



[REDACTED]
[REDACTED]
[REDACTED]

Brussels, 13 February 2024

Subject: **Response to notice letter regarding 2023 Notes**

Dear Madam/Sir,

We refer to your letter dated 27 December 2023 (the "**27 December Letter**").

In your 27 December Letter, you inform us that [REDACTED] ("**[REDACTED]**") is a noteholder of 2023 Notes issued by the Republic of Belarus pursuant to a Deed of Covenant dated 29 June 2017 with a stated maturity of 28 February 2023 (the "**2023 Notes**").

You argue in the 27 December Letter that the labelling by Euroclear Bank ("**EB**") of the 2023 Notes as "matured" would be one that no other party agrees with (referring mainly to rating agencies) and ask EB to "review" its position to reflect their status as "outstanding" or "in default". This would allow to "unblock" settlement and clearing of the securities and allow secondary trading which EB's designation of the 2023 as having "matured" would disrupt.

We hereby fully and firmly contest the allegations set out in your 27 December Letter, and do not agree with the position as set out therein for the following reasons:

1. EB has no direct contractual relationship with [REDACTED]

First of all, we would like to point out that [REDACTED] does not have any direct contractual relationship with EB in connection with the 2023 Notes. As a matter of



general policy, EB only communicates via its Participants. In accordance with EB's Terms and Conditions governing the use of the Euroclear System (the "**Terms and Conditions**" – **Appendix 1**) and the Operating Procedures of the Euroclear System ("**Operating Procedures**" – **Appendix 2**), no customer or other entity or individual for which a Participant may be acting has or is entitled to assert, in that capacity, claims or remedies against EB (see article 18 of EB's Terms and Conditions, the "**T&Cs**"). EB therefore invites ██████████ to address its requests to its contracting party who is a Participant in the Euroclear System.

2. **EB has not contractual obligations in relation to the 2023 Notes**

Furthermore, EB is not a party to the contractual documentation between ██████████ and the Issuer. It has no rights nor any obligations under this documentation and it is therefore not for EB to take position on whether or not the 2023 Notes are in default.

We note in this regard that you argue that the 2023 Notes would not require any notification or determination of an Event of Default by any party and that this would be an "objective fact" which would have plainly occurred. It is unclear on what basis you make this statement. Without EB taking position on the legal interpretation of the terms and conditions of the 2023 Notes, the terms of the 2023 Notes provide that a note may be declared immediately due and payable if an Event of Default occurs and is continuing, by written notice addressed by the holder to the issuer. Your position therefore on the face of it does not seem in line with the contractual documentation governing the 2023 Notes.

Your statements are, moreover, contradicted by your own actions. Indeed, in your letter, you yourselves confirm that (i) ██████████ has assigned its rights under the 2023 Notes to you, (ii) ██████████ as beneficial holder has delivered a notice of default to the Issuer on 30 October 2023, and that (iii) ██████████ would also have delivered to EB via SWIFT a notice of default.

The 27 December Letter does not contain, however, any reference to the response of Belarus, nor whether it has acknowledged or contested the position. To the extent Belarus as Issuer acknowledges that it has defaulted on the 2023 Notes, EB is happy to reflect this position in its system.



However, Belarus does not appear to have acknowledged any such point. Indeed, you mention yourself in the 27 December Letter that the 2023 Notes are "outstanding" and that the Belarusian government, although it notified all investors and market participants that Belarus will not fulfil its obligation to repay the holders of the 2023 Notes *in accordance with their contractual terms*, announced that "*debt obligations under sovereign securities...will be honoured in Belarusian roubles*", and adopted various "orders" providing for a mechanism to "reroute" payments outside the clearing system designated in the 2023 Notes.

For this reason, EB also does not agree with the statement in your 27 December Letter that the situation of Belarus would be comparable with that of Lebanon, Sri Lanka, Venezuela and Zambia. Indeed, these sovereign nations have admitted an inability to make payments and therefore acknowledged a "default" even if they did not use that term. Belarus has admitted no such inability but has offered alternative payment options.

In addition, you also point out that "*although no judgment has yet been rendered in favour of any of Belarus' bondholders, a number of cases have been initiated by holders in Russia with Russian courts and are currently pending*". It is unclear to EB from your 27 December Letter what the allegations of these bondholders are and what cases have been made pending by whom and on what basis. From articles published in the press, it would appear that "*on 18 January 2024, a group of investors consisting of eight individuals and five companies announced a default on five issues of Belarus Eurobonds 2023, 2026, 2027, 2030 and 2031*" (**Appendix 3**). This article seems to confirm that holders of the 2023 Notes have gone to the courts precisely on the topic of whether or not there is a default. It is unclear whether you are also a party to this litigation.

To the extent the bondholders are seeking to contest Belarus' actions and to establish that there is a default under the 2023 Notes, this only serves to confirm that the question as to whether or not Belarus is in default or whether it is complying with its obligations is in dispute. You will appreciate that EB is not the "judge" of Belarus' actions and has no power – whether contractual or otherwise – to determine whether Belarus' actions to make payments via other means are legitimate or not. This is a contractual dispute which must be decided by a court, and not by EB.



The fact that international rating agencies consider Belarus to be in default is likewise of no relevance to this contractual discussion. Their role is to assess the creditworthiness of market participants. Their assessment that the current situation and actions of Belarus impact the latter's rating and creditworthiness is in no way binding on EB and does not allow it to unilaterally declare that Belarus is in default under the contractual documentation governing the 2023 Notes.

The question is all the more delicate considering that, as you also point out in the 27 November Letter, Belarus' actions occur against the backdrop of the wide-ranging sanctions which have been adopted against Russia and Belarus by a number of national and supranational authorities, such as notably the UK, the US and the EU. You state that none of the relevant sanctions regimes would be applicable and support this by referring to an article published in the Financial Times. You will appreciate that a newspaper article does not prove your assertion that Belarus is in default to perform its contractual obligations.

The foregoing elements therefore do not demonstrate at all that there is a "*clear case of a non-payment Event of Default for the 2023 Notes*", as you assert in your 27 December 2023. Quite to the contrary, they evidence that this is far from a straightforward question, which is in dispute.

In conclusion, EB is not a party to the contractual documentation nor a court of competent jurisdiction which has any authority to decide on whether there is an Event of Default in relation to the 2023 Notes or not. There is therefore no legal basis for you to allege that EB must take any actions to declare the 2023 Notes in default. Conversely, EB does not exercise any judgment in labelling the 2023 Notes as "matured". The labelling of the 2023 Notes as "mature" depends on the terms and conditions governing the 2023 Notes and when they reach maturity and is therefore a reflection of an objective fact.

3. EB bears no liability towards ██████████ and must act prudently and diligently

For the reasons set out above, EB has no obligation whatsoever towards ██████████ to label the 2023 Notes as "in default".



This is all the more the case since, contrary to what you allege in the 27 December Letter, changing the labelling of the 2023 Notes to "in default" has far-reaching implications and may disrupt the Euroclear System and jeopardise EB's liability.

The labelling of the 2023 Notes as matured based on the objective fact that they have reached maturity entails that trading in the 2023 Notes is suspended. Changing the labelling of the 2023 Notes would entail that – as you point out in your letter – the 2023 Notes could be traded on the secondary market. This whilst EB has no visibility on whether certain bondholders have used the alternative payment options offered by Belarus and may already have received payment.

You refer in this regard to the fact that a number of Russian Eurobond issues have offered the option of obtaining "replacement securities" and receiving payments on such securities, leading to EB and Clearstream suspending settlement to prevent stock pilfering and to comply with its obligations of asset protection. Likewise, you refer to the "forced transfer" regime adopted by the Russian Federation which allowed holders of securities to receive payment outside of the Euroclear System. This also led to the suspension by EB of settlement in the relevant securities pending the reconciliation between the position reflected in EB's books and the information received from NSD on the transfers made.

You seem to argue that the concerns referred to in relation to these alternative payment mechanisms would not arise in relation to the alternative payment options offered by Belarus. In relation to the Belarussian repayment option in Rubbles, you state, *inter alia*, that the option would only be selectively available, that the book entry balance in EB's books would not be affected and that this would be akin to a repurchase by an issuer of its securities. The option would, for now, only be available to NSD's clients and NSD would have to report the amounts paid in Belarus Rubbles to EB. In relation to the exchange option, you argue that the Belarussian order would not be applicable to the 2023 Notes, and that it, moreover, expressly requires the delivery of the relevant instruments to the Belarussian Ministry of Finance which must in turn submit the Eurobonds transferred to it for cancellation to EB. The third option of repurchase of the 2023 Notes at 30 of their face value would also preserve market integrity as the repurchased bonds would have to be delivered to the Ministry of Finance and book-entry interests reduced.



These arguments do not alleviate in any way the risk for EB. Indeed, as has also been the case in the event of other "alternative payment" methods being adopted to circumvent sanctions, EB has no obligation whatsoever to cooperate with the aforementioned schemes which provide for repayment or repurchase options outside of the usual mechanisms foreseen under the 2023 Notes. In this regard, EB cannot take any risk of discrepancies between the position in its books and the position on the market. If EB would allow securities to be traded while they have been repaid, replaced or exchanged through such alternative mechanisms which EB is not familiar with, has not agreed to cooperate or comply with contractually, and the consequences/intent of which are not fully clear or unknown to EB, this might potentially allow (malicious) noteholders to transfer 2023 Notes for which payment was already received. This is not acceptable, as EB has a regulatory obligation to protect the integrity of the system and must comply with its contractual obligations and its duty of care towards its Participants. If it fails to comply with these obligations, EB runs a significant risk of incurring liability. There is therefore no reason for EB to adopt a different approach to the 2023 Notes than towards any other "replacement securities" or other alternative payment methods.

In addition, EB also wishes to point out that NSD is the subject of economic sanctions imposed by the European Union. According to Article 2 of Council Regulation (EU) N° 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ("**Regulation n° 269/2014**"), *"all funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex 1, shall be frozen"*. NSD is listed at n° 101 in the list of entities appearing in Annex 1 to Regulation n° 269/2014 and its assets must hence be frozen. The designation of NSD also entails that EB cannot cooperate in any way with actions which would somehow seek to circumvent EU sanctions¹. As an EU entity, EB must comply with EU sanctions and the restrictions they impose. Any violation of EU sanctions is punishable with administrative and criminal penalties in accordance with the Law of 13 May 2003 relating to the implementation

¹ See article 9 of Regulation 269/2014 which provides that *"It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2."*



of restrictive measures adopted by the Council of the European Union against some states, persons and entities.

Given the above restrictions in relation to NSD, EB can therefore not allow that the 2023 Notes would be released for secondary trading if this would allow them to be transferred in some shape or form to NSD for repayment by Belarus. This is therefore an additional reason why EB cannot run the risk of changing the labelling of the 2023 Notes and allowing for their secondary trading.

Based on the above considerations, EB is not in a position to comply with the requests in your 27 December Letter and invites you to address your issues with Belarus, as Issuer of the 2023 Notes, and to take appropriate action under the contractual documentation and/or before the competent courts to resolve the situation.

This letter is addressed to you with all rights and remedies reserved, and without any prejudicial acknowledgement.

Yours sincerely,

[Redacted signature block]

Enclosed:

1. Euroclear Bank's Terms and Conditions governing the use of the Euroclear System.
2. Operating Procedures of the Euroclear System
3. Press release : "*Owners of Eurobonds in Belarus announced default*", WestObserver, dated 23 January 2024.