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EU and Swiss Sanctions Regimes – Confiscation of Assets

1. Introduction

In February 2025, the Swiss government implemented the 15th sanctions package against the Russian Federation, this after the EU had adopted its own 15th package in December 2024.

In January 2025, we compared the Swiss sanctions regime with the EU's *"Directive on Criminal Offences and Penalties for the Violation of EU Restrictive Measures"* (Directive (EU) 2024/1226) (see *"EU and Swiss Sanctions Regimes compared"*, [EU and Swiss Sanctions Regimes compared | Prager Dreifuss]). The review demonstrated that by and large, the two systems offer comparable approaches and tools.

With the war in the Ukraine entering its fourth year and the renewed sanctions measures by Switzerland (addition of 48 individuals and 35 entities to the designated persons list), it seems an opportune moment to compare how the issue of asset tracing and forfeiture is dealt with under both legislative systems.

Marcel Frey
Counsel
marcel.frey@prager-dreifuss.com

Since the beginning of Russia's military aggression against the Ukraine on February 24, 2022, the Swiss Federal Council (government) has been following the international discussions on the issue of dealing with Russian assets and the legislative developments within the EU on this matter. In the EU as well as in Switzerland, the question arises as to whether assets of private persons or public institutions that have been frozen owing to the sanctions against the Russian Federation and its exponents can be confiscated and used, inter alia, for rebuilding damage suffered by the Ukraine during the course of the war.

2. Purpose of EU Asset Recovery Directive

On an introductory note it is important to set out that the Asset Recovery Directive intends to harmonize the EU member states' approach to confiscation of illegally acquired assets in criminal proceedings (for a defined set of serious crimes) by setting out minimal requirements as regards the tracing, securing, managing and forfeiting of such resources, which the member states need to transpose into local law.

3. Switzerland's Ukraine Ordinance

As noted in our earlier article of January 2025, Switzerland does normally not initiate own sanctions, but adopts measures of its major trading partners (in addition to sanctions by the UNO and the Organisation for Security and Cooperation in Europe). In the context of the Ukraine conflict, it did so by amending its pre-existing Ukraine Ordinance and adopted measures of the EU on designated persons and entities, of which the assets were frozen. Presently, the list of designated persons is by and large the same as the EU's list. As per the Swiss State Secretariat for Economic Affairs (SECO) account, of August 13, 2024, CHF 7.1 billion in financial assets, 17 properties as well as sports and luxury vehicles, works of art, furniture and instruments belonging to sanctioned natural persons, companies and organisations were frozen in Switzerland.

4. Asset forfeiture - Analysis by Swiss government

In this article we compare the means available under Swiss law when it comes to the forfeiture as compared to the EU's *"Directive on Asset Recovery and Confiscation"* ("Asset Recovery Directive") which was passed in April 24, 2024 (Directive (EU) 2024/1260) and pertains to assets derived from illegal acts. Member states have until November 2026 to pass domestic legislation reflecting the Asset Recovery Directive. Note that the Asset Recovery Directive does not deal with the political question whether income from frozen legal Russian assets should be applied to rebuilding efforts in the Ukraine.

The Federal Council commissioned a review of local legislation with a view to its compatibility with EU law on the issue of confiscation and summarized its findings in its report of November 20, 2024. The government concludes that with regard to the majority of the measures that are included in the EU's Asset Recovery Directive, Switzerland has comparable regulation.

5. Comparison between the Swiss sanctions Regime and the EU Asset Recovery Directive

The review conducted by the Federal Council confirmed that Swiss law also has legislation in place that dealt with the identification of illegal assets and their confiscation. The report nevertheless identified four differences between the two legal systems, which are discussed below.

A) Tracing and identification of assets

Under the Asset Recovery Directive, the EU member states are required to create so-called "Asset Recovery Offices", which enjoy far-reaching powers in the area of asset tracing and seizure (art. 5). These offices (member states are required to establish at least one such specialized bureau) are tasked with tracing assets in trans-border constellations.

In comparison, Switzerland has no central body that performs the tasks of an asset recovery office on its own. Rather, there are various authorities at federal and cantonal level that have competencies in the area of asset recovery (e.g. Attorney General, Federal Office of Police fedpol, Federal Office of Justice, State Secretariat for Economic Affairs SECO, Directorate of International Law and cantonal prosecution and police departments). Despite this organisational difference, Swiss authorities can exchange information with foreign counterparties based on mutual legal assistance, police cooperation and financial intelligence units.

B) Extended confiscation

Under the Asset Recovery Directive, assets of a person convicted of a financial crime may be confiscated despite the absence of a proven link of these assets to the crime if the court is convinced that these (additional) assets also originate from criminal conduct (art. 14). This may be the case where the amount of funds available to the perpetrator seem disproportionate to his or her legal income.

In Switzerland, an extended confiscation of assets is only possible, where the owner of these assets belongs to or supports a criminal or terrorist organization. In such instances, the legal presumption is that all assets of these individuals are subject to the control of such an organisation and therefore may be confiscated (art. 72 Criminal Code).

C) Use of confiscated assets

The Asset Recovery Directive prescribes that confiscated assets may be used for social purposes or in the public interest (in certain cases also in third countries). In particular, for assets frozen under the Criminal Offences and Penalties for the Violation of EU Restrictive Measures Directive, the EU law permits such assets to be applied to countries in support of which sanctions were originally passed by the EU.

The Swiss sanctions regime allows for such usage in very limited instances at a federal level within a narrow framework of the Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act).

D) Strategic framework and overview of blocked assets

While the Asset Recovery Directive requires members states to draw up an asset recovery strategy and establish and maintain a central register of frozen assets and corresponding statistics, Switzerland, though having put in place a national asset recovery strategy in 2014, has limited this approach to assets of foreign politically exposed persons. Switzerland does also not know of an obligation to keep statistics or a register. However, in practice, the Federal Council regularly obliges banks and other parties holdings assets under a freezing regime to report these assets to the authorities.

E) Conclusion

The analysis between the Asset Recovery Directive and Swiss law reveals that Switzerland already has comparable regulation with regard to the majority of the measures in the EU directive. Nevertheless, four main differences do exist, these pertaining to the authorities dealing with assets of designated persons, the options of extended confiscation, the actual use of confiscated assets and lastly, the strategic framework and overview of frozen assets.

The discussion is ongoing how Switzerland will deal with legally acquired assets of sanctioned persons and/or entities. While in the EU there are discussion on whether and how extraordinary interest income of legally acquired assets can be confiscated and used for the reconstruction of the Ukraine, the framework of the Swiss Ukraine Ordinance does not include a similar option for the time being.

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Prager Dreifuss AG
www.prager-dreifuss.com

Mühlebachstrasse 6
CH-8008 Zürich
Tel: +41 44 254 55 55
Fax: +41 44 254 55 99

Schweizerhof-Passage 7
CH-3001 Bern
Tel: +41 31 327 54 54
Fax: +41 31 327 54 99

Avenue Louise 235
B-1050 Bruxelles
Tel: +32 2 537 09 49
Fax: +32 2 537 21 16