

(Unofficial translation by the Financial and Capital Market Commission)

Regulations No 126 of 11.08.2020
(Min. No 33 of the Meeting of the Board of the
Financial and Capital Market Commission)

Regulations on sanctions risk management

Issued in accordance with the Section 13 (4), Clauses 3, 4 and 5 of the Law on International Sanctions and National Sanctions of the Republic of Latvia

I. General provisions

1. "Regulations on sanctions risk management" (hereinafter – the Regulations) shall be binding to credit institutions, payment institutions and electronic money institutions, private pension funds, investment firms, investment management companies, alternative investment fund managers, insurance undertakings in so far as they carry on life assurance or other activities related to funding accumulation, insurance intermediaries in so far as they carry on life assurance or other services related to funding accumulation, reinsurance service providers and branches of all of the stated subjects as well as credit unions (hereinafter collectively – the institution). Chapter III of these Regulations is also binding on regulated market operators, central securities depositories, as well as insurance companies, insurance and reinsurance intermediaries providing non-life insurance services, and branches of such entities established in other Member States and third countries in the Republic of Latvia.

2. The Regulations determine:

2.1. minimum requirements for carrying out the sanctions risk assessment and establishing an internal control system for sanctions risk management and control thereof;

2.2. circumstances to be taken into account by the institution in carrying out an assessment of sanctions risk, specifying those Member States of the European Union (hereinafter – the EU) or the North Atlantic Treaty Organization, whose sanctions have a serious impact on the interests of the institution or the financial and capital markets;

2.3. requirements in relation to the application of financial restrictions if they result from the sanctions imposed by the Member State of the EU or North Atlantic Treaty Organization where compliance with them have a serious impact on the interests of the institution or the financial and capital markets.

3. Terms used in the Regulations:

3.1. sanctions – restrictions imposed on the subject of sanctions adopted in accordance with the provisions of the Law on International Sanctions and National Sanctions of the Republic of Latvia. Within the context of the Regulations the scope of sanctions shall cover also the

sanctions set by the Member State of the EU or North Atlantic Treaty Organization that are identified in paragraphs 15 and 16 hereof;

3.2. an internal control system for sanctions risk management – a package of measures including activities to be taken to ensure compliance with sanctions requirements, providing adequate resources and organisational structure, regulatory and technological, as well as human resources and staff training, in order to prevent as far as possible engaging the institution in a violation, circumvention or attempt of evading the enforcement of sanctions. An internal control system for sanctions risk management is an integral part of the institution's internal control system;

3.3. sanctions risk – an impact and probability of engaging the institution in a violation or circumvention of sanctions;

3.4. subject of sanctions – a subject of international public law, a natural or legal person, or another identifiable subject, in relation to which sanctions have been imposed.

II. Sanction risk assessment and internal control system for sanction risk management

4. The institution shall carry out and document a sanctions risk assessment appropriate to the type of its activities, in order to identify, measure, understand and manage sanctions risk the institution is exposed to. In assessing sanctions risk the institution shall take into account at least following factors that have an impact on sanctions risk:

4.1. in relation to the activities of the institution:

4.1.1. a region where the institution operates and provides services, including the state where the institution's structure – subsidiary, branch, representation – operates and provides services;

4.1.2. states and territories where the third persons operate attracting or identifying customers in the interests of the institution or obtain information necessary for customer due diligence (agents);

4.1.3. services and products provided by the institution;

4.2. in relation to the institution's customer the institution takes into account circumstances affecting risk laid down in the Law on the Prevention of Money Laundering and Terrorism Financing – customer risk, risk of the state and geographical risk, and risks associated with financial services provided to customers and service delivery channels, assessing them in the context of sanctions risk.

5. The institution shall carry out a sanctions risk assessment in relation to all sanctions referred to in paragraph 3.1 hereof. The sanctions risk assessment shall be approved by the board of the institution, if appointed, or highest management body.

6. Based on the sanctions risk assessment, the institution shall establish an internal control system for sanctions risk management. Sanctions risk policies shall be approved by the council, if appointed, or highest management body of the institution, whereas sanctions risk procedures may be approved by the board of the institution, if appointed, highest management body or a structural unit delegated by it.

7. Establishing an internal control system for sanctions risk management the institution shall take into account at least following characteristics of elevated sanctions risk:

7.1. the customer, customer's business partner or customer's transactions are related to a territory or border area of a territory or state that is a subject of sanctions;

7.2. economic activity of the customer, its beneficial owner or business partner is related to a the military industry; sale, manufacture, import or export of dual-use goods subject to sectoral sanctions, or specialised foreign agencies (military design bureaux, space technology research agencies, etc.).

7.3. the customer's economic or personal activities do not meet their declared economic or personal activities or information on the customer's business partner does not conform to their economic or personal activities;

7.4. the customer has business relationship with companies having characteristics of a legitimate business which are used to conceal their financial malpractice, including beneficial owners or economic activities (*front company*), or business relations with inactive companies for longer time period and whose shareholders, directors or secretaries are inactive companies as well (*shelf companies*);

7.5. instead of the customer's business partner, the payments are made by a third party who is a resident of the territories or states subject to sanctions, or the customer makes payments instead of the third party who is a resident of the territories or states subject to sanctions;

7.6. the customer cooperates with a service provider transporting goods in states and territories subject to sectoral sanctions or in the frontier zone of such territories or states;

7.7. the customer cooperates with a service provider regarding which the publicly available information indicates that it provides transport services to companies operating in a territory or state subject to sectoral sanctions;

7.8. the carriage of goods involved in the customer's transactions takes place in a territory or state, or in the frontier zone of the territories or states subject to sectoral sanctions, on routes that are not precisely traceable in publicly available internet resources;

7.9. the price of the goods or services involved in the transactions essentially differs from the average price level in the market, the type of transport or storage of the goods involved in the transaction, the route, packaging or other characteristics do not correspond to the general practice in the sector;

7.10. the customer submits the same documents to justify several unrelated transactions;

7.11. the documents supporting transactions submitted by the customer contain indications of fraud, providing evidence of possible evading sanctions;

7.12. within the framework of non-cash remittance, funds are transferred or received from states or territories associated with the export of prohibited goods and services subject to sanctions or carried out in the vicinity of such states or territories.

8. Establishing an internal control system for sanctions risk management the institution shall provide for at least:

8.1. the development and sanctions risk management policies and procedures and requirements for their regular review in line with the amendments to laws and regulations or the institution's activities, services provided, management structure, customer base or regions of activities;

8.2. procedure for assessing, documenting and reviewing sanctions risk associated with the customer, its country of residence (registration), the customer's economic or personal activities, business partners, services and products provided to customers and service delivery channels, as well as transactions performed;

8.3. sanctions enforcement and compliance procedures and sanctions risk management measures appropriate to the sanctions risk assessment, including sanctions risk mitigation measures, in certain cases determining the necessary restrictions regarding services and products provided by the institution;

8.4. procedure for establishing and examining potential violations or circumvention of sanctions, including timely identification of sanctions risk before an occasional transaction,

before the establishment of business relationship and throughout the business relationship, as well as when entering into agreements with the institution's business partners;

8.5. decision-making procedure regarding business relationship with the customer, whose activities are identified as evolving elevated sanctions risk, including in the assessment of sanctions risk associated with members of a group of connected clients;

8.6. procedure for reporting on sanctions risk management by the institution referred to in the second sentence of paragraph 5 hereof and the Financial and Capital Market Commission (hereinafter – the Commission) regarding established or potential violations of sanctions, including the circumvention of sanctions;

8.7. procedure for the appointment of employee responsible for sanctions risk management, including the determination of the mandate of the employee responsible for sanctions risk management in the implementation of sanction risk prevention and mitigation measures;

8.8. the rights, obligations and responsibilities of the employees, as well as employees' professional qualifications and compliance standards pursuant to their obligations and mandate, providing for sanctions risk management measures;

8.9. requirements of the assessment of internal control system for sanctions risk management in accordance with regulatory requirements in the sanctions area and the assessment of efficiency of internal control system for sanctions risk management;

8.10. procedure for anonymous internal reporting on violations of sanctions requirements within the institution (whistleblowing) and the assessment of such reports, if such reporting is possible considering the number of employees in the institution;

8.11. the existence of adequate information technology (hereinafter – IT) for sanction risk management, including the determination of functional requirements for the system and regular testing of the existing IT, documenting test results and making timely improvements.

8.12. the procedures for notifying the State Security Service of the violation or attempted violation of sanctions and the funds frozen as a result thereof, and the procedures for informing the Commission thereof;

8.13. the procedures for notifying the Financial Intelligence Service of suspicions regarding the circumvention of international and national sanctions or attempts to circumvent financial restrictions;

8.14. the procedure for notification to the Commission in the cases specified in paragraph 14 of the Regulations.

9. The institution shall at regular intervals not exceeding three years update the sanctions risk assessment appropriate to sanctions risk inherent in its activities. Credit institutions, licenced payment and electronic money institutions and branches of the Member States and third countries shall review and update the assessment of sanctions risk once every 18 months.

10. The institution shall at regular intervals not exceeding 18 months assess and document the functional efficiency of internal control system for sanctions risk management, including reviewing and updating sanctions risk associated with the customer, its country of residence (registration), economic or personal activity, customer's key business partners, services and products provided to customers and service delivery channels, as well as transactions performed, and where necessary, take measures to improve its efficiency, including reviewing and specifying sanctions risk management policies and procedures. Credit institutions, licenced payment and electronic money institutions and their branches of the Member States and third countries shall, at least once every 18 months, ensure an independent assessment of the functional efficiency of internal control system for sanctions risk management, through a professional external evaluator.

11. The institution shall, regardless of the sanctions risk assessment frequency laid down in paragraph 9 hereof and frequency of the assessment of the functional efficiency of internal control system for sanctions risk management laid down in paragraph 10 hereof, carry out an assessment of sanctions risk and measures for improvement of internal control system for sanctions risk management in such cases:

11.1. the institution or the Commission has established weaknesses in the assessment of the institution's sanctions risk or internal control system for sanctions risk management or it fails to conform to the sanctions risk inherent in the institution's activities;

11.2. the institution intends to make changes to its activities, management or member structure, institution's structure (branches, representation offices, subsidiaries), services and products provided to customers and service delivery channels, customer base or geographic regions of activities, as a result of which sanctions risks inherent in the activities of the institution is increased.

11.3. the institution has identified significant changes in the area of sanctions, such as the introduction of a new sanctions regime that directly affects the institution.

12. The institution shall appoint an employee responsible for sanctions risk management, who is authorised to take decisions and directly responsible for compliance with regulatory provisions in the sanctions area and their enforcement, as well as for ensuring reporting on sanctions violations or potential violations of sanctions and circumvention of sanctions to the Commission and the institution referred to in the second sentence of paragraph 5 hereof. The institution shall ensure the adequate mandate and access to information necessary for the discharge of duties to the employee responsible for sanctions risk management. The institution shall notify the Commission in writing within 30 days of the appointment of the employee responsible for sanctions risk management or replacement of the employee.

13. The institution shall ensure that employees involved in sanctions risk management, including the employee responsible for sanctions risk management, have expertise in risks associated with sanctions risk management, regulatory provisions in the sanctions area of the Republic of Latvia, EU, as well as organisations of other states, whose sanctions the institution has recognised as sanctions having a serious impact on the interests of the institution or the financial and capital markets pursuant to the assessment of its sanction risk, as well as carry out regular staff training to enhance their knowledge and competences in sanctions risk management.

14. The institution shall immediately notify the Commission of:

14.1. the customer who is subject to sanctions;

14.2. freezing of the financial assets or financial instruments of the subject of sanctions;

14.3. a service prohibited to the subject of sanctions;

14.4. established violation of sanctions, including circumvention;

14.5. established circumstances providing evidence of possible violation or circumvention of sanctions.

14.6. customers who belong to a group of customers related to a person in respect of whom financial restrictions have been imposed in accordance with the requirements of customer enhanced due diligence, indicating the nature of the obligation, as well as the identification information of parties related to the stated customers.

14.7. a customer who is a person in respect of whom financial restrictions have been imposed, if there has been a change of its true beneficiary or representatives throughout the period of co-operation with the institution;

14.8. the release of the frozen funds or financial instruments of a customer who is subject to financial restrictions on the basis of a relevant decision lifting the sanctions on the basis of which the freezing was carried out.

III. Conditions and requirements regarding the sanctions imposed by the Member States of the EU or North Atlantic Treaty Organization

15. The sanctions imposed by the Member State of the EU or North Atlantic Treaty Organization shall be regarded as sanctions having a serious impact on the interests of the institution or the financial and capital markets, whose official currency (except the euro) has been mainly used in the settlements in international trade and financial markets and in case of noncompliance with its sanctions may make access to international financial settlements substantially more difficult for the financial and capital markets participants.

16. The institution shall, in carrying out an assessment of sanctions risk and sanctions imposed by the Member State of the EU or North Atlantic Treaty Organization that have a serious impact on the institution's interests, evaluate and take into account at least the following circumstances:

16.1. currencies the institution uses in the provision of services and products;

16.2. the institution's contractual obligations with other financial institutions or correspondent banks;

16.3. a region where the institution operates and provides services, including the state where the institution's structure – subsidiary, branch, representation – operates and provides services;

16.4. states where the institution's customers operate.

17. Where, pursuant to an assessment of its sanction risk, the institution establishes an essential impact of the sanctions imposed by the Member State of the EU or North Atlantic Treaty Organization on the interests of the institution or the financial and capital markets, the institution shall ensure appropriate sanctions risk management also regarding the sanctions imposed by this Member State of the EU or North Atlantic Treaty Organization.

18. Applying restrictions determined in the sanctions of the Member State of the EU or North Atlantic Treaty Organization, the institution shall assess the risks associated with the restrictions, including legal risks, and provide for restrictions adequate to the assessment, inter alia, determining that the institution shall not provide services to the customer who is the subject of sanctions pursuant to the sanctions imposed by the Member State of the EU or North Atlantic Treaty Organization or shall not execute transactions, if the party to the transaction is the subject of sanctions pursuant to the sanctions imposed by the Member State of the EU or North Atlantic Treaty Organization.

19. By way of derogation from paragraph 18 of the Regulations, an institution may provide financial services to a person subject to financial restrictions if written consent of the Commission is received to execute financial transactions and the person subject to financial restrictions is related to the EU or European Economic Area Member State and the receipt of services is reasonably necessary and consistent with the objective of the sanctions set by the EU and the North Atlantic Treaty Organization Member State:

19.1. to cover the basic needs of natural persons and dependent family members of natural persons or the basic operating expenses of a legal person, including payments for food, rent, mortgage, medicines and medical treatment, taxes and state fees, insurance premiums and utilities;

19.2. reimbursement of expenses related to legal services provided to a person;

19.3. to cover commissions for holding financial assets;

19.4. payments for obligations assumed by a person subject to financial restrictions before being included in the list of sanctions established by the Member State of the EU or the North Atlantic Treaty Organization, as well as for obligations after inclusion in the list, if they are related to any of exception cases provided for in paragraphs 19.1-19.3.

20. When applying to the Commission for consent, the institution shall submit an assessment that the service to be provided complies with the exceptions specified in paragraph 19 of the Regulations. If an institution discloses a suspicious transaction, it shall report it to the Financial Intelligence Service in accordance with the procedures specified in the AMLCFTP Law.

21. For the application of the exceptions provided for in paragraph 19 of the Regulations, the Commission may issue a general consent, including a limit on the basic needs or the expenses specific to the basic economic activity.

IV. Closing provision

22. With the entry into force of these Regulations, the Commission 29.01.2019 Regulations No 13 Sanctions Risk Management Regulations shall cease to be in effect.

Acting Chairwoman of the
Chairman of Financial and Capital Market Commission
Member of the Board

K. Černaja - Mežmale