April 16, 2022

With effect as of 16 April 2022, Poland has introduced sanctions legislation in the form of the Act on special measures to combat support for aggression against Ukraine and to protect national security (commonly referred to as the "Sanctions Act").

The new law is an addition to a package of restrictive measures (sanctions) that bind Poland and have been adopted at the European Union level. The Sanctions Act:

i. creates a national list of persons and entities subject to sanctions (sanctions list);

ii. introduces a new restrictive measure in the form of disqualification of targeted entities from public procurement proceedings;

iii. imposes a national embargo on coal from the territory of Russia and Belarus;

iv. provides for administrative and criminal liability for violations of the Sanctions Act and EU regulations imposing sanctions on Russia and Belarus.

Who may be designated on the national sanctions list and how?

The national sanctions list, which is maintained by the Minister of Internal Affairs and Administration, is supplemental to EU sanctions lists. Therefore, the Polish list may only feature entities which have not already been designated by the EU.

The following persons and entities are liable to be listed:

- those directly or indirectly supporting Russian aggression against Ukraine or any serious infringements of human rights, antidemocratic repressions or other actions that present a serious threat to democracy or rule of law in Russia or Belarus;

- those directly associated with such persons or entities, including especially by reason of personal, organisational, economic or financial links, provided they have been found likely to use the means or resources in their possession to support any targeted activities.

During the legislative process, a controversial provision has been removed which proposed that the list also include persons and entities presenting a threat to the national security of the Republic of Poland.

The Minister’s decision to put a person or entity on the list is not appealable in course of the regular administrative procedure and is immediately enforceable on the day following its publication in the Public Information Bulletin. The decision may be contested by:
Note that initiating either of these procedures generally will not postpone the listing or suspend its effects.

**Restrictive measures under the sanctions Act. disqualification from public contracting**

Persons and entities on the national sanctions list will face restrictive measures corresponding to those under EU legislation, namely:

- freeze of all funds and economic resources owned, held or controlled by targeted entities;
- ban on provision of funds or economic resources to targeted entities, directly or indirectly;
- ban on participation, knowingly and intentionally, in activities intended to evade the above restrictions.

The Sanctions Act additionally provides for a new restrictive measure, i.e. disqualification from public procurement proceedings procedures or contests held under the Public Procurement Act. Such disqualification will apply to:

- contractors or contest participants on EU sanctions lists targeting Russia or Belarus;
- contractors or contest participants on the national sanctions lists;
- contractors or contest participants whose beneficial owners are listed on any of the above sanctions lists;
- contractors or contest participants whose parent companies are listed on any of the above sanctions lists.

A contractor will remain disqualified for as long as the reasons for the disqualification are valid.

While the new measure will also apply to ongoing procedures still pending on the effective date of the Sanctions Act, there will be a 14-day transition period for the contractors and contracting entities to, inter alia, adapt their contract documentation.

**Embargo and new obligations on entities involved in coal trading**

The lawmakers moved to impose a domestic embargo on coal originating from Russia or Belarus. While coincident in time with the regulations adopted by the EU on 8 April 2022, the measure differs somewhat from them, with the main differences between the two regimes being as follows:

<table>
<thead>
<tr>
<th>Council Regulation (UE) 2022/576</th>
<th>Sanctions Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sanctioned product</strong></td>
<td>Coal and other solid fossil fuels as per Annex XXII</td>
</tr>
<tr>
<td><strong>Originating country</strong></td>
<td>Russia</td>
</tr>
<tr>
<td><strong>Effective date for pre-existing contracts</strong></td>
<td>10 August 2022</td>
</tr>
</tbody>
</table>

The Sanctions Act prohibits both imports into Poland of coal originating in Russia or Belarus and the transfer of such coal between two third countries through the territory of Poland, or from the territory of another EU Member State into Poland.

The embargo will introduce new documentation requirements for entities trading in coal within Poland:
Liability for non-compliance

There will be parallel administrative and criminal liability regimes for non-compliance with the Sanctions Act and the EU’s sanctions regulations.

In particular, with regard to financial penalties available in the administrative process, these can be imposed by the following authorities:

<table>
<thead>
<tr>
<th>Infringement</th>
<th>Authority</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failing to comply with obligations or violating freezes or bans on provision of funds to targeted entities</td>
<td>Head of the National Revenue Administration</td>
<td>up to PLN 20 million</td>
</tr>
<tr>
<td>Seeking participation or participating in public procurement procedures despite disqualification</td>
<td>President of the Public Procurement Office</td>
<td>up to PLN 20 million</td>
</tr>
<tr>
<td>Infringing the ban on imports or transfer of coal originating in Russia or Belarus within Poland</td>
<td>Head of the National Revenue Administration</td>
<td>up to PLN 20 million</td>
</tr>
<tr>
<td>Failing to comply with duties relating to country-of-origin documentation or provision of country-of-origin declarations to coal purchasers</td>
<td>Provincial Trading Inspector</td>
<td>up to PLN 10 million</td>
</tr>
</tbody>
</table>

Moreover, the Sanctions Act establishes criminal liability of individuals for:

- violating EU sanctions against Russia and Belarus, including the bans on supplying or purchasing certain products and technologies there;
- participating in any activities the aim or effect of which is to violate the EU sanctions as above;
- violating the coal embargo under the Sanctions Act.

All of the above offences carry a penalty of imprisonment for a term of no less than 3 years.

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