

EU Introduces Magnitsky-Style Human Rights Sanctions Regime

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On 7 December 2020, the EU implemented a new sanctions regime that allows the European Council to impose asset freezes and travel bans on persons—whether state or non-state actors—it determines to have committed serious human rights violations. Although no persons have yet been listed under the regime, it is an important step forward for the EU’s agenda to promote respect of human rights globally. It also brings the bloc’s sanctions powers in line with those of other countries that have already implemented similar “Magnitsky”-style sanctions—most notably the United States, Canada and the [United Kingdom](#).

Prior to the introduction of this regime, the majority of EU sanctions regimes were country-specific, and enacting a new sanctions regime requires unanimous consent of all EU Member States to sanction the country. The new human rights sanctions regime may allow the EU to employ its sanctions powers to impose asset freezes on persons in jurisdictions where the EU has no standing sanctions regime, or if there is political sensitivity about targeting the jurisdiction, as sanctions designations only require the unanimous consent of the European Council rather than of each Member State.

HUMAN RIGHTS VIOLATIONS: THE EU’S PREVIOUS APPROACH

Upholding “*the universality and indivisibility of human rights and fundamental freedoms [and] respect for human dignity*”¹ is one of the core principles of the EU’s foreign policy. Prior to the introduction of the Magnitsky-style sanctions regime, the EU sought to incentivise other countries to uphold human rights in three main ways.

First, the EU utilised its existing legislation to impose sanctions against countries that were alleged to have engaged in state-led human rights violations. *Second*, the EU suspended development aid to countries alleged to have violated human rights and undermined democracy. *Third*, several of the EU’s trade agreements contain a human

¹ Article 21(1) of the [Treaty on European Union](#).

rights clause that allows the EU to suspend or withdraw from the agreement for human rights violations.

Nevertheless, the EU's attempts to censure human rights abuses had limited success. The above mechanisms result in censure of a country as a whole, making them both less precise and less likely to be employed, given the broader political and humanitarian implications.

THE NEW EU FRAMEWORK

The new EU global human rights sanction regime is set out in [Council Regulation \(EU\) 2020/1998](#) (the "Regulations").² It allows the Council to impose restrictive measures on individuals involved in human rights violations, such as: genocide; torture and other cruel, inhuman or degrading treatment; slavery; extrajudicial, summary or arbitrary executions and killings; enforced disappearance of persons; and arbitrary arrest or detention.

Persons Targeted by the Restrictive Measures

The Regulations provide for sanctions targeting legal and natural persons ("Listed Persons") who (a) are responsible for human rights abuses; (b) provide financial, technical, or material support for or are otherwise involved in human rights abuses; or (c) are associated with persons covered by (a) and (b). No names have been added to the sanctions list yet.

The European Council, acting by unanimity, is responsible for establishing and maintaining the list of Listed Persons upon receiving a proposal from an EU Member State or the High Representative. Recommendations must be based on "*accurate, up-to-date and defensible statements of reason*"³ and should follow applicable EU guidance.⁴

The Restrictive Measures: Asset Freezes and Travel Bans

The Regulations permit the Council to impose asset freezes and travel bans on Listed Persons.

Asset freezes require EU persons and entities to "freeze" the funds or economic resources in their possession that are held or controlled by the Listed Persons. Any

² Concerning restrictive measures against serious human rights violations and abuses. Implemented in accordance with [Council Decision \(CFSP\) 2020/1999](#).

³ Council of the European Union, [Sanctions Guidelines](#), 4 May 2018, paragraph 17.

⁴ Specifically, the EU Council's Recommendations for working methods for EU autonomous sanctions, set out in Annex I of the Sanctions Guidelines.

funds or economic resources made available to an entity owned or controlled by a Listed Person are presumed to be made available to the Listed Person, unless there is evidence to the contrary.

Travel bans prevent a Listed Person from entering or transiting through an EU Member State unless the Listed Person is a national of that state. The Regulations list exemptions to the travel ban, including where travel is needed on urgent humanitarian grounds, to fulfil a judicial process, or to otherwise comply with obligations of an EU Member State under international law.

HUMAN RIGHTS SANCTIONS: A GLOBAL TREND

By enacting the Regulations, the EU joins states that have introduced sanctions regimes that specifically target human rights abuses. In 2012, the United States adopted the Magnitsky Act,⁵ which imposed sanctions against persons involved in gross human rights abuses in Russia. The sanctions policy was expanded in 2016, following the introduction of the U.S. Global Magnitsky Human Rights Accountability Act (the “Global Magnitsky Act”),⁶ which extended the scope of the sanctions to cover every country. As of December 2020, the U.S. Global Magnitsky Act has been applied to 107 persons from 36 countries.

Since the introduction of the U.S. Global Magnitsky Act, other countries have adopted similar human rights-based sanctions regimes.⁷ On 6 July 2020, the United Kingdom adopted Magnitsky-style sanctions legislation,⁸ making it the UK’s first autonomous sanctions regime post-Brexit.

The EU, U.S. and UK Magnitsky-style sanctions are broadly similar. But there are subtle but important differences among the regimes, including which human rights violations can serve as a basis for imposition of sanctions. The U.S. regime provides for sanctions targeting specific violations, as well as a broader category of “*gross violations of internationally recognized human rights*”.

⁵ Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, Title IV, 126 Stat. 1496, 1502-1509 (Dec. 14, 2012).

⁶ [22 U.S.C. § 2656 note](#).

⁷ Specifically Canada, Estonia, Gibraltar, Jersey, Kosovo, Latvia, Lithuania and the United Kingdom. It is anticipated that Australia will soon follow suit.

⁸ The [Global Human Rights Sanctions Regulations 2020](#). Read our client update on the legislation [here](#).

Ground for imposing sanctions	EU regime	U.S. regime	UK regime
The right to life		✓**	✓
Genocide	✓	✓**	
Crimes against humanity	✓	✓**	
Torture or other cruel, inhuman or degrading treatment	✓	✓	✓
Slavery	✓	✓**	✓
Extrajudicial, summary or arbitrary executions and killings	✓	✓	✓
Enforced disappearance of persons	✓	✓**	
Corruption		✓	
Arbitrary arrests or detentions	✓	✓**	
Human trafficking	✓*	✓**	
Sexual and gender-based violence	✓*	✓**	
Violations of peaceful assembly, association, opinion and expression, religion and belief	✓*	✓**	

* Sanctions can be imposed if the violation is widespread, systematic or otherwise of serious concern.

** Sanctions can be imposed under the category “gross violations of internationally recognized human rights”.

While the Regulations cover a broad range of human rights violations, corruption is conspicuously absent. Research has identified a strong link between endemic corruption and serious human rights abuses, and the European Parliamentary Research Service has stated that “even in the absence of such abuses, corruption itself threatens human rights, given that it erodes the rule of law, and diverts government resources that could otherwise have been used to meet the basic needs of a country's population.”⁹ Given this close nexus, the U.S. and Canadian human rights sanctions regimes cover corruption, and the UK reportedly is considering amending its legislation accordingly.

In response to the lack of a similar provision in the Regulations, a group of 15 civil society organisations have urged the EU to align the Regulations with the regimes of

⁹ European Parliamentary Research Service, [EU human rights sanctions Towards a European Magnitsky Act](#), December 2020, page 6.

other countries. Though the European Parliament has advocated for a similar approach,¹⁰ it is unclear whether the EU will agree.

CONCLUSION

Although no individuals have yet been designated under the Regulations, companies operating in the EU should ensure that they incorporate any necessary amendments to their sanctions systems and controls to ensure compliance. In particular, companies should ensure that their sanctions screening lists are updated with any new Listed Persons. The Regulations represent another step in the EU's recent regulatory programme, requiring the alignment of compliance regimes with an agenda to promote the protection of human rights.¹¹

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Please do not hesitate to contact us with any questions.

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¹⁰ See, for example, European Parliament resolution of 14 March 2019 on a European human rights violations sanctions regime ([2019/2580\(RSP\)](#)).

¹¹ See, for example, recent EU developments in [human rights due diligence and reporting](#), and the pending [European Disclosure Regulation](#) dealing with Environmental, Social, and Governance matters (with human rights falling under the 'social' consideration).