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Federal Department of Economic Affairs,  
Education and Research DEFR  
State Secretariat for Economic Affairs SECO  
Law

CH-3003 Bern SECO; beu POST CH AG

Reference: SECO-471.4-2/32/12

Your reference:

Person in charge of the case: Luca Bernardoni  
Bern, 18 January 2023

## ENFORCEMENT WARRANT

**Pursuant to Art. 64 of the Federal Act of 22 March 1974 on Administrative Criminal Law (DPA; SR 313.0) in administrative criminal law proceedings conducted by the**

**State Secretariat for Economic Affairs (SECO)**

**against**

**[REDACTED]**

**for**

**violation of Article 6 of the Ordinance of 16 March 2022 instituting measures in the  
against Belarus (SR 946.231.116.9, hereinafter referred to as the “Ordinance”)**

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## I. Facts

On the basis of the report of 24 June 2022 drawn up by Zurich Airport Customs and the additional information provided, it has been established that on 16 June 2022 the company [REDACTED] [REDACTED] has entered into a contract of sale with the company [REDACTED] [REDACTED], located in Belarus, for the supply of pumps and spare parts for a total amount of EUR 39,619.20.

On 22 June 2022, the goods were to be dispatched by the transport company [REDACTED] [REDACTED] to the customer's address in [REDACTED] Belarus, with the parcel first transiting through the airports of Istanbul (Turkey) and Moscow-Cheremetievo (Russia).

Following the customs declaration (Edeo n° [REDACTED]) issued on 24 June 2022, the goods were automatically blocked and temporarily secured for the attention of SECO by customs at Zurich airport, because the delivery contained products (tariff number 8413.9130) that were subject to the prohibition on sale, delivery, export, transit and transport under Art. 6 of the ordinance.

On the basis of these findings, SECO decided on 5 September 2022 to open an administrative criminal law investigation against [REDACTED] for alleged violation of Art. 6 of the Ordinance, and gave it a period of 30 days to take a written position on the objections to it; produce an organizational chart establish the competences within [REDACTED] showing the administrative subdivisions, the hierarchical relationships as well as the respective competences of the different subdivisions; declare the identity of the persons responsible for the acts suspected of contravening the order Above; to inform SECO of the identity and full address of other persons who may, if any, be affected by the present proceedings and to produce all documents relating to this case which make it possible to clarify the facts recounted.

Since the case had already been sufficiently documented by customs and there was no need to sequester the temporarily seized goods, the goods were released on 5 September 2022 and returned to the sender for use in accordance with the law.

By letter dated 15/27 September 2022, [REDACTED] sent SECO its position paper and the required information on the decision to open an administrative criminal investigation. In this position, the company argued that:

- On 26.01.2022, it received the customer's order in Belarus, which it confirmed on 11.02.2022 with incoterms [REDACTED] Prior to this confirmation, the company checked with SECO (as it always does) the permission to export the goods.
- Once this order was ready for export, i.e. on 17.06.2022, the company informed the customer and also informed him of the change from Incoterms to [REDACTED] instead of [REDACTED]
- At that time, the company allegedly made a mistake by failing to check the tariff code (8413) mentioned in the Ordinance of 16.03.2022 imposing measures against Belarus as well as Annex 4 to the Ordinance (status on 10.06.2022).
- As of 22.06.2022. the goods have been picked up by the customer's carrier, i.e. by the company [REDACTED]
- On 27.06.2022, the company was informed by the customer that the goods were blocked at customs in Zurich.

- The [REDACTED] customs carrier at Zurich airport have notified [REDACTED] on 07.09.2022 that the goods had been unblocked, and that the goods would have been returned to the company [REDACTED]
- The company also points out that, following SECO's opening decision, it has put in place even stricter measures (appointing a sanctions officer within the company) to prevent such a mistake from happening again.

Having regard to [REDACTED] I did not take a position or request further investigation within the 10-day period provided for in the report sent on 12 December 2022, the repression warrant can then be issued.

## **II. Rights**

### Art. 6 of the Ordinance; Machinery

<sup>1</sup> The sale, delivery, export, transit or transport of the machinery referred to in Annex 4 to Belarus or intended for use in Belarus shall be prohibited.

<sup>2</sup> The supply, directly or indirectly, of technical assistance, brokerage services, financial resources or financial assistance, including financial derivatives, as well as insurance and reinsurance products in connection with the activities referred to in paragraph 1 shall be prohibited.

### Schedule 4 of the Ordinance: Machinery

<sup>8413</sup> Pumps for liquids, whether or not incorporating a measuring device, liquid elevators.

### Penal Provisions

Anyone who violates the provisions of Art. 6 of the Ordinance is punishable by imprisonment for not more than one year or a fine of not more than 500,000 francs; if the offender acts negligently, the penalty is imprisonment for a term not exceeding three months or a fine of up to CHF 100,000 (Art. 28 para. 1 of the Ordinance in conjunction with Art. 9 of the Federal Embargo Act, Embargo Act; SR 946.231).

Pursuant to Article 333 of the Swiss Criminal Code (SCC; SR 311.0), these threatening penalties will be adapted to the new types of sanctions provided for in the general part of the Criminal Code.

SECO supervises the implementation of the enforcement measures provided for in Articles 2 to 9, 10 to 14 and 16 (Art. 29 para. 1 of the Ordinance) and prosecutes and adjudicates infringements of Art. 9 and 10 Ordinance (Art. 28 para. 3 of the Ordinance). The Federal Act of 22 March 1974 on Administrative Criminal Law (DPA; SR 313.0) is applicable (Art. 14 para. 1 MbA).

## **III. Recitals**

### Objective elements of an infringement of Art. 6 of the Ordinance

It follows from Art. 6 para. 1 of the Ordinance that the sale, delivery, export, transit and transport of the machinery listed in Annex 4 to Belarus or intended for use in Belarus is prohibited.

Annex 4 to the Ordinance refers in this connection to Customs Tariff 8413, which applies to pumps for liquids, whether or not with a measuring device and liquid elevators.

In view of the above, having attempted to have goods (pumps and spare parts totalling EUR 39,619.20) delivered to Belarus, the export of which was prohibited (their tariff number being 8413.9130), [REDACTED] has completed the building blocks objectives of an infringement of Art. 6 of the Ordinance.

#### Subjective Constituent Elements of a Breach of Art. 6 of the Ordinance

Unless otherwise expressly provided by law, only the perpetrator of a crime or offence who acts intentionally is punishable (Art. 12 para. 1 SCC). Articles 9 and 10 of the Embargo Act in conjunction with Article 20 of the Ordinance punish both intentional and negligent violation of the blocking and reporting obligations under Articles 10 and 19 of the Ordinance.

Anyone who commits a crime or misdemeanour intentionally acts with knowledge and will. The perpetrator is already acting intentionally when he considers it possible to commit the offence and accepts it in the event that it occurs (Art. 12 para. 2 SCC). Anyone who acts negligently if he commits a crime or a misdemeanour through culpable improvidence without realizing the consequences of his act or without taking them into account. Lack of foresight is culpable when the perpetrator has not taken the precautions required by the circumstances and by his personal situation (Art. 12 para. 3 SCC).

In the present case, [REDACTED] is not alleged to have intentionally violated Art. 6 of the Ordinance. Nevertheless, as a company active in international trade, it had a duty to carefully analyse the embargo ordinances imposed by Switzerland and to take the necessary measures to ensure that they were not contravened. The fact that the Ordinance was checked with SECO in January 2022 whether it was possible to export the goods does not justify its error, given that at the beginning of 2022 the Ordinance was not yet in force and the text of the Ordinance had been amended again on 10 June 2022.

Moreover, it is the company itself that does not dispute that it erred in failing to control the tariff code referred to in the Order and Schedule 4.

This lack of foresight is culpable within the meaning of Art. 12 para. 3 SCC and [REDACTED] has therefore fulfilled the subjective constituent elements of an infringement of Art. 6 of the Ordinance.

#### **IV. Sentencing**

When an offence is committed in the management of a legal person, the penal provisions are applicable to the natural persons who committed the act, in accordance with art. 6 para. 1 DPA. The head of the company, employer, principal or representative who, intentionally or negligently and in breach of a legal obligation, fails to prevent an offence committed by the subordinate, agent or representative or to remove its effects, is subject to the criminal provisions applicable to the perpetrator who has acted intentionally or negligently (Art. 6 para. 2 DPA). If the fine does not exceed 5,000 francs and the investigation would make it necessary, in the case of persons punishable under Art. 6 DPA, investigative measures out of proportion to the penalty incurred, it is permissible to waive the prosecution of these persons and to order the payment of the fine in their place to the legal person, the general or limited partnership or the sole proprietorship (Art. 7 para. 1 DPA).

Given that a fine of up to CHF 5,000 is in any case permissible and that the investigation would make it necessary to deal with persons punishable under Art. 6 DPA of investigative measures out of proportion to the sentence to be imposed, it is necessary, in accordance with Article 7 para. 1 DPA, to hold [REDACTED] day liable for infringements of Art 6 of the Ordinance.

[REDACTED] was indeed guilty, as we have seen, of a lack of attention by failing to verify the tariff code relating to the goods it wanted to export to Belarus.

On the basis of the organisation charts provided and in view of the large number of persons who could be considered liable in the specific case - alone or in competition with each other - SECO considers that a fine of no more than CHF 5,000 may be imposed pursuant to Art. 7 DPA, take into account the investigation of persons punishable under art. 6 making it necessary to take investigative measures out of proportion to the penalty incurred.

Fines not exceeding 5,000 francs are set according to the seriousness of the offence and the offence; it is not necessary to take into account other factors (Art. 8 DPA).

In this case, a violation of art. 6 of the Ordinance was issued, a provision which aims, inter alia, to control the export of machinery to Belarus.

Although the offence was committed negligently, [REDACTED]'s fault lies with a certain importance. In this regard, it is necessary to take into account the value of the blocked property (€39,619.20) and the fact that the error could have been avoided by more thorough control and monitoring, which would be expected from a company active at the international level as [REDACTED]

In determining the sentence, account must be taken, in a mitigating sense, of the fact that [REDACTED] acted under the influence of culpable negligence, that the company was cooperative throughout the proceedings, that additional precautionary measures were subsequently implemented in order to prevent the recurrence of such an incident, as well as the fact that this was an isolated case that had no consequences, as the export was blocked by customs at the Swiss border and then the goods were returned to the sender for use in accordance with the law.

In the light of these factors, it appears appropriate to impose a fine of 2,000 francs [REDACTED].

#### **V. Procedural Costs**

Pursuant to Articles 94 and 95 DPA, the costs of the proceedings, which include the fees for decisions and pleadings, are to be borne by the convicted person.

These costs are set on the basis of Art. 64 and 94 DPA and Art. 7 para. 2 let. a and 12 para. 1 of the Ordinance of 25 November 1974 on Costs and Allowances in Administrative Criminal Proceedings (SR 313.32), at 560 francs (i.e. a decision fee of 500 francs and a writing fee of 60 francs).

**In the light of these recitals**

**State Secretariat for Economic Affairs (SECO)**

**pronounced:**

1. [REDACTED] is found guilty of violating Article 6 of the Ordinance of 16 March 2022 instituting measures against Belarus.
2. [REDACTED] is ordered to pay a total fine of CHF 2,000 - francs.
3. In addition, the costs of the proceedings, which amount to 560 francs, including a decision fee of 500 francs and a writing fee of 60 francs, are charged to the convicted person.
4. This request for a resolution is hereby notified, in two examples, to [REDACTED] the attention of [REDACTED] (registered letter with acknowledgment of receipt).

**State Secretariat for Economic Affairs SECO**

Jurg Herren, lic. iur./LL.M.  
Head of Legal Division

Luca Bernardoni, lawyer  
Surveyor

Indication of appeals

[REDACTED] may lodge an objection against this enforcement warrant within 30 days of its notification. The objection must be sent in writing to the SECO Legal Department (State Secretariat for Economic Affairs, Law Sector, Holzikofenweg 36, 3003 Bern). The opposition must set out specific conclusions and the facts on which they are based; The means of proof must be indicated and as much as possible, attached to the pleadings (Art. 67 and 68 DPA).

At the request of [REDACTED], SECO may treat the objection as a request for judgment by the competent court (Art. 71 DPA).

If no objection is lodged within the legal period, the enforcement order will be assimilated to a judgment passed in force (Article 67 DPA). Within five days of the entry into force of the enforcement mandate, the total amount of CHF 2,560 must be credited to the account of the State Secretariat for Economic Affairs (SECO).