

THE REPUBLIC OF BELARUS (SANCTIONS) (EU EXIT) REGULATIONS 2019

REPORT UNDER SECTION 2(4) OF THE SANCTIONS AND ANTI-MONEY LAUNDERING ACT 2018

Introduction

1. This is a report under section 2(4) of the Sanctions and Anti-Money Laundering Act 2018 (“**the Act**”) in relation to the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (“**the Regulations**”). Section 2(4) requires a report to be laid before Parliament which explains why the appropriate Minister making regulations under section 1 of the Act considers that carrying out each of the purposes of the regulations meet one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act;ⁱ why the Minister considers that there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
2. Sanctions will continue to contribute to the UK’s efforts to “defend the rules-based international order”. The UK will continue to be a global leader on sanctions, based on the smart, targeted use of sanctions, as part of wider political and diplomatic strategies. The UK will enhance its leadership role in developing robust evidence to support sanctions regimes and designations – for national and multilateral sanctions. At the international level, the UK will continue to seek multilateral cooperation on sanctions in response to shared threats, given that a collective approach to sanctions achieves the greatest impact.
3. The Act allows the UK to take a range of actions against those reasonably suspected of, for example, preventing or undermining the resolution of armed conflicts, committing gross human rights violations, and to promote compliance with international humanitarian law or respect for human rights.
4. There is an existing EU Belarus sanctions regime which was established in 2004 in response to the unresolved disappearance of two opposition politicians, one businessman and one journalist in 1999 and 2000 (2004/661/CFSP). In 2006, the EU imposed further sanctions, including freezing the funds of President Lukashenko and certain other officials responsible for violations of international electoral standards in Belarus on 19 March 2006 and the subsequent crackdown on civil society and democratic opposition. An arms embargo was introduced in 2011. Following the release of all remaining political prisoners in August 2015, the majority of asset freeze targets were suspended on 1 November 2015 and individuals were delisted in February 2016. The arms embargo, restrictions on internal repression goods and technology, and the sanctions against four persons in relation to the unresolved disappearances remained. The preambular language in the EU Council Decision (No. 2011/235) underlined in particular the dramatic increase in executions and the systematic repression of Belarusian citizens, who face harassment and arrests for exercising their legitimate rights to freedom of expression and peaceful assembly. The purpose of the sanctions imposed by the EU Belarus sanctions regime was to target persons complicit in or responsible for directing or implementing grave human rights violations. Sanctions remain a key lever to pressure the Belarusian government to make

progress on its human rights records, make progress on its investigation into the disappearances of four individuals in 1999/2000 and to comply with international human rights law and to respect human rights

5. The UK played a significant role in the development of the EU sanctions regime, and proposed a large number of the designations imposed under the regime. Bringing these existing EU sanctions into UK law is consistent with UK policy on Belarus. These Regulations are intended to substantially deliver the same policy effects as the existing EU sanctions regime.

Purposes and reasons for pursuing the purposes

6. The Regulations impose sanctions in relation to human rights abuses and threats to the rule of law in Belarus. In particular, they confer a power on the Secretary of State to designate persons where the Secretary of State has reasonable grounds to suspect that that person is an involved person, and considers that the designation of that person is appropriate, having regard to the purposes stated in regulation 4, and the likely significant effects of the designation on that person. In these Regulations an 'involved person' means a person who:

(a) is or has been involved in—

(i) conduct enabling or facilitating—

(aa) the disappearance of Yury Zakharenka, Viktor Hanchar, Anatol Krasouski or Dzmitry Zavadski, or

(bb) the failure to investigate properly or institute criminal proceedings against the persons responsible for those disappearances,

(ii) the commission of a serious human rights violation or abuse in Belarus,

(iii) the repression of civil society or democratic opposition in Belarus, or

(iv) other actions, policies or activities which undermine democracy or the rule of law in Belarus,

(b) is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,

(c) is acting on behalf of or at the direction of a person who is or has been so involved, or

(d) is a member of, or associated with, a person who is or has been so involved.

2.The purposes of the regulations contained in this instrument that are made under section 1 of the Act are to encourage the Government of Belarus to—

(a) respect democratic principles and institutions, the separation of powers and the rule of law in Belarus,

(b) refrain from actions, policies or activities which repress civil society in Belarus,

(c) properly investigate and institute criminal proceedings against the persons responsible for the disappearances of Yury Zakharanka, Viktor Hanchar, Anatol Krasouski and Dzmitry Zavadski, and

(d) comply with international human rights law and to respect human rights, including in particular to—

(i) respect the right to life of persons in Belarus;

- (ii) respect the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in Belarus, including inhuman and degrading conditions in prisons;
 - (iii) afford persons in Belarus charged with criminal offences the right to a fair trial;
 - (iv) respect the right to liberty and security, including refraining from the arbitrary arrest and detention of persons in Belarus;
 - (v) afford journalists, human rights defenders and other persons in Belarus the right to freedom of expression, association and peaceful assembly;
 - (vi) secure the human rights of persons in Belarus without discrimination, including on the basis of a person's sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
7. Carrying out these purposes meets one or more of the conditions set out in section 1(2) of the Act. In particular, carrying out these purposes would fall within paragraph (f), in that it would promote compliance with international human rights law and respect for human rights. The Government of Belarus continues to violate its international human rights obligations and the UK continues to lead international efforts to encourage Belarus to improve its human rights record and seek to encourage the Belarusian Government to change. We do this by putting pressure on the Belarusian government to improve the human rights situation in Belarus, including by imposing sanctions on human rights violators working or who have worked for the state.
8. There are good reasons for pursuing these purposes, including to address the ongoing human rights abuses and violations taking place in Belarus in contravention of Belarus's international human rights obligations. The situation remains of serious concern to both the UK and the international community, as evidenced in reports by The UN Special Rapporteur for Human Rights in Belarus¹. Consistently documented violations are set out in the conclusions of the UN Special Rapporteur's most recent report. These violations include: violations of the right to life; of the prohibition of torture and other ill-treatment, in particular the handing over of individuals seeking international protection to authorities of countries where they were at real risk of torture or other ill-treatment; of the violent crackdowns on right to freedom of assembly; to freedom of opinion and expression, in particular new amendments to media laws threatening further harsh restrictions to freedom of expression online.
9. The UN Special Rapporteur states that Belarus is the only country in Europe where there are no privately owned nationwide broadcasting outlets. Licensing and registration of any media start-ups are governmental prerogatives, without any legal remedy against the decisions. All externalities of the print, broadcasting and online media, such as printing, distribution, subscription, frequency and apparatuses for transmitting signals, and infrastructure for the provision of Internet service, are State-owned or, in the best case, State-directed . The Belarus Parliament adopted in June 2018 amendments to the Law on Mass Media, which extended state

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/134/03/PDF/G1813403.pdf?OpenElement> United Nations Office of the High Commission for Human Rights

control to online media outlets. Websites can be temporarily blocked without a court decision, and bloggers and their followers are frequently harassed and closely monitored.

10. Freedom of association, a right that exists under the constitution, is considered a potential threat to the “stability” of Belarus and the authorities have created a politically guided bureaucratic system to register any entity. By considering the activities of unregistered NGOs in the same category as propaganda inciting war and extremism, the Ministry of Justice can severely restrict the exercise of this freedom.
11. Violent repression of peaceful public gatherings took place in March 2017 and again during the Freedom Day marches in March 2018. Violations of freedom of assembly included preventative detentions of targeted political opponents of the Government in particular; the arbitrary arrest of participants – including human rights defenders and staff at the respected Viasna Human Rights Centre. Some of those arrested were subject to ill-treatment. The procedure for obtaining authorisation for holding a rally lawfully is cumbersome and prohibitive in the same way that it is for registering an association.

Why sanctions are a reasonable course of action

12. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purpose of encouraging the Government of Belarus to respect democratic principles and institutions, the separation of powers and the rule of law in Belarus, to refrain from actions, policies or activities which repress civil society in Belarus, to properly investigate and institute criminal proceedings against the persons responsible for the disappearances of Yury Zakharenka, Viktor Hanchar, Anatol Krasouski and Dzmitry Zavadski and to comply with international human rights law and to respect human rights.
13. Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. HMG believes sanctions can be an effective and reasonable foreign policy tool if they are one part of a broader foreign policy strategy for a country or thematic issue, and are appropriate to the purposes they are intending to achieve.
14. The gravity of the human rights situation in Belarus means that putting sanctions in place is a reasonable measure to take. The recent UN Special Rapporteur on Human Rights in Belarus report of 15 May 2018 said that there is virtually no rule of law in Belarus “owing to the extent of power of the executive branch over the National Assembly, the judiciary and legal professionals continues to be governed by a deeply entrenched repressive legal framework.”² The Human Rights Watch Report for 2019 says: “In 2018, civil society activists, lawyers, rights groups, and independent media continued to face government harassment and pressure”³. The largest wave of arrests of peaceful protesters since 2010 took place in 2017. Then in March 2018 over 100 peaceful protesters were either detained or prevented from participating in the Freedom Day centenary event. Several days before the event, former presidential candidates were among those put under house arrest. Although a political opposition movement was registered for the first time in 10 years, no new political party has been registered since 2000 and restrictive legislation continues to prevent rights groups from registering and operating

² <https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/BY/Pages/SRBelarus.aspx>

³ <https://www.hrw.org/world-report/2019/country-chapters/belarus>

freely. Belarus is the only European country to still maintain the death penalty, and no steps towards abolition have been made. There are further restrictions to accessing online media.

15. There are three principal kinds of prohibition in the Regulations: those relating to financial sanctions, those relating to immigration sanctions, and those relating to trade sanctions.

a. Financial and immigration sanctions. These restrictions consist of an asset freeze (including a restriction on providing funds and economic resources) and a travel ban. These restrictions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations (for example, that there are reasonable grounds to suspect that the person is, or has been, involved in the commission of a serious human rights violation or abuse in Belarus) and that their designation is appropriate having regard to the purposes of the regime and the likely significant effects of the designation on that person. This is in order to ensure that the sanctions are clearly targeted at those who fulfil the stated purposes of the sanctions. The intention is to apply pressure in order that the Government of Belarus changes its behaviour, and to send a strong message of disapproval for human rights abuses or disregard for the rule of law. Current evidence suggests that serious human rights violations in Belarus are committed largely by direct representatives of the Government of Belarus, or by others working in concert with the Government of Belarus. The ability to apply these restrictions to both officials and others is intended to both directly and indirectly bring about behaviour change in the Government of Belarus. The Regulations allow for there to be derogations from the travel ban and also provides for the financial sanctions to be subject to certain exceptions and a licensing framework. The exceptions and licensing provisions support the reasonableness of imposing these sanctions measures on designated persons, as they mitigate any possible negative or counter-productive impacts.

b. Trade sanctions. The Regulations contain restrictions on the trade of restrictive goods and technology, namely an arms embargo and a prohibition on goods and technology that may be used for internal repression. The effect of these sanctions is to directly constrain potential human rights violations and abuses or the repression of civil society, therefore fulfilling the stated purposes of this regime, for example by preventing violations to freedom of assembly. The trade measures in the Regulations are targeted and provide for the trade sanctions to be subject to a licensing framework that will be overseen by the Department for International Trade. The power to grant licences under this regime supports the reasonableness of imposing these sanctions measures, as it will mitigate any unintended negative consequences.

16. These sanctions are not an end in themselves. They are one element of a broader strategy to achieve HMG's foreign policy goals in Belarus. Sanctions are part of a policy of parallel engagement, to pressurise and engage with Belarus. HMG will continue to engage with Belarus bilaterally and work with international partners and government, including the EU, OSCE and Council of Europe and support the implementation of reforms, strengthen state institutions and improve conditions for civil society.

17. The policy intention is to keep the sanctions on Belarus in place until HMG is assured that the human rights situation in Belarus has improved, or has demonstrated steady and consistent

improvement over a sustained period of time. The FCO will continue to coordinate with international partners, including on the future of the regime. We expect to see Belarus working with international fora to strengthen alignment with and implementation of international standards and practices in the fields of rule of law, more efficient and effective democratic governance and human rights.

18. The Regulations also impose supplemental prohibitions and requirements, in particular those relating to the disclosure of confidential information, the reporting of information by relevant firms, and the holding of records. These kinds of prohibitions and requirements ensure that certain information is appropriately held by those involved with the operation of the sanctions regime, and that certain information is provided to authorities, and ensure that certain sensitive information is treated securely. These kinds of prohibitions and requirements enable the government to properly operate and enforce the sanctions regime, and therefore their imposition is also considered a reasonable course of action for the purposes of the Regulations.

Conclusions

19. The purposes of these Regulations are to encourage the Government of Belarus to respect democratic principles and institutions, the separation of powers and the rule of law in Belarus, to refrain from actions, policies or activities which repress civil society in Belarus, to properly investigate and institute criminal proceedings against the persons responsible for the disappearances of Yury Zakharanka, Viktor Hanchar, Anatol Krasouski and Dzmitry Zavadski and to comply with international human rights law and to respect human rights.
20. For the reasons set out in this report, carrying out those purposes meets one of the conditions in section 1(2) of the Act. As set out in this report, there are good reasons for pursuing those purposes, and the imposition of the kinds of prohibitions and requirements imposed by these Regulations for those purposes is a reasonable course of action for those purposes.

The Rt Hon Sir Alan Duncan MP KCMG

**Minister of State for Europe and the Americas, Foreign and Commonwealth Office, on behalf of
the Secretary of State for Foreign and Commonwealth Affairs**

ⁱ Section 1(2) states:

“A purpose is within this subsection if the appropriate Minister making the regulations considers that carrying out that purpose would –

- a) further the prevention of terrorism, in the United Kingdom or elsewhere,*
- b) be in the interests of national security,*
- c) be in the interests of international peace and security,*
- d) further a foreign policy objective of the government of the United Kingdom,*
- e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,*

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- f) *provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote -*
 - (i) *compliance with international human rights law, or*
 - (ii) *respect for human rights,*
 - g) *promote compliance with international humanitarian law,*
 - h) *contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or*
 - i) *promote respect for democracy, the rules of law and good governance.”*