

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 SWE 3/2022
(Please use this reference in your reply)

2 August 2022

Excellency,

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.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the suspension of the PostNord joint Danish-Swedish postal service, to and from the Russian Federation and Belarus**, intended to serve the population in both countries.

The suspension of postal services to the people of both countries, amounts to a denial of basic rights including 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 set a dangerous precedent, adversely affecting 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.

According to the information received:

On 24 March 2022, in consultation with the Swedish Post and Telecom Agency, 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*¹. 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. According to the aforementioned press release, 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 affects DPD group², PostNord's strategic partner parcel-delivery company³; as well as the Swedish Post and Telecom authority, as PostNord's national oversight organ. This suspension also includes previously ceased commercial logistics flows, and all items addressed to Russian or Belarussian recipients, which will effectively be returned to the sender, or held by PostNord.

¹ [PostNord in Sweden suspends all postal items to and from Russia and Belarus | PostNord](#)

² [DPD - Parcel shipping for business and private customers » DPD](#)

³ [DPDgroup and PostNord renew partnership for five years | Post & Parcel \(postandparcel.info\)](#)

Leaving aside the issue of legality or illegality of sanctions imposed by the European Union against the Russian Federation or Belarus, it is also worth to underscore that there is today no EU-imposed no sanctions against the postal services of the aforementioned countries. Under these provisions, discontinuation of the postal services is either arbitrary or constitutes a clear example of over-compliance applied by Post-Nord as a private company, which affects the rights of persons of the Russian Federation and Belarus.

Background

Between February and June 2022⁴, as part of the European Union's Common Foreign and Security Policy (CFSP), the [European] Council adopted several unilateral measures against the Russian Federation. Prohibition of financing⁵ and transactions⁶ with Russia, its government, and its Central Bank, including the exclusion of the central bank from the central SWIFT system⁷; export of or investment in dual-use goods⁸, including iron, steel, and coal; restrictions on air⁹ and maritime¹⁰-related goods and transport.

Among others, additional unilateral measures taken against the Republic of Belarus include restrictions on trade of goods¹¹; transferable securities¹² such as crypto currencies, and limiting financial inflows from Belarus to European Union trading venues¹³. Finally, the EU decisions introduced, also imposed additional restrictive measures on transport of goods by road within the territory of the European Union by any Belarusian enterprise, as well as a prohibition for citizens of Belarus from acquiring any transferable securities or banknotes in any official currency of EU Member States¹⁴.

The Special Rapporteur recalls the obligation of states to respect and protect human rights for every individual, even when acting in the course of counter measures, avoiding their direct or indirect effects on human rights. Denying individuals or private citizens, including foreign nationals abroad, of the right to correspondence is a violation of international law. The obstruction of essential documents including legal, medical, fiscal, and others, which may amount to a lifeline for individuals, deny persons of the possibility to freely exercise their basic rights. Furthermore, halting postal services and 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, 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.

⁴ 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 \(europa.eu\)](#)
⁵ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0262>
⁶ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0334>
⁷ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0350>
⁸ [EUR-Lex - 32022R0328 - EN - EUR-Lex \(europa.eu\)](#)
⁹ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0576>
¹⁰ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32022R0394>
¹¹ <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0355&qid=1651124182926&rid=10>
¹² [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)
¹³ <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0398&qid=1651124182926&rid=9>
¹⁴ <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32022R0577&qid=1651124182926&rid=3>

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. Should this decision be replicated globally, persons such as the elderly, those in marginalized or remote communities, persons with health concerns, as well as those living in extreme poverty, who still rely on the postal service as their primary and essential source of communication, will be deprived of options.

Historical use of sectoral, economic and financial sanctions has traditionally affected whole populations of a country. In her report to the UN General Assembly, titled *Targets of unilateral coercive measures: notion, categories and vulnerable groups*, the Special Rapporteur underlines that **any unilateral measures can only be taken by states if they do not violate any international obligation of states or if wrongfulness of the action is excluded under international law** with due account of principles of necessity, proportionality and respect to human rights. She also noted that **applying extraterritorial jurisdiction to nationals and companies of third States is not justified under international law and increases the risks of over compliance with sanctions.**¹⁵

In her report to the Human Rights Council, *Unilateral coercive measures: notion, types and qualification*¹⁶ the Special Rapporteur draws special attention to the extraterritorial effect of unilateral coercive measures, which has been noted in relevant resolutions of the Human Rights Council and the General Assembly¹⁷ as impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments. This effect has caused blocking mechanisms in order to protect the economic interests of the states in question, and the companies within them. These efforts are only exasperated as responsibility is shifted from lawmakers to companies, by issuing vague and escalating targeted sanctions, which in turn cause fear of fines or social discontent, causing [companies] to commit over compliance.

Member states that have adhered to the Treaty of Bern of 1874 have an obligation to uphold a universal postal territory (art. 3.1), as a guarantee of the freedom of correspondence. Should members wish to raise concerns regarding future rules for international mail exchange, they may do so within the framework of the [UPU Congress](#), as the primary decision-making entity for the organization, via the “one country, one vote” mechanism, during its quadrennial meetings. In addition, as a member of the intergovernmental organization of the International Bureau of the Universal Postal Union (UPU), member states¹⁸ are duty-bound to revert any preoccupations or doubts to this platform.

The UPU upholds to *maintain international postal exchanges with or between regions afflicted by disputes, disturbances, conflicts or wars* (According to UPU

¹⁵ A/76/174/Rev.1, para. 67 and 86; Extraterritorial sanctions on trade and investments and European responses Policy Department for External Relations Directorate General for External Policies of the Union PE 653.618 - November 2020, para. 18-19, 26-27

¹⁶ A/HRC/48/59 Para. 61; 116

¹⁷ General Assembly resolution 51/103, para. 1.

¹⁸ Sweden, Denmark, Russia, Belarus, and Belgium (as host country to the EU), DOE of all four countries is 01.07.1875.

Resolution C 37/Lausanne of 1974,¹⁹ regarding *Postal Relations to be Maintained in the Event of Dispute, Conflict or War*, during the Seventeenth Congress in Lausanne of May 1974; Article 25 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War²⁰)²¹. *The suspension of postal relations, far from affecting only the population of the countries concerned, also has repercussions on the 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*²².

States can withdraw from the UPU under the Article 12²³ of the UPU Constitution, which explicitly allows for any member state to do so from the organization with one year's notice, but are not entitled to stop postal relations without authorization of the UN Security Council. As part of the provisions of the Treaty of Bern²⁴ any postal dispute between nations shall be settled through the appropriate channels of the Council of Administration of the Universal Postal Union, the organ responsible for resolving urgent issues and promoting and coordinating all aspects of technical assistance among member countries.

Additional responsibilities, affirmed by state accession to and ratification of international human rights conventions, applies, *inter alia*, to the activities of state-owned enterprises and private companies on both Swedish and Danish territory. The responsibility to protect human rights, in turn, is set out in the UN Guiding Principles on Business and Human Rights²⁵ (Guiding Principles), which apply to their activity without any geographic restriction.

The role of states in implementing the Guiding Principles is one of due diligence that entails “taking appropriate steps to prevent, investigate, punish and redress” human rights abuses by companies (Guiding Principle 1) through actions such as laws, policies, guidance and encouragement that aim to protect human rights (Guiding Principle 3).

These important guiding principles call on states to be particularly attentive with respect to the activities of state-owned enterprises that affect human rights (Guiding Principle 4). “(W)here a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations.”²⁶ While the Sweden and Denmark postal service is a joint venture with a legal personality, it may be deemed a state organ on grounds that the state makes decisions relating to its activities and operations.

¹⁹ 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>

²⁰ [Postal relations to be maintained in the event of dispute, conflict or war \(icrc.org\)](#)

²¹ [Statement by the Director General of the International Bureau of the UPU on the conflict in Ukraine](#)

²² 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>

²³ [actInThreeVolumesConstitutionAndGeneralRegulationsEn.pdf \(upu.int\)](#)

²⁴ International Bureau of the Universal Postal Union [universal_postal_convention.pdf](#)

²⁵ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

²⁶ Guiding Principles on Business and Human Rights, commentary to Guiding Principle 4,
https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

A similar approach is reflected in General comment No. 24 of the United Nations Committee on Economic, Social and Cultural Rights, which requests that freedom of business does not violate human rights emerging from the Covenant (para. 12), and calls to establish mechanisms to prevent such violations (para. 14) including extraterritorially (para. 26)²⁷. Absence of such measures is seen by the Committee as a violation of Covenant norms (para. 18).

As Special Procedures mandate holders, we are calling on Your Excellency's Government to guarantee restoration of postal relations with the Russian Federation and Belarus in accordance with the Treaty of Bern of 1874.

The above information and concerns are further elaborated in the attached **Annex on Reference to international human rights law**, refers to additional relevant international human rights 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 clarify how the measures taken are compatible with the international human rights commitments of Your Excellency's Government, under the treaties it has ratified?
3. Please explain how the measures taken are compatible with the international human rights law principle of non-discrimination, and the prohibition under international humanitarian law of collective punishment?
4. Please explain the nature, extent and form of human rights due diligence and due process of law that your Excellency's Government conducted with respect to its decisions to cease correspondence to-and-from Belarus and Russia, and how this meets international human rights norms and standards.
5. Please specify any action that your Excellency's Government has taken to ensure that over compliance does not affect the sphere of postal relations between nations, and reassure this and other postal agencies that their duties to continue their essential and possibly life-saving services protect human rights and do not infringe any unilateral measures set forth by the European Union.
6. Please explain whether your Excellency's Government requires state-owned enterprises and private-sector businesses to carry out human

²⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, 10 August 2017, E/C.12/GC/24, available at: <https://www.refworld.org/docid/5beaecba4.html> [accessed 30 May 2022]

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.

7. Please elaborate on any developments regarding a checks-and-balances-type system with private companies, if any, as to where they may seek thorough assistance regarding compliance with unilateral coercive measures.
8. Please, explain what measures have been taken to guarantee the freedom of correspondence to and from the Russian Federation and Belarus.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

As independent experts appointed by the Council of Human Rights, our mission is, inter alia, is to establish with all States in which we observe issues of concern, conditions propitious for an effective dialogue aimed at fostering the respect of human rights based on international law. In this regard, we would be grateful for a prompt response to this communications, including detailed responses to the questions raised.

Given the importance of the matter at hand, and the fact that numerous people are affected by the measures taken by the Post-Nord, we are recommending prompt attention to a matter which is obviously of public international interests. In this regard, we may publicly share our views and concerns as we believe that the wider public should be alerted to the implications of the measures taken by the joint postal system, to suspend the right to correspondence of entire populations. Any expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on the same subject has also been sent to PostNord, and to the government of Denmark as the other state 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 refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described.

I additionally call your attention to the UN Guiding Principles on Business and Human Rights, which apply to all states and recognize their existing obligations to respect, protect and fulfil human rights.

We wish to recall the responsibilities of all states and companies within those states are detailed in the UN Guiding Principles on Business and Human Rights, in particular, guiding principle 1 outlines the duty of states to "protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises". 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 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.

We also wish to highlight guiding principle 5, which calls on states to "exercise adequate oversight in order to meet their international human rights obligations when they (...) legislate for business enterprises to provide services that may impact upon the enjoyment of human rights"; guiding principle 11, which calls on business enterprises to "avoid infringing on the human rights of others and (...) address adverse human rights impacts with which they are involved;" and to "not undermine States' abilities to meet their own human rights obligations"; and, 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".

In accordance with article 17 of the International Covenant on Civil and Political Rights: "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 art. 11 sets forth 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 that States parties adopt legislative, administrative, educational and other appropriate measures, 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”. 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 stop at their territorial borders. States parties were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their 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), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant”.

As signed on 4 July 1947, entering into force at the same time with the Paris Convention, the Universal Postal 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”.

In addition, according to the Constitution and General Regulations Manual of the Universal Postal Union²⁸, the UPU may also be in a position to formally request to the UN General Assembly advisory opinions from the International Court of Justice; as pursuant to the instructions contained in Congress resolution C 15/2012.

²⁸ [actInThreeVolumesConstitutionAndGeneralRegulationsEn.pdf \(upu.int\)](#)

Member States to the Universal Postal Union also abide by economic and social cooperation principles, including articles 55, 56, and 59 of the UN Charter.

Article 55: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a higher standards of living, full employment, and conditions of economic and social progress and development; b solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

Article 56: “All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in article 55”.

“Article 59 “The Organization shall, where appropriate, initiate negotiations among the States concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in article 55”.

Likewise, according to article 62.2 of the UN Charter: “1 The Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all”.