



The EU Global Human Rights Sanctions Regime: Prospects and Challenges

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The European “Magnitsky Act” adopted by the EU is a political signal that the Union wants to protect human rights in the world more effectively. It fixes the scope of sanctions application in this field, but it does not fundamentally change existing EU practices. Still, the challenges lie in the adoption of sanctions listings by a unanimous decision of the Member States and their subsequent effective implementation. The new system will be used for the first time to impose restrictions on those responsible for the detention of Alexei Navalny in Russia. It may also be used in cases of human rights violations in China or on the territory of conflict areas in the Eastern Partnership (EaP) region.

Origins of the Reform. The EU frequently has used sanctions for human rights violations in relation to specific countries where the authorities were deemed responsible for such actions (e.g., in Belarus, Zimbabwe, Venezuela). The adoption of restrictions has been difficult, however, for political reasons because it usually results in a deterioration of bilateral relations. On each occasion, the Member States, deciding by unanimity, negotiated the appropriate legal basis for at least several months.

In response to those challenges, the EU in December 2020 adopted a global human rights sanctions regime called the European “Magnitsky Act”, named after Sergei Magnitsky, a lawyer who died while imprisoned in Russia. The new thematic approach is to facilitate the political and procedural use of sanctions. The restrictions will not apply directly to a given country, but to the actions of human rights violations, regardless of where committed. Based on the adopted legal basis, it is sufficient to add natural or legal persons to a sanctions list by unanimous decision of the Member States.

The new mechanism confirms the increasing trend of the use of thematic restrictions by the EU (e.g., sanctions pertaining to the use of chemical weapons was introduced in 2018, and another for cyberattacks in 2019). This regime will enable better coordination of sanctions with countries that have similar laws, such as the U.S., Canada, and the UK. The European “Magnitsky Act” will be an additional EU

instrument that will complement the existing restrictions. In the first half of this year, the EU plans to adopt a wider sanctions listings based on it.

Characteristics. Sanctions under the new act can be applied to private or legal persons (including state and non-state actors) who are responsible for, provide support to, or otherwise are involved in serious human rights violations. The thematic scope of the restrictions is broadly defined (Table 1). For example, they can relate to genocide, gender-based violence, and other violations that are widespread or have serious consequences for the EU’s foreign policy objectives. The EU has already applied restrictions in most of the areas listed in the new system. For example, violations of media freedom were the subject of EU sanctions against Zimbabwe and Nicaragua, and human trafficking in the case of Libya.

The restrictive measures include an EU entry ban and financial sanctions against those responsible for violations. The latter concern the freezing of funds and economic resources belonging to, owned, held, or controlled by sanctioned persons. This means not only freezing their bank accounts but also, for example, the resources of enterprises associated with these persons (e.g., if the target holds more than 50% of the proprietary rights in a company or the right to exert a dominant influence on its development). Moreover, the restrictions prohibit EU entities from providing sanctioned persons and related enterprises with

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any financial means or economic resources (e.g., services, supplies, donations). For example, an estate agency registered in the EU cannot rent premises owned by such a person. Member States are responsible for implementing sanctions on their territory and the European Commission (EC) monitors and coordinates this process. Importantly, the provisions provide for cases in which Member State authorities may authorise the release of some funds from those under restriction, such as those necessary to meet basic needs, or for emergencies.

Challenges. The adoption of the sanctions listings will remain a problem due to the requirement for a unanimous decision of the Member States. Some of them tend to block sanctions in order to force concessions on other issues. An example of this was Cyprus' opposition to restrictions on Belarus in 2020 that aimed to gain Council support for its proposed sanctions against Turkey. Moreover, although the restrictions may be directed towards private persons (e.g., human traffickers), they most often apply to state actors, including officials and persons related to them. This will provoke negative reactions from the governments of these countries, which may make it difficult for EU members to rapidly adopt the restrictions.

One large question is the effectiveness of individual sanctions in bringing about the desired political change and their impact on the entities covered by them. They proved to be partially effective in the case of Belarus in 2012-2016 when they were used to bargain with the Belarusian authorities on the release of political prisoners, for example, Andrei Sannikov. However, it is difficult to demonstrate success in other cases. The large number of appeals of EU sanctions decisions—72 pending cases in the General Court in 2019—show a significant number of targeted persons are seeking the return of their frozen property. Financial sanctions adopted in the last four years are the most often implemented, as the Council legal service wins most of the cases in which they prepare evidence. However, the EU has not carried out any assessment of the impact of this instrument on the individuals it targets. It plans to conduct such a study only this year.

Another limitation is the inconsistent implementation of sanctions by the Member States. They not only have different institutional capacities to monitor their implementation on their territory but also are free to define the penalties for violating them and may grant exemptions from the sanctions. The conditions for the implementation of restrictive measures are defined only by

legally non-binding EC guidelines. Some countries may also use practices to circumvent sanctions. For example, Cyprus grants citizenship to numerous investors from Russia, which prevents the potential application of restrictions on these persons. The EC, on the other hand, has limited powers to control the Member States, as it relies on their own reporting. Hence, the EC plans to create a database on the application of sanctions based on information from EU agencies and bodies, among other sources. It will also review practices regarding circumvention (e.g., the use of cryptocurrencies) and create a system enabling anonymous reporting of such cases.

Conclusions and Perspectives. The European “Magnitsky Act” is an additional EU instrument to protect human rights worldwide. Although it does not introduce fundamental changes to the EU's existing practices, it will facilitate the adoption of sanctions in countries towards which the Member States have a relatively uniform position (e.g., in Central Asia and some regions of Africa). In a situation of diverging interests at the EU level, the adoption of restrictions will still be difficult due to the requirement of unanimity.

The new system will be used for the first time to impose sanctions on those responsible for the imprisonment of Navalny, as it covers arbitrary detention. The sanctions were mainly promoted by Poland and the Baltic states. After the unsuccessful visit of the High Representative Josep Borell to Moscow in February this year, the Member States agreed to adopt sanctions. The EU members are also negotiating a broader listings based on the new system. The European Parliament demands the use of sanctions in response to, for example, the repression of Uighurs in China and the democratic opposition in Hong Kong, and the violation of human rights in Egypt. Media and expert circles also indicate the possibility of their use against individuals from Saudi Arabia or Turkey.

From the perspective of Poland, a country supportive of the use of sanctions in the EU's external relations, the European “Magnitsky Act” may be used, for example, in cases of human rights violations in China or in conflict areas in the Eastern Partnership region, such as Donbas, Crimea, Abkhazia, and South Ossetia. When it comes to the current situation in Belarus, the established sanctions system already provides for restrictions in cases of serious violations of human rights, the rule of law and democracy, including repression of civil society and the democratic opposition.

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Table 1. Entities and Areas of Sanctions According to Art. 2. of Council Regulation (EU) 2020/1998 of 7 December 2020 Concerning Restrictive Measures Against Serious Human Rights Violations and Abuses

Areas of application	<ul style="list-style-type: none">- genocide;- crimes against humanity;- the following serious human rights violations or abuses: torture and other cruel, inhuman or degrading treatment or punishment; slavery; extrajudicial, summary or arbitrary executions and killings; enforced disappearance of persons; arbitrary arrests or detentions;- other human rights violations or abuses, including but not limited to the following, in so far as they are widespread, systematic, or are otherwise of serious concern as regards the objectives of the common foreign and security policy set out in Art. 21 TEU: trafficking in human beings, as well as abuses of human rights by migrant smugglers; sexual and gender-based violence; violations or abuses of freedom of peaceful assembly and of association, of freedom of opinion and expression, of freedom of religion or belief.
Entities covered by restrictions	<p>Natural or legal persons, entities or bodies may include:</p> <ul style="list-style-type: none">State actors;other actors exercising effective control or authority over a territory;other non-State actors.