

New “Sanctions Constitution” under preparation

26 June saw the publication of the [draft Act on Restrictive Measures](#). The draft comprehensively regulates the issue of sanctions for the first time in Polish legislative history – hence it is referred to as the “*Sanctions Constitution*”. Public consultations have just ended, meaning that the draft is at the very beginning of the government legislative process. The new act will operate in parallel with the current Sanctions Act. The Small Sanctions Act retains its special character – continuing to focus on sanctions related to Russia's aggression against Ukraine. However, the Big Act will introduce a framework of a universal nature and bring previously dispersed provisions together in a single law. Ultimately, therefore, the Big Act will become the main basis for sanctions in Poland and the Small Act will remain *a lex specialis* regarding the war in Ukraine.

What are the key points of the new draft act?

Harmonisation of sanctions regulations

The aim of the proposed law is to unify the system for the implementation in Poland of restrictive measures of the European Union and international bodies.

Definition of criminal offences and penalties for violations of sanctions regulations

The draft defines criminal offences and penalties for violations of EU restrictive measures.

Implementation of national sanctions mechanisms

The draft implements permanent mechanisms for the imposition of national restrictive measures subsidiary to EU restrictive measures.

Designation of competent authorities

The draft indicates which Polish authorities will be responsible for carrying out and monitoring compliance with restrictive measures.

What solutions are proposed in the new draft act?

Harmonisation

- › The draft introduces **a broad definition of restrictive measures**, covering EU sanctions, sanctions resulting from decisions of international organisations and national sanctions. The new provisions will therefore **apply to all sanctions applicable in the territory of Poland** – thus the draft creates a comprehensive regulatory framework in this respect.

National authorities

- › The draft designates **a dozen or so national administrative authorities** competent for the enforcement of restrictive measures, which will be responsible for, inter alia, the application of derogations from sanctions (so-called national licences). Compliance with sanctions will be supervised by the heads of the Tax and Customs Office, the Inspector General of Financial Information and the Polish Financial Supervision Authority.
- › The National Revenue Administration (*Krajowa Administracja Skarbowa* – KAS) has been given new powers – it can tighten up customs controls on cargo suspected of circumventing sanctions. If the **KAS detects risk factors** (e.g. suspicious destination of goods), **officials may demand additional documents from the trader** – e.g. a manufacturer's declaration that the end customer will use the goods in accordance with sanctions regulations. A refusal to provide the required declarations carries the risk of seizure of the goods and a fine.
- › A Restrictive Measures Team will be set up under the Minister for Foreign Affairs to be responsible for the implementation of international obligations arising from sanctions.

National sanctions list based on new rules

- › The list will be kept by the **Head of the KAS** – not the Ministry of Internal Affairs and Administration – who will issue decisions on the application of national sanctions measures against a person or entity and make entries on the list. Decisions issued by the Head of the KAS may be appealed to the administrative court. The assumption of this function by the Head of the KAS is due to the role the KAS plays in enforcing financial sanctions – centralisation is intended to facilitate the freezing of assets and the supervision of restrictions.
- › The criteria for inclusion on the sanctions list are very broad. National individual sanctions may be imposed on persons or entities that directly or indirectly support: countries **subject to EU or UN sanctions** (e.g. aggressors or regimes violating international law), serious **breaches of human rights or repression of civil society and democratic opposition** or activities threatening democracy or the rule of law in countries subject to sanctions, **foreign information interference and disinformation** against the security, interests or image of the Republic of Poland – the latter prerequisite is new in relation to the current Ministry of Internal Affairs and Administration list.
- › Sanctions may also be imposed on entities **related** to the aforementioned persons (e.g. personal, organisational, financial links) and even entities **whose financial or economic resources are likely to be used for the above-mentioned aims**.
- › **National sanctions** will be similar to those under the Small Act – to include the **freezing of existing** financial resources, funds and economic resources, **prohibition on any funds or resources being made available** to an entity on the list, **inclusion on the list of foreigners whose stay in the Republic of Poland is undesirable** (in practice a ban on entering the country) and exclusion from **public procurement procedures**. Inclusion on the list will therefore result in the entity being shut out of the market almost immediately – banks will have to block the person's accounts, business partners will be unable to make payments or deliveries, etc. The obligation to freeze assets and prohibit them from being made available will be incumbent on all entities – e.g. a bank that fails to block a client's account risks a serious administrative penalty.

Swift sectoral sanctions

- › In addition to specific entities being placed on the national sanctions list, it will also be possible to **restrict trade and financial dealings with a third country**. This will be decided by the **Council of Ministers**, which will have the power to issue a regulation in the event of **a threat to national security or public order**. These sectoral sanctions may include a prohibition on the trading of certain goods, a prohibition on investment activities (e.g. the acquisition of real estate or enterprises by entities from a particular country) or a prohibition on the provision of certain services (e.g. financial, insurance) linked with that country.
- › Until now, a law was required to introduce sectoral sanctions in Poland. This was a one-off and relatively slow solution. The government is now authorised to impose similar embargoes or restrictions by way of a regulation, which will significantly reduce the response time to geopolitical threats. For example, a firm exporting machinery and machinery parts to country X could find out overnight that the government – in response to actions taken by that country – has banned exports.

Criminal and administrative liability for failure to comply with sanctions

- › The draft envisages **severe sanctions** for failure to comply with both EU and UN sanctions and the new national sanctions. The primary tool continues to be **administrative fines** – a fine of **up to PLN 20 million** will be imposed for violating or circumventing any of the restrictive measures set out in the law (as in the Small Sanctions Act). It will be possible for this penalty to be imposed on, e.g. a firm that knowingly carries out a transaction with a sanctioned business partner or fails to freeze its funds. Importantly, the PLN 20 million penalty is the maximum ceiling – the authority will impose it taking into account the circumstances of the violation.
- › In addition to administrative penalties, the legislator – in accordance with Directive 2024/1226 – introduces **criminal liability for violation of EU and UN sanctions**. The intentional violation of EU restrictive measures will be a criminal offence punishable by imprisonment for **between three months and five years** or **between six months and eight years, depending on the type of violation** (greater criminal liability is also possible if the property involved is of significant value).
- › The risk of liability will be incurred for, inter alia, **types of sanctions violations** such as making money, movables or real estate available to entities on the list, failing to freeze the financial or economic resources of an entity on the list (as well as concealing or helping to conceal funds to be frozen), enabling a designated person to enter into or transit through the territory of the EU, entering into a contract or a transaction with a country subject to sanctions or in violation of sanctions trading, importing, exporting, selling, purchasing, transferring, transiting, transporting or providing services relating to goods.
- › It should be noted that the draft refers to “**indirect**” breach of regulations, meaning that, e.g. even indirectly making funds available to persons or entities on the sanctions list may result in the imposition of an **administrative penalty**. In practice, this broad coverage imposes an obligation on traders to **adapt sanctions risk mitigation measures accordingly**, e.g. extending sanctions verification to the business partners of their business partners.

Liability of collective entities – absence of prejudication and whistleblowers

- › The draft also introduces another exception to the principle laid down in the Act on the Liability of Collective Entities, according to which a collective entity may only be subject to liability if a natural person was previously convicted (the prejudication principle) – according to the draft, a company can **also be punished for a sanctions offence without a prior judgment convicting a natural person** (at present, this exception applies, inter alia, to environmental offences). It is worth knowing that, independently of the draft of the Big Sanctions Act, [a draft of amendments to the Act on the Liability of Collective Entities](#) is currently under way and envisages the introduction of a separate procedure of “agreement” with the public prosecutor, under which it will be possible for an entity to be held liable without a natural person being convicted – this, combined with the assumptions of the draft of the Big Sanctions Act, will significantly facilitate the punishing of companies in sanctions cases.
- › For sanctions offences, a penalty of between **PLN 10,000 and PLN 200 million or 5% of the revenue** earned in the previous financial year may be imposed on a collective entity.
- › In addition, breaches of sanctions regulations will have to be **reported under internal whistleblowing systems**.

How to prepare for the new obligations?

The draft of the Big Sanctions Act marks a **revolution in the national sanctions regime**. For Polish businesses, it is a clear signal that a stricter, more systematic and more strictly enforced system is coming. On the one hand, it will ensure greater consistency with European law and make it possible to effectively punish the circumvention of sanctions, while on the other hand, it introduces new obligations for which preparations should already be made.

DZP's experts provide clients with comprehensive sanctions advice so that they comply with the new regulations, supporting them in, inter alia:

- › **the counterparty verification process (due diligence)**. We carry out detailed risk analyses, verifying counterparties in terms of links to sanctioned entities. We ensure that all new counterparties are verified and also help to structure the process accordingly, supporting clients with regular screening of existing counterparties.
- › **implementing appropriate procedures in the organisation to minimise sanctions risks**. We ensure that internal sanctions procedures are updated or created. We assign responsibility for the implementation of processes to specific employees and implement rules for the documentation and archiving of counterparty verifications carried out.
- › **reviewing contracts with business partners for the inclusion in them of sanctions declarations demonstrating due diligence**. We assist with the preparation of formal sanctions declarations/clauses which confirm that all necessary verification procedures have been carried out in accordance with applicable regulations. Having sanctions compliance documentation is now a cornerstone of international business, and our support covers both legal and organisational aspects, enabling the seamless implementation of reporting and monitoring systems.

- › **conducting sanctions training.** We organise specialised training sessions and workshops to raise staff awareness of sanctions risk management. This gives the whole team a better understanding of responsibilities and procedures, resulting in more effective implementation of the compliance system.
- › **legislative and sanctions monitoring.** We regularly track changes to the sanctions lists and regulatory amendments to ensure that our clients have constant access to up-to-date information and the ability to react quickly to new guidelines.

Key advisers in the Regulatory Affairs, Legislation and Compliance Practice



**Dr Anna
Hlebicka-Józefowicz**

Partner

E: anna.hlebicka-jozefowicz@dzp.pl
T: +48 571 207 060



**Gniewomir
Wycichowski-Kuchta**

Senior Associate

E: gniewomir.wycichowski-kuchta@dzp.pl
T: +48 516 294 873



**Wiktoria
Kuczkowska**

Associate

E: wiktoria.kuczkowska@dzp.pl
T: +48 516 295 456
