



Report on sanctions

On 21 March 2022, the Ministry of Finance issued a guidance letter to government agencies and institutions. The purpose of the letter is to clarify the information and legal basis of the situation caused by the war in Ukraine, as well as the implementation of the sanctions imposed, and to steer to a uniform procedure in government agencies with regard to the planning and guidance of operations.

EU Regulation 269/2014 on personal sanctions contains a list of natural persons and legal persons, entities and bodies whose assets have been frozen. Public procurement is suitable for the article stating that funds and economic resources must not be made available to persons subject to sanctions. The Regulation prohibits any form of assets (i.e. the transfer, directly or indirectly, of any fixed or movable, tangible or intangible assets of economic value) to an entity listed in the Sanctions Regulation.

No payments should be made to the listed person or entity. In addition, no funds or financial resources should be relinquished indirectly to the listed person or entity. Indirect relinquishment shall be subject to whenever, for example, funds are handed over in the first instance to another unlisted entity; nevertheless in such manner that they are made available to a listed entity in one way or another or for utilisation. **In practice, this means that companies owned or controlled by sanctioned entities cannot obtain goods or services, nor make a contractual payment, even if the agreement has been concluded before the sanctions were imposed.** Banks shall also monitor this in, for example, the transfer of payments.

In the case of joint procurement, it may be considered that financial resources are indirectly transferred to the contracting employer undertaking. For this reason, the employer must provide a declaration in the employer's proposal that it is not subject to the sanctions.

Employer's declaration of sanctions

1) The European Union and/or UN have imposed and may in future impose sanctions through legislation and/or decisions of their institutions. **The employer declares that:**

- a. the sanctions referred to above have not been imposed*
 - on the employer,
 - Members of the administrative, management or supervisory body of the employer or persons exercising control, representation, decision-making or supervisory powers,
 - On the direct or indirect owners of the employer
 - subcontractors participating in producing the goods or providing the services under this contract,
 - members of the administrative, management or supervisory body of such subcontractors or persons exercising control, representation or supervision power of such subcontractors, and
 - the direct or indirect owners of such subcontractors
- b. The employer shall immediately notify the subscriber designated in the contract if sanctions are imposed on any of the parties referred to in item a) and
- c. The activities provided for in this contract and the use of the goods produced or services provided by the employer and its subcontractors do not violate the aforementioned sanctions.

The employer shall without delay provide the subscriber designated in the contract information on its subcontractors, direct or indirect owners, and other beneficiaries. The employer also undertakes to notify the subscriber designated in the contract without delay if the payments relating to the procurement may indirectly or directly be made available to a party subject to sanctions.

2) If

- a) the European Union and/or UN impose sanctions on the employer or on one of the parties referred to in section 1. a) above or
- b) payments relating to the procurement may indirectly or directly be made available to a party subject to the sanctions referred to herein, the subscriber designated in the contract may terminate this contract effective immediately either entirely or with respect to those goods or services subject to sanctions.

3) If these affirmations are violated, the employer is liable to compensate the subscriber designated in the contract for all damage it incurs without limitation of liability.

In the employer's proposal on joint procurement training, the employer assures that the sanctions do not apply to the employer or its beneficiary group.

**According to the EU's (2018) restrictive measures, i.e. best practices for the effective implementation of sanctions, the criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is ownership of more than 50% of the entity's ownership rights or a majority shareholding. If that criterion is met, the legal person or entity shall be deemed to be owned by another person or entity. In the EU's best practices, eight criteria are described for assessing whether a legal person or entity is controlled either individually or under an agreement with another shareholder or third party. It is sufficient for the assessment that any of the criteria must be met, in which case it is considered that the legal person or entity is controlled by another person or entity unless demonstrated otherwise on a case-by-case basis. The criteria for the assessment include, inter alia, the right or the power to appoint or dismiss the members of the administrative or management bodies, the right to determine the majority of the members of the administrative or management bodies, and the right to use all or part of the assets of the legal person under an agreement with the other members.*