

• Swiss Banking

Sanctions

The SBA's position



Position

Sanctions are an increasingly important tool of foreign and security policy. They are typically – though not always – developed multilaterally through bodies such as the UN, and can take various forms, targeting finance, trade or individuals. All banks operating in Switzerland are required to comply directly with the sanctions applicable to their relevant activities, a task that is already highly complex and not without contradictions. Additional sanctions adopted and imposed by Switzerland itself must always be fully compliant with international legislative norms and the rule of law; in particular, they must respect freedom of property and the principle of “nulla poena sine lege” (no penalty without law). The financial players involved in sanctions must at all times understand what their objective is, how they are to be implemented, and who is responsible for overseeing them.

Russia’s war of aggression against Ukraine and the sanctions imposed in response by the EU in particular have given rise to additional policy issues, difficulties and ambiguities, for example regarding Switzerland’s role in the international context as well as questions of interpretation, responsibility and procedure. Added to this is a general movement towards geopolitical multipolarity and the “weaponisation of finance”, which is set to make matters even more complex and lead to irreconcilable differences.

Switzerland and its financial centre must be prepared to deal with all these issues over the long term. Against this backdrop, the Swiss Bankers Association (SBA) has drawn up five guiding principles designed to address the challenges of formulating a Swiss sanctions policy that is effective and compliant with the rule of law:

- 1. In the context of economic and foreign policy, Swiss politicians must agree on an approach to sanctions that is optimally coordinated with international developments and geared to the long term, taking account of the rule of law and overarching political principles.** The various regimes of sanctions against Russia are becoming increasingly incompatible, resulting in greater complexity and contradictions that are impossible to overcome. As the world becomes increasingly divided into separate geopolitical blocs, these problems will intensify. Switzerland and its banks are already having to cope with discrepancies between the various regimes without a clear national position to fall back on or indeed a body that can consolidate them.
- 2. Switzerland’s sanctions regime should be clear and efficient. The goal of each individual sanction must be defined in advance and enjoy political support. To ensure that the sanction is implemented consistently and effectively, all the relevant players must be covered by it and the principles governing its implementation.** Until now, Switzerland has adopted almost all of the EU sanctions packages in their entirety. This has led to difficulties in implementation, one obvious example of which concerns the measure regarding deposit restrictions. Although this was adopted from the EU, in Switzerland (unlike in the EU), the receipt of corporate actions such as dividends is permitted regardless of the amount deposited. There are good reasons for this. When it

comes to implementation, however, the differing treatment of corporate actions creates major hurdles, especially for multinational banks that are required to comply with EU sanctions. This demonstrates that the overriding aim of sanctions must be clearly defined because rules cannot be imposed on a case-by-case basis, especially when more complex sanctions regimes are concerned.

3. Switzerland should make its views on sanctions heard in the relevant international discussions and bodies, presenting its position confidently and coherently. It makes sense for Switzerland to align its approach to imposing and implementing sanctions with that of foreign sanctioning authorities. Active involvement in discussions and bodies at the international level would also be advantageous, since it would enable Switzerland to play its full part in formulating the details of sanctions, leading to greater alignment and international recognition of the Swiss approach in this area.

4. Switzerland's sanctioning authority should be capable and effective, and the allocation of roles between SECO and FINMA must be clear to all those involved. SECO is the right authority within Switzerland to order and oversee implementation of sanctions in the financial sector. However, its organisation and processes need to be optimised and its international enforcement powers enhanced. SECO has recently announced a reorganisation designed to address these issues. With the adoption of EU sanctions into Swiss law, though, SECO has also assumed responsibility for enforcing them, a task that would otherwise have fallen to FINMA. Nevertheless, there is still insufficient clarity within the sector regarding the two authorities' roles in overseeing implementation.

5. Liaison between the SBA and the relevant authorities should be institutionalised and recognised, so that unresolved questions can be answered quickly and consistent implementation ensured. For the SBA, implementing sanctions in coordination with the relevant authorities is not about lobbying: it is intended to resolve technical issues. The liaison between the SBA and SECO that has been ongoing since the start of Russia's assault on Ukraine has already enabled numerous difficulties to be addressed and dealt with. This shows that coordination between the authority ordering sanctions and the institutions required to enforce them has led to more effective and consistent implementation in practice, by allowing the two parties to share information openly and resolve issues quickly. However, the fact that SECO – unlike other authorities with similar remits such as FINMA – is bound by the Freedom of Information Act (FoIA) has hampered the liaison between the SBA and SECO that is vital from an implementation perspective. The requests received by SECO under the FoIA to divulge communications

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between it and the SBA are causing unnecessary delays. This issue needs to be resolved over the long term.