

Russia Sanctions – Compliance Guide

FAQ FOR NGOS



SWITZERLAND

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Since the Russian invasion of Ukraine, countries and regional organisations around the world have imposed sanctions on Russia and Belarus, as a means of putting pressure on Russia's government to end the invasion. These sanctions take different forms and have different targets (sectors/individuals/companies etc.).

While the objective of these sanctions is not to affect organisations such as NGOs who operate in or have links with Russia, inevitably these sanctions might have a direct or indirect impact on them.

The following questionnaire has been created to collect legal research, that will in turn help NGOs understand how sanctions regimes might impact them and to understand how some of these risks could be managed.

Jurisdiction	Switzerland
Date Last Updated	19 July 2022

Public regulatory/executive body responsible for Sanctions

The main authority responsible for monitoring and implementing sanctions is the State Secretariat for Economic Affairs ("SECO").¹ However, the decision of whether individuals and entities will be added to or removed from a sanction list lies with the Federal Council.²

Consolidated List

On 4 March, the Federal Council approved the total revision of the Ordinance on Measures connected with the Situation in Ukraine ("Ordinance") based on Art. 184 of the Constitution and Art. 2 of the law of 22 March 2002 on embargoes, thereby adopting further packages of European Union sanctions against Russia.³

According to the Federal Council's statement, the sanctions shall "not hinder humanitarian activities"⁴ Accordingly, the Ordinance provides for humanitarian exemptions to a number of prohibitions and restrictions.

Relevant Guidance

N/A

1 ICLG, "Sanctions Switzerland 2022", 30 September 2021, available at <https://iclg.com/practice-areas/sanctions/switzerland>.

2 ICLG, "Sanctions Switzerland 2022", 30 September 2021, available at <https://iclg.com/practice-areas/sanctions/switzerland>.

3 "Ordonnance instituant des mesures en lien avec la situation en Ukraine", 946.231.176.72, 4 March 2022 as amended ("Ordinance"), available at https://www.fedlex.admin.ch/eli/cc/2022/151/fr#annex_2. See also SECO, Measures related to the situation in Ukraine, available at https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-zur-vermeidung-der-umgehung-internationaler-sanktionen.html.

4 See Federal Council, "Ukraine: Further trade and financial sanctions imposed against Russia", 4 March 2022, available at <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-87474.html>.

Key Points to note

Do the Russia Sanctions apply to you?

Is there any reason to think that you have any connection to Russia or Russians?

Your organization may be subject to sanctions if it is involved with persons or activities that could trigger sanctions. To this end, organizations may wish to examine any contracts, partnerships, or other associations they may have with Russian nationals and entities to confirm whether the other party is a designated person or entity or acts on behalf of a designated person or entity. In addition, persons not currently designated or activities not currently prohibited may become so in the future, since the sanctions regimes are constantly updated to reflect any new developments.

Freezing of assets and other financial as well as trade restrictions including the following might affect your organization's operation. However, the nature of your organization or its activities may also bring it within the scope of exceptions or exemptions to the prohibitions, as described below.

Freezing of assets:

- Prohibition on providing, directly or indirectly, assets or economic resources to natural persons and entities listed in Annex 8 (Ordinance, Art. 15(2)). The assets and economic resources belonging to or under the control of these natural persons and entities are also frozen, and thus prevented from use (Ordinance, Art. 15(1). See also definition of "freezing of economic resources", Ordinance, Art. 1(d)):
 - "Assets" include financial assets, including cash, checks, monetary claims, bills of exchange, money orders or other means of payment, deposits, debts and acknowledgments of debt, contract performance guarantees or other financial commitments (Ordinance, Art. 1(a).
 - "Economic resources" are values of any kind whatsoever, tangible or intangible, movable or immovable that do not constitute "assets" (Emphasis added. Ordinance, Art. 1(c).

Under this broad definition, economic resources may, for example, include the provision of labor. This means that if one's employer is placed on the Swiss sanctions list, an employee could be prohibited from continuing to work for the employer in Switzerland.

Exception: This prohibition does not apply when the provision of assets or economic resources is necessary to enable humanitarian activities or assist the civilian population in connection with the situation in Ukraine (Ordinance, Art. 15(3)(a). In these cases, payments from frozen accounts, transfers of frozen capital assets, and the release of frozen economic resources may be authorized (Ordinance, Art. 15(5)(f).

Other financial restrictions:

- Prohibition on participating, directly or indirectly, in any transaction with i. any designated bank or entity located in Russia;¹ ii. any bank or entity located outside Switzerland or a Member State of the European Economic Area and controlled by more than 50% of designated banks or entities; and iii. any entity acting on behalf of or according to the instructions of a designated bank or entity (Ordinance, Art. 24a(1).

This prohibition may, for example, restrict your organization's ability to transfer funds to staff or suppliers if that transfer requires the services of a bank that is listed as a designated person.

Exception: These prohibitions do not apply to, among others, transactions aiming to enable humanitarian activities or assist the civilian population in connection with the situation in Ukraine (Ordinance, Art. 24a(2)(c).

¹ Designated banks within the meaning of this provision are referred in Annex 15, which may be found here, pp. 284 – 285 of the pdf.

- Prohibition on accepting deposits from Russian nationals, natural persons residing in Russia, or from banks, companies or entities established in Russia if the deposits exceed the threshold of CHF 100.000.²

Trade restrictions:

- The importation of goods from territories mentioned in Annex 6, i.e. Crimea, Sebastopol, and Zones of Donetsk and Louhansk that are not controlled by the Ukrainian government (“Designated Territories”), is authorized only if the goods are accompanied by a certificate of origin issued by the Ukrainian authorities (Ordinance, Art. 13(1) and Annex 6).
- The sale, delivery, export, and transit of certain goods referred to in Annex 7 is prohibited if it is destined for persons or entities in Designated Territories (Ordinance, Art. 14(1)). In connection with these goods and persons or entities, technical or financial assistance and other services are also prohibited (Ordinance, Art. 14(2)).

Exception: These prohibitions do not apply to humanitarian activities and to activities for the support of hospitals or schools having their headquarters in the Designated Territories (Ordinance, Art. 14(3)).

With which sanctions regimes may you and/or your employees need to comply as a matter of law?

The Ordinance does not contain any provision defining its scope of application in relation to a person or to a territory. According to some authors, unless otherwise specified, Swiss sanctions apply territorially, that is, they apply to individuals and corporate entities located in Switzerland and/or engaged in commercial activities in Switzerland.³ Accordingly, US citizens involved in commercial activities in Switzerland, for instance, may fall within the purview of both Swiss and US sanctions.⁴

If your organization falls within the scope of application of the sanctions outlined in Question 1, it must comply with the prohibitions and other restrictions and obligations under the Ordinance. However, as discussed in Question 1, prohibited activities may fall under certain exceptions to the prohibitions.

Have you agreed to comply with sanctions with which you would not be required to comply as a matter of law by contractual agreements (e.g. with lenders, in donor agreements)?

Your organization may wish to review its contractual agreements and seek legal advice in relation to any provisions with implications regarding Swiss sanctions. These could include, for example, provisions that specifically address the impact of sanctions law on contractual obligations as well as force majeure and related clauses.

Connections with Russian Individuals and Businesses

Are you engaging with any person specifically targeted by any of these sanctions?

The Federal Council has listed a number of natural persons that are targeted by sanctions as designated persons in Annex 8 of the Ordinance.⁵ As discussed, these persons are subject to financial restrictions, in particular freezing of assets (Ordinance, Art. 15(1)).

Your organization may be subject to prohibitions on providing and making available assets or economic resources to these natural persons, except if the provision of such assets or economic resources is necessary

² Ordinance, Art. 20(1). As per Art. 21, Persons and institutions that accept deposits or grant loans on a professional basis shall provide the SECO a list of deposits exceeding such threshold.

³ See, e.g., Mercedeh Azeredo Da Silveira, Trade Sanctions and International Sales: An Inquiry into International Arbitration and Commercial Litigation (Kluwer Law International 2014), p. 27

⁴ Mercedeh Azeredo Da Silveira, Trade Sanctions and International Sales: An Inquiry into International Arbitration and Commercial Litigation (Kluwer Law International 2014), p. 27.

⁵ Designated natural persons are referred to in Annex 8 which may be found here, pp. 1 – 247 of the pdf.

to enable humanitarian activities or assist the civilian population in connection with the situation in Ukraine (Ordinance, Art. 15(3)(a)).

Are you engaging with any entity owned or controlled by any of these sanctions?

The Ordinance includes different lists of targeted entities including the following:

- Annex 8 contains a list of targeted entities that are subject to financial restrictions, including the freezing of assets.⁶

Your organization may be prohibited from providing and making available assets or economic resources to these entities, except if the provision of such assets or economic resources is necessary to enable humanitarian activities or assist the civilian population in connection with the situation in Ukraine (Ordinance, Art. 15(3)(a)).

- Annexes 9 and 12 – 15 contain a list of targeted banks and other companies that are subject to further restrictions including the direct or indirect granting of loans, as illustrated in Question 8 below.⁷

Are you importing or exporting any goods that may be subject to import/export restrictions?

As discussed in Question 1, the Ordinance includes prohibitions on the sale, import, delivery, export, transit and transportation of certain goods, including the following:

- The sale, delivery, export, transit and transport of goods for military and technological reinforcement is prohibited (Ordinance, Arts. 4 and 5).

Exception: Among other exceptions, this prohibition does not apply to goods and services intended exclusively i. for humanitarian or medical activities carried out by an impartial humanitarian organization; ii. for the prevention or urgent mitigation of an event likely to have serious and significant effects on human health and safety or on the environment, or iii. in response to natural disasters (Ordinance, Art. 6(1)(a)).

- Trade in crude oil and petroleum products destined for Switzerland, as well as the provision of related services, are also prohibited (Ordinance, Arts. 12 and 12b).

- The sale, delivery, export and transit of goods referred to in Annex 7 is prohibited if these goods are destined for persons, companies or entities in the Designated Territories.⁸ Examples of these goods are the following:

- Organic or inorganic chemicals; earth metals; mineral fuels; mineral oils, etc.;
- Generators;
- Pumps;
- Ventilators;
- Household appliances;

6 Designated entities under Annex 8 may be found here, pp. 247 – 271 of the pdf.

7 Designated entities under Annexes 9 and 12 – 15 may be found here.

8 Ordinance, Art. 14(1). Annex 7 may be found here, i.e. in the text of the Ordinance.

- Construction tools;
- Motor vehicles for the transport of ten or more people, driver included;
- Cleaning appliances;
- Printing tools;
- Agricultural tools and machinery.

Exception: This prohibition does not apply if the goods are destined for humanitarian activities or for the support of hospitals or schools having their headquarters in the Designated Territories (Ordinance, Art. 14(3)).

Do you have any involvement with activities in the Donetsk, Luhansk and Crimea regions, which are subject to specific regimes?

Donetsk and Luhansk regions are not subject to specific sanctions regimes. They are instead listed in Annex 6 as Designated Territories, as discussed in Question 1. For this reason, if your organization is engaged in activities in Donetsk and Luhansk regions, you should be mindful of the prohibitions applying to these Designated Territories, as discussed in Questions 1 and 6.

Payments and Investments

Do you have a charitable trust or foundation that might involve dealing with equity/debt instruments issued by, or making loans available to Russian state owned companies, persons connected with Russia, or the Government of Russia?

If your organization has a charitable trust or foundation that might involve i. dealing with equity/debt instruments issued by persons connected with Russia or the Government of Russia, or ii. making loans available to such persons and entities, it might be subject to relevant prohibitions imposed by Switzerland.

Freezing of assets:

- The definition of “assets” includes securities and debt instruments (Ordinance, Art. 1(a)). Accordingly, securities and debt instruments fall within the freezing of assets prohibition, as discussed in Question 1 (Ordinance, Art. 15(1)).

Other prohibitions:

- The direct or indirect granting of loans with a maturity of more than 30 days is prohibited, with some exceptions, when it is to certain beneficiaries targeted under Annexes 9, 12 or 13, after 12 November 2014 and until 5 March 2022 (Ordinance, Art. 19(1) and (6)). The direct or indirect granting of any loan is also prohibited, with some exceptions, when it is to certain entities targeted under Annexes 9 to 13, after 5 March 2022. There are also restrictions, with some exceptions, on loans granted in relation to certain activities involving investments and financial instruments after 28 February 2022 (Ordinance, Art. 19(4) – (5)).
- The granting of loans or credits to companies or entities in the Designated Territories, or the participation in such operations are also prohibited (Ordinance, Art. 25(1)).
- The Ordinance includes a prohibition on establishing trusts or similar legal forms, or acting as trustee, nominal shareholder, director, secretary or in any similar capacity for a trust or similar legal form or enabling any other person to do so when certain persons, entities or bodies referred in Art. 28d are settlors or beneficiaries (Ordinance, Art. 28d(1) – (2)).

Exception: This prohibition might not apply to humanitarian activities including in relation to medical supplies and foodstuffs or the transfer of humanitarian workers and related aid, or for evacuation purposes

(Ordinance, Art. 28d(4)(a). Similarly, civil society activities that directly promote democracy, human rights or the rule of law in Russia might also be excluded from the scope of the above prohibition (Ordinance, Art. 28d(4)(b). Derogation from the above prohibition may be also authorized for the operation of a trust or a similar legal form whose purpose is the management of, among others, amateur sports clubs and funds for minors or vulnerable adults (Ordinance, Art. 28d(4)(c).

The Ordinance provides that violation of the above provisions (i.e. those outlined in this Question) results in punishment in accordance with the Embargo Act.⁹ As per the Embargo Act, anyone who intentionally violates any provision of an ordinance may be liable for imprisonment up to 5 years or a fine of maximum CHF 1 million.¹⁰

Are you affected by restrictions on processing funds (e.g. making payments where Russian banks have been removed from SWIFT)?

Your organization may be subject to any prohibitions applicable to the provision of funds (e.g. to a sanctioned individual or entity), or to dealings with the financial institution that would transfer the funds.

Examples of types of activities that might involve processing funds include paying staff members and invoices.

Restrictions on processing funds include the following:

- Prohibition on providing specialized financial messaging services used to exchange financial data (i.e. SWIFT or substituting services) to companies controlled by more than 50% by certain banks and entities listed in Annex 14, or to any bank or entity located in Russia (Ordinance, Art. 27).
- Prohibition on providing, directly or indirectly, financial assistance or other benefits under a Swiss national program to legal persons, undertakings or entities established in Russia which are controlled by a governmental entity (Ordinance, Art. 28c(1).

Exception: This prohibition is subject to certain exceptions including i. humanitarian activities; ii. public health emergencies, iii. the urgent prevention or mitigation of an event that could have serious and significant effects on human health and safety or the environment, or iv. in response to natural disasters (Ordinance, Art. 28c(2)(a).

Please also refer to Questions 1 and 5. As discussed, some of the prohibitions mentioned in Question 1 could, for example, restrict your ability to work for an employer that has been placed on the Swiss sanctions list.

Are you affected by restrictions on access by Russian individuals to local bank accounts?

Please refer to Questions 1, 5, and 9

Are there any sanctions that apply to using or trading cryptoassets?

Under the Ordinance, freezing of assets and other financial restrictions apply to using trading and crypto-assets.

Freezing of assets

- The definition of “assets” includes crypto-assets (Ordinance, Art. 1(a). Accordingly, crypto-assets fall within the freezing of assets prohibition, as discussed in Question 1 (Ordinance, Art. 15(1).

⁹ Ordinance, Art. 32; Federal Act on the Implementation of International Sanctions of 22 March 2002 (Status as of 1 January 2022), 946.231 (“Embargo Act”), available at <https://www.fedlex.admin.ch/eli/cc/2002/564/en>.

¹⁰ Embargo Act, Art. 9. See also ICLG, “Sanctions Switzerland 2022”, 30 September 2021, available at <https://iclg.com/practice-areas/sanctions/switzerland>.

Other restrictions

- The provision of services related to crypto wallets, crypto-accounts or custody of crypto-assets to Russian nationals, natural persons residing in Russia, or banks or entities established in Russia by persons or entities providing such services on a professional basis is prohibited if the total value of the crypto assets per wallet, account or custody service provider exceeds CHF 10.000 (Ordinance, Art. 20(2)).

Exception: Derogations from these prohibitions may be authorized if the deposit or provision of a service in connection with a crypto-asset portfolio, a crypto-asset account and the custody of crypto-assets is necessary for, among others, i. humanitarian purposes; ii. to civil society activities that directly promote democracy, human rights or the rule of law in Russia; and iii. for the exercise of the official activities of diplomatic or consular representations or international organizations (Ordinance, Art. 20(4)).

Exemptions and Other Points to Note

To the extent there are restrictions which apply, can you apply to relevant authorities for licences, e.g. “in connection with the performance of any humanitarian assistance activity”?

The Ordinance provides for exceptions to the applicable restrictions to support humanitarian activities or safeguard Swiss interests, in particular for the provision of food supplies, medicines and therapeutic products for humanitarian purposes.

Specifically, SECO may exceptionally, and usually after having consulted the competent departments of the Foreign Department of Foreign Affairs (“FDFA”) and the Federal Department of Finance (“DFF”), authorize derogations from prohibitions provided in the Ordinance. Some examples of such authorizations in relation to certain prohibitions are described below:

- Freezing of assets and economic resources: The SECO may, after having consulted the competent departments of the FDFA and the DFF, authorize payments from frozen accounts, transfers of frozen capital assets and the release of frozen economic resources for, among others, enabling humanitarian activities or the provision of assistance to the civilian population in connection with the situation in Ukraine (Ordinance, Art. 15(4) – (5)).
- Prohibition on direct or indirect participation in any transaction involving certain banks and entities: The SECO may, after having consulted the competent departments of the FDFA and the DFF, authorize derogations from this prohibition to among others enable humanitarian activities or the provision of assistance to the civilian population in connection with the situation in Ukraine (See Ordinance, Art. 24a(2) – (3)).
- Prohibitions regarding trusts: The SECO may, after consulting the competent departments of the FDFA and the DFF, authorize derogations from this prohibition i. to enable humanitarian activities, such as the delivery of medical supplies and foodstuffs or the transfer of humanitarian workers and related aid; ii. for evacuation purposes; and iii. for civil society activities that directly promote democracy, human rights or the rule of law in Russia (Ordinance, Art. 28d(4)).
- Prohibition on accepting deposits and crypto-assets: The SECO may, after consulting the competent departments of the FDFA and the DFF, authorize derogations from the prohibitions if the deposit or provision of a service in connection with a crypto-asset portfolio, a crypto-asset account and the custody of crypto-assets is necessary for, among others, i. humanitarian purposes; ii. to civil society activities that directly promote democracy, human rights or the rule of law in Russia; and iii. for the exercise of the official activities of diplomatic or consular representations or international organizations (Ordinance, Art. 20(4)).

- Export of goods to Designated Territories: The SECO may, after consulting the competent departments of the FDFA and the DFF, authorize derogations from this prohibition insofar as it is necessary to prevent or mitigate an event likely to have serious and significant effects on human health and safety, including the safety of existing infrastructure, or on the environment (Ordinance, Art. 14(4). In duly substantiated urgent cases, the sale, delivery, transfer or export is admissible without prior authorization, provided that the exporter informs the SECO within five working days of the sale, delivery, transfer or export and sets out in detail the reasons justifying the sale, delivery, transfer or export without prior authorization (Ordinance, Art. 14(5).

Other points to consider

The Federal Council approved a revised Ordinance on measures against Belarus on 16 March 2022¹.

The newly adopted sanctions concern goods and financial services, and are similar to those against Russia. Examples of sanctions against Belarus are the following:

- Prohibition on public financing or financial assistance for trade with or investment in Belarus.²
- Restrictions concerning securities, loans and the acceptance of deposits.³
- Prohibitions on providing technical assistance, brokering services or financing to Belarus, according to a government statement.⁴
- Extension of the pre-existing import bans from Belarus to include wood products, products made of rubber, iron and steel as well as cement.⁵

As with the sanctions against Russia, exceptions are allowed for humanitarian purposes.

1 Ordinance on measures against Belarus, SR 946.231.116.9, approved on 16 March 2022. See SECO, Belarus: Federal Council extends scope of sanctions, 16 March 2022, available at <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-87614.html>.

2 Ordinance on measures against Belarus, SR 946.231.116.9, approved on 16 March 2022. See SECO, Belarus: Federal Council extends scope of sanctions, 16 March 2022, available at <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-87614.html>.

3 Ordinance on measures against Belarus, SR 946.231.116.9, approved on 16 March 2022. See SECO, Belarus: Federal Council extends scope of sanctions, 16 March 2022, available at <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-87614.html>.

4 Ordinance on measures against Belarus, SR 946.231.116.9, approved on 16 March 2022. See SECO, Belarus: Federal Council extends scope of sanctions, 16 March 2022, available at <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-87614.html>.

5 Ordinance on measures against Belarus, SR 946.231.116.9, approved on 16 March 2022. See SECO, Belarus: Federal Council extends scope of sanctions, 16 March 2022, available at <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-87614.html>.