

Swiss sanctions against Russia – Implementation of the EU 13th Sanctions Package

Switzerland continues aligning its sanctions regime to the European Union (EU) sanctions against Russia. On 29 February 2024, the Federal Department of Economic Affairs, Education and Research (DEFR) adopted further measures against Russia, in line with the 13th sanctions package adopted by the EU. Alongside, the State Secretariat for Economic Affairs (SECO) has updated its FAQ document, providing further clarifications notably on the asset freeze and contractual obligations aimed at preventing re-exportation to Russia.

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Introduction

On 29 February 2024, the DEFR adopted further sanctions against Russia with a view to mirroring the latest measures imposed by the EU on 23 February 2024. The corresponding amendments to the Ordinance on measures in connection with the situation in Ukraine ("**UKRO**") entered into force on 1 March 2024, at 18:00 CET.

An unofficial English translation of UKRO as of 20 March 2024^[1] and a redline against the version of 1 February 2024 are available, respectively [here](#) and [here](#).

Also, on 29 February 2024, the State Secretariat for Economic Affairs (SECO) published an amended version of its clarifications in the form of "frequently asked questions" (FAQ) document, inter alia to include frequently asked questions in relation to Article 14f UKRO.

An unofficial English translation of the FAQ as of 29 February 2024, 11 March 2024 and a redline

against the version of 29 February 2024 are available, respectively [here](#), [here](#) and [here](#).

[1] The version as of 20 March 2024 is already available and reflects the restrictions that will enter into force on 20 March 2024, in particular Articles 14e (4) and 14f UKRO.

Key elements

The new measures include in particular the following:

- **Extension of the list of targeted persons:** The DEFR has expanded sanctions to include an additional 106 individuals and 88 entities. These are primarily active within Russia's military-industrial sector, actively contributing to the production of missiles, drones, anti-aircraft missile systems, and other military equipment. The extension also targets Russian entities and individuals involved in facilitating the transfer of military equipment from North Korea to Russia. Moreover, judges and officials operating in the occupied territories of Ukraine, as well as entities involved in the forced deportation of Ukrainian children, are now subject to asset freeze.
- **Enhancement of restrictions on dual-use goods:** This includes an export ban on dual-use goods and technologies to 27 additional companies that could bolster Russia's military and technological capabilities. Moreover, the list of goods subject to export restrictions has been expanded to include components for drone development and manufacturing, now prohibited for export to Russia.
- **SECO clarifications (FAQ)**
 - *Asset freeze (Article 15 UKRO)*
 - SECO clarifies that the asset freeze aims to prevent any management or utilization of the frozen assets. However, normal administrative actions by financial institutions, such as the collection of administration fees and the accrual of interest, are not impacted by the restriction (cf. section 1.1 FAQ).
 - SECO further clarifies that, before releasing assets and economic resources announced to SECO as frozen, institutions and individuals are required to consult SECO and explain the reasons for releasing these assets and resources. SECO then decides whether to release the assets (cf. section 1.7 FAQ).
 - *Clarification on proof of origin for diamonds (Article 14e UKRO):* SECO updated its guidance regarding the proof of origin for diamonds or products containing diamonds imported into Switzerland. To establish that these goods are not of Russian origin, importers must provide appropriate proof, such as Kimberley certificates, invoices, and other documents indicating the non-Russian origin of the goods. This update expands the types of documents recognized as valid proof, facilitating compliance with the restriction on import of Russian diamonds (cf. section 2.4.2 FAQ).
 - *Clarification on contractual obligation to prevent re-export (Article 14f UKRO):* Finally, in view of entry into force on 20 March 2024 of Article 14f UKRO, SECO provided in its FAQ a model contractual clause in English, German, French and Italian languages that guides entities in drafting agreements that comply with the obligations under Article 14f UKRO (cf. section 2.5 FAQ and section 3 below).

Re-export ban (Article 14f UKRO) – Actions and deadlines

Actions required

Exporters should assess:

1. whether they sell any of the goods listed in Annex 3 (available [here](#)), Annex 19 (available [here](#)) or high-priority goods listed in Annex 31 (available [here](#)); and
2. whether they sell those goods to any party outside the EEA.

In the affirmative, exporters should include in their agreements with purchasers specific provisions restricting re-export as from **20 March 2024**. The SECO issued model clauses which can be used as a starting point (see below under 3.2).

If exporters become aware of breaches of the re-export ban, they are required to **immediately** report to SECO.

Transitional provisions

The new requirements under Article 14f (1) UKRO do not apply to transactions governed by an agreement entered into prior to **1 February 2024** and performed until **20 December 2024** or the expiry of the agreement, whichever comes first.

Model contractual clauses – Re-export ban

According to SECO's FAQ (*cf.* section 2.5.2), businesses are free to choose the wording of the clause, as long as the requirements of Article 14f UKRO are met. In this context, SECO recommends specifying that such clause constitutes an essential element of the contract.

The following model clause, provided by SECO in section 2.5.2 of its FAQ and available in English, German, French and Italian, may serve as a guide:

- English version

"(1) The [Importer/Buyer] shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 14f of the Ordinance imposing Measures in Connection with the Situation in Ukraine (SR 946.231.176.72).

(2) The [Importer/Buyer] shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

(3) The [Importer/Buyer] shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).

(4) Any violation of paragraphs (1), (2) or (3) shall constitute a material breach of an essential element of this Agreement, and the [Exporter/Seller] shall be entitled to seek appropriate remedies, including, but not limited to : (i) termination of this Agreement ; and (ii) a penalty of [XX]% of the total value of this Agreement or price of the goods exported, whichever is higher.

(5) The [Importer/Buyer] shall immediately inform the [Exporter/Seller] about any problems in

applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The [Importer/Buyer] shall make available to the [Exporter/Seller] information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information."

- German version

"(1) Der [Importeur/Käufer] darf Güter, die im Rahmen oder im Zusammenhang mit dem vorliegenden Vertrag geliefert werden und in den Anwendungsbereich von Artikel 14f der Verordnung über Massnahmen im Zusammenhang mit der Situation in der Ukraine (SR 946.231.176.72) fallen, weder direkt noch indirekt in die Russische Föderation oder zur Verwendung in der Russischen Föderation verkaufen, ausführen oder wiederausführen.

(2) Der [Importeur/Käufer] bemüht sich nach bestem Wissen und Gewissen, sicherzustellen, dass der Zweck von Absatz (1) nicht durch Dritte in der weiteren Handelskette, einschliesslich möglicher Wiederverkäufer, verletzt wird.

(3) Der [Importeur/Käufer] muss einen angemessenen Überwachungsmechanismus einrichten und aufrechterhalten, um Verhaltensweisen Dritter in der weiteren Handelskette, einschliesslich möglicher Wiederverkäufer, die den Zweck von Absatz (1) verletzen würden, zu erkennen.

(4) Jeder Verstoß gegen die Absätze (1), (2) oder (3) stellt einen wesentlichen Verstoß gegen ein wesentliches Element dieses Vertrags dar, und der [Exporteur/Verkäufer] ist berechtigt, angemessene Abhilfemassnahmen zu verlangen, namentlich: (i) Die Beendigung dieses Vertrags und (ii) eine Vertragsstrafe in Höhe von [XX]% des Gesamtwerts dieses Vertrags oder des Preises der ausgeführten Güter, je nachdem, welcher Wert höher ist.

(5) Der [Importeur/Käufer] informiert den [Exporteur/Verkäufer] unverzüglich über etwaige Probleme bei der Anwendung der Absätze (1), (2) oder (3), einschliesslich etwaiger relevanter Aktivitäten Dritter, die den Zweck von Absatz (1) verletzen könnten. Der [Importeur/Käufer] stellt dem [Exporteur/Verkäufer] auf Anfrage innerhalb von zwei Wochen Informationen über die Einhaltung der Verpflichtungen nach den Absätzen (1), (2) und (3) zur Verfügung."

- French version

"(1) Il est interdit à [l'importateur/l'acheteur] de vendre, d'exporter ou de réexporter, directement ou indirectement, à destination de la Fédération de Russie ou aux fins d'une utilisation dans ce pays les biens livrés dans le cadre du présent contrat ou en lien avec le présent contrat qui tombent dans le champ d'application de l'art. 14f de l'ordonnance instituant des mesures en lien avec la situation en Ukraine (RS 946.231.176.72).

(2) [L'importateur/L'acheteur] met tout en œuvre pour garantir qu'aucun tiers en aval de la chaîne commerciale, y compris les éventuels revendeurs, ne contrevient au but de l'al. (1).

(3) [L'importateur/L'acheteur] met en place et maintient un mécanisme de surveillance adéquat afin de détecter le comportement de tiers en aval de la chaîne commerciale, y compris d'éventuels revendeurs, qui contreviendrait au but de l'al. (1).

(4) Toute infraction aux al. (1), (2) ou (3) constitue une violation grave d'un élément essentiel du présent contrat, permettant à [l'importateur/l'acheteur] d'exiger des réparations adéquates, notamment (i) la résiliation du présent contrat et (ii) le versement d'une peine conventionnelle se montant à [XX] % de la valeur totale du présent contrat ou du prix des biens exportés, le montant le plus élevé étant retenu.

(5) [L'importateur/L'acheteur] informe sans délai [l'exportateur/le vendeur] en cas de problème lié à l'application des al. (1), (2) ou (3), y compris des activités pertinentes de tiers susceptibles de contrevenir au but de l'al. (1). Sur demande, [l'importateur/l'acheteur] met à la disposition [de l'exportateur/du vendeur] dans un délai de deux semaines des informations sur le respect des obligations prévues aux al. (1), (2) et (3)."

- Italian version

"(1) L'[importatore/acquirente] non venderà, esporterà o riesporterà, direttamente o indirettamente, nella Federazione Russa o per un uso nella Federazione Russa alcuna merce fornita nell'ambito del presente contratto o in relazione ad esso che rientri nell'ambito di applicazione dell'articolo 14f dell'ordinanza che istituisce provvedimenti in relazione alla situazione in Ucraina (RS 946.231.176.72).

(2) L'[importatore/acquirente] si impegna, in piena scienza e coscienza, a garantire che lo scopo del capoverso (1) non sia violato da terzi a valle della catena commerciale, compresi i potenziali rivenditori.

(3) L'[importatore/acquirente] istituisce e mantiene un meccanismo di monitoraggio adeguato per individuare il comportamento di terzi a valle della catena commerciale, compresi i potenziali rivenditori, che potrebbero violare lo scopo del capoverso (1).

(4) Qualsiasi violazione dei capoversi (1), (2) o (3) costituisce una violazione sostanziale di un elemento essenziale del presente contratto e l'[esportatore/venditore] ha il diritto di chiedere adeguate misure correttive, in particolare: (i) la risoluzione del presente contratto e (ii) il versamento di una penale pari al [XX] % del valore totale del presente contratto o del prezzo dei beni esportati, se superiore.

(5) L'[importatore/acquirente] informa tempestivamente l'[esportatore/venditore] di eventuali problemi nell'applicazione dei capoversi (1), (2) o (3), comprese eventuali attività rilevanti di terzi che potrebbero violare lo scopo del capoverso (1). Su richiesta, l'[importatore/acquirente] fornisce all'[esportatore/venditore] entro due settimane informazioni sul rispetto degli obblighi di cui ai capoversi (1), (2) e (3)."

Reminder – Deadline for transactional reporting requirement

All financial institutions who reported assets or economic resources belonging to a sanctioned person listed in Annex 8 prior to **1 December 2023** must now provide additional reporting that covers all movements, transfers, changes, usage, access, or manipulation of assets belonging to a listed person which occurred within two weeks prior to the listing of that person in Annex 8. No additional investigations are required to be performed, but the requirement is to report what is already known and documented in the records of the reporting financial institution (e.g., account statements, transaction records, etc.).

The additional transaction reporting is due by **29 March 2024**.^[2]

[2] Cf. section 2.6.6 FAQ SECO

Future developments

Sanctions are amended and adapted on an ongoing basis. Given the importance of the topic and the potentially serious legal and reputational consequences of a breach, it is essential to keep abreast of the latest measures and any guidance issued by the Swiss government. We are monitoring these developments closely.

At this juncture, the introduced restrictions raise a number of interpretation and implementation questions. Some of those questions are expected to be clarified based on EU sanctions guidance and FAQs, if any, whereas other issues will require formal confirmation from SECO. We are working with our clients to clarify the expectations of competent authorities and to find practical solutions for an efficient operational implementation of the sanctions framework.

Useful links

Given the fluid nature of the sanctions, we enclose some relevant resources which we trust will be of assistance for monitoring the developments:

Swiss Sanctions

UKRO, version as of 20 March 2024

- Official publication:
 - [UKRO German version](#)
 - [UKRO French version](#)
 - [Unofficial English translation](#)
 - [Redline against the version of 1 February 2024 \(English\)](#)

SECO FAQ, as amended on 11 March 2024

- Official publication:
 - [German version](#)
 - [French version](#)
 - [Unofficial English translation](#)
 - [Redline against the version of 29 February 2024 \(English\)](#)

EU Sanctions

- Consolidated texts of sanctions regulations
 - [Consolidated text of Regulation \(EU\) No 833/2014 \(Russia\)](#)
 - [Consolidated text of Regulation \(EU\) No 269/2014 \(Ukraine territorial integrity\)](#)
- Compilation of frequently asked questions regarding EU sanctions available here: [link](#).

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



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