

## New Developments Regarding Swiss Measures to Prevent the Circumvention of International Ukraine-Related Sanctions

On 12 November 2014, the Swiss Federal Council announced the adoption of further measures to prevent Swiss territory from being used as a channel to circumvent international sanctions imposed in connection with the situation in Ukraine. The further measures take into account the reinforced sanctions adopted by the EU in September 2014. They have been introduced by way of a revision of the Federal Council's Ordinance dated 27 August 2014.

The latest measures include, in particular, (i) additional restrictions on the trade and financing of dual-use goods and specific military goods, as well as goods and services for the oil industry; (ii) new financial restrictions on the issuance of financial instruments by, or loans granted to, certain major Russian banks, energy and defense companies.

The present briefing is a followup to our 29 August 2014 briefing on the topic. It aims to provide an overview of the key aspects of the new Swiss measures in the context of the Ukraine-related crisis.

### Background

In September 2014, the EU adopted additional restrictive measures in connection with the Ukraine-crisis (cf. Council Regulation No 960/2014 and Implementing Regulation No 961/2014, dated 8 September 2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine). These measures specifically targeted the energy sector, the dual-use/military sector, as well as the financial sector. Consistent with its policy, the Swiss Government has now decided to further expand the scope of its own national measures to ensure that the latest sanctions imposed on the EU level cannot be circumvented via Swiss territory.

### The Amendments introduced on 12 November 2014

The *key elements* of the latest amendments introduced by the Swiss Federal Council on 12 November 2014 can be summarized as follows:

#### Trade Restrictions

- Dual-use and/or military goods (Article 1 of the Ordinance)

In addition to the existing restrictions (i.e. possible denial of export licenses) regarding goods that are

intended to be used exclusively or partly for military purposes or by a military end user, there is a *new obligation to notify* the Swiss State Secretariat for Economic Affairs (SECO) without delay, in case of direct or indirect provision of services (such as financial services) or technical assistance in connection with specific dual-use and military goods to any of the nine companies that are listed in Annex 4 to the Ordinance.

However, if the services are intended for the aeronautics and space industry, no notification is required.

- Goods and services relating to oil exploration and extraction (Article 2 of the Ordinance)

The obligation to notify SECO is no longer limited to the sale, delivery, export and transfer of certain goods if they are used for the exploration and extraction of oil in deep water or the Arctic or for shale oil projects in Russia, but now also encompasses the *provision of certain services* in connection with such activities and projects.

The services that may trigger an obligation to notify SECO now include drilling, well testing, logging and completion services and the supply of specialized floating vessels.

## Financial Restrictions

- Issuance of financial instruments (Article 5 of the Ordinance)

The financial restrictions that were until now imposed on the five major Russian banks listed in Annex 2 to the Ordinance (i.e. Sberbank, VTB Bank, Gazprombank, Vnesheconombank/VEB, Rosselkhozbank) have been significantly expanded.

By way of reminder, the previous restrictions required (prior) authorization from SECO for the issuance of financial instruments of more than 90 days maturity by any of the above-mentioned banks (or by their majority-owned non-Swiss subsidiaries or any entity acting on their behalf or under their direction).

Pursuant to the amendment of 12 November 2014, the financial restrictions and thus the requirement for SECO's authorization have been expanded to cover:

- the issuance of financial instruments with a maturity of over 30 days;
- the provision of *loans* with a maturity of over 30 days;

if and to the extent that the financial instruments are issued by, or the loans are granted to, any of the targeted entities listed in Annex 2 to the Ordinance (or their majority-owned non-Swiss subsidiaries or any entity acting on their behalf or at their direction).

The list in Annex 2 is no longer limited to the above-mentioned five major banks, but now also encompasses *three major Russian energy companies* (Rosneft, Transneft, Gazprom Neft) and *three major Russian defense companies* (OPK Oboronprom, United Aircraft Corporation, Uralvagonzavod).

Similar to the version adopted on 27 August 2014, the amended Ordinance provides that SECO's authorization will be granted if the transaction contemplated under Article 5 remains within the average nominal value of the financial instruments held by the concerned entity during the past three years (so called "*courant normal*").

- Mandatory notification (Article 6 of the Ordinance)

There is a duty to notify SECO on a monthly basis of any trading of financial instruments with a maturity of over 90 days that were issued between 27 August and 12 November 2014 outside Switzerland or the EU, where these were issued by one of the targeted banks, energy or defense companies (including their majority-owned non-Swiss subsidiaries or any entity acting on their behalf or at their direction).

The same obligation applies to the trading of financial instruments that have a maturity of over 30 days, if and to the extent that such instruments were issued after 12 November 2014.

## Implementation

The amendments to the Ordinance of 27 August 2014 entered into force on 12 November 2014 at 18:00. However, part of the amended provisions are also applicable to transactions governed by contracts entered into before that date (Art. 14a of the Ordinance *e contrario*).

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

## Conclusion

The latest amendments to the Ordinance of 27 August 2014 further expand the scope of the restrictive measures adopted by Switzerland in connection with the situation in Ukraine, in order to avoid Swiss territory being misused to evade international sanctions. The amendments are also proof of Switzerland's continued efforts to align, to a large extent, its national measures with those of the EU.

However, there are a number of material differences in the scope and language of the provisions in the latest amendments introduced by Switzerland and the corresponding EU Regulations of September 2014. These differences, together with the lack of publicly available guidance on how SECO interprets the Ordinance, makes its day-to-day application particularly difficult for any company involved in transactions that potentially fall thereunder.

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