

Swiss Confederation  
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Federal Department of Economy,  
Education and Research WBF

State Secretariat for Economic Affairs (SECO)  
Law

CH-3003 Bern

SECO; scf

POST CH AG

**Registered mail with acknowledgement of receipt**

[REDACTED]

Ref.: [REDACTED]

Bern, 1 May 2023

## **PENALTY NOTICE**

**pursuant to Article 64 of the Federal Act of 22 March 1974 on Administrative Criminal Law (VStrR; SR 313.0)**

[REDACTED]

**in administrative criminal proceedings of the State Secretariat  
for Economic Affairs (SECO)**

**against**

**the [REDACTED]**

**because of**

**Suspicion of violation of Art. 14b para. 1 of the Ordinance of the Federal Council of 4 March 2022 on measures related to the situation in Ukraine (SR 946.231.176.72; hereinafter referred to as the “Ukraine Ordinance”) in conjunction with Art. 9 of the Federal Act of 22 March 2002 on the Enforcement of International Sanctions (SR 946.231, hereinafter referred to as the “Embargo Act”)**

State Secretariat for Economy SECO [REDACTED]  
Holzikofenweg 36  
3003 Bern  
Tel. +41 58 481 08 38  
[REDACTED] @seco.admin.ch  
<https://www.seco.admin.ch>

## I. Facts

1. On 27 September 2022, the Federal Office for Customs and Border Security (FOCBS) sent SECO's Export Controls / Industrial Products Division (BWIP) a consignment from the company [REDACTED] as follows: [REDACTED] [REDACTED] or the "accused") with the country of destination Russian Federation. The consignment was provisionally seized by the Zollstelle Zoll Zurich, Mülligen secured in advance.

The delivery of [REDACTED] according to the export list dated 27 September 2022 (first dated 22 September 2022, subsequently corrected) to the consignee [REDACTED] [REDACTED] 19072 Moscow to the Russian Federation become. Delivery includes a painting created by [REDACTED] Year 2021, dimensions 90x100 cm, net weight 8.7 kg, value according to invoice no. 801489: CHF 1'500.00.

By agreement dated December 15, 2022, the purchase agreement between [REDACTED] [REDACTED] (seller) and [REDACTED] was dissolved and it was stated that the owner of the painting was (again) [REDACTED] st.

Owner of the painting (again) the [REDACTED] st.

The [REDACTED] Chairman of the Board of Directors of [REDACTED] sent this agreement to SECO on December 26, 2022. In a letter dated January 11, 2023, SECO then informed the BAZG that the painting could be released and returned to the seller/dispatcher [REDACTED] for lawful use.

[REDACTED] finally confirmed on 18 January 2023 that [REDACTED] had received back the paintings in question.

2. On 28 September 2022, this dossier concerning possible breaches of the Ukraine Regulation by the accused was referred by BWIP to SECO's Legal Affairs Division (OARE) with a request to consider the opening of administrative criminal proceedings.
3. By order of 29 March 2023, SECO initiated administrative criminal proceedings against the accused or against the persons responsible on suspicion of a violation of Article 14b(1) of the Ukraine Regulation and requested them to comment on the alleged conduct by 28 April 2023 and to submit the requested information and documents.
4. The defendant complied with this request in due time by submitting its statement dated March 31, 2023 (received by SECO on April 3, 2023). The statement was prepared before [REDACTED] who, according to his own information, is responsible for the sales business in [REDACTED] and, according to the entry in the commercial register of the Canton of Valais, is Chairman of the Board of Directors of [REDACTED]. In this letter, [REDACTED] [REDACTED] acknowledges the facts alleged against it. At the same time, the [REDACTED] [REDACTED] provides information on the background.
5. In the week of February 15, 2022, [REDACTED] would have sold the [REDACTED] painting to [REDACTED] and requested that the painting be sent to them in Russia at the address [REDACTED]. On February 22, 2022, [REDACTED] sent the painting to Russia. However, on March 25, 2022, the package was returned to [REDACTED] because the customer was not at home (in Moscow) and did not pick up the package (in

time) at the Russian Post's post office. On September 22, 2022, [REDACTED] sent the painting to Russia for the second time and was informed on November 6, 2022 that the painting was blocked at customs due to the sanctions against Russia. On December 15, 2022, [REDACTED] [REDACTED] finally agreed to terminate the contract ([REDACTED]) so that the painting could be returned to [REDACTED]. According to the report, the accused sold the painting before the sanctions against Russia came into force. If the clientele had been in Moscow and picked up the painting (meaning the time of the first shipment in February 2022), there would have been no problem.

The defendant therefore sold the painting before the sanctions against Russia came into force. If the customer had been in Moscow and picked up the painting (i.e. the date of the first shipment in February 2022), no problem would have arisen.

In the statement, [REDACTED] further explains that he alone was responsible for sending the package and had no knowledge of the sanctions against Russia, otherwise he would not have made the second delivery. He had not intended to make an illegal export. Moreover, [REDACTED] was a family business in [REDACTED] and not a large company. The defendant would only very rarely export to Russia.

6. It is apparent from the defendants' observations that [REDACTED] was not aware of the sanctions imposed on the Russian Federation and did not carry out the necessary clarifications in this regard.

## **II. Legal**

7. Article 14b(1) of the Ukraine Regulation prohibits the sale, supply, export and transit of luxury goods listed in Annex 18 to persons, undertakings or entities in the Russian Federation or for use in the Russian Federation.
8. Annex 18 to the Ukraine Decree specifies the prohibited luxury goods. The ban applies to luxury goods with a unit price of more than CHF 300.00, unless otherwise stated in the appendix. Paragraph 20 of Annex 18 to the Ukraine Regulation mentions "works of art, collectors' items and antiques" under customs number 97 and does not mention any other unit price.
9. Any person who infringes Article 14b(1) of the Ukraine Regulation shall be punished in accordance with Article 32(1) of the Ukraine Regulation pursuant to Article 9 of the EmbG (Federal Act of 22 March 2002 on the Enforcement of International Sanctions, Embargo Act, SR 946.231).
10. Any person who intentionally violates Article 14b (1) of the Ukraine Regulation shall be punished with imprisonment of up to one year or a fine of up to CHF 500,000 (Article 32 (1) of the Ukraine Regulation in conjunction with Article 9 (1) EmbG). In serious cases, the penalty is imprisonment for up to five years. The custodial sentence can be accompanied by a fine of up to CHF 1 million (Art. 9 para. 2 EmbG). If the offence is committed negligently, the penalty is imprisonment for up to three months or a fine of up to CHF 100,000 (Art. 9 para. 3 EmbG).
11. These threats of punishment are popular. Art. 333 of the Criminal Code (SCC, SR 311.0) adapted to the new sanctions of the General Part of the Criminal Code.

12. Infringements pursuant to Articles 9 and 10 of the EmbG are prosecuted and assessed by SECO (Article 32(3) of the Ukraine Regulation). Administrative criminal law (VStrR) is applicable (Art. 14 para. 1 EmbG).

### **III. Considerations**

#### **Objective Criminal Offence**

13. Article 14b(1) of the Ukraine Regulation prohibits the sale, supply, export and transit of luxury goods listed in Annex 18 to persons, undertakings or entities in the Russian Federation or for use in the Russian Federation. Works of art, collectors' items and antiques are mentioned in Annex 18 of the Ukraine Decree under customs tariff number 97.
14. The accused arranged for the export of a painting (art object according to customs tariff number 97) worth 1,500.00 Swiss francs to the consignee [REDACTED] [REDACTED] in the Russian Federation. The consignment was temporarily seized by the customs office in Zurich, Müingen and therefore did not reach the intended recipient [REDACTED] (see point 1/1.). The defendant confirmed these facts in its statement of March 31, 2023 (see para. I/4.).
15. By arranging for the shipment of a painting covered by Annex 18 of the Ukraine Ordinance to the Russian Federation, the company [REDACTED] violated the export ban on luxury goods pursuant to Art. 14b para. 1 of the Ukraine Ordinance.

#### **Subjective offence**

16. Unless the law expressly provides otherwise, only a person who commits a crime or misdemeanour intentionally is liable to prosecution (Article 12(1) of the Criminal Code). Article 9 of the Embargo Act in conjunction with Article 32 (1) of the Ukraine Regulation criminalise both the intentional and negligent violation of Article 14b (1) of the Ukraine Regulation.
17. A crime or misdemeanour is committed intentionally by a person who carries out the act with knowledge and will. Anyone who considers the realization of the act to be possible and accepts it is already acting intentionally (Art. 12 para. 2 SCC). A crime or misdemeanour is negligent if he does not consider or does not take into account the consequence of his conduct due to negligent carelessness. Imprudence is a breach of duty if the perpetrator fails to observe the precaution to which he is obliged according to the circumstances and his personal circumstances (Art. 12 para. 3 SCC).
18. The accused is not accused of having acted intentionally in the present case.
19. In her observations of 31 March 2023, the defendant argues, inter alia, that she is a family business and very rarely exports to Russia. She was therefore not aware of the sanctions against Russia and that the export of the said painting was prohibited.
20. The accused did not appear to be aware of the breach of duty until SECO drew her attention to the legal situation.
21. Against this background, the conduct of the accused constitutes imprudence in breach of duty and is to be qualified as negligent within the meaning of Article 12(3) of the

Criminal Code. The accused would have been obliged to examine more closely whether the export of the said goods to or for use in the Russian Federation was permissible. In breach of duty, she carelessly omitted to carry out more detailed investigations. Thus, the accused has also fulfilled the subjective criminal offence of a violation of Article 14b(1) of the Ukraine Regulation.

### Sentencing

22. Anyone who negligently violates Article 14b (1) of the Ukraine Regulation is liable to imprisonment for up to three months or a fine of up to CHF 100,000 (Article 9 (3) of the Embargo Act in conjunction with Article 32 (1) of the Ukraine Regulation). In accordance with Article 333 of the Criminal Code, these penalties are adapted to the new sanctions of the General Part of the Criminal Code.
23. If an offence is committed in the course of managing the affairs of a legal person, the penal provisions are, in principle, applicable to the natural persons who committed the offence (Article 6(1) of the VStrR). If the principal, employer, client or representative fails, intentionally or negligently in breach of a legal obligation, to avert or annul the effects of an infringement by the subordinate, agent or representative, he or she is subject to the penal provisions that apply to the perpetrator acting accordingly (Art. 6 para. 2 VStrR). If the principal, employer, principal or representative is a legal person, Art. 6 para. 2 VStrR applies to the guilty bodies, board members, managing partners, actual managing persons or liquidators (Art. 6 para. 3 VStrR).
24. If a fine of not more than CHF 5,000 is envisaged and the identification of persons liable to prosecution under Article 6 of the VStrR would require investigative measures which would be disproportionate in the light of the penalty forfeited, the prosecution of those persons may be avoided and the legal person, the collective or limited partnership or the sole proprietorship may be ordered to pay the fine in their place (Article 7(1) of the VStrR). Fines of up to CHF 5,000 are to be assessed according to the seriousness of the offence and the culpability; other reasons for sentencing do not have to be taken into account (Art. 8 VStrR).
25. In her observations of 31 March 2023, the accused stated that [REDACTED] [REDACTED] was the person responsible for the sale transaction in [REDACTED] and that he alone was responsible for the attempted, prohibited export of the painting in question. Nevertheless, the misconduct in the present case cannot be clearly attributed to a specific person. The statement by [REDACTED] that he is solely responsible is too general to qualify as an admission in the criminal sense. In view of the fact that, in the present case, due to the lack of fault and the minor offence (see the following paragraphs) a fine of between 700 and 1,000 Swiss francs is to be considered and the identification of the natural persons punishable under Article 6 of the VStrR would require investigative measures that would be disproportionate in view of the sentence forfeited, the prosecution of these persons is taken on the basis of Article 7(1) of the VStrR and the accused is ordered to pay the fine in their place.
26. The fault is not particularly great. The accused acted out of negligent imprudence, without criminal energy. If the first shipment of the painting in February 2022, i.e. before the luxury goods embargo came into force, had not been returned due to non-collection by customers in Moscow, then there would have been no violation of the sanctions provision at all. In addition, the defendant subsequently sought to reverse the

transaction and did so (agreement of 15 December 2022). Accordingly, there is only a minor violation of the Ukraine Regulation.

27. Finally, it should be noted that the defendant was cooperative from the beginning of the proceedings and, moreover, readily admitted the facts alleged by SECO.
28. The accused did not comment on the final minutes of 17 April 2023.
29. In the light of the abovementioned factors in sentencing, a fine of 700 Swiss francs must be imposed.

#### **IV. Costs of Proceedings**

30. In accordance with Articles 94 and 95 of the VStrR, the costs of the proceedings are to be imposed on the convicted persons, consisting of the trial fee and the writing fee.
31. These are based on Articles 64 and 94 of the VStrR and Article 7(2)(a) and Article 12(1) of the Charter 1 of the Ordinance of 25 November 1974 on Costs and Compensation in Administrative Criminal Proceedings (SR 313.32) at 370 Swiss francs (arbitration fee of 300 francs and writing fee of 70 francs).

**On the basis of those considerations**  
**the State Secretariat for Economic Affairs (SECO)**

**Recognized:**

1. The [REDACTED] is terminated for the infringement of Article 14b(1) of the Ukraine Regulation.
2. The [REDACTED] is ordered to pay a fine of 700 Swiss francs.
3. The [REDACTED] shall also pay the costs of the proceedings totalling EUR 370 Swiss francs, consisting of a casting fee of 300 Swiss francs and the writing fees of 70 Swiss francs.
4. Two copies of this penalty notice shall be sent to [REDACTED] by Registered mail with acknowledgement of receipt opened.

**Information on Legal Remedies**

The [REDACTED] may lodge an objection against the penalty notice within 30 days of the opening of the notice. Objections must be submitted in writing to the Legal Service of SECO (State Secretariat for Economic Affairs SECO, Legal Department, Holzikofunweg 36, 3003 Bern). The objection must contain a specific request and state the facts on which it is based; the evidence should be identified and, as far as possible, enclosed (Articles 67 and 68 VStrR).

The opponent may request that the objection be treated as a request for assessment by the competent criminal court (Art. 71 VStrR).

If no objection is lodged within the statutory period, the penalty notice is equivalent to a final judgment (Art. 67 para. 2 VStrR). The total amount of 1,070 Swiss francs must then be transferred within a further 5 days to the account with the IBAN CH7709000000300063895 of the State Secretariat for Economic Affairs SECO at PostFinance Ltd.

**For the State Secretariat for Economic Affairs**

**[REDACTED] [REDACTED]**