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Designing Sanctions: Lessons from EU Restrictive Measures against Belarus

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Summary

The effectiveness and impact of sanctions are predetermined by how they are designed. This paper looks at the different elements in the design of European Union sanctions on Belarus in its different stages, their main pitfalls, and their potential effects on the country and its citizens. Several key elements are important for the design of sanctions: the triggering situation, the type of sanctions, the clarity of objectives and targets, the evidence for listings, and the conditions for review. They are crucial for explaining the mismatch between the objectives of EU sanctions and their limited impact.

The gravity of the situation that triggers the introduction of sanctions is closely linked to the type of restrictive measures that will be chosen by the EU. Threats to EU and regional security as well as to the territorial integrity and sovereignty of its neighbors result in more complex measures, including sectoral economic sanctions, export restrictions, and flight bans. In the case of Belarus, broader economic measures were enacted in response to growing security threats to the EU and its partners.

An analysis of EU sanctions on Belarus, including their cyclical nature, suggests that they have been most effective when their objective is limited and achievable. The release of political prisoners, cosmetic reforms to the Electoral Code, and the partial solution of the migration crisis are the most obvious examples of concessions that were made by the Belarusian authorities following the imposition of sanctions. Overly ambitious sanctions objectives limit the EU's room for maneuver and bargaining. Bringing to justice those responsible for forced disappearances and human-rights violations or holding new free and fair elections are inacceptable demands for the Belarusian regime because they endanger its survival as it relies on the law-enforcement institutions.

The effects of sanctions also depend on whom can be added on sanctions lists. Listing or designation criteria define conditions under which someone can be targeted. Those for Belarus were significantly updated in 2021 and now target those responsible for violations of human rights and election falsification, entities and persons benefitting from the regime, and those responsible for the forced landing of a Ryanair plane, the instrumentalization of the migration crisis, and Belarus's involvement in Russia's aggression against Ukraine. The broadening of the listing criteria increases the sanctioning power of the EU and paves the way for the extension of sanctions listings.

The EU enacts sanctions by providing a statement of reasons that must come under the listing criteria and be substantiated with sufficient evidence for each listing. Based on EU sanctions-related case law, sanctions are designed in a way that takes into consideration the due-process rights of targeted individuals and entities. The EU Council has deployed a degree of legal gymnastics in crafting its sanctions on Belarus to increase their traction, notably by using the broad concepts of "support" for and "benefit" from the regime's actions.

Conditions for the review of sanctions are construed as requirements addressed to the targeted state. The fulfillment of these or some variation in the behavior of the target could trigger the partial suspension or the lifting of restrictive measures. Those conditions in EU sanctions against Belarus are sometimes included in EU legal acts and sometimes in other political statements. Clear-cut conditions for reviewing sanctions would help in improving their effects.

The paper concludes with suggestions regarding the EU sanctions policy toward Belarus, notably with respect to national bias and to the need for a proper prior impact assessment, realistic objectives, clear communication, and more leverage for the EU.

Introduction

The EU's sanctions framework against the Belarusian regime is one of its oldest. Sanctions have included a broad range of measures: from arms embargos to targeted restrictive measures against natural and legal entities. Since the fraudulent August 2020 presidential election and subsequent repression, the EU has adopted five packages of sanctions against the regime of President Alexander Lukashenka. Since May 2021, this has included sectoral economic sanctions. More recently, the EU imposed further sanctions following the regime's support for Russia's invasion of Ukraine. Belarus has thus become one of the most sanctioned states worldwide.

The fact that non-EU countries often mirror the EU sanctions expands their traction and strengthens the EU's voice in global affairs.[1] Canada, New Zealand, the United Kingdom, and the United States have also sanctioned the Belarus regime. US sanctions often are complementary measures to EU ones and target areas where the EU is reluctant to act. EU candidate countries (Albania, Montenegro, North Macedonia, and Serbia) and the European Economic Area countries (Iceland, Liechtenstein, and Norway) have also aligned with the EU sanctions, while Switzerland joined the EU in imposing sanctions and Ukraine aligned with some selective EU measures.

The effectiveness of sanctions has been broadly debated, with scholars often using different measures of success.[2] Some highlight that sanctions have a limited impact in bringing about regime change and can even have the opposite effect.[3] Others conclude that sanctions succeeded in achieving the stated foreign policy objectives in 34 percent of cases.[4] Sanctions that pursued limited goals, such as the release of political prisoners, succeeded in half of cases.[5] The effectiveness and impact of sanctions are predetermined to some extent by the way how they are crafted. One way of trying to judge whether they are effective or not is to look at how they are designed.

This paper analyzes the different elements in the design of EU sanctions in its different stages, their main pitfalls, and their potential effects on the targeted country and its citizens. It examines different episodes of EU sanctions toward Belarus and how their design shaped their effects. It then looks at the implementation of EU sanctions on the country before drawing some conclusions about their future. The analysis draws on research that has pointed out that the design of sanctions has implications for the ultimate success of sanctions and their different effects on the target.[6] The paper emphasizes the need for a forward-thinking and more tailored approach in EU sanctions policy toward Belarus, which is especially important now when Belarus has become a transit point for Russian armed forces and the regime has silenced the most critical voices that could speak up against their use of the Belarusian territory.

1 Elin Hellquist, "Either with us or against us? Third-country alignment with EU sanctions against Russia/Ukraine," 29(3), Cambridge Review of International Affairs, 2016; Sebastian Mayer, "Common foreign and security policy alignment in the Southern Caucasus," 66(10), Europe-Asia Studies, 2014.

2 Francesco Giumelli, "The purpose of targeted sanctions," in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (eds.), Targeted Sanctions: The Impacts and Effectiveness of United Nations Actions, Cambridge University Press, 2016.

3 Robert Pape, "Why Economic Sanctions Do Not Work," 22(1), International Security, 1997; Margaret Doxey, "International sanctions: A framework for analysis with special reference to the UN and Southern Africa," 26, International Organization, 1972; Dursun Peksen, "When Do Imposed Economic Sanctions Work? A Critical Review of the Sanctions Effectiveness Literature," 30(6), Defence and Peace Economics, 2019.

4 Gary Clyde Hufbauer et al, Economic Sanctions Reconsidered, Peterson Institute for International Economics, third edition, 2007.

5 Ibid.

6 Katharina L. Meissner and Clara Portela, "Beyond Foreign Policy? EU Sanctions at the Intersection of Development, Trade, and CFSP," 10(1), Politics and Governance, 2022; Clara Portela and Thijs Van Laer, "The Design and Impacts of Individual Sanctions: Evidence From Elites in Côte d'Ivoire and Zimbabwe," 10(1), Politics and Governance, 2022.

Sanctions Design

Several key elements are important for the design of sanctions: the triggering situation, the type of sanctions, the clarity of objectives and targets (listing criteria and reasons for listing), the evidence for listings, and the conditions for review. They are crucial for explaining the mismatch between the objectives of EU sanctions and their limited impact.[7] In the case of Belarus, the different types of sanctions the EU has imposed since 1997 did not bring about any substantial change in the country's political system. In fact, Belarus has consolidated as an autocratic state and the regime has recently turned more repressive than it has been over the past 20 years.

EU-Belarus relations have had a cyclical nature, with four periods of sanctions and reducing bilateral cooperation—in 1997-1999, 2004-2008, 2011-2015, and since 2020.[8] The sanctions period came after elections and referenda in Belarus that were marked by falsification and violence leading to the consolidation of Lukashenka's control over the country. Referenda in 1996, 2004, and 2022 respectively put an end to the separation of powers, eliminated presidential term limits, and further aggravated the concentration of power by introducing the All-Belarusian People's Assembly as the highest representative body. All the presidential elections and referenda, except for the 1994 presidential one, have not been recognized as free and fair by the Organization for Security and Co-operation in Europe (OSCE).[9] In 2020, the EU for the first time rejected the official result of the presidential election that was marked by serious violations of constitutional law and international electoral standards.[10]

Several EU institutions are involved in the enactment of specific restrictive measures. Sanctions proposals are first prepared by member-state competent authorities within working parties at the EU Council. Recently there has been a shift toward a supranationalization of the procedure that would allow to partially break away from national biases.[11] In this centralized procedure, the European External Action Service (EEAS) also crafts sanctions proposals on behalf of the EU high representative for foreign affairs and security policy. The high representative then proposes final listings to the EU Council, which adopts, renews, or lifts sanctions.[12]

Neither the EEAS nor the EU Council provide any explanations to external parties as to specific EU sanctions listings.[13] However, it is clear that the sanctions design and the choice of one measure over the other are dictated not only by the triggering situation and the EU's willingness to gradually exercise pressure but also by the economic considerations of different member states, with some reluctant to impose more robust sanctions. This has recently been visible in the debates on imposing an oil and gas embargo on Russia in relation to the war in Ukraine. In the case of Belarus, the EU has imposed sanctions on Belarusian potash with a defined potassium content, but Belgium has advocated for a deviation of as much as 2 percent

7 Yarik Kryvoi, "Why European Union Trade Sanctions Do Not Work," 17 Minnesota Journal of International Law, 2008; Julia Korosteleva, Impact of targeted sanctions on Belarus, European Parliament's Committee on Foreign Affairs, 2012; Clara Portela, "The European Union and Belarus: Sanctions and Partnership?", Comparative European Politics, 2011; Francesco Giumelli and Paul Ivan, The effectiveness of EU sanctions: An analysis of Iran, Belarus, Syria and Myanmar (Burma), European Policy Centre, 2013.

8 Author's periodization relating to the introduction and lifting of sanctions. See also Ekaterina Pierson-Lyzhina, "Belarus's oscillating 'dictaplomacy' towards the EU: From 'multi-vectorness' to retraction, 1994–2021," 63(3-4), Canadian Slavonic Papers, 2021; Giselle Bosse, "Authoritarian consolidation in Belarus: What role for the EU?", 20(2), European View, 2021.

9 Maksim Karliuk and Yuliya Miadzvetskaya, "The Kafkaesque Edifice of Law: Belarusian Presidential Elections VerfBlog," *Verfassungsblog, 2020.*

10 Deutsche Welle, "EU rejects Belarus presidential election result," August 19, 2020.

11 Christina Eckes, "EU global human rights sanctions regime: is the genie out of the bottle?", Journal of Contemporary European Studies, 2021.

12 EU sanctions are set out in a council decision taken by unanimity (Article 29 of the Treaty on European Union) followed by a council regulation adopted by a qualified majority voting (Article 215 of the Treaty on the Functioning of the European Union).

13 Written exchanges with the EEAS Sanctions Division, March 2022.

from this content level on the basis that European companies buying potash from elsewhere would lead to price increases and lower-quality potash.[14]

Several important elements influence the sanctions design. First, the gravity of the situation that triggers the introduction of sanctions is closely linked to the type of measures that will be chosen (targeted, sectoral, and comprehensive economic sanctions; prohibition on access to EU financial markets; trade and development measures) and their scope (number of sectors of the economy covered, individuals and entities targeted). Threats to the EU and regional security as well as to the territorial integrity and sovereignty of the EU's neighbors result in more complex measures, including sectoral economic sanctions, export restrictions and flight bans. In the case of Belarus, the EU has imposed sector-specific economic sanctions as a response to transborder threat situations; for example, the forced landing of a Ryanair plane and the migration crisis at the borders with Lithuania and Poland in 2021, and the regime's support for Russia's military aggression against Ukraine.

Another element of the sanctions design relates to the clarity and achievability of sanctions objectives. Following the EU Council's 2018 guidelines, sanctions are designed to be lifted once their objectives are fulfilled.[15] However, it is often unclear how to determine that the objectives of specific sanctions have been fulfilled. In a case like Belarus, it is not realistic to set too ambitious objectives and expect that the regime will commit political suicide so that sanctions are lifted.[16] Instead of opting for an unachievable regime change, setting clear and realistic objectives may stimulate some minor but achievable changes.

The effects of sanctions also depend on whom can be put on sanctions lists. Listing criteria or designation criteria define conditions under which someone can be targeted. Those for Belarus were significantly updated in 2021 and 2022, and they now target those responsible for violations of human rights and election falsification, entities and persons benefitting from the regime, and those responsible for the forced landing of the Ryanair plane, the instrumentalization of the migration crisis and Belarus's involvement in Russia's aggression against Ukraine. The broadening of the listing criteria increases the sanctioning power of the EU and paves the way for the extension of sanctions listings.

Several important elements influence the sanctions design.

The EU enacts sanctions by providing a statement of reasons for each listing case. Based on EU sanctions-related case law, sanctions are designed in a way that takes into consideration the due-process rights of targeted individuals and entities.[17] Reasons for a listing must come under the criteria and be substantiated with sufficient evidence. The legal soundness of sanctions (the reasons for listing and substantial evidence) plays a key role in determining the reach and resilience of the EU's coercive measures. In the past, the Court of justice of the EU (CJEU) considered that the evidence gathered by the EU Council was not sufficient to conclude that Belarusian businesspersons or entities benefitted from or supported the regime.[18]

14 Alberto Nardelli and Yuliya Fedorinova, "Belgium Is Pushing to Dilute the EU's Belarus Potash Sanctions," Bloomberg, October 19, 2021.

15 Council of the EU, Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy 5664/18, 2018, para 35.

16 Jean-Marc F. Blanchard and Norrin M. Ripsman, "Asking the right question: When do economic sanctions work best?", 9, Security Studies, 2007; Giumelli, "The purpose of targeted sanctions."

17 Christina Eckes, "EU restrictive measures against natural and legal persons: From counterterrorist to third country sanctions," 51(3), Common Market Law Review, 2014.

18 For example, Case T-441/11 Peftiev v Council; Case T-438/11 BelTechExport ZAO v Council; Case T-439/11 Sport-pari ZAO v Council; Case T-275/12 FC Dynamo-Minsk v Council; Case T-440/11 BT Telecommunications PUE v Council; Case T-765/15 BelTechExport v Council; Case T-276/12 Chyzh and Others v Council; Case T-163/12 Ternavsky v Council; Case C-314/13 Peftiev v Council.

Table 1. Elements of Sanctions Design

Triggering situation	Why sanctions are imposed
Type of sanctions	Common Foreign and Security Policy measures; withdrawal of trade preferences or development cooperation advantages; sectoral economic sanctions; export/import restrictions; financial sanctions
Targets (listing criteria and reasons for listing)	Persons, entities, sectors of economy targeted by sanctions
Objectives	What the EU aims to achieve with the sanctions
Evidence	Open-source data for imposing sanctions, required for complying with the due-process rights of individuals
Conditions for review	Conditions under which sanctions can be reviewed, suspended, or lifted

Another element of the sanctions design relates to the conditions for review of restrictive measures. As stated in the EU Council guidelines, sanctions must either have an expiration date or a review clause to ensure that the need for their renewal, review, or expiration is discussed with due account of relevant facts and context.[19] This is connected to the sanctions objectives since sanctions are meant to end once their objectives have been achieved. Conditions for the review of sanctions are construed as requirements addressed to the targeted state. The fulfillment of these or some variation in the behavior of the target could trigger the partial suspension or the lifting of restrictive measures.

The analysis here does not go into other aspects, such as whether the EU sanctions entail an alignment for third states, that are also of crucial significance for their reach. In recent years there has been more alignment of third states with EU restrictive measures. The ones adopted by Canada and the United States sometimes overlap with the EU ones and sometimes are more impactful.

Sanctions Design during the Introduction Phase

Triggering Situations for Sanctions

The triggering situation directly influences the choice of the type of sanction measure by the EU. In the case of Belarusian regime, it remained unchanged up until 2021. Sanctions were adopted in response to every significant election or referendum in the country marked by human rights violations, except for the 2001 and 2015 presidential elections. The first EU sanctions on Belarus date back to 1997 as a response to the 1996 referendum that, among other things, was used by Alexander Lukashenka to radically increase presidential powers. The EU suspended the signature of its Partnership and Cooperation Agreement with Belarus and its assistance programs except for

19 Council of the EU, Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, para 34.

humanitarian and democracy-building projects.[20] The late 1990s were marked by the elimination of critical voices and political opponents representing a threat to the consolidation of Lukashenka's power. In 2004, the EU enacted its first targeted restrictive measures against four Belarusian officials allegedly responsible for forced disappearances of two key political figures, one businessman, and one journalist in 1999-2000. Targeted restrictive measures were expanded in 2004, 2006, and 2011-2012 to cover more key figures responsible for referendums, falsification of presidential elections, and post-electoral violence.

In 2020-2021 the triggering situation for EU sanctions has been in some aspects similar to and in other aspects different from previous sanctions episodes. The triggers for the first three rounds of sanctions from October 2020 following the presidential election were in no way different from those since 2004: election falsification and post-electoral violence. However, the fourth and subsequent rounds were triggered by different considerations: the Ryanair incident, the migration crisis, the aggravation of situation in the country, and the involvement of Belarus in Russia's aggression against Ukraine.

While previous EU sanctions dealt with the internal political situation and disrespect for the rule of law inside Belarus, the Ryanair incident and the instrumentalization of migrants created security threats for the EU and its citizens. The EU labelled the migration crisis a form of hybrid warfare.[21]

The forced landing of the Ryanair plane interrupted a direct flight connecting two European capitals to arrest a regime critic, the former editor-in-chief of the Nexta Telegram channel. This served as the main triggering element for the EU's comprehensive response. The EU condemned the act of air piracy by the Belarusian authorities and called for the expansion of restrictive measures, including banning the national airline Belavia from EU skies and the overflight of the territory of Belarus by EU operators.[22] The EU also adopted sectoral economic sanctions that targeted oil and potassium products from the country.

The Ryanair incident and the instrumentalization of migrants transformed the political crisis in Belarus into a problem with a European or even global dimension. The EU sanctions therefore also had to fulfill a deterrent function by preventing other regimes from committing similar acts in the future. In a similar vein, in response to the Belarusian regime's involvement in Russia's war against Ukraine, the EU started extending its anti-Russian sanctions to Belarus by targeting more sectors of the Belarusian economy, prohibiting the road transport of goods between the EU and Belarus, cutting off Belarusian banks from the SWIFT banking system, and banning transactions with the Belarusian central bank.

Type of Sanctions

The EU has employed almost all available sanctions formats with regard to Belarus: targeted sanctions, arms embargo, sectoral economic sanctions, export restrictions, restriction on the access to capital markets, suspension from the Generalized System of Preferences (GSP), and financial restrictions.

The EU enacted trade- and development-related sanctions in 1997 when it suspended the ratification of the Partnership and Cooperation Agreement and its assistance programs. In 1998, it used diplomatic measures in response to the expulsion of Western diplomats from their residence compound.

The mid-1990s marked a turning point in the EU's sanctions practice with the EU shifting from broad economic sanctions to targeted restrictive measures.[23] The main objective of the latter is

20 Peter Van Elsuwege, "The European Union and the Belarus Dilemma: Between Conditionality and Constructive Engagement," Proceedings of the Institute for European Studies, 7, Journal of Tallinn University of Technology, 2010.

21 Marija Golubeva, "EU must be ready to act on its border with Belarus," Politico, 2021.

22 European Council conclusions on Belarus, May 24, 2021.

23 Clara Portela, "Are European Union sanctions "targeted"?", 29(3), Cambridge Review of International Affairs, 2016.

to avoid sanctions having negative consequences for the population by targeting only those responsible for policy decisions.[24] This has been the main guiding principle of EU sanctions policy. Most EU sanctions against the Belarusian regime from 2004 until the beginning of 2021 were targeted restrictive measures in the form of travel bans against high-level officials. From 2006, they also included asset freezes in all EU-based financial and credit bodies as well as travel bans against all those considered responsible for election fraud, violence, and repression.

Targeted visa bans and asset freezes are meant to increase the price of being part of or close to the regime, either as a high-ranking civil servant or as an influential businessperson. However, research has pointed out that sanctions can shape a feeling of belonging among members of a specific group or that the signaling effect of sanctions can fail since some of those targeted can be unaware of being listed.[25] There is unfortunately a lack of research on how individuals in Belarus react to being sanctioned.

Comprehensive economic sanctions that consist of suspending trade cooperation with a targeted country are the most impactful, and not necessarily in a good sense as they can have humanitarian consequences for the population without achieving their objectives.[26] With regard to Belarus, the EU has been reluctant to use this type of restrictive measure, which is difficult to calibrate and is not in line with its objectives of changing behavior by "hitting the least possible."[27] Until 2021, the only sectoral economic measures that the EU had used were the suspension of Belarus from the GSP in 2006 for violations of its International Labor Organization obligations and an embargo since 2011 on arms and on equipment that could be used for internal repression.

The EU's approach toward Belarus changed after the Ryanair incident. It shifted from targeted sanctions against decision-makers and the closest circle around Lukashenka to sanctions against sensitive sectors of the economy. In addition to the Belavia and overflight bans, the EU extended its export ban to more items, such as software for the surveillance of Internet and telephone communications or goods used for the production of tobacco products. More importantly, the EU has banned imports of petroleum and potassium products from Belarus and restricted access to EU capital markets for Belarusian financial institutions.

The targeted restrictive measures and sectoral economic sanctions adopted by the EU have not been without impact on the Belarusian economy.

The EU sanctions imposed on Belarus as a result of its role in the invasion of Ukraine by Russia are even more far-reaching. They include sectoral bans on wood, cement, steel, and rubber products, and they can be compared to a semi-embargo. It remains to be seen what the long-term consequences of such measures for Belarusian society will be and whether they will help to attain the objectives of democracy promotion.

The targeted restrictive measures and sectoral economic sanctions adopted by the EU have not been without impact on the Belarusian economy. The reorientation of oil and potassium products to alternative markets will face infrastructural and logistical challenges further compounded by the war in Ukraine. Official data for the oil and potassium sectors were

24 Michael Brzoska, "From dumb to smart? recent reforms of UN sanctions," 9(4) Global Governance, 2003.

25 Portela and Thijs Van Laer, "The Design and Impacts of Individual Sanctions."

26 Boutros Boutros-Ghali, "Supplement to An Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations," UN Doc. A/50/60-S/95/1, 1995, para 70; Brzoska, "From dumb to smart?; Francesco Giumelli, "Understanding United Nations targeted sanctions: an empirical analysis," 91(6), International Affairs, 2015.

27 Interview with EU official 1, December 2021, Brussels, Belgium.

Table 2. Triggering Situation, Type, and Scope of Sanctions

Triggering situation	Adopted/ Lifted	Type of sanctions	Scope of sanctions
1996 referendum	1997	Trade sanctions Development cooperation sanctions Diplomatic isolation	Suspension of the PCA and assistance programs Withdrawal of support for Belarus's accession to the Council of Europe
Expulsion of Western diplomats from their residence compound. Violation of the Vienna Convention	1998/1999	Travel bans	Over 100 individuals
Forced political disappearances in the late 1990s	2004	Targeted restrictive measures	4 individuals
2004 constitutional referendum	2004/2016	Travel bans	2 individuals
2006 presidential election	2006/2008	Travel bans and asset freezes	31 individuals
Lack of respect for labor rights	2006	Trade sanctions	Suspension of Belarus from the GSP
2010 presidential election and 2012 parliamentary elections	2011-2012/2016	Travel bans and asset freezes Arms embargo (never suspended)	243 individuals and 32 entities
2020 presidential election and post-electoral violence	2020	Travel bans and asset freezes Arms embargo Suspension of European Bank for Reconstruction and Development and the European Investment Bank financial programs in Belarus's public sector	40 individuals (1st package) 15 individuals (2nd package) 29 individuals and 7 entities (3rd package)

Escalation of serious human-rights violations in Belarus Forced landing of a Ryanair flight and related detention of journalist Raman Pratasevich and Sofia Sapega	2021	Travel bans and asset freezes Export restrictions for certain dual-use equipment Sectoral economic sanctions Restrictions on access to EU capital markets	78 individuals and 7 entities (4th package) Sectors targeted by sanctions: petroleum products, potassium chloride, and goods used for the production of tobacco products Financial entities targeted: Belarusbank, Belinvestbank, Belagroprombank
Human-rights abuses and instrumentalization of migrants	2021	Travel bans and asset freezes	17 individuals and 11 entities (5th package)
Belarus's support for Russia's aggression against Ukraine	2022	Travel bans and asset freezes	22 individuals
		Bans on goods and technology that contribute to the military and technological enhancement of Belarus Prohibition on provision of technical assistance, financial and brokering services etc.	Sectors of the economy targeted: wood, cement, steel, rubber, security, and defense
		Restrictions on investments and trade SWIFT ban for 3 Belarusian banks Prohibition on transactions with the Central Bank of Belarus Limits on financial inflows from Belarus Prohibition on the provision of euro-denominated banknotes to Belarus Prohibition of any deposits from Belarusian nationals or residents exceeding €100,000	Financial Entities targeted: Belagroprombank, Bank Dabrabyt, and the Development Bank of the Republic of Belarus

		Prohibition on the sale to Belarus of transferable securities and banknotes denominated in any EU member state's official currency Prohibition on any road transport actor established in Belarus from transporting goods by road within the EU	
The continuing violations of human rights and repression of civil society and democratic opposition	2022	Travel bans and asset freezes	12 individuals and 8 entities
Belarus's support for Russia's aggression against Ukraine	2022	SWIFT ban Export restrictions regarding dual-use goods and technology	Financial entity targeted: Belinvestbank (Belarusian Bank for Development and Reconstruction)

made confidential by the Belarusian authorities. The potassium sector allegedly performs only at around 30 percent of its usual capacities and the oil sector at around 50 percent of its usual volume.[28] Belaeronavigatsia, the state-owned provider of air-navigation services, has been reported to be experiencing losses of $10 million per month due to EU sanctions.[29] Prime Minister Raman Haloŭčanka recently said that Western sanctions were blocking Belarusian exports to the EU and North America worth $16–18 billion a year.[30] At the same time, the ban on road transport between the EU and Belarus is believed to have consequences mostly for Belarusian private logistics companies and not for the authorities.[31] The regime's efforts to influence EU decision-makers suggest that the sanctions have potentially serious implication for the economy. For example, the authorities have compelled students and workers to make videos calling upon the EU not to introduce sanctions.

Objectives of Sanctions

The efficiency of sanctions has been the subject of much debate.[32] It is difficult to measure the efficiency of restrictive measures given that their imposition is often based on unclear expectations rather than a careful calculation on what they can achieve.

Studies of sanctions suggest that the objectives pursued by the imposing state are not that straightforward.[33] EU sanctions mostly pursue objectives related

28 Interview with Dzmitry Kruk, research associate at Belarusian Economic Research and Outreach Center (BEROC), May 9, 2022, Tubingen, Germany.

29 Belta, "Belarus to file lawsuits in international courts over losses caused by sanctions," November 3, 2021.

30 ATN, "Роман Головченко дал интервью телеканалу Аль-Арабия," [Raman Haloŭčanka gave an interview to Al Arabiya], May 15, 2022.

31 Interview with Dzmitry Kruk.

32 Peksen, "When Do Imposed Economic Sanctions Work?"

33 James Barber, "Economic sanctions as a policy instrument," 55(3), International Affairs, 1979.

Table 3. Objectives of Sanctions

Sanctions	Objectives	Impact
2004 to date: Sanctions against four officials allegedly responsible for forced disappearances	Bring to justice those responsible for forced disappearances	No one has been held responsible
2004-2008: Sanctions in response to the 2004 referendum and the 2006 presidential election (suspended 2008)	Bring Belarus's Electoral Code in line with Belarus's OSCE commitments and other international standards for democratic elections as recommended by the OSCE Ensure respect for human rights Release and rehabilitation of all political prisoners Hold future democratic elections	In 2009, 130 cosmetic amendments were made to the Electoral Code on the basis of the OSCE recommendations issued after the 2008 parliamentary elections Release of political prisoners with no rehabilitation in 2008
2010-2016: Sanctions in response to the 2010 presidential election and the 2012 parliamentary elections (suspended 2015; lifted 2016)	Release and rehabilitation of all political prisoners Further reforms of the Electoral Code as well as on freedom of expression and of the media and freedom of assembly and association	Release of political prisoners with no rehabilitation in 2015 The 2015 presidential election was not marked by the usual violence
2020 to date: Sanctions in response to the 2020 presidential election, the forced landing the Ryanair flight, the migration crisis, and the support for Russia's aggression against Ukraine	New free and fair election Bring to justice those responsible for torture and human-rights abuses End of migrants' smuggling Release and rehabilitation of political prisoners End the support for Russia's aggression against Ukraine	Partial solution of the migrant crisis: migrants were hosted at a shelter in Belarus and some returned to their home countries; other still try to cross the border

to democracy, peace, and security (for example, sanctions in response to cyberattacks, the use of chemical weapons, terrorism, gross human rights violations, and nuclear proliferation). The primary objectives of EU sanctions against authoritarian regimes like the one in Belarus aim at destabilizing them by coercing them to change their behavior, by constraining their repressive capacity, by deterring them from some of their actions, and by punishing or isolating them.[34] On a secondary level, sanctions act as self-reassuring measures for Western countries as a community of values and they signal solidarity with democratic movements.

An analysis of EU sanctions on Belarus, including their cyclical nature, suggests that they have been most effective when their objective is limited and achievable.

An analysis of EU sanctions on Belarus, including their cyclical nature, suggests that they have been most effective when their objective is limited and achievable. The release of political prisoners, cosmetic reforms to the Electoral Code, and the partial solution of the migration crisis are the most obvious examples of concessions that were made by the Belarusian authorities. Sanctions bring results when the costs of compliance for the target are lower than those of non-compliance.[35] Bringing to justice those responsible for forced disappearances and human-rights violations or holding new free and fair elections are inacceptable for the Belarusian regime because they endanger its survival as it relies on the law-enforcement institutions. Overly ambitious objectives of its sanctions limit the EU's room for maneuver and bargaining.

Two instances of sanctions on Belarus have been followed by the restoration of cooperation under what the EU called "critical engagement." The Belarusian authorities always managed to convince the EU to lift sanctions in exchange for a few concessions and to cooperate in areas where a mutual understanding could be achieved. EU sanctions have been inefficient when they aimed to change who holds political power in Belarus by calling, for example, for new presidential elections, but they have been useful achieving more realistic goals such as the release of political prisoners in 2008 and 2015 or amendments to the Electoral Code in 2009. (See Table 3.) The EU can be said to have acted as an accommodating party by accepting "less for more"[36]—it relaxed its sanctions toward Belarus despite the fact that their main objectives had not been fulfilled.

Targets of Sanctions

All EU restrictive measures contain listing criteria that explain why persons and entities are added on the sanctions list. Listing criteria are linked to a statement of reasons that, in turn, must be supported by sufficient evidence in case the sanctions are challenged in the CJEU. Precise listing criteria are meant to enable a person or entity to understand why they are listed and challenge this before the court.

Listing proposals are presented by member states or the high representative for foreign affairs and security policy to the EU Council, which must unanimously decide on those to target. Member states can also find a consensus and come with a bigger package of sanctioned entities and individuals together.[37] The EEAS provides supporting evidence for all the sanctions designations.

Representatives of the Belarusian democratic opposition or civil society can send their suggestions for listings to EU institutions. However, these merely serve as a guidance. According to one EU official, if

34 Barber, "Economic sanctions as a policy instrument;" Paul Cardwell, "The legalisation of EU foreign policy and the use of sanctions", 17(1), Cambridge Yearbook of European Legal Studies, 2015.

35 Blanchard and Norrin M. Ripsman, "Asking the right question;" Giumelli, "The purpose of targeted sanctions."

36 Portela, "The European Union and Belarus."

37 Interview with EU official 1.

Table 4. Targets of Sanctions since 2020

Main sanctions targets per institution/sector	Number of persons targeted
Ministry of Internal Affairs, inc. members of Special Rapid Response Unit (SOBR), detention centers, penal correction departments, and OMON	At least 58
Judicial system, including the Constitutional Court	31
Ministry of Defense	25, inc. 22 high-ranking members of the armed forces supporting Russia's war against Ukraine
Businesspersons or general directors of state-owned companies, including members of Lukashenka's family	14
Central Electoral Commission	13
Investigative Committee	10
State propaganda, inc. national broadcaster Belteleradiocompany, Belarus Today, and TV channel ONT	8
State Security Committee (KGB)	8
State Border Committee	7
Prosecutor General	6
National Assembly	6
State Control Committee	4
Universities	4
Ministry of Transport and Communications	2

all such suggestions were taken into consideration, the EU sanctions listings on Belarus would include thousands of names and entities.[38]

In recent years, there has been a broadening of listing criteria, leading to a significant enlargement of the scope of EU restrictive measures on Belarus.[39] In 2004, restrictive measures were enacted on the basis of one event-related listing criteria, targeting officials allegedly responsible for the forced disappearances in 1999-2000 and subsequent obstruction of justice. Later that year and then in 2006 and 2011-2012, listing criteria were updated to target persons responsible for electoral falsification and severe human-rights violations following the fraudulent 2004 presidential election and referendum as well as the 2006 and 2010 presidential elections. Listing criteria were also extended in 2012 to include those benefitting from or supporting the Lukashenka regime. This gave the green light for the sanctioning of legal entities and businesspersons from Lukashenka's inner circle.

The broadening of listing criteria simplifies the compliance with the standard-of-proof requirement in case of sanctions being challenged at the CJEU. The broader the listing criteria, the easier it is to back sanctions with evidence and the wider the range of activities that can be targeted, including journalistic work for state propaganda, state violence, politically motivated sentences, or systematic and coordinated violation of international electoral standards. For its sanctions in response to the August 2020 election in Belarus, the EU first relied on the same listing criteria as for the 2012 sanctions. It targeted those responsible for violence, unjustified arrests, and falsification of election results. In the first round of restrictive measures adopted in October 2020, 40 individuals were added on the EU sanctions list. This did not include Lukashenka or his son and former national security advisor Viktar. There were some hopes that keeping a diplomatic channel open with the regime could stimulate a national inclusive dialogue over a transition of power under the auspices of the OSCE.

The EU primarily targeted members of the Central Electoral Commission as well as several officials of the Ministry of Internal Affairs. The Ministry of Internal Affairs, the judiciary, and the Central Electoral Commission are the most targeted state bodies in Belarus. The EU added Lukashenka and his son Viktar to its sanctions list in November 2020 due to the aggravation of the political crisis. After the start of Russia's invasion of Ukraine, 22 high-level officials from the Ministry of Defense were also sanctioned.

The broadening of listing criteria simplifies the compliance with the standard-of-proof requirement in case of sanctions being challenged at the CJEU.

The EU broadened the scope of its measures by targeting seven companies in its December 2020 sanctions. These include Beltechexport, which exports weapons and military equipment, Dana Holdings, a construction company allegedly with close ties to Lukashenka's family, and LLC Synesis, which provided the authorities with a surveillance platform to track protesters.[40] In its June 2022 sanctions package, the EU added more persons and entities to its sanctions list against Belarus, including the state-owned company Belaruskali, which provides 20 percent of global potash exports. Since then, 195 individuals and 35 entities are targeted, including regime propagandists and officials of the State Border Committee allegedly involved in the migrants crisis. As before, the EU has

38 Ibid.

39 Celia Challet and Yuliya Miadzvetskaya, "Are EU Restrictive Measures really Targeted, Temporary and Preventive? The Case of Belarus," Europe and the Word: a Law Review, forthcoming.

40 For more information on individuals and entities listed see Council Implementing Decision (CFSP) 2020/2130 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus OJ L426/14, 2020; Council Implementing Regulation (EU) 2020/2129 implementing Article 8a(1) of Regulation (EC) 765/2006 concerning restrictive measures in respect of Belarus OJ L426/1, 2020.

listed entities considered as supporting or benefitting from Lukashenka's regime.

This is a clear sign of the granularity of the EU's approach to its sanctions targets. The EU progressively shifted from solely listing individuals to targeting entities crucial for the Belarussian economy or associated with businesspersons from Lukashenka's close circle, as well as turning to sectoral economic sanctions.

Evidence for Sanctions

The evidence supporting most of the EU's sanctions listings today is from open-source data. This includes listings on Belarus.[41] This makes it possible to avoid previous situations where sanctions were annulled by the CJEU because member states refused to disclose relevant information of a confidential character that supported listings.[42] The use of publicly available data has pitfalls, however. It must be comprehensive and from a trusted source.[43] The increase in the number of sanctions cases being challenged before the court may discourage the use of sanctions unless based on a strong and reliable evidence.

The fact that sanctions listings are based on open-source data can also bring negative attention to journalists and media outlets conducting investigations on the assets of the Lukashenka's family as well as of their close circle. For example, Dana Astra, a firm linked to Lukashenka's family, is suing EUobserver, as well as the EU Council, following being blacklisted. It seeks the removal of an article on the grounds that this harmed its reputation by giving the false impression it got some benefits due to its links with Lukashenka's daughter-in-law.[44]

Providing evidence is an essential element of the due-process rights of listed individuals, enabling them to challenge their listings in the CJEU. The restrictive measures imposed in reaction to the 2020 presidential election predominantly target officials of the Ministry of Internal Affairs, members of the Central Electoral Commission, commanders of governmental troops responsible for the crackdown on civil society, and staff of detention centers. The choice of these categories of sanctioned individuals can be explained by the ease of collecting evidence against them and of defending their listings in the court. By comparison, it can be harder to prove that businesspersons and journalists were directly involved in repression or elections falsification as well as being beneficiaries of the regime. For instance, the CJEU previously annulled sanctions against one Belarusian journalist on the ground that there was no direct link between his professional activities and electoral fraud and violence.[45] However, given the role of the media today in influencing people, sanctioning propagandists that justify the use of violence in Belarus (or Russia's aggression against Ukraine) has become relatively easy. In addition, some Belarusian propagandists use rhetoric that borders on hate speech and would be prohibited in most countries for encouraging violence and hatred against a specific group of people.

The Design of Sanctions during the Implementation Stage

There is a division of competences between the EU and the member states with regard to sanctions. Some, including arms embargoes or travel bans, are implemented by member states, while others, including asset freezes and sectoral restrictions are implemented at the EU level. The European Commission is also responsible for monitoring the implementation and enforcement of EU sanctions by member states. Member states need to ensure that their economic operators comply with EU sanctions.

41 Interview with EU official 1.

42 Vigjilenca Abazi and Christina Eckes, "Closed Evidence in EU Courts: Security, Secrets and Access to Justice," 55(3), Common Market Law Review, 2018.

43 Eckes, "EU global human rights sanctions regime."

44 Andrew Rettman, "Lukashenko-linked firm suing EUobserver and EU Council," EUobserver, December 16, 2021.

45 Joined cases T-196/11 and T-542/12 Mikhalchanka v Council ECLI:EU:T:2014:801; Case T-693/13, Mikhalchanka v Council ECLI:EU:T:2016:283, para 135.

This decentralization in the oversight of sanctions can endanger their uniform implementation, which is of paramount importance for the EU if it wants to speak with one voice and preserve unity at the international level. Divergent implementation of sanctions by member states risk undermining the homogeneity of EU's internal market and must be avoided. Furthermore, inconsistent implementation might create uncertainty among European and other economic operators as to how to interpret EU sanctions.

As an illustration, in the autumn of 2020, pictures shared on the messaging app Telegram showed that allegedly Czech-made stun grenades produced in 2012 were used against peaceful protestors in Belarus. The Czech Republic denied the export of any such weapons to the Belarusian government in violation of the EU arms embargo on Belarus in place since 2011.[46] Similar allegations were made with respect to Canadian-made watercannons and German-made body armor. More recently, reports of France and Germany selling arms to Russia has sparked criticism in the EU. Those incidents signal how EU members or other Western states undermine sanctions and their intentions.

The lack of proper implementation of EU sanctions is a sensitive question.

The lack of proper implementation of EU sanctions is a sensitive question. The EU adopts a gradual approach in its Belarus sanctions, which are crafted so that pressure is increased step by step. First, there is a delay in implementation due to existing contracts. Second, some items are excluded from sanctions, such as potash products as noted above. Such exceptions are not loopholes since the EU chose to delay the entry of measures into force and to exclude certain products from sanctions lists.

Within the European Commission, the Directorate-General for Financial Stability, Financial Services, and Capital Markets Union (DG FISMA) provides guidance on sanctions implementation to member states, the EU delegation to Belarus, and EU businesses, as well as to the Belarusian embassy in Brussels. It can provide guidance on ad hoc basis by answering questions from all stakeholders. The role of DG FISMA as the body responsible for the correct and uniform implementation of sanctions is expected to grow, especially given that the European Commission has recently set up a whistleblower tool that enables the reporting of sanctions evasions.[47]

Anyone with doubts about the proper implementation of EU sanctions can notify DG FISMA and ask for an investigation. When there is information in the press or any other venue pointing to the violation of EU sanctions regime, it also has to examine the case.

Member-state authorities have an obligation to notify the European Commission of any breach of the EU sanctions regime. However, when an investigation is opened by their authorities, the final decision regarding any actions remains in the hands of member states, with DG FISMA regularly following up. In contrast to the United States where the Office of Foreign Assets Control oversees compliance and implementation issues concerning US sanctions, the EU system is decentralized. This does not allow to build up a thorough institutional memory at the EU level for improving sanctions implementation.[48]

Against this backdrop, better coordination among the member states and EU institutions would improve the implementation of sanctions. Furthermore, it would be an incentive to institutionalize knowledge on strategies and techniques for evading sanctions. Following Russia's invasion of Ukraine coordination at the EU level on financial investigations has been enhanced via the Freeze and Seize Taskforce and Europol's Operation Oscar. They are charged with the coordination of financial investigations by national authorities to detect, to freeze, and poten-

46 Katerina Svobodova, "Czechia denies organizing protests in Belarus and supplying them with flash-grenades," Prague Daily Monitor, August 11, 2020.

47 Interview with an EU official 2, December 2021, Brussels, Belgium.

48 Ibid.

tially to confiscate the assets of sanctioned Belarusian and Russian individuals. The European Commission also foresees criminal responsibility for any sanctions breaches. This is an unprecedented measure that changes the preventive nature of sanctions by bringing them closer to criminal penalties.

The Review of Sanctions

As stated in the EU Council guidelines, sanctions must either have an expiration date or a review clause in order to ensure that the need for renewal, review, or expiration of restrictive measures is discussed with due account of relevant facts and context.[49] This element of sanctions design is connected with the sanctions objectives since sanctions are meant to end once these have been achieved. Conditions for the review of sanctions are construed as requirements addressed to the targeted state. The fulfillment of these or some change in the behavior of the target could trigger the partial suspension or lifting of restrictive measures.

EU sanctions on Belarus like other sanctions adopted under the CFSP framework contain "sunset clauses" that provide for the annual review of sanctions. The decision on the suspension or lifting of sanctions is taken by the EU Foreign Affairs Council. The sanctions can be suspended or lifted fully, partially (applying to only one type of measure), or selectively (applying to some elements of specific measures).[50] Selective delisting can also come from a successful challenge to sanctions listings at the CJEU, a possibility was mostly used by businessmen from Lukashenka's inner circle.

EU sanctions on Belarus have never been fully suspended. For instance, in 2008 the travel restrictions were temporarily and selectively suspended. The suspension did not cover those involved in the forced disappearances in 1999-2000 or the president of the Central Electoral Commission. In addition, the suspension had a time limit of six months, extended to nine months in 2009. After the end of each period, the EU Council had to re-examine the progress made by the Belarusian authorities in order to decide whether to reapply restrictive measures or not. Its decision depended on the concrete actions undertaken by the Belarusian authorities. The suspended sanctions were reintroduced in 2011 just after the 2010 presidential election.

In 2015-2016 the EU proceeded in two steps. First, it selectively suspended sanctions in 2015, making their lifting subject to further review. It then selectively lifted sanctions in 2016. Some sanctions listings remained in place, specifically those related to the forced disappearances in 1999-2000. The arms embargo also remained in place.

Conditions for Review

EU sanctions against Belarus can be suspended provided certain conditions are fulfilled. For instance, the 2004 sanctions against four officials allegedly responsible for the forced disappearances in 1999-2000 and subsequent obstruction of justice were conditional upon starting an investigation and bringing those responsible for the crimes to justice. The next round of sanctions enacted in 2004 in response to the parliamentary elections and constitutional referendum had conditionality attached related to bringing the Electoral Code in line with Belarus's OSCE commitments and international standards as well as respecting human rights.

Two more conditions were added after the 2006 presidential election and related to repression. Notably, in conjunction with the previous conditions, a suspension of sanctions was linked to the speedy release and rehabilitation of all political detainees and the conduct of future elections. The EU sanctions enacted in January 2011 were not accompanied by strict conditionality. Instead, the EU Council pledged to regularly re-examine the situation in Belarus and to

49 Council of the EU, Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, para 34.

50 Zuzana Hudáková, Thomas Biersteker, and Erica Moret, Sanctions Relaxation and Conflict Resolution: Lessons from Past Sanctions Regimes, The Carter Center, 2021.

evaluate any improvements the authorities may make toward respect for democratic values.

It is often argued that it was geopolitical conditions that triggered Belarus's slight turns to the West in the past. Major developments in 2008 and 2014, notably the war in Georgia as well as Russia's illegal occupation of Crimea and destabilization of Donbas in Ukraine, played a role on both sides. The EU has become more pragmatic and has advocated stability and resilience in the region.[51] Belarus emerged in 2014-2015 as a platform for negotiations between Ukraine and Russia to achieve a ceasefire in Donbas. In addition, the release of political prisoners was used to gain Western loans and the inclusion of Belarus in the EU's Eastern Partnership in 2009. In 2016, the EU toned down its rhetoric on the human-rights situation in Belarus, fearful of Russia's potential actions and the country's loss of sovereignty. And once more it limited its conditions for the suspension of sanctions in 2015 to the release of political prisoners.

Such open-ended conditionality and lack of clear-cut conditions for reviewing sanctions proved inefficient in bringing any tangible progress in democratizing Belarus. But at the same time sanctions relaxation is one of the sources of leverage for the EU for fostering changes in Belarus. Some voices in Brussels consider that lifting sanctions in 2016, in the absence of substantial democratization, was also linked to a strong feeling that the EU had to adopt a different approach and create some space for the people of Belarus.[52] Indeed, the rapprochement between Minsk and Brussels between 2016 and August 2020 was marked by some important progress in relations resulting, among other things, in the visa facilitation and readmission agreements. In addition, the EU financed projects of societal significance in Belarus and, most probably, the development of civil society in the country during this period contributed to the mobilization of Belarusians in 2020.

The conditions for the suspension of the sanctions adopted in the aftermath of the 2020 presidential election are outlined in the EU Council conclusions of October 12, 2020.[53] They include the end of repression and abuses of human rights, the release and rehabilitation of political prisoners, the return of those in political and forced exile, and the start of an inclusive political process resulting in free and fair elections. With the unfolding of the migration crisis and Russia's invasion of Ukraine those conditions are now outdated and must be adapted to the evolving context.

Selective Suspensions by the CJEU

The CJEU, which is in charge of monitoring the compliance of EU sanctions with fundamental-rights standards, has also ordered some selective delistings. Fourteen judgments have been delivered so far on sanctions adopted in response to the 2010 presidential election. Most touched upon the listing of Belarusian businesspersons close to Lukashenka and considered to benefit from or to support the regime and companies controlled by them as well as one state-television journalist and one official of the Central Electoral Commission.

Most of the challenges to listings brought before the CJEU were upheld as it considered that the EU Council did not present sufficient evidence to support its listings and prove a link between those sanctioned and the regime. The court considered that the fact that a company paid taxes in Belarus did not mean that it supported financially the regime.[54] It also ruled that hiring a member of Lukashenka's family or operating in a state-controlled sector of economy was not enough proof that a company or a businessperson supported the regime.[55]

51 European Union Global Strategy, 2016.

52 Interview with EU official 1.

53 Council Conclusions on Belarus 11661/20, 2020.

54 See Case T-276/12 Chyzh v Council, para 169; Case T441/11 Peftiev v Council, para 188.

55 See Case T-163/12 Ternavsky v Council, para 79.

The same applies to the listing of journalists who work for state propaganda outlets. It used to be difficult to prove in court that a journalist or a regime propagandist participated in election falsification or repression.[56] Even if a journalist can be shown to have manipulated facts, this may not serve as a valid basis for sanctions. The involvement of journalists still remains indirect. Furthermore, the EU needs to balance its foreign policy objectives against the right to freedom of expression when deciding on restrictive measures against journalists. This balance is not always easy to strike.

How listings criteria are worded may serve as justification for sanctioning journalists who actively support the actions of the regime and ongoing repression. For instance, in the fourth sanctions package after the 2020 presidential election the EU Council started using the concepts of support and benefit in relation to journalists. Several were included on the sanctions list under this criterion. For instance, the deputy chairman of Belteleradio, Siarhei Gusachenka, is listed as "responsible for the way in which the State Television presents the situation in the country, thus lending support to the authorities, including Lukashenka."[57] Another regime propagandist, Andrei Mukavozchyk, is listed as benefitting from and supporting the regime. In addition to being a main source of state propaganda, he has also received several official awards and consequently benefitted from the regime.[58]

This legal creativity in designing sanctions is meant to contribute to the resilience of EU restrictive measures. It also prevents situations where one institution introduces sanctions and the other one annuls them. To date, six Belarusian companies and one Russian oligarch will seek for a selective delisting by the CJEU. Synesis has challenged its listing before the CJEU on the ground of insufficient evidence.[59] In October 2021 three more companies—Belaeronavigatsia[60] and the leading state-owned automobile plants Belaz[61] and Maz[62]—asked the CJEU to delist them, claiming the sanctions are illegal. The Russian oligarch Mikhail Gutseriev,[63] who is the largest single foreign investor in Belarus, is also contesting his listing in court.[64] In March 2022 two more companies, the tire manufacturer Belshyna AAT[65] and Belavia[66] sought the annulment of the sanctions against them on the basis of, among other things, reliance on factually incorrect reasons for listing. It remains to be seen whether the EU Council has learned the lessons of the past and backed its listings with solid evidence.

The Future of EU Sanctions

Many elements of the design of sanctions directly impact their potential to achieve their policy goals. The framing of listing criteria, objectives, identification of targets and collection of evidence as well as implementation and procedures for review have consequences for the resilience of EU sanctions and for the EU's bargaining power. The ability to pragmatically relax sanctions as an inducement is directly linked to how they are designed. For instance, targeted sanctions are easier to suspend than comprehensive sanctions.[67] In particular, the flexibility of its sanctions toolbox can be used by the EU in order to induce a change in behavior by the target. A partial easing of

56 Joined cases T-196/11 and T-542/12 Mikhalchanka v Council.

57 Council Implementing Decision (CFSP) 2021/1002 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus OJ L219/70, 2021; Council Regulation (EU) 2021/996 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus OJ L219/1, 2021

58 Ibid.

59 Case T-97/21 Synesis v Council, pending.

60 Case T-536/21 Belaeronavigatsia v Council, pending.

61 Case T-533/21 Belaz v Council, pending.

62 Case T-532/21 MAZ v Council, pending.

63 Case T-526/21 Gutseriev v Council, pending.

64 Reuters, "EU sanctions Russian businessman Gutseriyev over ties with Belarus," June 21, 2021.

65 Case T-115/22 Belshyna v Council, pending.

66 Case T-116/22 Belavia v Council, pending.

67 Thomas Biersteker, "Targeted sanctions and individual human rights," 65(1), International Journal, 2009.

sanctions pressure in response to concessions by the target can foster cooperation.

The main pitfalls of the EU's sanctions policy that are applicable to Belarus and more broadly are outlined below.

National Bias and Incomplete Centralization

The EU's sanctions policy suffers from still incomplete centralization. Most sanctions proposals are made separately by different member states. The choice to sanction an entity or not is directly linked to the economic interest of specific member states (for example, Austria, Germany, Hungary, and Slovakia have been reluctant to sanction oil products from Russia). As a result, EU sanctions are influenced by different national biases. The centralization of sanctions policy could solve this problem and also prevent bilateral lobbying that could take place between a member state and a targeted country.[68] Third parties often seek for a weak link in the EU in order to influence its decision-making. The centralization of, and the institutionalization of knowledge about, EU sanctions implementation would contribute to greater consistency and coherence between different national authorities.

Prior Impact Assessment

Prior impact assessment could help the EU to define what exactly it wants to achieve with its different sanctions.[69] While measuring their efficiency and potential effects is difficult, the EU would significantly improve its policy if it carried out a detailed prior impact assessment of every measure to identify all its potential counterproductive effects. This would ensure that sanctions do not hit or hit to the least extent possible the ordinary citizens of Belarus.

The EU also might need to come up with some ad hoc measures to mitigate potential negative humanitarian consequences of sanctions. As an example, those against the national airline Belavia has already raised questions with respect to the annual treatment in Italy of children from Belarus affected by the Chernobyl nuclear disaster. Overall, disrupting people-to-people contacts between the EU and Belarus might have negative implications for the future of their relations.

Furthermore, in its impact assessment the EU should take into account the country's broader political context and the security situation in the region. With Belarus serving as a transit point for the Russian army, sanctions should be applied carefully. There needs to be a differentiation between Belarus and Russia. Conversely, a sanctions policy that equates the two countries only reinforces the official Russian narrative of that Russians, Ukrainians and Belarusians are one people.[70]

Realistic Objectives

It follows from the EU Council guidelines that measures can be reviewed and lifted if their objective has been met. However, in most cases it is not clear how to determine that a specific objective has been achieved, not least since the imposition of sanctions is often based on unclear expectations rather than a careful calculation on what they can achieve. For instance, the EU's call upon the Belarusian authorities to conduct new free and fair elections has always been ignored. Such an objective is unrealistic. It is important for the EU to make sure that its sanctions objectives are not overly ambitions. Furthermore, they should be clear-cut but not set in stone in the sense that they have to be adapted to the evolving political context. This would allow the EU to increase its bargaining power and extract more concessions from the Belarusian authorities. However, this needs to take into account the question of the autonomy of a regime

68 Eckes, "EU global human rights sanctions regime."

69 There is a "checklist" for the pre-assessment and contingency planning phase of sanctions. See Anthonius W. de Vries, Clara Portela, and Borja Guijarro-Usobiaga, Improving the Effectiveness of Sanctions: A Checklist for the EU, Centre for European Policy Studies, 2014.

70 Vladimir Putin, "On the Historical Unity of Russians and Ukrainians," Kremlin, July 12, 2021.

that is highly dependent on Russia, especially since the start of its war on Ukraine.

Clear Communication

There are several myths in Belarusian society, including in the expert community, about the implementation and enforcement of EU sanctions. The general impression is that sanctions are toothless since there are many ways to circumvent them. It would be advisable for the EU to work further on its strategic communication toward the Belarusian population and civil society, and to provide a reliable information on its sanctions' objectives and implementation. Furthermore, civil society should be informed about the EU's recently set up whistleblower tool that allows for flagging any cases of sanctions evasions.

Preserving the EU's leverage

Russia's war against Ukraine and the resulting food crisis are changing the status quo for Lukashenka's regime. The United States is considering suspending its sanctions against Belaruskali if Belarus would open a route for the transport of Ukrainian wheat through the country to Klaipeda port in Lithuania. At the end of May, the EU leaders also discussed the potential relaxation of sanctions against Belarus. At the beginning of June in a telephone call with UN Secretary-General Antonio Guterres, Lukashenka said he would allow the transit of Ukrainian wheat in exchange for Belarus regaining access to the ports of EU member states.[71] Such a preliminary lifting of sanctions or any trade-off would undermine the objectives of the EU sanctions, however. Their relaxation would also send the wrong signal to Belarusian civil society that their cause has become just a part of a bigger deal on Ukraine. For this reason, any potential review or suspension of sanctions should take place with the involvement of Belarusian civil society, experts, academia, and representatives of the democratic forces. The procedure for selecting participants should be open and transparent so as to reflect a broad range of opinion.

The EU would be well advised to avoid the preliminary lifting of its sanctions. Given that its relationship with Belarus has long been marked by a cycle of rapprochement and retrenchment, the EU would keep more leverage if it suspended sanctions instead of lifting them, even partially as was done in 2016. The suspension of sanctions is usually reviewed every six, nine, or twelve months to give an incentive to the Belarusian authorities to refrain from repression. Suspending instead of lifting sanctions increases the EU's bargaining power since it can be reversed if the regime resumes behavior deemed problematic by the EU.

71 Reuters, "Minsk will allow Ukrainian grain to transit Belarus in exchange for access to Baltic ports," June 3, 2022.

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