

BELARUS: European Union and United Kingdom Sanctions

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Overview

On 24 June 2021, the EU introduced new restrictive measures against Belarus, targeting key sectors of the Belarusian economy and marking a step-change in EU policy. While the UK has not imposed equivalent sectoral sanctions against Belarus, it is expected to follow the EU's lead in due course, as suggested by a UK government press release from 21 June 2021.

The relevant EU regulation related to sanctions against Belarus is Council Regulation (EC) No 765/2006, as recently amended by Council Regulation (EU) 2021/1030. Respectively, the relevant UK regulations are The Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 and the UK's Global Human Rights Sanctions Regulations 2020.

Who do the EU and UK Sanctions apply to?

The scope of the EU and UK sanctions regimes are very similar in their application. In particular, both apply:

- (a) within the territory of the EU and the UK, including their airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State/the UK;
- (c) to any person inside or outside the territory of the EU/UK, who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State/the UK; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU/UK.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU/UK.

The sanctions do not apply to non-EU/non-UK companies. However, if those companies take any action that is in breach of sanctions, associated EU/UK companies and employees who are EU/UK citizens may face penalties under the EU and UK regimes.

In addition, non-EU/non-UK companies may face sanctions in respect of any business they conduct that is done in whole or in part within the EU/UK. The sanctions would be limited to that particular business, and would not extend to exclusively non-EU/non-UK business carried out by those companies.

Prohibitions: Overview

The EU and UK prohibitions of most significance to the shipping sector relating to Belarus are listed below. While all of the below prohibitions apply to the EU, the UK currently has only imposed asset freezes and certain restrictions in relation to military and internal repression goods as noted below.

A. Asset freezes

Under the EU and UK sanctions regimes, all funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources may be made available, directly or indirectly, to or for the benefit of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payments to a non-listed party who then in turn pays the money to a listed party, are prohibited.

B. Sectoral sanctions

In June 2021, the EU introduced sectoral sanctions specifically targeting certain petroleum products (excluding crude oil), potassium chloride (“potash”) and goods used for the production or manufacturing of tobacco products, as well as telecommunications equipment, dual-use or military goods. Insurance and re-insurance is also prohibited in respect of these petroleum products.

At the time of writing, equivalent sanctions are yet to be implemented by the UK. However, there are indications that they will follow in the future.

The UK and EU also both implement sanctions that specifically target military and internal repression goods and technology.

C. Financial sanctions

The EU has also introduced financial sanctions aimed at restricting the access to EU capital markets, as well as the prohibition of providing insurance or re-insurance to the Belarusian government, public bodies and agencies. The UK has not yet imposed equivalent measures against Belarus.

Further guidance on these restrictions can be found below.

Due diligence as a defence to liability

The EU and UK sanctions regulations implementing these prohibitions include a defence to liability where the person or entity concern “*did not know, and had no reasonable cause to suspect*”, that their actions would infringe the relevant prohibitions.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions is, therefore, critical; well-documented investigations and screenings may serve as a defence to unintentional sanctions violations.

Anti-circumvention

The EU and UK sanctions regulations contain anti-circumvention wording that provides that it “*shall be prohibited to participate, knowingly and intentionally, including indirectly, in activities the object or effect of which is to circumvent the prohibitions...*”. Therefore, even if a transaction is not in direct breach of sanctions, if it intended to circumvent sanctions, there may still be a violation and liability.

A. Dealing with Designated Parties: Asset Freezes

Background

The EU and the UK have developed asset freeze measures against persons and entities responsible for serious violations of human rights or the repression of civil society and democratic opposition or whose activities otherwise seriously undermine democracy or the rule of law in Belarus or who benefit from or support of President Lukashenko’s regime.

These measures have been introduced in response to the August 2020 presidential elections in Belarus, and the intimidation and violent repression of peaceful protesters, opposition members and journalists. Further, on 24 and 25 May 2021, the EU Council and the UK government strongly condemned the forced landing of the Ryanair flight in Minsk. Consequently, on 24 May and 4 June 2021, a ban on the overflight of UK and EU airspace was imposed, respectively. On 4 June, the EU also banned access to EU airports by Belarusian carriers.

What is prohibited?

- I. Funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

→ *What does this mean?*

This provision is largely aimed at banks and financial institutions, who must freeze all accounts belonging to, owned, held or controlled by designated parties.

- II. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of designated parties.

→ *What does this mean?*

No payments can be made to any party designated by the EU and UK regimes, either directly or indirectly (*e.g.*, making the payment to a non-designated party knowing that they will pay it on to the designated party).

No payments can be made “for the benefit of” a designated party. This includes, for example, making payments to a non-designated company which is owned or controlled by a designated party.

The prohibition extends beyond the payment of monies to “economic resources”. These are defined by the EU and UK regimes as “assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services”.

The wide scope of this provision emphasises the importance of thoroughly investigating all parties involved in a particular transaction or trade.

How can I avoid a breach?

Thorough investigations must be carried out in order to determine whether any party involved in a transaction is designated. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

The following investigations should be carried out:

- (a) Identify all parties involved in the transaction, for example shippers, receivers, agents and any intermediaries.
- (b) Investigations must go further than simply identifying the names of the parties and checking them against the asset freeze lists. The prohibitions extend to parties owned and controlled by designated persons. Where possible the corporate structure, ownership and control of all companies involved in the transaction must be investigated.

It is also necessary to consider whether a non-designated party is directly or indirectly owned or controlled by a designated party.

Under the UK sanctions regime, a party is considered to be “owned or controlled” by another party if:

- (a) that person holds directly or indirectly more than 50% of the shares or voting rights in the company or the rights to appoint or remove a majority of the board of directors of that company; and
- (b) it is reasonable, having regard to all the circumstances, to expect that that person would (if such person chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the company are conducted in accordance with that person’s wishes.

Under EU regulations, a party is considered to be “owned” by another party which is in possession of more than 50% of its proprietary rights, or which has a majority in it. There is no definitive meaning of “control” for the purposes of the EU sanctions regime – however, it is likely to follow similar principles to the UK position.

Are there any situations in which payments can be made to a designated party?

Under EU and UK sanctions regulations, payments to designated parties may be authorised in certain specified circumstances. The majority of these are not relevant to a commercial situation, and reflect circumstances such as satisfying the basic needs of designated parties, or the payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services or payment of service charges for the maintenance of frozen funds or economic resources.

NB: Under EU regulations, these payments must be authorised by the competent authority in the Member State of the party making the payment. Those authorities are listed in Annex II to Council Regulation (EC) No 765/2006. The payment must also be notified to the relevant Member State and the EU Commission, without delay. Under the UK regulations, a licence to carry out any such payments must be obtained by the UK’s HM Treasury.

Even if it appears that a particular payment may be permitted, it should never be assumed that authorisation will be given.

Funds may be added to frozen accounts of interest or other earnings on those accounts or where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen. As above, the relevant EU competent authorities must be notified without delay regarding any such transactions. There is no express notification requirement in this context under the UK sanctions regulations.

Are there any situations in which funds may be released from a frozen account?

Under EU sanctions regulations, funds may be released from frozen accounts, with prior authorisation, in certain specified circumstances, including:

- (a) if the funds in question are necessary for extraordinary expenses, official purposes of diplomatic missions, consular posts or international organisations enjoying immunities in accordance with international law; or
- (b) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided, that payment will not contribute to any prohibited activity, and will not otherwise contravene the asset freeze provisions.

NB: If the above conditions apply, the Member State concerned must also notify the other Member States and the EU Commission that the transaction will go ahead at least two weeks in advance. Under UK regulations, a licence from the HM Treasury will be required even if the above circumstance apply.

How can I find out which parties are designated?

A full up to date list of all Belarusian parties designated by the EU regime can be found [here](#).

A full list of all parties designated by the EU regime can be found [here](#).

A full list of all parties designated by the UK regime can be found [here](#).

B. Sectoral Sanctions

As stated above, the UK is yet to impose sectoral sanctions on Belarus, but is likely to follow the EU's lead in the near future.

The EU sectoral sanctions relate to certain petroleum products, potash, goods used for the production or manufacturing of tobacco products, dual use goods, software and technology. They are set out in Council Regulation (EU) 2021/1030.

In most cases, these prohibitions do not apply to contracts entered into before 25 June 2021 or ancillary contracts necessary for the execution of such contracts.

What is prohibited?

Petroleum Products

It is prohibited to:

- (a) Import petroleum products (as listed in Annex VIII of Council Regulation (EU) 2021/1030) into the EU if they (i) originate in Belarus; or (ii) have been exported from Belarus;
- (b) Purchase petroleum products which are located in or which originated in Belarus;
- (c) Transport petroleum products if they originate in Belarus or are being exported from Belarus to any other country;
- (d) Provide, directly or indirectly, technical assistance, brokering services, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance, related to the above prohibitions.

The above prohibitions do not apply to purchases of petroleum products in Belarus required to meet essential needs of the purchase or humanitarian projects in Belarus.

Potassium Chloride ("Potash")

It is prohibited to import, purchase or transfer, directly or indirectly, certain potassium chloride products as listed in Annex VIII of Council Regulation (EU) 2021/1030 from Belarus, whether or not originating in Belarus.

Goods used for the production or manufacturing of tobacco products

It is prohibited to sell, supply, transfer, or export the goods used for the production or manufacturing of tobacco products as listed in Annex VI of Council Regulation (EU) 2021/1030 (including filters, papers, flavours and machinery), whether such goods originate or not in the EU, to any natural or legal person, entity or body in Belarus or for use in Belarus.

Dual-Use Goods and Technology

Save for where authorised by a relevant competent authority (*i.e.* a Member State sanctions regulator), it is prohibited to:

- a) sell, supply, transfer export, directly or indirectly, whether or not originating in the EU, equipment, technology or software, to any natural or legal person, entity or body in Belarus or for use in Belarus, if these would be used for repression by the Belarusian Government, public bodies, corporations or agencies, or any natural or legal person or entity acting on their behalf or at their direction. This prohibition includes equipment, technology or software intended primarily for use in the monitoring or interception of internet or telephone communications.
- b) In relation to a), there are also related prohibitions on technical assistance, financing, financial assistance and brokering services.
- c) sell, supply, transfer or export, directly or indirectly, dual-use goods and technology, whether or not originating in the Union, to (i) any natural or legal person, entity or body in Belarus or for use in Belarus, if those items are or may be intended, in their entirety or in part, for military use or for a military end-user (where the end-user is the Belarusian military, any dual-use goods and technology procured by it shall be deemed to be for military use) or (ii) to any designated natural or legal person, entity or body in Belarus.

The Common Military List and Equipment used for Internal Repression

There are also EU prohibitions in relation to the Common Military List and equipment used for internal repression (such as firearms and military vehicles). Similar prohibitions apply under the UK sanctions regulations.

How is the shipping industry affected?

Any Members involved in Belarusian trade should carefully consider what sanctions implications may apply. The EU sanctions are wide ranging and complex in scope and legal advice should be taken in the event of any doubt.

Members should be aware that even if not caught by the sectoral sanctions, contemplated trade may be prohibited through the involvement of designated parties. For example, whilst crude oil is excluded from the sectoral sanctions set out above, at the date of this guidance Novaya Neftnaya Kompaniya (NNK) New Oil Company, which the EU states as being the only private company entitled to export oil products from Belarus, is designated.

C. EU financial sanctions aimed at restricting the access of certain Belarusian entities and Belarusian state-owned financial institutions to EU capital markets

What is prohibited?

Subject to certain derogations, these financial measures aim to restrict the access of certain key Belarusian companies to EU capital markets, new loans and credit.

In particular it is prohibited to, directly or indirectly, make or be part of any arrangement to make new loans or credit with a maturity exceeding 90 days after 29 June 2021 or, directly or indirectly, purchase, sell or provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 29 June 2021. These prohibitions apply to the following entities:

- (a) the Republic of Belarus, its Government, its public bodies, corporations or agencies;
- (b) Belarusbank, Belinvestbank and Belagroprombank (listed at Annex IX of Council Regulation (EU) 2021/1030) (the “**Sanctioned Banks**”);
- (c) any person, established outside the EU, whose proprietary rights are directly or indirectly owned 50%+ by the Sanctioned Banks; and
- (d) any person acting on behalf of the Sanctioned Banks.

The above prohibitions in relation to making new loans or credit do not apply where:

- (a) loans or credits have and document a specific objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the EU and third countries, including the expenditure for goods and services from another country that is necessary for executing the export or import contracts; or
- (b) authorisation has been granted by the relevant Member State’s competent authority and the activities concerned are for the purpose of providing support to the Belarusian population or do not involve funds or economic resources being made available directly or indirectly, to or for the benefit of designated persons; or
- (c) drawdowns or disbursements are made under a contract concluded before 25 June 2021 provided that before that date all terms (including provisions relating to the length of the repayment period for each drawdown or disbursement, the applicable interest rate or its calculation method and the maximum amount) were agreed, have not been modified since and a contractual maturity date has been fixed for the repayment in full of all funds made available and for the cancellation of all commitments, rights and obligations under the contract.

Further, it is prohibited to provide insurance or re-insurance to the Belarusian Government, its public bodies, corporations or agencies or any person, entity or body acting on behalf or at the direction of such entities,

The European Investment Bank (“**EIB**”) is also prohibited from making any disbursement or payment under or in connection with any existing agreements entered between Belarus or any Belarusian public authority thereof and the EIB and must suspend all existing Technical Assistance Services Contracts relating to projects financed under agreements entered into between Belarus or any Belarusian public authority.

No equivalent measures have been adopted by the UK to date.

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