

Extraterritorial sanctions: the United States and the European Union

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Swiss law recognises only Swiss sanctions. SECO states that third-country sanctions have in principle no direct effect in Switzerland and that Swiss law offers no protection against them.¹ Switzerland has no blocking statute of the kind that the European Union adopted in 1996 against the extraterritorial effects of American sanctions on Cuba, Iran and Libya.² For Zurich banks, the absence of legal effect is of limited practical comfort. A general counsel and the head of AML and sanctions of Raiffeisen Switzerland wrote in 2021 that every transaction in US dollars must be assumed to use American financial market infrastructure and therefore to create a nexus with OFAC sanctions. Secondary sanctions threaten banks that conduct significant transactions for sanctioned persons with exclusion from the American market, which for an internationally active bank is an existential risk. FINMA expects banks to manage these risks as part of proper business conduct.³

The history of Swiss banks and American sanctions explains the caution. On 16 December 2009 Credit Suisse agreed to forfeit USD 536 million to the United States and New York County for violations of the International Emergency Economic Powers Act and New York law. Between 1995 and 2006 the bank had systematically removed identifying information from payment messages for clients in Iran, Sudan, Libya, Burma, Cuba and Liberia so that the transfers would pass undetected through American filters. It had even distributed a brochure titled “How to transfer USD payments” to Iranian clients.⁴ The American measures against Russia since 2022 extend the risk further. Executive Order 14114 of 22 December 2023 authorises the Treasury to impose full blocking sanctions or prohibitions on correspondent accounts on foreign financial institutions that conduct or facilitate significant transactions involving Russia’s military-industrial base. The order contains no knowledge requirement for certain transactions, which makes it broader than earlier secondary sanctions

programmes.⁵ For a Zurich bank that finances trade with Central Asia or the Caucasus, the order means that the absence of a Swiss listing is not the end of the analysis.

Swiss courts have had to decide how far banks may invoke foreign sanctions against their own clients. On 10 December 2020 the Zurich Commercial Court dismissed a claim by Lamesa Holdings, a company controlled by Viktor Vekselberg, who had been designated by OFAC in April 2018. Lamesa sought to compel Julius Baer to release funds from a securities account in order to repay a loan of USD 160 million. The court accepted that the bank could refuse the transaction because of its exposure to American sanctions.⁶ The Federal Supreme Court reached a different result in the special case of PostFinance, which has a statutory universal service obligation for payment services. PostFinance had terminated Vekselberg's account in December 2018, citing the disproportionate burden of compliance monitoring. In its judgment 4A_84/2021 the Federal Supreme Court held that the grounds for refusal in the Postal Ordinance were exhaustive and that the bank had to maintain the relationship within the scope of the universal service.⁷

The collision between Swiss law and American sanctions became acute in the Magnitsky case. On 21 January 2025 the Federal Supreme Court dismissed an appeal by Hermitage Capital Management and upheld a 2022 decision that the fund was not a victim of the tax fraud uncovered by the late Sergei Magnitsky. The decision cleared the way for UBS and Credit Suisse to return some CHF 14 million of CHF 18 million previously frozen to three Russian nationals who are sanctioned under the American Magnitsky Act and by the United Kingdom, Canada and Australia, but not by Switzerland or the European Union. The banks thus had to choose between complying with the decision of a Swiss court and the risk of American penalties.⁸ Mutual legal assistance aspects of the case are treated in the following chapter.

Cooperation with foreign sanctions authorities meets a further obstacle in Article 271 of the Swiss Criminal Code, which prohibits acts on behalf of a foreign state on Swiss territory without authorisation. A bank that transmits client data directly to OFAC or the Department of Justice in order to obtain a licence, answer a subpoena or settle an investigation may commit that offence. In judgment 6B_216/2020 of 1 November 2021 the Federal Supreme Court confirmed the conviction of the executive of a wealth management company who had handed client files to the Department of Justice on a USB stick. The court held that non-public information identifying third parties may be transmitted to foreign

authorities only through the channels of legal or administrative assistance.⁹ In practice, Swiss banks that must respond to American sanctions inquiries therefore apply for authorisation from the Federal Department of Finance or the competent department, redact client data or route information through FINMA. The same constraint applies to Zurich law firms that conduct internal investigations for American authorities.

The European Union's sanctions reach Switzerland in a different way. EU regulations apply to EU nationals and to EU companies everywhere, including their Swiss branches and employees, and to any business done in whole or in part within the Union. A German or French national working in a Zurich bank remains bound by EU sanctions in his or her personal capacity. Swiss subsidiaries of EU groups are exposed through group-wide compliance policies and through the EU requirement that parent companies use their best efforts to ensure that subsidiaries do not undermine the sanctions.¹⁰ Because Switzerland adopts almost all EU measures, the practical divergence is small. It matters where the Swiss implementation lags behind the European Union by some weeks, where Switzerland has not adopted a particular measure or where a Swiss exemption, such as the one for Swiss nationals abroad, has no EU equivalent.

The combined weight of these regimes produces what the literature calls over-compliance or de-risking. Banks refuse transactions and close relationships that no Swiss rule prohibits, because the cost of analysing the risk exceeds the revenue. In July 2023 Julius Baer informed clients domiciled in Russia that it would end wealth management activities by 30 September 2023 and all business with them by the end of that year.¹¹ The fall of reported deposits of non-sanctioned Russian clients from CHF 46.1 billion to CHF 12.8 billion between 2022 and 2024 reflects the same movement. For the affected clients the consequences can be severe, since even Russian nationals resident in Switzerland, who are exempt from most restrictions, depend on banks that apply their own, stricter risk appetite. The legal remedies are limited. Outside the universal service of PostFinance, a Swiss bank is free to terminate a banking relationship in accordance with its general terms, provided it does not act abusively.

1 Notes

1. SECO, "FAQ – Sanktionen der Schweiz" (cited above). ↩
2. Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting

therefrom, whose original Annex listed the Cuban Democracy Act 1992, the Cuban Liberty and Democratic Solidarity Act of 1996 and the Iran and Libya Sanctions Act of 1996, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31996R2271>. ↩

3. Roland J. Luchsinger and Matthias Portmann, “Extraterritoriale Wirkung von Sanktionen”, PwC Switzerland, 2 September 2021, <https://www.pwc.ch/de/insights/finanzdienstleistungen/extraterritoriale-wirkung-von-internationalen-sanktionen-auf-schweizer-banken.html>. ↩
4. US Department of Justice, “Credit Suisse Agrees to Forfeit \$536 Million in Connection with Violations of the International Emergency Economic Powers Act and New York State Law”, 16 December 2009, <https://justice.gov/opa/pr/credit-suisse-agrees-forfeit-536-million-connection-violations-international-emergency>. ↩
5. Morrison Foerster, “U.S. Authorizes Secondary Sanctions on Banks Supporting Russia’s Military-Industrial Base”, 3 January 2024, <https://www.mofo.com/resources/insights/240103-us-authorizes-secondary-sanctions-on-banks>. ↩
6. European Sanctions, “Swiss Court says bank can refuse Vekselberg transaction because of US sanctions risk”, December 2020, <https://www.europeansanctions.com/2020/12/swiss-court-says-bank-can-refuse-vekselberg-transaction-because-of-us-sanctions-risk/>. ↩
7. Yannick Caballero Cuevas, “Payment services: Viktor Vekselberg v PostFinance”, Centre de droit bancaire et financier, 3 March 2022, <https://cdbf.ch/en/1225/>. The ordinance was subsequently amended to allow refusal where compliance creates disproportionately high costs, without retroactive effect. ↩
8. swissinfo.ch, “New ruling on Magnitsky case forces banks to choose between Swiss judiciary and US sanctions”, 2025, <https://www.swissinfo.ch/eng/swiss-diplomacy/new-ruling-on-magnitsky-case-forces-banks-to-choose-between-swiss-judiciary-and-us-sanctions/88841453>. ↩
9. Lenz & Staehelin, “Art. 271 StGB weiterhin ohne klare Schranken”, <https://www.lenzstaehelin.com/de/news-and-insights/browse-thought-leadership-insights/insights-detail/new-precedent-does-not-provide-clear-guidance-on-the-boundaries-of-the-swiss-blocking-statute-1/>. The authors point to Article 42c FINMASA and to authorisations by the competent federal department as partial solutions. ↩

10. Art. 13 lit. c of Council Regulation (EU) No 833/2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0833>, and Art. 17 lit. c of Council Regulation (EU) No 269/2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0269>, both applying to any national of a Member State inside or outside the Union; Art. 8a of Regulation (EU) No 833/2014, inserted by Council Regulation (EU) 2024/1745 of 24 June 2024 (fourteenth package), on the “best efforts” obligation regarding legal persons established outside the Union that EU operators own or control, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32024R1745>. ↩
11. Malay Mail (Reuters), “Letter: Swiss bank Julius Baer to end business with clients in Russia”, 25 July 2023, <https://www.malaymail.com/news/money/2023/07/25/letter-swiss-bank-julius-baer-to-end-business-with-clients-in-russia/81699>. ↩

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