

Sanctions Enforcement in Poland

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Introduction

Restrictive measures often referred to as sanctions are an important instrument in advancing the goals of the European Union's Common Foreign and Security Policy. The EU has enacted over 40 different sanctions schemes, applying restrictive measures against individuals, entities and groups. These measures range from asset freezes and the prohibition on making funds or economic resources available to restrictions on import/export and provision of services. While the EU's restrictive measures were primarily designed to enforce UN sanctions, over time the EU began to reinforce those sanctions with more stringent and additional measures, eventually adopting autonomous sanctions regimes (e.g. against Russia, Syria, and Venezuela, or addressing horizontal issues such as chemical weapons proliferation, cyber-attacks, human rights violations, and terrorism).

Beyond the EU sanctions, Poland has established its own unilateral sanctions regime.¹ It complements EU efforts by introducing a Polish sanctions list targeting additional individuals and entities deemed to support or benefit the Belarusian or Russian government.

While the EU has the authority to impose restrictive measures, their implementation and enforcement rests with member states. The member states are required to introduce effective, dissuasive and proportionate penalties, but the enforcement mechanisms have gaps leaving many violations unpunished. As highlighted in the Genocide Network's 2021 report, EU member states have different systems of criminal law, different definitions of EU sanctions-related offences and crimes, as well as different levels of penalties.² This disparity

- ¹ Poland's autonomous sanctions regime was introduced by the Act on Special Solutions to Counter Support for Aggression against Ukraine and to Protect National Security of 13 April 2022 (**Polish Sanctions Act**).
- ² Genocide Network, "Expert Report on Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis" (2021). In some member states, breach of EU restrictive measures is purely a criminal offence or an administrative offence (or both, depending on the circumstances). Penalties also vary widely, with maximum prison sentences ranging from 2 to 12 years and fines from EUR 1,200 to EUR 5 million. Regarding the liability of legal persons, half of the member states impose criminal liability on legal entities and half apply administrative fines. The highest fines for legal entities range from EUR 133,000 to EUR 37.5 million.

in enforcement and penalties reduces the effectiveness of the EU's sanctions regime and creates opportunities for forum shopping.

This landscape will be transformed with introduction of the new EU sanctions offences directive (**Directive 2024/1226**).³ The directive is expected to bring a more unified and effective approach to sanctions enforcement in the EU and to strengthen national capacities in prevention, detection, investigation and prosecution of sanctions violations. Emphasis will also be placed on enhanced cooperation between member states, which includes more effective exchange of information, referral of cases, and cooperation with EU agencies such as Eurojust, Europol, and the European Public Prosecutor's Office.

Directive 2024/1226, published on [29 April 2024 in the Official Journal of the EU](#), will enter into force in 20 days (i.e. on 19 May 2024). After that, member states will have one year to transpose it into national law (i.e. by 20 May 2025).

3 Directive (EU) 2024/1226 of the European Parliament and the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673.

The Polish sanctions enforcement regime

In Poland, penalties for non-compliance with sanctions are spread across several laws and differ depending on the sanctions scheme in question.

Restrictive measures to *combat terrorism*

Liability for violating EU regulations on restrictive measures to combat terrorism is regulated by the 2018 Act on Combatting Money-Laundering and Financing of Terrorism (**AML Act**). The AML Act imposes obligations only on specific entities, particularly financial institutions, and serves to apply only selected EU regulations on restrictive measures to combat terrorism.⁴

Possible penalties for violations include withdrawal of a licence or permit, removal from the register of regulated activities, or fine of up to twice the amount of the benefit gained or loss avoided by an obligated institution as a result of a breach, or up to the equivalent of EUR 1,000,000 if it is not possible to determine the amount of such benefit or loss).⁵

Restrictive measures against Russia and Belarus

Further acts introducing liability for breach of sanctions are the Polish Sanctions Act and the National Revenue Administration Act. However, these laws only introduce liability for violations of restrictive measures against Russia and Belarus.

⁴ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism; Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'ish) and Al-Qaida organisations; Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan.

⁵ AML Act, Articles 149–150.

Penalties for sanctions violation include:

- **Administrative fines of up to PLN 20,000,000** for:
 - Violation of asset freeze measures or a prohibition against providing funds or economic resources to persons or entities on the Polish Sanctions List⁶ or the EU Sanctions List⁷
 - Violation of certain EU trade control measures⁸ against Russia and Belarus⁹
 - Failure to comply with reporting obligations detailed in Council Regulations 269/2014, 833/2014 and 765/2006 (e.g. receipts in frozen accounts, level of deposits or facilitation of compliance with the regulations)
 - Conscious and intentional acts to circumvent the above three prohibitions
 - Participation in a public procurement procedure or contest by persons or entities subject to exclusion¹⁰
 - Entry or transfer through the territory of Poland of coal originating from Russia¹¹
 - Failure to keep documents confirming the country of origin of coal and the date of its entry into Poland for 5 years and to make them available to the Trade Inspectorate upon request¹²
 - Failure to prepare and provide the coal buyer with information on the country of origin of coal and the date of its entry into Poland¹³
- **Imprisonment for a term of at least three years¹⁴** for:
 - Violation of certain EU trade restriction measures¹⁵ against Russia and Belarus
 - Violation of EU trade control measures regarding the Ukrainian regions of Donetsk and Luhansk laid down in Council Regulation (EU) 2022/263 (Article 2(1), 4(1) or (2), 5(1) or 6(1))
 - Ban on the introduction into Poland of coal originating from Russia or Belarus

6 Polish Sanctions List, Article 6.

7 National Revenue Administration Act, Article 143d.

8 Council Regulation (EC) 765/2006, Article 1ja(1), 1k(1), or 1u(1); Council Regulation (EU) 833/2014, Article 2e(1) or (3), 3(1) or (2), 3a(1), 3g(1), 3h(1), 5(1)–(6), 5a(1), (2) or (4), 5aa(1), 5b(1), 5f(1), 5h, 5i(1), or 5j(1) or (2).

9 National Revenue Administration Act, Article 143d.

10 Polish Sanctions Act, Article 7.

11 Polish Sanctions Act, Article 12.

12 Polish Sanctions Act, Article 13.

13 Polish Sanctions Act, Article 13.

14 Polish Sanctions Act, Article 15.

15 Council Regulation (EU) 833/2014, Article 2(1) or (2), 2a(1) or (2), 3(1) or (2), 3a(1), 3b(1) or (2), 3c(1)–(4) or 4(1); Council Regulation (EC) 765/2006, Article 1a(1)(a), 1b(1)(a)–(c), 1c(1), 1d(1), 1e(1) or (2), 1f(1) or (2), 1g(1) or (1a), 1h(1), 1i(1), 1o(1), 1p(1), 1q(1), 1r(1) or 1s(1).

- ♦ **Exclusion from public procurement proceedings** of contractors or participants on the EU or PL sanction lists and contractors or participants whose beneficiaries or parent company is a person on the list.

Sanctions scheme	Scope	Obligated entities	Possible penalties
AML Act	EU restrictive measures to combat terrorism	Enumerated in the AML Act ¹⁶	Criminal and administrative measures
Polish Sanctions Act and National Revenue Administration Act	Polish and EU restrictive measures against Russia and Belarus	Entities subject to Polish jurisdiction	Criminal and administrative measures
Violation of other EU regulations on restrictive measures is not subject to criminal or administrative liability under Polish law.			

¹⁶ Among others, financial institutions (domestic and foreign operating in Poland); insurance and reinsurance companies; business operators, notaries, advocates and attorneys-at-law in situations specified in the AML Act.

New EU directive to harmonise criminalisation of breaches of EU restrictive measures

Directive 2024/1226 aims to approximate definitions of criminal offences related to violation of EU sanctions and to ensure effective, dissuasive, and proportionate penalty types and levels for such offences.

Criminal liability of natural persons

Member states should ensure that a violation of EU restrictive measures adopted under Article 29 of the Treaty on European Union or Article 215 of the Treaty on the Functioning of the European Union constitutes a criminal offence. In effect, this would cover all EU sanctions schemes. While Poland criminalises certain violations of selected sanctions schemes, the scope of criminal offences will need to be significantly expanded to cover all existing sanctions schemes as well as schemes that may be adopted in the future.

Directive 2024/1226 requires that violations be committed intentionally, or for most violations, with “serious negligence.” The directive also requires that inchoate offences and complicity be criminalised for most violations, as summarised in the following table:

Offence	Liability standard	Is attempt covered?	Is complicity (aiding or abetting) or inciting covered?
Making funds or economic resources available to, or for the benefit of, a designated person, entity or body	Intentionally or with serious negligence	Yes	Yes
Failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body	Intentionally or with serious negligence	No	Yes

Offence	Liability standard	Is attempt covered?	Is complicity (aiding or abetting) or inciting covered?
Enabling the entry (or transit) of designated natural persons into or through the territory of a member state	Intentionally or with serious negligence	Yes	Yes
Entering into transactions with a third country, bodies of a third country, or entities or bodies owned or controlled by a third country or bodies of a third country	Intentionally or with serious negligence	Yes	Yes
Trading in goods or services whose import, export, sale, purchase, transfer, transit or transport is prohibited or restricted by Union restrictive measures, as well as providing brokering services or other services relating to those goods and services	Intentionally or with serious negligence	Yes	Yes
Providing financial activities (such as financing and financial assistance, providing investment and investment services, issuing transferrable securities or money market instruments, accepting deposits, providing specialised financial messaging services, dealing in banknotes, providing credit rating services, or providing crypto assets or wallets)	Intentionally or with serious negligence	Yes	Yes
Providing other services prohibited or restricted by Union restrictive measures, such as legal advisory services (with the exception of providing legal assistance in the context of judicial, administrative or arbitration proceedings), trust services, accounting, auditing, bookkeeping and tax consulting services, business and management consulting, IT consulting, public relations services, broadcasting, architectural and engineering services	Intentionally or with serious negligence	Yes	Yes
Breaching or failing to fulfil conditions under authorisations granted by competent authorities to conduct activities, which in the absence of such authorisation are prohibited or restricted under a Union restrictive measure	Intentionally	Yes	Yes

Offence	Liability standard	Is attempt covered?	Is complicity (aiding or abetting) or inciting covered?
Circumventing a Union restrictive measure by:			
1. Concealing funds or economic resources owned, held, or controlled by a designated person, entity or body, which should be frozen in accordance with a Union restrictive measure, by the transfer of those funds or economic resources to a third party	Intentionally	Yes	Yes
2. Concealing the fact that a person, entity or body subject to restrictive measures is the ultimate owner or beneficiary of funds or economic resources, through the provision of false or incomplete information	Intentionally	Yes	Yes
3. Failing by a designated person, entity or body to comply with an obligation under Union restrictive measures to report funds or economic resources within the jurisdiction of a member state belonging to, owned, held, or controlled by them	Intentionally	No	Yes
4. Failing to comply with an obligation under Union restrictive measures to provide without undue delay information on funds or economic resources frozen or information held about funds and economic resources within the territory of the member states, belonging to, owned, held or controlled by designated persons, entities or bodies and which have not been frozen, to the competent administrative authorities	Intentionally	No	Yes
5. Failing to cooperate with the competent administrative authorities in any verification of information under points 3. and 4., upon their reasoned request	Intentionally	No	Yes

Criminal liability of legal persons

Member states will be required to ensure that legal persons can be held criminally liable for sanctions violations committed for their benefit:

- By any person holding a “leading position” in the legal person (this includes those with the power to represent the entity, the authority to make decisions on its behalf, or the capacity to exert internal control), or
- Due to a lack of supervision or control by a person holding a leading position in the legal person.

The liability of legal persons will not exclude the liability of natural persons who commit, incite or are accessories to sanctions violations.

Directive 2024/1226 offers flexibility in determining whether the liability of a legal person should be criminal or administrative. While the preamble indicates a preference for criminal liability, it allows for administrative liability in member states where criminal liability is not feasible. Poland’s approach in this matter remains to be seen. Historically, Poland has favoured administrative liability over corporate criminal liability, mainly due to the operational efficiency of administrative fines. The corporate criminal liability framework has been less effective and rarely enforced, mainly due to the requirement of a prior conviction of a natural person as a predicate for corporate criminal liability (see our [brochure on corporate criminal liability in Poland](#)).

Poland may seize this opportunity to reform its system of corporate criminal liability. Alternatively, it may carve out liability for breach of sanctions by removing the requirement of a prior conviction of a natural person, much as it did with corporate criminal liability for environmental offences. However, it should be noted that the removal of this requirement in the context of environmental crimes has not yet led to a significant increase in the number of investigations or prosecutions against corporate offenders.

Penalties for natural persons

Imprisonment

Directive 2024/1226 establishes minimum penalty thresholds for natural persons, varying according to the severity of the conduct. Where the offence involves funds or economic resources of a value of at least EUR 100,000, it will be punishable by a maximum of at least one year’s imprisonment. The most serious offences will carry a maximum prison sentence of at least 5 years.

Accessory criminal or non-criminal penalties

Accessory offences may be punishable by the following criminal or non-criminal penalties:

- Fines proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the natural person concerned
- Withdrawal of permits and authorisations to pursue activities which have resulted in the relevant criminal offence
- Disqualification from holding, within a legal person, a leading position of the same type used for committing the criminal offence
- Temporary bans on running for public office
- Where there is a public interest, publication of all or part of the judicial decision that relates to the criminal offence committed and the penalties or measures imposed.

Penalties for legal persons

Depending on the offence, companies may be liable to penalties ranging from EUR 8 million to 40 million or from 1% to 5% of the consolidated worldwide turnover of the legal person either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine.

Accessory offences may be punishable by the following criminal or non-criminal penalties:

- Exclusion from public benefits or public funding (including tenders, grants or concessions)
- Disqualification from the practice of business activities
- Withdrawal of permits and authorisations to pursue activities which have resulted in the relevant criminal offence
- Placement under judicial supervision
- Judicial winding-up
- Closure of establishments used for committing the criminal offence
- Publication of judicial decisions.

Member states will have to ensure that certain aggravating and mitigating factors are considered. Aggravating factors include offences committed as part of a criminal organisation, or by a professional service provider, a public official, or someone performing a public function. Conversely, mitigating circumstances encompass voluntary cooperation with law enforcement, such as providing useful information about the crime or the offenders, or assisting in gathering evidence.

Limitation periods

The directive also requires that a reasonable limitation period be adopted to allow the authorities to investigate and prosecute cases. For offences punishable by at least 5 years' imprisonment, the limitation period should not be less than 5 years, or 3 years if the law allows for interruption or suspension of the limitation period.

Confiscation and money-laundering

The directive requires that funds or economic resources held with the purpose of concealing that they belong to the designated person should be considered proceeds of crime and subject to confiscation. It also requires that criminal offences prescribed by the directive be considered a predicate offence for the purpose of the crime of money-laundering.

Jurisdiction

Each member state will have to ensure that it has jurisdiction over sanctions violations committed:

- In its territory (including on board a ship or aircraft registered in the member state or flying its flag)
- By its national, habitual resident, or official (if the offence was committed in the course of their official duties)
- For the benefit of a legal person established in the territory of the member state
- For the benefit of a legal person in respect to any business done, in whole or in part, within the territory of the member state.

This ensures that member states can effectively address crimes linked to their nationals, residents and officials, and legal entities established or operating within their boundaries.

Where more than one member state has jurisdiction, they will need to cooperate to determine which member state should prosecute, possibly by referring the case to Eurojust.

Whistleblowing and international cooperation

Directive 2024/1226 provides that those reporting sanctions violations should be afforded protection under the Whistleblowing Directive (2019/1937). This ensures a safeguarding framework for those who come forward with key information on sanctions breaches.

In addition, the new directive mandates that the investigative tools used in tackling organised crime and other serious crimes should also be employed to detect, investigate, and prosecute violations of restrictive measures.

The directive stresses the importance of efficient exchange of information and cross-border cooperation between various authorities. This includes not only national authorities, but also key central entities such as Europol, Eurojust, EPPO and the European Commission.

The directive's focus on joint efforts is intended to enhance the effectiveness of identifying and addressing sanctions violations across member states.

Takeaways for business

Introduction of the new Directive 2024/1226 is a sign of the EU's continuing and intensified focus on sanctions risks. It underscores the EU's commitment to bolstering sanctions compliance by imposing significant fines and strengthening international cooperation. We can anticipate not only an increase in the number of restrictive measures but also stricter enforcement of those in place.

As for its integration into the Polish legal framework, the details have not yet been released. However, it is evident that the directive will substantially broaden the range of criminal offences related to sanctions violations in Poland, and provide a legal foundation for more effective sanctions enforcement.

For business operators, this implies the need for increased compliance efforts. Companies must proactively implement systemic and effective compliance measures to prevent sanctions violations, including the challenging task of preventing sanctions circumvention. This entails establishing robust oversight mechanisms going beyond standard AML/KYC policies and procedures to foster a culture that aligns with sanctions compliance objectives, including remuneration or bonus policies.

Companies should brace themselves for increased compliance risks, and routinely review their compliance programmes. In addition, they should ensure that all sanctions screening activities are meticulously documented, and retain these records to defend themselves in the event of any allegations of misconduct or sanctions violations. Companies must also keep informed of their rights during investigations and be prepared to respond effectively in such cases.

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