

[LETTERHEAD]

CH-3003 Bern

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[REDACTED]

Reference number: [REDACTED]

Your reference:

Clerk: [REDACTED]

Bern, February 26, 2024

**Penalty Notice**

pursuant to Art. 64 of the Federal Act of March 22, 1974 on Administrative Criminal Law  
(VStrR; SR 313.0) in administrative criminal proceedings

**against**

[REDACTED]

**on suspicion of**

suspected violation of Art. 9 para. 1 of the Ordinance of the Federal Council of March 4, 2022 on  
measures in connection with the situation in Ukraine (SR 946.231.176.72; hereinafter: "Ukraine  
Ordinance")

## I. Facts of the Case

1. The Federal Office for Customs and Border Security FOCBS (hereinafter “FOCBS”) informed SECO on December 23, 2022 that the following goods intended for export (customs declaration [REDACTED]) of the company [REDACTED] to [REDACTED], Russia, were provisionally seized by the Zurich Airport customs office; “pressure transmitters, pressure transducers and pressure gauges”. The value of the goods according to the existing invoices and the customs declaration is EUR 57,263.
2. By order of January 15, 2024, SECO opened administrative criminal proceedings against [REDACTED] or the persons responsible on suspicion of violating Art. 9 para. 1 of the Ukraine Ordinance and requested them to comment on the alleged conduct within 30 days and to submit the requested information and documents.
3. By separate letter from SECO dated January 15, 2024, the provisionally seized goods were released to [REDACTED] for lawful use.
4. In a letter dated January 30, 2024, [REDACTED] submitted a statement on the alleged conduct (hereinafter; Statement) within the deadline and submitted various enclosures. This statement will be addressed in the following recitals (III), insofar as legally relevant.
5. The investigations in these administrative criminal proceedings were concluded on February 19, 2024 with the final report. This was opened to [REDACTED] on the same day and she was given the opportunity to comment on it within 10 days, to inspect the files and to request a supplement to the investigation.
6. By e-mail dated February 25, 2024, [REDACTED] stated that it was grateful for the delivery of the final report and the review of its case contained therein, which it considered to be correct, and therefore waived its right to comment.

## II. Legal Bases

7. Violations under Art. 9 of the Federal Act on the Enforcement of International Sanctions (Embargo Act, EmbG, SR 946.231) are prosecuted and assessed by SECO (Art. 32 para. 3 Ukraine Ordinance). The Federal Act on Administrative Criminal Procedure (VStrR, SR 313.0) is applicable (Art. 14 para. 1 EmbG). If an offense is committed while managing the affairs of a legal entity, the criminal provisions apply to the natural persons who committed the offense (Art. 6 para. 1 VStrR).
8. The sale, supply, export and transit of goods listed in Annex 3 that are suitable for use in the aerospace industry, directly or indirectly to natural or legal persons or organizations in the Russian Federation or for use in the Russian Federation are prohibited (Art. 9 para. 1 Ukraine Ordinance). Annex 3 to the Ukraine Regulation lists goods with the customs tariff number 9026 since November 23, 2022. Anyone who violates Art. 9 para. 1 of the Ukraine Ordinance will be punished in accordance with Art. 32 para. 1 of the Ukraine Ordinance under Art. 9 EmbG. The penalty for an intentional offense is a prison sentence of up to one year or a fine (Art. 9 para. 1 EmbG) and for a negligent offense a fine of up to CHF 100,000 (Art. 9 para. 3 EmbG).

9. If an offense is committed while managing the affairs of a legal entity, the criminal provisions apply in principle to the natural persons who committed the offense (Art. 6 para. 1 VStrR). 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 person 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).

10. Unless the law expressly provides otherwise, only those who intentionally commit a felony or misdemeanor are punishable (Art. 12 para. 1 SCC). The negligent violation of Art. 9 para. 1 of the Ukraine Ordinance is punishable (Art. 9 para. 3 EmbG / Art. 2 para. 3 EmbG). A felony or misdemeanor is committed intentionally by anyone who carries out the act with knowledge and intent. Anyone who considers the realization of the act to be possible and accepts it (Art. 12 para. 2 StGB) is already acting intentionally. A person commits a felony or misdemeanor negligently if he fails to consider the consequences of his conduct due to carelessness contrary to his duty or fails to take them into account. 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 SCC).

### **III. Considerations**

#### **Objective Elements of the Offense**

11. [REDACTED] shipped “pressure transmitters, pressure transducers and pressure gauges” to [REDACTED] on December 16, 2022 in fulfillment of a purchase contract with [REDACTED], Russia. These goods bear the customs tariff number 9026, which has been listed in Annex 3 of the Ukraine Regulation since November 23, 2022. The objective element of Art. 9 para. 1 Ukraine Regulation (Annex 3) is fulfilled.

#### **Subjective Facts**

12. [REDACTED] is not accused of having acted intentionally within the company in the present case. It is necessary to examine whether the elements of Article 9(1) of the Ukraine Regulation (Annex 3) were fulfilled through negligence.

13. In the statement, [REDACTED] states that the company assumed that it was lawful to deliver to Russia because its Russian representative had given assurances that it would not deliver to the aerospace industry or for military applications (p. 2 of the statement). [REDACTED] further stated that on December 16, 2022, it had been informed for the first time by its freight forwarder [REDACTED] that the shipment in question had been blocked by customs because it concerned possible aerospace goods. On this day, the company learned for the first time that it might be in breach of the regulations. This was the time for the company to take a closer look (Exhibit 4). On December 20, 2022, the company also had the Russian representative reconfirm that the company's products were not used in the military sector or in aerospace applications (Exhibit 5). Finally, in an email dated December 22, 2022, the employee responsible for exports contacted the freight forwarder to check the case of the blocked shipments again, as [REDACTED] was not

on the sanctions list (List 23) (Exhibit 10). In its statement, [REDACTED] also stated that it had always examined requests and applications in the military sector particularly carefully and critically and had always been in contact with SECO in this regard. In a letter dated April 23, 2021, SECO gave an assurance that [REDACTED]'s products would be used exclusively in civilian areas (Enclosure 1).

14. The aforementioned statements of [REDACTED] illustrate that the responsible persons of the company were not aware of the sale or shipment of the pressure transmitters on December 16, 2022, that the customs tariff number 9026 has been newly listed in Annex 3 since November 23, 2022, and that the sale and export of such products to Russia is prohibited. Even after the goods were seized by customs, the company was still of the opinion that the pressure transmitters could be exported to Russia, as the Russian company involved confirmed that it did not use the products in the military sector or in aerospace applications, and SECO informed the company in a letter dated April 23, 2021 that the pressure transmitters could be exported without a permit. This prevailing view within the company is incorrect. With regard to the reference to aerospace, Art. 9 para. 1 Ukraine Ordinance is based solely on the fact that the goods sold or delivered to Russia are “suitable” for use in the aerospace industry. The specific intended use is not relevant. The goods seized in the present case are suitable for use in the aerospace industry. Otherwise, it would make no sense for [REDACTED] to obtain contractual assurances from the Russian contractual partner, including by e-mail, that the latter would not use the goods in the aerospace industry.

15. The letter from SECO dated April 23, 2021 (Enclosure 3) mentioned by [REDACTED] in its statement, in which [REDACTED] claims to see an assurance that its products would be used exclusively in civilian areas, explicitly states that the pressure transmitters in question may only be exported without a permit subject to Swiss sanctions law. Since it is precisely a violation of sanctions that is being examined here, [REDACTED] cannot derive anything for itself from this letter.

16. As a globally active company with around 500 employees, which sells goods to various countries (including Russia), [REDACTED] should have been more aware of the applicable sanctions against Russia and should have recognized in good time that the pressure transmitters etc. with tariff number 9026 were subject to sanctions. with tariff number 9026 falls under the published Annex 3 of the Ukraine Ordinance - in other words, the company's carelessness is to be regarded as “contrary to duty” or negligent (Art. 12 para. 3 StGB), which means that the elements of Art. 9 para. 1 / Annex 3 Ukraine Ordinance are also subjectively fulfilled.

### **Sentencing**

17. First of all, it must be examined whether individual or several persons can be identified within [REDACTED] to whom the criminal conduct can be attributed in the present case. According to its own statements, [REDACTED] bears the overall operational and cross-departmental responsibility of the company and, as the person responsible for sales, the overall responsibility for the alleged conduct. Furthermore, [REDACTED] stated that Mr. [REDACTED] bears joint responsibility and [REDACTED] also bears joint responsibility.

18. The statements made by [REDACTED] in its statement are limited to general responsibilities of employees within the company and do not qualify as an admission of guilt in the criminal sense. Based on this alone, the criminal liability of individual persons cannot be proven - individual aspects are too unclear (e.g. regarding the role, contributions to the offense, motives, etc. of the persons). In order to obtain additional and possibly sufficient information, additional investigative measures would be necessary (such as questioning the persons concerned and any witnesses). As SECO considers a maximum fine of CHF 5,000 to be appropriate in this case, further costly investigative measures would be disproportionate. SECO therefore refrains from prosecuting the natural persons specifically responsible and instead imposes a fine on the legal entity [REDACTED] for the alleged conduct (Art. 7 para. 1 VStrR).

19. The value of the sanctioned goods amounts to EUR 57,263. The goods were not delivered to Russia, which means that the intended sanction effect has been realized. The objective wrongdoing is therefore in the low range. At the time the goods were exported, the customs tariff number 9026 had only been listed in Annex 3 of the Ukraine Ordinance for around 3 weeks. The responsible persons and employees of [REDACTED] therefore did not have much time to recognize the change to Annex 3 of the Ukraine Regulation. The failure to include the goods in Annex 3 of the Ukraine Regulation must therefore be regarded as slight negligence. The documents submitted and the explanations provided by [REDACTED] in its statement indicate its willingness to deal responsibly and carefully with binding sanctions and its insight into the misconduct, which is taken into account to reduce the penalty. Finally, it should be noted that [REDACTED] was cooperative from the beginning of the proceedings. Overall, the culpability of [REDACTED] is to be assessed as slight.

20. The penalty for a negligent violation of Art. 9 para. 1 Ukraine Ordinance is a fine of up to CHF 100,000 (Art. 9 para. 3 EmbG). In the present case, the fine is in the lowest range of the penalty scale. Taking into account the seriousness of the offense and the degree of fault (Art. 8 of the VStR), SECO considers the imposition of a fine of CHF 2,900 to be appropriate.

#### **IV. Procedural Costs**

21. The costs of the present administrative penal proceedings are set at an adjudication fee of CHF 900 and a writing fee of CHF 70 (Art. 94 para. 1 VStR / Art. 6a f. and 12 of the *Ordinance on Costs and Compensation in Administrative Penal Proceedings*, SR 313.32). The total amount of the procedural costs of CHF 970 is imposed on [REDACTED], as it is convicted (Art. 95 para. 1 VStR).

#### **Based on these considerations**

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

#### **recognized:**

1. [REDACTED] is declared guilty of violating Art. 9 para. 1 of the Ukraine Ordinance.
2. [REDACTED] is sentenced to pay a fine of CHF 2,900.

3. The procedural costs of CHF 970, consisting of an adjudication fee of CHF 900 and a writing fee of CHF 70, are imposed on [REDACTED] for payment.

4. The present penalty notice shall be sent to [REDACTED] by registered letter with acknowledgement of receipt.

### **Right of Appeal**

The person concerned may lodge an objection to the penalty notice within 30 days of its notification. 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 final judgment (Art. 67 para. 2 VStrR). The total amount of CHF 3,870 must then be transferred to the [REDACTED] account of the State Secretariat for Economic Affairs (SECO) within a further 5 days.

### **State Secretariat for Economic Affairs SECO**

[REDACTED]