

EUROPEAN EXTERNAL
ACTION SERVICE



POL. DPD 1 Sanctions Division



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services
and Capital Markets Union

Sanctions Unit

Brussels, 03.11.2021

Dear Ms Douhan,

The EU services in charge of restrictive measures (“sanctions”) value the possibility to engage with you, as was last demonstrated by the dedicated meeting held on 9 September 2021. This is in line with the EU’s earlier contributions to you and your predecessor’s calls for input and questionnaires. These contributions and interactions demonstrate our willingness to engage in a facts-based and open dialogue.

In your letter dated 22 September 2021, you requested a number of clarifications regarding certain restrictive measures recently imposed by the EU in view of the situation in Belarus (Council Decision (CFSP) 2021/908 and Council Regulation (EU) 2021/907 of 4 June 2021). You notably enquire about the human rights compatibility of the aviation ban imposed in the EU on Belarussian air carriers. While our reply focuses on the more specific issue of the Belarus sanctions-related aviation ban, we consider it essential to also address the general issue of the compatibility of EU sanctions with international legal standards.

EU sanctions pursue the objectives of the common foreign and security policy of the EU, as referred to in Article 21 of the EU Treaty. Supporting democracy, the rule of law, human rights and the principles of international law as well as preserving peace, preventing conflicts and strengthening international security feature prominently in these objectives and thus underpin EU sanctions. In fact, many of the sanctions regimes adopted by the EU respond to serious human rights violations and abuses.

Your assessment fails to make any mention of the massive human rights violations committed by the Belarusian regime, as reported for instance by the OSCE¹ and the UN². The EU cannot ignore and fail to respond to such blatant breaches of international law and human rights taking place on its doorstep. As for the extraordinary incident involving the interception, diversion and forced landing of the Ryanair flight in Minsk on 23 May 2021, you argue that “events of this nature are not

¹ <https://www.osce.org/odihr/482924>

² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27264&LangID=E>;
<https://news.un.org/en/story/2021/02/1085712>

rare". This event, which was used by the Belarusian authorities to detain two journalists, was however neither innocuous nor ordinary.

By their nature, sanctions imposed by the EU can have a severe cost for persons and entities designated under the individual measures or affected by the sectoral measures. However, EU sanctions are intended to be temporary and precautionary in order to bring about a change in the activities and behaviour of the targeted persons and entities. The overall impact and duration of sanctions depends on whether the activities that prompted the adoption of sanctions in the first place are continued or not.

As for your claim that the EU sanctions on Belarusian air carriers constitute human rights violations against Belavia workers and Belarusian citizens (for instance, the right to work; the right to freedom of movement including air travel; the right to correspondence, including correspondence transported by airmail; etc.), we would recall that the Court of Justice of the EU has confirmed in numerous cases restrictions on fundamental freedoms that do not have absolute protection are permissible, so long as they are proportionate and correspond to objectives of public interest. Regarding proportionality, the EU sanctions on Belarusian air carriers do not amount for instance to preventing Belarusian citizens from any type of movement to any destination. Moreover, exemptions to the aviation ban are also possible, notably for humanitarian purposes.

As regards your claim that the EU sanctions breach the right to effective judicial protection, we would also point out that sanctions can be challenged before the EU Courts in accordance with the conditions in Article 263 TFEU. Furthermore, designations are based on specific listing criteria, they require legally robust evidence and are accompanied by an explanation – “the statement of reasons” – to enable the individual or entity concerned to understand the grounds for their listing. They must also respect human rights and fundamental freedoms, as required by the EU Treaty. We provided further details on the aspects of effective judicial protection and respect for the rule of law of EU sanctions in our meeting of 9 September as well as in our most recent written contributions from May 2020 and January 2021 in response to requests received from your office.

EU sanctions also comply with international law and do not have extraterritorial application. They do not create obligations for non-EU operators, except as regards any of their business which is conducted at least partly within the EU.

For the reasons set out above, we strongly refute your contention that the measures imposed by Council Decision (CFSP) 2021/908 and Council Regulation (EU) 2021/907 amount to human rights violations.

Yours sincerely,

NEDEA Alina
Head of Sanctions Unit
DG FISMA

Sandra DE WAELE
Head of Sanctions Division
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