

# SANCTIONS ALERT: CANADA REIMPOSES SANCTIONS ON BELARUS

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Three years after repealing its economic sanctions against Belarus, Canada announced on September 29, 2020, that it would reimpose more targeted economic sanctions against Belarusian high-ranking public officials. These sanctions follow controversial and contested presidential elections held on August 9, 2020, in which Mr. Lukashenko claims to have been re-elected with over 80% of the popular vote. The Government of Canada sees this measure justified through the brutal suppression of subsequent mass public protests by the Belarusian opposition that resulted in gross and systemic human rights violations. While the United States and the European Union have been publicly debating sanctions measures against Belarus following the fraudulent elections, Canada and the UK are the first countries to take action against Mr. Lukashenko and his government that has been in power since 1994.

## Differences Between Canadian and UK Approach

Although there is a large overlap between the measures imposed by the UK and Canada, there are a few notable differences. The UK decided to move forward with the Magnitsky-style *Global Human Rights Sanctions Regulations 2020* [1] under its Sanctions and Anti-Money Laundering Act of 2018, while Global Affairs Canada ("GAC") decided to introduce these sanctions under the *Special Economic Measures Act* ("SEMA") [2] and not the Canadian Magnitsky law titled *Justice for Victims of Corrupt Foreign Officials Act*, which was enacted in 2017 to respond to gross violations of internationally recognized human rights of this kind. Furthermore, the number of high-ranking officials that were added to list by Canada amounts to eleven, including Mr. Lukashenko and his son, while the UK only listed eight individuals. Despite the significant overlap, four individuals sanctioned by Canada were not listed by the UK, while Canada did not target one individual sanctioned by the UK.

## Prior Sanctions Under the Area Control List

The new measures against Belarus are far less restrictive than prior sanctions imposed by Canada under the *Export and Import Permits Act* ("EIPA") [3]. Between 2006 and 2017, GAC listed Belarus, alongside North Korea, on the EIPA's *Area Control List* ("ACL"). This measure required any Canadian exporter to apply for a permit prior

to an export or transfer of any good or technology to Belarus. Although GAC started taking a more lenient approach on May 13, 2016<sup>[4]</sup> following a rapprochement with the Belarusian government, it routinely denied export permit applications for any good or technology in the ten years before destined for Belarus. These trade restrictions were deemed to be among the most severe measures taken against Belarus by any Western country at the time.

### **Prohibitions Against Transactions and Additional Requirements**

Similar to the prohibitions in other regulations under the SEMA, the new measures against Belarus target certain individuals by prohibiting, subject to certain exceptions, any person in Canada or any Canadian outside Canada to:

- deal in any property of a listed person or of a person acting on behalf of a listed person;
- enter into or facilitate any transaction related to a dealing in such property;
- provide any financial or related services in respect of such property;
- make available any goods to a listed person or to a person acting on behalf of a listed person; and
- provide any financial or related services to or for the benefit of a listed person.

In addition, the regulations impose sanctions monitoring obligations on an enumerated list of entities, including regulated banks, insurance companies, trust and loan companies. They also require every person in Canada, every Canadian outside Canada to report to the RCMP or CSIS the existence of property in their possession or control that the person has reason to believe is owned, held or controlled by or on behalf of a listed person.

Lastly, the individuals listed *Special Economic Measures (Belarus) Regulations* are also rendered inadmissible to Canada under the *Immigration and Refugee Protection Act*.

### **GAC Does Not Foresee any Significant Costs or Losses of Opportunity**

As part of its regulatory impact analysis<sup>[5]</sup>, GAC does not expect any significant costs of loss of opportunities for Canadian businesses caused by these sanctions measures. Although Canadian banks and financial institutions will need to add the new Belarus sanctions list to their existing sanctions screening systems, small businesses are not expected to suffer any significant loss of trade and investment opportunities given their lack of ties to these eleven listed public officials. Nevertheless, GAC announced that it is in the process of conducting enhanced outreach with stakeholders, and that it will provide additional information on its website and through the sanctions hotline. McMillan's International Trade Group will continue monitoring any changes to this sanctions program and can provide strategic advice for Canadian businesses with ties to Belarus.

by Jamie Wilks and Chris Scheitterlein

[1] The Global Human Rights Sanctions Regulations 2020, UK Statutory Instruments, September 29, 2020; online: [Government of the UK](#).<sup>[ps2id id='1' target='']</sup>

[2] *Special Economic Measures (Belarus) Regulations*, September 29, 2020; online: [Global Affairs Canada](#)<sup>[ps2id id='2' target='']</sup>

[3] *Export and Import Permits Act*, online: [Department of Justice](#).<sup>[ps2id id='3' target='']</sup>

[4] Exports of items listed on the Export Control List to Belarus, Global Affairs Canada, May 13, 2016; online: [Global Affairs Canada](#)<sup>[ps2id id='4' target='']</sup>

[5] Regulatory impact analysis statement, *Special Economic Measures (Belarus) Regulations*, September 29, 2020; online: [Global Affairs Canada](#)<sup>[ps2id id='5' target='']</sup>

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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