

CLIENT ALERT

Biden Administration Imposes New Sanctions for Belarus, Continuing Pattern of Sanctions Actions Related to Democracy and Human Rights

August 12, 2021

AUTHORS

David Mortlock | **Britt Mosman** | **Nikki M. Cronin** | **Ahmad El-Gamal**

In a move designed to counter the increasingly repressive and anti-democratic regime in Belarus, the Biden administration has imposed significant new sanctions that impose further consequences upon the Lukashenka government. On August 9, 2021, President Biden signed a [new Executive Order](#) (the “E.O.”) expanding the scope of the national emergency previously declared with respect to Belarus in [Executive Order 13405](#) of June 16, 2006, by authorizing the imposition of blocking sanctions on persons operating in certain identified sectors of the Belarusian economy, including the defense and related materiel sector, security sector, energy sector, potassium chloride (potash) sector, tobacco products sector, construction sector, and transportation sector.

At the same time, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) [issued](#) its largest Belarus-related tranche of designations to date, adding 23 individuals and 21 entities to its Specially Designated Nationals and Blocked Persons List (the “SDN List”). This includes Belaruskali OAO, one of the world’s largest producers of key fertilizer ingredient potassium chloride and a major source of revenue and foreign currency for the Lukashenka regime. OFAC also published [Belarus General License 4](#) (“GL 4”), authorizing certain wind-down transactions with Belaruskali, and additional guidance, FAQ [915](#), [917](#), and [918](#), related to the E.O. and GL 4.

The expansion of sanctions on Belarus targeting antidemocratic behavior and human rights abuses is consistent with the Biden Administration’s focus on these issues across other sanctions programs, as seen in the expansion of sanctions on

Biden Administration Imposes New Sanctions for Belarus, Continuing Pattern of Sanctions Actions Related to Democracy and Human Rights

China related to the involvement of China's military-industrial complex in facilitating repression and serious human rights abuses and the reinstatement of sanctions on Burma after the Burmese military detained the country's head of state.

Expansion of Executive Order 13405

The E.O. expands the scope of Belarus-related sanctions by authorizing blocking sanctions against individuals and entities ("persons") determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be involved in the following activities:

- actions or policies that threaten the peace, security, stability, or territorial integrity of Belarus;
- actions or policies that prohibit, limit, or penalize the exercise of human rights and fundamental freedoms (including freedoms of expression, peaceful assembly, association, religion or belief, and movement) by individuals in Belarus, or that limit access to the Internet or to print, online, or broadcast media in Belarus;
- electoral fraud or other actions or policies that have undermined the electoral process in a Republic of Belarus election;
- deceptive or structured transactions or dealings to circumvent any United States sanctions by or for or on behalf of, or for the benefit of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to the E.O. or Executive Order 13405; or
- public corruption related to Belarus.

In addition, the E.O. authorizes the Secretary of the Treasury to designate persons determined to (among other things):

- be (or have been) a leader, official, senior executive officer, or member of the board of directors of an entity engaged in targeted activities or whose property and interests in property are blocked pursuant to the E.O. or Executive Order 13405;
- be a political subdivision, agency, or instrumentality of the Government of Belarus;
- be (or have been) a leader or official of the Government of Belarus; or
- operate (or have operated) in the defense and related materiel sector, security sector, energy sector, potassium chloride (potash) sector, tobacco products sector, construction sector, or transportation sector of the economy of Belarus, or any other sector of the Belarus economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

Biden Administration Imposes New Sanctions for Belarus, Continuing Pattern of Sanctions Actions Related to Democracy and Human Rights

FAQ 916 provides an overview of the E.O. and reiterates OFAC's 50% rule. FAQ 917 clarifies that while the new E.O. authorizes the imposition of blocking sanctions on persons operating in certain identified sectors of the economy of Belarus, the mere identification of a sector in the E.O. does not automatically block all persons that operate in that sector. Rather, it provides notice that persons operating in the identified sectors risk exposure to sanctions.

The E.O. significantly expands the criteria for determining when a person can be designated as an SDN for activities in Belarus, including merely for operating in a particular sector, which we have previously seen used by the Biden Administration in [Executive Order 14092](#) to target entities in the surveillance technology sector of the Chinese economy. In this instance, the newly announced authorization and placement of sanctions on Belarusian persons operating in specific sectors of the Belarusian economy indicates that the Biden Administration desires broad authority to target major sources of funding for the Lukashenka regime.

Belarus General License 4

GL 4 authorizes all transactions and activities prohibited by the E.O. that are ordinarily incident and necessary to the wind down of transactions involving Belaruskali OAO, or any entity in which Belaruskali OAO owns, directly, or indirectly, a 50% or greater interest. The activities are authorized through December 8, 2021. FAQ 918 provides an overview of GL 4.

Sanctions Imposed by OFAC

The 44 persons [designated](#) to OFAC's SDN List on August 9, 2021 fall into six categories. The first two categories target sources of funding for Lukashenka and the Lukashenka regime. OFAC sanctioned 16 individuals and entities that were identified as "wallets" for Lukashenka and his regime. The sanctioned entities and individuals operate in the energy, tobacco, and construction sectors of the Belarusian economy, largely conforming to the list of sectors identified by the Biden Administration in the E.O. The Biden Administration also sanctioned two state-owned enterprises that provide significant tax revenue and foreign currency for the Lukashenka regime, and the Belarusian directors of three previously designated Belarusian State Owned Entities.

OFAC's action also targeted Belarusian security services in response to the ongoing violence against and repression of peaceful protestors, civil society, independent media, and political opposition in Belarus. Five Belarusian officials involved in the forced diversion of Ryanair flight 4978 and subsequent detainment of a Belarusian journalist were also sanctioned. Two additional Belarusian officials were sanctioned for their contributions to the continuance of the Lukashenka regime. Lastly, OFAC designated one Belarusian athlete and two Belarusian sports organizations tied to the Lukashenka regime.

All transactions by U.S. persons or within or transiting the United States that involve any property or interests in property of designated persons are prohibited unless authorized by a general or specific license issued by OFAC, or otherwise exempt.

Biden Administration Imposes New Sanctions for Belarus, Continuing Pattern of Sanctions Actions Related to Democracy and Human Rights

Conclusion

The E.O. demonstrates the Biden Administration's continued focus on using sanctions policies to hold regimes accountable for their undemocratic actions and human rights abuses. The Biden Administration also emphasized its coordination with transatlantic partners in targeting the Lukashenka government, consistent with a more multilateral approach to sanctions overall. Companies with business activity in Belarus should be aware that additional sanctions on entities within Belarus as well as prominent Belarusian individuals may be forthcoming.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

David Mortlock

202 303 1136

dmortlock@willkie.com

Britt Mosman

202 303 1057

bmosman@willkie.com

Nikki M. Cronin

202 303 1203

ncronin@willkie.com

Ahmad El-Gamal

202 303 1142

ael-gamal@willkie.com

Copyright © 2021 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Chicago, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.