

## Switzerland Expands its Measures to Prevent the Circumvention of International Ukraine-Related Sanctions

On 27 August 2014, the Swiss Federal Council has adopted additional measures to prevent that the Swiss territory is used as a channel to circumvent international sanctions in connection with the situation in Ukraine. To that end, the Federal Council has revised its Ordinance dated 2 April 2014 to take into account the new sanctions implemented by the EU in July 2014. The new Ordinance contains restrictions of commerce regarding dual-use goods and specific military goods, goods for the oil industry, as well as the import and export of goods from/to Crimea and Sevastopol. It also introduces new financial restrictions regarding financial instruments of certain Russian banks as well as the financing of infrastructure projects in Crimea and Sevastopol.

The purpose of this briefing is to provide high-level information as regards the background as well as the contents of the latest measures adopted by Switzerland in the context of the Ukraine-related crisis.

### Background

In reaction to the recent developments relating to Ukraine, both the U.S. and EU authorities have adopted a first set of restrictive measures in March 2014.

To address the escalating situation in Ukraine, the U.S. and EU sanctions were subsequently revised on a number of occasions. In particular, between July and August, the U.S. and EU measures were expanded to target more specifically the Russian banking and energy sectors.

Since the very outset of the Ukraine crisis, the Federal Council has closely monitored the evolution of the situation as well as the sanctions imposed by the international community. However, with a view

to Switzerland's chair of the OSCE and its possible role in finding political solutions to the crisis with all the parties involved, the Federal Council decided not to adopt the sanctions imposed by the EU.

Rather, Switzerland would ensure that its national territory is *not misused to circumvent* the sanctions imposed by the international community in connection with the situation in Ukraine.

Hence, pursuant to the provisions of the Swiss Embargo Act, the Federal Council adopted a first Ordinance on 2 April 2014, setting forth certain restrictions and reporting obligations that are applicable in particular to the Swiss financial sector. More specifically, the Ordinance contained a prohibition for financial intermediaries to enter into new business relationships with certain persons,

companies and organizations listed in its annex as well as their affiliates. Financial intermediaries having business relationships with such persons, companies or organizations were obliged to notify such relationship immediately to the Swiss State Secretariat for Economic Affairs (SECO), specifying the name of the beneficiary as well as the object and the value of the commercial relationship.

Travel restrictions were not addressed specifically in the 2 April 2014 Ordinance, as the measures imposed on the EU level are immediately applicable in Switzerland via the Schengen Association Agreement.

The annex to the Ordinance of 2 April 2014 was subsequently updated and expanded on a number of occasions, in an effort to align its contents to the respective list of the EU.

After further escalation of the conflict in Ukraine and after the EU had adopted additional sanctions against Russia in July 2014 (cf. Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine), the Swiss Government decided to continue its policy and to take additional measures to ensure that the sanctions imposed by the EU cannot be circumvented via Swiss territory. The Federal Council also decided to widen the ban on exports of war materials to Russia and Ukraine to specific military goods.

## The Ordinance of 27 August 2014

The Federal Council's recent decisions have been implemented by a new *Ordinance on Measures to Prevent the Circumvention of International Sanctions in Relation to the Situation in Ukraine*, dated 27 August 2014. The new Ordinance significantly expands the scope of the measures compared to the first Ordinance of 2 April 2014, in order to include the sanctions imposed by the EU in July 2014. Its contents may be summarized as follows:

## Restrictions of Commerce

The new Ordinance limits the commerce regarding dual-use goods and specific military goods, goods for the oil industry, as well as the import and export of goods from/to Crimea and Sevastopol:

- In addition to the conditions under the Goods Control Act, licenses regarding dual-use goods and specific military goods in connection with the situation in Ukraine may be denied if such goods are intended exclusively or partly for military purposes or if they are intended for a military end user (Article 1 of the Ordinance);
- The sale, delivery, export and transfer of certain goods has to be notified to SECO immediately if such goods are to be used for exploration and extraction of oil in deep sea or the Arctic or for shale oil projects in Russia (Article 2 of the Ordinance);
- Goods from Crimea or Sevastopol may only be imported if a certificate of origin from Ukrainian authorities exists. Moreover, it is prohibited to provide financial services, insurance or reinsurance services with regard to other goods from Crimea or Sevastopol (Article 3 of the Ordinance);
- The sale, delivery, export or transfer of certain goods to persons, companies or organizations in Crimea or Sevastopol, as well as the provision of technical assistance, brokering or financial services in connection with such goods are prohibited (Article 4 of the Ordinance).

## Financial Restrictions

In addition to the existing prohibition to enter into new business relationships and the obligation to notify existing business relationships with regard to certain persons, companies and organizations (Articles 8 and 9 of the Ordinance), *additional financial restrictions* have been included in the new Ordinance:

- The issuance of financial instruments of more than 90 days maturity by any of the five Russian banks listed in an annex to the Ordinance (currently Sberbank, VTB Bank, Gazprombank,

Vnesheconombank/VEB and Rosselkhozbank) or by their affiliates is subject to authorization by SECO, which will only be granted if they are within the respective entity's average financial engagement of the past three years (so called "*courant normal*", Article 5 of the Ordinance). According to the Federal Council's press release, Swiss subsidiaries of these Russian banks are exempt from the authorization requirement, as long as they are not acting on behalf of or upon the instructions of their parent companies;

- Secondary trading with financial instruments issued after 27 August 2014 outside Switzerland and the EU by one of the five Russian banks or their affiliates are subject to a duty to notify SECO on a monthly basis (Article 6 of the Ordinance);
- It is prohibited to grant loans in connection with infrastructure projects in the areas of traffic, telecommunication and energy or for the exploitation of oil, gas and mineral resources in Crimea and Sevastopol, or to acquire shares in companies or to establish joint ventures active in such areas (Art. 7 of the Ordinance).

## Implementation

The ordinance entered into force on 27 August 2014. However, certain of its provisions are also applicable to contracts entered into before that date (Art. 14 of the Ordinance *e contrario*).

Compliance with the Ordinance is monitored by SECO and, at the Swiss border, by the Federal Customs Administration.

Violations of the Ordinance's provisions are subject to criminal sanctions according to Art. 9 and 10 of the Embargo Act which stipulate penalties up to imprisonment of five years and a fine of CHF 1 million.

## Conclusion

The Ordinance of 27 August 2014 broadens the scope of the measures adopted by Switzerland in connection with the situation in Ukraine, in order to

avoid that the Swiss territory is misused to bypass the international sanctions. The new Ordinance also evidences Switzerland's continuous efforts to align its measures with those adopted by the EU.

However, by contrast to the U.S. and the EU, Switzerland has so far not ordered the blocking of property or freezing of assets of any of the persons, companies and organizations that are targeted by the measures adopted since April 2014 in connection with the Ukraine-related crisis. Moreover, when comparing the most recent Ordinance adopted by Switzerland with the rules applicable within the EU, there remain some important differences in the scope and language of the provisions that may entail significant consequences both from a legal and practical perspective. Hence, prior to engaging in cross-border transactions having a connection to Ukraine or Russia, it is essential to also carefully consider and review the relevant EU and U.S. sanctions regimes.

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