

An EU human rights sanctions regime?

The EU already has multiple sanctions in place targeting individuals responsible for gross human rights abuses in specific countries. There are growing calls for a more global approach targeting violations from all over the world, following the example of the US 2016 Global Magnitsky Act. In December 2018, the Dutch government floated the idea, but it is not yet clear whether it has a good chance of being adopted at EU level.

EU human rights sanctions: current approach

Since the 1990s, the EU has adopted multiple sanctions against third countries for human rights violations. Examples include [China](#) (violent repression of Tiananmen Square protests, 1989); [Belarus](#) (disappearance of opposition activists and a journalist, 2004); [Iran](#) (repression of peaceful protests, torture, excessive use of death penalty, 2011); Burundi (disproportionate use of force against protestors, obstructing democracy, 2015); and [Venezuela](#) (repression of civil society and democratic opposition, 2017). The most common measures are visa bans and asset freezes against human rights offenders, often accompanied by restrictions on EU sales of weapons to the country concerned. The individuals targeted include government ministers, senior military, police and intelligence officers, prosecutors and election officials. As well as imposing sanctions, the EU can also respond to human rights abuses by cutting development aid (the case of [Burundi](#)) or withdrawing 'everything but arms' trade preferences (currently being considered for [Cambodia](#)).

US human rights sanctions: Magnitsky and Global Magnitsky Acts

[Sergei Magnitsky](#) was a Russian tax expert who claimed to have uncovered massive fraud involving corrupt tax officials and criminal organisations. In 2008, Magnitsky himself was accused of tax evasion and arrested; he died in prison one year later, after being severely beaten and denied access to medical treatment. Ironically, Magnitsky and business associate Bill Browder were the only persons ever [convicted](#) in the case; those responsible for his death and the alleged tax fraud continue to enjoy impunity.

In 2012, following international outrage and tireless campaigning by Bill Browder, the United States adopted the [Magnitsky Act](#), envisaging sanctions (asset freezes, visa bans, financial restrictions) against persons responsible for Magnitsky's death and other gross human rights abuses in Russia. It currently targets nearly 50 Russian officials. In 2016, a [Global Magnitsky Act](#) followed, with a much broader scope including serious cases of human rights abuse and corruption from all over the world. It has since been applied to over [40 individuals](#) from around a dozen countries.

Although EU and US human rights sanctions often target similar countries and individuals, many on the Magnitsky and Global Magnitsky lists are not covered by EU sanctions. For example, the EU has no sanctions against Saudi Arabia, and its [Russia](#) sanctions relate entirely to Ukraine as opposed to human rights.

From geographical to thematic sanctions

In the past, most US programmes, and all the EU's sanctions (except for those on counter-terrorism and chemical weapons) have targeted particular countries. The Global Magnitsky Act represents a shift from geographical to thematic sanctions. For the EU, a potential advantage of this approach is that it could target human rights violators from countries not previously covered by sanctions merely by amending the list of designated persons, a less cumbersome procedure than adopting a completely new sanctions programme.

At the same time, a thematic approach might be less damaging to the EU's relations with third countries than geographical sanctions. At present, the EU has a tendency to avoid sanctions against allies and economic partners (such as Saudi Arabia or Bahrain), even though US-based NGO Freedom House [suggests](#) that the human rights situation there is even worse (199th and 188th respectively out of 209 countries and territories) than in targeted countries (such as Iran, in 180th place). This inevitably leads to accusations of [double standards](#). By contrast, the Global Magnitsky Act targets not only Kremlin functionaries and Myanmar generals, but also former Gambian president Yahya Jammeh, a Serbian [arms dealer](#), as well as [Belgian](#) and [Israeli](#) businessmen implicated in corrupt mining deals. These measures do not appear to have

[affected](#) Washington's relations with the targeted individuals' countries of origin – for example, Saudi Arabia, which has no fewer than 17 persons on the list for their role in the killing of Jamal Khashoggi.

Magnitsky-style laws in other countries

Following the US Global Magnitsky Act, five other countries (in chronological order, Canada, Estonia, Lithuania, the United Kingdom and Latvia) have adopted similar laws. [Canadian](#) legislation is modelled on the 2016 US Global Magnitsky Act and targets nationals of several countries, whereas the three Baltic countries' lists are [identical](#) to that of the 2012 Magnitsky Act, exclusively targeting Russian officials. The [UK](#) does not disclose the names of persons targeted by Magnitsky-style measures. A January 2019 [resolution](#) by the Parliamentary Assembly of the Council of Europe called for more countries to consider following suit.

Growing momentum for a European human rights sanctions regime

Sanctions are more effective when adopted by the EU as a whole rather than by a few Member States. Both the [Lithuanian](#) and [Dutch](#) parliaments have called for EU-level measures, and the European Parliament is also in favour (see below). Following the April 2018 resolution of the Dutch Parliament, in November 2018 the Netherlands [floated](#) the idea at a [conference](#) of EU, US and Canadian diplomats, and one month later (on the 70th anniversary of the UN's Universal Declaration of Human Rights) at the Council of the EU.

As EU foreign ministers have not formally tabled the initiative for debate, work on drafting a more detailed proposal has not yet begun. In the meantime, informal behind-the-scenes [discussions](#) are continuing in Brussels at the level of Council working groups. The scope, likely added value, and coordination with existing country-based sanctions programmes are among the issues being discussed.

Specific issues that the proposed sanctions regime would have to address

Resilience to legal challenges: in 2017, no fewer than [62](#) legal challenges were lodged with the EU's General Court. In previous years, such challenges were more likely to succeed than not. The Council's Legal Service [claims](#) that since 2015 the tendency has been reversed, with a majority of sanctions upheld; nevertheless, a significant number are still being overturned. To enable further improvements, evidence needs to be more robust (however, obtaining evidence of human rights violations in third countries is often difficult), and criteria for inclusion on sanctions lists more carefully defined.

Mechanism and criteria for sanctions: according to one [proposal](#), a committee of experts rather than EU governments could be tasked with selecting the most pressing cases – a procedure that would have the advantage of depoliticising the process and avoiding geopolitical bias. Given that an EU list can include only a small sample of the many thousands of human rights abuses across the world, one criterion for selection could be impact. It makes sense to target (for example) Russian officials with personal and financial interests in Europe, rather than Myanmar generals who have no such interests. That said, sanctions also play an important role in signalling acts that the EU finds unacceptable, regardless of the impact.

Scope of sanctions regime: US legislation targets both human rights abuses and corruption, given the link between the two in the Magnitsky case. An EU sanctions regime would need to decide whether to retain this dual focus or to concentrate only on human rights.

Need for unanimity: although EU foreign ministers [welcomed](#) the initiative, it is not clear whether they would actually vote for a new sanctions regime, something that as part of the EU's common foreign and security policy requires a unanimous Council decision. In the past, some governments have been [reluctant](#) to upset powerful countries with poor human rights records such as China and Russia.

Should a new regime be adopted, the question will arise as to whether to add individuals to the list by a unanimous or a qualified-majority vote. Although in September 2018 European Commission president Jean-Claude Juncker [suggested](#) that the EU could move to qualified majority voting on sanctions, in March 2019, Commissioner Johannes Hahn insisted that all sanctions decisions would continue to require unanimity.

European Parliament position: in its [resolution](#) of March 2019, adopted by a large majority, Parliament reiterated its previous support for the new sanctions regime, and urged the Council to reach agreement on it by the end of the parliamentary term in May 2019. Parliament is in favour of the Council adopting sanctions by qualified majority rather than unanimity. Given the symbolic importance of the Magnitsky case, Parliament feels that the regime should be named after him, following the example of the US Global Magnitsky Act.

