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

CH-3003 Berne

SECO; stj

POST CH AG

Reference: **SECO-471.4-2/32/12**

Your reference:

Person in charge of the dossier: [REDACTED]

Berne, 15 May 2023

ENFORCEMENT WARRANT

**Pursuant to Art. 64 of the Federal Law of 22 March 1974
on administrative criminal law (DPA; SR 313.0)**

[REDACTED]

in the administrative criminal law proceedings conducted by the

State Secretariat for Economic Affairs (SECO)

against

[REDACTED]

for

**violation of Art. 14b para. 1 of the Federal Council Ordinance of 4 March 2022
measures related to the situation in Ukraine (SR 946.231.176.72, hereinafter
“the Ordinance”)**

State Secretariat for Economic Affairs SECO
[REDACTED]
Holzkofenweg 36
3003 Berne
[REDACTED]
<https://www.seco.admin.ch>

I. Introduction

1. By decision of 8 September 2022, the State Secretariat for Economic Affairs (SECO) initiated administrative criminal proceedings against [REDACTED] [REDACTED] (hereinafter [REDACTED]) for suspicion of violation of Art. 14b para. 1 of the 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 “Ordinance”)¹ and gave [REDACTED] [REDACTED] 30 days to submit a written position and submit a series of information and documents.

2. By letter of 10 October 2022, Ms. [REDACTED] commented on behalf of [REDACTED] on the decision of 3 September 2022 to initiate the investigation. As such, he has

- referred to a number of facts (marginal notes 1 to 14 of the statement);
- stated that the sale fee for the wristwatch “[REDACTED]” had in fact already been concluded in 2020 and that the buyer and his messenger had their residence in Dubai,
- presented some appendices (a document summarizing the facts referred to signed by Mr. [REDACTED] [REDACTED] Boutique Director of [REDACTED] two copies of residence cards of Dubai, a video of the wristwatch [REDACTED], serial number [REDACTED] [REDACTED] as well as a screenshot of the “client” database).

3. By letter of 17 November 2022, SECO asked Mr [REDACTED] to submit until December 2, 2022 the following documents:

- The contract of sale concluded between [REDACTED] and the buyer of the wristwatch [REDACTED] [REDACTED]
- Documents attesting to the payment of the sale price for the said wristwatch [REDACTED] [REDACTED]
- Any communication between [REDACTED] and the purchaser of the wristwatch [REDACTED] [REDACTED] relating to the delivery and payment of the truth price of the wristwatch.

4. By letter of 29 November, Ms. [REDACTED] took a position on behalf of her principal and stated, inter alia, that “it is not customary in the world of watchmaking for contracts of sale to be signed when a deal is concluded. Only one invoice is issued and you already have it in your file.” No documents have been taken care of.

5. In view of the fact that the investigation is complete, SECO sent the final report within the meaning of Art. 61 DPA to Mr [REDACTED] on 3 April 2023. [REDACTED] was informed of its right to comment on the final report, to inspect the documents and to request further investigation within ten days of notification of the final report. By letter of 25 April

¹ Available in all versions without [SR 546.231.176.72 - Ordinance of 4 March 2022 introducing measures in connection with the situation in Ukraine \(admin.ch\)](#)

2023, [REDACTED]’s lawyer informed SECO that [REDACTED] “will not object to a fine of CHF 5000 in order to save time and resources”.

II. In Fact

6. The Federal Customs Administration informed SF.CO on May 2, 2022 that on April 30, 2022 a form bearing the title “Export document for tourist traffic” was intercepted and blocked at the Geneva-Aéroport customs office. This is a document within the meaning of art. 3 of the Ordinance of the FDF of March 24, 2011 governing the tax exemption of deliveries of goods on Swiss territory for export in tourist traffic (RS 641.202.2). This form enables persons domiciled abroad to apply for tax exemption (VAT exemption) for store sales made during a tourist stay in Switzerland (also known as “tax free shopping”).

7. The form blocked at the customs office and the attached invoice (invoice no. [REDACTED] [REDACTED] of 29 April 2022) concern the purchase of a wristwatch [REDACTED] done on April 29, 2022 in the store located at [REDACTED] by a person domiciled in Russian Federation. Blocked documents include the following information:

| | |
|--------------------------|--|
| Merchandise: | Wristwatch [REDACTED] |
| Selling price: | CHF 297’000.00 |
| Seller: | [REDACTED] Geneva |
| Buyer: | [REDACTED] Moscow, Russian Federation |
| Date of purchase: | April 29, 2022 |

III. In Law:

Art 14b of the Constitution: Trade Restrictions - Luxury Goods

8. Pursuant to Article 14b al. 1 of the Ordinance, which entered into force on 25 May 2022, “the sale, delivery, export, transport and transit of the luxury goods referred to in Annex 18 to any person, enterprise or entity in the Russian Federation or for use in the Russian Federation is prohibited”.

Annex 18 lists the luxury goods subject to the prohibitions provided for in art. 14b para. 1 of the Ordinance. Unless otherwise specified in this annex, the prohibition in Art. 14b applies to luxury goods with a unit cost of more than CHF 300 (introductory sentence of Annex 18).

Paragraph 18 of Annex 18 contains “Clocks and watches and parts thereof”. It mentions as products covered by the prohibition of art. 14b para. 1 of the Ordinance products falling under headings 9101 and 9102 of the Customs Tariff, namely “wristwatches, pocket watches and similar watches (including time counters of the same kind), with cases of precious metal or of precious metal plated or clad with precious metals” as well as “wristwatches, pocket watches and similar watches (including time counters of the same types); other than those of heading No 9101”.

Penal Provisions

9. Pursuant to Art. 32 para. 1 of the Ordinance, anyone who violates the provisions of Art. 14b of the Ordinance shall be punished in accordance with Art. 9 of the Federal Act on Embargoes (Embargo Act; SR 946.231).

10. SECO prosecutes and adjudicates infringements of Art. 9 and 10 Mb Act (Art. 32 para. 3 of the Ordinance); it may order seizures or confiscations (Art. 32 para. 2 of the Ordinance). The Federal Act of 22 March 1974 on Administrative Criminal Law (DPA; SR 313.0) is applicable (Art. 14 para. 1 Lemb).

III. Recitals

Objective elements of an infringement of Article 14b para. 1 of the Ordinance

11. The present case concerns the *sale, delivery and export* of a luxury item within the meaning of Annex 18 to the Ordinance to a person, warehouse or entity in the Russian Federation or for use in the Russian Federation.

12. The [REDACTED] wristwatch worth CHF 275766 is a luxury item within the meaning of Chapter 18 (“Clocks and Watches and Parts thereof”) of Schedule 18 to the Ordinance.

13. The export form for tourist traffic blocked at the customs office and the attached invoice (see note 7) mention as acquirer/purchaser of the wristwatch [REDACTED] Moscow, Russian Federation, passport number [REDACTED] Both documents were issued by [REDACTED] and dated April 29, 2022; the export document for tourist traffic was also signed by a representative of.

14. Through its lawyer, [REDACTED] states that the contract of sale relating to the [REDACTED] wristwatch was in fact concluded in 2020, or before the entry into force of the sanctions measures against Russia, and not with Mr. [REDACTED] but with [REDACTED] Despite SECO’s injunction of 17 November 2022 to submit the contract of sale between [REDACTED] and the purchaser of the wristwatch [REDACTED] [REDACTED] has not submitted evidence to support the allegations.

15. Article 14b para. 1 of the Ordinance prohibits not only the sale, but also the *delivery* of the luxury goods listed in Annex 18 to any person, enterprise or entity in the Russian Federation or for use in the Russian Federation.

16. Swiss law defines the term supply as follows: “1. the fact of granting a person the power to dispose economically of goods in his own name, 2. the act of handing over to a consignee goods on which work has been carried out [...] as well as 3. making goods available to a third party for use or enjoyment” (Art. 3 (d) of the Federal Law on Value Added Tax (VAT; SR 641.20)).

17. In the present case, the delivery of the [REDACTED] wristwatch took place on 29 April 2022, or after the entry into force of Art. 14b para. 1 of the Ordinance. This is also recognized by [REDACTED] Thus, in his statement of 10 October 2022, [REDACTED]’s lawyer acknowledges that a deferred delivery of the wristwatch [REDACTED] had been agreed “In the present case, it is established - and if necessary, Mr. [REDACTED] is ready to be heard by your authority to confirm this- that Mr. [REDACTED] ordered a specific model of watch in 2020, at an agreed price and that [REDACTED] agreed to deliver it to him, albeit on a *delayed basis* [that’s us which underline] due to or grano success of the brand and the turnaround times of the ordered model” (page 3 of [REDACTED]’s position paper of October 10, 2022).

18. [REDACTED]'s lawyer even explicitly acknowledges that the delivery took place on 29 April but claims that it was not made in favour of a person in the Russian Federation or for use in that country: "If it had been held that the sale had taken place, *because of its delivery on 29 April 2022* [emphasis added], subsequent to the coming into force of art 145 of the Ordinance, it should then be remembered that your sale did not take place in favour of a person in the Russian Federation or for the purpose of use in that country" (page 3 of [REDACTED]'s position paper read 10 October 2022).

19. The delivery of the wristwatch [REDACTED] took place by handing over that object on 29 April to [REDACTED]'s premises at [REDACTED]. This is apparent from the documents intercepted at customs (supra, footnote 7), is explicitly acknowledged in the certificate drawn up and signed by M. [REDACTED] Boutique Director of [REDACTED] ("5. April 29, 2022 Mr. [REDACTED] went to the shop and took possession of the watch") and is also apparent from the two statements taken by counsel for [REDACTED].

20. Counsel for [REDACTED] contends that this delivery was not made to or for use in the Russian Federation to any person, undertaking or entity in the Russian Federation, Mr. [REDACTED] residing in Dubai; as proof, he submits a copy of a Dubai residency card. However, Mr. [REDACTED]'s residence card was issued on 16 June 2022 ("Issue Date 2022/06/16"), which is two months *After* delivery of the wristwatch [REDACTED] in dated April 29, 2022 to the latter. Mr. [REDACTED] does not prove the latter's residence in Dubai at the time of delivery of the wristwatch [REDACTED].

21. What is more, the two documents drawn up by [REDACTED] in connection with the delivery of the wristwatch [REDACTED] on 29 April 2022 to M. [REDACTED] (i.e. the invoice and the export document in the context of tourist traffic) mention the city of Moscow in the Russian Federation ([REDACTED] Moscow) as the latter's place of residence. By signing the export document for tourist traffic issued by [REDACTED], the employee responsible for [REDACTED] explicitly confirmed the accuracy of the information provided.

22. By indicating the Russian Federation as the country of residence of Mr. [REDACTED] too on the invoice as well as on the export document in the context of tourist traffic, [REDACTED] was informed of the fact that the wristwatch [REDACTED] would be delivered to a person in Russian Federation and exported by the Russian Federation as part of tourist traffic to the Russian Federation for use in that country.

23. The objective constituent elements of an infringement of Art. 14b para. 1 of the Ordinance are thus fulfilled.

Subjective elements of a violation of Art. 14b para. 1 of the Ordinance

24. Unless otherwise expressly provided by law, only the perpetrator of a crime or offence who acts *intentionally* is punishable (Art. 12 para. 1 SCC). Art. 9 and 10 of the Embargo Act in conjunction with Art. 32 of the Ordinance punish both intentional and negligent breaches of Art. 14b para. 1 of the Ordinance.

25. Anyone who commits a crime or offence with knowledge and will acts intentionally. The perpetrator already acts 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 crime 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 CP).

26. In the present case, [REDACTED] is not alleged to have intentionally infringed Art. 14b para. 1 of the Ordinance. What is at issue in the present case is a negligent breach by art. 14b para. 1 of the Ordinance.

27. By delivering a wristwatch [REDACTED] worth CHF 275,766 a person domiciled in the Russian Federation who is likely to export those goods as part of the tourist trade to the Russian Federation, [REDACTED] has not exercised due diligence required by the circumstances and by his personal circumstances. This lack of foresight is culpable within the meaning of Art. 12 para. 3 SCC and [REDACTED] has therefore fulfilled the subjective elements of a negligent breach of Art. 14b para. 1 of the Ordinance.

V. Sentencing

28. Anyone who negligently violates Article 14b of the Ordinance shall be punished by imprisonment for a term not exceeding three months or a fine of up to CHF 100,000 (Art. 9 para. 3 LF.mb in conjunction with Fort 32 para. 1 of the Ordinance). In accordance with Art. 333 SCC, these threat penalties will be adapted to the new system of sanctions as provided for in the general part of the SCC.

29. Art. 6 DPA applies to infringements committed in undertakings (Art. 12 MbA). When an offence is committed in the management of a legal person, the criminal provisions are applicable to the natural persons who committed the act, in accordance with Article 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 the effects, is subject to the penal provisions applicable to the perpetrator who has acted intentionally or negligently (Art. 6 para. 2 DPA). Where the head of the enterprise, the employer, the principal or the represented person is a legal person, a general or limited partnership, a sole proprietorship or a collective without legal personality, the AI. 2 applies to organs and their members, managing partners, effective managers or liquidators who are at fault (Art. 6 para. 3 DPA).

30. Article 7 of the DPA provides for the possibility of waiving the prosecution of persons punishable under Article 6 of the DPA and of ordering the legal person to pay the fine in their place, where the fine to be taken into account does not exceed 5,000 francs and which the investigation would make necessary, in respect of persons punishable under Article 6 DPA, investigative measures out of proportion to the sentence incurred.

31. In the present case, it is not possible to determine with certainty whether the delivery of the wristwatch [REDACTED] to a person domiciled in the Russian Federation and intended for export to the Russian Federation in the context of tourist traffic is due to non-compliance with internal guidelines by the responsible employee of [REDACTED], insufficient implementation of these guidelines in the internal process, absence of such guidelines, insufficient and inadequate compliance structures, lax application of internal guidelines by the employee in charge, insufficient control of that person by his or her supervisor or a combination of all of these wrongdoers. In view of the above, it is not possible for SECO to identify the natural person(s) responsible for this violation of Article 14b para. 1 of the Ordinance that occurred and the person(s) who must ultimately bear responsibility for it. SECO considers that a fine not exceeding 5,000 Swiss francs may, pursuant to Art. 7 DPA, be taken into account, in

respect of persons punishable under Art. C necessitating investigative measures out of proportion to the sentence to be imposed. Thus, it is justified to hold [REDACTED] [REDACTED] liable for the violation of Art. 14b para. 1 of the Ordinance.

32. Fines not exceeding CHF 5,000 are set according to the seriousness of the offence and the offence (Art. 7 DPA); it is not necessary to take into account other factors of assessment (Art. 8 DPA).

33. Although it was committed negligently, the fault of [REDACTED] cannot be regarded as insignificant. Since it is active in a luxury market, [REDACTED] should, at the time of the adoption of the sanctions measures relating to luxury goods, have taken the necessary measures to prevent luxury goods from being sold, delivered and exported to persons domiciled in the Russian Federation or for use in that country.

VI. Procedural Costs

34. Pursuant to Articles 94 and 95 DPA, the costs of the proceedings, which include the decision-making and chancery fees, are to be borne by the convicted person.

35. These costs are set at CHF 1,280 on the basis of Articles 64 and 94 DPA and Art. 7(2)(a) and 12(1) of the Ordinance of 25 November 1974 on Costs and Compensation in Administrative Criminal Proceedings (SR 313.32) (i.e. a decision fee of CHF 1,200 and a chancery fee of CHF 80).

In the light of these recitals

State Secretariat for Economic Affairs (SECO)

Pronounce:

1. [REDACTED] is found guilty of violation of Art. 14b para. 1 of the Ordinance.
2. Pursuant to Article 7 para. 1 DPA, [REDACTED] is ordered to pay a total fine of CHF 5,000.
3. In addition, the costs of the proceedings, which total 1,280 francs, i.e. a decision fee of 1700 francs and a chancery fee of 80 francs, shall be borne by the convicted person.
4. The order of repression shall be notified in two copies to Ms. [REDACTED] [REDACTED] (registered letter with acknowledgment of receipt).

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 evidence must be indicated and, as far 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 the forum: the total amount of CHF 6,280 must be credited to the account of the State Secretariat for Economic Affairs SECO (IBAN [REDACTED]).

State Secretariat for Economic Affairs SECO
Law Sector

[REDACTED]