

## **Federal Act on the Implementation of International Sanctions**

**(Embargo Act, EmbA)**

of 22 March 2002 (Status on 27 July 2004)

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*The Federal Assembly of the Swiss Confederation,*

on the basis of Article 54 paragraph 1, Article 122 paragraph 1 and Article 123 paragraph 1 of the Federal Constitution<sup>1</sup>, and having considered the report of the Federal Council dated 20 December 2002<sup>2</sup>

*decrees:*

### **Section 1: General Provisions**

#### **Art. 1**            Subject Matter

<sup>1</sup> The Confederation may enact compulsory measures in order to implement sanctions that have been ordered by the United Nations Organisation, by the Organisation for Security and Cooperation in Europe or by Switzerland's most significant trading partners and which serve to secure compliance with international law, and in particular the respect of human rights.

<sup>2</sup> The right is reserved for the Federal Council to take measures to safeguard the interests of the country in accordance with Article 184 paragraph 3 of the Federal Constitution.

<sup>3</sup> Compulsory measures may in particular:

- a. directly or indirectly restrict transactions involving goods and services, payment and capital transfers, and the movement of persons, as well as scientific, technological and cultural exchange;
- b. include prohibitions, licensing and reporting obligations as well as other restrictions of rights.

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<sup>1</sup> SR 101

<sup>2</sup> BBl 2001 1433

## **Art. 2**            Scope of Authority

<sup>1</sup> The Federal Council has the authority to enact compulsory measures. It may stipulate exceptions in order to support humanitarian activities or to safeguard Swiss interests.

<sup>2</sup> The Federal Council may stipulate exceptions in accordance with paragraph 1 above, in particular for the provision of food supplies, medicines and therapeutic products for humanitarian purposes.

<sup>3</sup> The compulsory measures are enacted in the form of ordinances.

## **Section 2: Supervision of Compliance**

### **Art. 3**            Duty of Disclosure

Anyone who is directly or indirectly affected by measures in accordance with this Act must provide the supervisory authorities appointed by the Federal Council with the information and documentation that is required for comprehensive assessment or supervision to be carried out.

### **Art. 4**            Powers of the Supervisory Authorities

<sup>1</sup> The supervisory authorities have the right to enter and to inspect the business premises of persons who are subject to a duty of disclosure without prior notice during normal working hours, as well as to examine relevant documentation. They shall confiscate any incriminating material.

<sup>2</sup> They may call upon the assistance of the cantonal or communal police as well as investigating officers from the customs administration.

<sup>3</sup> The supervisory authorities and any other authorities called upon for assistance are obliged to preserve official secrecy and take such precautionary measures within the scope of their activities as may be required to prevent industrial espionage.

## **Section 3: Data Protection and Cooperation between Authorities**

### **Art. 5**            Data Processing

<sup>1</sup> The responsible authorities of the Federal Administration may process personal data provided this is necessary for the enforcement of this Act and of ordinances in terms of Article 2 paragraph 3.

<sup>2</sup> They may only process particularly sensitive personal data in the event that such data is relevant to proceedings or sanctions under the administrative or criminal law. Other particularly sensitive personal data may only be processed if this is essential for the handling of the case in question.

**Art. 6** Administrative Assistance in Switzerland

The responsible authorities of the Confederation together with the cantonal and communal police authorities may disclose data, including particularly sensitive personal data, to each other and to the relevant supervisory authorities provided that this is necessary for the implementation of this Act and of the ordinances in terms of Article 2 paragraph 3.

**Art. 7** Administrative and Legal Assistance between Swiss and Foreign Authorities

<sup>1</sup> The authorities of the Confederation that are responsible for enforcement, supervision, prevention of violations and prosecution may cooperate with the responsible foreign authorities as well as with international organisations or bodies and coordinate investigations, provided:

- a. this is necessary for the implementation of this Act and of the ordinances in terms of Article 2 paragraph 3, corresponding foreign provisions, or corresponding provisions of international organisations; and
- b. the foreign authorities, and international organisations or bodies are bound by official secrecy or a corresponding duty of secrecy, and guarantee the prevention of industrial espionage within the scope of their activities.

<sup>2</sup> They may in particular request foreign authorities and international organisations or bodies to handover any data that is required. In order to obtain such data, they may disclose data, including particularly sensitive personal data, to other authorities, and in particular data relating to:

- a. the nature, quantity, place of destination and place of use, purpose, and recipients of goods;
- b. persons who are involved in the manufacture, supply or procurement of goods;
- c. the financial terms and conditions of the transaction;
- d. frozen accounts and assets.

<sup>3</sup> The federal authorities may disclose data in terms of paragraph 2 above on their own initiative or in response to a request from a foreign state, provided the relevant state:

- a. accords reciprocal legal rights and is also enforcing the international sanctions;
- b. provides assurance that the data will be processed only for purposes that are in accordance with this Act; and
- c. provides assurance that the data will be used in criminal proceedings only where judicial assistance in criminal matters would not be excluded due to the nature of the offence.

<sup>4</sup> The relevant administrative unit of the Confederation decides in consultation with the federal department responsible for legal assistance matters<sup>3</sup> whether the requirements for the use of data in criminal proceedings in terms of paragraph 3c above have been fulfilled.

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<sup>3</sup> Currently the Federal Office of Justice

<sup>5</sup> The federal authorities may, subject to the requirements of paragraph 3 above, also disclose data to international organisations or bodies; in doing so, they may dispense with the requirement that reciprocal legal rights be accorded.

<sup>6</sup> In cases of violations of this Act, judicial assistance may be given to foreign authorities and international organisations or bodies in accordance with paragraph 1 above. Such violations do not constitute currency, commercial, or economic offences in terms of Article 3 paragraph 3 of the Judicial Assistance Act of 20 March 1981<sup>4</sup>, the procedural provisions of which remain applicable.

## **Section 4: Rights of Appeal**

### **Art. 8**

The appeal procedure in respect of orders made in terms of this Act is governed by the general provisions on the administration of justice at federal level.

## **Section 5: Criminal Provisions and Measures**

### **Art. 9**            Misdemeanours

<sup>1</sup> Whoever with intent violates any provision of an ordinance in terms of Article 2 paragraph 3, provided such violation is declared to be subject to prosecution, is liable to a term of imprisonment of up to one year or to a fine of a maximum of CHF 500,000.

<sup>2</sup> In serious cases the penalty is a term of imprisonment of up to five years. A custodial sentence may be combined with a fine of a maximum of CHF 1 million.

<sup>3</sup> In the event that the offence is committed through negligence, the penalty is imprisonment of up to three months or a fine of a maximum of CHF 100,000.

### **Art. 10**            Contraventions

<sup>1</sup> The penalty is detention or a fine of a maximum of CHF 100,000 for anyone who intentionally:

- a. refuses to provide information, to hand over documents, or to permit access to business premises in terms of Article 3 and Article 4 paragraph 1, or who provides false or misleading information in this connection;
- b. in the absence of culpable conduct that would constitute any other criminal offence, violates in any other manner the terms of this Act or any provision of an ordinance in terms of Article 2 paragraph 3, provided such violation is declared to be subject to

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<sup>4</sup> SR 351.1

prosecution, or any order issued and that carries a reference to the liability to penalties under this Article.

<sup>2</sup> Attempts and aiding and abetting are also be liable to prosecution.

<sup>3</sup> In the event that the offence is committed through negligence, the penalty is a fine of a maximum of CHF 40,000.

<sup>4</sup> Prosecution is subject to a statute of limitations of five years. The statute of limitations may not be extended by more than one half as a result of interruption of the five-year period.

#### **Art. 11** Concurrence of more than one Criminal Provision

<sup>1</sup> In the event that a violation of this Act should at the same time constitute an offence under the War Materials Act of 13 December 1996<sup>5</sup>, the Control of Goods Act of 13 December 1996<sup>6</sup> or the Nuclear Energy Act of 23 December 1959<sup>7</sup>, then the criminal provisions of the Act that provides for the most severe penalty are exclusively applicable.

<sup>2</sup> In the event that a violation of this Act should at the same time constitute the offence of customs violation in terms of Article 76 of the Customs Act of 1 October 1925<sup>8</sup>, then the criminal provisions of the Customs Act are exclusively applicable, subject to the provisions of paragraph 1 above.

#### **Art. 12** Offences committed in Businesses

Article 6 of the Federal Act of 22 March 1974<sup>9</sup> on Administrative Criminal Law applies to offences committed in businesses.

#### **Art. 13** Confiscation of Property and Assets

<sup>1</sup> Property and assets that are subject to compulsory measures shall be confiscated irrespective of the criminal liability of any particular person in the event that their continued lawful use is not guaranteed.

<sup>2</sup> Confiscated property and assets, together with any revenues from their sale, shall be forfeited to the Confederation subject to the provisions of the Federal Act of 19 March 2004<sup>10</sup> on the Division of Confiscated Assets<sup>11</sup>.

#### **Art. 14** Jurisdiction

<sup>1</sup> The Federal Act of 22 March 1974 on Administrative Penal Law<sup>12</sup> applies.

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<sup>5</sup> SR 514.51

<sup>6</sup> SR 946.202

<sup>7</sup> SR 732.0

<sup>8</sup> SR 631.0

<sup>9</sup> SR 313.0

<sup>10</sup> SR 312.4

<sup>11</sup> Wording according to section 7 of the Annex to the Federal Act of 19 March 2004 on the Division of Confiscated Assets, in force since 1 Aug. 2004 (SR 312.4).

<sup>2</sup> In the event that the penal provisions of this Act apply, the Office of the Attorney General of Switzerland may at the request of the relevant administrative unit initiate an investigation provided that this is justified by the seriousness of the offence. The initiation of an investigation by the Office of the Attorney General of Switzerland establishes federal jurisdiction.

## **Section 6: Final Provisions**

### **Art. 15** Reporting

The Federal Council shall inform the Federal Assembly of matters relating to the application of this Act in its reports on foreign economic policy.

### **Art. 16** Updating of Annexes to Ordinances

The relevant department<sup>13</sup> may update annexes to ordinances issued in terms of Article 2 paragraph 3.

### **Art. 17** Amendment of Current Law

The following acts are amended as follows:

#### **1. War Materials Act of 13 December 1996<sup>14</sup>;**

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based on Article 41 paragraphs 2 and 3 as well as Article 64<sup>b</sup> of the Federal Constitution<sup>15</sup> and on the authority of the Confederation in foreign matters<sup>16</sup>,

...

##### *Art. 25*

The granting of licenses shall be prohibited in the event that corresponding compulsory measures have been enacted in terms of the Embargo Act of 22 March 2002<sup>17</sup>.

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<sup>12</sup> SR 313.0

<sup>13</sup> Currently the Federal Department of Economic Affairs

<sup>14</sup> SR 514.51

<sup>15</sup> These provisions correspond to Article 107 paragraph 2 and 123 of the Federal Constitution of 18 April 1999 (SR 101)

<sup>16</sup> This definition of authority corresponds to Article 54 paragraph 1 of the Federal Constitution of 18 April 1999 (SR 101)

<sup>17</sup> SR 946.231; AS 2002 3673

## 2. Control of Goods Act of 13 December 1996<sup>18</sup>

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based on the authority of the Confederation in foreign matters<sup>19</sup> as well as on Article 64<sup>bis</sup> of the Federal Constitution<sup>20</sup>,

...

### Art. 6 para. 1

<sup>1</sup> The granting of licences shall be prohibited if;

- a. the activity to which the licence relates is contrary to international treaties;
- b. the activity to which the licence relates is contrary to non-binding international control measures that are supported by Switzerland;
- c. corresponding compulsory measures have been enacted in terms of the Embargo Act of 22 March 2002<sup>21</sup>.

## 3. Nuclear Energy Act of 23 December 1959<sup>22</sup>:

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based on Article 24<sup>quinquies</sup>, 64 and 64<sup>bis</sup> of the Federal Constitution<sup>23</sup>

...

### Art. 5 para. 6

<sup>6</sup> The granting of licences in accordance with paragraph 1 above is prohibited in the event that corresponding compulsory measures have been enacted in terms of the Embargo Act of 22 March 2002<sup>24</sup>.

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<sup>18</sup> SR 946.202

<sup>19</sup> This definition of authority corresponds to Article 54 paragraph 1 of the Federal Constitution of 18 April 1999 (SR 101)

<sup>20</sup> This provision corresponds to Article 123 of the Federal Constitution of 18 April 1999 (SR 101)

<sup>21</sup> SR 946.231; AS 2002 3673

<sup>22</sup> SR 732.0

<sup>23</sup> These provisions correspond to Articles 90, 122 and 123 of the Federal Constitution of 18 April 1999 (SR 101)

<sup>24</sup> SR 946.231; AS 2002 3673

**Art. 18**      Referendum and Commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council determines the date of commencement hereof.

Commencement date: 1 January 2003<sup>25</sup>

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<sup>25</sup> BRB of 30 October 2002 (AS 2002 3679)