

Switzerland imposes further sanctions against Russia

On March 4, the Swiss Federal Council adopted a complete overhaul of the Federal Ordinance on measures in connection with the situation in Ukraine, to align the Swiss regime with the EU sanctions against Russia. This extensive revision follows the Federal Council's February 28, 2022 decision to match the EU sanction packages under Swiss law; a decision that had already resulted in a partial expedited revision of the Ordinance (covered in our March 4 Newsflash). The new, fully restated, Ordinance entered into force on March 4, 2022 at 18h00.

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1. Introduction

On March 4, 2022, the Swiss Federal Council adopted further restrictive measures against Russia, with a view to fully aligning the Swiss sanctions regime with EU sanction packages. This resulted in a complete overhaul of the former Ordinance instituting measures in connection with the situation in Ukraine, which had been revised in a staggered manner on February 25 and 28 (see our Newsflash of March 4, 2022) and has now been replaced by a new, restated, March 4, 2022 version (the "Ordinance").

The revised regulation covers the different sanctions imposed in the EU on February 23, 25, 28 and March 2, 2022, and entered into force on March 4, 2022, at 18h00 (CET).

As a result of this revision, the Swiss sanctions regime against Russia has now been expanded to include the following additional key financial restrictions:

- a prohibition to accept deposits exceeding certain values from Russian nationals or residents or entities established in Russia;
- a prohibition imposed on Swiss central securities depositories to provide services to Russian nationals or residents or entities established in Russia in relation to securities issued after April 12, 2022;
- a prohibition to sell CHF or EUR denominated securities issued after April 12, 2022 or units in collective investment schemes providing exposure to such securities to Russian nationals or residents or entities established in Russia;
- a prohibition to provide, as of March 12, 2022, specialized financial messaging services (i.e., SWIFT or substituting services) to certain designated Russian banks and their subsidiaries;
- a prohibition to sell, supply, transfer, or export CHF or EUR denominated banknotes to Russia, to any person in Russia, including the Russian Government and the Central Bank of Russia; or otherwise for use in Russia;
- a prohibition to settle claims by any designated persons, Russian national or resident or entity established in Russia, or any person acting on their behalf, which derive from an agreement or matter whose performance was prevented or impacted by restrictions imposed under the current or the past Swiss sanction regime against Russia.

These sweeping financial sanctions come in addition to an expansion of the financial restrictions that had been previously adopted on February 28, such as asset freezes, prohibitions to grant loans and prohibitions related to dealings in financial instruments.

These financial measures are accompanied by extensive commercial sanctions (notably in relation to dual-use goods and goods that could contribute to military and/or technical development of the defence and security sector), as well as expanded travel bans.

We will outline below some practical implications of the most notable financial restrictions imposed by the revised Swiss sanction packages.

2. Prohibition of deposits - Practical implications

Swiss banks and licensed FinTech institutions are prohibited from accepting "deposits" from (i) Russian nationals or residents or (ii) businesses or entities established in Russia, if (and to the extent) the total value of deposits of the relevant individual or entity per financial institution exceeds CHF 100'000.

Based on the wording of the Ordinance, non-Russian entities owned or controlled by any of the above are not within the scope of this restriction. However, given the explicit anti-circumvention provision in the EU sanctions and the implicit anti-circumvention principle under Swiss law, it is likely that some financial institutions, especially international financial groups with operations in the EU, will – on a risk based approach – implement a more restrictive approach.

Swiss nationals, nationals of an EU Member State and persons having a temporary or permanent residence in Switzerland or in an EU Member State are carved out from the prohibition. An exception also applies to deposits that are necessary for non-prohibited cross-border trade between Switzerland and Russia, Switzerland and the EU, and the EU and Russia.

The restriction applies generally to deposits if the resulting balance will exceed the threshold of CHF 100'000 per institution. Deposits below the CHF100'000 threshold are not prohibited under the Ordinance. Withdrawals are, in principle, not restricted, subject to other provisions, such as the remittance of CHF or EUR banknotes to Russian residents or for use in Russia (with only

limited personal use carve-outs).

In the absence of a definition of the term "deposits", the scope of the restriction is not entirely clear. In our view, the term should generally be understood as it is defined under the Swiss Banking Act and therefore would not include securities and certain other assets. Likewise, inflows of cash resulting solely from corporate actions or the management of assets within a pre-existing account, including proceeds derived from such activity, should not be prohibited, as these would not be deposits from a relevant person. That being said, an official clarification or interpretative guidance from SECO would be welcome for the industry to ensure legal certainty.

For the rest, Swiss banks and licensed FinTech institutions must provide SECO with a list of all deposits exceeding CHF 100'000 held in their books by Russian nationals or residents and by entities established in Russia, no later than June 3, 2022. There is no carve-out based on dual citizenship or residence permits in Switzerland or an EU Member State in relation to this reporting obligation. The list will have to be updated annually thereafter. Of note, there are no provisions specifying the information to be provided, so that, until further guidance is published by SECO, our view is that banks and FinTech institutions may only disclose anonymized (or pseudonymized) lists of deposits without any client-identifying information (CIDs).

3. Prohibition to grant loans

The prohibition to grant loans is not limited to financial institutions and therefore applies to any person.

The following restrictions can be distinguished:

- a prohibition to grant loans, directly or indirectly, to the Federation of Russia, its Government, the Central Bank of Russia and entities or organizations acting on behalf or at the direction of the latter ("Covered Persons A"),
- a prohibition to grant loans, after March 5, to designated banks or other Russian entities, their controlled entities based outside of Switzerland and the businesses or entities acting on their behalf or at their direction (so-called "Covered Persons B"; a list extended by the March 4 Ordinance).

As was previously the case, a limited carve-out applies to drawdowns, made under certain conditions, in accordance with pre-existing contractual arrangements entered into prior to February 28, 2022.

4. Restrictions on dealing with securities and money-market instruments

The March 4 Ordinance maintains the prohibition introduced on February 28 on dealings (incl. trading and issuance-related activities) with transferable securities and money-market instruments issued after March 14, 2022 by Covered Persons A.

As regards Covered Persons B, the regime has been adapted to match the system adopted under the corresponding EU restriction (with a few adaptations to take into account the different dates of implementation of the 2014 sanctions against Russia under Swiss law, which impact the instruments' issuance dates and relevant list of covered issuers) to now include:

- a prohibition on dealings with transferable securities and money market instruments (i) with a term exceeding 90 days, issued after August 27, 2014 to November 12, 2014 or (ii) with a term exceeding 30 days, issued after November 12, 2014 to April 12, 2022 by the Covered Persons B that are listed on Annex 9 to the Ordinance (which corresponds to Annex III of Council Regulation (EU) 833/2014, as amended by Council Regulation (EU) 2022/328);
- a prohibition on dealings with transferable securities and money market instruments with a term exceeding 30 days, issued after November 12, 2014 to April 12, 2022, by the Covered Persons B that are listed on Annexes 12 and 13 to the Ordinance (which corresponds to Annex V and VI of Council Regulation (EU) 833/2014, as amended by Council Regulation (EU) 2022/328); and
- a prohibition on dealings with transferable securities and money market instruments issued after April 12, 2022 by any of the Covered Persons B listed in Annexes 9 to 13 of the Ordinance.

Transitional provisions apply to some transactions based on a contract entered into prior to February 28, 2022 at 6 pm (CET).

Finally, the revised Ordinance now also includes a prohibition to list and provide services on trading venues registered or recognised in Switzerland for transferable securities of banks, businesses or entities established in Russia that have over 50% public ownership.

5. Prohibition on the provision of specialized financial messaging services

The restrictions introduced on March 4, 2012 now also include the prohibition, applicable as of March 12, 2022, to provide specialized financial messaging services (i.e., SWIFT or substituting services) to certain Russian banks and entities established in Russia that these own at more than 50%, directly or indirectly.

As of March 4, 2022, excluded banks include (as is the case under the corresponding EU restriction): Bank Otkritie; Novikombank; Promsvyazbank; Bank Rossiya; Sovcombank; Vnesheconombank; and VTB Bank.

6. Impact & expected developments

The alignment of the Swiss regime with the EU sanction packages will undoubtedly facilitate the implementation of applicable restrictions by Swiss financial intermediaries and other businesses, even if some (limited) differences still subsist.

That said, the application of these rules – unprecedented in their nature and scope – does present considerable challenges in practice, especially because limited guidance is available as to their interpretation at this early stage. In this respect, persons and businesses implementing the Swiss sanctions regime should distinguish between (a) the strict prohibitions or restrictions resulting from the sanctions, and (b) any additional risk mitigation measures that go beyond those, which may be decided on a risk-based approach. For the rest, irrespective of the legal interpretation and guidance, purely practical and operational aspects need to be taken into account, especially when the sanctions affect in different ways large volumes of transactions (e.g., payment processing, dealing in securities, etc.) absent automated data-feeds distinguishing between permitted and restricted operations.

Given the importance of the topic and the potentially serious legal and reputational consequences

in case of breach, it is crucial that official guidance becomes available as soon as practicable.

It is expected by the industry that professional associations, such as the Swiss Bankers Association (SBA), will coordinate efforts of its members with a view to seeking clarifications from SECO as to general issues and questions that frequently arise.

For the rest, Swiss authorities continue monitoring the developments on the EU sanctions front. Considering the Federal Council's February 28 declaration, it is expected that, if the EU decides to expand its current regime further, for instance by designating additional individuals or entities or adopting additional restrictions, Swiss authorities will continue working towards an alignment.

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@lenzstaehelin.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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