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## **POLAND**

### **1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way?**

According to Article 9 of the Constitution of the Republic of Poland, Poland observes the binding international law. The said article constitutes the general provision that obligates Poland to implement Security Council resolutions imposing sanctions based on Chapter VII of the UN Charter in order to maintain or restore international peace and security. Binding acts of an international organization, including sanctions imposed by the UN Security Council, are incorporated into internal legal order through a specific legal act respective of the content.

The implementation of sanctions by the Republic of Poland is accomplished by the laws, regulations or ad hoc acts.

In the cases of implementation of restrictive measures the following laws and regulations, so called the sector's legislation, are mostly applied:

- Penal Code of June 6, 1997(Journal of Laws of 1997, No 88, item 553);
- Law of November 29, 2000 on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws (Journal of Laws of 2000, No 119, item 1250);
- Foreign Exchange Law of July 27, 2002 (Journals of Laws of 2002, No141, item 1178);
- Law of Aviation of July 3, 2002 (Journals of Laws of 2002, No301, item 1112);
- Law of November 16, 2000 on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism (Journal of Laws of 2003, No153, item 1505).

If the laws and regulations allow implementation of UNSC Resolution, the Council of Ministers after the presentation of the Resolution by the Minister of Foreign Affaires, adopts the decision that designates the execution authority and points out the appropriate law to be applied.

If the implementation of restrictive measures can not be accomplished by the laws and regulations, the UNSC Resolution may be implemented in two ways by the ad hoc acts.

The first possibility is that following the decision of the Council of Ministers the appropriate authorities implement the Resolution by the legal means. The Council of Ministers adopts the decision that designates the authorities responsible for the implementation of restrictive measures on the national level and stipulates the measures that must be undertaken. First of all, the designated authorities, identify whether under the existing laws the restrictive measures may be fully implemented, if not, they are obliged to prepare appropriate legislation and present it to the Council for adoption, according to their competence.

Second possibility applies mostly in the cases of "political" sanctions. The implementation of the Resolution takes place by the solely ad hoc act. For instance, decision as to the interruption or reduction of diplomatic relations with one or more of the third countries, as a result of UNSC sanctions, belongs to competence of the Council of Ministers and is adopted by the resolution of the Council of Ministers.

The implementation of restrictive measures imposed by the UNSC into the Polish internal legal order may be also accomplished by the European Union Regulations based on Article 60 and 301

of the Treaty establishing the European Community. Such Regulations are binding in their entirety and are directly applicable in Poland after its publication in Official Journal of European Union. The other measures, included into Council Common Position, are implemented by the domestic legal acts. The national measures have to comply with Article 15 of EU Treaty.

In order to establish one comprehensive national system of implementation, facilitate the procedures and strengthen effectiveness of the implementation of international sanctions, new Law on the Implementation of International Sanctions by the Republic of Poland and amending certain laws has been drafted. The legislation procedure concerning the draft is currently on the way.

**2. Does the choice depend on the content of the Security Council resolution?**

The choice of the incorporation of UNSC Resolutions imposing sanctions into the internal legal order depends on the nature and contents of the Resolution and the measures that must be undertaken by the Republic of Poland as a member State of UN and EU. The incorporation of Resolutions is usually accomplished by the laws, regulations and ad hoc acts or within the EU Regulations (see answer to question (1)).

**3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?**

The national measures of implementation provided for as temporary remain in force during the period for they were established, unless the duration of sanction is extended or renewed by an act of the Security Council.

In principle, if the Security Council fails to renew the restrictive measures or the duration of sanctions expires, accordingly to the domestic legislative procedure, the normative action is not required for the sanctions to be repealed regardless of the form they were implemented through provision of laws or regulations (a.i. in cases of sanctions in the form of freezing of assets, imposed for the fixed period of time which is not renewed, no legislative action is required by the national law).

The restrictive measures regarding the embargo on exportation of certain goods to the third countries, that are usually adopted by the regulations, just require a new regulation for the repealing of the sanction and updating the list of the countries that still remain under the embargo.

**4. When a Security Council resolution imposing an export embargo provides for exceptions while not establishing a committee to authorise such exceptions, does the incorporating act appoint a national authority which is competent to authorise export?**

UNSC Resolutions under Chapter VII are mandatory in accordance with international law. In case of implementation of restrictive measures as an export embargo, imposed by the Security Council, through a resolution, it is practicable to indicate the appropriate Polish authorities that may authorise exemptions concerning the export embargo. For example, in the matter of authorization of export of arms or trade of common goods and services the Minister of Economy and Labor will be appointed in the resolution as a competent authority.

The EU Regulations imposing sanctions include lists of competent authorities that are empowered to grant exemptions. Whereas certain implementing powers are granted to the Commission, it is common practice that the Regulations provide that authorities of the Member States are competent to take decisions for exemptions. In some cases, where the indication of authorities is required by the EC Regulation, the following Polish authorities are indicated as appropriate: in the matter of authorization of export in derogation of an arms embargo, Minister of Economy and Labor after consultations with Minister of Foreign Affairs and Minister of National Defense, in the matters

concerning authorisation of trade of common goods or services, Minister of Economy and Labor and Minister of Finance.

**5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?**

Decisions of Sanctions Committee specifying Security Council sanctions or setting conditions for their activation are not incorporated into the Polish domestic law.

The decisions specifying sanctions or setting conditions are given effect through the measures enacted for implementing the UNSC Resolution under which the Committee was established.

**6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?**

On the level of public Courts there are not statistics available in the matters of cases where the act incorporating sanctions in the domestic legal order was challenged for being in violation of human rights.

The national measures of implementation of sanctions could be challenged before the Polish Constitutional Court just for the purpose of establishing whether they are consistent with the Polish Constitution.