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Federal Department of Economy,
Education and Research WBF

State Secretariat for Economic Affairs (SECO)
Law

CH-3003 Bern SECO [REDACTED] POST CH AG

Registered letter with advice of delivery (AR)

[REDACTED]

Reference: SECO-471.4-2/32/60

Your reference:

Clerk:

Bern, January 15, 2024

PENALTY NOTICE

**Penalty notice pursuant to Art. 61 of the Federal Act of 22 March 1974 on
Administrative Penal Law. law (VStrR; SR 313.0)**

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

against

[REDACTED]

for

**Suspected violation of Art. 11a para. 1 Ordinance of the Federal Council of 4 March
2022 on measures in connection with the situation in Ukraine (SR 946.231.176.72;
hereinafter referred to as the “Ukraine Ordinance”) in conjunction with Art. 9 of the
Federal Law Act of 22 March 2002 on the Enforcement of International Sanctions (SR
946.231, hereinafter “Embargo Act”)**

State Secretariat for Economic Affairs SECO
[REDACTED]

<https://www.seco.admin.ch>

I. Facts of the case

1. On November 15, 2022, the State Secretariat for Economic Affairs (SECO) received an export shipment from the company [REDACTED [REDACTED] hereinafter also referred to as the “Defendant”) with the destination country Russian Federation reported. The shipment was provisionally seized by the Zurich airport customs office.
2. The delivery of [REDACTED should according to export list of November 15, 2022 to the recipient [REDACTED in the Russian Federation. The delivery includes polyethylene rods and sheets. The sheets fall under customs tariff number 3920.10 (value according to positions 4-6 of invoice no. 1068 approximately Euro 5,373).

However, the export to the Russian Federation of polyethylene staves (customs tariff number: 3916.10), which were part of the delivery in addition to the sheets, is not prohibited by the Ukraine regulation.

3. By order dated October 30, 2023, SECO opened administrative criminal proceedings against the defendant and the persons responsible on suspicion of violating Art. 11a para. 1 of the Ukraine Ordinance and requested them to comment on the alleged conduct and submit the requested information and documents by November 27, 2023.
4. The defendant complied with this request in due time by submitting its statement of November 20, 2023. The statement was written by Mr. [REDACTED, Deputy Managing Director of [REDACTED In it, [REDACTED acknowledges the facts of the case against it. According to its statements, when the goods were delivered to [REDACTED, it was not even considered that the delivery of the polyethylene sheets could fall under the Ukraine Regulation. [REDACTED had taken the customs tariff number from the supplier's invoice and transferred it to the invoice accordingly. This was careless behavior, which could perhaps be considered reckless, but not deliberate.

In the aforementioned statement, [REDACTED is designated as the person responsible for the alleged facts, without, however, describing the responsibility more precisely.

5. The investigations in these administrative criminal proceedings were concluded on December 11, 2023 with the final report in accordance with Art. 61 para. 1 VStrR. This was opened to [REDACTED on the same day in accordance with Art. 61 para. 2 VStrR and she was given the opportunity to comment on it, inspect the files and request a supplement to the investigation.
6. The defendant did not comment on the final minutes and did not request a supplement to the investigation.

II. Legal Matters

7. Art. 11a para. 1 of the Ukraine Ordinance prohibits the sale, supply, export, transit and transportation of goods for industrial reinforcement in accordance with Annex 23 to or for use in the Russian Federation.
8. Annex 23 of the Ukraine Regulation mentions the following under customs tariff number 3920.100:

Other plates, sheets, film, foil, bands and strip, of compact plastics, not reinforced, laminated or otherwise combined with other materials, without backing – of polymers of ethylene.

9. Anyone who violates Art. 11a para. 1 of the Ukraine Ordinance will be punished in accordance with Art. 32 para. 1 of the Ukraine Ordinance under Art. 9 EmbG (Federal Act of 22 March 2002 on the Enforcement of International Sanctions, Embargo Act, SR 946.231).
10. Anyone who willfully violates Art. 11a para. 1 of the Ukraine Ordinance is punished with a custodial sentence of up to one year or a fine (Art. 32 para. 1 of the Ukraine Ordinance in conjunction with Art. 9 para. 1 EmbG). In serious cases, the penalty is imprisonment for up to five years or a fine. (Art. 9 para. 2 EmbG).
11. If the offense is committed negligently, the penalty is a fine of up to CHF 100,000 (Art. 9 para. 3 EmbG).
12. Violations under Art. 9 and 10 EmbG are prosecuted and assessed by SECO (Art. 32 para. 3 of the Ukraine Ordinance). Administrative criminal law (VStrR) is applicable (Art. 14 para. 1 EmbG).

III. Expectations

Objective Offense

13. In accordance with Art. 11a Para. 1 of the Ukraine Ordinance, the sale, supply, export, transit and transportation of goods for the strengthening of industry in accordance with Annex 23 to or for use in the Russian Federation are prohibited. Polyethylene sheets are mentioned in Annex 23 of the Ukraine Regulation under customs number 3920.100.
14. The defendant arranged for the export of polyethylene sheets worth EUR 5,373 to the recipient [REDACTED], the Russian Federation. The shipment was temporarily seized by the Zurich Airport customs office and therefore did not reach the intended consignee [REDACTED] (see section I/1.). The defendant confirmed these facts in its statement of November 20, 2023 (see para. I/5.).
15. By arranging for the shipment of polyethylene sheets covered by Annex 23 of the Ukraine Ordinance to the Russian Federation, the defendant violated the export ban on goods to support industry pursuant to Art. 11a para. 1 of the Ukraine Ordinance.

Subjective Offense

16. Unless the law expressly stipulates otherwise, only those who intentionally commit a felony or misdemeanor are liable to prosecution (Art. 12 para. 1 SCC). Art. 9 of the Embargo Act in conjunction with Art. Art. 32 para. 1 of the Ukraine Ordinance criminalize both intentional and negligent violations of Art. 11a para. 1 of the Ukraine Ordinance.
17. A felony or misdemeanor is committed intentionally by anyone who carries out the act with knowledge and will. Anyone who considers the realization of the act to be possible and accepts it (Art. 12 para. 2 StGB) is already acting with intent. A person commits a felony or misdemeanor negligently if he fails to consider or take into account the consequences of his conduct due to carelessness contrary to his duty. Carelessness is

contrary to duty if the offender fails to observe the caution to which he is obliged under the circumstances and according to his personal circumstances (Art. 12 para. 3 StGB).

18. The defendant is not accused of having acted with intent in the present case.
19. In its statement of November 20, 2023 the defendant argues, inter alia, that the defendant was not aware that polyethylene sheets were subject to a ban laid down in the Ukraine Regulation.
20. The defendant only appeared to be aware of the lack of caution in breach of duty when SECO pointed out the legal situation to her.
21. Against this background, the defendant's conduct constitutes a failure to exercise due care and is to be qualified as negligent within the meaning of Art. 12 para. 3 StGB. The defendant would have been obliged to check more closely whether it was permissible to export the goods to or for use in the Russian Federation. In breach of duty, it carelessly failed to carry out more precise clarifications. The defendant has therefore also committed the subjective offense of violating Art. 11a para. 1 of the Ukraine Ordinance.

IV. Sentencing

22. Anyone who negligently violates Art. 11a para. 1 of the Ukraine Ordinance is liable to a fine of up to CHF 100,000 (Art. 9 para. 3 Embargo Act in conjunction with Art. 32 para. 1 of the Ukraine Ordinance).
23. If an offense is committed while managing the affairs of a legal entity, the criminal provisions are generally applicable to the natural persons who committed the offense (Art. 6 para. 1 VStrR). If the principal, employer, principal or agent fails, intentionally or negligently in breach of a legal duty, to avert an offense committed by the subordinate, agent or representative or to nullify its effects, he is subject to the criminal provisions that apply to the perpetrator acting accordingly (Art. 6 para. 2 VStrR). If the principal, employer, client or representative is a legal entity, Art. 6 para. 2 VStrR applies to the guilty organs, members of organs, managing partners, persons actually in charge or liquidators (Art. 6 para. 3 VStrR).
24. If a fine of no more than CHF 5,000 can be imposed and if the investigation of the persons liable to prosecution under Art. 6 VStrR would require investigative measures that would be disproportionate to the penalty imposed, the prosecution of these persons may be dropped and the legal entity, the general or limited partnership or the sole proprietorship may be ordered to pay the fine instead (Art. 7 para. 1 VStrR). Fines of up to CHF 5,000 are to be assessed according to the seriousness of the offense and the degree of culpability; other grounds for sentencing do not have to be taken into account (Art. 8 VStrR).
25. Based on the statement of November 20, 2023, the misconduct in the present case cannot be clearly attributed to a specific person. Although the statement [REDACTED Deputy Managing Director of [REDACTED as a responsible person. However, it is not explained on the basis of which circumstances and actions he is to be considered a responsible person. The corresponding statement in the opinion is therefore too general to be qualified as an admission in the criminal sense. In view of the fact that a fine of no more than CHF 5,000 is possible in the present case due to the low level of culpability and the minor offense (see the following section) and that the identification of the natural persons liable

to prosecution under Article 6 of the VStrR would require investigative measures that would be disproportionate in view of the penalty imposed, it is decided, based on Art. 7 para. 1 VStrR, the prosecution of these persons is dropped and the accused is sentenced to pay the fine in their place.

26. The culpability is not particularly great. The defendant acted out of a lack of caution in breach of duty, without any particular criminal energy. She was not aware that polyethylene sheets were subject to a ban laid down in the Ukraine Ordinance, and she failed to carry out the necessary clarifications. In addition, the goods were ultimately not exported to the Russian Federation, but could be returned to the defendant by the FOCA for legitimate use. The plates contained in the shipment were also not particularly valuable (5,373 euros). Accordingly, there was only a minor violation of the Ukraine Ordinance.
27. Finally, it should be noted that the defendant was cooperative from the beginning of the proceedings and also readily admitted the facts alleged by SECO.
28. In consideration of the above-mentioned penalty assessment factors, a fine of CHF 2,500 is appropriate.

V. Procedural Costs

29. In accordance with Art. 94 and 95 VStrR, the costs of the proceedings, consisting of the sentencing fee and the clerk's fee, are imposed on the convicted person.
30. Based on Art. 64 and 94 VStrR as well as Art. 7 para. 2 let. a and Art. 12 para. 1 of the Ordinance of November 25, 1974 on Costs and Compensation in Administrative Criminal Proceedings (SR 313.32), these are set at CHF 1,260 (ruling fee of CHF 1,200 and writing fee of CHF 60).

Based on these expectations
the State Secretariat for Economic Affairs (SECO)

recognized:

1. [REDACTED] will be prosecuted for breach Art. 11a para. 1 of the Ukraine Regulation.
2. The [REDACTED] is sentenced to a fine of 2,500 francs.
3. The [REDACTED] is also ordered to pay the costs of the proceedings totaling 1,260. The court imposed a fine of 1,200 Swiss francs, consisting of an adjudication fee of 1,200 Swiss francs and a clerical fee of 60 Swiss francs.
4. Two copies of this penalty notice will be sent to [REDACTED] and by registered letter with acknowledgement of receipt.

Right of Appeal

The [REDACTED] may lodge an objection to the penalty notice within 30 days of its issue. The objection must be submitted in writing to the SECO Legal Service (State Secretariat for Economic Affairs SECO, Legal Division, Holzikofenweg 36, 3003 Bern). The objection must contain a specific request and state the facts on which it is based; the evidence should be specified and, if possible, attached (Art. 67 and 68 VStrR).

The objector may request that the objection be dealt with directly 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 legally binding judgment (Art. 67 para. 2 VStrR). The total amount of CHF 3,760 must then be transferred within a further 5 days to the account IBAN CH7709000000300063895 of the State Secretariat for Economic Affairs (SECO).

State Secretariat for Economic Affairs SECO

[REDACTED] [REDACTED]