

SWITZERLAND INTRODUCES BILL REQUIRING LEGAL ENTITIES TO REPORT THEIR BENEFICIAL OWNERS IN A NEW, NON-PUBLIC, FEDERAL REGISTRY

During its meeting on August 30 2023,¹ the Swiss Federal Council initiated the consultation process for a bill aimed at strengthening the anti-money laundering framework in Switzerland. The Federal Council plans to submit the bill to Parliament in 2024.

The bill targets beneficial ownership with enhanced anti-money laundering due diligence

Notably, the bill introduces a federal register in which companies and other legal entities, including trusts, registered in, or with a close connection to, Switzerland are required to report the identity of their "beneficial owners" and the magnitude of the control exercised by them over the company or other legal entity. This obligation extends to foreign-based legal entities which have a close connection with Switzerland² and also applies to associations, foundations, and small to medium-sized companies, for whom a simplified registration is required. The proposed register will be non-public and will be managed by the Federal Office of Justice, which will have the right to impose penalties in the case of breaches.

The bill includes due diligence rules that apply to certain advisors (including legal advisors), which have a heightened risk of money laundering, representing a significant development in the law since the last revision two years ago.³ Other measures include lowering the threshold for cash payments in precious metal trading from CHF 100,000 to CHF 15,000, as a means to prevent sanctions circumvention⁴. Sanctions enforcement is not the main goal of the bill, according to Councillor Keller-Sutter, however it is a "desired side effect".⁵

Why is the bill needed?

Two years ago, the Swiss Federal Council published the previous amendment to its anti-money laundering framework which many criticised for being insufficient with respect to enforcing the sanctions against Russia.⁶ Earlier this year, the Swiss State Secretariat for Economic Affairs (SECO), received a letter from G7 ambassadors suggesting Switzerland is not doing enough to combat Russian oligarchs evading sanctions as a further push.⁷

The new bill was proposed on the heels of a guidance document published by the Swiss Financial Market Supervisory Authority ("FINMA") last week on money laundering risk analysis. In the guidance document, FINMA refers to repeated shortcomings in money laundering prevention identified during on-site supervisory review and the analysis of 30+ banks it undertook in the spring of 2023.⁸

¹ [Federal Council initiates consultation on strengthening the anti-money laundering framework \(admin.ch\)](https://www.admin.ch/newsd/admin/ch/newsd/message/attachments/82294.pdf)

² <https://www.news.admin.ch/newsd/message/attachments/82294.pdf>

³ <https://www.aargauerzeitung.ch/schweiz/geldwaescherei-bundesrat-will-geldwaescherei-staerker-bekaempfen-doch-der-korruptionsexperte-haelt-die-plaene-fuer-ungenuegend-ld.2506469>

⁴ <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-97561.html>

⁵ <https://www.aargauerzeitung.ch/schweiz/geldwaescherei-bundesrat-will-geldwaescherei-staerker-bekaempfen-doch-der-korruptionsexperte-haelt-die-plaene-fuer-ungenuegend-ld.2506469>

⁶ <https://www.aargauerzeitung.ch/schweiz/geldwaescherei-bundesrat-will-geldwaescherei-staerker-bekaempfen-doch-der-korruptionsexperte-haelt-die-plaene-fuer-ungenuegend-ld.2506469>

⁷ <https://www.ft.com/content/6fa258e8-f928-4738-808b-df03cb55b16e>

⁸ [FINMA publishes guidance on money laundering risk analysis | FINMA](https://www.finma.ch/press/2023/08/23/finma-publishes-guidance-on-money-laundering-risk-analysis/)

Anticipated effects on law firms & other advisors

While this bill provides more stringent reporting requirements, some argue it does not go far enough, especially where legal service providers are concerned. Although the bill requires legal service providers to conduct due diligence on the identity of the beneficial owner in certain circumstances, the disclosure requirements are purposefully limited. The Federal Council is clear that lawyer-client privilege must be respected in this regard. Critics including academic Mark Pieth, criminal law professor and anti-money laundering expert at Basel University, argue that these limitations on the disclosure obligation for legal professionals mean that the proposed changes to the rules will not be strong enough to make them effective.

By contrast, in the UK a new regulation was enacted on 30 June 2023, clarifying the extent of UK sanctions on the provision of legal advisory services. Unlike the EU, the UK has adopted an activity-focused prohibition, which applies to services provided to any non-UK person, rather than to services to Russian persons specifically. Pursuant to the regulation, it is prohibited to provide legal advisory services to non-UK persons in relation to activities which would be prohibited if they were taking place in the UK or carried out by a UK person. The UK regulation has provided for an exception for legal advice related to compliance with the sanctions regime itself.⁹

"Beneficial owner" and "control" under the bill

Article 4 of the bill defines "beneficial owner" as a natural person who either controls the legal entity by indirectly or directly holding at least 25% of the capital or voting rights of a company (alone or together with a third party), or by exerting control *in some other way*, the latter of which is to be defined by the Federal Council¹⁰.

How ownership and control are defined has been a key topic in interpreting sanctions enforcement. This is likely to play out in the definition and interpretation of Article 4, should the bill come into effect.

As an example, in July 2022, the Swiss regulator found that there was insufficient evidence to show the Melnichenkos, who are designated individuals pursuant to the March 2022 Ordinance on measures related to the situation in Ukraine¹¹, controlled the Zug, Switzerland-based company, EuroChem Group AG.¹² On that basis, the Swiss regulator found that sanctions do not apply to the company for the moment. Conversely, in September 2022, the Italian regulator took the view that the Melnichenkos *do* satisfy the ownership and/or control test and that therefore Eurochem Group AG is indirectly sanctioned as held or controlled by a designated party¹³.

As the sanctions regulatory position develops and these new regulations come into force, regulators will need to grapple with defining these "control" and "ownership" terms closely to avoid inconsistencies and to effectively enforce sanctions and money laundering rules down the line.

⁹ <https://www.gov.uk/government/publications/professional-and-business-services-to-a-person-connected-with-russia/professional-and-business-services-to-a-person-connected-with-russia#:~:text=As%20of%20December%202022,a%20person%20connected%20with%20Russia.#:~:text=As%20of%20December%202022,a%20person%20connected%20with%20Russia>
[The Russia \(Sanctions\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](https://www.gov.uk/government/publications/professional-and-business-services-to-a-person-connected-with-russia/professional-and-business-services-to-a-person-connected-with-russia#:~:text=As%20of%20December%202022,a%20person%20connected%20with%20Russia.#:~:text=As%20of%20December%202022,a%20person%20connected%20with%20Russia)

¹⁰ <https://www.news.admin.ch/news/message/attachments/82295.pdf>

¹¹ [Searching for subjects of sanctions \(admin.ch\)](https://www.news.admin.ch/news/message/attachments/82295.pdf)

¹² https://www.seco.admin.ch/seco/en/home/seco/stellungnahmen_medienbeitraege.html

¹³ <https://studiopadovan.com/blog/2022/sanzioni-lautorita-italiana-sottopone-a-congelamento-i-beni-di-eurochem-group-ag/>

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