

EU Imposes New Comprehensive Sanctions on Belarus

28 June 2021

In the last week, the European Union significantly escalated its existing sanctions regime against Belarus in response to alleged human rights violations and the recent forced landing of a Ryanair flight in Belarus. The new restrictions, which target major Belarus commercial enterprises and entire industry sectors, may have serious global economic ramifications. This escalation constitutes the most comprehensive new EU sanctions package since the EU's Russia sanctions in 2014, and serves as a reminder that the EU is ready to impose damaging sanctions in the face of behavior it perceives to be sufficiently malign.

Asset Freeze Extension. The EU's first tranche of sanctions against Belarus on 21 June 2021 consisted of asset freezes on 78 individuals and eight entities in Belarus ("Listed Persons").¹

The EU's choice of targets is noteworthy and likely to have a significant impact on global commerce. The EU's designations included BELAZ and MAZ, major Belarus state-owned manufacturers of mining and commercial vehicles sold around the world, and JSC NNK, the only privately owned Belarus company that exports oil from Belarus.

The EU also designated business executives deemed to be part of President Lukashenko's inner circle. Most significantly, this includes Mr Mikhail Gutseriev, a prominent businessman whose family has interest in SAFMAR group, which holds shares in major companies in Russia, such as PJSC "RussNeft" and "Russian Coal". Recent EU Commission guidance states that asset freezes should be presumed to apply to any entities controlled by a Listed Person, unless it can be shown, on a case-by-case basis, that the Listed Person does not in fact control the relevant entities. This so-called "indirect benefit presumption" means that making funds or economic resources available to an entity owned or controlled by a Listed Person is presumed to be equivalent to making those funds or economic resources available to the Listed Person directly.

¹ As set out in Council Implementing Regulation (EU) 2021/997, which amends Regulation (EC) No 765/2006.

Notably, although the EU announced these asset freezes in coordination with the United Kingdom and the United States, neither the United Kingdom nor the United States adopted the EU's list of asset-freeze targets. Instead, the United Kingdom and the United States focused on Belarus military and senior political figures alleged to have been directly involved in the forced landing of the Ryanair flight.

Trade and Sectoral Sanctions. On 24 June 2021, the EU imposed a second tranche of sanctions on Belarus,² consisting of comprehensive trade restrictions that include:

- enhanced restrictions on sending dual-use goods to Belarus, in particular for use by the Belarus military;
- enhanced restrictions on equipment, technology and software that could be used to monitor or intercept internet or telephone conversations;
- restrictions on selling, supplying, transferring or exporting to Belarus certain products used to manufacture tobacco (for example, papers for cigarettes, filters and tobacco flavoring);
- restrictions on importing, purchasing or transporting certain petroleum products from, or originating in, Belarus, and associated restrictions on financing, brokering, providing financial assistance, technical assistance or insurance or re-insurance for such products;
- restrictions on importing, purchasing or transporting certain potash products from, or originating in, Belarus;
- prohibitions on dealing with money market instruments and transferable securities issued by, or issuing new loans to, the Belarus government, any Belarus government public body or agency, or certain listed Belarus majority state-owned financial institutions, in each case with a maturity exceeding 90 days and issued after 29 June 2021 (the "Capital Market Restrictions"); and
- Prohibitions on insuring or re-insuring the Belarus government, its public bodies, corporations and agencies.

The Capital Market Restrictions are similar to restrictions imposed by the EU on Russia in 2014, with one important difference: the restrictions related to Russia targeted only certain state-owned enterprises and did not target the Russian government as a whole. With the new Belarus sanctions, the EU has extended the Capital Market Restrictions to

² As set out in Council Regulation (EU) 2021/1030.

the Belarus government, thus targeting Belarus government bonds and financing for the Belarus government's ministries and agencies. It is not yet clear whether the EU's guidance on the Russian Capital Market Restrictions will apply to the new Belarus ones.

The new trade sanctions include limited grandfathering provisions for contracts executed prior to 25 June 2021 (in cases of tobacco, oil and petroleum and potash restrictions), and, in respect of the Capital Market Restrictions, to loans, transferable securities and money market instruments issued before 29 June 2021 or loans contractually agreed prior to 25 June 2021.

The United Kingdom and the United States have not yet implemented any equivalent sanctions on Belarus.

Implications for Business. Companies with operations in Belarus, or that trade with Belarus counterparties, should carefully review whether the new EU sanctions could affect their operations, including potential supply chain issues.

Businesses should also ensure that their sanctions-screening procedures and due diligence processes are up to date and sufficiently robust to identify businesses potentially owned or controlled by the newly asset-frozen business executives, whether those business are located in Belarus, Russia or other countries. Companies would need to carefully consider whether the "indirect benefit presumption" would apply (or can be rebutted) in any particular case, such that business with a company owned by a Listed Person could proceed without violating EU sanctions.

Finally, given the comprehensive nature of these sanctions, it is not yet clear if international financial institutions may start to treat Belarus as a high-risk sanctioned country, equivalent to North Korea or Syria, and so impose new contractual limitations on doing business in Belarus. Companies should also ensure that they are aware of any contractual restrictions that may be triggered by the imposition of these new sanctions.

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