



Danish enterprises and private individuals may be affected by sanctions



Per Vestergaard Pedersen
Partner



Stine Gellert
Attorney

Danish companies and individuals must comply with sanctions

Danish companies and individuals must comply with sanctions that apply to them and their activities and matters.

They must comply with sanctions under Danish law, including EU law, UN law, and other international law, which under Danish law applies to them and their activities and matters.

Danish companies and individuals may be punished and sanctioned for not complying with sanctions

If Danish companies and individuals do not comply with a provision or prohibition regarding a sanction under Danish law, including EU law, UN law, and other international law which applies under Danish law, they may be punished or sanctioned according to the rules thereon. The rules include the rules of the Danish Criminal Code, including its section 110 c.

On the basis of their acts and omissions in relation to their breach of a sanction, they may be fined for the breach of the sanction, for example with a fine corresponding to 100% or 200% of their profits. In addition, they may also be required to pay an amount to the Danish state corresponding to their profit. This will be done by a decision of the court on confiscation of the profit derived from the breach of the sanction. Examples of this in the Dan-Bunkering case are mentioned below in this section on penalties for breaches of sanctions. Persons, including persons in company management, may also in certain cases be sentenced to imprisonment.

Danish companies and individuals must also comply with sanctions under the law of other countries, which apply to them and their activities and matters. For example, it could be sanctions rules under the law of the United Kingdom or the United States of America if a Danish company or individual has an affiliated company, owns a company, has assets or agreements with a public authority, or performs activities in the United Kingdom or the United States of America. Failure to comply with the sanctions rules may result in penalties in some cases. In some cases, the Danish company or individual may also be excluded from performing activities and disposing of and dealing with their assets in the other country.

Danish companies and individuals' obligations in relation to compliance with sanctions

Some sanctions are a prohibition on certain activities or matters. For example, there may be a prohibition on certain activities, certain agreements, certain trades on and supplies, exports or imports of certain goods, services or technologies, certain transfers of money or other assets, certain financing, certain payments of claims or debts, certain financing of activities, transactions or projects, or certain trades or transactions in certain bonds, shares or similar assets, securities or financial instruments.

If a Danish company or individual is subject to a sanction which is a prohibition on doing something specific, the company or individual must comply with the prohibition and not do what is prohibited. The company or individual has a legal obligation to do so. For example, a company may not enter into or perform an agreement if it is prohibited, make a payment or transfer of money or assets if it is prohibited, enter into an agreement on or complete a transaction or a project if it is prohibited, sell, export and supply or buy, import and receive weapons, goods, services or technology if prohibited, or perform certain activities if prohibited.

Force majeure clauses and rules on the exemption of a Contracting Party from the performance of the agreement to the extent and for the period it is not possible due to sanctions

A commercial agreement often includes a clause on force majeure or similar impediments to performance. The clause applies if a party to the agreement is unable to perform the agreement or an obligation under the agreement due to force majeure or a similar impediment to performance.

The clause usually contains some terms on conditions for its use, including possibly a definition of force majeure or similar impediments to performance. It often follows from these terms that the clause applies if a contracting party is unable to perform the agreement or an obligation under the agreement due to an impediment to performance which meets all the following conditions or similar conditions (and under some clauses also some other conditions):

1. The impediment to performance could not (reasonably) be foreseen by the party at the conclusion of the agreement.
2. The impediment to performance is beyond the (reasonable) control of the party.
3. The party cannot (reasonably) avoid or overcome the impediment to performance and its effects by applying the (reasonable) skill, care, and diligence required of a contracting party under such an agreement.

It usually follows from the clause that the contracting party is not obliged to perform the agreement and is not liable for non-performance, to the extent and for the period of time the contracting party is unable to perform

the agreement due to the impediment to the performance that meets the conditions for the application of the clause.

Force majeure clauses often contain some examples of events, circumstances, or matters which will generally or often be force majeure and which will specifically be force majeure if they meet the conditions for the application of the force majeure clause. Sanctions are often cited as such an example of force majeure. If sanctions are not mentioned as such an example of force majeure, a sanction will generally nevertheless be force majeure if the sanction meets the conditions for the application of the force majeure clause.

A party to an agreement who is unable to perform the agreement due to the party's compliance with a sanction will thus not be obliged to perform the agreement and will not be liable for non-performance to the extent and for the period of time the party's compliance with the sanction is an impediment to performance which meets the conditions for the application of the force majeure clause.

A force majeure clause may thus in some cases have the effect that a contracting party's obligation to comply with a sanction releases the contracting party from performing the agreement and from liability for non-compliance to the extent and for the period of time the contracting party has an obligation to comply with the sanction.

For example, a supplier may be exempt from supplying goods, services or technology to the customer as agreed if a sanction prohibits the supplier from doing so.

A force majeure clause may thus in some cases have the effect that a contracting party's obligation to comply with a sanction releases the contracting party from performing the agreement and from liability for non-performance.

For example, a supplier may be exempted from supplying goods, services, or technology to the customer as agreed if a sanction prohibits the supplier from doing so.

As another example, a customer may be exempted from making a payment of the agreed consideration to a supplier if it follows from a sanction that the customer is prohibited from doing so. This will then be the case, regardless of whether the supplier has or has not delivered the agreed service when the customer has to pay the consideration to the supplier.

If the supplier has not provided the agreed goods or services when the customer has to pay the consideration to the supplier, the customer will often have the right to terminate the agreement under its terms on termination or general rules of contract law on termination which apply to the agreement. For example, they may be agreement terms or general rules on the customer's right to terminate the agreement if it becomes illegal or legally prohibited for the customer to perform its payment obligation under the agreement due to the sanction, or if it is clearly to be expected (anticipated) that the supplier will not perform its delivery obligation when the customer is not allowed to and will not pay the consideration to the supplier.

For example, the general rules mentioned may be rules in the Danish Sale of Goods Act, the Danish International Sale of Goods Act and the United Nations Convention on Contracts for the International Sale of Goods (CISG), or

the Danish general rules of contract law on agreements and their performance, non-performance, and remedies in case of non-performance, etc.

The Danish International Sale of Goods Act provides that the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies as Danish law to international agreements on the sale and purchase of goods. Article 79 of the convention provides that a contracting party is not liable for failure to perform its obligations under the agreement if the contracting party can prove that this was due to an impediment beyond the control of the contracting party and that the contracting party could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the agreement or to have avoided or overcome the impediment or its consequences. Under article 79, the contracting party is exempt from liability for non-performance as long as the impediment persists. Such an impediment may, for example, be a sanction that applies to the contracting party and which prohibits the contracting party from fulfilling its obligations under the agreement.

The Danish Sale of Goods Act contains similar rules in sections 24, 30 or 43.