Swiss Export Controls and Sanctions on Russia and Belarus as of 4 March 2022 and Overview of EU, U.S. and UK sanctions

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Key takeaways

- **Switzerland adopted new export controls and sanctions on Russia and Belarus.**
- **This means that Switzerland essentially adopts the EU sanctions.**
- **In addition, due to indirect extraterritorial impact, persons in Switzerland must comply not only with Swiss sanctions, but indirectly also with the EU sanctions, the UK sanctions and in particular the US sanctions.**
- **This means that persons in Switzerland should conduct an analysis as to the sanctions in all these jurisdictions, in order to further conduct a proper risk assessment and to further implement measures and systems to control such related risks and in order to comply with the sanctions regime.**
- **This newsletter provides an overview of all these sanctions with a particular focus on the Swiss sanctions' regime.**

Pestalozzi has broad experience in advising on sanctions and possible implementing measures. Please do contact any of our sanctions' experts for further advice.

Introduction

In response to the escalating conflict in the Ukraine, the international community imposed sanctions and export controls on Russia. This legal update shall give a high-level overview of the EU, U.S. and UK sanctions and summarizes the measures taken by the Swiss government. It does not cover all aspects in detail and, thus, is not intended and does not purport to be comprehensive.

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The information provided in this legal update is valid as of 7 March 2022 and represents the current measures in effect at that time. Regarding the most current status of Swiss sanctions in connection with the situation in Ukraine, please refer directly to the website of the State Secretariat for Economic Affairs (SECO).

This Legal Update uses the following definitions

Designated Area	Crimea, Sevastopol and the areas of Donetsk and Luhansk not controlled by the Ukrainian government (Annex 6 to the Ordinance).
Ordinance	Ordinance on Measures in Connection with the Situation in the Ukraine, status as of 4 March 2022, and its Annexes.
Prohibited Goods	Goods as listed in Annex 7 of the Ordinance.
Subjects of Sanctions	Individuals, companies and organizations listed in Annexes 8 to 14 of the Ordinance. Subjects of Sanctions can be searched here.

EU sanctions

On 23 February 2022, the European Council imposed sanctions on Russia in response to the Russian recognition of the non-government-controlled areas of Donetsk and Luhansk in Ukraine as independent entities. The sanctions included targeted restrictive measures against specific individuals and entities (asset freezes, travel bans, prohibition from making funds available), economic sanctions (import ban on goods, restrictions on trade and investments, prohibition on tourism services, export ban for certain goods and technologies) and financial restrictions on Russia's access to the capital and financial markets of the EU.

On 24 February 2022, the EU introduced additional sanctions with restrictions on the Russian energy, financial, and transport sectors, as well as restrictions on exports of dual-use goods and introducing new export controls. Furthermore, the sanctions were extended to include Russian individuals.

On 25 February 2022, the EU adopted a third round of measures, including the freezing of the European assets of Russian President Vladimir Putin and Foreign Minister Sergey Lavrov.

On 28 February, 1 March 2022 and 2 March 2022, the EU imposed the following additional sanctions:

- ban on transactions with the Russian Central Bank;
- ban on the overflight of EU airspace and on access to EU airports by Russian carriers of all kinds;
- extension of the list of sanctioned persons and entities;

- ban for the supply of euro banknotes to any natural or legal person Russia (with certain exceptions such as diplomatic missions);
- suspension of the broadcasting activities in the EU of certain Russian state-owned outlets; and
- ban on the provision of specialized financial messaging services to certain Russian credit institutions and their Russian subsidiaries, which prohibits the Worldwide Interbank Financial Telecommunication "SWIFT" for seven Russian banks.

With these sanctions packages, the European Council amended the existing Council Regulations Nr. 269/2014 and Nr. 833/2014, and adopted the new Council Regulation 2022/263. Furthermore, with respect to certain Russian citizens, the EU also suspended its Agreement with Russia providing for facilitations of the issuance of short-term visas.

U.S. sanctions

On 22 February 2022, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) restricted access to the U.S. financial system for Russia's largest financial institutions and state-owned private entities and limited their ability to raise capital. Among those targeted are Russia's two largest banks and 90 financial institution subsidiaries worldwide, Russian elites and their families, and the new debt and equity of specified Russian state-owned enterprises. Several major Russian banks are now on the U.S. List of Specially Designated Nationals (SDN list), targeted by full blocking sanctions. U.S. correspondent and payable-through account sanctions have been imposed against Sberbank and its subsidiaries.

Expanded debt- and equity-related US sectoral sanctions prohibit certain transactions of Russian state-owned enterprises (including energy and telecommunications companies) and entities operating in the financial services sector of the Russian economy, restricting capital-raising through the US market.

Families close to President Putin and elites in the financial sector were added to the SDN list, as were certain Belarusian individuals and entities with close ties to Russia.

U.S. export controls on Russia have been expanded significantly to require export licenses for a wider range of items to Russia, as well as to restrict Russia's ability to acquire non-U.S. produced items that are the direct product of US-origin software or technology.

U.S. sanctions generally prohibit all dealings related to the covered regions that involve a U.S. nexus, including U.S. dollar payments cleared through the U.S. financial system.

OFAC general licenses authorize U.S. persons to wind down activities related to the covered regions through 23 March 2022, as well as limited activities after that date.

U.S. secondary sanctions target non-U.S. person facilitation of "significant transactions" for or on behalf of an individual or entity sanctioned pursuant to EO 14024 or new EO 14065.

The new U.S. sanctions largely mirror those imposed by the U.S. in 2014 related to Crimea, with some notable additions related to Russian sovereign debt and the immediate application of secondary sanctions.

UK sanctions

Although the UK is no longer bound by the restrictive measures imposed by the EU after Brexit, the UK has adopted sanctions that are largely aligned with EU and U.S. sanctions. These measures include financial sanctions targeting specific individuals and entities, such as asset freezes, travel bans, immigration measures, as well as trade and export restrictions.

On 24 February 2022, the UK extended its existing financial sanctions against Russia by amending the list of Russian entities and individuals. The UK imposed an asset freeze on additional individuals and state-owned entities, including major Russian banks active in the UK financial system. In a joint statement with its international partners, the UK pledged to remove certain Russian banks from the SWIFT messaging system and impose restrictions against the Russian Central Bank.

With effect from 1 March 2022, the UK adopted four Regulations which introduce new financial, trade and shipping sanctions against Russia (UK Regulations).

The UK Regulations prohibit persons from dealing with individuals or entities owned by, acting on behalf of or otherwise controlled by those deemed connected with Russia or its government in transferable securities, money-market instrument or providing loans. Furthermore, the UK Regulations prohibit UK persons or entities from providing financial services, including foreign exchange and asset management, to the Russian Central Bank, the Russian National Wealth Fund or the Russian Ministry of Finance.

With respect to trade, the UK expanded its export controls and trade restrictions on the export, supply and delivery and making available of military goods to include dual-use goods and critical-industry goods and technology. These trade sanctions also extend the prohibitions on the provision of technical assistance, financial services, funds and brokering services to include dual-use goods and technology and critical-industry goods and technology. To ease the implementation of certain provisions, the UK government included the provision of general licenses for the winding down of certain specified transactions.

The UK Regulations further prohibit Russian ships, and other ships to be specified by the Secretary of State, from entering UK ports. The measures also extend the powers of the Secretary of State to control movement of Russian or otherwise specified ships by ordering them to depart or enter specified ports, direct their movement or remain in port. The registration of ships on the UK Ship Register is also prohibited where they are owned, controlled, chartered or operated by a designated person or per-sons connected with Russia, or where they are a specified ship. Furthermore, the regulations authorize the Secretary of State and harbour authorities to detain Russian ships or specified ships at ports or anchorages.

In response to these sanctions and market conditions, the London Stock Exchange suspended trading in 27 Russian firms, including Sberbank, VTB, Gazprom, Rosneft and Lukoil.

Finally, the UK seeks to speed up its sanctions process via new legislation designed to allow ministers to tighten restrictions on Russian businesses and wealthy individuals. The Economic Crime (Transparency and Enforcement) Bill is being pushed through parliament this week. Among the technical changes to the draft legislation is the creation of a legal power to sanction individuals or companies already placed under sanctions by allies such as the EU, the U.S. and Canada.

Swiss sanctions

Overview

As a non-EU state, Switzerland is not bound by the restrictive measures imposed by the EU. However, Switzerland may enact compulsory measures to implement sanctions adopted by international organisations or its main trading partners, such as the United Nations or the EU, in order to ensure compliance with international law, in particular respect for human rights. Such measures may include trade embargoes, financial sanctions or travel bans (Art. 1 of the Federal Act on the Implementation of International Sanctions).

On 25 and 28 February 2022, the SECO amended the existing "Ordinance on Measures to prevent the Circumvention of International Sanctions in connection with the Situation in Ukraine". The revised Ordinance, taken effect on 28 February 2022, 6 pm CET, has been renamed to "Ordinance on Measures in connection with the Situation in the Ukraine". Such amendment includes the immediate freeze of assets belonging to the listed individuals and entities. In addition, the opening of new business relationships with listed persons is not permitted, while existing relationships must be reported to the SECO. Such restriction, up to now only applicable to financial intermediaries, has been extended to everyone doing business with listed persons, subject to certain exceptions.

On 28 February 2022, the Swiss government decided to adopt the package of sanctions imposed by the EU on 23 and 25 February 2022 in response to the situation in Ukraine. Based on the Federal Act on the Implementation of International Sanctions, such measures may include trade embargos, financial sanctions or travel bans.

On 4 March 2022, the Swiss government approved the total revision of the Ordinance on Measures in connection with the Situation in Ukraine, thereby adopting further packages of EU sanctions against Russia. Switzerland's list of sanctions has been extended accordingly. The changes have entered into force on 4 March 2022, 6pm CET.

Export controls and sanctions

Restrictions regarding Goods and Services

General import and export bans

The export of dual-use goods and specific military goods to any country is now prohibited, regardless of their end-use or end-user. In addition, the export of goods that could contribute to Russia's military and technological enhancement or the development of the defense and security sector is prohibited. It is also prohibited to provide technical assistance, brokering

services or financing. The import of firearms, components and accessories thereof, ammunition, explosives, pyrotechnic articles and gunpowder for military purposes from Russia and Ukraine are prohibited. Any sale, supply, export or transit of Prohibited Goods is no longer permitted.

The export to Russia of certain goods and services in the oil sector is no longer permitted. Furthermore, the export of goods and technology that can be used in aviation and the space industry is prohibited. Certain services related to these goods, for example insurance, repair work, inspections, brokering services and financial assistance, are also prohibited.

Import and export bans regarding the Designated Areas

It is prohibited to import goods originating from the Designated Areas (or to provide financial, insurance or reinsurances services related thereto), unless a certificate of origin issued by the Ukrainian authorities is available.

The sale, supply, export and transit of Prohibited Goods to any persons, companies or organizations in the Designated Area is prohibited. In addition, the provision of technical assistance, brokering services, construction or engineering services, and the provision of financing or financial assistance related to Prohibited Goods for the benefit of persons, companies or organizations in the Designated Area is prohibited as well. There are few exceptions (e.g. supply to hospitals, educational institutions, etc.).

Financial Restrictions

Asset Freeze

Funds and other economic resources belonging to or controlled by Subjects of Sanctions (Annex 8 of the Ordinance) are blocked. It is forbidden to directly or indirectly transfer funds or making economic resources available to Subjects of Sanctions (Annex 8 of the Ordinance) in any manner. Entities holding or managing such assets that should be frozen must declare them to the SECO.

The Swiss regulations may set forth certain exceptions to the restrictions or prohibitions set forth above and may allow certain transactions. For example, the SECO may permit the payment from blocked (frozen) funds or accounts, the transfer of frozen funds and the release of frozen economic resources in order:

- to avoid cases of hardship;
- to perform or fulfil existing agreements;
- to fulfil claims that are subject to an existing court decision, administrative body or arbitration tribunal;
- to fulfil official purposes of Russian diplomatic or consular missions;
- to safeguard Swiss interests.

The provision of public financing or financial assistance for trade with or investment in Russia is prohibited. Other restrictive measures in the financial sector concern securities, loans and the acceptance of deposits. Transactions with the Russian Central Bank are also no longer permitted. Furthermore, the Federal Council has decided to impose the sanctions in the financial sector that the EU adopted on 1 March, with the same exemptions. In particular, this concerns SWIFT, the international messaging system for financial transactions.

Prohibition on issuing and trading of financial instruments and granting loans

The issuance (and related assistance) of financial instruments with a maturity of more than 90 days issued after 27 August 2014 and on or before 12 November 2014, or of financial instruments with a maturity of more than 30 days issued after 12 November 2014 and or before 12 April 2022, or financial instruments issued after 12 April 2022 by Subjects of Sanctions (Annex 9 et seqq. of the Ordinance), entities controlled by Subjects of Sanctions, the Russian Federation or the Central Bank of Russia or entities acting on behalf of or at the direction of such subjects is prohibited.

The direct or indirect granting of loans with a maturity of more than 30 days issued after 12 November 2014, and until 5 March 2022 to Subjects of Sanctions within the meaning of Annexes 9, 12 or 13 is prohibited. Furthermore, the direct or indirect granting of any loan to Subjects of Sanctions within the meaning of Annexes 9 to 13 after 5 March 2022 is prohibited. Some exceptions are provided, in particular for loans granted prior to 28 February 2022.

Transactions with the Russian Central Bank and, presumably backed by the Export Import Bank are also no longer permitted. Furthermore, the Federal Council has decided to impose the sanctions in the financial sector that the EU adopted on 1 March 2022, with the same exceptions, which in particular concerns SWIFT, the international messaging system for financial transactions.

Financial restrictions regarding the Designated Area

The granting or assistance in granting of loans and credits to companies and organizations in the Designated Area, as well as the acquisition and expansion of interests in companies, real estate or joint ventures in the Designated Area is prohibited.

Also, tourism-related activities in the Designated Area are prohibited.

Further restrictions

The 2009 agreement on visa facilitation for Russian nationals has been partially suspended. Also, Switzerland has imposed entry bans against a number of individuals having a connection to Switzerland and are close to the Russian President Vladimir Putin.

In line with the developments in Europe, on 28 February 2022, 3pm CET, Swiss airspace has been closed not only to all flights from Russia but also to all Russian aircraft.

Implications

The sanctions imposed by the various countries over the past two weeks will have a great impact on those who do business with the newly sanctioned persons (and the businesses they own or control). Increasingly severe measures and export controls against Russia appear likely to continue, driven by political events that are escalating rather than resolving. Coordination among allies to impose sanctions on Russia appears to have materialized.

The exclusion of seven Russian banks from the bank messaging system SWIFT will have far reaching consequences. Even though no money is transferred via SWIFT, banks almost exclusively use SWIFT to exchange money transfer instructions. With a ban to SWIFT money transfers are not per se impossible, banks will most likely refrain from doing business with banks with no access to SWIFT.

The sanctions' regime by the US and the UK are likely to have an extraterritorial effect, as persons and companies in Switzerland that breach such US and UK sanctions or assist in breaching such sanctions, potentially risk being put on such US or UK sanctions' and/or restricted lists.

Hence, Swiss persons and companies should take steps to ensure compliance with all these sanctions, including revising sanctions screening and due diligence processes and updating compliance policies.

Please do contact any of our sanctions' experts, should you have questions or wish to discuss. Our team has significant experience in supporting clients to implement an effective sanctions compliance regime taking into considerations the restrictions resulting from sanctions.

We will continue to monitor the situation closely and provide further updates.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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