

The background of the image is a dark red gradient. It is filled with numerous stacks of 100 US dollar bills, some of which are falling from the top, creating a sense of motion and abundance. The bills are arranged in a way that they appear to be scattered across the entire frame. The word "SWITZERLAND" is centered in the middle of the image, flanked by two horizontal white lines.

SWITZERLAND

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Switzerland's Foreign Illicit Assets Act (FIAA) legislation, which creates the basis for asset freezes under certain conditions, is a unique example in that it actively encourages law enforcement to investigate assets frozen under its regime. Despite the adoption of this progressive legislation and the recent dedication of more resources to implement and enforce sanctions, when implementing sanctions coordinated with other countries and the UN, Switzerland lacks policies encouraging law enforcement authorities to investigate the origins of sanctioned assets and whether they can be confiscated in Switzerland due to criminality.

Legislative and institutional framework

The Swiss legislative framework allows Switzerland to implement autonomous sanctions regimes, when they have already been adopted by its partners, as well as freezing orders on the request of the government (the Federal Council). The imposition of orders to freeze individual assets located in Switzerland is enabled by the Foreign Illicit Assets Act (FIAA)¹²⁴ and is a rare example of legislation that creates a basis for confiscation and restitution of frozen assets to the countries of origin, creating a direct link between these processes. As described in Section 4 of the FIAA, the confiscation of frozen assets can proceed as part of a procedure initiated in the country of origin via an MLA request or according to an independent Swiss criminal procedure. Section 4 also creates a presumption that frozen assets are of illicit origin where the wealth of the sanctioned PEP "increased inordinately", or where the level of corruption surrounding the foreign PEP was notoriously high during their term of office.

However, the FIAA can only be applied in situations of political crises and failed regimes. Switzerland used the FIAA to freeze the assets of ousted ruling elites from Egypt and Tunisia in 2011, and Ukraine in 2014.¹²⁵ While there was an attempted coordination between these countries and Switzerland to investigate sanctioned individuals and return some of the frozen assets, only a very small proportion of these funds was eventually returned.

Otherwise, sanctions are imposed by Switzerland in parallel to sanctions adopted by the United Nations (UN), Organisation for Security and Cooperation in Europe (OSCE) or by Switzerland's most significant trading partners, which so far have only been the EU. The imposition of sanctions is governed by the Federal Act on the Implementation of International Sanctions (the Embargo Act).¹²⁶ This law sets out the types of sanctions that can be imposed, the roles and powers of the supervisory authorities, including on cross-border cooperation, and the extent of criminal and monetary penalties levied in cases of non-compliance and sanction violations.

Unlike the FIAA, the Embargo Act does not contain provisions that would encourage authorities to start proceedings regarding the assets frozen by sanctions. However, Article 13 of the Embargo Act, which states that any "property and assets that are subject to compulsory measures shall be forfeited irrespective of the criminal liability of any particular person in the event that their continued lawful use is not guaranteed",¹²⁷ was scrutinised during the country's "freeze to seize" debate over Russian assets. Similarly to most other jurisdictions so far, the discussion over the use of radical innovative tools to confiscate the assets of sanctioned Russian oligarchs

in Switzerland without proving them to be of illegal origin, such as the Canadian C-19 Budget Implementation Act, was concluded to be a violation of the rule of law and the right to property.¹²⁸

Some of the key institutions involved in the implementation of and potential investigations into breaches of asset-freezing sanctions are the Money Laundering Reporting Office Switzerland (MROS) – the Swiss FIU -, the Swiss Financial Market Supervisory Authority (FINMA) and the State Secretariat for Economic Affairs (SECO).¹²⁹ Both MROS and SECO are able to refer suspicious cases on for further investigations to the Attorney General, however, a specific mechanism that would flag suspicious cases of unexplained wealth in the cases of sanctioned assets appears to be missing.

Called for by civil society,¹³⁰ the Swiss Council rejected a proposal to set up its own task force to locate, freeze and if necessary, confiscate the assets of sanctioned Russian and Belarusian nationals located in the country. It argued with sufficient activities of existing agencies, including the existing Sanctions Policy Coordination Group, whose focus is on sanctions policy and implementation.¹³¹

Investigations into assets linked to sanctioned individuals

With regards to scrutinising sanctioned assets and starting criminal or civil investigations in case of any suspicions over their legality, there are no signs of a concentrated effort by the Swiss government in this direction. There do not seem to be any investigations linked to sanctioned Russian assets launched by law enforcement, with the only related case being of bank employees convicted of violating Swiss anti-money-laundering laws.¹³² This might come as a surprise given the amount of Russian assets located in the

country, either directly in bank accounts and properties or indirectly via businesses registered in Switzerland.¹³³ While Swiss authorities have frozen around CHF 7.5 billion (EU7.7 billion) in assets linked to sanctioned individuals, the Swiss Bankers Association has estimated that there is around CHF 150 billion (EUR 155 billion) in Russian assets in Switzerland overall.¹³⁴

The country's failure to join the international REPO Task Force and the lack of proactive approach to investigating sanctioned assets has resulted in critique from the US and other G7 countries towards Switzerland. A letter from April 2023 issued by G7 countries directed to the Swiss Federal Council highlighted concerns that the "Swiss privacy provisions...could be used to cover the tracks of financial shelters" and "that law enforcement officials are blocked from investigating illicit financial structures... because of privacy protections"¹³⁵ This critique, led by the US over insufficient sanctions enforcement and measures against money laundering, was addressed directly to the Swiss government and the Swiss banking sector. The US Department of Justice has launched a probe into compliance failures that might have led to sanctions violations by a Swiss bank Credit Suisse, which was known to cater to wealthy Russian clients.¹³⁶

The authority responsible for the implementation of sanctions in Switzerland, the State Secretariat for Economic Affairs (SECO), has responded to the criticism by highlighting an increase in staff resources dedicated to overseeing the implementation of sanctions¹³⁷ and the successful closure of around half of 29 initiated criminal proceedings for attempted Russian sanctions violations.¹³⁸ In one case SECO passed a potential case to the Attorney General for investigation, who, however, upon inspection did not consider it relevant and closed it.¹³⁹ SECO and



other relevant authorities fighting financial crime are, however, still considered to be considerably under-resourced, with most recent investigations largely focusing on small luxury goods traders rather than the enabling networks around sanctioned individuals.¹⁴⁰

Civil society has further called for the removal of administrative obstacles to investigations into sanctions violations, by removing the need for SECO to specifically request law enforcement authorities to act,

as is currently the case under the Embargo Act. Moreover, additional voices from the private sector and political representatives have joined forces in urging the Swiss parliament to reconsider its position and join the REPO task force.¹⁴¹ New legislation that should establish a beneficial ownership registry and put financial advisors under money laundering legislation in compliance with the FATF regulations should be debated in parliament towards the end of 2023.¹⁴²

