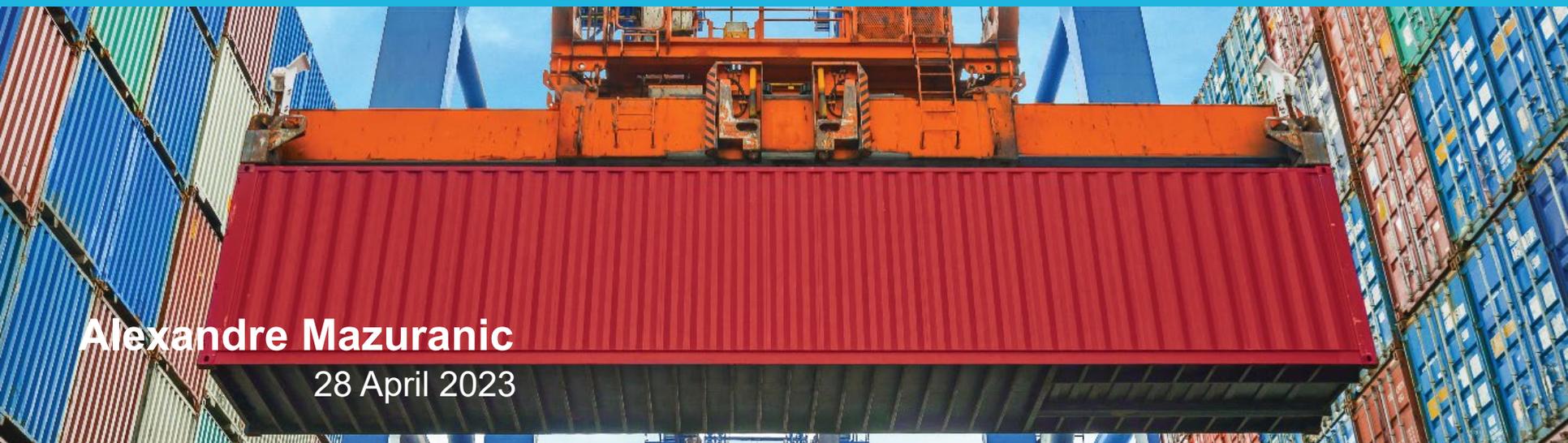


Update on international trade sanctions

A photograph of a shipping yard. In the foreground, a large red shipping container is being lifted by an orange gantry crane. The crane's structure is visible above the container. In the background, there are stacks of various colored shipping containers (blue, red, green, yellow) and the blue sky. The image is used as a background for the lower portion of the slide.

Alexandre Mazuranic
28 April 2023

Agenda

- Overview of international sanctions
- Update on some recent trends:
 - Restrictions on services (including legal services)
 - Restriction related to critical infrastructures
 - Divestment from Russia
 - Protection of Swiss interests
 - The UN humanitarian exemption
- Dos and Dont's

► Overview of international sanctions

What are sanctions?

- **Tools to pursue foreign policy goals by restricting transactions with certain parties and countries**
 - Some agreed at UN by Security Council Resolutions (e.g., Iran, Lybia, North Korea)
 - EU sanctions decided by the European Commission and enforced by EU Member States
 - US sanctions mostly adopted (and enforced) by Office of Foreign Assets Control (“**OFAC**”)
 - Swiss sanctions decided by the Federal Council and enforced mainly by State Secretariat for Economic Affairs (“**SECO**”)



When do Swiss sanctions apply?



- Sanctions generally apply when there is a “**Swiss nexus**”
 - Within Switzerland
 - Entities incorporated/constituted under Swiss law
 - Any legal person, entity or body in respect of any business done in whole or in part from Switzerland
 - No extraterritorial application
 - Application to branch offices and subsidiaries of Swiss entities outside of Switzerland?

When do US sanctions apply?



- Sanctions generally apply to “**US Persons**”
 - US citizens and permanent residents, wherever located
 - Entities organized under US law (including foreign branches)
 - Parties located in the United States
 - “**US nexus**”: also US-origin or US-content goods, use of US financial system (USD transactions), etc.
 - *In case of Iran/Cuba sanctions*, include “persons subject to US jurisdiction” – entities owned or controlled by US persons
 - US secondary sanctions can be triggered when no US nexus

When do EU sanctions apply?

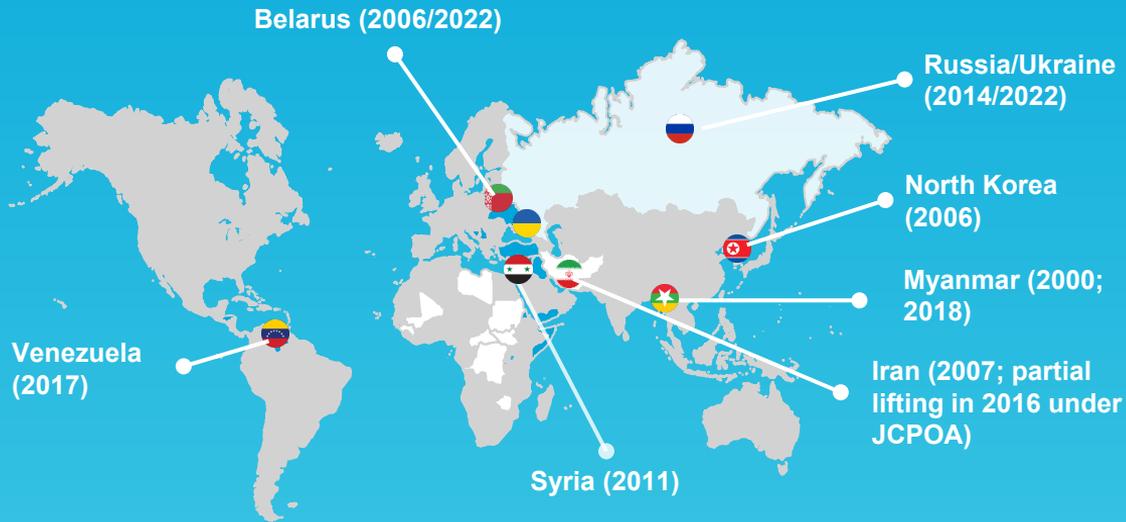


- Sanctions generally apply when there is an “**EU nexus**”
 - Within EU territory
 - On board aircrafts/vessels under EU Member State jurisdiction
 - Nationals of Member States (even if outside EU territory)
 - Entities incorporated/constituted under Member State laws
 - Any legal person, entity or body in respect of any business done in whole or in part within the EU

Why does this matter?

- Risk of civil and criminal penalties
 - In **Switzerland**, little enforcement (so far), but generally criminal penalties (up to 5 years of imprisonment or a fine of up to CHF 1,000,000 for serious cases)
 - In **EU**, little enforcement (so far) but generally criminal penalties
 - In the **US**, civil penalties: up to the greater of \$302,584 or twice the value of the transaction, per transaction; criminal penalties: up to \$1,000,000 and/or 20 years imprisonment (\$8.9 billion levied against BNP Paribas for processing transactions to “blacklisted” countries)
- Contractual obligations (usually lenders/investors, but also suppliers, etc.)
- Reputational harm and business disruption

Swiss Sanctions Map



Burundi
Central African Republic
Democratic Republic of Congo
Guinea
Guinea Bissau
Haïti
Irak
Lebanon
Lybia
Mali
Nicaragua
Somalia
South Sudan
Sudan
Yémen
Zimbabwe

Al-Quaïda / Talibans
Assassination of Rafik Hariri

Types of sanctions

Type of Sanctions	Impact
1. Comprehensive (US only)	Prohibit virtually all transactions with a US nexus
2. List-Based	Prohibit transactions with listed parties; must “freeze” or “block” assets of listed parties
3. Sectoral	Prohibit or restrict trade and investment in sensitive goods/services, certain debt, equity, and energy-related transactions (“ smart sanctions ”); sometimes related to listed parties (“SSI List”)
4. Secondary (US only)	Target “sanctionable” activity with no connection to the United States

► Update on some recent trends

Recent sanctions – Ukraine

- One of the largest sanctions program – mix of list based and “smart sanctions”
 - Financial sanctions (freezing of funds and other financial assets, ban on transactions, investment restrictions)
 - Trade restrictions on particular goods (e.g., arms, diamonds, oil, lumber)
 - Trade restrictions on services (e.g., engineering, accounting, legal)
 - Travel restrictions
 - Air traffic restrictions



Restrictions on services



□ Article 28a *ff*

- credit rating services - Art. 28a
- trusts-related services (e.g., registration, provision of registered offices , or business address, management services, holding position as trustee, director, or secretary) - Art. 28d
- accounting, auditing (including statutory audit), bookkeeping or tax advice, or business and management consulting or public relations services - Art. 28e(1)
- architectural and engineering services, legal consulting services and IT consulting services – Art. 28e(1bis)
- market research and opinion polling services, technical testing and analysis services and advertising services – Art. 28e(1ter)

Restriction on legal services



- Principle - Art. 28e(1bis):
 - The provision of legal advisory services to the Government of the Russian Federation or to legal persons, companies or entities established in Russia is prohibited.



Restriction on legal services (cont'd)



□ Exceptions (cont'd):

- “Services intended for the exclusive use of legal persons, companies or entities established in the Russian Federation which are owned or controlled exclusively or jointly by legal persons, companies or entities incorporated under Swiss law, the law of an EEA Member State or the law of the United Kingdom” – Art.28e(2)(a).
- Humanitarian activities - Art. 28e(2)(b).
- “The exercise of the rights of defence in judicial proceedings or the right to an effective remedy” – Art. 28e(2bis)(a).
- “To ensure access to judicial, administrative or arbitral proceedings in Switzerland, an EEA Member State or the United Kingdom, or for the recognition or enforcement of a judgement or arbitral award rendered in Switzerland, an EEA Member State or the United Kingdom” - Art. 28e(2bis)(b).

Restriction on legal services (cont'd)



□ Controversies:

- Guarantee of access to justice: *“In a legal dispute, every person has the right to have their case determined by a judicial authority. [...]”* – Art. 29a Cst.
- Legality: *“Restrictions on fundamental rights must have a legal basis. [...]”* - Art. 36 para. 1 Cst.
 - The Order is based on the Embargo Act, which does not allow for such restrictions.
- Proportionality and appropriateness of the measure?
- Interpretation issues: “Advice” vs. “legal representation”
 - No guidelines issued by SECO
 - Application of the interpretation made by the European Union in its regulation? (See recital 19) Regulation (EU) 2022/1904)

Restriction on legal services (cont'd)



□ New derogation – Art. 30c

- Since 29 March 2023
 - Subject to authorization by SECO
 - Window open until 31 December 2023
 - Conditions:
 - These services are strictly necessary for the disposal of assets or the liquidation of activities in the Russian Federation,
- and
- these services are provided for the exclusive benefit of legal persons, entities or bodies resulting from the divestment.

Restrictions re. critical infrastructures



- Entered into force yesterday (27 April 2023)
- Art. 28f - Prohibition of influence in critical infrastructures

“1 it is prohibited to allow Russian nationals or natural persons residing in the Russian Federation to exercise a function in the governing bodies of owners or operators of critical infrastructure.

“2 The prohibition provided for in para. 1 does not apply to the exercise of a function referred to in para. 1 by persons who are exclusively or also nationals of Switzerland, an EEA Member State or the United Kingdom.”

- Critical infrastructures:

“the supply of drinking water and energy, information, communication and transport infrastructure, as well as other facilities, processes and systems essential to the functioning of the economy and the well-being of the population” (Federal Information Security Act, Art. 5(c)).

▶ Divestment from Russia



- Wide divestment exemption program (since 29 March 2023) – Art. 30a
- Purpose: the disposal of assets or the liquidation of activities in the Russian Federation
- Subject to SECO's authorization
- Window open until 30 September 2023

Divestment from Russia (cont'd)



□ Conditions:

- The activities are strictly necessary for the disposal of assets or the liquidation of activities in the Russian Federation.
- The goods and technology are owned by nationals or legal entities of Switzerland or a Member State of the EEA.
- The goods and technology concerned were physically located in the Russian Federation prior to the entry into force of the prohibitions against them.

and

- The goods will not be used for military end-use in the Russian Federation.

Divestment from Russia (cont'd)



□ Applies to:

- Dual-use goods (Art. 4)
- Goods intended for military and technological reinforcement (art. 5)
- Maritime navigation goods and technologies (Art. 9a)
- Jet fuels and fuel additives (Art. 9b)
- Goods intended for the refining of petroleum and the liquefaction of natural gas (art. 10)
- Goods intended for the strengthening of industry (Art. 11a)
- Steel products (Art. 14(a))
- Economically important assets (art. 14c)

Protection of Swiss interests



“In regard to the sanctions, the Federal Council has previously stated it is prepared to act within the framework of existing legislation to minimise any unintended economic consequences on Swiss companies.” (Press release of 29.03.2029)

- Derogations to certain restrictions to protect Swiss interests:
 - Unfreezing of assets or economic resources - Art. 15(5ter) → Sulzer and medmix*
 - Acceptance of crypto assets - Art. 20(4)(e)*
 - Entry into or transit through Switzerland - Art. 29(2)(c)
 - Air traffic - Art. 29a(3)

Humanitarian exemption to UN sanctions regimes



- Resolution 2664 (2022)
- Permanent and standardized humanitarian exemption to targeted financial sanctions
- Purpose: strengthen legal certainty of humanitarian organizations and commercial service providers
- Switzerland will amend 13 Ordinances on 1 June 2023



Dos and Dont's

Dos and Dont's - compliance

- **DO** ensure that employees comply with relevant sanctions regimes
- **DO** ensure that US / EU Persons comply with US / EU sanctions
- **DO** always conduct appropriate sanctions due diligence on all business partners
- **DO** ensure that any transaction involving the supply of goods to a person in a sanctioned country, or for (end-)use in a sanctioned country is compliant with any (trade) sanctions or export controls
- **DO** get in touch with SECO in case of doubt

- **DON'T** ignore sanctions as this could hurt your business (reputation, fines)

Resources in Switzerland

- SECO's website on sanctions
(<https://www.seco.admin.ch/> or *type seco sanctions in google*) :
 - Link to all Ordinances (with history and delta versions for updates)
 - Search tool for sanctioned individuals, entities and organizations
 - Newsletters on sanctions



Questions?