



FAQ on frozen assets of Politically Exposed Persons (PEPs) originating from Ukraine –Federal Council ordinance

Situation April 2014

1. Why has Switzerland frozen the assets of prominent persons originating from Ukraine?

The Swiss Government (Federal Council) is entitled to take such measures in specific situations – for example in times of political upheaval – so as to preserve assets that may have been illegally acquired and deposited in Switzerland and to prevent them from being transferred elsewhere. In this way, Switzerland provides support to the judicial authorities of the states concerned, which are thus able to initiate criminal proceedings and – in this context – request mutual legal assistance from Switzerland. The relevant judicial authorities of the country concerned are responsible for carrying out the procedures necessary to demonstrate the illicit origin of the frozen assets.

2. On what basis did the Federal Council take the decision to freeze the assets?

The Federal Council enforced preventive measures to freeze the assets on the basis of Article 184, para. 3 of the Swiss Constitution, which states: “Where safeguarding the interests of the country so requires, the Federal Council may issue ordinances and rulings. Ordinances must be of limited duration”.

3. How are assets frozen?

The freezing of assets immediately follows the promulgation of an ordinance. Ordinances enacted by the Federal Council are accompanied by an appendix containing the names of the individuals, companies and organisations subject to the freeze order. Persons or institutions that hold or manage the assets or have knowledge of financial resources subject to the freeze order must declare them without delay to the Directorate of International Law (DIL) of the Federal Department of Foreign Affairs (FDFA). The lists of names in the appendices to the ordinances are exhaustive.

4. What are the criteria for deciding which persons are to be listed in an appendix?

The lists of individuals and legal entities contained in appendices to ordinances on the freezing of assets are compiled on the basis of analyses carried out by the federal administration with the aid of information provided by the authorities or other sources of the countries concerned, as well as based on the exchange of information with other countries and organisations with a particular knowledge of the context.

The persons listed in the most recent ordinance imposing preventive freezing measures are politically exposed persons (PEPs) together with individuals directly or indirectly linked with them. In most cases, these are family members or people who have had important functions in the political, economic or financial spheres.

The appendices to the ordinances are established on the basis of the information available at the time the ordinances were promulgated. They can be amended in accordance with the

changing situation, such as in the case of requests for mutual legal assistance from Egypt and Tunisia, or if the UN or the EU decides to impose sanctions, as in the case of Libya and Ivory Coast. The ordinance on Ukraine was amended on 7 March 2014, and 9 additional persons were added to the list following the decision of the European Union of 5 March concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

Information on persons targeted by the ordinance is published online:

<http://www.eda.admin.ch/eda/de/home/topics/finec/poexp/sperr.html>

5. Can the persons listed in the appendices protest or appeal?

Any person who feels he or she has been unjustly included in an appendix to an ordinance imposing the freezing of assets as a preventive measure can contact the FDFA (DIL) to ask for their name to be removed from the appendix. The Department will verify the information and make a decision. Appeals against such decisions must be addressed to the Federal Administrative Court.

6. Under what conditions can frozen assets be unfrozen?

There are several possibilities:

- The persons concerned can ask for their names to be removed from the appendix to the ordinance. If the person concerned is vindicated and his or her name is removed from the appendix, he or she may once again freely dispose of the assets in question. If the relevant authorities refuse to do so, an appeal can be lodged before the Federal Administrative Court. The appendix to the ordinance can be amended by the FDFA on the basis of new information which might, for example, be obtained within the framework of a request for mutual legal assistance.
- If the illicit origin of the assets cannot be demonstrated within the framework of criminal or of mutual legal assistance proceedings, the assets must be unfrozen.
- Ordinances on the freezing of assets are of limited duration. In the case of Ukraine, the ordinance is in effect for three years.

7. Was there any cooperation with other European countries on freezing the assets of PEPs and drafting the appendices to the ordinance on Ukraine? Is there any international coordination?

Switzerland has had close contact with other states and with the European Union regarding developments in Ukraine, and continues to do so. However, as far as the Federal Council's freezing of assets in relation to Ukraine is concerned, Switzerland has acted swiftly, indeed before the EU. In such crisis situations involving political upheaval, rapid and effective action to freeze potentially unlawfully acquired assets is imperative to ensure that the assets cannot be withdrawn and hidden away.

8. Why was no action taken earlier to freeze the funds of these PEPs?

The freezing of assets on the basis of Article 184, paragraph 3 of the Federal Constitution is considered appropriate only in exceptional situations, for example in cases of political upheaval. In order for the frozen assets to be returned to the state concerned, their illicit origin must be demonstrated by the judicial authorities of that country through criminal proceedings, notably on the basis of information obtained within the framework of mutual legal assistance procedures. Thus, assets are first frozen in this manner if there is likelihood of a request for legal assistance on the part of the country concerned. Such a request is not

likely to be submitted while a PEP is still in power. Without the prospect of legal verification of the criminal origin of the assets, it makes little sense to freeze such assets.

9. Which authorities are responsible for implementing the ordinance concerning Ukraine?

Within the federal administration, the FDFA (Directorate of International Law, DIL) is responsible for the implementation of this ordinance. The DIL provides support to financial intermediaries when questions arise.

The implementation of the ordinance (identification and freezing of the assets of the listed persons) must be done by the financial institutions themselves or by persons and institutions that hold or manage such assets. If problems arise, the financial institutions may seek advice from the FDFA at any time.

The supervisory body for financial markets is the Swiss Financial Market Supervisory Authority (FINMA). FINMA carries out regular checks, above all to ensure compliance with the due diligence requirements in relation to the Money Laundering Act (AMLA, SR 955.0). FINMA also publishes the sanctions decided by the Federal Council and requires financial intermediaries to comply strictly with the sanction ordinances, including freezing ordinances which have been issued on the basis of Article 184, paragraph 3 of the Swiss Constitution. If it has evidence of violations of these ordinances, FINMA may intervene in its supervisory capacity.

Non-compliance with freezing ordinances is a criminal offence. The Federal Department of Finance (FDF) is responsible for prosecuting and punishing administrative offences of this kind.

10. Switzerland is the country that has returned by far the largest amount of illicit assets of PEPs to the states of origin. Is that because the Swiss financial centre holds more funds of illegal origin?

No. Today, competition between financial centres is global. In the long term, a financial centre's reputation and credibility are the most important criteria with respect to competitors. It is therefore in the interest of Switzerland and Swiss banks to prevent misuses of their financial market. That is why Switzerland has taken a proactive stance in combating money laundering and in favour of the restitution of illicit assets.

In recent years, the Federal Council and the Swiss Parliament have strengthened existing laws in these areas and passed new legislation. In many respects current Swiss regulations are among the most advanced legislation in international comparison.

11. Despite this panoply of laws and procedures, illicit assets are still deposited in Swiss bank accounts. Who is to blame?

Switzerland has a real interest in preventing the misuse of its financial centre. To this end, the Federal Council and the Federal Assembly have taken a series of necessary measures in recent years. Existing laws have been strengthened, new laws created and loopholes identified and closed. Targeted action has been taken to set up an efficient system — which has produced results. Today, in international comparison Switzerland defends itself well against the influx of illegal money. But not even the best possible system can guarantee complete protection against this problem. The Swiss authorities deal with any possible weak points as soon as they are identified.

12. 1.7 billion US dollars has been returned. Is that all?

Switzerland can be credited with the restitution of more than one third of the USD 5 billion returned to states of origin in the past 15 years and is thus a true pioneer in this field. Switzerland is strongly committed not to serve as a haven for assets of illegal origin.

13. How do the ordinances on the freezing assets that were issued on the basis of article 184 paragraph 3 of the Constitution differ from those imposing sanctions issued on the basis of the Embargo Act (Federal Act of 22 March 2002 on the Implementation of International Sanctions; Embargo Act: EmbA)?

The ordinances issued on the basis of the Constitution are designed to safeguard Switzerland's interests. They are issued by the Federal Council. The regulations issued on the basis of the Embargo Act are designed to implement international measures issued primarily by the UN Security Council. Such regulations can for example induce a state that is in serious breach of international law to adopt a different attitude or they can serve as a sanction. As a member of the UN, Switzerland is obliged to carry out these measures.

Information on persons and organisations targeted by the ordinances imposing sanctions is published online by the State Secretariat for Economic Affairs (SECO):

<http://www.seco.admin.ch/themen/00513/00620/00622/index.html?lang=de>

14. How do the ordinances of the Federal Council on freezing assets fit into Switzerland's policy on fighting financial crime?

For the last 20 years, the Federal Council has made every effort, as a matter of principle, to systematically bar assets of illicit origin from the Swiss financial centre.

In fact, Switzerland has created a system that rests on two pillars:

- Prevention (preventing the investment of illegally obtained assets in Switzerland). The most important instrument in this context is the Anti-Money Laundering Act (AMLA, SR 955.0).
- The seizure and restitution of illegally obtained assets. Here, the main instrument is the Federal Act on International Mutual Assistance in Criminal Matters (IMAC, SR 351.1) and the Federal Act on the Restitution of Illicit Assets (RIAA, SR 196.1).

Switzerland thus has a stringent Anti-Money Laundering Act (AMLA, SR 955.0), which imposes extensive due diligence and reporting obligations on financial institutions. The measures prescribed in the AMLA and its related ordinance primarily aims at preventing the investment of funds of illicit origin in Switzerland. In this context, the assets of PEPs and their entourage are considered especially high-risk, and are therefore subject to a higher level of due diligence. In such cases, financial intermediaries must not only verify the identity of the account beneficiaries (know your customer rule) but also the source of the transferred assets, their origin, the context and credibility of significant incoming payments as well as the purpose of any withdrawn assets. As soon as a financial intermediary has a well-founded suspicion that assets are of criminal origin, are at the disposal of a criminal organisation, are connected with money laundering or a criminal organisation or are intended to finance terrorism, the intermediary must report this to the Money Laundering Reporting Office Switzerland (MROS) and freeze the assets concerned (Art. 9 al.1 AMLA). Suspicions may be founded for instance on information that criminal proceedings against the natural person or legal entity are in progress in Switzerland or abroad, requests for mutual legal assistance have been filed, or non-plausible transaction patterns or transitory accounts exist. The provisions of anti-money laundering legislation apply to all assets invested in Switzerland regardless of the person(s) on whose behalf they are invested, where they come from, and of political developments or turmoil in the countries of origin. The report made to the MROS is

thus independent. Financial intermediaries that have reported frozen assets to the Directorate of International Law of the FDFA on the basis of a Federal Council ordinance on freezing assets are not released from their obligation under the AMLA to report to the MROS.

(http://www.fedpol.admin.ch/content/fedpol/en/home/themen/kriminalitaet/geldwaescherei/meldeformular/art_9_gwg.html).

If, despite the various precautionary measures, illicit assets do arrive in Switzerland, they must be identified by the relevant judicial authorities and returned to their country of origin. Some cases are especially difficult to resolve, notably due to the failure of the relevant institutions of the state from which the funds originate. For such cases, Switzerland enacted in 2011 the Federal Act on Restitution of Illicit Assets Act (RIAA, SR 196.1), which sets out the procedures for freezing, forfeiture and restitution of the assets of PEPs. This law is intended to apply when a request for international mutual legal assistance in criminal matters cannot succeed owing to a lack of action on the part of the state in which the PEP performs, or has performed, his or her public functions. The RIAA provides a solution that is subsidiary to the Swiss Federal Act on International Mutual Legal Assistance in Criminal Matters. This law, which is a world-first in this field, is a clear illustration of the policy that Switzerland has adopted for more than 20 years to avoid being used as a haven for assets misappropriated by PEPs. The first restitution under this law will concern the assets of the former dictator Duvalier (Haiti). The Federal Administrative Court confirmed a confiscation under the RIAA in September 2013.

Internationally renowned experts acknowledge that few other countries have contributed as much to this cause in recent years. Although Switzerland's financial centre only ranks seventh in the world, Switzerland is a leader when it comes to the restitution of stolen assets.