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False information and contradictory statements by the Swiss competent authorities regarding the implementation of sanctions in connection with the Russia-Ukraine conflict are poison for the Swiss financial center. The current discussions regarding the import of Russian gold are an example of this.

On 28 February 2022, the Swiss Federal Council decided to adopt the European Union's (EU) sanctions against Russia and thus strengthen their effect. The Swiss Ordinance of 4 March 2022 on Measures in Connection with the Situation in Ukraine (SR 946.231.176.72) contains all Swiss measures and is legally binding.

Over the last few months, various operational companies and political circles have been discussing the meaning and scope of certain measures in connection with the above-mentioned ordinance. The restrictions on the import and export of gold has also caused much media ink to flow, some of the debates fueled by three tons of gold with the designation of Russian origin allegedly imported in May 2022 from the United Kingdom into Switzerland. Is the import of gold of Russian origin per se prohibited (as claimed by Fabio Molina, member of the Swiss National Council, in his question to the Swiss Federal Council on 8 June 2022) or is there a misunderstanding on the scope of the sanctions adopted?

After a detailed analysis of the relevant provisions, we are of the opinion that smelter products produced after 7 March 2022 by the suspended Russian refineries are deemed to be products that do not bear a recognized foreign assayer's mark, and as such upon importation and accordingly fall into the same category as smelter goods. The trade in melting goods is generally prohibited in Switzerland. Only trade assayers, i.e. companies that have a license from the Central Office in accordance with Art. 41 PMCA, are allowed to import and process melting goods in Switzerland due to their increased due diligence obligations.

This fact is also consistent with the media release of the Swiss Federal Office for Customs and Border Security (FOCB/BAZG) of 24 June 2022¹. According to the FOCB, all bars produced by Russian refineries after 7 March 2022 may no longer be traded in Switzerland. In this context, it should be noted that although such gold bars can no longer be traded directly, they may be imported, processed and -

¹ <https://www.bazg.admin.ch/bazg/de/home/aktuell/medieninformationen/medienmitteilungen.msg-id-89456.html>

provided the requirements from the perspective of the PMCA and the AMLA are met - placed on the market by Swiss trade assayers. From this point of view and as long as these are a) standard bars produced by the sanctioned Russian refineries before the entry into force of the decided measures and/or b) smelted products imported exclusively by trade assayers, the news that three tons of gold with Russia's designation of origin had been imported into Switzerland in the month of May 2022 seems neither extraordinary nor unlawful.

It also seems interesting that the speculation in the media is based on statistics that neither differentiate between the date of manufacture of the melt products (before or after 7 March 2022) nor consider possible errors in filling out the customs documents. A non-binding survey of the most important forwarding agencies has shown that the correct completion of the necessary customs documents for deliveries from different countries of origin is not a matter of course. Accordingly, incorrect declarations cannot be ruled out. In contrast to the trade assayers who, due to their due diligence obligations, must examine the deliveries meticulously and are accordingly in a position to uncover any errors, the statistics take the country of origin declared in the customs documents as "face value".

In connection with the sanctions imposed, it should be noted in summary that

- a) the import and trade of Russian gold is not prohibited as long as they are smelted products produced before 7 March 2022.
- b) The import of Russian smelted products produced after 7 March 2022 is not prohibited as long as the import is carried out (directly) by a trade assayer.
- c) The measures against Russia have only a moderate impact on Swiss refineries (trade assayers), as they can continue to import gold from Russia due to their due diligence obligations under the PMCA and AMLA.
- d) The statistical data are misleading in that they do not distinguish whether the gold bars were produced before or after the entry into force of the sanctions and they do not consider potential false declarations or errors made by the forwarding agencies.

In the run-up to the publication of this article, our Institute consulted the Swiss Federal Precious Metals Commission (EMK). With regard to our conclusion that the standard bars supplied by the Russian refineries (suspended by the LBMA) no longer qualify as melt products with a Swiss or recognized foreign assayer's mark (and thus end up in the same category as scrap, 1 kg bars, etc.) and can accordingly only be imported, further processed and - provided the provisions of Art. 47 PMCA are met - placed on the market by trade assayers, the EMK has clarified the following:

"Taking into account the clarifications below, we can agree with your view:

- *The smelted products do not have to be delivered directly from the Russian refineries. The restrictions also apply to Russian gold bars that enter Switzerland in a roundabout way (e.g. interim sale or storage in a third country) and are to be processed here.*
- *Since the legal basis in the precious metals control legislation (Precious Metals Control Act PMCA and Precious Metals Control Ordinance PMCO) refers to placing on the market in Switzerland, a direct implementation of the suspensions of the LBMA by means of an import ban is not possible from a strictly legal point of view. If Russian gold produced after the date of the suspension (provided it originates at all from one of the previously recognized Russian refineries) is imported by a third party and is subsequently to be placed on the market in Switzerland, this qualifies as an offence against Art. 47 para. 1 PMCA. This also applies to the transfer to a trade assayer, who must report this to the Precious Metals Control as part of his due diligence obligations. Standard bars are considered to be melt products within the meaning of the PMCA regardless of their designation. The designation of melt products must be documented when accepted by a holder of a melt license, among other things (Art. 168c para. 2 let. c PMCA).*
- *Trade assayers are allowed to import and process any gold, but when accepting Russian gold produced after 7 March 2022, the Precious Metals Control would check compliance with the due diligence obligations under the PMCA as part of its supervision. Furthermore, the provisions of the AMLA must also be complied with. Trade assayers have however been strongly advised by the Swiss authorities to refrain from such transactions. "*

Shortly before the editorial deadline, we received an e-mail from the Office of Planning and Control Communications of the Federal Office of Customs and Border Security (FOCA). According to Mr David Venetz - media spokesman - the FOCA does not comment on media releases from third parties. *"Nevertheless, we can informally send you the general indication that the factual presentation in the enclosed document [meaning the present article] is wrong in places (e.g. page 1 section 3, page 2 section 2 or page 2 letter c). Should any media enquiries be received by the BAZG in this regard, we will respond accordingly. "*

It is undisputed that some political circles are not satisfied with the sanctions decided by the Swiss Federal Council. However, the reason for this dissatisfaction lies in fundamental issues of the system. From this point of view, targeted attacks on the players in the precious metals sector who correctly implement the regulatory requirements are not only inefficient, but - together with unclear and even contradictory information on the part of the competent authorities - lead to serious damage to the reputation of the Swiss financial center.

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