

The stance of the ZPP on the Act of 7 April 2022, on special arrangements to prevent the promotion of aggression against Ukraine and to protect national security

On 30 March 2022, the draft law on special arrangements to prevent the promotion of aggression against Ukraine and to protect national security was submitted to the Polish Sejm. The law aims to restrict the activities of persons and entities linked to Russia, which on 24 February 2022 attacked Ukraine, as well as Belarus, which supports the Russian Federation in these actions. The bill was very quickly adopted by the Sejm by a large majority - 445 in favour, 0 against and 11 abstentions. The bill has been forwarded to the Senate and will most likely be passed and signed by the President in the coming days.

This project focuses on the possibility of 'freezing' the assets of individuals and entities linked to Russia and Belarus that support aggression against Ukraine. Entities from these countries will also not be able to participate in tenders organised under the public procurement procedure. In addition, individual persons may be included in the list of foreigners whose residence in the territory of the Republic of Poland is undesirable. These are, therefore, relatively comprehensive measures to eliminate both the physical and economic presence and capital of specific companies and individuals.

The aforementioned sanctions may be imposed on entities and persons who will be included in the list maintained by the appropriate Minister in charge of internal affairs, responsible for making administrative decisions in this regard, based largely on the provisions of the Code of Administrative Proceedings. The proceedings in the matter of an entry may be undertaken by the Minister ex officio or at the request of one of the entities enumerated in the Act (e.g. the heads of the Central Anticorruption Bureau, the Internal Security Agency, the Foreign Intelligence Agency, the Military Intelligence Service, the Military Counterintelligence Service and the National Public Prosecutor). The list will be published in the Bulletin of Public Information on the Ministry's website. It is therefore important that businesses keep their contractors, both current and future, under review for potential sanctions stipulated in the provisions of the Act.

Pursuant to the Art. 3 sec. 2 persons and entities who directly or indirectly support the Russian aggression against Ukraine or severely violate human rights, repress civil society and democratic opposition, or whose activities pose another serious threat to democracy or the rule of law in the Russian Federation and Belarus may be included in the list. Entities may also be included on the list if they are directly related to previously listed entities, in particular through personal, organisational, economic or financial links.

It is also worth noting that the Minister in charge of internal affairs will be able to limit the scope of justification of the decision on entry and removal from the list for reasons of state security or public order in accordance with Art. 3 sec. 9 of the Act. This provision is meant to ensure state security, e.g. in the dissemination of classified information.

Another important step provided for in the Act is to prohibit the import and transit of coal from Russia and Belarus through the territory of Poland. The entities trading in coal will have to document its origin and keep the relevant documents for 5 years.



The Act will also prohibit the use, application or promotion of symbols or names supporting the aggression of the Russian Federation against Ukraine (Art. 16 of the Act). The ban will apply, for example, to the 'Z' symbol used to mark the military vehicles of the aggressor's army and, in recent weeks, also used by supporters of the policies of Russian President - Vladimir Putin. Violation of the ban is punishable by imprisonment of up to 2 years.

It is important to note that entities that fail to comply with their obligations under the Act with respect to, for example, freezing funds, funds or resources of persons identified on a list maintained by the Minister, violate the prohibition on the import and transit of coal, take action to circumvent the prohibitions or otherwise violate the prohibitions set out in the Act may be subject to financial liability. The fine for individual violations can be up to PLN 20 million.

In view of the current geopolitical situation, the introduction of the Act on special measures to prevent support for aggression against Ukraine and to protect national security is undoubtedly justified. Russia is not a reliable economic partner for Poland, and the measures provided for in the Act may restrict funding for arming activities of a state which does not respect the sovereignty of its neighbours and which, in the future, could potentially deploy its troops even against our country. It is worth noting that the value of Polish exports to Russia is around 36.6 billion PLN, while the value of imported goods is 77.8 billion PLN. This means that Russia is not, on an economy-wide basis, a key trading partner, although certainly in many industries the proposed measures could be very noticeable. It is therefore crucial to urgently secure other channels of trade. In view of the above arguments, it must be assumed that it is certainly more important to guarantee the security of the state and to cut off trade with Russia than to go through some temporary trade problems.

It should be pointed out, however, that the Act does not provide details on how traders should fulfil their obligations under the agreement in question, how they should behave towards listed entities under ongoing contracts. It is important for Polish companies to have information on the procedure for freezing funds, securing assets and potential liability for loss of value, damage or destruction. Guidance in this regard seems necessary to avoid the potential risks involved in even unintentional breaches of the Act.