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EU Expands Sanctions against Belarus Amid Hybrid Attack and Continued Repression

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Background

November 19, 2021 - On November 15, 2021, the European Union (“EU”) adopted a fifth package of restrictive measures targeting Belarus in response to the migration crisis on the EU’s eastern border.

Denouncing a “hybrid attack,” the EU has sanctioned Belarus for deliberately using migrants fleeing the Middle East for political goals. For the EU, the Belarusian regime organized or facilitated the transport from the Middle East to Minsk of migrants before forcing them to the borders with Poland and the Baltic states, four member States of the EU. It is believed that Belarus took these actions in part as a response to the latest EU sanctions targeting Belarus for President Lukashenko’s crackdown on his opponents in August 2020. In June 2021, just before the adoption of the fourth package of EU sanctions arising out of the enduring repression and the forced landing at Minsk airport of a Ryanair flight, President Lukashenko had threatened the EU that he would “allow migrants and drugs to pour into western Europe if sanctions were imposed.” On November 18, 2021, shortly after the EU announced its newest round of sanctions, Belarus began repatriation flights for some of the migrants massed on its border.

Overview of the EU Sanctions Program Targeting Belarus

The EU sanctions program against Belarus was originally introduced in 2004 following the disappearance of two opposition politicians in the 1999-2000 period and has been adapted over time. Sanctions were significantly reinforced in October 2020 in response to the fraudulent presidential election in Belarus in August 2020, the result

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The EU sanctions program targeting Belarus provides for restrictive measures against individuals and entities designated in Annex 1 of the Regulation, including:

- the freezing of funds and economic resources owned, held or controlled by designated individuals and entities (Article 2 of the Regulation);
- the prohibition from making available, directly or indirectly, funds or economic resources to or for the benefit of designated individuals and entities (Article 2 of the Regulation); and
- the travel ban to the EU for designated individuals (Article 3 of the Council Decision).

To date, 166 individuals along with 15 legal persons and entities (mainly close to President Lukashenko, his family and the Belarusian Government) have been designated.

EU measures targeting Belarus also include several export and import restrictions on:

- arms (Article 1 of the Council Decision) and certain equipment listed in Annex III which might be used for internal repression (Articles 1a and 1b of the Regulation);
- telecommunication monitoring equipment as listed in Annex IV (Article 1c and 1d of the Regulation);
- dual-use goods and technology if those items are or may be intended, wholly or partially, for military use or for a military end-user, or to the parties listed in Annex V (Articles 1e and 1f of the Regulation);
- goods used for the production or manufacturing of tobacco products as listed in Annex VI (Article 1g of the Regulation);
- petroleum products listed in Annex VII (Article 1h of the Regulation); and
- potassium chloride products ("Potash") as listed in Annex VIII (Article 1i of the Regulation).

In addition, EU sanctions program targeting Belarus provides for a wide range of financial restrictions, notably by prohibiting:

- the purchase, sale, provision of investment services for or assistance in the issuance of, or otherwise dealing with, transferable securities and money-market instruments with a maturity exceeding 90 days issued after June 29, 2021 by certain listed parties in Belarus (Article 1j of the Regulation);
- any agreement to make new loans or credit with a maturity exceeding 90 days to the above-mentioned parties. The Regulation however provides for a number of exceptions, for example for the financing of legitimate EU trade or humanitarian purposes (Article 1k of the Regulation); and
- the provision of insurance or re-insurance to (i) the Belarusian Government, public bodies, corporations or agencies and (ii) any party acting on their behalf or at their direction (Article 1l of the Regulation).

Finally, following the unlawful forced landing of an intra-EU Ryanair flight in Minsk on May 23, 2021, to arrest opposition activist and journalist Roman Protasevich and his girlfriend Sofia Sapega, the EU also imposed flight restrictions on Belarus. Aircraft operated by Belarusian air carriers are prohibited to land in, take off from, or overfly the territory of the EU, except for emergency landing or overflight, or for humanitarian purposes (Articles

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- the illegal crossing of the external borders of the EU; or
- the transfer of prohibited goods and the illegal transfer of restricted goods, including hazardous goods, into the territory of the EU.

Moreover, [Council Decision \(CFSP\) 2021/1989](#) and [Council Regulation \(EU\) 2021/1986](#) amended the scope of the financial restrictions in place against Belarus by adding two exceptions to the prohibition to provide insurance or re-insurance services to the Belarusian government (Article 11 of the Regulation). Now exempted are (i) the provision of compulsory or third-party liability insurance to Belarusian persons, entities or bodies where the risk insured is situated in the EU or the provision of insurance for Belarusian diplomatic or consular missions in the EU, and (ii) the execution of contracts concluded before June 25, 2021, or ancillary contracts necessary for the execution of such contracts.

These changes entered into force on November 17, 2021, the day after the publication of the new regulations and decisions in the Official Journal of the European Union.

While the updated list of sanctioned parties has not yet been released, the High Representative of the EU for Foreign Affairs and Security Policy [stated](#) that the new package of sanctions would affect an important number of persons and entities. New designations [could target](#) Belarusian officials, airlines, travel agencies and others involved in the instrumentalization of migrants, such as Belarusian airline [Belavia](#), which is already prohibited from landing in, taking off, and overflying the EU territory but could, provided it is designated, be further prevented from leasing aircraft from European companies. Some third country air carriers, such as [Turkish Airlines](#) and [Cham Wings](#), have already voluntarily agreed to suspend one-way flights to Minsk, which could notably explain why EU leaders have not yet agreed on the updated list of sanctioned parties.

Following the November 15 announcement, the Belarusian President [stated](#) he was working to repatriate the migrants that have gathered at its border with Poland, thus suggesting that the measures might have been effective, without any new designation. However, the situation remains dynamic at publication of this advisory. Businesses should therefore exercise great caution and carefully assess their sanctions risk if considering doing business in Belarus or with a counterparty directly or indirectly connected to the country.

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