



## Interpretation of Articles 20, 21, 23 and 28d of the Ordinance on measures relating to the situation in Ukraine (SR 946.231.176.72, hereinafter the "Ordinance")

*Status as of 31 August 2022*

This document contains important information for the interpretation of Articles 20, 21, 23 and 28d of the Ordinance. It is not legally binding. Compliance with the provisions of the Ordinance is the sole responsibility of the persons concerned. The Swiss authorities strive to ensure that the implementation of Articles 20, 21, 23 and 28d is as close as possible to the implementation practice in the EU and are in contact with the competent EU services for this purpose. SECO reserves the right to supplement or adapt this document in the future.

Pursuant to Article 20 of the Ordinance, it is prohibited to accept deposits from Russian nationals or individuals residing in the Russian Federation, from banks, companies or entities established in the Russian Federation (hereinafter "Russian persons"), or from banks companies or entities established outside Switzerland and the EEA, more than 50% of whose ownership rights are held directly or indirectly by Russian nationals or natural persons residing in the Russian Federation, for persons and institutions accepting deposits and granting credits on a professional basis, if the total value of the deposits of the natural person, bank, enterprise or entity exceeds CHF 100'000 per person or institution.

According to Article 21, persons and institutions that accept deposits or grant credits on a professional basis shall provide SECO, by 3 June 2022, with a list<sup>1</sup> of deposits exceeding CHF 100'000 held by Russian persons. Every 12 months, they shall provide updates on the amount of these deposits.

Pursuant to Article 23 of the Ordinance, it is prohibited to sell transferable securities denominated in Swiss francs or in the official currency of a member state of the European Union issued after 12 April 2022, or units of collective investment schemes offering exposure to such securities, to any Russian national, to any natural person residing in the Russian Federation or to any bank, company or entity established in the Russian Federation.

According to Article 28d of the Ordinance, it is prohibited to establish a trust or similar legal form and to provide domicile or administrative services to trusts if settlors or beneficiaries of the trust are:

- a) Russian nationals or natural persons residing in the Russian Federation;

<sup>1</sup> See below for the exact manner and form of the reporting



- b) legal persons, enterprises or entities established in the Russian Federation;
- c) legal persons, companies or entities that are more than 50% owned, directly or indirectly, by natural persons, legal persons, enterprises or entities referred to in letters (a) and (b);
- d) legal persons, enterprises or entities controlled by natural persons, legal persons, enterprises or entities referred to in letters (a) to (c);
- e) legal persons, firms or entities acting on behalf of or at the direction of natural persons, legal persons, firms or entities referred to in letters (a) to (d).

It is also prohibited, as of 1 August 2022, to act as a trustee, nominal shareholder, managing director, secretary, or in a similar capacity for a trust or similar legal form under Article 28d (1), or to cause another person to do so.

Frequently asked questions are answered below. Questions not answered below can be directed to [sanctions@seco.admin.ch](mailto:sanctions@seco.admin.ch).

## **Article 20 and 21**

### **Who is affected by Articles 20 and 21?**

*Do these articles apply to all banks within the meaning of the Banking Act?*

Switzerland has joined the EU sanctions against Russia. Council Regulation (EU) 2022/328 of 25 February 2022 provides that all credit institutions are subject to the corresponding measure. Accordingly, the provisions of Articles 20 and 21 of the Ordinance also apply to persons and institutions that accept deposits or grant credits on a professional basis, such as banks under the Banking Act.

*Are insurance companies subject to Articles 20 and 21 of the Ordinance?*

No.

### **How should reports under Article 21 be made?**

*Does the exception provided for in Article 20 (3) of the Ordinance for Swiss nationals, nationals of an EEA member state and natural persons holding a temporary or permanent residence permit issued by Switzerland or an EEA member state also apply in the area of the reporting obligation under Article 21?*

Yes, the reporting requirement under Article 21 of the Ordinance applies only to business relationships falling under Article 20 (1) and (2) of the Ordinance. If the exception in Article 20 (3) of the Ordinance applies to a business relationship then that relationship does not have to be reported.

*What information must persons subject to mandatory reporting requirements provide to SECO in fulfilment of the reporting obligation under Article 21 of the Ordinance? Is the information required the same as for declarations under Article 16 of the Ordinance?*

The reporting under Article 21 of the Ordinance must be distinguished from declarations concerning frozen assets under Article 16 of the Ordinance. Existing deposits in excess of CHF 100'000 must be reported to SECO in an aggregated form. This means the number of business relationships involved as well as the sum of the current balances involved.

*In what format should the reporting be made? Is there a standard form?*

The reporting can be made by e-mail ([sanctions@seco.admin.ch](mailto:sanctions@seco.admin.ch)) or by post (State Secretariat for Economic Affairs SECO, Sanctions Division, Holzikofenweg 36, CH-3003 Bern). At present, we do not provide any information on the form of the reporting, nor there is a standard form. SECO reserves the right to put a standard form on its website ([www.seco.admin.ch](http://www.seco.admin.ch)) in the future.

## **How is the CHF 100'000 limit calculated?**

*Does the acceptance of "corporate actions" (dividends, coupons, etc.) fall under Article 20 of the Ordinance?*

No. Corporate actions (dividends, coupons, etc.) in connection with securities deposited within the framework of the corresponding business relationship may be accepted even if they exceed the limit of CHF 100'000 per person or institution.

*Does the crediting of interest on existing deposits fall under Article 20 of the Ordinance?*

No. Interest on existing deposits that were in the bank before the Ordinance came into force are not considered as new deposits within the meaning of Article 20 (1) of the Ordinance and can therefore be credited, even if they exceed the limit of CHF 100'000 per person or institution.

*Do the securities and their safekeeping fall under Article 20 of the Ordinance? May the proceeds from the sale of securities registered in the corresponding client relationship be accepted, even if the limit of CHF 100'000 is thereby exceeded?*

The deposit and safekeeping of securities do not fall under the definition of "deposits" according to Article 20 of the Ordinance. Proceeds from the sale of securities deposited in the context of the corresponding business relationship may be accepted, even if they exceed the limit of CHF 100'000 per person or institution.

*Does the CHF 100'000 limit only apply to new deposits? Or is it the total of all deposits?*

The limit of CHF 100'000 per person or institution refers to the total deposits per client with the bank or institute concerned. If a client has, for example, CHF 80'000 in existing deposits, a maximum of CHF 20'000 in deposits can still be accepted. If a client has, for example, CHF 110'000 in existing deposits, no further deposits can be accepted.

*May payments used to repay loans be accepted, even if they exceed the limit of CHF 100'000?*

Yes. Deposits that are immediately debited to repay outstanding loans do not fall within the definition of "deposits" under Article 20 of the Ordinance. Therefore, such payments may be accepted even if they exceed the limit of CHF 100'000 per person or institution.

## **Which individuals are affected by Article 20 of the Ordinance?**

*Are Swiss and Russian dual nationals affected by the exception provided for in Article 20 (3) of the Ordinance? What about dual Russian and EEA nationals? What about dual nationals from Russia and third countries?*

*Are persons holding a residence permit in Switzerland or in the EEA affected by the exception provided for in Article 20 (3) of the Ordinance?*

In accordance with Article 20 (3) of the Ordinance, the prohibition provided for in Article 20 (1) does not apply to Swiss nationals, nationals of a member state of the EEA and natural persons holding a temporary or permanent residence permit issued by Switzerland or a member state of the EEA.

As a consequence, Swiss and Russian dual nationals, as well as persons with both Russian citizenship and citizenship of an EEA member state, are not subject to the prohibition set forth in Article 20 of the Ordinance. On the other hand, persons holding both Russian citizenship and citizenship of another non-EEA country are subject to the prohibition provided for in Article 20.

*Are persons of Monegasque, Andorran or British nationality or holders of a residence permit in Monaco,*

*Andorra or in the United Kingdom concerned by the exception provided for in Article 20 (3) of the Ordinance?*

Monegasque citizens or Andorran citizens and natural persons holding a temporary or permanent residence permit issued by the Principality of Monaco or by the Principality of Andorra are not subject to the prohibitions provided for in Article 20, unlike British citizens and natural persons holding a temporary or permanent residence permit issued by the United Kingdom, who are.

*Are accounts held jointly with a Russian person affected by article 20 of the Ordinance?*

If a Russian person holds an account jointly with a person from a third state, the account falls under the scope of Article 20 of the Ordinance. However, if the account is held with a person who falls within the scope of the exception provided for in Article 20 (2) (see question above), it does not fall under the measure.

### **Which legal entities are covered by Article 20 of the Ordinance?**

*Do trusts in which a Russian person acts as a settlor or beneficiary fall under Article 20 of the Ordinance?*

No. Trusts in which a Russian person acts as settlor or beneficiary are not covered by Article 20 of the Ordinance.

*Does a company established outside Switzerland or the EEA in which a Russian person or a person residing in the Russian Federation is a majority shareholder fall under Article 20 of the Ordinance?*

Yes, according to Article 20 (1) (d) of the Ordinance, the accounts of companies established outside Switzerland and the EEA, in which a Russian national or a natural person residing in Russia owns directly or indirectly more than 50% of the ownership rights, fall within the scope of Article 20 of the Ordinance.

On the other hand, the prohibitions provided for in Article 20 (1) of the Ordinance do not apply to banks, companies or entities established outside Switzerland and the EEA and in which more than 50% of the ownership rights are held directly or indirectly by Russian nationals or natural persons residing in the Russian Federation, who have Swiss or EEA citizenship or a Swiss or EEA residence permit.

*Do funds domiciled outside Switzerland or the EEA that are similar to an entity and in which a Russian national or a natural person residing in the Russian Federation holds more than 50% of the ownership rights (or an equivalent investor stake) fall under Article 20 of the Ordinance?*

Yes, they are covered by Article 20 (1) (d) of the Ordinance. In addition, according to Article 23 of the Ordinance, it is prohibited to transfer units of collective investment schemes with an exposure to transferable securities denominated in Swiss francs or in euro to Russian nationals or natural persons resident in the Russian Federation or to banks, enterprises or organizations established in the Russian Federation.

### **Do consular and diplomatic representations of Russia in Switzerland fall under Article 20 of the Ordinance?**

No. Consular and diplomatic representations of the Russian Federation in Switzerland are not subject to this prohibition, as they are not "entities established in the Russian Federation" as defined in Article 20 (1) of the Ordinance. Accordingly, deposits may be accepted notwithstanding the restrictions under Article 20 (1).

## Other questions

*May Russian persons withdraw deposits?*

Article 20 of the Ordinance prohibits the acceptance of new deposits if the total value of the deposits exceeds CHF 100'000. Existing deposits – regardless of the current amount of these deposits – can be used freely and also withdrawn.

*Is it possible to make transfers within a bank, even if the credit account exceeds the limit of CHF 100'000?*

Internal transfers within a bank between different accounts of the same Russian person can be made.

*Do accounts that do not belong to a Russian person but for which a Russian person has the right of disposal [PoA] fall under Article 20 of the Ordinance?*

No. As long as the Russian person does not own the account, but merely manages it, Article 20 of the Ordinance does not apply.

*Do deposits that are necessary for the non-prohibited cross-border exchange of goods and services between Switzerland and the Russian Federation, between Switzerland and the EEA or between the EEA and the Russian Federation fall under the prohibitions of Article 20 (1) and (2)?*

Yes, as of August 31, 2022, these deposits are no longer exempt from the ban. However, according to Article 20, para. 4, letter f of the Ordinance, these deposits may be subject to an exemption granted by SECO, in consultation with the competent services of the FDFA and the FDF.

## Article 23

*Do existing exchange-traded shares of a company (issued before 12 April) fall under the prohibitions pursuant to Article 23 if the company has also issued new shares after 12 April? Or do only securities that were newly issued after 12 April (e.g., a new tranche of a bond with its own ISIN) fall under the prohibitions?*

Existing ("old") shares are also covered by Article 23 because they cannot usually be distinguished from those issued after 12 April. However, the case is different when new ISINs are created, because then a distinction can be made. Moreover, shares that are already in the securities account do not have to be sold. In principle, no sales of new shares, i.e., shares issued after 12 April, may be made.

This interpretation of Article 23 applies by analogy to sectoral sanctions, such as Article 18 of the Ordinance.

*Are derivatives on such securities (e.g. total return swap), which give a client a synthetic exposure to a security without physical delivery of the security, also covered by the prohibition?*

The Ordinance explicitly refers to shares in funds, which means that such a transaction with an affected person would be considered a circumvention transaction and would therefore also be covered by the prohibition.

*Do existing fund shares in a custody account now fall under Article 23 if newly issued securities in CHF or EUR are added to the underlying in the fund?*

As long as no sale takes place, these fund shares may continue to be held. The "continued holding" of existing fund shares does not fall under the prohibition of Article 23.

*Are persons with Monegasque, Andorran or British nationality or a residence permit in Monaco, Andorra or the United Kingdom covered by the exemption under Article 23 (2) of the Ordinance?*

Citizens of Monaco or Andorra and natural persons holding a temporary or permanent residence permit of Monaco or Andorra are not covered by the prohibition under Article 23 [exempted]. However, British citizens and natural persons holding a temporary or permanent residence permit in the United Kingdom are covered by the prohibition under Article 23 [not exempted].

## **Article 28d**

### **Which legal forms are affected by Article 28d?**

*How should the term "similar legal form" in Article 28d (1) of the Ordinance be interpreted?*

Legal forms are considered similar if they have a structure or function similar to a trust. This includes, for example, the creation of a fiduciary relationship between the trustee and the beneficiaries or the separation or decoupling of legal and beneficial ownership of assets.

*Does Article 28d of the Ordinance also apply to existing trust structures or only to new trust structures?*

Article 28d applies to all structures referred to as trusts or similar legal forms. It does not matter whether they were established before or after the entry into force of Article 28d of the Ordinance.

*What applies in the case of specific forms of trusts, e.g., with discretionary trusts?*

The provisions are the same, i.e., if the settlor or beneficiary of the trust is subject to the prohibition, the prohibition applies regardless of the form of the trust.

In the case of a discretionary trust, where the beneficiary covered by the order is replaced by a person not included therein, the previously prohibited trust would be permitted again unless the settlor is also covered by the prohibition.

*Article 28d (2)<sup>2</sup> of the Ordinance refers to "trustee, nominal shareholder, manager, secretary or similar function". What is covered by these different descriptions?*

Article 28d (2) lists functions that can be equated with trustee. If a person acts as a trustee, i.e., takes instructions from a settlor to manage affairs for a beneficiary, he or she is assimilated to a trustee, regardless of his or her function.

*Which services are affected by the prohibition? Does the provision of bank accounts, securities and payment transactions or similar services to a trust fall under this definition?*

Prohibited are administrative services for a trust or similar legal form. For example, accounting services fall under this prohibition due to the direct provision of administrative services to the trust.

Not prohibited, however, are standard banking and payment services, such as the provision of a bank account, the execution of payments or currency exchange. These are not "administrative services" within the meaning of Article 28d (1) of the Ordinance.

### **What is understood by control?**

*Article 28d (1)(d) of the Ordinance uses the term "control". What is meant by control?*

As in the case of Articles 15 and 20 of the Ordinance, the concept of control must be assessed on a case-by-case basis. The decisive factor is whether a person is under the effective control of a person listed in Article 28d (1) (a-c).

### **What is the territorial scope of application?**

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<sup>2</sup> Article 28d (2) (out of force until 31 July 2022): It is prohibited to act as a trustee, nominal shareholder, manager, secretary or in a similar capacity for a trust or similar legal form referred to in paragraph 1 or to allow another person to do so.

*What is the Swiss nexus required for Article 28d of the Ordinance to apply? Are criteria such as the law governing the trust, the domicile or residence of the trustee, protector, beneficiary and the location of the assets relevant?*

All natural and legal persons domiciled in Switzerland are obliged to comply with the Ordinance, regardless of where the trust and the parties involved have their registered office. Further criteria are therefore irrelevant.

*Does "provision of a registered office" in Article 28d (1) mean, among other things, the constellation in which the actual management (abroad) and the statutory registered office (in Switzerland) of the trustee diverge? What is understood under "provision of a business or administrative address"?*

Yes. The "provision of a domicile" means providing the trust with an address in Switzerland. The "provision of a business or administrative address" means providing an address in Switzerland that leads directly to or can be associated with the trust.

*Does Article 28d of the Ordinance apply to companies domiciled in Switzerland which are in the assets of a trust with a Russian settlor or beneficiary? Can a Swiss corporation carry out the accounting for a foreign company which is indirectly (i.e. via further holding companies in the trust structure) wholly owned by a trust pursuant to Article 28d (1) of the Ordinance?*

Article 28d of the Ordinance applies to trusts or similar legal forms. On the other hand, legal entities held in the assets of a trust or similar legal form pursuant to Article 28d of the Ordinance are not covered by Article 28d. However, entities that are in the assets of a trust or similar legal form may not provide administrative services to the trust.

*Is Russia-related if the structure was established in the past by Russian persons pursuant to Article 28d (1), but they no longer have any influence (possibly already deceased) and no Russian persons are beneficiaries?*

No. Russia-relatedness is only given if a Russian person currently serves as the settlor or beneficiary of the trust or similar legal form.

*If there are multiple beneficiaries of the trust and one of them is subject to Article 28d of the Ordinance, is the trust subject to the Ordinance?*

Yes. It is sufficient that only one person is affected by Article 28d (1) of the Ordinance for the provisions of Article 28d to apply.

Example: If a trust has five non-Russian citizens and one Russian citizen as beneficiary, it falls under the provisions of Article 28d of the Ordinance.

### **How does the exception of Article 28d (3) apply?**

*Do all "beneficiaries" or "settlers" have to meet the requirements of Article 28d (3) in order for this exception to apply, or is it sufficient if an individual or the majority of beneficiaries meet these requirements?*

By analogy with Article 28d (1), the trust or similar legal form falls within the exception of Article 28d (3), if only one of the beneficiaries falls under the exception.

Example: If a trust has five beneficiaries, four of whom have Russian citizenship only and one of whom has dual Russian-EEA citizenship, then the exception applies.

*Does Article 28d (3) of the Ordinance apply if the settlor with Russian nationality holds a temporary or permanent residence permit of an EEA Member State or Switzerland, but his actual residence is outside the EEA Member State, e.g. in the UK?*

Yes. The nationality or residence title is relevant, not the location of the settlor. In this case, the trust or similar legal form would fall under the exception because the settlor has a temporary or permanent residence permit of Switzerland or an EEA member state.

*Do persons with Monegasque, Andorran or British nationality or a residence permit in Monaco, Andorra or the United Kingdom fall under the exemption pursuant to Article 28d (3) of the Ordinance?*

Citizens of Monaco or Andorra and natural persons holding a temporary or permanent residence permit in Monaco or Andorra are not subject to the prohibition under Article 28d. However, British citizens and natural persons holding a temporary or permanent residence permit in the United Kingdom are covered by the prohibition under Article 28d.

### **Is there a transition period and how is it regulated?**

All Swiss natural and legal persons who offer the provision of a registered office, business or administrative address or administrative services to a relevant trust have a transitional period until 31 July 2022 to comply with the requirements of the Ordinance, pursuant to Article 35 (18).

*What is envisaged in the event that a contract concerning the provision of a service prohibited under Article 28d of the Ordinance cannot be terminated within the transitional period?*

The prohibition against acting or causing any other person to act as a trustee, nominal shareholder, director, secretary, or in any similar capacity for a trust or similar legal entity are reinstated on 1 August 2022 (were previously repealed paragraph (2) of the Article 28d). Pursuant to Article 28d (5) (a) (effective as of 1 August 2022), SECO may grant exceptions to the prohibition under Article 28d (2) to permit the continuation of such services necessary to complete transactions to terminate contracts inconsistent with Article 28d of the Ordinance and entered into before 28 April 2022, provided that such transactions were initiated before 30 May 2022, and are completed by 1 October 2022.