



## 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 (EU) and the United Nations (UN) have imposed and may in future impose sanctions or restrictive measures through legislation or decisions of their institutions. The employer affirms that:
  - a) no sanctions referred to above have been imposed on<sup>1</sup>
    - i. on the employer,
    - ii. members of the administrative, management or supervisory body of the employer or persons exercising control, representation or supervision power of the employer,
    - iii. the employer's direct or indirect owners that are in possession of more than 50% of the proprietary rights of an entity or have majority interest in it,
    - iv. subcontractors participating in producing the goods or providing the services under this contract,
    - v. members of the administrative, management or supervisory body of such subcontractors or persons exercising control, representation or supervision power of such subcontractors, and
    - vi. such subcontractors' direct or indirect owners that are in possession of more than 50% of the proprietary rights of an entity or have majority interest in it,
  - b) the employer must immediately inform the subscriber designated in the contract if sanctions are imposed on any of the parties referred to in point 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 or restrictive measures.

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. 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 or restrictive measures if
  - a) the EU or UN impose sanctions on the employer or on one of the parties referred to in point 1. a) above or
  - b) payments relating to a procurement may indirectly or directly be made available to a party subject to the sanctions referred to herein, or

<sup>1</sup> In accordance with the [EU Best Practices for the effective implementation of restrictive measures \(2022\)](#), the criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of **more than 50%** of the proprietary rights of an entity or having majority interest in it. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity. The EU Best Practices list eight criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party. If just one of these criteria is met, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established on a case by case basis. The criteria include having the right or exercising the power to appoint or remove a majority of the members of the administrative or management body; controlling, pursuant to an agreement with other shareholders, a majority of the members of the administrative or management body; having the right to use all or part of the assets of a legal person.

3. If the employer violates these affirmations, the subscriber designated in the contract is entitled to compensation for all direct or indirect damage it incurs due to the violation. The employer's liability for damages is no more than five (5) times the imputed value of the procurement contract. Limitations of liability shall not apply if the employer has caused the damage wilfully or through gross negligence.

**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.**

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