Implementation of the Tenth Sanctions Package in Switzerland

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Key Takeaways

- **Following the EU's measures, the Federal Council has enacted a tenth sanctions package against Russia, which entered into force on 29 March 2023.**
- **The new sanctions package contains, on the one hand, extended reporting obligations in the financial sector and a tightening in the area of goods.**
- **On the other hand, an amendment to the Ukraine Ordinance allows providing certain services to Russian companies and organizations under an exemption for humanitarian purposes.**
- **Further, the Ukraine Ordinance now provides for a possibility of obtaining an authorization from SECO for the provision of certain funds or economic resources to sanctioned persons to avoid unintended adverse consequences for Swiss companies.**

Introduction

On 29 March 2023, the Federal Council adopted further sanctions against Russia and amended the Ordinance on Measures in Connection with the Situation in Ukraine (Ukraine Ordinance) accordingly. In doing so, Switzerland followed the European Union (EU), which had already adopted a tenth round of sanctions in February 2023. While the latest Swiss sanctions package tightens import restrictions, it also entails certain exemptions and measures to mitigate unintended economic consequences for Swiss companies.

Key Points of the New Sanctions Package

The new sanctions package includes the following categories of measures:

- Enhanced financial reporting requirements;
- Adjustment of the lists of goods and a tightening of existing restrictions;
- The exemption of humanitarian activities from the ban on providing certain services to Russian companies and organizations; and
- A new authorization opportunity to mitigate unintended negative economic consequences of Swiss sanctions for Swiss companies.

Reporting Obligations in the Financial Sector

The Ukraine Ordinance already provides reporting obligations in the financial area connected to the freezing of funds and economic resources (Art.16 Ukraine Ordinance) as well as the reporting obligation for existing deposits (Art. 21 Ukraine Ordinance), which must be updated every twelve months. While the reporting obligations for existing deposits remain unchanged, the reporting obligations regarding the freezing of funds and economic resources have been expanded.

The reporting obligations under Article 16 of the Ukraine Ordinance now not only includes information on the type and value of the relevant (frozen) assets. In addition, the State Secretariat for Economic Affairs (SECO) must also be notified of all transactions during the two weeks prior to including sanctioned persons, companies or organizations in the Swiss sanctions lists.

Enhancements in the area of sanctioned goods

In the area of goods, the new sanctions package contains further prohibitions and restrictions as well as extensions and adjustments to the lists of goods (Annexes to the Ukraine Ordinance). In particular, both transit through the Russian Federation of dual-use goods (i.e., goods that can be used for both civilian and military purposes) and military equipment is now prohibited. Moreover, the lists of restricted goods for military and technological enhancement or for developing the defense and security sector (Annex 1 of the Ukraine Ordinance) as well as goods that contribute to Russia's industrial capacity (Annex 23 of the Ukraine Ordinance) have been amended and extended. In addition, the new sanctions package identifies additional goods as economically significant in Annex 20 of the Ukraine Ordinance.

Exemption for humanitarian activities

The Ukraine Ordinance also prohibits providing a number of services to the Government of the Russian Federation or legal entities, companies or organizations established in the Russian Federation. These entities would include services in the fields of auditing, tax consulting, management consulting, architecture, legal consulting, IT consulting, and market and opinion research, among others (cf. Art. 28e Ukraine Ordinance).

As part of the new sanctions package, the Federal Council decided to forego providing certain services under Art. 28e Ukraine Ordinance, those in the context of humanitarian activities. The exemption's scope of application, however, is limited; it only applies if the activities are carried

out by public bodies or by companies and organizations that receive federal contributions for carrying out humanitarian activities.

Exceptional authorization for the protection of Switzerland's interests

The new sanctions package builds on the Federal Council's previous efforts to mitigate any unintended economic consequences of Swiss sanctions for Swiss companies. To this end, the Federal Council introduced the opportunity of granting individual authorizations for the release of certain blocked funds or economic resources or for providing certain funds or economic resources to sanctioned persons to protect Swiss interests.

The background and rationale for this measure lies in the cases of Sulzer AG and medmix AG, two Swiss high-tech companies. A majority of the shares of both Sulzer AG and medmix AG are held by a Swiss holding company, Tiwel Holding AG, linked to Viktor Vekselberg. Tiwel Holding AG had previously entered into a loan agreement with two Russian banks and pledged its shares in these Swiss companies as collateral.

As a result of US sanctions against Viktor Vekselberg and Swiss sanctions against the two Russian banks, Tiwel Holding AG was no longer legally able to service its loan. In the absence of the new exemption, the two Swiss high-tech companies could have been controlled by the sanctioned Russian banks.

In such case, sanctioned entities would have ultimately benefited from the sanctions imposed upon them – an outcome that clearly stands in contrast to both the rationale and the purpose of the sanctions.

Ban on Influence in Critical Infrastructure as of 27 April 2023

As of April 27, 2023, a new provision will enter into force, whereby it will be prohibited to allow Russian nationals and natural persons, residing in the Russian Federation, to hold a position in the governing bodies of the owners or operators of critical infrastructures. An exception to this provision is provided for Swiss nationals (including persons with dual nationality), nationals of an EEA member state or nationals of the United Kingdom.

For the time being, no definition of the term "critical infrastructure" can be found in the current draft of the Ukraine Ordinance. Potentially, a respective definition will be adopted and included in the Ukraine Ordinance before the new provision enters into force. Alternatively, SECO might provide further specifications of the term included along with their interpretation aids (cf. SECO F&Q).

Next steps

With the new sanctions package, the Federal Council follows the path taken by the European Union, carefully sidestepping the material discrepancies between the EU and the Swiss frameworks. The Federal Council also reiterates its acknowledgment that the sanctions framework may result in unintended adverse impacts on Swiss companies, and it establishes a flexible remedy to avoid or mitigate such outcomes.

Given the evolving geopolitical situation, further sanctions packages cannot be ruled out at this point. Currently, calls for an eleventh sanctions package have surfaced from certain EU member states. At present, however, both the timeline and the content of any further sanctions remain unclear.

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No legal or tax advice

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