



UKRAINE

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IMPLEMENTATION AND LAW

As a member of the United Nations, Ukraine implements sanctions adopted by the United Nations.

Until 2014, UN sanctions were implemented through government decisions that would normally define *ad hoc* the scope of the restrictive measures adopted by Ukraine, the competent authorities tasked with implementation of the adopted measures, as well as the mechanisms for their enforcement. With the enactment of the 2014 legal framework for the adoption of Ukraine's autonomous sanctions, however, the Law of Ukraine on Sanctions № 1644-VII of 14 August 2014 (*Закон України «Про санкції»*) (the 'Sanctions Law' or the 'Law') serves as the new legal basis for the implementation of UN sanctions.

The Law also cements the foundations for the adoption of Ukraine's autonomous sanctions. It comprises six articles:

1. Ukraine's sovereign right to defence;
2. the legal basis for the adoption of sanctions;
3. grounds and principles governing the adoption of sanctions;
4. types of sanctions;
5. adoption, cancellation and amendment of sanctions;
6. final provisions.

While the Law does not address some of the practical issues of sanctions implementation,¹ further amendments to the Law are being considered in the Parliament of Ukraine.²

In addition, implemented through the Ukrainian National Security and Defence Council's decision of 28 April 2017, 'On application of individual special economic and restrictive measures (sanctions)' and enacted by the decree of the President of Ukraine from 15 May 2017 No 133, is Ukraine's designated persons list. This target list is regularly amended. For example, in March 2019, the President of Ukraine enacted the decree of the Ukrainian National Security and Defence Council imposing new, and extending existing, sanctions against 294 legal entities and 848 individuals.³

Key features of the sanctions legislation

In Article 3, the Law sets out four basic grounds on which sanctions against foreign natural and legal persons, as well as against foreign states and organisations, can be adopted:

- (i) Actions of a foreign state, foreign legal entity or natural persons, or other entities, that pose a real and/or potential threat to the national interests, national security, sovereignty and territorial integrity of Ukraine, facilitate terrorist activity and/or violate human and civil rights and freedoms, or interests of the society and the state, result in occupation of territories, expropriation or restriction of property rights, material damages, or obstacles to sustained economic development and full-fledged exercise of rights and freedoms by Ukrainian citizens;
- (ii) Resolutions of the General Assembly and Security Council of the United Nations;
- (iii) Decisions and regulations of the Council of the European Union;
- (iv) Violations of the Universal Declaration of Human Rights and the Charter of the United Nations.

It is noteworthy that, pursuant to item (iii) above, Ukraine has effectively committed to align its sanctions regime with that of the EU. Nevertheless, as drafted, this provision does not cause a person designated in the EU to become automatically subject to sanctions in Ukraine; it merely serves as a basis for a possible



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designation in Ukraine. Accordingly, the designated persons list in Ukraine does not coincide with the EU list of designated persons.

Adoption, amendment or annulment of sanctions

The Parliament of Ukraine, as well as the President, the government, the national bank and the security service of Ukraine, all have the power to initiate the process for the adoption of sanctions, their amendment or lifting, by submitting the sanctions-related proposal to the National Security and Defence Council of Ukraine ('NSDC').

The NSDC next reviews the proposals and decides whether to approve or reject the sanctions proposal. If the proposal concerns individual sanctions, if approved, it would be implemented through the Order of the President of Ukraine. Sectoral sanctions-related proposals, if approved, would be implemented through the Order of the President of Ukraine and confirmed by a decision of the Parliament of Ukraine to that effect within 48 hours following approval by the President. In both cases, the sanctions decisions enter into force upon their publication in the *Official Gazette*.

Types of sanctions

The Law provides for the adoption of individual sanctions – i.e., targeting specific natural persons, legal entities and/or other types of organisations – as well as sectoral sanctions that extend to certain economic activities, geographical areas, or group of entities.

In Article 4, the Law also provides the list of measures that can be adopted as sanctions:

- asset freezes – i.e., temporary restriction of a person's right to use and manage property owned by them;
- restriction of trade-related and trading operations;
- restriction, partial or complete cessation of the transit of natural or other resources, termination of flights and transportation in the territory of Ukraine;
- prohibition to move capital outside of Ukraine;
- suspension of execution of economic and financial obligations;
- revocation and termination of licences and other permits that must be procured to conduct certain types of activities, in particular, revocation or cessation of special permits for the use of subsurface resources;
- prohibition to participate in privatisation or lease of state property for residents of a foreign state and persons who are directly or indirectly controlled by residents of a foreign state or acting in their interests;
- prohibition to use Ukraine's radio frequencies;
- restriction or cessation of telecommunication services and the use of general usage telecommunication networks;
- exclusion from tenders for government procurement of goods, works, and services of state-owned legal entities – residents of a foreign state, and legal entities partly owned by a foreign state; as well as government procurement from other legal entities that sell goods, works, and services originating from a sanctioned foreign state;

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- prohibition to access the territorial waters of Ukraine, as well as its inland waters and ports for foreign civilian and military ships; and prohibition to access Ukraine's airspace or for foreign aircraft to land;
- complete or partial prohibition to perform operations with the securities issued by designated persons;
- prohibition for the National Bank of Ukraine to issue permits and licences for investments in a foreign state or to allocate currency to accounts and make deposits in a foreign state;
- suspension of the issuance of permits and licences for importing foreign currency into Ukraine or exporting currency from Ukraine; and restriction of cash pay-outs on bankcards issued by foreign resident financial institutions;
- prohibition for the National Bank of Ukraine to register a participant of the international payment system, where the paying institution is a foreign resident;
- prohibition to increase the statutory capital for entities in which a foreign resident, foreign state, or a legal entity with a non-resident or foreign state shareholder owns a 10% or more interest or can exert influence over the management or business activity and operations of such legal entity;
- implementation of additional measures in the area of ecological, sanitary, phytosanitary, and veterinary control;
- termination of trade agreements, joint ventures and industrial programmes in certain areas, in particular, in defence and security sectors of economy;
- prohibition to transfer technologies and intellectual property or rights thereto;
- cessation of cultural exchanges, scientific cooperation, educational and sports contacts, and entertainment programmes with foreign states and foreign legal entities;
- refusal to issue visas and/or cancellation of visas for residents of foreign countries, impositions of other restriction to prohibit entry into Ukraine;
- termination of international agreements ratified by Ukraine;
- cancellation of official visits, sessions and negotiations regarding contracts or agreements;
- withdrawal of the Ukrainian state awards.

Links and Notes

¹ Such as the respective roles of different actors in this process, definition of the terms used, jurisdictional scope of the sanctions, mechanisms for sanctions implementation, control over sanctions compliance, penalties for non-compliance with the sanctions.

² Including draft of the amendment that seeks to align Ukrainian sanctions with the sanctions imposed by the United States and the United Kingdom following Brexit. See, Draft Law on Amendments to the Law of Ukraine 'On Sanctions' (regarding the synchronisation of sanctions with the international community) available at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64650.

³ Decree of the President of Ukraine No. 82/2019 dated 19 March 2019 enacting the NSDC Decision dated 19 March 2019 'On Imposition, Cancellation and Amendment of Personal Special Economic and Other Restrictive Measures (Sanctions)'. The decree entered into force on 21 March 2019. The sanctions list includes individuals and companies who were involved in building a transport bridge across the Kerch Strait, the Kerch Strait incident with Ukrainian navy boats, organising elections in the self-proclaimed Donetsk and Luhansk people's republics and Crimea, individuals who travelled to and from Crimea in violation of Ukrainian laws, distributed 'printed matter of anti-Ukrainian content', and 'have unlawfully received and are using a museum collection owned by Ukraine.'

Other restrictive measures and sanctions can be adopted as deemed necessary by the Ukrainian authorities to achieve the purpose and goals of the Law.

POWERS AND PROVISIONS

The Law does not grant specific enforcement powers to the regulatory authorities in Ukraine. The Law includes no industry-specific provisions, nor guidance on making voluntary disclosures of violations or infringements of the Law. There is no procedure for obtaining licences for activities otherwise prohibited by the Law.

KEY AGENCIES

The Law does not create a single authority competent in the area of sanctions enforcement. In practice, however, depending on the nature of the restrictive measure (sanction) adopted, the implementation thereof may fall within the purview of a state agency whose principal activity covers the specific measure, from Border Control to the National Bank of Ukraine or the Security Service of Ukraine, etc.

Although the Law is silent about the specific allocation of competencies, these are derived from the general legal order and the principles of administrative law.

The Law does not provide for licensing of sanctionable activities; as such, no state body would be able to issue licences or exemptions from the application of sanctions.

Ukraine does not maintain antiboycott or sanctions-blocking legislation.

ENFORCEMENT AND PENALTIES

The Law does not include provisions on penalties for violation of the sanctions regime.

Neither the Criminal Code of Ukraine, nor the Code on Administrative Liability of Ukraine contain specific provisions on sanctions violation or misconduct in relation to sanctions enforcement.

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Nevertheless, certain types of sanctionable conduct may be caught by other provisions of Ukrainian law targeting fraud, corruption or threats to national security.

OUTREACH

In Ukraine, the regulatory authorities do not generally conduct outreach on sanctions compliance for potentially affected industry sectors or the public.

This chapter is reprinted from the book **Sanctions in Europe**, published
by WorldECR, the journal of export controls and sanctions,
January 2020.

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