

15 May 2023

POLISH UPDATE: RUSSIA SANCTIONS

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POLISH AUTONOMOUS RESTRICTIVE MEASURES AGAINST RUSSIA

Following the enactment of EU Regulations imposing sanctions against Russia in response to its invasion of Ukraine, the Polish Parliament has enacted an Act on Special Solutions Counteracting Support for Aggression Against Ukraine and Serving the Protection of National Security (*Ustawa z dnia 13 kwietnia 2022 r. o szczególnych rozwiązaniach w zakresie przeciwdziałania wspieraniu agresji na Ukrainę oraz służących ochronie bezpieczeństwa narodowego*) - (the "Act"). The Act entered into force on 16 April 2022, after it was published in the Journal of Laws on 15 April 2022. The Act has since been amended twice. First on 18 August 2022 and then on 28 January 2023.

The provisions of the Act can be divided into three groups, each with different objectives.

The **first group** consists of regulations intended to introduce additional, stand-alone sanctions to those adopted at EU level, where Poland considered those measures to be insufficient.

The **second group**, are provisions implementing certain sections of EU Regulations, namely:

- 1) Council Regulation (EC) No 765/2006 of 18 May 2006, concerning restrictive measures in view of the situation in Belarus and the participation of Belarus in Russia's aggression against Ukraine¹ ("Regulation 765/2006");
- 2) 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 Ukraine² ("Regulation 269/2014");
- 3) Council Regulation (EU) No 833/2014 of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine³ ("Regulation 833/2014");

which required additional regulation at national level.

This concerns, in particular, determining the **authorities competent to enforce** EU sanctions and the provisions of national law introducing EU sanctions in Poland, as well as specifying **penalties** to be applied for an infringement of these sanctions.

The **third group** are provisions introduced by the first amendment to the Act. They include:

- 1) the possibility of imposing (in particular circumstances) a forced, temporary administration over an enterprise conducted by a person or entity sanctioned under the Act, in order to:
 - a. dispose of its financial resources, funds or economic resources within

¹ Consolidated text: [Council Regulation \(EC\) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine](#);

² Consolidated text: [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](#);

³ Consolidated text: [Council Regulation \(EU\) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#);

- the meaning of Regulation 765/2006 or Regulation 269/2014, or
- b. take over its financial resources, funds or economic resources within the meaning of Regulation 765/2006 or Regulation 269/2014 by the State Treasury;
- 2) a mechanism of supporting employees of sanctioned entities.

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As the legislative process of the initial version of the Polish Act took place before the announcement of the EU's fifth package of sanctions, which came into force on 9 April 2022, some of the solutions applied in it partly overlap with those introduced at EU level.

Imports of coal

The Act introduces a ban on imports of Russian and Belarusian coal (CN codes: 2701 and 2704) to Poland, or its transit through Poland, including its transport from another EU Member State to Poland. The Russian coal ban coincides with the fifth package of EU restrictions against Russia.

The Act states that:

- any entity that has transferred coal into Poland is obliged to have and make available upon the request of the relevant authority, **documents** confirming the country of origin of the coal, the date of the coal entering Poland, and in the case of coal from Ukraine, also information on the region where the coal was mined; the documents must be kept for a period of five years from the date of the coal entering Poland;
- companies that store or distribute coal imported into Poland before 16 April 2022 are required to **provide evidence** confirming that the coal was purchased, introduced or relocated to Poland **before 16 April 2022** when the ban on imports came into force.
- during every coal transaction in Poland, the seller **must declare** to the buyer the following information:
 - 1) the country of origin of the coal;
 - 2) the date of its entry into Poland – if the coal is from abroad;
 - 3) the region in which the coal was mined and the date of its entry into Poland – if the coal comes from Ukraine;
 - 4) the date when the coal was purchased from the mine – if the coal is from Poland.

which seller's declaration is made under criminal liability for making false statements (it must include the statement which translates to '*I am aware of the criminal liability for making a false statement*').

Any person or entity that fails to comply with these information obligations is subject to a **fine of up to PLN 10 million** (approximately EUR 2.15 million). The fine is imposed by an administrative decision issued by a regional inspector of the Trade Inspection (*wojewódzki inspektor Inspekcji Handlowej*)⁴.

In the event of a violation of the ban on importing or transporting coal originating from Russia or Belarus, the Act provides for the penalty of **fine of up to PLN 20 million** (approximately EUR

⁴ <http://wiih.org.pl/index.php?id=125>

4.3 million) and **imprisonment for at least three years.**

Public procurement

A restrictive measure prohibiting awarding to or continuing with the Russian nationals and entities execution of any public or concession contract falling within the scope of the EU public procurement law has been introduced in the fifth package of EU sanctions prohibiting the participation of Russian nationals and entities in public procurement proceedings in EU Member States.

The Polish Act somewhat extends that sanction, excluding certain entities (see below) from public procurement proceedings and design contests conducted under the Polish Public Procurement Law.

The exclusion applies also to public procurement procedures and design contests initiated and not concluded by the date of the Act entering into force, i.e. 16 April 2022, **with the transition period of at least 14 days**, after the lapse of which the precluded entities must not be taken into account by the contracting authority in further public procurement proceedings / design contests.

The exclusion under the Act applies, among other things, to:

- contractors or participants of a design contest, **included in the lists** of sanctioned entities set out in Regulation 765/2006 and Regulation 269/2014, or entered onto the Polish list of sanctioned entities on the basis of a decision of the Polish Minister of the Interior and Administration (the "**Minister**").
- contractors and participants of a design contest whose **beneficial owner** is one of the entities included in the lists of sanctioned entities set out in Regulation 765/2006 and Regulation 269/2014, or entered onto the Polish list of sanctioned entities on the basis of a decision of the Minister.
- contractors and participants of a design contest whose dominant entity is one of the entities included in the lists of sanctioned entities set out in Regulation 765/2006 and Regulation 269/2014, or entered onto the Polish list of sanctioned entities on the basis of a decision of the Minister.

A person or entity subject to exclusion pursuant the Act who applies for or continues to participates in procurement proceedings or a design contest is subject to a fine of up to PLN 20 million (approximately EUR 4.3 million).

The fine is imposed by means of a decision issued by the President of the Public Procurement Office (*Prezes Urzędu Zamówień Publicznych*).⁵

Extended list of sanctioned entities

The Act authorises the Minister to publish a list of sanctioned entities supplementary to those set out in Regulation 765/2006 and Regulation 269/2014.

The decision on inclusion in the list upon the request of several authorities listed in the Act may be issued by the Minister in relation to:

- persons and entities with financial resources, funds and economic resources within the meaning of Regulation 765/2006 or Regulation 269/2014, directly or indirectly **supporting**:
 - 1) the **aggression** of the Russian Federation against Ukraine initiated on 24 February 2022, or
 - 2) **serious violations** of human rights or repression of civil society and democratic

⁵ <https://www.uzp.gov.pl/en/contact>

opposition, or whose activities constitute **another serious threat** to democracy or the rule of law in the Russian Federation or Belarus; or,

- which are **directly related** to these individuals or entities, in particular by personal, organisational, economic or financial links, or which are likely to use such funds, resources or economic resources for that purpose.

The individuals and entities included in the list published by the Minister might be in particular (as specified in the decision applying the Polish sanctions) subject to:

- 1) the **restrictive measures** set out in paragraphs 1 to 3 of Article 2 of the Regulation 765/2006, under the conditions set out in it, with the exception of Articles 1fb, 1fc and 7;
- 2) the **restrictive measures** set out in Article 2 and Article 9 of the Regulation 269/2014, under the conditions set out in it, excluding Article 8, Article 12 and Article 16;
- 3) **exclusion from a public procurement** procedure or competition conducted under the Polish Public Procurement Law;
- 4) entry on the **list of foreigners** whose residence in Poland is **undesirable**, referred to in Article 434 of the Polish Act on Foreigners.

The Act stipulates that sanctions introduced under the Act will not apply in the scope in which they duplicate the measures specified in Regulation 765/2006 or Regulation 269/2014.

The list of sanctioned entities published by the Minister and the decisions in respect of the entry on the list are available at the following government website (in the Bulletin of Public Information): <https://www.gov.pl/web/mswia/lista-osob-i-podmiotow-objetych-sankcjami>

The entries on the list and the measures adopted through the Minister's decision are **immediately enforceable** the following day after being published online as stated above.

The decisions are not subject to any administrative appeal but might be challenged with the complaint before the administrative court.

The list published and updated by the Minister contains several dozen individuals and legal entities of Russian and Belarusian origin.

According to the individual decisions issued by the Minister, the Polish list includes essentially individuals linked to Vladimir Putin or Alexander Lukashenko, among others:

- Oleg Deripaska – Russian oligarch, the owner of the corporation manufacturing BTR-80 armoured personnel carriers used during the armed aggression in Ukraine, who is the beneficial owner of companies operating, among other things, in the Polish construction sector;
- Mikhail Fridman – Russian oligarch, founder of ALFA Bank - Russia's largest private bank, the fifth largest bank in the Russian Federation;
- Michail Gucerjew – a Russian businessman strictly connected to Alexander Lukashenko, involved among other things in the energy, potassium and hospitality sectors in Belarus.
- Sait Salam Gucerjew – Michail Gucerjew's brother, who was made the beneficial owner of the entities controlled by his brother as a result of the latter being subject to sanctions imposed by the European Union and the United Kingdom.

as well as individuals and entities whose business activities potentially bring, directly or indirectly, significant financial benefits to the Russian government or who otherwise support Russia's military activities in Ukraine, including by manufacturing military supplies. The entities sanctioned under Polish Act are, among others:

- PAO Gazprom – the owner of a 48% stake in the Polish company "EUROPOL GAZ" S.A., which owns the Polish part of the Yamal-Europe transit gas pipeline. The imposed sanctions include a freezing of PAO Gazprom's shareholder rights in EuRoPol Gaz S.A.

On 14 November 2022, the Minister imposed a forced, temporary administration upon shares held by PAO Gazprom in the EuRoPol Gaz S.A.

As justified in the decision, the adopted model for the management of the EuRoPol Gaz S.A. requires cooperation between the board members appointed by the Polish company PGNiG and PAO Gazprom. However, due to the current situation, the cooperation between board members is limited, which has resulted in a decision-making deadlock both at the level of the company's board and at the general meeting of shareholders (resolutions are adopted by a majority of three-quarters of the votes, as well as by unanimity of the two main shareholders).

As the Minister stated, the decision-making difficulties in EuRoPol Gaz S.A. hindered proper cooperation with the transmission system operator, which had an impact on the security of gas supplies to domestic and foreign customer, and thus the economic and energy security of the state.

On 25 April 2023, the forced administration was extended by up to 12 months.

- Go Sport Polska sp. z o.o. – owner of a chain of sport equipment shops, previously French-owned company, bought by Singapore-based SPORTMASTER OPERATIONS PTE LTD whose real beneficiaries are persons of Russian origin, sanctioned by Ukraine in 2021;
- Kaspersky (Kaspersky Lab) and its Polish subsidiaries – one of the world's largest anti-virus software providers. Kaspersky Lab software is banned from US federal systems. Cyber security warnings against the threat posed by Kaspersky Lab software have been issued by cyber security authorities in the US, the European Union, the UK, Germany, Italy, the Netherlands and Lithuania.

Among other entities included on the Polish sanctions list are OAO Novatek and its Polish subsidiary Novatek Green Energy Sp. z o.o.. The former is ranked fourth on the list of the largest Russian companies and second largest natural gas producer in Russia. Its Polish subsidiary used to conduct licensed activity of supplying gas fuels to customers located in Poland.

As a result of its funds and economic resources being frozen, as well as a prohibition on making the funds or economic resources available to it, Novatek Green Energy Sp. z o.o. had to cease the supply of natural gas to several municipalities in Poland, as of the date of publishing the list of sanctioned entities i.e. 27 April 2022.

In order to restore the gas supply to Novatek's customers, on 29 April 2022, the Polish Prime Minister issued an order under the Crisis Management Act, obliging PGNiG (Polish Gas and Oil Company – the state-controlled natural gas producer and supplier) to take over the necessary infrastructure (including 85 km of gas network) as well as documentation from Novatek Green Poland Sp. z o.o., to provide gas supply to Novatek's former customers.

Changes on the Polish list of sanctioned entities

According to media reports, Novatek Green Poland Sp. z o.o., as well as other entities included on the Polish sanctions list, have applied to the relevant Polish authorities for the release of frozen funds and/or economic resources, sought approval to sell the Russian-owned shares, or asked to be removed from the list.

Refusals

As of 15 May 2023, the Minister had issued several decisions refusing to remove several sanctioned persons and entities from the list. Among others, this concerned Go Sport Polska Sp. z o.o., Medmix Poland Sp. z o.o. and Novatek Green Poland Sp. z o.o.

Medmix Poland

Media reports indicate that the Office of Foreign Assets Control, which is the agency of the US Treasury Department, intervened with the Polish government in the Medmix Poland case.

Due to the sanctions imposed on the company, which owns a plant in Poland, the recipients of the products manufactured by it, which include US defence and space industry companies, as well as companies such as Tesla, Airbus, Boeing and Apple, have been affected.

Press reports also indicate that a separate letter on the same issue was sent to the Polish government by SpaceX, the company owned by Elon Musk.

As of 15 May 2023, these interventions had no effect, as Medmix Poland Sp. z o.o. remains on the list of sanctioned entities.

Removals from the list

On the other hand, the Minister has lifted sanctions in respect to three entities and one individual.

Maga Foods

Maga Foods sp. z o.o. and its subsidiary Maga Dystrybucja 2 sp. z o.o. were removed from the list of sanctioned entities at their request.

These entities, operating in the food industry, were sanctioned in the first place due to being indirectly controlled by the oligarch Mikhail Fridman, founder of ALFA Bank – Russia's largest private bank and the fifth largest bank in the Russian Federation.

When the companies found themselves on the sanctions list, their owner put them into liquidation. To save the companies, on 22 July 2022, a group of its employees decided to acquire all the shares in the company under liquidation through Brandez sp. z o.o.

As a result of the change in the shareholding structure, the reasons for sanctioning these companies ceased. The Minister's decisions to remove them from the list were issued respectively on 10 and 18 August 2022.

KAMAZ and Aleksandra Melniczenko

PJSC Kamaz – the largest Russian truck manufacturer in the Russian Federation and Aleksandra Melniczenko – affiliated with SUEK Polska Sp. z o.o. and EUROCHEM POLSKA Sp. z o.o., were removed from the Polish list of sanctions due to the fact that they were sanctioned in the meantime by the Council of the European Union under Regulation 269/2014.

The Polish Act stipulates that sanctions introduced under it will not apply in the scope in which they duplicate the measures specified in Regulation 765/2006 or Regulation 269/2014.

Some other sanctioned entities

Gazprom Export LLC

On 28 September 2022, the Minister issued a decision on sanctioning Gazprom Export LLC ("GEX") with its registered office in Saint Petersburg, Russia. In particular, GEX has been sanctioned with the freezing of its financial and economic resources within the meaning of

Regulation 269/2014. It is also prohibited to provide GEX, directly or indirectly, with any financial or economic resources.

GEX's activities are of strategic importance for the government of the Russian Federation. Its main focus is the export of natural gas. In 2021, GEX generated revenues of 22.3 billion roubles. GEX therefore operates in economic sectors that provide the government of the Russian Federation with a significant source of revenue, and is therefore responsible for materially or financially supporting the activities that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

Igor Petrov and his companies

On 23 January 2023, Igor Petrov, accused of spying for the Russian Federation, arrested by the Polish authorities, was added to the sanctions' list. He reportedly gathered information on the combat readiness of the Polish Armed Forces as well as NATO troops stationed in Poland.

The Minister also decided to sanction four companies linked to Igor Petrov: Arena sp. z o.o. VAN BERG sp. z o.o., BALTIC SPORT TRADE sp. z o.o. and OOO ATM.

PUNITIVE MEASURES

The Act provides for a series of punitive measures against businesses and individuals who fail to abide by restrictive measures introduced by the Act and the EU Regulations.

Breach of Polish sanctions

First of all, in addition to already mentioned penalties for a violation of the ban on coal imports and exclusion from public procurement proceedings, **a fine of up to PLN 20 million** (approximately EUR 4.3 million), may be imposed on any person or entity that, in relation to an entity included in the list published by the Minister, fails to:

- **freeze** financial resources, funds and other economic resources, as prescribed by Article 2 clause 1 or 2 of Regulation 765/2006 and Article 2 of Regulation 269/2014;
- fulfil their obligation to **immediately transfer information** under Article 4 clause 2 or Article 5 of Regulation 765/2006 or under Article 7 clause 1 or Article 8 of Regulation 269/2014;
- comply with the **prohibition on knowingly and intentionally participating** in activities aimed at circumventing the application of the restrictive measures specified in Article 2 clause 1 or 2 of Regulation 765/2006 or Article 2 of Regulation 269/2014;
- comply with the **exclusion from** public procurement proceedings and design contests under **public procurement** law by competing in or submitting a request for participation in the proceedings or design contests.

The fine is imposed by a decision issued by the head of the customs and tax office (*naczelnik urzędu celno-skarbowego*).

Breach of EU sanctions

In addition to the fines, the Act provides for a **penalty of imprisonment of at least three**

years for:

- **individuals** who are in breach of **restrictive measures** under Regulation 765/2006, Regulation 833/2014 and Regulation 2022/263,⁶ (as well as the ban on Russian and Belarusian coal imports introduced by the Act, as already mentioned in the Imports of Coal section of this alert);
- anyone who **participates in activities aimed at or resulting in circumventing** the restrictive measures under Regulation 765/2006, Regulation 833/2014 and Regulation 2022/263, listed in the Act.

Where the act violating restrictive measures is committed in the course of business activity, the **individual responsible for the conclusion of the business transaction** bears criminal liability (and not the entity – legal person which they represent).

In addition to imprisonment, the court may order the **forfeiture of any goods that are the subject of the offence, even if they are not the property of the offender.**

As of the date of this alert the Act does not provide for penalties for violations of the sanctions introduced as part of the fifth and subsequent packages of EU sanctions. Updating the list of sanctions whose violation is subject to penalties under the Act requires passing the amendments to the Act.

AMENDMENTS TO THE ACT

Forced administration of sanctioned entities

Grounds for establishing forced administration

The amendment to the Act that has entered into force on 18 August 2022, provides the minister competent for economic affairs with a power to impose a forced, temporary administration upon an enterprise conducted by person or entity that, following a decision issued by the Polish Minister of the Interior and Administration under the Act, is subject to the restrictive measures set out in paragraphs 1 to 3 of Article 2 of Regulation 765/2006 or Article 2 and Article 9 of Regulation 269/2014.

This forced administration may be established over an enterprise conducted by a sanctioned person or entity in order to enable:

1. the **disposal of its financial resources, funds or economic resources** within the meaning of Regulation 765/2006 or Regulation 269/2014 – if it is necessary **to ensure the functioning of an enterprise conducting economic activity in Poland** in order to:
 - a. maintain jobs in that enterprise,
 - b. maintain the provision of public utility services or other tasks of public character by that enterprise,
 - c. protect the economic interests of Poland.
2. **a takeover of its financial resources, funds or economic resources** within the meaning of Regulation 765/2006 or Regulation 269/2014 by the Polish State Treasury – if it is necessary to **protect an important public interest, to protect the economic interest of Poland or to ensure national security.**

The establishment of the forced administration **takes a form of an administrative decision**

⁶ Council Regulation (EU) No 2022/263 of 23 February 2022 on restrictive measures in response to the recognition of the non-government-controlled areas of Ukraine's Donetsk and Luhansk regions and ordering the deployment of Russian military forces in those areas

issued by the minister competent for economic affairs. The decision must:

1. identify the person or entity in possession of the financial resources, funds or economic resources within the meaning of Regulation 765/2006 or Regulation 269/2014 subject to the forced administration;
2. indicate a scope of the financial resources, funds or economic resources within the meaning of Regulation 765/2006 or Regulation 269/2014 subject to the forced administration;
3. specify the period for which the forced administration is established, which will not exceed six months, though the period may be extended once, by up to another six months;
4. indicate the person designated to execute the forced administration - the administrator (in Polish: "zarządcą"), who must meet the requirements set out in clause 7 of Article 6a of the Act. In particular, the administrator must have a university degree and experience in the field of business management or business consulting.

The role of the administrator

The administrator:

1. identifies the financial resources, funds or economic resources within the meaning of Regulation 765/2006 or Regulation 269/2014 which belong to the sanctioned person or entity at the date of their appointment, including property, funds and property rights to which the listed person or entity is entitled, and its receivables.
 2. ensures the continuity of the business activity conducted by the enterprise;
 3. manages the enterprise. In particular, the administrator is vested with the right to adopt resolutions and decisions on all matters reserved to the competent authorities and bodies of the entity;
 4. exercises the powers vested in a sanctioned person or entity, in particular exercises the rights attached to such person's or entity's shares;
 5. takes measures necessary to prevent the use of the financial resources, funds or economic resources subject to its administration with a goal to support directly or indirectly, among other things, armed aggression in Ukraine, serious violations of human rights or repression against civil society.
- until all of the financial resources, funds or economic resources under the forced administration have been disposed of, or until they are taken over by the Polish State Treasury.

Disposal of the financial resources, funds or economic resources

If the forced administration is imposed to enable the disposal of the enterprise's financial resources, funds or economic resources within the meaning of Regulation 765/2006 or Regulation 269/2014, the administrator is entitled to dispose of those funds and resources in the name and on behalf of the person or entity subject to the forced administration, on the basis of a power of attorney. However, a power of attorney is not required for disposals within the scope of ordinary management activities.

If, within the period for which the administration was imposed, not all of the financial resources, funds or economic resources subject to forced administration are disposed of, the District Court for the city of Warsaw will order the disposal of such funds or resources by the administrator.

The court determines the manner in which the funds and resources are to be disposed of and the deadline for taking the steps necessary for doing so.

As a general rule, the business under administration should be disposed of in full. Where this is not possible, an organised part of the company may be sold.

Priority in the acquisition of the company or its organised part is given to a company with the

participation of more than half of the employees of the enterprise over which the forced administration has been established.

Takeover of the financial resources, funds or economic resources

If the forced administration is imposed to enable taking over its financial resources, funds or economic resources within the meaning of Regulation 765/2006 or Regulation 269/2014 by the Polish State Treasury or other entity, the takeover is subject to a decision issued by the minister competent for economic affairs.

The decision specifies the amount of the compensation against which the funds and resources are taken over. The amount must be corresponding to the market value of the financial resources, funds and economic resources being taken over. It is established on the basis of an up-to-date valuation carried out by an independent third party of recognised standing in the market for the services provided and having the necessary skills and experience to carry out such a valuation and, in the case of taking over of a real estate, on the basis of an appraisal report carried out by a qualified valuer, according to the state of the financial resources, funds or economic resources being taken over on the date of the decision fixing the amount of compensation.

Exclusion of the right to compensation

Furthermore, the Act stipulates that persons and entities subject to forced administration have no claims for damages against State Treasury, other entities to which the financial resources, funds or economic resources are transferred, as well as the administrator for the actions taken in accordance with the Act.

Mechanism of supporting employees of sanctioned entities

The amended Act provides the employers sanctioned under the Act, or their employees, with the right to apply for allowances from the Guaranteed Employee Provisions Fund, to satisfy employees' receivables in case the employer is unable to satisfy them due to sanctions.

MORE RESTRICTIONS ON RUSSIANS' RIGHT OF ENTRY TO POLAND

By a decree of the Minister (Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 19 września 2022 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych) as of 26 September 2022, Poland has tightened entry restrictions for citizens of the Russian Federation.

They may not enter Poland for economic, sport, tourist or cultural purposes.

The restriction applies to all types of Polish border crossings (including road, rail, air and sea border crossings).

This measure reflects the common position reached by the Prime Ministers of Poland, Estonia, Lithuania and Latvia.

According to a press release published on the website of the Ministry of the Interior and Administration, the adopted solutions will enable the Polish authorities to counter direct threats to public order and state security more efficiently.

POSITION OF THE PRESIDENT OF THE ENERGY REGULATORY OFFICE

On 3 June 2022, the President of the Polish Energy Regulatory Office (Prezes Urzędu Regulacji Energetyki) – "President of URE" – published its position on the application of the

provisions of the Act.⁷

One of the sanctions provided by the Act is the freezing of financial and economic resources owned, held in possession or being in control of the listed persons or entities.

The term “economic resources” means tangible and intangible assets of every kind, movable or immovable, which are not financial resources but which may be used to obtain funds, goods or services. Licences granted by the President of URE provide the legitimacy of conducting a particular economic activity. Therefore, according to the position paper published by the President of URE, such licences should be considered as “economic resources” within the meaning of Regulation 269/2014 and 765/2014.

Therefore, the decision of the Minister on including an entity on the "sanction list" and subjecting it to the sanction of freezing of its financial and economic resources, automatically constitutes the basis for “freezing” (specific suspension) of licences and other decisions of the President of URE related to regulating conduct of business activity on the electricity, heat, gaseous and liquid fuels market, and therefore there is no need for the regulator to issue separate decisions on the matter.

The President of URE also points out that the “freezing” of a licence results not only in the automatic suspension of rights, but also of all obligations from the date of this "freezing" which, by virtue are imposed on the entities holding a licence.

The above does not affect the proceedings already pending and the responsibility for the performance of obligations incurred prior to the “freezing” of the licence.

POLAND DECIDED TO TERMINATE THE INTERGOVERNMENTAL AGREEMENT IN RESPECT OF THE YAMAL PIPELINE

On 23 May 2022, the Polish Minister of Climate and Environment announced that Poland had decided to terminate the intergovernmental agreement on the construction of a pipeline system for the transit of Russian gas through Poland and the supply of Russian gas to Poland, concluded with Russian Federation on 25 August 1993.

The decision on termination is a result of shutting off supplies of Russian gas to Poland via the Yamal pipeline, which states a breach of that agreement.

According to the information provided by the Minister of Climate and Environment, a relevant termination notice has been already submitted to the Russian side by the Polish Ministry of Foreign Affairs.

The Polish section of the Yamal pipeline will continue to be operated by the Polish operator, as it is used to transfer gas from Germany to Poland.

Gide Warsaw will provide further updates and guidance as matters continue to unfold.

We will gladly assist you should you have questions or need legal assistance in ensuring compliance when dealing under the sanctions adopted in Poland

You can also find this legal update on our website in the News & Insights section: [gide.com](https://www.gide.com)

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⁷ <https://www.ure.gov.pl/pl/urzed/informacje-ogolne/komunikaty-prezesa-ure/10351,Informacja-nr-272022.html>

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