

**Mandate of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights**

Ref.: AL DEU 1/2024  
(Please use this reference in your reply)

27 February 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to Human Rights Council resolution 52/13.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning alleged violations of exports bans introduced under article 1o of Regulation (EC) No. 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine.

According to the information received:

Ms. Alena Bekker, born on 30 July 1977, in Zhlobin, Belarus, is a German entrepreneur, and owner of Texforum-Interhandel e. K. Ms. Bekker acquired the German citizenship in 2003.

On 15 February 2021, Ms. Bekker's company, Texforum-Interhandel e. K., entered into a contract with UAB Manirenta, a Lithuanian company, for the delivery of kindling wood. Subsequently, on 21 June 2021, UAB Manirenta signed a contract with Belpotok Universal LLC, a Belarusian company, to supply the same kindling wood products as agreed upon in the previous contract with Ms. Bekker.

On 2 March 2022, the EU introduced a ban on the import of wood products (Annex X) directly or indirectly from Belarus, according to article 1o of Regulation (EC) No. 765/2006. This ban excluded transactions to fulfill contracts concluded before this date, provided they were fulfilled before 4 June 2022.

According to the received information, Ms. Bekker imported wood and wood products from Belarus on 3 April 2022. The import was based on the two contracts signed in 2021 with Belpotok Universal LLC and UAB Manirenta. In a letter dated 14 April 2022, the Berlin-Brandenburg Customs Investigation Office claimed that the contracts between Belpotok Universal LLC and UAB Manirenta, and between UAB Manirenta and Ms. Bekker, were signed on 21 June 2022 and 15 January 2022, respectively, instead of 2021.

The actions of the Berlin-Brandenburg Customs Investigation Office led to the seizure of goods, denial of import, and criminal prosecution, causing significant financial and reputational harm as well as human rights violations for Ms. Bekker and Texforum Interhandel e.K.

On 25 August 2022, Texforum-Interhandel e. K. submitted a customs declaration for a truck containing flammable materials, identified as kerosene-treated wooden firelighters. The goods were seized under article 198 of

Regulation (EU) No. 952/2013. The Hauptzollamt Erfurt reclassified the goods on the basis of the expert opinion stating that the goods should be classified under code number 4401 1100 00 0 EZT because they were not treated and were therefore subject to an import ban, as per Regulation (EC) No. 765/2006. No chemical laboratory analysis of the goods was ever conducted. Additional evidence submitted by Texforum-Interhandel e. K. on 24 February 2023 was rejected by the Hauptzollamt Erfurt. Despite correspondence from Convent Frankfurt (Oder) on 16 August 2022, confirming that there were no import restrictions for wood-based fire starters the Hauptzollamt Erfurt German customs authorities reclassified the imported goods, seized them, denied import, and initiated criminal prosecution.

The Hauptzollamt Erfurt's reportedly refused to grant full access to inspection records, particularly the inspection report, requested during the legal appeal initiated by Texforum-Interhandel e. K.

On 5 September 2022, Texforum-Interhandel e. K submitted a customs declaration for a truck containing plant products in the form of linen briquettes. According to a letter from CZ Theodor Convent Zollagentur GmbH, dated 9 August 2022, linen briquettes were not subject to sanctions restrictions and were eligible for import into the European Union. Despite the exemptions and confirmation of eligibility, the Hauptzollamt Frankfurt (Oder) had allegedly arbitrarily interpreted the sanctions regulations, resulting in the improper application of sanctions on the imported goods of Ms. Bekker and her company Texforum-Interhandel e. K. The classification report from the Federal Financial Administration (BWZ), dated 6 September 2022, determined that the linen briquettes after being dried and treated into briquettes should be classified as "firewood" under item number 4401 3900 000, which is subject to import restrictions.

The German Customs reported all three cases to the Federal Prosecutor's Office as the intentional evasion of sanctions under Section 18 of the German Foreign Trade and Payments Act of 6 June 2013, which subsequently opened criminal investigations against Ms. Bekker. On 28 March 2023, the Federal Prosecutor's Office conducted raids on her house and office, allegedly invading her privacy and accessing privileged information. They carried out searches and seizures of her personal and company assets, including mobile phones, computers, files, and other items.

While I do not wish to prejudge the accuracy of the information received, I express serious concern about the reported arbitrary interpretation of the EU sanctions regulations, which resulted in criminal charges brought against Ms. Bekker. Such an approach may constitute arbitrary extension of measures taken to enforce application of unilateral sanctions resulting in growing instances of over-compliance by all actors. Furthermore, criminal proceedings against Ms. Bekker for alleged violations of unilateral sanctions regimes may amount to violations of due process and fair trial guarantees, as well as of the right to privacy, freedom from discrimination and equality before the law, and affect her health and reputation negatively.

It is a principled position of my mandate that the use of unilateral sanctions and over-compliance are illegal under international law and also have a detrimental negative effect on human rights of directly designated individuals, those affected by

criminal and civil penalties for circumvention of sanctions regimes as well as in some cases, of the population in general.<sup>1</sup> I have previously stated that the inconsistent, non-uniform, expanded and confusing interpretation by the EU organs and organs of the EU member states of existing unilateral sanctions regimes, the absence of an effective EU mechanism responsible for such an interpretation, the adoption of non-binding acts as the means of explanation and interpretation of legal norms as well as an intention to increase criminal responsibility for alleged circumvention or association with alleged circumvention of the EU sanctions regimes, may further exacerbate the existing uncertainty and fear, including legal uncertainty, undermine the rule of law and result in human rights violations<sup>2</sup>, often depriving affected states, individuals and companies of any possibility to protect their rights, to access justice, and seek redress and remedy. Furthermore, it is important to stress that the adverse effects of the enforcement of unilateral sanctions and over-compliance may be extended beyond the actual primary targets of such measures, including the families of the targeted individuals. This may apply to Ms. Bekker and her family, including her 2-year-old daughter, in the case of possible guilty criminal verdict, for Ms. Bekker's alleged circumvention of EU restrictive measures and her possible sentence.

Reported discrepancies in the interpretation of the European Union's export restrictions by CZ Theodor Convent Zollagentur GmbH, Convent Frankfurt (Oder) and the Hauptzollamt Erfurt, the Hauptzollamt Frankfurt (Oder) may be seen as a violation of the principle of legal certainty and rule of law and have resulted in the extension of criminal penalties for alleged circumvention of sanctions regimes. As reflected in the above reports, growing uncertainty and fear of unintended transgression of the imposed restrictions and prohibitions result in further over-compliance and consequently has a negative effect resulting in refusal to have entrepreneurial relationships with companies from sanctioned countries even for humanitarian reasons. Such negative impact on the rule of law significantly impedes the implementation of Sustainable Development Goal 16 in Germany.

I note with great concern, that such practice of overcompliance gives rise to discrimination for persons engaged in commercial activities with sanctioned States in areas not prohibited by sanctions. The German authorities appear not to take into account that in both cases of disputed classification of the European Union's Combined Nomenclature (CN) Ms. Bekker appears to have been acting in good faith, requesting information about the legality of import wood-based fire starters and of linen briquettes before proceeding with their actual import to Germany (correspondence from Convent Frankfurt (Oder) on 16 August 2022; letter from CZ Theodor Convent Zollagentur GmbH, dated 9 August 2022, respectively). Inconsistent and arbitrary interpretation of the CN resulting from the violation of the principle of legal certainty led to the criminal investigation against Ms. Bekker and brought about constant fear of criminal punishment which has negatively affected her psychological condition and her right to mental health.

I would like to note that the Hauptzollamt Erfurt's reported refusal to grant full access to inspection records, particularly the inspection report as well as disregard of evidence concerning the dates of contracts may indirectly violate the right to due process, and the right to fair trial of Ms. Bekker, since it resulted in criminal charges brought against her. These human rights are enshrined in the Universal Declaration of Human Rights, and in the International Covenant on Civil and Political Rights to

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<sup>1</sup> A/76/174/Rev.1 of 13 September 2021; A/78/196 of 4 September 2023

<sup>2</sup> OTH 75/2023 of 9 June 2023

which Germany is a state party since 17 December 1973.

I am concerned that the reported arbitrary disregard of excluded transactions under Regulation (EC) No. 765/2006 by the Berlin-Brandenburg Customs Investigation Office led to a significant number of violations of human rights of Ms. Bekker including prohibition of retroactive application of the law and a core element of the principle of rule of law, prohibiting misuse of powers.

I also wish to highlight to your Excellency's Government that seizure of goods resulting from the decisions taken by German customs authorities due to the practice of overcompliance is reported to negatively impact Ms. Bekker's right to property under article 17 of the Universal Declaration of Human Rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 how the actions taken by your Excellency's Government against Ms. Bekker are in line with its obligations under international law to protect her human rights as a German national.
3. Please explain what procedure and/or organ in Germany is authorized to interpret the European Union sanctions' regulations including European Union's Combined Nomenclature and how such interpretation is communicated to business operators.
4. Please provide information on the measures undertaken by your Excellency's Government to ensure the right of Ms. Bekker to a fair trial in light of the criminal charges brought against her in connection with the aforementioned facts.
5. Please provide information on the measures undertaken by your Excellency's Government to provide guidance and clarity to all actors with regards to the scope and application of the EU exemptions. Please, also explain the legal justifications for the measures taken by your Excellency's Government against Ms. Bekker, and whether such measures are in line with the principles of rule of law and legal certainty.

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

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

In view of the fact that the criminal interrogation of Ms. Bekker's case has started since 19 February 2024, and in view of the above mentioned allegations, I urge your Excellency's Government to drop the charges against Ms. Bekker based on the expanded interpretation of the EU unilateral sanctions and means of their enforcement, which contravene the principles and norms of international law and human rights standards.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government to clarify the issue/s in question.

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

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

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer to the relevant international norms and standards that are applicable to the issues brought forth by the situation described.

Reference is made to the international human rights standards on the freedom from discrimination and equality before the law, in particular article 26 of the International Covenant on Civil and Political Rights (ICCPR), which provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds (Human Rights Committee, general comment No. 18, para 12). Article 26 prohibits discrimination in law or in fact in any field regulated and protected by public authorities (general comment No. 18, para 12).

Right to equality before courts and tribunals and to a fair trial is set forth in article 14 of the ICCPR and ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant (general comment No. 18, paras 8, 13). According to article 14(2) everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

Article 15(1) of the ICCPR enshrines the principle of non-retroactivity of law, stating that “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”.

The right to privacy is guaranteed by article 17(1) of the ICCPR, which ensures that “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”. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances (Human Rights Committee, general comment No. 16, para. 4).

The Universal Declaration of Human Rights enshrines the right to property (article 17). As it was commented in the Annotation prepared by the UN Secretary General to Draft International Covenants on Human Rights, article 17 “would ensure the right of the individual to enjoyment of ownership without unreasonable interference<sup>3</sup>”. This principle is considered as a general principle of law having a binding character<sup>4</sup>.

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<sup>3</sup> [https://digitallibrary.un.org/record/748971/files/A\\_2929-EN.pdf?ln=ru](https://digitallibrary.un.org/record/748971/files/A_2929-EN.pdf?ln=ru), p. 192

<sup>4</sup> Yarik Kryvoi, Shaun Matos. Non-Retroactivity as a General Principle of Law. Utrecht Law Review. 2021. Volume: 17 Issue: 1. P. 46.

International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right to health. In particular, article 12 indicates that the States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The preamble to the Constitution of World Health Organization defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”<sup>5</sup>. As the Committee on Economic, Social and Cultural Rights clarifies that article 12(1) is not confined to the right to health care; “the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life” (CESCR general comment No. 1, para. 4). Atmosphere of fear to face criminal punishment is not conducive to the attainment of the highest standard of mental health.

Rule of law as a basis for the enjoyment of human rights was underlined in the UN General Secretary report “In larger freedom: towards development, security and human rights for all” (A/59/2005), Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international level (A/RES/67/1), the Universal Declaration of Human Rights (preamble), United Nations Millennium Declaration (para. 24-25), 2005 World Summit Outcome (A/RES/60/1) (para. 119).

Provisions of the Convention on the rights of the child of 20 November 1989 (articles 3(2), 9(1)) to the right of every child to benefit from support and relations with their parents, unless it is recognized dangerous for a child. As unilateral sanctions are contrary to international law, means of their enforcement at the national level cannot be qualified as a decision taken by the competent court taken in the best interests of the child.

Sustainable development goal 16 aims at promoting just, peaceful and inclusive societies<sup>6</sup>. In particular, its indicator 16.6 focuses on the need to develop effective, accountable and transparent institutions at all levels; and indicator 16.b is to promote and enforce non-discriminatory laws and policies for sustainable development<sup>7</sup>.

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<sup>5</sup> <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>

<sup>6</sup> <https://www.un.org/sustainabledevelopment/peace-justice/>

<sup>7</sup> <https://documents.un.org/doc/undoc/gen/n17/207/63/pdf/n1720763.pdf?token=nbPgHUZxsHALXoPVQS&fe=true>, p. 21-22.