

Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Independent Expert on human rights and international solidarity

Ref.: AL OTH 74/2022
(Please use this reference in your reply)

2 August 2022

Dear Mr. Delmas,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 49/6 and 44/11.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention, information we have received concerning practices of implementation of overcompliance, most specifically regarding **the suspension of the PostNord joint Danish-Swedish postal service, to and from the Russian Federation and Belarus**, intended to serve the civilian population in both countries.

The suspension of postal services to the people of both countries amounts to a denial of basic rights including the freedom of correspondence, freedom of expression and the inducement of third persons to assist in denying these rights. In the absence of authorization of the UN Security Council these measures adversely affect the population of two countries, extraterritorially, as well as persons within the confines of the states of Denmark and Sweden with family, legitimate businesses, or other personal ties to Russia and Belarus.

GeoPost/DPDgroup

According to the information received:

Between February and July 2022¹, as part of the European Union's Common Foreign and Security Policy (CFSP), the [European] Council adopted several unilateral measures against the Russian Federation, including Prohibition of financing² of and transactions³ with Russia, its government, and its Central Bank, including the exclusion of the Central Bank from the central SWIFT system⁴; export of or investment in dual-use goods⁵, including iron, steel, and coal; restrictions on air⁶ and maritime⁷- related goods and transport.

Among others, additional unilateral measures were taken against the Republic of Belarus, including restrictions on trade of goods⁸; transferable securities⁹ such as crypto currencies, and limiting financial inflows from Belarus to European Union trading venues¹⁰. Finally, the EU decisions introduced, also imposed additional restrictive measures on transport by road within the territory of the European Union of goods by any Belarusian enterprise, as well as a prohibition for citizens of Belarus from acquiring any transferable securities nor banknotes in any official currency of EU Member States¹¹.

Following the introduction of sanctions by the European Union, on the Russian Federation and Republic of Belarus, on 24 March 2022, PostNord, the joint Danish-Swedish postal company, issued a press release asserting it will *neither forward nor accept postal items (letter-post items, parcel-post items and EMS items) to and from Russia and Belarus*¹². According to the statement, these measures have been imposed in order for the company to be able to comply with the sanctions that the European Union has issued against the countries. The aforementioned press release also declares that these measures will continue until “*a screening system is in place that makes it possible to resume postal flows to and from these countries while complying with the sanctions, or until the sanctions come to an end*”.

In addition to the postal service, the decision also affected DPD¹³ group, PostNord's strategic partner parcel delivery company¹⁴; as well as the Swedish Post and Telecom authority, as PostNord's national oversight organ. This suspension also includes previously ceased commercial logistics flow, and all items addressed to Russian or Belarussian recipients, which will effectively be returned to the sender, or detained by PostNord. It is also worth noting that sanctions against the postal service are not present within the extensive list of unilateral sanctions set forth by the European Union in recent months.

¹ COUNCIL REGULATION (EU) 2022/879 Russia [EUR-Lex - 32022R0879 - EN - EUR-Lex \(europa.eu\)](#)

COUNCIL REGULATION (EU) 2022/877 Belarus [EUR-Lex - 32022R0877 - EN - EUR-Lex \(europa.eu\)](#)

² <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0262>

³ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0334>

⁴ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0350>

⁵ [EUR-Lex - 32022R0328 - EN - EUR-Lex \(europa.eu\)](#)

⁶ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0576>

⁷ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0394>

⁸ <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0355&qid=1651124182926&rid=10>

⁹ [https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0398R\(01\)&qid=1651124182926&rid=7](https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0398R(01)&qid=1651124182926&rid=7)

¹⁰ <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0398&qid=1651124182926&rid=9>

¹¹ <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0577&qid=1651124182926&rid=3>

¹² [PostNord in Sweden suspends all postal items to and from Russia and Belarus | PostNord](#)

¹³ [DPD - Parcel shipping for business and private customers » DPD](#)

¹⁴ [DPDgroup and PostNord renew partnership for five years | Post & Parcel \(postandparcel.info\)](#)

Without prejudging the accuracy of the information received, companies are responsible for exercising due diligence principles in their work and to guarantee that it does not affect human rights of people both within and outside of country. This corporate responsibility calls on all businesses to avoid infringing on the human rights of others and to address adverse human rights impacts in which they are involved (guiding principle 11). In connection with this, all companies should have in place “policies and processes appropriate to their size and circumstances,” including a “human rights due diligence policy to identify, prevent, mitigate and account for how they address their impacts on human rights” (guiding principle 15). Business enterprises also have the responsibility to “(a)void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur” (guiding principle 13a), and to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13b). Moreover, companies are expected to use their leverage to “effect change in the wrongful practices of an entity that causes a harm” (Commentary to guiding principle 19). General comment 24 (2017) of the Committee on Economic, Social and Cultural Rights requests that the freedom of business does not violate human rights emerging from the Covenant (para. 12)¹⁵.

As human rights experts entitled to address human rights violations worldwide within the scope of the mandates endowed by the Human Rights Council, we wish to clarify that the freedom of correspondence is viewed as an integral part of establishment of the universal postal territory enshrined in art.3.1 of the Treaty of Bern of 1874. Denmark, Norway, the Russian Federation and Belarus are members of this treaty, and none of them undertook any steps to denounce the treaty. Thusly, denying individuals or private citizens, including foreign nationals abroad, of the right to correspondence is a violation of international law.

Apart from that, we recall the obligation of private entities to ensure their activities or decisions do not impact the human rights of any individual, while respecting and protecting these rights. The obstruction of essential documents including legal, medical, fiscal, and others, which may amount to a lifeline for individuals, deny persons the possibility of the free exercise of their human rights. Moreover, halting postal services, communication between families denies these persons the right to family life, freedom of expression, and their right to privacy. Absence of postal correspondence is affecting social and economic relations and therefore hinders economic and social rights, in some cases – the right to property. Last but not least, these blanket measures are indiscriminate in nature and punish entire populations without distinction.

Despite advances in telecommunications which have allowed web platforms to become a global standard of social interaction, many persons, particularly those most vulnerable, are disproportionately affected by these actions of overcompliance. Should this decision be replicated globally, persons such as the elderly, those in marginalized or remote communities, persons living in extreme poverty, who still rely on the postal service as their primary and essential source of communication, will be deprived of options.

The Universal Postal Union was established to *maintain international postal exchanges with or between regions afflicted by disputes, disturbances, conflicts or*

¹⁵ <https://www.refworld.org/docid/5beaecba4.html>

wars (Resolution C37/Lausanne of 1974,¹⁶ regarding *Postal Relations to be Maintained in the Event of Dispute, Conflict or War*, during the Seventeenth Congress in Lausanne of May 1974). *The suspension of postal relations, far from affecting only the population of the countries concerned, also has repercussions on countries of nationality or registration of all correspondents. The maintenance of postal relations to the greatest possible extent is thus a major concern of the Universal Postal Union*¹⁷.

The above information and concerns is further elaborated in the attached **Annex on Reference to international human rights law**, which refers to additional relevant international human rights instruments and norms.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the nature, extent and form of human rights due diligence and due process of law that your company conducted with respect to its decisions to cease correspondence to-and-from Belarus and Russia, and how this meets international human rights laws and standards.
3. Please specify any action that your company has taken to ensure that overcompliance does not affect the agency's duties to continue their essential services and protect the human rights of those who are not in infringement of any unilateral sanctions set forth by the European Union.
4. Please explain whether your company has been required by law to carry out human rights due diligence in line with the guiding principles, and provide details of the relevant laws and regulations as well as the state organ or agency that monitors compliance.
5. Please indicate what sanctions, fines or other forms of retributions, including threats thereof, if any, have been affecting your organization as a result of maintaining business with partner agencies operating in sanctioned nations.
6. Please elaborate on any developments regarding a checks-and-balances-type system within your companies, if any, as to where you have access to seek thorough assistance regarding compliance with

¹⁶ International Bureau of the Universal Postal Union. Compendium. of Congress decisions (Paris 1947-Beijing 1999). Berne. Page 63.
<https://www.upu.int/UPU/media/upu/files/UPU/aboutUpu/acts/actsOfPreviousCongress/act1999DecisionsBeijingEn.pdf>

International Bureau of the Universal Postal Union. Convention Manual. Berne, 2018. Page 199
<https://www.upu.int/UPU/media/upu/files/UPU/aboutUpu/acts/manualsInThreeVolumes/actInThreeVolumesManualOfConventionEn.pdf>

unilateral sanctions.

7. Please explain what measures have been taken to guarantee freedom of expression and the right to privacy as it concerns correspondence to and from the Russian Federation and Belarus.

We would be grateful for your view and comments, and especially the measures that are being taken at the light of these allegations.

We may publicly express our concern about this case, which in our view merits serious attention. As per the standard practice of our institution, this communication and any response received from your organization will be made public via the Office of the United Nations High Commissioner for Human Rights' communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual public report to be presented to the Human Rights Council.

Please be informed that a letter on the same subject has also been sent to the governments of Denmark and Sweden as states of the company in question.

Please accept, Excellency, the assurances of our highest consideration.

Alena Douhan
Special Rapporteur on the negative impact of unilateral coercive measures on the
enjoyment of human rights

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, I would like to draw your attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation described. We would like to note that although many of these references are of a state nature, being a state-owned company directly links PostNord to these guiding principles, laws and standards.

Articles 2 (3) and 14 International Covenant on Civil and Political Rights (ICCPR), state that everyone has the right to an effective remedy, the right to be presumed innocent and the right to a due process. Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights guarantee the right of every individual to life and security and not to be arbitrarily deprived of life. States parties therefore have the duty to respect and ensure the right to life extends to all threats that can result in loss of life. States parties may be in violation of article 6 even if such threats have not actually resulted in loss of life”.

In accordance with article 17 of the ICCPR “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”.

Under article 19 of the ICCPR “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines “the right of everyone to an adequate standard of living for himself and his family,” (article 11(1)), and thusly sets forth that that the family deserves the widest possible protection.

In accordance with para. 12 of the General comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights: “The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights”.

Under para. 14: “The obligation to protect means that States parties must prevent effectively infringements of economic, social and cultural rights in the context of business activities. This requires enterprises to abide by legislative, administrative, educational and other appropriate measures adopted by State parties to ensure effective protection against Covenant rights violations linked to business activities, and that they provide victims of such corporate abuses with access to effective remedies”.

Under para. 18 “States would violate their duty to protect Covenant rights, for instance, by failing to prevent or to counter conduct by businesses that leads to such rights being abused, or that has the foreseeable effect of leading to such rights being

abused”.

Corporations domiciled in the territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory), of signatory states, must abide by the laws and responsibilities within that state and prevent human rights violations abroad. Under para. 26, in its 2011 statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights, the Committee reiterated that States parties’ obligations under the Covenant did not cease at their territorial borders.

In addition, the responsibility of enterprises to push for state compliance with all international obligations, including in this case, lie within the Constitution and General Regulations Manual Rules of procedure Legal status of the Universal Postal Union¹⁸.

The UPU may also be in a position to formally request to the UN General Assembly advisory opinions from the International Court of Justice; noted that, pursuant to the instructions contained in Congress resolution C 15/2012.

As signed on 4 July 1947, entering into force at the same time as the Paris Convention, the Union has been linked with the United Nations (UN) under an Agreement which is appended to the Constitution. This Agreement was approved by the UN General Assembly on the recommendation of the ECOSOC. It was completed by the Supplementary Agreement dated 13 and 27 July 1949, applied as from 22 October 1949. Under these Agreements the UN recognizes the Universal Postal Union “as the specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purpose set forth therein”.

The UN Guiding Principles on Business and Human Rights, which apply to all states and companies and recognizes “(t)he role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights”.

The responsibilities of all enterprises within states, to hold their state accountable should they feel the state is not acting in accordance with, or promote a vague interpretation of, their own responsibilities as detailed in the UN Guiding Principles on Business and Human Rights, in particular, guiding principle 1, which outlines the duty of these states to “protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises”.

Likewise, guiding principle 2 directs states to “set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.” In conjunction with this, I refer to guiding principle 3, which elaborates how this is to be done through legislation and policies. Paragraph (a) calls on states to “(e)nforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;” while Paragraph (b)reminds states to ensure that other laws pertaining to businesses, such as corporate law, “do not constrain but enable business respect for human rights.” Paragraph (c) calls on states

¹⁸ [actInThreeVolumesConstitutionAndGeneralRegulationsEn.pdf \(upu.int\)](#)

to “(p)rovide effective guidance to business enterprises on how to respect human rights throughout their operations,” which in the case of transnational enterprises entail their foreign as well as domestic activities.

Guiding principle 11 calls on companies to “avoid infringing on the human rights of others and (...) address adverse human rights impacts with which they are involved.” It also says companies “should not undermine States’ abilities to meet their own human rights obligations,” which include ensuring the right to health.

We refer to guiding principle 13, which states that “the responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.

In its commentary to guiding principle 13, the UN Office of the High Commissioner of Human Rights notes that a company’s activities are understood to include both actions and omissions, and its business relationships “are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

We call your attention to guiding principle 15, which calls on each company to have in place a policy and a process to meet its responsibility to respect human rights. It should also have a human rights due diligence process to identify, prevent, mitigate and account for how it addresses the impact its activities have on human rights, and a remediation process to correct any adverse human rights impact it causes or to which it contributes. Guiding principle 22 states that a company which has, through its due diligence process, identified a human rights problem that it has caused or contributed to, should provide for or cooperate in the problem’s remediation.

We further refer to guiding principle 17, which details how human rights due diligence should be carried out: “The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed,” and “should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships”.

The commentary to this principle states that “(h)uman rights due diligence should be initiated as early as possible” when a company engages in an action. It also notes that “(q)uestions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties”.

We point out that guiding principle 18 calls on each company to “identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and 11

other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation”.

The commentary to guiding principle 18 states that “(t)he purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically, this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.” It further states that “(i)n this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability (...)”.

We also refer to guiding principle 19, which calls on companies to take appropriate action to prevent and mitigate adverse human rights impacts. The commentary to this principle states that if a company finds it “contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm”.

The commentary to guiding principle 19 further states that “(i)f the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.” It also notes that if the company lacks the leverage to prevent or mitigate adverse impacts and cannot increase its leverage, it should consider ending the relationship with the entity involved, although if the company retains the relationship as essential to its business, “it should be able to demonstrate its own ongoing efforts to mitigate the impact (of any harm to human rights) and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection”.