



Belarus Insights No. 1/2021

# EU'S UNILATERAL TRADE LIBERALISATION FOR BELARUSIAN SERVICES

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Sierż Naŭrodski



CASE – Centrum Analiz Społeczno-Ekonomicznych  
CASE – Center for Social and Economic Research



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## CASE

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## CASE Belarus

CASE Belarus is a think tank based in Warsaw, Poland, the only EU-based think tank with the focus on Belarusian economy. CASE Belarus is a part of CASE Network and shares CASE's core idea that evidence-based policy-making is vital to the economic welfare of societies. Since 2007 CASE Belarus has been actively working in Belarus to boost market reforms and improve socio-economic well-being of Belarusian society by performing objective economic analyses and providing constructive policy solutions. CASE Belarus is one of the leading organisations in Belarus to contribute to broader use of monitoring and evaluation approach in decision-making in the country.



**Sierż Naūrodski** graduated from the Belarusian State Economic University with an Honors Diploma in 2002 and acquired his Master's degree in Economics at the University of Warsaw in 2003. Since 2007, Sierż has been the President of CASE Belarus, which is a part of CASE Network, and is actively engaged in CASE research projects in Belarus. Among Sierż Naurodski's research interests are structural changes in the economy of Belarus and other countries of Central and Eastern Europe, increasing efficiency in social services provision, financial system reform, and public administration reform. Sierż had consultancy contracts with UNICEF, UNDP, World Bank, as well as advised the governments of Poland, Belarus, and Georgia.

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# Executive summary

This policy paper aims at offering a complementary solution to the European Union (EU) EUR 24 million assistance package to support good faith small and medium enterprises in Belarus by suggesting the introduction of unilateral trade liberalisation measures for the country's services sector for 12 months, with prolongation conditional on the political and economic situation in Belarus. In consideration of the identified drawbacks of direct monetary assistance to Belarus, the author builds this paper on the EU's experience in the Western Balkans to suggest potential political and economic rationales for the EU to unilaterally liberalise trade in services with Belarus. The paper identifies construction, transport, maintenance and repair, and ICT services as sectors with the highest untapped export potential for Belarusian services in the EU. The author did not find any legal limitations or negative implications under the legal frameworks of the EU, the Eurasian Economic Union, or the World Trade Organization.

# Introduction

In the aftermath of the 2020 Presidential Election in Belarus, which has been proclaimed by the EU as neither free nor fair, the European Commission adopted a EUR 24 million assistance package “EU4Belarus: solidarity with the people of Belarus”. The package aims at directly benefiting the Belarusian people, in particular civil society, youth, and small and medium-sized enterprises, as well as improving health resilience in the country.<sup>1</sup> The EU assistance package puts an emphasis on strengthening advisory support to small and medium enterprises (SMEs) to build up resilience in the current economic downturn. The EU is also preparing an additional support package worth EUR 6 million to facilitate SMEs’ access to finance.<sup>2</sup>

Direct support to the abovementioned stakeholders has certain practical limitations in the current political context that have been amplified by growing tensions in EU-Belarus political relations. Transfers of funds to Belarusian non-commercial legal entities will be subject to Belarus’ rigorous legal regime and all gratuitous foreign trade must be registered at the Department on Humanitarian Affairs of the Office of the President’s Affairs.<sup>3</sup> Furthermore, most of these entities are currently

either deprived of their registrations, remain under continuous criminal investigation, or face other political repressions of the Belarusian government.

Any international transfers in foreign currency remain under strict government control, including transfers to private businesses and personal accounts. Evidence shows that direct financial assistance equal to BYN 1.4 million (EUR 463,000)<sup>4</sup> from EU-based private funds to cover the costs of repressions for people in Belarus has been seized.

There are serious concerns that EU assistance will be banned or limited to supporting government related businesses. As of 2021, over 500 cases of politically motivated business closures have been reported<sup>5</sup> and more seem to be under way.<sup>6</sup> These circumstances create a chilling effect for the remaining business entities in regard to receiving foreign funds.

The existing situation rationalises the need to look for complementary ways to support these stakeholders in Belarus, which would circumvent the possibility of political repressions by the government. As such, this paper suggests the EU to

1 EU strengthens its direct support to the people of Belarus, 11 December 2020, available at [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_2309](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2309).

2 *Ibid.*

3 The Decree of the President of the Republic of Belarus from 25.05.2020 No. 3 “On Foreign Gratuitous Aid”.

4 Shaun Walker, “Belarus tells banks to seize money raised to help out protesters”, The Guardian, 13 November 2020, available at <https://www.theguardian.com/world/2020/nov/13/belarus-tells-banks-seize-money-raised-help-protesters-lukashenko>.

5 Evidence is being collected by: <https://zadelo.co>.

6 See, for instance, the speech of Mr. Aleksander Lukashenka dated 12 February 2021 when he personally asked for the closure of one of the biggest retail chains in Belarus: <https://news.tut.by/economics/718697.html?tg>.



consider the introduction of unilateral measures to eliminate barriers for services originating in Belarus and exported by good faith companies to the EU market. This measure will allow the creation of additional opportunities along with financial assistance for Belarusian SMEs to overcome the consequences of the COVID-19 pandemic as well as the unceasing political pressure.

EU-Belarus trade has been governed by the Trade and Cooperation Agreement signed with the Soviet Union and later endorsed by Belarus.<sup>7</sup> Belarus has also been aspiring to become a member of the World Trade Organization (WTO) since 1993.<sup>8</sup> Efforts on this front have been reactivated in recent years but market access negotiations have yet to be concluded, including those with the EU. Belarus is also a member of the Eurasian Economic Union (EAEU) which ensures, inter alia, free movement of services.<sup>9</sup>

This paper consists of six sections. The first section introduces the status quo of foreign trade in goods. The second part presents Belarus' foreign trade in services in numbers and defines the sectors' untapped potential for the EU market. The third section discusses the EU experience with unilateral trade liberalisation in the Western Balkans as a basis for the proposed solution in this paper. The fourth section suggests specific proposals and recommendations for the EU in this respect and is followed by an assessment of the legal implications of such undertakings under several legal regimes regulating cross-border trade in services in the fifth section. The final section describes important implementation issues which may form the basis of an institutional mechanism to implement the proposed measures in the future.

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7 Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:21990A0315\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:21990A0315(01)&from=EN).

8 World Trade Organization. Accessions. Belarus, available at [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_belarus\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_belarus_e.htm).

9 Article 1 of the Treaty on the Eurasian Economic Union (Treaty) envisages that "Under the present Treaty Parties shall establish the Eurasian Economic Union (hereinafter - the Union, the EAEU) and ensure free movement of goods, services, capital and labor as well as coordinated, agreed or common policy in the economic sectors defined in the present Treaty and in the international agreements within the EAEU". The unofficial English translation of the Treaty is available at [https://www.wto.org/english/thewto\\_e/acc\\_e/kaz\\_e/WTACCKAZ85\\_LEG\\_1.pdf](https://www.wto.org/english/thewto_e/acc_e/kaz_e/WTACCKAZ85_LEG_1.pdf).

# 1. Status quo in foreign trade in goods

Belarus is a middle-sized trade economy contributing 0.07% to world GDP<sup>10</sup> and 0.18% to world exports.<sup>11</sup> The EU has been the second largest trade partner for Belarus, with roughly an 18% share in Belarus' exports.<sup>12</sup> EU-28's import of goods from Belarus' grew steadily until 2008, when it reached its peak of around USD 7 billion. It was then followed by a steady fall to USD 4.4 billion in 2020 (USD 4.8 billion in 2019).<sup>13,14</sup> Belarus' exports to the EU are predominantly wood, mineral fuels, and base metals, while the EU exports machinery, transport equipment, and chemicals to Belarus.<sup>15</sup>

According to the International Trade Centre's (ITC) calculations, the untapped export potential of Belarus in goods stands at USD 8.6 billion.<sup>16</sup> The total untapped export potential of Belarus to the EU and West Europe is worth USD 2.7 billion (31%).<sup>17</sup> ITC methodology suggests that potassium chloride for use as fertiliser, tractors, and mineral or chemical fertilisers are the products with the greatest export potential from Belarus to the EU and West Europe.

According to revealed comparative advantage (RCA) methodology,<sup>18</sup> Belarus is a competitive

10 GDP by country. Worldometer, available at <https://www.worldometers.info/gdp/gdp-by-country/>.

11 Market Analysis Tools Portal, International Trade Center, available at <https://marketanalysis.intracen.org/en>.

12 Countries and Regions. Belarus. European Commission, available at <https://ec.europa.eu/trade/policy/countries-and-regions/countries/belarus/#:~:text=The%20EU%20is%20Belarus'%20second,%25%20of%20Belarus'%20international%20trade>

13 Export of goods from the Republic of Belarus to EU countries: <https://comtrade.un.org/data/>.

14 Data for 2020 (if available) and 2019 is presented in the study in order to consider the influence of COVID-19 on the international trade.

15 List of products exported by Belarus. International Trade Center, available at [https://www.trademap.org/Bilateral\\_TS.aspx?nvpm=1%7c112%7c%7c%7c42%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1](https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c112%7c%7c%7c42%7cTOTAL%7c%7c%7c2%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1).

16 Spot export opportunities for trade development. International Trade Center, available at <https://exportpotential.intracen.org/en/?type=country&code=112>.

17 *Ibid*.

18 Revealed Comparative Advantage (RCA) is an index used for calculating the relative advantage or disadvantage of a certain country in a certain class of goods or services as evidenced by trade flows. The export index of revealed comparative advantage XRCA is defined as the ratio of the country's exports in a particular commodity/services category to its share in total merchandise exports:

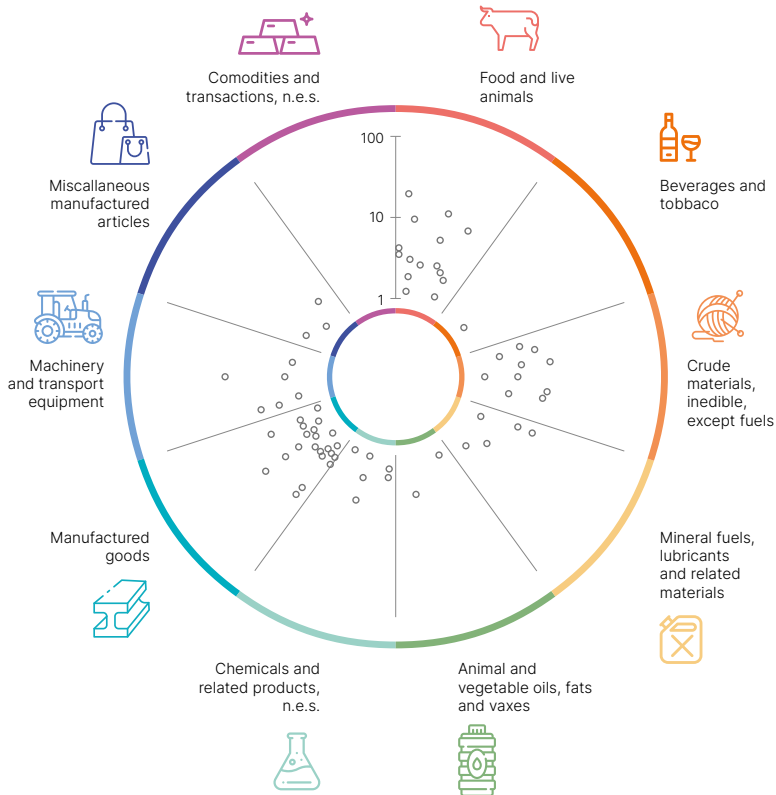
$$XRCA = \frac{\frac{X_{ij}}{\sum_i X_{ij}}}{\frac{\sum_i X_{ij}}{\sum_i \sum_j X_{ij}}}$$

where X stands for exports, and the subscripts i and j refer to the industry (product category) and country, respectively. The revealed comparative advantage of exported products/services occurs when XRCA is greater than 1. The higher the value of a country's RCA for product i, the higher its export strength in product i.

producer and exporter of chemical fertilisers (RCA=30.5), butter (19.8), cheese (13.9), tractors (13.4), milk and milk products (10.7), and wires of iron or steel (10.0)<sup>19</sup> (see Chart 1).

The main trading partners of Belarus among EU countries, based on the indicators of bilateral trade turnover for 2020, are Germany, Poland, Lithuania, the Netherlands, Italy, Latvia, France, Belgium, and Czechia.<sup>21</sup>

**Chart 1. Revealed comparative advantage for Belarus' export products in 2019**



Source: UNCTAD RCA Radar Plots, accessed on 15 April 2021

19 UNCTAD: <https://unctadstat.unctad.org/en/RcaRadar.html>.

20 Revealed comparative advantage. UNCTAD, available at <https://unctadstat.unctad.org/en/RcaRadar.html>.

21 Belarus and European countries. Ministry of Foreign Affairs of the Republic of Belarus, available at <https://www.mfa.gov.by/bilateral/europe/>.

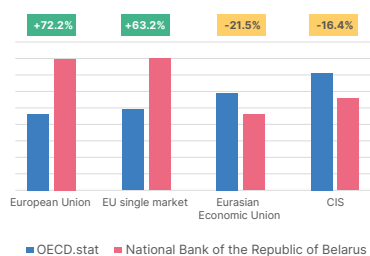
## 2. Belarus' foreign trade in services and its comparative advantage

Unlike trade in goods, on the services side Belarus' annual exports have been growing fast and amounted to USD 8.8 billion in 2020 (USD 9.6 billion in 2019, up from USD 4.8 billion in 2010 and USD 1 billion in 2000),<sup>22</sup> with USD 2.3 billion (23.5%) destined to the EU market in 2019.<sup>23</sup> Four key sectors, namely, transport (41.7%), ICT services (25%), travel (10%), and construction (7.6%), make up 84% of Belarus' services export worldwide.<sup>24</sup> Concerning the EU, the distribution of key export-driving services is the following: travel (19%), transport-related (18%), and ICT services (15%).<sup>25</sup> The top EU destination countries are Germany (15.1%), France (12.7%), the Netherlands (11.7%), and Ireland (10.6%).<sup>26</sup>

A mirror analysis of the statistics reveals discrepancies related to the export destination of Belarusian services worldwide and within the EU. The total volume of the export of services from Belarus reported by The National Bank of Belarus (NBB) corresponds to that indicated by the OECD.<sup>27</sup> However, the destination structure differs significantly (Chart 3). NBB data indicates that the volume of services exported to the EU

single market exceeds the volume of exports to the Eurasian Economic Union. OECD statistics insist on the opposite. In fact, the overestimated amount of services is destined for markets outside the EU. For instance, a contract could be signed with a company from Cyprus, but the services are delivered to a non-EU country. The NBB's data on the outflow of services from Belarus to Cyprus is 40 times higher than the OECD's data on the inflow, which might be related to the IT services

Chart 2. Export of services from Belarus to various regions, USD million, 2019



Source: authors' calculations based on the OECD Balanced International Trade in Services and National Bank of the Belarus foreign trade statistics

22 National Bank of Belarus: <https://www.nbrb.by/eng/statistics/foreigntrade>.

23 Balanced International Trade in Services (2005-2019), OECD.Stat, available at [https://stats.oecd.org/Index.aspx?DataSetCode=BATIS\\_EBOPS2010](https://stats.oecd.org/Index.aspx?DataSetCode=BATIS_EBOPS2010).

24 *Ibid*; the number is calculated as a percentage of total services exports.

25 *Ibid*; the numbers are calculated as a percentage of total exports to the EU.

26 *Ibid*; the numbers are calculated as a percentage of total exports to the EU.

27 Export of services according to Belarusian statistics: <https://www.nbrb.by/statistics/foreigntrade>; Export of services according to OECD.stat: [https://stats.oecd.org/Index.aspx?DataSetCode=TISP\\_EBOPS2010](https://stats.oecd.org/Index.aspx?DataSetCode=TISP_EBOPS2010).

produced in Belarus.<sup>28</sup> Among the other EU countries with overestimated outflows based on NBB data are Belarus' EU neighbours and regional partners, namely: Lithuania (5 times difference), Estonia (4.5 times), Latvia (3.4 times), Czechia (3.4 times), and Poland (3.4 times). Norway, Sweden, and the UK are on the other side of the issue – inflows are much higher than outflows (9.4 times, 4.1 times, and 3.4 times, respectively).<sup>29</sup>

The application of the comparative advantage approach (RCA) reveals five services export sectors for Belarus (Table 1) with a comparative advantage.<sup>30</sup> Construction, ICT, and transport services have the greatest comparative advantage.

As to the comparison of the export share from Belarus to the world with the export share to

the EU, we observe that construction, transport, maintenance and repair, and ICT services have significant untapped potential for the EU market (Table 2).<sup>31</sup>

Theoretical and empirical studies suggest that a country may have a comparative advantage in the production of services when it possesses a relatively large skilled labour force,<sup>32</sup> while trade in services is sensitive to a country's stock of high-skilled and mid-skilled labour.<sup>33</sup> As Belarus holds good records in educational attainment of the adult population, high employment rates, as well as low level of youth not in employment, education, or training if compared to the level of highest-performing EU member states, one can expect that Belarus may offer competitive skilled labour force for the EU single market.

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<sup>28</sup> *Ibid.*

<sup>29</sup> Export of services according to Belarusian statistics: <https://www.nbrb.by/statistics/foreigntrade/>; Export of services according to OECD.stat: [https://stats.oecd.org/Index.aspx?DataSetCode=TISP\\_EBOPS2010](https://stats.oecd.org/Index.aspx?DataSetCode=TISP_EBOPS2010).

<sup>30</sup> A comparative advantage is indicated for sectors that have  $RCA > 1$ .

<sup>31</sup> A ratio is indicated for sectors that have  $ratio > 1$ .

<sup>32</sup> Brian Hindley, Alasdair Smith (1984). Comparative Advantage and Trade in Services. *The World Economy*, Volume 7, Issue 4, December 1984, pp. 369-390.

<sup>33</sup> Erik van der Marel (2011). Determinants of comparative advantage in services. Working paper, Group d'Economie Mondiale, Paris, France.

**Table 1.** Revealed comparative advantage for Belarus, 2019

Services sector	RCA
Construction	4.22
Internet, computer, and telecommunication (ICT)	2.88
Transport	2.26
Maintenance and repair services, n.i.e.	1.71
Manufacturing services on physical inputs owned by others	1.02

Source: authors' calculations based on the OECD Balanced International Trade in Services

**Table 2.** Ratio of Belarus' exports in select services (share in the world to the share in the EU), 2019

Services sector	Ratio
Construction	5.57
Transport	2.35
Maintenance and repair services, n.i.e.	1.71
Internet, computer, and telecommunication (ICT)	1.69

Source: authors' calculations based on the OECD Balanced International Trade in Services

### 3. EU Regional Trade Facilitation

As part of its overall political and economic policy, the EU has been undertaking trade facilitation efforts with respect to countries which possess a European outlook. As such, the EU has developed a stabilisation and association process for the Western Balkans (Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, and Kosovo<sup>35</sup>).<sup>36</sup>

In the framework of this process, the EU adopted autonomous trade measures, which provided unilateral liberalisation of trade in goods. For the purposes of the EU legal framework, such asymmetrical trade liberalisation constitutes exceptional trade measures.<sup>37</sup> Council Regulation (EC) No 1215/2009 of 30 November 2009 (Regulation)<sup>38</sup> served as a legal basis to introduce temporary exceptional trade measures for countries and territories *participating in or linked to* the EU's Stabilisation and Association process. The Regulation allowed for unlimited duty-free access to the EU market for nearly all products originating in the countries and customs territories benefiting from the stabilisation and association process. Only a few exceptions – those concerning certain agricultural and fishery products – were not fully liberalised and remained subject to reduced

duties and/or preferential quantitative concessions. Further, the unilateral trade measures have been superseded by stabilisation and association agreements (SAAs), which provide for the establishment of free trade on a bilateral rather than unilateral basis.

The unilateral liberalisation established certain conditions that had to be met by benefiting countries and territories in order to enjoy the preferential measures. Such conditions included:

- complying with the definition of originating products provided for in Regulation (EU) No. 952/2013 in the EU Customs Code – the products must have been wholly manufactured or have undergone sufficient processing in the country or territory;
- undertaking not to increase the level of taxes or restrictions on products imported from the EU;
- combating fraud by means of administrative cooperation with the EU;
- abstaining from engaging in serious and systematic violations of human rights, including core labour rights, and respect the principles of democracy and the rule of law.

34 Belarus: Education, Training and Employment Developments 2018. European Training Foundation, 2018, available at: <https://www.etf.europa.eu/sites/default/files/2019-03/Belarus%202018.pdf>.

35 Without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

36 While Albania, North Macedonia, and Montenegro are WTO members, Bosnia and Herzegovina and Serbia have not finalised their accession processes yet. Kosovo has not commenced its accession to the WTO so far.

37 Normally, only EU members are entitled to benefit from the EU free trade regime.

38 Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (codified version), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2009.328.01.0001.01.ENG&toc=OJ%3AL%3A2009%3A328%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2009.328.01.0001.01.ENG&toc=OJ%3AL%3A2009%3A328%3ATOC).

The European Commission has the mandate to propose the suspension of trade preferences in whole or in part should a country or territory fail to comply with its obligations. The desired effects for these efforts is aimed at contributing to the process of political and economic stabilisation in the region while avoiding a negative impact on the EU market. The latter has been ensured by the fact that nearly all products originating from those territories already enjoy unlimited duty-free access to the EU market. The European Parliament extended the application of the Regulation to all initial benefiting parties to support these

economies and show the commitment for further trade integration with Western Balkan partners.<sup>39</sup>

The Regulation extends benefits only with respect to trade in goods and does not touch upon trade in services. Trade in services had benefited from a free-trade regime established by the SAAs with Western Balkan partners over a transitional period. As of 2021, the SAAs' transitional period lapsed for all but Kosovo,<sup>40</sup> but liberalisation of trade in services remains within the SAAs' framework.<sup>41</sup>

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39 Regulation (EU) 2020/2172 of the European Parliament and of the Council of 16 December 2020 amending Council Regulation (EC) No 1215/2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process, available here <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R2172&from=EN>.

40 European Commission. Countries and Regions. Western Balkans, available at <https://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/>.

41 *Ibid.*



## 4. Proposals and solutions

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The ongoing political and economic crises in Belarus will likely evolve and deepen in the next few years. Foreign aid other than that aimed at supporting the government directly or government “wallet” businesses will not be admitted into the country and will likely become “convenient” grounds for more politically motivated repressions and new criminal cases against businesses. In this regard, the EU’s EUR 24 million assistance package to support good faith small and medium enterprises seems to have limited direct impact for SMEs residing in Belarus. As a complementary measure to provide indirect support to these stakeholders, we suggest the introduction of unilateral trade liberalisation measures for Belarus’ services sector for 12 months with prolongation conditional on the political and economic situation in the country.

During this period, services with a revealed untapped potential would not be subject to any

trade barriers imposed within the EU on services imported from the third countries. As such, the EU could provide the same regime for the movement of services as it provides to its member states (Articles 56-62 of the consolidated version of the Treaty on the Functioning of the European Union).<sup>42</sup> For 12 months, the liberalisation would remain unconditional and represent a complementary means of assistance to Belarusian SMEs.

Once the 12-month period expires, its further prolongation may be subject to the fulfilment of certain conditions by the Belarusian government, which could vary depending on the situation in place at the time of expiration. This experience may further evolve into and serve as a basis for a comprehensive free trade agreement on services with Belarus in the future.

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<sup>42</sup> Consolidated version of the Treaty on the Functioning of the European Union. EUR-lex Home, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FTXT>.

## 5. Legal implications

Given the variety of legal regimes that Belarus and the EU are involved in, it is important to consider the legal implications of unilateral trade liberalisation under each of these regimes. Overall, analysis of the EU, EAEU, and WTO legal frameworks did not reveal any potential implications that could limit the possibility of the EU to undertake unilateral trade liberalisation measures.

Council adopted Regulation No. 1215/2009 with the latest amendments as of 21 December 2020.<sup>43</sup>

As such, the EU legal framework permits the Parliament and the Council to adopt similar unilateral measures with respect to a third country, in particular Belarus.

### The Law of the European Union

The EU has referred to unilateral (autonomous/asymmetric) trade liberalisation as exceptional trade measures under the Regulation.<sup>43</sup> The Regulation is based on a common commercial policy provision in the Treaty on the Functioning of the European Union (Article 207/ex Article 133 TEC), where the EU exercises exclusive competence (Article 3). In particular, paragraph 2 of Article 207 gives the power to the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, to adopt measures defining the framework for implementing the common commercial policy.<sup>44</sup> Utilising these powers, the

### The Law of the World Trade Organization

Belarus is not a Member of the WTO. Belarus' Working Party on Accession was established on 27 October 1993.<sup>46</sup> The Working Party met for the 12th time in July 2019. Bilateral negotiations between the EU and Belarus on market access are ongoing. Until Belarus becomes a member of the WTO, EU obligations under the covered agreements do not extend to Belarus. Furthermore, WTO-covered agreements do not limit the possibility of the EU to introduce unilateral trade liberalisation measures with respect to non-WTO members. This conclusion is based on the scope of the General Agreement on Trade in Services (GATS), which specifies that GATS applies to

43 Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (codified version), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2009.328.01.0001.01.ENG&toc=OJ%3AL%3A2009%3A328%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2009.328.01.0001.01.ENG&toc=OJ%3AL%3A2009%3A328%3ATOC).

44 Consolidated version of the Treaty on the Functioning of the European Union. EUR-lex Home, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FTXT>.

45 Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (codified version), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2009.328.01.0001.01.ENG&toc=OJ%3AL%3A2009%3A328%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2009.328.01.0001.01.ENG&toc=OJ%3AL%3A2009%3A328%3ATOC).

46 World Trade Organization. Accessions. Belarus, available at [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_bela-rus\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_bela-rus_e.htm).

measures by members affecting trade in services (Article I.1), whereas trade in services is only limited to the supply of services between and among WTO members (Article I.2).<sup>47</sup> The most favourable nations (MFN) provision for services applies only to measures covered under GATS, which precludes imposing any obligations for measures outside the scope of GATS. The introduction of unilateral liberalisation measures with respect to a non-WTO member is not covered by GATS and falls outside the scope of the notion of “trade in services” under GATS Article I.2.

Hence, EU obligations under the WTO-covered agreements do not interfere with the EU's possibility to introduce unilateral liberalisation measures with respect to services.

## The Law of the Eurasian Economic Union

The major governing international agreement of the Eurasian Economic Union, the Treaty on the Establishment of the Eurasian Economic Union, creates rights and obligations for five states: Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan.

The EAEU legal regime does not extend any obligation either to the EU or any of its member states and, therefore, does not preclude the EU from introducing unilateral measures within its jurisdiction.

Being unilateral in nature,<sup>48</sup> asymmetric trade facilitation measures do not require Belarus to assume any additional obligations for them to attain legal force within the EU.

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<sup>47</sup> General Agreement on Trade in Services, [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm).

<sup>48</sup> The International Law Commission, Third Report on Unilateral Acts of States, 52nd Session UN Doc A/CN.4/505 (2000), has defined a unilateral act as “an unequivocal expression of will which is formulated by a State with the intention of producing legal effects in relation to one or more other States or international organizations, and which is known to that State or international organization.”

## 6. Mechanisms of implementation

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Below are implementation issues that contribute to the development of the institutional implementation mechanism of unilateral trade in services liberalisation between Belarus and the EU considering different modes of supply of services:

1. Approval of unilateral (autonomous / asymmetric) trade liberalisation as exceptional trade measures for services originating from Belarus by the European Parliament and the European Council;

For mode 1 (Cross border trade):

- II. Introduction of temporary exceptional trade measures for private legal entities (registered private companies and sole proprietorships) resident in Belarus allowing for access to the EU market for all services and service providers originating in Belarus without any limitation or restriction; once in the EU market, it is suggested that the services and service providers enjoy national treatment;
- III. To avoid making Belarus a “back door” for services from other EAEU members, the benefits of mode 1 can be extended only to those legal entities that were established before the introduction of unilateral measures by the EU.

For mode 3 (Commercial presence):

- IV. Allowing for competition among EU member countries in terms of attracting Belarusian service providers to their business residency and special business programmes.

For mode 4 (Presence of natural persons):

- V. Introduction of an on-line declaration mechanism for private legal entities resident in Belarus to send labour force to the EU based on the exceptional trade measures for services originating from Belarus. The EU Delegation in Minsk could run a database of labour force participating in the mechanism on the EU territory;
- VI. Introduction of a free-of-charge visa or visa-free entry for the labour force registered in a single EU Delegation database for a period of 12 months (no longer than the period of the unilateral elimination of trade barriers for services by the EU).

# Conclusion

Belarus' services sectors hold a considerable competitive advantage for the EU market, in particular in the areas of construction, transport, maintenance, and ICT services. Coupled with the availability of highly skilled labour in Belarus, the EU market can benefit from deeper trade integration with Belarus on the services side. Evolving political tensions throughout the last decade seem to hinder this opportunity for both markets. Current political developments show the continuous support and commitment of the EU to work with the people of Belarus on this front. They also present an opportunity for exploring ways that could benefit both Belarus and the EU. In this respect, the adoption of unilateral trade liberalisation measures for Belarus' services sector for 12 months, with prolongation conditional on the political and economic situation in Belarus, could become a good complementary way to support Belarus in its moment of crisis as well as contribute to the EU-Belarus relationship in the long run.

