

Switzerland adopts EU sanctions against Russia

The Swiss Federal Council took the decision on February 28, 2022 to adopt sanctions against Russia mirroring the packages of sanctions imposed by the EU on February 23 and 25, 2022. The Federal Ordinance on measures to prevent the circumvention of international sanctions connected with the situation in Ukraine, which had been adopted in 2014, has been revised in an expedited manner to reflect the new scope and retitled as the Federal Ordinance instituting measures in connection with the situation in Ukraine on February 28, 2022 (the "Ordinance").

Published: 3 March 2022
Updated: 3 July 2023

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Introduction

On February 25, 2022, the Swiss Federal Council expanded the list of individuals and entities subject to restrictive measures, in line with the list adopted by the EU on February 23 targeting members of the Russian State Duma who voted for the recognition of independence of the Donetsk People's Republic and Luhansk People's Republic, and a number of Russian banks, individuals and entities considered responsible for threatening Ukraine, operating in the defence sector or engaging in disinformation against Ukraine.

On February 28, 2022, the Swiss Federal Council introduced additional restrictions, building on the measures that had been in place since 2014, with a view to mirroring the sanction packages imposed by the EU on February 23 and 25, 2022.

These additional measures notably include the following key financial restrictions: (1) asset

freezes, (2) expanded prohibitions to grant loans and (3) expanded prohibitions on dealings with financial instruments. As will be highlighted below, for the time being, the restrictions that were transposed on an expedited basis into the Ordinance on February 28, 2022 do not yet entirely match the full EU sanction package. Our expectation is, however, that the Swiss authorities will further revise the Ordinance, in order to fully align the Swiss sanctions with the EU regime.

1. Asset freezes

Similar to what applies in the EU, all funds and economic resources belonging to or controlled by individuals or entities designated in Annex 3 to the Ordinance are subject to an immediate freeze as of February 28, 2022 at 18:00. A further prohibition to make funds or economic resources available to such persons, directly or indirectly, was also introduced.

Persons or entities holding or managing assets or resources falling under this asset freeze must report to the Swiss State Secretariat for Economic Affairs (SECO) without delay. The same applies to persons who have knowledge of resources that must presumably be subject to an asset freeze.

Under certain conditions, SECO may grant derogations to a freeze by way of exception (for instance, where this is required to honour pre-existing contracts or to allow the activities of Russian diplomatic or consular representations).

2. Prohibitions to grant loans

The restrictions introduced on February 28, 2022 expand previous restrictions on loans and now cover:

(1) a prohibition to grant loans (regardless of their maturity), directly or indirectly, to the Federation of Russia, its Government, the Central Bank of Russia and entities or organizations acting on their behalf or at their direction ("Covered Persons A"); and

(2) a prohibition to grant loans, directly or indirectly, with a maturity of more than 30 days to (i) banks or other Russian entities designated in Annex 2 to the Ordinance, (ii) banks, businesses or entities based outside of Switzerland that are more than 50% controlled by a bank or entity designated in Annex 2 and (iii) businesses or entities acting on behalf or at the direction of any of the foregoing parties ("Covered Persons B").

Given the political declarations of the Swiss Federal Council, we would expect that the scope under the Ordinance will be interpreted as much as possible in a manner that would align the Swiss sanctions to the EU ones. That being said, beyond mere interpretation questions (e.g., control and ownership concepts), there are other deviations in the scope of restrictions on loans, including the scope of covered persons (the EU scope appears to be wider) and the parameters of the prohibition (e.g., tenor of 30 days for Covered Persons B, as opposed to any tenor under EU sanctions). It is likely that those differences will be removed in the expected further revision of the Ordinance.

A limited carve-out applies to drawdowns, which are made under certain conditions, in accordance with pre-existing contractual arrangements entered into prior to February 28, 2022.

3. Prohibitions of dealing with financial instruments

First, the revised Ordinance added a prohibition on trading with financial instruments issued after March 14, 2022 (regardless of their maturity date) by Covered Persons A. Furthermore, the issuance, or assistance in the issuance, of financial instruments whose issuer is a Covered Person A is prohibited.

By contrast, the EU's trading prohibition applies to all transferable securities and money market instruments issued after March 9, 2022.

Second, the revised Ordinance introduced a prohibition – as opposed to a mere notification in the previous regime – on trading in financial instruments issued by Covered Persons B, but surprisingly limited such prohibition to financial instruments issued between August 27, 2014 and March 14, 2022, with a maturity exceeding 90 days. In addition, the Ordinance now prohibits – as opposed to subjecting to prior authorization – the issuance or assistance in the issuance of financial instruments when the issuer is a Covered Person B and the maturity exceeds 30 days.

Here too, the Swiss regime relating to instruments issued by Covered Persons B does not entirely match the EU rules. The latter prohibit dealings with (including the issuance or assistance in the issuance of) transferable securities and money-market instruments (i) with a term exceeding 90 days, issued after August 1, 2014 to September 12, 2014 or (ii) with a maturity exceeding 30 days, issued after September 12, 2014 to April 12, 2022. Finally, the EU sanction regime prohibits dealings with transferable securities and money market instruments issued after April 12, 2022 by Covered Persons B, regardless of their maturity date.

4. Other notable difference with the EU sanction packages

Another notable difference between the measures adopted on February 28, 2022 by the Federal Council and the EU sanction packages is that the Swiss regime does not – yet – include measures akin to the sweeping prohibitions on the acceptance of deposits exceeding certain thresholds from Russian nationals or residents (with some exemptions for EU nationals or residents), the holding of accounts of Russian clients by central securities depositories and the selling of euro-denominated securities to Russian clients.

5. Impact & expected developments

For Swiss financial intermediaries and other businesses, navigating the various sanctions regimes is not easy, especially because of the difference in scope and interpretation between the U.S., EU and Swiss sanctions against Russia, all of which may apply concurrently to the same fact pattern, with varying consequences and implications. Beyond the immediate assessment as to whether a Swiss financial intermediary or business has direct relationships with, holds assets for or otherwise is involved in dealings with, any designated person, or Covered Persons A or B, it would be advisable to assess and put in place measures to, inter alia: (i) identify potential indirect implications (e.g., impact on intermediaries, suppliers or contractors, themselves being in the EU or U.S.), (ii) implement procedures to avoid inadvertently breaching sanctions (e.g., counterparty or client screening, pre-screening of payments or transfers of funds), and (iii) review and assess impacts on the supply chain, especially if any services, resources or materials – at any stage in the process – are being sourced from Russia or Ukraine.



We understand that the Swiss authorities are continuing to monitor the EU sanctions packages and working towards further adapting the Ordinance to fully align the Swiss sanctions against Russia with the EU sanctions. This would be consistent with the declaration by the Swiss Federal Council on 28 February 2022.

Please do not hesitate to contact us in case of any questions.

You may reach out to your usual contact at our firm or direct any sanction-specific queries to our dedicated task force at: sanctions@clutterlenzstaehelin.com.

Legal Note: The information contained in this Update is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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