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Sanctions law – its significance for business entities

On 7 April 2022, the Government's draft law on special remedies for counteracting support for the aggression against Ukraine and for protecting national security ("Draft") was passed by the Polish Parliament.

The Senate will now continue working on the Draft.

The Draft aims to ensure the effective application of the provisions of Council Regulations (EC) ("**Regulations**") concerning restrictive measures regarding the aggression of the Russian Federation against Ukraine, and also the legal framework for – as announced by the Prime Minister – a ban on the import and transport of coal referred to under items 2701 or 2704 of the Combined Nomenclature, coming from the territory of the Russian Federation or Belarus to or via Poland.

The Draft provides for a number of provisions governing the competence of pertinent bodies to enforce compliance with the Regulations, including also by imposing fines of up to 20 million zlotys for failing to meet the obligations referred to in the Draft.

Importantly, the Draft envisages criminal liability for violating the requirements and prohibitions specified in the Regulations and the Draft by providing that such behaviour will be criminal.

The Draft introduces new prerequisites for the obligatory exclusion from a public procurement procedure under the Public Procurement Law.

Please be reminded that the restrictive measures under the Regulations, referred to in the Draft and applied accordingly, include but are not limited to: freezing all funds and economic resources owned or being in possession of, under active control of, or under the control

of natural or legal persons, entities or bodies referred to in the list kept by the pertinent Minister for Internal Affairs based on the Draft ("**list**"), regardless of freezing the aforementioned assets of the entities mentioned in the Regulations.

To enforce the application of the restrictive measures, tax authorities are to enjoy new powers

One of the Draft's most crucial points under discussion is the granting of new powers to the Head of the National Revenue Administration within the scope of tasks and powers introduced by EU regulations regarding the restrictive measures imposed on Russia and Belarus in the aftermath of the ongoing war in Ukraine.

First and foremost, the new prerogatives are focused on granting permits to release or make available some of the frozen financial or economic means that belong to the entities under EU sanctions and that are, in addition, on the list kept by the pertinent Minister for Internal Affairs.

All those matters will be resolved in the form of an administrative decision that may be appealed in the form of an application for re-examination.

The Head of the National Revenue Administration will have the power to impose financial penalties on entities obliged to meet the obligations given in EU regulations, as far as the entities put on the list are concerned, as regards:

- the freezing of funds or economic resources, or the prohibition of making them available;
- the immediate submission of information on transactions made in frozen accounts that belong to the entities under the sanctions; and

¹ Namely, in Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and participation of Belarus in Russia's aggression against Ukraine ("**Regulation 765/2006**"), and Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ("**Regulation 269/2014**"). The Draft is also intended to ensure the effectiveness of restrictive measures as may arise from Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (EU Official Journal L 229 of 31.07.2014, p. 1, as amended. 4) ("**Regulation 833/2014**"), and Council Regulation (EU) No 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (EU Official Journal L 0421 of 23.02.2022, p. 77, as amended. 5) ("**Regulation 2022/263**").

- any failure to comply with the prohibition to participate in actions aimed at omitting the freezing of financial means and economic resources (the last item pertains to any and all entities that would perform such actions).

In this respect, the Draft provides for an extremely severe fiscal sanction of up to 20 million zlotys that will be appealable.

The proposed regulations also provide for the tax authorities' new powers regarding the projected introduction of the prohibition to import to, and transit through Poland, any coal and coal coke that comes from the territory of the Russian Federation and Belarus. If a violation of the prohibition is found, the heads of the Customs and Tax Offices will be authorised to seize the goods and apply to the pertinent authority for a decision for the goods to be forfeited to the State Treasury.

Moreover, entities which violate the aforementioned restrictions will have to take into consideration the necessity to pay a financial penalty of up to 20 million zlotys, to be imposed by the Head of the National Revenue Administration via a decision subject to an appeal in the form of an application to re-examine the matter, to be filed with the authority.

As far as Public Procurement Law is concerned

The Draft introduces new prerequisites of obligatory exclusion from the public procurement procedure. Such prerequisites will make it impossible for persons and entities that directly or indirectly support Russia's aggression against Ukraine to effectively apply for public procurement in Poland.

The Ordering Party (Employer) – after the Draft has come into force – will be obligated to exclude contractors or participants in a competition:

- that are mentioned in the lists specified in Regulations 765/2006 and 269/2014;
- that are put on the national list kept by the Minister for Internal Affairs and Administration;
- whose beneficial owner is a person mentioned in the lists referred to in 1) or put on the list referred to in 2) or who has been a beneficial owner since 24 February 2022 if they have been put on the national list; and
- whose dominant unit is the entity referred to in the lists mentioned in 1) or put on the list referred to in 2) or who has been a dominant unit since 24 February 2022 if they have been put on the national list.

The novelty is the obligation to apply the aforesaid prerequisites of exclusion also to procedures below the statutory thresholds, and to procurements granted outside of Public Procurement Law.

The employer, because of the aforesaid prerequisites of exclusion, respectively regarding the procurement method and the stage of the procedure in progress, will:

- reject the application for admission to participate in the procedure or the offer of such a contractor or participant in the competition;
- not invite them to make an initial bid, a negotiable bid, an additional bid, a bid, or a final bid;
- not invite them to join negotiations or a dialogue, nor will the employer carry out any negotiations or a dialogue with such a contractor;
- reject the application for admission to participate in a competition; and
- not invite them to submit an entry or will not make an appraisal of the entry.

Interestingly enough, under Art. 7 of the Draft, the imposition of financial penalties on contractors who, within a period of new exclusion, will:

- apply for a public procurement or for admission to participate in a competition; or
- take part in a public procurement procedure or in a competition,
- will fall within the competence of the President of the Public Procurement Office.

The President of the Public Procurement Office will be authorised to impose on the aforementioned entities – via a decision – a financial penalty of up to 20 million zlotys.

Due to the new prerequisites to exclude a contractor from the procedure, there also arises the necessity to make an amendment to the PPL's executive provisions by specifying subjective (contractor-related) means of proof which the employer may request the contractor to submit to confirm the absence of grounds for exclusion from the procedure based on the newly introduced prerequisites.

The Draft also provides for severe criminal liability

Art. 15 of the Draft introduces severe criminal sanctions for:

- violating regulations regarding the embargo on certain goods that are the subject of trade with the Russian Federation, Belarus, and the separatist republics of the Donetsk and Luhansk oblasts of Ukraine;
- participating in actions, the purpose or effect of which, is to circumvent prohibitions included in the Regulations; and
- importing and transporting coal referred to under items 2701 or 2704 of the Combined Nomenclature, coming from the territory of the Russian Federation or Belarus to or via Poland.

The following actions will constitute a crime:

- violating the prohibition on the sale, delivery, transfer, or export of goods and technologies mentioned in the list in Appendix II to Regulation 2022/263 to any natural or legal person, entity or body in the specified territories, or for purposes of use in the specified territories; and
- the importing of coal coming from the territory of the Russian Federation and Belarus.

To date, violating prohibitions or helping to bypass them has not been punishable. This is now changed under the Draft.

The expected punishment for committing such crimes might range from 3 to 15 years of imprisonment.

Practically, this means that without extraordinary mitigation of punishment, courts will not be able to conditionally suspend the enforcement of the penalty, and the threat of punishment itself could be used by the Prosecutor's Office as independent grounds to apply to use pre-trial detentions.

According to the Draft, it is the person responsible for making a given commercial transaction who will be subject to criminal liability. The Draft's intention is to rule out the possibility of instituting proceedings against persons whose role in the illegal practice is to perform some activities only (e.g. as a driver or subcontractor) who might not be aware of the misconduct.

The applied penal mechanism aims to prevent the violation of bans on trading in specific goods and rendering specific services, as referred to in the Regulations and the Draft, with a severe and dissuasive sanction.

To ensure the effectiveness of prosecuting perpetrators, the Draft directly states that abolishing the provisions of the regulations on the bans, the violation of which is punishable, will not impede punishing the perpetrator who violated such bans when the bans were in effect.

Moreover, abolishing the provisions of the regulations to which the Draft refers within the scope of criminal liability will not be a prerequisite for expungement under law.

According to the Draft, the Court may also order the forfeiture of goods that are the subject-matter of a crime even if they are not owned by the perpetrator.

It is worth noting the provision under criminal law that prohibits applying, using, or propagating symbols or names that support the aggression of the Russian Federation against Ukraine. Violating this provision is subject to a fine, a restriction of liberty, or imprisonment of up to a maximum of 2 years.

It should be emphasised that legislative works on the Draft are still pending in the Polish Parliament, and so the wording of it might still change. As soon as there are further developments, we will let you know.

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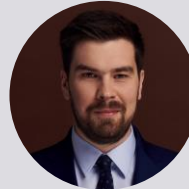


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