

POLISH UPDATE: RUSSIA SANCTIONS

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 has been published in the Journal of Laws on 15 April 2022.

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

The **first group** consists of regulations intended to introduce additional, stand-alone sanctions to those adopted at the EU level which measures Poland considered - to some degree - as 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 destabilizing the situation in Ukraine³ ("*Regulation 833/2014*");

which required additional regulation at national level.

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

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As the legislative process 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.

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;](#)

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, as well as its transport from another EU Member State to Poland. The Russian coal ban coincides with the fifth package of EU restrictions against Russia. Nevertheless, the prohibition introduced at EU level is subject to a four-month wind-down period (contracts concluded before 9 April 2022 can still be performed until 10 August 2022), whereas the Polish Act provides that **the ban applies from the date of Act entering into force, i.e. 16 April 2022, without any transition period.**

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 means of 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 4.3 million) and **imprisonment for no less than 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 sanctions⁵ prohibiting the participation of Russian nationals and entities in public procurement proceedings in EU Member States.

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

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

into account by the contracting authority in further public procurement proceedings / design contests.

The exclusion under the Act applies, among others, 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.
- 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 Polish Minister of the Interior.
- 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 Polish Minister of the Interior.

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 Chairman of the Public Procurement Office (*Prezes Urzędu Zamówień Publicznych*)⁶.

Extended list of sanctioned entities

⁶ <https://www.uzp.gov.pl/en/contact>

The Act authorises the Polish Minister of the Interior and Administration (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 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 Polish Minister of Interior 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 by the Polish Minister of the Interior contains 51 individuals and legal entities of Russian and Belarusian origin.

According to the individual decisions issued by the Polish Minister of the Interior, 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., owner of the Polish part of the Yamal-Europe transit gas pipeline;
- 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;
- Kamaz – the largest Russian truck manufacturer and one of the 20 largest producers of heavy-duty trucks in the world. A supplier of trucks for the Armed Forces of the Russian Federation.
- 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.

Other entities included in 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 imposing 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 publication of 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.

According to media reports, Novatek Green Poland Sp. z o.o., as well as 36 other entities included on the Polish sanctions list have applied to relevant Polish authorities for the release of frozen funds and/or economic resources, or seeks approval to sell the Russian-owned shares.

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 the 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 assets, funds and other commercial 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 means of a decision issued by the Head of the National Fiscal Administration (*Szef Krajowej Administracji Skarbowej*)⁷.

Breach of the EU sanctions

In addition to the fines, the Act provides for a **penalty of imprisonment of not less than three years** for:

- **individuals** who are in breach of **restrictive measures** under Regulation 765/2006, Regulation 833/2014 and Regulation 2022/263,⁸ (as well as the ban on Russian and

⁷ <https://www.gov.pl/web/national-revenue-administration/about-us>

⁸ 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

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 he or she represents).

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 EU's fifth package, nor would it apply automatically to further packages of sanctions. Updating the list of sanctions whose violation is subject to penalties under the Act requires passing the amendments to the Act.

Poland decided to terminate the intergovernmental agreement in respect of the Yamal pipeline

On 23 May 2022 the Polish Minister of Climate and Environment, has announced that Poland decided to terminate the intergovernmental agreement on the construction of a pipeline system for the transit of Russian gas through the territory of the Republic of Poland and the supply of Russian gas to the Republic of 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 a 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

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