

## BELARUS SANCTIONS: UK, EU AND US

On 23 May 2021, the Government of Belarus diverted a Ryanair passenger jet to land in Minsk and detained two of its passengers – activist and journalist Roman Protasevich, and his partner Sofia Sapega. In a [joint statement](#) issued on 21 June 2021, the UK, EU and US, in addition to Canada, expressed "deep concern regarding the [Alexander] Lukashenka regime's continuing attacks on human rights, fundamental freedoms, and international law". An expansion of global sanctions on Belarus followed, the most wide-ranging of which were initially imposed by the EU to target sectors of the Belarusian economy.

On 9 August 2021, the Governments of the [UK](#) and [US](#) adopted further sanctions on persons and entities linked to the Lukashenka regime. The UK imposed further sector-based sanctions on Belarus, while a new US Executive Order authorises a wide range of additional sanctions designations at the discretion of the Biden Administration.

Although there is some overlap between the co-ordinated measures, there are also material differences. As a consequence, companies with a nexus to the UK, EU and US will need to have an understanding of all three sanctions regimes.

In this briefing, we set out some of the key restrictions contained in the newly updated sanctions.

### UK SANCTIONS

The UK Government has now further expanded the scope of its sanctions against Belarus to include sector-based restrictions. These broadly reflect equivalent restrictions imposed by the EU in June, and include prohibitions relating to financial services and instruments, as well as trade restrictions relating to telecommunications equipment and petroleum, potash and tobacco products. In summary:

- **Financial services and financial instruments** – There is a new prohibition on dealing directly or indirectly with transferable securities or money market instruments with a maturity exceeding 90 days issued (after noon on 9 August 2021) by a "relevant person", which includes the Government of Belarus, and credit or financial institutions majority-owned by Belarus or a Belarusian authority. There are similar restrictions regarding the provision of loans and credit arrangements. These measures are similar to the sectoral sanctions imposed on Russia. It is also

#### Key issues

- Companies with a nexus to the UK, EU and US will need to have an awareness of all three sanctions regimes concerning Belarus.
- The EU has amended the substance of its sanctions against Belarus. Some of the new restrictions are sector-based.
- The UK and US have subsequently followed the EU's lead in introducing additional, sector-based sanctions.
- The UK, EU and US have designated additional individuals and entities under their respective sanctions regimes.

prohibited to provide insurance or reinsurance services to Belarus, Belarusian authorities or anyone acting on their behalf or at their direction.

- **Telecommunications** – A licensing requirement now applies to the sale, supply, transport or export to Belarus of goods or software that can perform certain listed functions related to monitoring or intercepting internet and telephone communications, and to associated technical assistance, financial services and brokering services.
- **Dual-use goods and technologies** – There are prohibitions relating to the sale, supply, transfer and export of items to Belarus for any military use (including for use by the Belarusian military) or, in certain instances, to a person connected with Belarus. The prohibition also extends to associated technical assistance, financial services and brokering services.
- **Petroleum, potash and tobacco products** – There is a licensing requirement for the supply of certain products used in tobacco manufacturing to Belarus, or to make those products available to a person connected with Belarus. It is also prohibited to acquire petroleum products or potash from a person connected with Belarus without a licence. There are also restrictions on providing associated technical assistance, financial services and brokering services.
- **Aircraft** – There is a licensing requirement for the provision of technical assistance relating to aircraft owned by or used for the benefit of a designated person, as well as additional powers for air traffic controllers to refuse permission for aircraft owned, chartered or operated by a person connected with Belarus (or registered in Belarus) to enter UK airspace.

The UK Government has also now designated Mikhail Gutseriev, a prominent Russian businessman described in the public briefing as a "long-standing associate" of Alexander Lukashenka and "one of the main private investors in Belarus". This new designation, as well as those previously announced, will require careful consideration of business dealings in Belarus with entities which are not themselves directly listed, given that the UK sanctions expressly include a prohibition on making funds or economic resources available to persons "owned or controlled" by designated persons (similar to the so-called "50 percent rule" in the US).

The total number of UK-designated persons now stands at 100 individuals and nine entities.<sup>1</sup>

The UK Office of Financial Sanctions Implementation (OFSI) [recommends](#) that persons affected by the sanctions regime targeting Belarus check whether they hold any funds or economic resources for the newly designated persons. If any such accounts are found, they must be frozen and reported to OFSI. UK persons should also review their current transactions and existing business dealings to ensure that the new designations do not, directly or indirectly, impose additional licensing requirements.

## **EU SANCTIONS**

The [EU sanctions](#) were last updated on 24 June 2021. As part of the measures, the European Council has designated an additional 78 individuals (including Gutseriev) and eight entities, bringing the total number of EU-

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<sup>1</sup> The Republic of Belarus (<https://www.gov.uk/government/publications/republic-of-belarus-sanctions-guidance/the-republic-of-belarus-sanctions-guidance> Sanctions) (EU Exit) Regulations 2019, which entered into force on 31 December 2020.

designated persons targeted to 166 persons and 15 entities. Among those were several prominent business figures alleged to support and benefit from the Lukashenka regime. Those designated are subject to an asset freeze.

The European Commission recently issued an [opinion](#) on the notion of “making funds indirectly available” to a designated sanctions target, which reiterated the view that making funds or economic resources available to a non-designated entity, which is owned or controlled by a designated person, entity or body, would amount – in principle – to making them indirectly available to the designated person. This is not as firm as the position in UK and US sanctions (which expressly prohibit making funds available to persons owned or controlled by a designated person) as the presumption can be rebutted on the individual facts and circumstances.

In addition to the financial prohibitions targeting specific individuals and entities, the European Council passed a series of further sector-based sanctions.<sup>2</sup> These measures include:

- **Financial services and financial instruments** – Prohibitions (broadly equivalent to, and in largely the same terms as, the sanctions contained in Article 5 of EU Regulation [No 833/2014](#) concerning Russia) relating to dealing in transferable securities and money market instruments issued by the Government of Belarus and certain entities which are listed, as well as on making loans or credits available to those entities. The majority of these restrictions include provisions regarding (and will require careful analysis of) the degree of “ownership or control” as well as the notion of “acting on behalf or at the direction of” listed entities. There are also certain grandfathering provisions to protect historically agreed contracts and obligations; however, these are subject to restrictions, including – for example – in relation to the future modification of terms and conditions for loans.
- **Telecommunications** – Licensing requirements for the direct or indirect sale, supply, transfer or export of equipment, technology or software intended primarily for use in Belarus for monitoring or intercepting internet and telephone communications. There are also prohibitions relating to the provision of any telecommunications or internet monitoring or interception services of any kind to, or for the benefit of, the Belarusian authorities.
- **Dual-use goods and technologies** – A prohibition on the sale, supply, transfer or export of items to any person in Belarus, or for use in the country, which could be applied for military use or by a military end-user (including the Belarusian military).
- **Petroleum, potash and tobacco products** – A prohibition on the import, purchase or transport of listed petroleum products of Belarusian origin or from Belarus. There are also restrictions on the import, purchase or transfer of potash products from Belarus, regardless of where they originated, and the sale, supply, transfer or export of tobacco products (described as filters, papers, flavours and machinery) to any person in Belarus or for use in the country.

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<sup>2</sup> Council Regulation (EU) 2021/1030 of 24 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus.

## US SANCTIONS

In a further co-ordinated act, on 9 August 2021, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) designated 23 individuals and 21 entities as Specially Designated Nationals (SDNs) under Executive Order 13405, "*Blocking the Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus*" or newly issued Executive Order 14038 "*Blocking Property of Additional Persons Contributing to the Situation in Belarus*" ("**EO 14038**").<sup>3</sup> EO 14038 expands the scope of the national emergency declared under Executive Order 13405 and provides OFAC with the authority to impose blocking sanctions, at the discretion of the Biden Administration, on, among others, persons operating in certain sectors of the Belarusian economy, including the defence, security, energy, potash, tobacco products, construction and transportation sectors.

The latest designations targeted individuals and entities that the US Government has determined finance the Lukashenka regime's activities, including the state-owned Belaruskali OAO, one of the world's largest producers of potash as well as other companies tied to the Lukashenka regime operating in the energy, tobacco and construction sectors.

The SDN designations impose the following blocking sanctions:

- a blocking requirement on all property and interests in property of the SDNs and entities owned 50% or more, directly or indirectly, by such SDNs (collectively "Blocked Persons") that are in the United States or in the possession or control of US persons;
- a prohibition against "*the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any [Blocked Persons]*" and on "*the receipt of any contribution or provision of funds, goods, or services from any such person*"; and
- a prohibition on any "*transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order.*"

Blocking sanctions apply only to SDNs and entities owned 50% or more by them, and not to all companies operating in a manner that might subject to them a sanctions designation, unless and until the Biden Administration might choose to impose sanctions on them.

OFAC has also issued General License 4, which authorises, until 8 December 2021, transactions and activities "*that are ordinarily incident and necessary to the wind down of transactions involving Belaruskali OAO*" and entities owned 50% or more, directly or indirectly, by Belaruskali.

## CONCLUSION

The developments prompted by the Government of Belarus's interception of a European passenger aircraft come at a time of heightened activity in global sanctions generally, and add yet another layer of complexity for businesses with a nexus to the UK, EU and US. In light of these new measures, businesses are increasingly facing the prospect of being subject to, and having to balance the requirements of, overlapping and inconsistent sanctions regimes.

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<sup>3</sup> Following the joint statement in June 2021, OFAC designated 16 individuals and five entities under Executive Order 13405.

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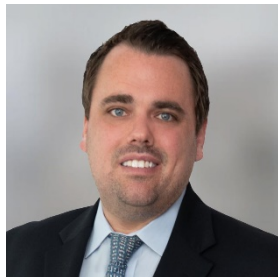
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