

CH-3003 Bern

seco

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Ref: SECO-471.4-2/32/33

Your sign:

Clerk: [REDACTED]

Bern, 4 September 2023

## Penalty Order

pursuant to Article 70 of the Federal Act of 22 March 1974 on Administrative Criminal Law  
(VStrR; SR 313.0)

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

against

[REDACTED]  
or the responsible persons

because of

Violation of Art. 14b para. 1 (Annex 18) of the Ordinance of 4 March 2022 on measures in connection with the situation in Ukraine (SR 946.231.176.72, hereinafter referred to as the "Ukraine Regulation")<sup>1</sup> and Art. 6 para. 1 (Annex 4) of the Ordinance of 16 March 2022 on measures against Belarus (SR 946.231.116.9, hereinafter referred to as the "Belarus Regulation")<sup>2</sup>

State Secretariat for Economic Affairs SECO

[REDACTED]

Holzikofenweg 36

3003 Bern

[REDACTED]

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

<sup>1</sup> Available in all versions under [SR 646.231.1/6.72 - Regulation, 4 March 2022 on measures in the Ztwammenh l j with the situation in Ukraine \(admin.ch\)](#)

<sup>2</sup> Available in all versions under [SR 846.231.116.B - Verordnung of 16 March 2022 on measures vis-à-vis Belarus \(admin.ch\)](#)

## I. Process Layer

1. On 18 September 2022, the State Secretariat for Economic Affairs (SECO) opened a administrative criminal proceedings against [REDACTED] on suspicion of infringement of Article 14b(1) (Annex 18) of the Ukraine Regulation and Article 6(1) (Annex 4) of the Belarus Regulation. [REDACTED] was asked to submit its observations on the alleged conduct by 20 October 2022 (at the request of the legal representative [REDACTED] [REDACTED] the deadline was extended to 4 November 2022) to submit the requested information and documents and to answer various questions

2. [REDACTED] By letter of 3 November 2022 from its legal representative, took part in the proceedings for the opening of administrative criminal proceedings within the prescribed period. The arguments put forward by [REDACTED] in this connection are set out in para. 14.

3. By letter of 16 January 2023, SECO, with reference to the opinion of 3 November 2022, requested [REDACTED] to deliver by 31 January 2022 the printouts from the Declare-It customs software promised by the legal representative [REDACTED]. The requested documents were sent to SECO on 30 January 2023 and thus on time.

4. The investigations in these administrative criminal proceedings were concluded on 2 March 2023 with the final protocol of Art. 61 para. 1 VStrR. By letter of the same date, the final minutes were sent to the legal representative [REDACTED]. Article 61(2) of the VStrR and gave [REDACTED] [REDACTED] the opportunity to comment on it, to inspect the file and to submit a supplementary at the time of the investigation. By letter of 6 March 2023, the legal representative [REDACTED] requested access to the file and an extension of the time limit for commenting on the final minutes to the date of 10 days, but receipt of the file. Both were granted by SECO in a letter dated 13 March 2023 in accordance with the application. Within the period thus extended, the legal representative [REDACTED] submitted its observations on the final minutes by letter dated 24 March 2023. He argued that the criminal offence of infringement of Article 14b(1) of the Ukraine Regulation was not fulfilled, since the domestic dispatch of goods did not correspond to the concept of “transport” within the meaning of the Ukraine Regulation; He went on to say that the infringements were rather “mere failures resulting from the heavy workload of the declarants”.

5. By penalty notice of 26 April 2023, [REDACTED] was found guilty of multiple infringements of Article 14b(1) (Annex 18) to the Ukraine Regulation and infringement of Article 6(1) (Annex 4) to the Belarus Regulation and, pursuant to Article 7(1) and Article 9 of the VStrR, was ordered to pay a fine of CHF 7,810 and to pay a total of CHF 1290 in the costs of the proceedings.

6. [REDACTED] On 26 May 2023, through its legal representative, lodged an objection to the penalty notice within the prescribed period, with the following requests:

- the administrative penal proceedings against [REDACTED] should be terminated immediately;
- with costs and compensation consequences at the expense of the Federal Treasury.

## II. Facts

7. Between April and September 2022, the Federal Office for Customs and Border Security (FOCBS) received a total of twelve consignments [REDACTED] with The country of destination, [REDACTED] the Russian Federation or Belarus, has been blocked and seized as a precautionary measure, containing goods that are suspected of violating the sanctions measures, the Ukraine Regulation or the Belarus Regulation. Those consignments were all accompanied by export documents completed by a customs declarant [REDACTED].

8. Eleven of those broadcasts were the subject of the opening order of 19 September 2022:

- 19.4.2022, Customs declaration 22CHEE000652912697.1 for the export of a transmission part for Mercedes Benz passenger cars with a value of CHF 2261.70, which constitutes a luxury good within the meaning of Annex 18 No. 17 of the Ukraine Regulation.
- 1.7.2022 and 4.7.2022, Customs Declarations 22CHEE000666173346.1 and CHEE000666422678.1 for the export of two parts and accessories for motor vehicles No. 8701 - 8705 of the Porsche brand for an amount of CHF 2048.10 and CHF 418.38, which are luxury goods according to Annex 18 No. 17 of the Ukraine Regulation
- 4.7.2022, Customs declaration 22CHEE000666419284.1 for the export of a gold ring with stone, value of goods CHF 1000 00, which constitutes a luxury good within the meaning of Annex 18 No. 10 of the Ukraine Regulation
- 12.7.2022, Customs declarations 22CHEE000667946413.1 and 22CHEE000668514535.1 for the export of a steering link (value of CHF 1200.00) and two sets of pads for car (value of CHF 400.00 each), which are sold as parts and accessories for motor vehicles of No. 8701 - 8705, Annex 18 No. 17, ex. Tariff No. 8708 of the Ukraine Regulation.
- 18.7.2022, Customs Declaration 22CHEE000668961179.1 for the export of a Palm Angels shirt, tariff no. 6205.9090 and a pair of shoes, tariff no. 6402.9900, value of goods CHF 1000.00, which are luxury goods within the meaning of Annex 18 No. 8 of the Ukraine Regulation.
- 19.7.2022, Customs declaration 22CHEE000669205062.1 for the export of a Palm Angels shirt, tariff no. 6205.2000 and two pairs of sneakers "Off-White", Tariff no. 6403.99, value of goods CHF 1000, which constitute luxury goods within the meaning of Annex 18 No. 8 of the Ukraine Regulation.
- 4.8.2022, Customs Declaration 22CHEE000671762900.1 for the export of two men's suits tariff no. 6103.1010, value of goods CHF 639.00 and CHF 609.00, which are luxury goods LS v. Annex 18 No. 8 of the Ukraine Regulation.
- 30.8.2022, customs declaration 22CHEE000675703148.1 for the export of a graphics processor, tariff no. 8471.8000 with a value of goods of CHF 1,000, softer a machine within the meaning of Annex 4 and therefore happy to benefit from the measures. Article 6(1) of the Belarus Regulation

- 12.9.2022, customs declaration 22CHEE000677858251.1 for the export of a laptop (and two adapters) tariff no. 8471.3000, value of goods CHF 1000, which constitutes a luxury good within the meaning of Annex 18 No. 15 of the Ukraine Regulation.
9. Following the opening of the present administrative criminal proceedings against [REDACTED] on 19 September 2022, two further infringements of the Ukraine Regulation by [REDACTED] were notified to SECO by the FOCBS
- 11.8 2022, Customs declaration 22CHEE000671762701.1 for the export of a wind instrument tenor Sax Lupifaro, tariff no. 9205.9090, value of goods CHF 1643, which is a luxury good within the meaning of 1643. Annex 18, point 19 of the Ukraine Regulation (musical instruments worth more than CHF 1,500).
  - 27.1.2023, Customs declaration 23CHEE000698258346.1 for the export of a used coat, tariff no. 6202.4000 worth CHF 1000. which constitutes a luxury good within the meaning of Annex 18 No. 8 of the Ukraine Regulation. That consignment was delivered to the addressee in Moscow.

### III. Legal

10. Article 14b(1) of the Ukraine Regulation prohibits the sale, supply, export, transport 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. Unless otherwise stated in Annex 18, the prohibition under Article 14b (1) of the Ukraine Regulation applies to luxury goods with a unit price of more than CHF 300 (Annex 18 to the Ukraine Regulation, preliminary remarks).

Acc. to Ari. Article 6(1) of the Belarus Regulation prohibits the sale, supply, export, transit and transport of machinery referred to in Annex 4 to or for use in Belarus.

11. Any person who violates Article 14b(1) of the Ukraine Regulation or Article 6(1) of the Belarus Regulation shall be punished under Article 9 of the Federal Law on the Enforcement of International Sanctions (Embargo Act, EmbG, SR 946.231) (Article 32(1) of the Ukraine Regulation and Article 28(1) of the Belarus Regulation). Violations pursuant to Articles 9 and 10 EmbG are prosecuted and assessed by SECO; it can order seizures or confiscations (Art. 32 para. 3 of the Ukraine Regulation or Art. 28 para. 3 of the Belarus Regulation). The Federal Act of 22.3.1974 on Administrative Criminal Law (VStrR, SR 313.0) is applicable (Art. 14 para. 1 EmbG).

### IV. Considerations

#### Objective Offence

12. By sending a total of twelve consignments of goods to [REDACTED]. Annex 18 to the Ukraine Ordinance with a value of more than CHF 300 per individual item for export from Switzerland and delivery to the Russian Federation, for which purpose the customs declaration was made by means of the necessary customs clearance documents, the goods were declared to customs for export and delivery to the Russian Federation and transported in this context, it infringed Article 14b(1) (Annex 18) of the Ukraine Regulation from an objective point of view.

13. By accepting for export from Switzerland and delivery to Belarus a consignment of goods for a graphics processor of tariff No. 8471.8000 with a value of CHF 1000, a soft

machine within the meaning of Annex 4 to the Belarus Regulation, [REDACTED] has made the customs declaration for this purpose by means of the necessary customs clearance documents, has declared the goods to customs for export and delivery to Belarus and transported them in this context, it infringed, from an objective point of view, Article 6 (Annex 4) of the Belarus Regulation.

14. In its observations of 3 November 2022, [REDACTED] argues that it was not appropriate to initiate administrative criminal proceedings, since there was already objectively no misconduct on the part of the client or that possible fault was so minor that no criminal proceedings would have been opened under the Customs Law, for three reasons: (a) the eleven items listed in the opening order were not subject to [REDACTED]; but merely transported to the place of customs declaration and the customs declaration was carried out and the objective offence was therefore not committed: (b) only two consignments (22CHEE000666173346.1 and 22CHEE000666422678.1) were actually exported by [REDACTED] to Russia; however, those two consignments had been electronically cleared by the customs authorities and those goods were also physically available for export to [REDACTED] [REDACTED]. “Corresponding printouts from the customs software Declare It, from which it can be seen that clearances have been granted, can be made available to SECO for sale”; c) that for the two export consignments referred to under b) there was neither an intentional act but rather an oversight and that there was no breach of duty of care.

15. All the goods listed in paragraphs 3 and 9 that have been blocked at customs are subject to the customs declaration Customs Tariff Regulations and have a value of more than 300 Swiss francs. This means that the restrictions are happy to apply to these goods. Art. 14b(1) of the Ukraine Regulation.

16. The graphics processor referred to in point 8 has a customs tariff number (8471.8000) listed in Annex 4 to the Belarus Regulations and has a value of CHF 1000 and is therefore exempt from the measures. Article 6(1) of the Belarus Regulation.

17. Article 14b Ab; 1 of the Ukraine Regulation criminalises a total of five different acts: *sale, supply, export, transport* and *transit* of luxury goods listed in Annex 18 to persons, companies or entities in the Russian Federation or for use in the Russian Federation

18. It is undisputed that the present case does not involve either the *sale* or *transit* of luxury goods. Annex 18 goes to any person, company or entity in the Russian Federation or for use in the Russian Federation. Rather, it is about the *delivery, export and transport* of these goods to the Russian Federation or for use in the Russian Federation.

19. The defendant accepted a total of twelve consignments of goods according to Annex 18 with a value of more than CHF 300 each for delivery to the Russian Federation. Annex 18 with a value of more than CHF 300 each for delivery to the Russian Federation and one consignment to Belarus, made the customs declaration by means of the necessary customs documents, declared the goods to customs for export and transported the goods in this context. The transport of these consignments of goods took place from the place of handover to [REDACTED] [REDACTED] to [REDACTED] with the aim of exporting the consignments of goods and delivering them to the Russian Federation or, in one case, to Belarus. However, the consignments of goods were stopped by the intervention of the customs office [REDACTED].

20. In her observations of 3 November 2022, the accused argues that the consignments of goods declared to SECO by customs were not exported at all and were therefore not delivered to the Russian Federation, and that the offence was therefore not fulfilled because the offence had not been completed. In its objection of 26 May 2023, [REDACTED] further states that the acts of export and supply were at most attempted, since the goods were neither exported nor delivered. The attempt to commit the crime, however, required a conclusion of the facts, which did not exist on the part of [REDACTED]. These two constituent elements were ruled out as the initial offence in the specific case (para. 4 of the objection of 26 May 2023)

21. It is not disputed, *in casu*, by SECO that eleven out of twelve consignments of goods destined for export to the Russian Federation and one consignment of goods destined for export to Belarus which have been blocked at the customs office [REDACTED] have not been exported from Switzerland or have not been delivered to the Russian Federation or Belarus. On the contrary, those consignments of goods were seized by the customs office [REDACTED] in the context of customs clearance; this prevented the completion of the offence with regard to the *export from Switzerland* and the *delivery to the Russian Federation or Belarus*. In relation to twelve out of thirteen consignments. On the other hand, the legal representative [REDACTED] himself acknowledges that, with regard to customs declaration 23CHEE000698258346.1, a second-hand coat with tariff No 6202 4000 to the value of CHF 1,000 was sold to a consignee in Moscow (paragraph 6 of the objection [REDACTED] [REDACTED] front May 26, 2023). With regard to this consignment, therefore, the offence of both the *export* and the *supply* of a luxury good was welcomed. Annex 18 of the Ukraine Regulation to a person in the Russian Federation or for use in the Russian Federation, since the coat has been exported from Switzerland to the Russian Federation as well as delivered to a person in the Russian Federation or for use in the Russian Federation. It should also be noted that, with regard to the twelve measures adopted by the FOCBS at the [REDACTED] [REDACTED] (eleven of which were sent to the Russian Federation and one to Belarus), the criminal activity of exporting and delivering to the Russian Federation was completed by [REDACTED], but the completion of the offence did not occur solely because of the intervention of the FOCBS, which seized the consignments declared for export by the declarants [REDACTED]

22. However, with regard to the act of *transporting* goods for export and delivery to the Russian Federation and Belarus respectively, the offence has indeed been completed. The goods from the place of delivery in Switzerland [REDACTED] to [REDACTED] [REDACTED] with the aim of exporting the consignments from Switzerland and exporting them to the Russian federation or, in one case, to Belarus. This [REDACTED] transport service is glad to be provided by the messenger. Article 14b(1) of the Ukraine Regulation and Article 6(1) of the Belarus Regulation. By carrying out these transports for the purpose of export to Russia and Belarus respectively, the accused has objectively violated the prohibition in Article 14b(1) of the Ukraine Regulation and the prohibition in Article 6(1) of the Belarus Regulation on several occasions. In order to complete the deed, it is not required that the goods must have reached the country of destination. Since consignments of goods destined for export and delivery to the Russian Federation or, in one case, to Belarus are not registered until after transport from [REDACTED] to [REDACTED] or after of the customs declaration by [REDACTED] stopped by the [REDACTED] customs office constitutes prohibited *transport* within the meaning of Art. 14b (1) of the Ukraine Regulation and Art. 6 (1) of the Belarus Regulation.



23. In its observations on the Final Protocol of 24 March 2023 and in its objection of 26 May 2023, [REDACTED] argues that, contrary to Article 12a of the Ukraine Regulation, Article 14b(1) of the Ukraine Regulation does not apply to the concept of ‘transport’ for the domestic dispatch of goods; ”First of all, it is questionable whether the internal Swiss shipment of goods falls under this term or whether it only covers transport from Switzerland to and through a third country. The latter is clearly supported by Article 12a of the Ukraine Regulation. This is because it explicitly prohibits the transport [of crude oil and petroleum products] *in and through Switzerland*. Since Art. 14b only refers to ‘transport’, it must refer to transport outside Switzerland, and any other assessment cannot be reconciled with the requirement of certainty. Incidentally, this is supported by the fact that the purely domestic transport does not bring the incriminated goods further to Russian or Belarusian territory” (para. 5 of the statement of 26 May 2023)

24. With regard to the [REDACTED] argument that, by inference from Article 12a(1) of the Ukraine Regulation, the prohibition of transport. Since Art. 14b of the Ukraine Ordinance only covers non-Swiss transport (transport from Switzerland to and through a third country), but not domestic transport, the following must be said: Prohibitions on the transport of goods are laid down in Art. 4 para. 1, 5 para. 1, 9 para. 1, 11 para. 1, 11a para. 1, 12a para. 1, 12b, 14a para. 1, 14b (1), 14c (1), 14d (1) of the Ukraine Regulation. These transport bans affect both imports and exports. On closer inspection, it is noticeable that the transport bans are formulated differently depending on whether the transport ban concerns an import or export. In the case of transport bans on imports, transport into and through Switzerland is punishable (Art. 12a para. 1, Art. 14c para. 1, Art. 14d para. 1). This makes sense, as these provisions prohibit both the import and transit of goods into and through Switzerland. There is no further clarification of the transport bans on exports. Since all these articles with transport bans concerning exports also prohibit transit through Switzerland and export from Switzerland (Art. 4 para. 1, Art. 5 para. 1, Art. 9 para. 1, Art. 11 para. 1, Art. 14b para. 1), these transport bans are to be understood as meaning that purely domestic transport for the purpose of export to the Russian Federation is also prohibited. Moreover, it is not apparent why - as claimed by the legal representative [REDACTED] (paragraph 5 of the objection of 26 May 2023) - the purely domestic transport should not bring the incriminated goods on to the Russian or Belarusian state territory. The transport of a consignment of goods from [REDACTED] to [REDACTED] may very well be regarded as an important intermediate step in the process of transport, export and delivery of this consignment of goods to the Russian Federation and Belarus respectively

25. It should also be noted that, in the present case, the transport of the thirteen consignments at issue was carried out in twelve cases for the purpose of delivery and export to the Russian Federation (or, in one case, to Belarus) and is therefore very much covered by Article 14b(1) of the Ukraine Regulation. Lastly, it should be noted that, for all those consignments, the customs declaration has been completed by customs declarants [REDACTED], the goods have been declared to customs for export and the consignments have been declared solely as a result of the intervention of the customs office [REDACTED] and, with one exception, have not been exported to the Russian Federation. This constitutes transport within the meaning of Art. 14b (1) of the Ukraine Regulation and Art. 6 (1) of the Belarus Ordinance

26. Thus, old objective elements of the offence are fulfilled. The act is thus completed with regard to the transport and the objective elements of the offence are fulfilled. Contrary to the assumption [REDACTED], there is not only an attempt under Art. 22 of the Criminal Code.

With regard to customs declaration 23CHEE00069825834G.1, the act is also completed with regard to export and delivery to the Russian Federation or for use in the Russian Federation, there is real competition between these two completed facts.

27. With regard to the two consignments gladly, customs declaration 22CHEE000866173346.1 and CHEE000666422678.1 dated 1.7.2022 and 4.7.2022 (export of parts and accessories for motor vehicles No. 8701 - 8705) were issued on 30 January 2023 by [REDACTED] At SECO's request, printouts from the Dec'are It customs software were submitted as proof that these goods had been cleared for consignment by customs. In that regard, it should be noted that those two consignments contained several parts, of which only the two referred to in para. 7 parts mentioned the threshold of CHF 300 in terms of value. Annex 16 of the Ukraine Regulation and, accordingly, could not be exported to the Russian Federation. Contrary to what [REDACTED] claimed in its statement of 3 November 2022, these two parts were not exported to the Russian Federation. The parts of the two consignments 22CHEE000663173346 1 and CHEE000666422678 listed in the customs software Declare ft, for which a consignment release was made, relate exclusively to only parts that did not reach the value threshold of CHF 300 are therefore not affected by the sanctions measures due to the Ukraine crisis.

### **Subjective Offense**

28. Unless the law expressly provides otherwise, only those who intentionally commit a crime or misdemeanor are liable to prosecution (Art. 12 para. 1 SCC). Article 9 of the Embargo Act in conjunction with Article 32 (1) of Ukraine and Article 28 (1) of the Belarus Regulation criminalise both the intentional and negligent violation of the sanctions under Article 14b (1) of the Ukraine Regulation and Article 6 (1) of the Belarus Regulation.

29. 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 of the Swiss Criminal Code, SCC, SR 311.0) commits a felony or misdemeanour negligently if they fail to consider or take into account the consequences of their conduct due to carelessness contrary to their duty. Carelessness is contrary to duty if the perpetrator fails to observe the caution to which he is obliged under the circumstances and according to his personal circumstances (Art. 12 para. 3 SCC).

30. In its observations of 3 November 2022 and 24 March 2023, [REDACTED] argues, inter alia, that possible fault is so low that no criminal proceedings would have been opened under the Zoltau Law (Section 1) or, in any event, that the customs declarants [REDACTED] certainly did not act intentionally... and that it is rather probable that the two referred to in No. 21 had been inadvertently exported, just as the release of those two consignments by customs was also likely to have been an accident.... And it was questionable whether an accidental declaration could be relevant from the point of view of negligence, this was also to be answered in the negative, since there was no breach of the duty of care (No. I., 5th section), this required individual reproachability... and that a release on the part of the Zoli (criminal) law, the Zoli had reacted to this enormous burden on declarants and significantly mitigated its penal practice. Since then, customs have no longer initiated criminal proceedings in the case of minor infringements or minor negligence.

31. Es ist vorab festzuhalten, dass erstens der *Transport* der dreizehn Warensendungen vom [REDACTED] zum [REDACTED] zweitens die *Zolldeklaration und-anmeldung zwecks Ausfuhr und Lieferung dieser* transported and delivered those consignments of goods to the



Russian Federation (or, in one case, to Belarus) and, thirdly, the export and delivery of consignment 23 CHEE000698258346 1 to the Russian Federation or for use in the Russian Federation with meadows and uwia” in accordance with the mandate [REDACTED] 32. However, [REDACTED] is not accused of intentionally infringing Article 14b(1) of the Ukraine Regulation and Article 6(1) of the Belarus Regulation in the present case. Rather, it is a negligent violation of the Ukraine and Belarus Regulations.

32. [REDACTED] is not accused of having intentionally violated Art. 14b (1) of the Ukraine Regulation or Art. 6 (1) of the Belarus Regulation in the present case, but rather of having negligently violated the Ukraine and Belarus Regulations

33. The infringements of the federal regulations are the direct consequence of the way in which the sanctions against Russia and Belarus have been imposed within [REDACTED]. Thus, notwithstanding the measures in force under the Ukraine and Belarus Regulations, customs declarants completed customs declarations for shipments of goods to the Russian Federation and Belarus on the assumption that problematic or prohibited shipments would be cleared by customs. With that, [REDACTED] their responsibility, [REDACTED] to ensure that sanctioned consignments of goods are not exported from Switzerland for the purpose of delivery to the Russian Federation or Belarus and are not transported in this context. It is part of the duty of care of a customs declarant to check whether there are any prohibitions, restrictions or conditions in relation to a consignment of goods. Due to its status as an “Authorised Consignee and Consignor”, [REDACTED] is subject to “an increased duty of care. Therefore, in order to ensure the correct implementation of the sanctions against Russia and Belarus, [REDACTED] should have taken into account in the course of the processing process between the posting of the consignment of goods [REDACTED] and the completion of the Customs declaration must verify whether the destination country is subject to sanctions (i) and, if so, (ii) verify in a second step whether the content of the [REDACTED] is sanctioned. Only when this check has been carried out and has led to the conclusion that a [REDACTED] is not sanctioned can the customs declaration be carried out. If there is any doubt as to the legality of a [REDACTED], it is possible to obtain information from customs or SECO at any time as to whether the [REDACTED] may be exported to the country of destination or whether it must be blocked or returned to the sender. In the present case, [REDACTED] did not carry out the abovementioned review and therefore acted imprudently in breach of its obligations. There can be no question of an oversight, but of an inadequate implementation of the sanction measures due to insufficient compliance measures.

34. In its comments on the Final Protocol of 24 March 2023, [REDACTED] argues that the thirteen infringements are ‘mere outliers resulting from the large workload of the declarants and may not even have been negligent, but even individually unavoidable’ (also para. 12 of the objection of 26 May 2023). It must be pointed out that twelve of the thirteen infringements took place between 19 April 2022 and 12 September 2022, that is to say, in a period of just under five months. With such an accumulation, there can be no talk of so-called “outliers”. It should also be noted that, since the opening of the present criminal proceedings against [REDACTED] on 19 September 2022, only one other export consignment of luxury goods to the Russian Federation has been seized by customs, namely on 27 January 2023. On the basis of general life experience, it stands to reason that, following the opening of the present administrative criminal proceedings, [REDACTED] has adapted its procedures, which has led to better compliance with the provisions. Article 14b(1) of the Ukraine Regulation.

35. In its observations, [REDACTED] also argues that ‘even if the concept of transport is broadly understood, there is no individual responsibility. [REDACTED] was (and is) not to be

reproached for due diligence in the absence of corresponding inspection obligations. And the declarants are not responsible for the transport, only for the declaration. Incidentally, this result is not based on a structural compliance deficit, but rather as a confirmation of the above-mentioned understanding of the concept of transport...”(objection of 26 May, para. 15); “In addition, from a subjective point of view, there is no breach of duty on the part of the [REDACTED] who initiated the ‘transport’ The declarants, in turn, neither initiated the ‘transport nor acted in breach of duty’ (objection front 26 Mat 2023, marginal no. 16).

36. Such a view is untenable, since it would make it possible for [REDACTED], as [REDACTED], to withdraw from any responsibility for compliance with the legal rules governing the gas authority process of the transport service to be provided by means of a concrete design of the process for the services [REDACTED] or [REDACTED] and the division of that process into different sub-steps, with the allocation of those individual sub-steps to different persons. [REDACTED] to design their internal processes and compliance processes in such a way that they are able to comply with the legal requirements as a whole, i.e. for the entire process of the service to be provided, regardless of the individual responsibility of the individual sub-processes. The interfaces between the individual process steps are of particular importance.

37. Against this background, the conduct [REDACTED] constitutes imprudence in breach of duty and must be classified as negligent within the meaning of Article 12(3) of the Criminal Code. [REDACTED] would have been obliged to check for itself whether [REDACTED] contained goods in the Russian Federation or Belarus which, by reason of their nature and value, were covered by the embargo on luxury goods and not to leave this examination to customs. It failed to carry out this examination in breach of duty and carelessly. [REDACTED] | thus also has the subjective criminal offence of a violation of Art. 14b para. 1 of the Ukraine Regulation or In one case, Article 6(1) of the Belarus Regulation fulfils the

### **Sentencing**

38. Anyone who negligently violates Article 14b of the Ukraine Regulation or Article 6 of the Belarus Ordinance is punished with 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 and Article 28 (1) of the Belarus Regulation). Article 333 of the Criminal Code has been adapted to the new sanctions of the General Part of the Criminal Code.

39. 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, principal or representative fails, intentionally or negligently in breach of a legal obligation, to avert or to annul the effects of an infringement by a subordinate, agent or representative, he 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)

40. If a fine of no more than CHF 5,000 is possible and the identification of persons liable to prosecution under Article 6 of the VStrR would require investigative measures that would be disproportionate in view of the penalty forfeited, the prosecution of those persons may be avoided and the legal person, the general 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 culpability, other reasons for sentencing do not have to be taken into account (Art. 8 VStrR).

41. In its observations of 3 November 2022, [REDACTED] appears to have submitted an organisation chart with the names of various responsible persons of the undertaking. In view of the fact that: (a) in the present case, a total of thirteen infringements were committed by different customs declarants and that generally inadequate compliance measures for the implementation of the Ukraine and Belarus Regulations must be assumed to be the cause of the present infringements; (b) due to the rather considers a maximum fine of CHF 5,000 per offence and (c) the identification of natural persons punishable under Article 6 of the VStrR would require investigative measures that would be disproportionate in view of the penalty forfeited, in the present case, on the basis of Article 7(1) of the VStrR, the prosecution of those persons is avoided and they are ordered [REDACTED] to pay the fines on the basis of Article 7(1) of the VStrR.

42. The culpability is not insignificant, as it has resulted in a total of thirteen infringements (declared consignments, paras. 6 and 7) with a total of CHF 15,61918 (total of the offences referred to in para. 8 and 9 for the thirteen shipments), which can be traced back to generally inadequate compliance measures for the implementation of the Ukraine and Belarus Ordinances as the cause. It should be noted that a further infringement occurred after the opening of the present criminal proceedings. Finally, it must be established that [REDACTED] was cooperative from the beginning of the proceedings.

#### **VI. Procedural Costs**

43. Pursuant to Articles 94 and 95 of the VStrR, the costs of the proceedings are to be imposed, consisting of the trial fee and the writing fee of the convicted person.

44. On the basis of Articles 64 and 94 of the VStrR and Article 7(2)(a) and Article 12(1) of the Regulation of 25 November 1974 on costs and compensation in administrative criminal proceedings (SR 313 32), those are set at CHF 1,310 (judgment fee of CHF 1,200 and writing fee of CHF 110).

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

**recognised**

1. **[REDACTED]** is found guilty of multiple violations of Article 14b(1) (Annex 16) of the Ukraine Regulation and violation of Article 6(1) (Annex 4) of the Belarus Regulation.
2. Pursuant to Art. 7 para. 1 and Art. 9 VStrR, [REDACTED] is sentenced to pay a fine of CHF 7,810.
3. **[REDACTED]** are also ordered to pay the costs of the proceedings totalling 1,310 francs, consisting of a court fee# of 1,200 francs and the writing fees of 110 francs.
4. The present penalty order is opened to **[REDACTED]** in two copies and by registered letter with acknowledgement of receipt through their legal representatives.

**Right of Appeals**

may request an assessment by the criminal court within ten days of the notification of this order. The request for judicial assessment must be submitted in writing to the SECO Legal Service (State Secretariat for Economic Affairs SECO, Legal Dept. Holtikofenweg 36, 3003 Bem). If an assessment by the criminal court is not requested within the statutory time limit, the skimming or confiscation order is equivalent to a legally binding judgment (Art. 72 VStrR).

The total amount of CHF 9,120 must then be transferred within a further 30 days to the account of the State Secretariat for Economic Affairs (SECO) IBAN CH770900000030006895.

**Staatssekretariat für Wirtschaft**

**[REDACTED]                      [REDACTED]**

Head of Legal Department,

Research Assistant / Investigator