

Newsletter No.

174

Swiss sanctions in relation to the situation in Ukraine

On 3 August 2022, the Swiss Federal Council took the decision to adopt the latest EU sanctions against the Russian Federation. Amendments to the corresponding ordinance have been adopted by the Swiss Federal Council on 3 August 2022 and came into force on the same day at 6pm. Also, the Federal Department of Economic Affairs, Education and Research (EAER) had already updated the list of sanctioned individuals, companies and entities on 29 July 2022, resulting in the sanctioning of further 54 individuals and 9 entities.

walderwyss attorneys at law

What are the latest developments of the sanctions regime currently in place in Switzerland?

On **3 August 2022**, the Swiss Federal Council took the decision to adopt the latest EU sanctions directed against the Russian Federation on **21 July 2022**, as implemented in the amended "Ordinance instituting measures in relation to the situation in Ukraine" (*Verordnung über Massnahmen im Zusammenhang mit der Situation in der Ukraine / Ordonnance instituant des mesures en lien avec la situation en Ukraine*) (the **Ukraine Ordinance**) which came into force on **3 August 2022 at 6pm**.

The new measures primarily concern a ban on buying, importing or transporting **gold and gold compounds** from the Russian Federation. Services in connection with these goods are also prohibited.

The Swiss Federal Council reminded that none of the measures against the Russian Federation are directed against the trade in agricultural or food products between third countries and the Russian Federation. Accordingly, in order to avoid disruptions to payment channels, the Swiss Federal Council decided **two new exceptions with respect to transactions related to agricultural products and oil supplies to third countries, as has the EU**.

The largest Russian bank, **Sberbank**, has now also had its assets frozen and is banned from providing funds, economic resources or technical services. New derogations have now been introduced to ensure the **orderly wind-down** of transactions and the **sale of Sberbank subsidiaries**.

Also, the **list of sanctioned individuals and entities** as set forth in Annex 8 to the Ukraine Ordinance has been further expanded by the Federal Department of Economic Affairs, Education and Research (EAER) on **29 July 2022**, resulting in the sanctioning of further 54 individuals and 9 entities for a current total of more than 1,200 individuals and more than 100 entities.

Finally, on **5 July 2022**, the State Secretariat for Economic Affairs (SECO) updated its 16 March 2022 guidelines, last updated on 14 April 2022.

Newly sanctioned entities and individuals

As a result of the amendments to Annex 8 to the Ukraine Ordinance which entered into force on **29 July 2022**, some **further 54 individuals and 9 entities** are now subject to financial sanctions and, for those individuals, travel restrictions. Assets in Switzerland belonging to these individuals must be frozen and reported to the Swiss State Secretariat for Economic Affairs (**SECO**). These changes reflect the EU's latest changes in respect of sanctioned individuals and entities published by the European Council on **21 July 2022**. Switzerland's list of sanctioned entities and individuals fully mirrors that of the EU.

Amendments to the Ukraine Ordinance

Commercial restrictions

1. Import ban regarding gold and gold compounds

The purchase of **gold** as listed in Annex 26 to the Ukraine Ordinance originating in or exported from the Russian Federation after **4 August 2022**, as well as the import, transit and transport thereof in or through Switzerland are prohibited. So too are the purchase, import, transit and transport of goods processed **in a third country but incorporating such prohibited products**.

Furthermore, the purchase of **gold compounds** as listed in Annex 27 to the Ukraine Ordinance (in particular jewellery), originating in or exported from the Russian Federation after **4 August 2022**, as well as the import, transit and transports of such goods in or through Switzerland, are prohibited.

These prohibitions are accompanied by a ban on the provision of related **services of any kind**, including financial services, technical assistance, brokering services, or otherwise the providing of financial means for the purchase, the import, the transit and transport in or through Switzerland or such goods, as well as on the **sourcing, manufacturing, repair or use** of such goods unless, for **the latter**, when destined to the **personal use** of individuals **travelling to Switzerland or a member State of the European Economic Area** and provided such goods are **owned by them** and are **not intended for sale**.

Finally, SECO may grant **derogations** in relation to cultural goods which are on loan in the context of **formal cultural cooperation** with the Russian Federation.

2. Updated list of banned goods related to oil refining and natural gas liquefaction

Various goods have been added to Annex 4 to the Ukraine Ordinance (*Goods related to oil refining and natural gas liquefaction*).

Financial restrictions

1. New exceptions to asset freeze

New **exceptions to the freezing of assets** of individuals and entities listed in Annex 8 to the Ukraine Ordinance and to the prohibition to **provide such individuals and entities with assets and economic resources** have been added whenever the unfreezing of assets or the provision of economic resources is required in order to prevent or mitigate an event likely to have a serious and significant impact on human health and safety or the environment.

Furthermore, the Ukraine Ordinance now provides **specific exceptions** according to which SECO can authorise the unfreezing and release of certain assets and economic resources in favour of:

- a. **Sberbank**, provided such measures are necessary to (i) **wind down by 22 August 2023** all operations, contracts and other agreements, including related banking relationship **concluded before 4 August 2022** or (ii) allow the **sale or transfer until 13 November 2022** of **ownership rights directly or indirectly held by this entity** to a legal person, corporation or entity established in Switzerland or a member State of the European Economic Area; and
- b. **Bank Rossiya, PROMSVYAZBANK, VEB.RF, Otkritie FC Bank, Novikom-bank, Sovcombank, VTB Bank and Sberbank**, provided such measures are necessary to purchase, import or transport **agricultural products**, including **wheat** and **fertilisers**.

2. Ban on transactions with certain state-owned enterprises

Since **25 March 2022**, taking part, directly or indirectly, in any transaction with certain banks or other entities located in the Russian Federation, their controlled entities based outside Switzerland or a **member State of the European Economic Area** and the entities acting on their behalf or upon their instructions/directions (as listed in Annex 15 to the Ukraine Ordinance) is **prohibited, except**, amongst others, with respect to (i) transactions necessary to wind down by **31 December 2022 (formerly 1 October 2022)** any co-enterprise of similar legal structure (involving such banks or other entities) established **before 26 March 2022**, (ii) transactions strictly necessary for the purposes of purchasing, importing and transporting fossil fuel, in particular coal, oil (being specified as of **3 August 2022** that the exception related to oil only applies to the extent the purchase, import or transport of these goods **are not otherwise prohibited** under the commercial restrictions set forth in Articles 12a (*Oil and petroleum products*) and 12b (*Services related to the international transport of oil and petroleum products*) of the Ukraine Ordinance) and natural gas, as well as titanium, aluminium, copper, nickel, palladium and iron ore from or through the Russian Federation to Switzerland, a member State of the European Economic Area and, **since 27 April 2022**, Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia (iii) certain transactions related to energy projects outside the Russian Federation, (iv) transactions serving humanitarian purposes, (v) **since 29 June 2022**, transactions related to the providing of **telecommunication services** or **services and equipment** necessary for the **functioning, maintenance or security of telecommunication services** to entities listed in Annex 15 to the Ukraine Ordinance and **since 3 August 2022**, transactions necessary (vi) for the direct or indirect purchase, import or transport of **pharma-**

ceutical, medical, agricultural and food products, including wheat and fertilisers whose import, purchase and transport is **allowed under the Ukraine Ordinance** and (vii) to ensure **access to judicial, administrative or arbitral proceedings** in Switzerland or a member State of the European Economic Area, as well as for the **recognition or enforcement of a judgment or an arbitration award** rendered in Switzerland or a member State of the European Economic Area.

3. Clarifications regarding the ban on the provision of services to trusts

As of **29 May 2022**, it was prohibited to act as, or arrange for another person to act as, a **trustee, nominee shareholder, director, secretary or a similar position**, for a trust or similar legal arrangement having as a settlor or a beneficiary (a) a Russian national or resident, (b) a legal person, corporation or entity established in the Russian Federation, (c) a legal person, corporation or entity whose directly or indirectly owned for more than 50% by an individual or a legal person, corporation or entity under (a) or (b) above, (d) a legal person, corporation or entity controlled by an individual or a legal person, corporation or entity referred to under (a), (b) or (c) above or, (e) an individual or legal person, corporation or entity acting on behalf or at the direction of an individual or a legal person, corporation or entity referred to under (a), (b), (c) or (d) above (together, the **Sanctioned Parties**). After having been **suspended on 29 June 2022, 6pm**, these prohibitions have **resumed on 1 August 2022**.

In that respect, SECO can authorise **derogations** to such prohibitions in order to allow the provisions of such services in order to (i) **complete by 1 October 2022** operations which are necessary for the **termination of all agreements** concluded **before 28 April 2022**, provided that such operations have been **initiated before 30 May 2022** and (ii) for other reasons, provided that the service providers do **not accept from, or make**

available to, Sanctioned Parties **any funds or economic resources**, directly or indirectly, or otherwise provide Sanctioned Parties with **any benefit from assets** placed in a trust or a similar legal arrangement.

SECO's updated guidelines

On **5 July 2022**, SECO has updated its guidelines (originally issued on 16 March 2022 and updated on 14 April 2022) regarding the interpretation of the Ukraine Ordinance with respect to (i) the prohibition to accept certain deposits and crypto assets and the related reporting obligations (**Articles 20 and 21**), (ii) the prohibition to sell certain securities (**Article 23**) and (iii) prohibitions related to trusts (**Article 28d**) (the **Updated Guidelines**) (an overview of such guidelines can be found in our previous Newsletters No. 166 (see [here](#)) and No. 168 (see [here](#)) released on 18 March 2022 and 5 May 2022, respectively). The changes to the Updated Guidelines can be outlined as follows based on **specific questions** which have been submitted to and reviewed by SECO.

With respect to Articles 20 and 21 of the Ukraine Ordinance:

1. **negative balances** do not need to be reported;
2. whereas citizens of and residents in **Monaco** are not subject to the prohibitions of Article 20 to accept certain deposits and crypto assets, citizens of and residents in the **United Kingdom** are;
3. accounts held by entities located **outside the Russian Federation** and whose **beneficial owner is a Russian individual**, are **not subject to Article 20**. SECO has effectively **revised its previous interpretation** according to which entities beneficially owned by Russian individuals were subject to Article 20, which we highlighted to be inconsistent with both the Ukraine Ordinance and the inter-

pretation of the similar sanctions at the level of the EU (see our Newsletter No. 168 (see [here](#)) released on 5 May 2022); similarly, accounts held by **entities located outside the Russian Federation** which are **owned (even partially) by a Russian individual** or entity are **not subject to Article 20**;

4. **funds located outside the Russian Federation**, in which a Russian individual or entity holds a participation as investor **are not subject to Article 20**; however, pursuant to Article 23, it is **prohibited** to sell units in collective investment schemes related to securities labelled in Swiss francs or in the currency of a member State of the European Economic Area **to Russian citizens or residents or banks, corporations or entities located in the Russian Federation**; and
5. **Russian diplomatic and consular representations in Switzerland** are **not subject** to Article 20 to the extent that they do not qualify as "entities established in the Russian Federation" within the meaning of said provision, so that their **deposits can be accepted**.

With respect to Article 23 of the Ukraine Ordinance:

1. existing listed shares (i.e. **issued before 12 April 2022**) are also covered by Article 23 because it is usually not possible to distinguish them from those issued after 12 April 2022; however, the case is different **when new ISINs are created**, because then a distinction can be made. Shares that are already in the custody account **do not have to be sold**. In principle, no sales of new shares, i.e. shares issued after 12 April 2022, may take place; furthermore, **derivatives** on such securities (e.g. total return swap), which give a client synthetic exposure to a security without physical delivery of the security, would **also be covered by**

the prohibition to the extent that such a transaction with an affected person would be considered a **circumvention** of the relevant prohibition;

2. the **continued holding of units of existing fund** does not fall under the prohibition of Article 23, even if newly issued securities in CHF or EUR are added to the underlying in the fund; and
3. whereas citizens of and residents in **Monaco** are not subject to the prohibitions of Article 23(2), citizens of and residents in the **United Kingdom** are.

With respect to Article 28d of the Ukraine Ordinance:

1. Article 28d apply to any trust or similar arrangement **without regard to when it has been established**;
2. "arrangements" deemed similar to trusts under the Ukraine Ordinance are those which offer **similarities in terms of structure or function**, such as the establishment of a **fiduciary relationship** between the administrator and the beneficiary or the **division or dissociation of the legal and economic ownerships over assets**;
3. if the settlor or beneficiary of the trust is subject to the prohibition, the **prohibition applies regardless of the form of the trust**; in the case of a discretionary trust, if the beneficiary is subject to the prohibition and is replaced by a person who is not, the previously prohibited trust would be **permitted again**, provided the settlor is **not covered** by the prohibition;
4. Article 28d(2) lists **names of functions that can be assimilated to a trustee**: if a person acts as a trustee, i.e. takes instructions from a settlor to manage affairs on behalf of a beneficiary, he or she is assimilated to a trustee, irrespective of the named function;
5. prohibited services are **manage-**

- ment services** provided to a trust or similar legal institution; for example, **accounting services**, which are directly related to the provision of management services to a trust, **are prohibited**; on the other hand, **customary banking and payment services**, such as the provision of a bank account, the execution of payments or the exchange of currencies, **are still permitted**, as these are not considered "management services" within the meaning of Article 28d(1);
6. similarly to Articles 15 and 20, the concept of "**control**" referred to in Article 28d(1)(d) must be assessed on a **case-by-case basis**, the decisive factor being whether a legal person, corporation or entity is under the **effective control** of a person, corporation or entity referred to in Art. 28d(1)(a) to (c);
 7. in order to assess the **territorial applicability of Article 28d**, SECO confirms that **all** natural persons resident in Switzerland or legal entities established in Switzerland are obliged to comply with the Ukraine Ordinance, **irrespective of the location of the trust's seat or the domicile of the parties**, so that no other criteria must be taken into account;
 8. the "**provision of a registered office**" is to be understood as the provision to the trust of an address in Switzerland; the "**provision of a business or administrative address**" is to be understood as the provision of an address in Switzerland that leads directly to the trust or can be linked to it;
 9. Article 28d applies to trusts or similar legal institutions and **not to legal persons that are held by a trust or similar legal arrangement** within the meaning of Article 28d; companies that are owned by a trust or similar legal arrangement subject to Article 28d are not, however, permitted to provide management services to such trust or similar legal arrangement;
 10. **current circumstances** must be considered when assessing the scope of Article 28d, e.g. it is not relevant whether the settlor was a Russian citizen but has since passed;
 11. Article 28d applies to a trust or similar legal arrangement even if there are **multiple beneficiaries** but only one of them is a Russian citizen or resident (e.g. if out of five beneficiaries of a trust, one is a Russian citizen or resident); similarly though, the **exceptions** set forth in Article 28d(3) are applicable already if one of the beneficiaries is a citizen of both the Russian Federation and Switzerland or a member State of the European Economic Area (e.g. if out of five beneficiaries of a trust, four are Russian citizens or residents and one is both a Russian and Swiss/EU national);
 12. Article 28d(3) refers to either the **citizenship or residence but not to the domicile** of the settlor or the beneficiary, so that the exceptions would apply to a Russian settlor who holds a residency permit of Switzerland or a member State of the European Economic Area but is domiciled outside the European Economic Area (e.g. in the UK); and
 13. whereas citizens of and residents in **Monaco** are not subject to the prohibitions of Article 28d, citizens of and residents in the **United Kingdom** are.

Conclusion

Considering the extensive scope of the sanctions under the Ukraine and Belarus Ordinances and the questions their application can often raise as well as the criminal consequences a breach thereof entails (pursuant to the Federal Act on the Application of International Sanctions (*Bundesgesetz über die Durchsetzung von internationalen Sanktionen/Loi fédérale sur l'application de sanctions internationales*)), activities and businesses which may be impacted call for a scrutinised review and assessment on a case-by-

case basis.

An overview of the scope of the Ukraine Ordinance can be found in our previous Newsletters No. 164, No. 166, 167, 168 and 173 on the topic, released on 11 March 2022 (see [here](#)), 18 March 2022 (see [here](#)), 1 April 2022 (see [here](#)), 2 May 2022 (see [here](#)) and 1 July 2022 (see [here](#)), respectively, and an overview of the scope of the Belarus Ordinance can be found in our previous Newsletters No. 166 (see [here](#)), No. 168 (see [here](#)) and No. 173 (see [here](#)), released on 18 March 2022, 2 May 2022 and 1 July 2022, respectively.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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