



Alexander Bychkov
Partner, Moscow



Hava Kadyrova
Associate, Moscow

Overview of International Sanctions Currently Applicable to Belarus

Since the reelection of the president of Belarus, Alexander Lukashenko, a year ago, Belarus has become subject to phased tightening of international sanctions restrictions.

In 2021, every wave of sanctions was caused by various "acts of aggression" connected with the current president of Belarus, including the forced landing of a Ryanair passenger plane in Minsk and the detention of a political activist who was onboard on 23 May 2021 (the so-called Ryanair incident).

Belarus-related sanctions restrictions were recently introduced by the United States, the European Union, the United Kingdom, Canada, Switzerland and Ukraine. The objective of newly introduced sanctions is to mount international pressure against the current oppressive regime in Belarus by preventing international companies from doing business in selected economic sectors of this country.

In this article, we discuss in more detail the sanctions restrictions recently introduced by the US, the EU, the UK, Canada, Switzerland and Ukraine with respect to Belarus.

US sanctions

To date, the US has imposed the following categories of Belarus-related sanctions:

- **Blocking sanctions** against selected individuals and legal entities pursuant to (i) Executive Order 13405 "Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus" dated 20 June 2006 ("EO 13405") and (ii) Executive Order "On Blocking Property of Additional Persons Contributing to the Situation in Belarus" dated 9 August 2021 ("EO 09/08/21").

The last time the US imposed such sanctions was 9 August 2021, when the so-called specially designated nationals (SDN) status was imposed on 23 individuals and 21 entities (pursuant to EO 13405 and EO 09/08/21). These persons were designated due to their involvement "in the continuing violent crackdown on peaceful protests, are connected to the Ryanair incident, or profit from or sustain the Belarusian regime at the expense of the Belarusian people."

US sanctions target the following persons:

- (i) wealthy business owners in Belarus (so-called "wallets" of the current president of Belarus) who are involved in the oil, coal, tobacco and construction businesses (e.g., Belarusian businessman Nikolay Vorobey; his Belarus, Ukraine and Russia-based energy companies; Aleksey Oleksin, who controls a vast fortune in the tobacco industry and the national traffic system of Belarus; and Serbian and Cypriot national Nebojsa Karic, who controls a construction empire);
- (ii) certain senior Belarusian government officials, security services (including officials at a detention center in Minsk, the capital of Belarus, where protesters and journalists are allegedly being held), and the Belarusian National Olympic Committee.

The list of sanctioned persons also includes (among others) Belaruskali JSC, which is one of the world's largest producers of key fertilizer ingredient potassium chloride (potash). It was designated for being owned or controlled by, directly or indirectly, the Government of Belarus and for operating or having operated in the potash sector of the economy of Belarus. Despite such designation, US persons are granted with 120-day transition period to wind down transactions



involving Belaruskali JSC, or any entity in which Belaruskali JSC owns, directly or indirectly, a 50% or greater interest (pursuant to Belarus General License 4).

The selected persons are included on the Specially Designated Nationals and Blocked Persons List ("**SDN List**") maintained by the US Department of Treasury's Office of Foreign Assets Control ("**OFAC**"). This status leads to the following negative implications: (1) prohibition from entering the territory of the US; (2) blocking of SDNs' property and interest in property that is within the US territory or comes within the possession or control of any US person ("asset freeze"); (3) US persons' ineligibility to engage in any transactions that involve, directly or indirectly, a US SDN. The SDN status applies not only to persons that are actually on the SDN List but also to entities that satisfy the US 50% Rule (i.e., are 50% or more owned, directly or indirectly, by a person (persons) that is (are) on the SDN List).

- **Secondary sanctions risks** arising pursuant to EO 09/08/21. This executive order raises a concern that activities in certain economic sectors of Belarus may lead to the imposition of blocking (secondary) sanctions on non-US persons. EO 09/08/21 effectively authorizes blocking sanctions to be imposed on persons that are determined to operate or have operated in the following economic sectors of Belarus: defense and related material sector, energy, potassium chloride (potash), tobacco products sector, construction sector, and transportation sector of the economy of Belarus. In addition to the named sectors, the executive order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to identify other sectors of the Belarus economy that may give rise to secondary sanctions.

Companies that do not fall under the category of "US persons" may face US secondary sanctions if they "operate in" any of the identified sectors of the Belarusian economy.

- **Revocation of Belarus General License 2G** on 19 April 2021 effectively leads to a prohibition on US persons engaging in transactions involving certain blocked Belarusian state-owned enterprises and their direct/indirect subsidiaries that satisfy the US 50% Rule (including Belarusian Oil Trade House, Belneftekhim, Belneftekhim USA, Inc., Belshina OAO, Grodno Azot OAO, Grodno Khimvolokno OAO, Lakokraska OAO, Naftan OAO and Polotsk Steklovolokno OAO). OFAC concurrently issued Belarus General License 2H, which authorized certain wind-down transactions with said enterprises until 3 June 2021 (this authorization is no longer available and now US persons may not engage in any dealings with such enterprises).
- **Issuance of Belarus General License 3** by OFAC on 21 June 2021 authorizing US persons to conduct certain transactions with the newly designated State Security Committee of the Republic of Belarus ("**Belarusian KGB**"), including interaction with Belarusian KGB in its administrative capacity (e.g., to obtain permissive documents for the importation, distribution or use of information technology products in Belarus, provided that such transactions are licensed or authorized by the US Department of Commerce). This license does not authorize US persons to export, reexport or provide any goods, technology or services except for the purpose of complying with rules and regulations administered by the Belarusian KGB.
- **Visa restrictions** (i.e., prohibitions against entering the US) pursuant to Presidential Proclamation 8015 applicable to particular individuals who are "involved in efforts to undermine Belarusian democracy." Currently, such restrictions apply to 109 individuals. The list includes high-ranking justice sector officials, law enforcement leaders and rank-and-file personnel who "detained and abused peaceful demonstrators," judges and prosecutors "involved in sentencing peaceful protesters and journalists to prison terms," academic administrators who "threatened students for participating in peaceful protests" and Russian and Belarusian nationals "complicit in hindering the work of independent media and otherwise undermining the integrity of media freedom in Belarus.
- **Announced suspension of the application of the US-Belarus Air Services Agreement of 2019**, which will effectively end flights between the US and Belarus.

EU sanctions

The EU sanctions restrictions targeting the current Belarusian regime are composed of the following:

Blocking sanctions against selected individuals and legal entities that have been added to the list of Designated Persons (DP) ("**EU DP List**"). The DP status is applied to persons directly indicated in the EU DP List. Formally, EU blocking sanctions do not extend to affiliated persons owned by such DPs. However, subsidiaries more than 50% owned or controlled by such DPs (directly or indirectly) may still be viewed as subject to said blocking sanctions based on the presumption applied in many EU member states that such subsidiaries act on behalf or in the interest of their DP owners (controllers). Although this is a rebuttable presumption, the practice shows that it is very difficult to reverse.

As a result of EU designations, DPs face the following restrictions: (a) travel bans making it impossible for them to enter the territory of the EU member states; (b) asset freeze; and (c) prohibition on the provision of "any funds or economic resources" that will be made available, directly or indirectly, to or for the benefit of such DPs. Economic resources are



defined as assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

In total, currently such blocking sanctions targeting the Belarusian regime apply to 166 individuals and 15 companies. The EU made the latest designations on 21 June 2021, when the European Council imposed restrictive measures against 78 Belarusian individuals and eight entities "in view of the escalation of serious human rights violations in Belarus and the violent repression of civil society, democratic opposition and journalists." Seven individuals and one entity were designated in connection with the forced landing of a Ryanair flight in Minsk (the Ryanair incident discussed earlier).

EU sanctions were imposed against several prominent business figures who support the regime of the current president of Belarus, including a Russian oligarch, Mikhail Gutseriev, who — as noted by the European Council — "is an old friend of Alexander Lukashenko" and "has accumulated considerable wealth and influence among the political elite of the republic."

The list also includes members of the president's family (namely, Dmitry Lukashenko (middle son of Alexander Lukashenko) and Lilia Semashko-Lukashenko (wife of Victor Lukashenko and daughter-in-law of Alexander Lukashenko)), public prosecutors and members of the judiciary, senior figures in the media and government, government ministers and members of the air force responsible for the Ryanair situation, Belaeronavigatsia (which is responsible for air traffic control), etc.

- **Sectoral sanctions** under Council Regulation (EU) 2021/1030 and Council Decision (CFSP) 2021/1031, including the following:
 - (a) prohibition of the direct or indirect sale, supply, transfer or export to anyone in Belarus of equipment, technology or software intended primarily for use in the monitoring or interception by, or on behalf of, the Belarusian authorities of the internet and of telephone communications on mobile or fixed networks, including the provision of any telecommunication or internet monitoring or interception services of any kind, and the provision of financial and technical assistance to install, operate or update such equipment, technology or software;
 - (b) prohibition of the direct or indirect sale, supply, transfer or export of all listed dual-use goods and technology for military use in Belarus or for any military end user in Belarus, and the prohibition of providing (i) technical assistance, brokering services or other services related to such goods and technology and to the provision, manufacture, maintenance and use of those goods and technology, directly or indirectly, to any natural or legal person, entity or body in Belarus, for military use in Belarus or for any military end user in Belarus or (ii) financing or financial assistance related to such goods and technology for any sale, supply, transfer or export of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any natural or legal person, entity or body in Belarus, for military use in Belarus or for any military end user in Belarus;
 - (c) prohibition of the direct or indirect sale, supply, transfer or export to any natural or legal person, entity or body in Belarus or for use in Belarus of goods used for the production or manufacturing of tobacco products (contracts for the trade of such products entered into before 25 June 2021 are exempt)
 - (d) prohibition of the purchase, import or transfer from Belarus of petroleum products and potassium chloride ("potash"), and the provision, directly or indirectly, of technical assistance, brokering services, financing or financial assistance, including financial derivatives, and insurance and reinsurance, related to said trade activities with petroleum products (contracts for the trade of such products entered into before 25 June 2021 are exempt);
 - (e) prohibitions relating to certain transferable securities, money-market instruments, new loans and credit with a maturity exceeding 90 days issued after 29 June 2021 by the Belarusian government, public bodies and listed state-owned banks and their affiliates (namely, Belarusbank, Belinvestbank (Belarusian Bank for Development and Reconstruction), Belagroprombank, legal persons (entities, bodies) established outside the EU whose proprietary rights are directly or indirectly more than 50% owned by the mentioned Belarusian banks);
 - (f) prohibition of providing insurance and reinsurance to the Belarusian government, its public bodies, corporations and agencies (and any individual or legal person, entity or body acting on behalf or at the direction of the Belarusian government, its public bodies, corporations and agencies);
 - (g) prohibition of any disbursements or payments by the European Investment Bank ("**EIB**") under or in connection with any existing agreements entered into between Belarus or its public authority and EIB, and the suspension of any existing Technical Assistance Service Contracts financed under such public sector agreements.
- **Ban on any aircraft operated by Belarusian air carriers** from landing, taking off or flying over the territory of the EU (as of 4 June 2021).



UK sanctions

After leaving the EU, the UK is no longer subject to EU sanctions regulations and, therefore, had to develop its own sanctions framework (which is still based on concepts and approaches similar to EU sanctions).

The UK has imposed a set of trade, financial and aviation sanctions aimed at targeting the "continued undermining of democracy and human rights violations" by the current Belarusian regime. Such sanctions include the following:

- **Blocking sanctions** against selected individuals and legal entities (so-called designated persons; "**UK DPs**") that have been added to the Consolidated List of Financial Sanctions Targets in the UK, and to entities that satisfy the UK 50% Rule, are acting on behalf of or at the direction of a UK DP or are members of, or associated with, a UK DP. The UK 50% Rule is based on the ownership test and the control test. A person (not an individual) is deemed owned or controlled by a UK DP if the following two conditions are satisfied:

(1) The UK DP (a) holds directly or indirectly more than 50% of the shares in such person, (b) holds directly or indirectly more than 50% of the voting rights in such person, or (c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of such person.

(2) It is reasonable, having regard to all the circumstances, to expect that the UK DP would (if such UK DP 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 person are conducted in accordance with the UK DP's wishes.

UK sanctions against UK DPs lead to (i) travel bans, (ii) asset freezes and (iii) prohibition on UK persons engaging in making funds and economic resources available to UK DPs, directly or indirectly.

In particular, similar to the EU, the UK imposed blocking sanctions on Mikhail Gutseriev due to him being "one of the main private investors in Belarus and a longstanding associate of Alexander Lukashenko." The sanctions include a freeze on his assets and a ban on providing technical assistance to his aircraft. The designations also include Victor Lukashenko, senior officials in the government and the air force who were responsible for the Ryanair incident, Belaeronavigatsia (which is responsible for Belarusian air traffic control), a number of state-owned enterprises, etc.

- **Sectoral sanctions** introduced by the UK on 9 August 2021 generally align with EU sectoral sanctions restrictions. In brief, UK sectoral sanctions include the following:

(a) The provision of insurance and reinsurance services to Belarus or Belarusian authorities is prohibited.

(b) There are restrictions limiting certain Belarusian entities' access to the capital markets (prohibition on directly or indirectly dealing with transferable securities or money-market instruments with a maturity exceeding 90 days issued on 9 August 2021 by listed "relevant persons," and prohibition of the provision of investment services in respect of such instruments/securities). The relevant persons are (i) Belarus, (ii) Belarusian authorities, (iii) any entity wholly owned by Belarus or a Belarusian authority, (iv) a credit or financial institution majority-owned by Belarus or a Belarusian authority, (v) any non-UK entity that is majority owned by such a credit or financial institution, or (vi) anyone acting on behalf of or at the direction of a person indicated in items (iv) or (v).

(c) The provision of loans with a maturity exceeding 90 days and issued after 9 August 2021 if such loans are made/granted to a "relevant person" (as defined in item (b) above) is prohibited. However, in some cases an exemption from this prohibition may apply.

(d) There are trade restrictions (prohibitions and licensing requirements) concerning potash, petroleum products, interception and monitoring goods and technology, goods used in cigarette manufacturing, and dual-use goods and technology. In many cases, trade restrictions concerning the listed goods are accompanied by related restrictions on the provision of technical assistance and/or financing or brokering services relating to the listed products.

- **Aircraft-related restrictions**, including a licensing requirement for the provision of technical assistance relating to aircraft owned by or used for the benefit of a UK DP, and a ban on flights by aircraft owned, chartered or operated by a person connected with Belarus (or registered in Belarus) to fly over or land in the UK.

Canadian sanctions

Canada has also joined the initiative to introduce restrictive measures against the Belarusian authorities.

Similar to other jurisdictions, Canada has imposed the following restrictions:



- **Blocking sanctions** established pursuant to Special Economic Measures (Belarus) Regulations against selected persons. Unlike some other jurisdictions, Canadian sanctions do not formally provide for the expansive 50% rule, however they apply to: (i) entities owned, held or controlled, directly or indirectly, by a sanctioned person, or acting on behalf of or at the direction of a sanctioned person; (ii) property, wherever situated, that is owned, held or controlled by a sanctioned person; and (iii) those entities and individuals, by means of which a sanctioned person benefits from financial or related services. Such sanctions entail asset freezes, various broad prohibitions on persons in Canada and Canadians outside Canada, including prohibitions on dealings in any property of sanctioned persons or providing financial or related services to them. To date, Canada has sanctioned 72 Belarusian officials and five entities.
- **Sectoral sanctions** targeting certain activities relating to various economic sectors of Belarus. With some exceptions, persons in Canada or Canadians outside Canada may not do the following:
 - (a) deal in transferable securities and money market instruments, including treasury bills, certificates of deposit and commercial papers (except for instruments of payment issued by listed persons);
 - (b) transact in, provide financing for or otherwise deal in debt of longer than 90 days' maturity, including bonds, loans, debentures, extensions of credit, loan guarantees, letters of credit, bank drafts, bankers' acceptances, discount notes, treasury bills, commercial paper and other similar instruments in relation to listed persons;
 - (c) provide insurance or reinsurance to listed persons;
 - (d) import, purchase, acquire, ship or otherwise deal in specific petroleum goods, wherever situated, that are exported from Belarus, and provide any financial, technical or other services such as insurance or reinsurance related to goods subject to this prohibition;
 - (e) import, purchase, acquire, ship or otherwise deal in any potassium chloride goods (potash), wherever situated, that are exported from Belarus.

Swiss sanctions

Switzerland imposed a set of restrictions similar to the sanctions regime established by the above-discussed jurisdictions. Swiss restrictions include the following:

- **Personal (blocking) sanctions** against the same 78 individuals and seven legal entities as under the EU sanctions (such as Alexander Lukashenko, his son Victor, Mikhail Gutseriev, Alexander Shatrov, etc.), leading to blocking of assets, an obligation to report blocked assets, a ban from entering or traveling through Switzerland, and a prohibition on funds and economic resources being made available to blocked persons or parties owned or controlled by blocked persons or acting in the name or according to the instructions of blocked persons.
- **Sectoral sanctions**, including controls on trade in certain goods and restrictions in the financial sector. Swiss sanctions are similar to EU sectoral sanctions. In particular, Switzerland applies the following:
 - (a) embargo on arms and equipment that may be used for internal repression;
 - (b) embargo on goods that could be used to monitor or intercept internet and telephone communications;
 - (c) restrictions against trade in dual-use goods and technologies (export prohibition for military purposes or to the Belarusian army or other military end users), goods used for the production/processing of tobacco products (export prohibition), and specific petroleum and potash products (import prohibition).

Prohibitions (A) on the issuance of and trading in financial instruments and the provision of loans to the Belarusian government and other public bodies and agencies as well as listed banks and other companies (namely, Belarusbank, Belinvestbank and Belagroprombank) and (B) on the provision of insurance or reinsurance services to Belarus, its government or a Belarusian public body, enterprise or agency also apply. Swiss financial sanctions also target the state-owned provider of air navigation services, Belaeronavigatsia.

Sanctions under item (A) also apply to a bank or other company or entity that are (i) located outside Switzerland and the EU and are more than 50% controlled by or (ii) acting in the name or according to the instructions of listed banks or companies. Sanctions under item (B) also apply to persons acting in the name or according to the instructions of Belarus, its government or a Belarusian public body, enterprise or agency.



Ukrainian sanctions

- Ukraine is among the jurisdictions that have applied certain sanctions against the current Belarusian regime. In 2020, Ukraine ceased contact with Belarus after the reelection of Alexander Lukashenko as the Belarusian president.
- In May 2021, Ukraine terminated direct flights with Belarus and restricted flights across Belarusian airspace the day after the Ryanair incident occurred.
- On 7 July 2021, Ukraine's government proposed introducing personal sanctions against 52 Belarusian officials, including Alexander Lukashenko's son Viktor, all current and former leaders of the interior ministry, the Belarusian KGB, presidential advisers and aides, and heads of the prosecutor general's office and the central election commission.

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