



BRIEFING PAPER
for the Participants of Exchange of Views on
EU APPROACH TOWARDS BELARUS
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Committee

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SITUATION IN BELARUS: 2011 in overview

December 2011 year marked an anniversary of presidential elections in Belarus. But contrary to the hopes of Europeans who saw this event as a possible starting point in the country's democratic transformation, this date marked the beginning of one of the harshest crackdowns in the history of Belorussian independence. Over the past year hundreds and thousands of people have suffered from beatings by the police, lawless arrests, administrative prosecution, illegal dismissals from their jobs, expulsion from universities, and other forms of harassment for their civic activism. Dozens of opposition leaders were subjected to criminal prosecution and faced torture, abuse, and unjust courts sentences. The year saw a record number of political prisoners in the history of the country. Even though in autumn some of these people were "pardoned" on the condition of "avoiding further conflicts with the law," all of them continue to see their rights stomped on and endure intimidation, including "preventative" arrests, threats, searches, and interrogations.

The fate of the people who are still behind bars is a cause of increasing concern. With the help of harsh conditions of detention they are being pressured into admitting their guilt and pleading for pardon. The pressure on them is growing; they live in virtually airtight isolation. Andrei Sannikov, for instance, cannot see his lawyer. He is constantly being transferred from one prison camp to another, and his inmates keep getting incited against him. Dmitry Dashkevich and Nikolai Statkevich are continually facing punitive sanctions. The health of Dmitry Bondarenko who had a surgery in prison is deteriorating. He does not have access to adequate medical treatment and has lost all hope of surviving his imprisonment.

A fresh round of repression aimed at suppressing all the country's civil society was

marked by politically motivated persecution and unjust sentencing of Ales Byalyatski, a prominent Belarusian human rights activist. The sentence was aimed at stopping his legitimate human rights work and hampering the activities of the Viasna Human Rights Group that he runs. With a clear intention to “uproot any green shoots” of protest last autumn the Belarusian authorities passed several new repressive laws that, by and large, criminalize all civic activism. Thanks to repression and a climate of fear, the government was able to suppress the wave of protests that had taken off in the summer.

It is clear that since the violent crackdown on the peaceful protests of December 19 the situation in Belarus has significantly deteriorated and continues to worsen. Repressions are mounting, and the systemic human rights crisis is deepening. All this is happening in the heart of Europe, next to the EU border.

EUROPEAN UNION’S REACTION TO THE EVENTS IN BELARUS

Over the course of 2011 the international community has voiced repeated concerns about the situation in Belarus. All international organizations, including the UN Human Rights Council, the European Union, the European Parliament, the Council of Europe, and the OSCE, have passed numerous statements and resolutions. However, Lukashenka’s actions showed his open disdain both for the opinion of international organizations and meeting the Republic of Belarus’s human rights obligations. The regime is stubbornly and consistently refusing to cooperate with international organizations, ignoring the resolution of the UN Human Rights Council and the OSCE Moscow Mechanism report and expelling the OSCE mission from the country while denying entry to the special OSCE Moscow Mechanism rapporteur, representatives of the European Parliament, the OSCE Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe. In 2011 more than a dozen journalists and more than a dozen activists from international human rights organizations have been refused entry to or expelled from the country. We have to conclude that the government of Belarus has almost completely refused to cooperate with international institutions on human rights issues.

It has become obvious by now that the international community has proven to be powerless in stemming the worsening of the human rights situation in Belarus and realigning the situation with the international norms. There is an increasing realization both inside and outside Belarus that the need is ripe for more effective measures to influence the situation in the Republic of Belarus that would go beyond calls for action and recommendations in reports and resolutions.

As early as the beginning of 2011 representatives of the Belarusian civil society and international observers judged the situation in this country as calling for extraordinary measures, including smart and targeted economic sanctions. However, to a great disappointment of the Belarusian and international civil society, the European Union failed to take decisive action in 2011, aside from imposing some travel restrictions on and freezing the assets of Lukashenka’s regime officials and a single businessman. The embittered families of political prisoners characterized these steps as decorative since they did not bring any real change to the situation, but instead showed the impotence and unwillingness of the EU to undertake serious measures to tackle the regime.

A year has passed since December 19, but the European Union still lacks a comprehensive understanding of the way the situation in Belarus could be addressed in the future. Almost all experts acknowledge the fact that the policy of “critical engagement” pursued in 2008-2010 did not work and cannot continue to be used in the present circumstances. Nobody has any more hopes that further dialogue may change Lukashenka’s behavior. Continuing the dialogue with the civil society and opposition is important, but does not have any impact on the country’s authorities.

Nevertheless, it seems that the EU member countries do not have the political will and lack unity to apply effective action using economic leverage, in no small measure because some of them have business interests in Belarus. At the same time there is a growing realization in the EU that failure to act while “continuing to monitor the situation carefully” as the crackdown on human rights intensifies is becoming increasingly inappropriate and immoral.

Considering that the EU policies toward Belarus have come to a certain dead end and there exists a paralysis of political will, there is a pressing need for elaborating a new strategy or, at the very least, an adjustment of the existing EU approaches to the situation in the country, and developing realistic, but at the same time effective measures.

AN ECONOMIC PARADOX: MORE SUPPORT FROM THE WEST THAN FROM THE EAST

At the time when politicians and officials give angry speeches, European banks and companies continue to do good business with the dictatorship, working inside Belarus (e.g. the Raiffeisen Bank, the Deutsche Bank, etc.) and trading with the regime, which both profits it and increases its survival chances. At the same time Belarusian businessmen, Lukashenka’s proxies nicknamed “the regime’s wallets,” continue doing business in Europe unhampered, opening branch companies and using bank accounts.

In 2011 (a period marred by the most violent crackdown denounced by the EU) Belarusian exports to the EU countries has more than doubled (221% to 2010). The EU is the largest trade partner of the Republic of Belarus (38% of all exports go to the EU). The export revenues make approximately one third of Belarus’s official state budget. In 2012 the regime is planning to increase its exports to the EU. If the EU policies towards the regime do not change, these plans will come to fruition because the deliveries of cheap Russian oil will prop up the country’s main export to the EU – oil products. It is crude oil and oil products (often exported through shady schemes under the guise of cheap heating oil, which allows for a drastic reduction in excise tax) that comprise the bulk of Belarusian exports to the EU. The other two principal export items are potash fertilizers and steel products.

By refraining from economic sanctions, the EU continues to foster and rescue the very same dictatorship that it criticizes. In 2011 the trade surplus between Belarus and the EU amounted to nearly USD 6 billion, far exceeding Russia’s aid through the EurAsEC that has been the focus of many comments recently. Against such a backdrop the 19.3 million Euros over three years in 2011-2013 promised by the EU to support the civil society in Belarus do not look like something serious compared to the annual USD 6 billion in trade

surpluse with the EU that end up in the regime's coffers.

Those who still fear a growth in Russia's influence on Belarus in case economic sanctions are enacted by the EU must understand two important points:

- when buying oil products and oil under the disguise of oil products from the Lukashenka regime, the EU is increasing Belarus's dependence on Russia because Russia is the main supplier of oil to Belarus;
- oil, potash fertilizers and metal products are the products that Russia does not buy from Belarus, so if the EU refuses to buy them, the Lukashenka regime will be unable to make up for these losses (some potash fertilizers are exported to China, but China will hardly be able to increase its purchases quickly).

Since the balance of power in Belarus is shifting to security forces away from "the technocrats" and the crackdown intensifies, it is hard to accept the arguments of some experts who advocate a return to the policies aimed at "drawing" Belarus into Europe. The main, albeit an old argument that increased EU pressure on Lukashenka will push him into Moscow's embrace is unsupported by facts and does not take into account prior experience and the basic economic fact that Belarus's budget depends on exports to the EU. They also fail to consider Lukashenka's reluctance to hand the control over Belarusian resources over to Russia since in that case he will inevitably lose power.

TIME TO ACT: SMART AND TARGETED ECONOMIC SACTIONS

The time for action has come now while the Lukashenka regime has not fully recovered from the economic crisis. Unfortunately, the time has been lost for decisive action during a full-blown economic crisis that unfolded in the summer and autumn of 2011, when economic measures would have proven the most effective and when the level of popular discontent with the authorities was at an all time high. At present, sociological studies show that the Belarusian society is developing a sense that the lowest turning point in the crisis has been passed. A degree of imaginary stabilization along with the crackdowns is diminishing the protest sentiment. However, 2012 will see Belarus going through at least two moments of political and economic instability.

The first is the presidential election in Russia. Lukashenka has received generous advances from the Putin regime toward Russia's geopolitical project of Common Economic Space. However, even now he is not in a hurry to heed Russia's wishes, first and foremost on account of privatization. If Russia steps up the pressure after the election, Lukashenka will be forced to start a dialogue with the West because meeting all Putin's conditions will take him out of power.

The second moment of instability is parliamentary elections in Belarus. Following the 2010 scenario, Lukashenka will most likely resort to populism, which means that Russian loans and advances will soon run out as was the case with the IMF loan in 2010.

Therefore, it is very important that Lukashenka's regime receives no new lifelines from the West in the form of loans, investments, and export revenues until certain conditions are met. Such pressure could have been mounted by Europe in the autumn of 2011, but it is not too late to do it now, in early 2012. So, what specific measures can be taken?

- 1) Firstly, it is necessary to block the channels through which the regime is receiving its funding. For this purpose appropriate sanctions must be instituted against a number of the regime's "wallets" that figure prominently as sources of its financial support. This measure should primarily target the companies that are active on the overseas markets, providing the regime with hard currency. It is necessary to understand that under the existing system of state-run corruption no one can do business abroad without a personal permission from Lukashenka, while those who "betray their loyalty" to the regime risk getting arrested, subjected to criminal prosecution, and forfeit their business.

In order to facilitate targeted action against such businesses our experts are prepared to provide a list of these so called Lukashenka's "wallets" that may become subject to sanctions. Experts believe that such measures could be based on a more circumstantial evidence than that required in court. For example, evidence to this effect may be deemed 100% appropriate if the businessmen in question have been shown to act as Lukashenka's representatives (proxies) during the presidential election of 2010. Secret decrees signed by Lukashenka concerning the transfers or sales of state assets to businesses not on a competitive basis, as well as locating production facilities abroad, can also be considered such evidence since proper permits are always issued by Lukashenka himself. Other types of evidence could be found according to which Lukashenka is demonstrated to have ruled in favor of such parties because it is clear that in exchange part of the revenues from the businesses they run are transferred to support the regime, including through the Presidential Reserve Fund over which the dictator has complete control without even a semblance of oversight from the pocket parliament.

- 2) Secondly, issuing any new loans must be stopped. The EU member states should use their political weight in the IMF to oppose the allocation of new loans by the IMF, restructuring of the existing loans, and deferment of payments. The game of giveaway with the dictator when loans are granted based solely on economic performance will do nothing to improve the situation, but will perpetuate the regime and boost its belief in its own impunity. On the contrary, setting tough systemic requirements may catalyze the desired change.
- 3) Thirdly, the EU leaders have to firmly recommend to European businesses, and particularly banks, to refrain from investing into business in Belarus and participating in privatization there since in the current climate any investment will become an investment into the regime. The plan of attracting foreign investment is personally approved by the head of the regime; that is why pretending that business and politics are separate in the case of Belarus is hypocritical, at the very least.
- 4) Fourthly, the European Union must begin putting in place sanctions against the main export sectors of Belarus, gradually increasing their number and volume. One could begin by sanctioning steel product exports from Belarus; further on, if the demands are not met, sanctions might expand to include potassium products, while the oil embargo should be reserved as the main threat.

WHAT THE EU SHOULD DEMAND FROM BELARUSIAN AUTHORITIES

Opponents of economic sanctions maintain that they lead to suffering of the people. However, the people of Belarus are already suffering from political repression and ineffective and corrupt economic policies of the Lukashenka regime. A 65% devaluation of the nation's currency and more than a 100% inflation, alongside continuous crackdown, have led to a situation where Lukashenka has lost support of three fourths of the public, while even more people blame him for the crisis in the country. The European Union must help the Belarusian society to put an end to its suffering and bring about change that it wants.

Another argument of the critics questioning economic sanctions is the assertion that they are generally ineffective as a foreign policy tool and rarely bring meaningful results. Admittedly, this may have been the case on many occasions, and yet, as a rule, their failure can be attributed to two systemic mistakes. The first mistake is a lack of clear and well-formulated demands when sanctions are only used as a punitive measure for violations rather than a condition of concrete change. In the case of Belarus the individual sanctions introduced by the EU have produced exactly this impression. The second mistake is a lack of consistency in applying sanctions whereby economic considerations and military and strategic priorities of *Realpolitik* trump human rights principles and values. As a result, sanctions are often canceled after a few years without achieving any result. For instance, this was the case with Uzbekistan when sanctions introduced in the wake of the Andijan massacre were lifted several years later when it became necessary to secure cooperation from the Karimov regime during the NATO-led military operation in Afghanistan. The sanctions ended without any progress in investigating this heinous crime and punishing its perpetrators.

Therefore, it is of key importance that concrete and measurable demands in the area of human rights and the rule of law are elaborated. What exactly should economic sanctions be aimed at and what should the EU demand of Belarus authorities?

Today there is a consensus that any dialogue with the Belarusian authorities is possible only after all political prisoners are released and cleared of all charges. However, this is definitely not enough since meeting this demand cannot, in and of itself, create the conditions for putting an end to repression and restoring the rule of law. It is necessary to serve the government of Belarus with a package of systemic demands in the area of human rights and the rule of law. Meeting these demands should become the condition of a gradual lifting of economic sanctions, renewal of international dialogue and economic cooperation with the Belarusian authorities. Such conditions could be formulated in a strategic document of a "roadmap" type but they need not necessarily include interconnected steps or stages of action by both parties. The document must include, on the one hand, demands regarding reforms in the Republic of Belarus, and, on the other hand, a description of what the European Union could provide in return. The latter refers both to a gradual decrease of the "stick" policies with a corresponding increase in the "carrot" activities.

In October 2010 the European Union drafted a document titled a Joint Interim Plan for

Belarus that, as far as we know, was supposed to become a launch pad for negotiations with the government of the country, should the presidential election of 2010 been conducted without major violations. In essence, this document amounts to a roadmap and, quite possibly, could serve as a basis for developing a package of demands to the Belarusian government during the current stage. Reportedly, the document draft contains approximately 20 pages of demands that span a 3-5-year reform period in return for considerable economic aid from the EU and is similar in content and scale of the offers made by the EU to Georgia, Moldova, and Ukraine. This is a strategy of using economic stimulus (“carrot” in return for reform). However, the EU put this plan on hold after the events of December 2010. Nevertheless, this document seems to be the only one of strategic importance in the EU concerning Belarus.

Apparently, even though this document contains the notion “progress” on the human rights issues, it lacks the requisite concrete and measurable yardsticks of such progress. The civil society is ready to fully contribute to developing such a roadmap and organize the monitoring of the way in which international demands are being met.

Measurable progress by Belarusian authorities in meeting the following sets of conditions relating to human rights and freedoms must be a key requirement for renewal of dialogue with the international community after the mandatory first step – release and rehabilitation of all political prisoners:

1) putting an immediate end to persecution of participants of peaceful protests, members of opposition parties and movements, representatives of civil society, human rights defenders, lawyers, journalists, bloggers, students and anyone who defends them;

2) conducting investigation of the events of the last year and addressing all violations committed during that time, in particular:

- thorough and impartial investigation of all incidents of disproportionate use of force by security forces during the crackdown on protests on 19 December 2010 and also during other peaceful assemblies in the following months, including the silent protests;
- thorough and impartial investigation and legal assessment of incidents of ill-treatment, including torture and degrading conditions of those who were detained and imprisoned following a conviction in cases relating to the events of 19 December and other politically motivated cases, including allegations of denial of medical treatment, access to a lawyer and relatives and the right to correspondence;
- review of all decisions in cases relating to administrative offences against protesters, taking into account peaceful nature of demonstrations, grounds for restriction of the right to freedom of assembly and freedom of expression, the proportionality of penalties and whether they were based on consistent and reliable witness accounts; and rehabilitation of all individuals sentenced to short-term imprisonment in winter and spring 2011;
- putting an end to obstructing lawful work of representatives of inter-governmental organizations and members of international non-government organisations and journalists monitoring and reporting human rights situation in Belarus; eliminate arbitrary practice of their detention, deportation and adding them in the lists of persons whose “presence in Belarus is undesirable or prohibited”.

Implementation of these requirements can also be started rather quickly, within a few weeks. However, fulfilment of these requirements, while giving grounds to renewal of

international dialogue with the government of Belarus, must not automatically lead to resuming economic cooperation and provision of financial support as it would only restore the situation to the point before 19 December while the situation with human rights and the rule of law had been systematically deteriorating for many years before that.

3) Implement a range of legal, institutional and policy changes aimed at meeting the main international obligations with regard to civil rights and freedoms based on decisions and recommendations of the United Nations, OSCE, PACE and the European Parliament, including freedom of association, freedom of assembly and freedom of expression; independence of the judiciary and defence lawyers; prohibition and elimination of torture; security of human rights defenders and journalists; and effective investigation of disappearances.

Meeting the third set of requirements will take more time. However, it is feasibly possible to achieve concrete and measurable progress in relatively short time in line with the set indicators, and this must be a prerequisite for continuing dialogue with international community and for provision of the first loan payments.

4) And last but not least, there must also be a requirement to prepare free and fair presidential and parliamentary elections – possibly, involving round table with the opposition and the scrutiny of international experts. It is crucial to understand that without implementation of the previous stages this step is impossible: no one can talk seriously about free and fair elections in the absence of independent media, fair courts, registration of political parties, changes in the electoral laws while repressions against civil society continue. Otherwise, “elections” and a round table will be a mere imitation, a Potemkin village used for yet another deception of the international community.

Meeting each of the requirements relating to fundamental rights and freedoms set out in the “road map” will weaken the authoritarian regime, empower people, help strengthen civil society and democratic opposition, and thus will create conditions for shift in the balance of power and make the authorities hold round table talks to address the main issue of free and fair elections.

In summary, the European Union must develop, without delay, a revised strategy towards Belarus which should include introduction of smart targeted economic sanctions, a set of concrete demands to the Belarusian authorities and a “road map” for steering Belarus back to the path of democratic development and the rule of law. Progress along such road map must be the sole criterion in making decisions about lifting sanctions, resuming economic cooperation and providing new loans. Unless these requirements are met, no efforts should be undertaken to “draw” Belarus into the European space unconditionally through mere dialogue with the regime in a hope for gradual weakening of repression and possible reforms sometime in the future. Continuing economic cooperation and providing new loans at this stage without requiring systemic reform will only ensure preservation of the dictatorial regime and continued suffering of the Belarusian people.