

RESTRICTIVE MEASURES BY BELARUS AUTHORITIES AGAINST WESTERN COMPANIES

What Belarusian counter-sanctions mean for business

May 2021

SUMMARY

- › Following the Presidential elections in Belarus in August 2020 and subsequent actions by the Belarusian authorities suppressing protests, relations between Belarus and both the European Union and US have deteriorated significantly. The EU and several other European states have imposed sanctions on Belarus's government officials and commercial enterprises. Belarus responded by imposing counter-sanctions on individual Western companies and creating conditions that severely impact its neighboring states.
- › Currently, the Government of Belarus is still developing the ways in which its restrictive measures should work against countries and companies that Belarusian authorities suspect of taking unfriendly steps against Minsk. Those decisions already taken by the Government contain contradictions that will need to be clarified in the near future.
- › Should relations with the West deteriorate further, sanctions may be imposed more actively, although this would also negatively impact Belarus. Generally, Western companies operating in Belarus are coming under increased risks of being hit by sanctions.
- › The following questions remain: which businesses & sectors will be affected by sanctions? Will the sanctions apply only to states that have imposed their own sanctions on Belarus or to other countries as well? Initially, restrictive measures were connected with sanctions by foreign governments against Belarus but in practice they are imposed on private companies for any "unfriendly" actions. For instance, there is now a ban on Liqui Moly, Skoda Auto and Beiersdorf products being imported into and sold in Belarus following these companies' refusal to sponsor the World Hockey Cup in Minsk (the World Cup itself was ultimately transferred to Latvia).
- › There is no discernible economic rationale behind the special measures; they are mostly part of a knee-jerk response aimed at demonstrating political will in the confrontation with the West ("saving face").
- › In the future, sanctions may be expanded but such actions will most likely be targeted at provoking a public reaction. Companies that criticize Belarusian authorities and publicly stop co-operating with Belarusian government bodies run the greatest risk of being subjected to such sanctions.

RECOMMENDATIONS

For Western companies, the principal insurance against sanctions today is to minimize publicity related to the need to respond to appeals by the Belarusian opposition or public bodies and reduce the level of interaction with Belarusian companies and government bodies.

This is relevant given Belarus's limited opportunities for applying counter-sanctions and its selective approach to targeting restrictive measures.

- › Minsk opted against sectoral sanctions (such as the Russian food embargo based on products' country of origin regardless of individual companies) and confined itself to measures targeting individual cases that prompted a major public reaction. So in the very near future, sanctions are most likely to be imposed on individual Western companies that acted or spoke in support of the Western sanctions regime.
- › The Belarus leadership applies broad and vague criteria for classing any actions or statements by companies as "unfriendly." Any interaction with non-governmental organizations associated with the opposition or declared foreign agents may qualify as "unfriendly." Companies therefore must be careful in undertaking corporate social responsibility projects. Also, an emphatic public indifference to politics is required in managerial decision-making and behaviour.
- › Economic reasons unrelated to the political situation in Belarus should be given to Belarusian authorities for refusing to cooperate with government bodies or companies.

POLITICAL CONTEXT OF THE SANCTIONS POLICY

The EU countries, the US, the UK, Ukraine, Norway, Switzerland, Canada and several others all refused to recognize Belarus' disputed election results in August 2020. Consequently, these states do not recognize Alexander Lukashenko as the legitimate head of Belarus and also criticize him for disproportionate use of force against protesters and political opponents.

Condemning the situation in Belarus as constituting a large-scale violation of democratic principles and human rights, the EU and others have, since August 2020, imposed three rounds of sanctions on Minsk ([2 October](#), [6 November](#), [17 December](#) 2020). Currently, restrictive measures extend to 84 individuals and 7 legal entities. Additionally, the European Investment Bank and the European Bank for Reconstruction and Development have virtually ceased co-operating with Belarus, and collaboration on technical assistance projects has virtually ground to a halt.

Currently, Brussels is readying the fourth round of sanctions announced back in February; according to the latest information, it is scheduled for consideration in June 2021. These sanctions are a response to the continued repression against political opponents and increased pressure applied to Polish ethnic minority organizations. Most likely, the sanctions list will be expanded to include officials, law enforcement officers and judges involved in investigating and hearing politically motivated cases.

Political and expert discussions suggest there is little chance of sectoral restrictions, measures against the financial sector, state or private companies close to the top leadership being introduced. Currently, European institutions are assessing the effectiveness of the measures already adopted, which have not yet produced the desired results. Work is also under way on developing additional mechanisms that might affect the situation, such as unofficial contacts, discussing possible talks on resolving the crisis, etc.

In April this year, Belarus's Minister of Foreign Affairs Vladimir Makey [noted](#) that Belarus intends to respond to unfriendly actions, specifying that, should new sanctions be imposed, the authorities might adopt retaliatory measures against European businesses.

The sanctions policy continued on 19 April when the US announced it was renewing sanctions imposed in 2008 (and suspended in 2015) on Belarus's nine biggest enterprises, including its key petrochemical sector. These are deferred-action sanctions (giving certain room for negotiation) coming into force on 3 June.

These sanctions could do grave financial damage to the Belarusian economy since restrictions on cooperation might extend not only to American companies but also to others around the world, including Russian petrochemical suppliers (secondary sanctions).

BELARUSIAN OPPOSITION AND FOREIGN BUSINESS

The active Belarusian opposition and diaspora have played a crucial role in Western sanctions being imposed, calling upon foreign businesses to cease co-operating with Belarus's state companies and bodies over restrictions on workers' rights in state enterprises, harassment of employees who participate in protests, etc.

In particular, the opposition and diaspora campaigned to persuade Norway's Yara (one of the world's biggest suppliers of mineral fertilizers) to terminate its contracts with Belaruskali, to curtail sales of Belarus-made vehicles to Ukraine and Moldova and to curtail deliveries of Siemens products used in energy sector projects.

Opposition groups try to make their appeals as public as possible and to involve Western political bodies and businesses in this process. In particular, Svetlana Tikhanovskaya, Alexander Lukashenko's principal opponent in the 2020 elections, [talked](#) to Yara's top management in the spring and summer of this year. Members of the Belarusian diaspora in different countries held protests against Yara's partnership with Belaruskali and, in April, the National Anti-Crisis Management, an opposition centre, [submitted](#) a petition to Yara's management to terminate its contract with Belaruskali; the petition was signed by 83,500 Belarusian citizens.

These public campaigns resulted, among other things, in several Western brands refusing, in January 2021, to sponsor the 2021 World Hockey Cup then slated to be held in Minsk and Riga in May-June 2021. In particular, NIVEA (owned by Beiersdorf) [stated](#) that it "advocates respect and unity and is opposed to all forms of discrimination and violence. Looking at the current situation, we have decided that NIVEA MEN will not sponsor the 2021 World Cup if it is held in Belarus". Later, the Skoda Auto car manufacturer [put](#) out a similar statement. As a result, the International Hockey Federation decided to hold the Cup exclusively in Latvia.

BELARUS IMPOSES RETALIATORY RESTRICTIVE MEASURES

The actions of Western states, international organizations and companies prompted a sharp response from the Belarusian authorities and President Alexander Lukashenko, who unofficially set the Government and other administrative bodies the task of responding to each unfriendly action.

Generally, when it comes to European sanctions, Belarus has limited response options. Nonetheless, the last eight months have shown that the authorities are attempting to use a variety of means for bringing pressure to bear on European states and companies: withdrawing from cooperation programmes, applying non-tariff restrictions, re-orientating transport flows, restricting exports, imposing official sanctions, etc.

In particular, in the autumn of 2020, Belarus's Ministry for Foreign Affairs announced it was scaling down its participation in the European Partnership programme to expert level. In March, some freight flows from Belarus were shifted from the port of Klaipeda (Lithuania) to the port of Ust-Luga (Russia).

Belarusian authorities have also made statements about possibly restricting energy deliveries to the Baltic states, transit of European goods via Belarus, activities of commercial and non-commercial organizations connected with Europe, about applying pressure to ethnic minority organizations, etc.

Several bans imposed by Belarus's Gosstandart (the State Committee for Standardization of the Republic of Belarus) on sale of individual products (such as Tuk biscuits made in Ukraine, this brand being owned by Mondelez International, a US company) could also have political motivation.

The Executive [Order](#) "On Applying Special Measures" issued by the Belarusian President on 30 March 2021 lays down a legal framework for introducing special (restrictive) measures. The order prohibits imports and sales in Belarus of individual commodity groups and goods manufactured by certain companies from those states that imposed sanctions on Minsk. The power to draw up the list of prohibited goods and services and to establish the duration of the restrictions was delegated to the Government.

The initial plan was therefore for restrictive measures to be imposed on manufacturers from states that had joined the sanctions against Belarus. Nonetheless, enforcement practices went in a different direction. In its [Decree](#) of 23 April 2021, the Cabinet of Ministers of the Republic of Belarus applied special measures, for a term of six months, to products of three companies:

- › perfumery, cosmetics, toiletries, and plastic goods manufactured by Beiersdorf Company Group (such brands as NIVEA, Eucerin, La Prairie, Labello, Hansaplast, Florena, 8X4, SKIN STORIES, GAMMON, tesa, CHAUL, Coppertone, Hidrofugal, Stop The Water While Using Me);
- › cars manufactured by SKODA AUTO Company Group;
- › chemicals and petrochemicals manufactured by LIQUI MOLY Company Group.

It should be noted that the Decree does not list the states whose manufacturers will be subjected to restrictions. This reveals that these special measures were not based on the products' country of the origin; they were imposed on individual companies (brands) for reasons other than the sanctions imposed on Belarus. The Decree itself does not indicate the reason but there is speculation it was down to the companies' refusals to sponsor the World Hockey Cup in Minsk and their criticism of the human rights situation in the country.

The [declaration](#) of the State Customs Committee "On Customs Bodies Monitoring Goods Prohibited from Being Imported into the Republic of Belarus" of 27 April indicates that the restrictions apply to imports of prohibited cars into the Republic of Belarus both via the customs border of the EAEU and from EAEU member states. In this case, however, there was no indication as to whether the country of origin would be taken into account when prohibiting circulation of goods.

It should be noted that the country-of-origin issue is crucial for the effectiveness of these special measures since virtually all Skoda cars sold in Belarus are assembled in Russia. Therefore, sanctions are basically being imposed on Russian manufacturers and not on manufacturers from the countries that imposed sanctions on Belarus, as had been envisioned in the Executive Order of 30 March.

PRELIMINARY CONCLUSIONS

- › Minsk is intent on responding to sanctions and other unfriendly actions by the EU and the US. It is principally motivated by “saving face” so such actions often lack any economic rationale and do not account for all the risks.
- › At the same time, officially Minsk is striving to discredit Western sanctions, calling them illegal and primarily detrimental to the ordinary people of Belarus. Official trade unions and personnel at individual enterprises have started petitioning for abolition of these sanctions as being harmful to regular workers. The authorities also emphasize that the sanctions pressure is pointless and that Alexander Lukashenko is determined to stay in power.
- › The experience of the last seven months shows that response measures are situational and spontaneous, ranging from curtailing cooperation with international organizations to imposing sanctions on individual companies. Minsk’s sanctions response will be selective and it does not always fit into the official, legal framework. Possible options include some non-tariff measures, unofficial prohibitions, obstacles to accessing the market, a change in the direction of commodity flows and pressure applied by law enforcement and courts.
- › Particularly at risk are companies that allow themselves to criticize openly the actions of the authorities, maintain open contacts with the opposition, or publicly announce that they cannot cooperate with Belarusian companies and state bodies for political reasons.
- › Any public stance poses a clear risk. It is important for the opposition, the diaspora and public bodies to gain international support for their own assessment of the situation in Belarus, while it is equally important for the authorities to prevent this. To reduce the risks of doing business in Belarus, companies need to distance themselves from public interactions on political matters with both members of the opposition and the authorities.
- › Businesses from Poland, Lithuania and Ukraine are likely to experience the most pressure. On the one hand, their businesses have significant interests in Belarus; on the other, their political relations with Belarus have been the tensest during recent months.
- › Further expansion of counter-sanctions largely depends on support from Russia. Officially Minsk can be expected to seek Moscow’s support for its actions and make certain concessions concerning military technical cooperation in particular and also concerning deeper integration projects. Minsk has also attempted to take the sanctions topic to the EAEU level but such initiatives have so far been unsuccessful.

###

*If you would like to schedule a discussion of this paper, please contact:
Yury Panasik, Partner / y.panasik@kesarev.com*

Kesarev

Kesarev is a leading independent public affairs and government relations consultancy in Central & Eastern Europe, Ukraine, Russia, the post-Soviet area, Turkey and Israel, covering 25 countries and specialising in government and corporate affairs, risk management and corporate reputation services. Since 2014, Kesarev consultants have been ranked by The Best Lawyers in the areas of Government Relations, Government and Regulatory Practice, including the "Best Lawyer of the Year" award. Kesarev partners were recognised among the Top-20 communications managers by the TOP-COMM rating in 2020 and 2019 and within the Top 1000 Managers of Russia rating in 2017, 2015 and 2014. www.kesarev.com