

# ClientAlert

## International Trade

April 2012

### EU expands sanctions against Belarus - adds legal entities to the asset freeze list for the first time

On 23 March 2012, the Council of the European Union (EU) adopted **Implementing Regulation 265/2012**,<sup>1</sup> which **for the first time added legal entities to the asset freeze list** in Annex IB of Regulation 765/2006 concerning restrictive measures in respect of Belarus.<sup>2</sup> Regulation 265/2012 entered into force on 24 March 2012 (the date of publication).

The EU Belarus sanctions regime has been in force since May 2006 and applies within the **EU territory**, to **nationals of EU Member States** (regardless of whether they are located inside or outside the EU territory) and **on board vessels and aircraft under Member State jurisdiction**. It also applies to **companies incorporated or registered under the law of an EU Member State and to non-EU companies in respect of any business done in whole or in part within the EU**. This means that even non-EU companies can be covered by EU sanctions, depending on the particular circumstances under which they perform business activities in the EU and how these are connected to any activities restricted by the Regulation.

The EU's sanctions against Belarus are generally targeted against the Lukashenko regime, notably due to violations of international electoral standards, serious human rights violations, and a crackdown on democratic opposition, and consist of the following restrictions:

#### Restrictions targeting internal repression equipment and military items

The EU prohibits the direct or indirect **sale, supply, transfer or export of equipment which might be used for internal repression** as listed in **Annex III** to Regulation 765/2006 to any person, entity or body in Belarus or for use in Belarus, unless prior authorization has been given by the competent EU Member State. Furthermore related technical assistance, brokering services, financing or financial assistance are also prohibited.

The EU also prohibits any direct or indirect technical assistance and financing or financial assistance related to goods and technology listed in the EU's **Common Military List**<sup>3</sup> or technical assistance related to the provision, manufacture or maintenance of such goods to any person, entity or body in Belarus or for use in Belarus.



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*Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice.*

<sup>1</sup> [Council Implementing Regulation \(EU\) No 265/2012 of 23 March 2012 implementing Article 8a\(1\) of Regulation \(EC\) No 765/2006 concerning restrictive measures in respect of Belarus](#)

<sup>2</sup> [Council Regulation \(EC\) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus](#). This consolidated version does not reflect the amendments imposed by [Council Regulation \(EU\) No 114/2012 of 10 February 2012](#), [Council Regulation \(EU\) No 170/2012 of 28 February 2012](#) and Council Implementing Regulation (EU) No 265/2012 of 23 March 2012.

<sup>3</sup> [Common Military List of the European Union](#)

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### Freezing of funds and economic resources

The EU's Belarus sanctions regime **freezes the funds and economic resources belonging to, or owned, held or controlled by certain designated parties** falling under EU jurisdiction (e.g. held by EU banks). The sanctions Regulation also provides that **no funds or economic resources may be made directly or indirectly available** to or for the benefit of designated parties by parties falling under EU jurisdiction.

These listed parties are contained in three Annexes to Regulation 765/2006. **Annex I** contains natural persons who have been identified as responsible for human rights violations during the 2006 Presidential elections; **Annex IA** lists parties that were responsible for such violations in connection with the 2010 Presidential elections; and **Annex IB** lists parties that are either responsible for human rights violations or the repression of civil society or benefit from or support the Lukashenko regime. Annex IB has been introduced by Council Regulation 114/2012 and contains the names of **29 legal entities since 23 March 2012**, as well as certain natural persons.

All persons, entities or bodies that fall under EU jurisdiction are prohibited from doing business with any of the listed parties (including the legal entities added to the list in March 2012). In addition, doing business with non-listed parties that are controlled by, or otherwise linked to, a listed person, entity or body, could be prohibited if this would constitute the indirect making available of funds and economic resources to or for the benefit of listed parties.

#### *Exceptions*

The **competent EU Member State authorities can authorize** the release or the making available of funds or economic resources if those funds and economic resources are necessary to satisfy the **basic needs** of the listed persons; are intended exclusively for the **payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services**; or are intended for the payment of **fees or service charges for routine holding or maintenance** of frozen funds or economic resources. In addition, frozen funds or economic resources can be released if the competent authorities have determined that these are **necessary for extraordinary expenses**.

Furthermore the asset freeze provisions do not apply to the **addition to frozen accounts of interest or other earnings, or to payments due under contracts or obligations** that were concluded or arose **prior to the date on which those accounts became subject to the EU's asset freeze obligations** (i.e. contracts concluded or obligations that arose before 24 March 2012 in the case of the legal entities listed by Regulation 265/2012). Moreover, financial or credit institutions are still entitled to credit frozen accounts if they receive funds transferred by third parties provided that any of those additions to the frozen account will also be frozen.

Finally, the competent Member State authorities **may also authorize certain payments by listed parties**, if that payment is due under a **contract that was concluded, or under an obligation** that arose for the listed party, **before the date on which that party was listed** (i.e. contracts concluded or obligations that arose before 24 March 2012 in the case of the legal entities listed by Regulation 265/2012), provided that these payments do not benefit any listed party directly or indirectly.

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