

Towards an EU global sanctions regime for corruption

SUMMARY

Corruption, and particularly grand corruption relating to government officials, has a harmful effect on democracy, the rule of law, human rights, security, the eradication of poverty, and sustainable development, all objectives of the EU's external action. Corruption in third countries can also affect the functioning of EU democracy with flows of money buying political influence in the EU.

In her 2022 State of the Union address, the European Commission President, Ursula von der Leyen, proposed to include corruption in the EU's human rights sanctions regime. The Commission cannot initiate the relevant legislation on its own, however. EU sanctions are laid down in common foreign and security policy-related decisions, adopted unanimously by the Council on the basis of a proposal by the High Representative. If such a Council decision includes economic or financial sanctions, these need to be implemented by means of a Council regulation, following a joint proposal of the High Representative and the Commission.

While the drafting of the new legislation has not yet officially begun, the Council is holding debates on the appropriateness of using CFSP sanctions to target corruption. The approach to adopt in order to impose sanctions to target corruption globally could involve creating a horizontal sanctions framework (by expanding the scope of the existing human rights sanctions mechanism adopted in 2020 or by setting up a new dedicated regime), or introducing case-by-case country-specific sanctions regimes.

Although Parliament does not play a formal role in the legislative process leading to the adoption of sanctions, since 2012 – when the international debate on the possibility of establishing such a sanctions regime first arose – it has expressed strong support for an EU sanctions regime applicable to corruption globally, and has asked to be involved in this process.



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Background

In December 2020, the EU adopted a [global human rights sanctions regime](#) (EUGHR SR) enabling it to apply targeted restrictive measures against persons responsible for serious human rights violations and abuses (such as genocide, torture, slavery, extrajudicial killings or arbitrary arrests), and for other human rights violations (such as human trafficking, abuses of freedoms of: peaceful assembly, association, opinion and expression, religion and belief), if widespread and systematic. The regime is the EU's own version of the Magnitsky laws adopted by certain major democracies, such as the United States (US), Canada and the United Kingdom (UK), following Sergei Magnitsky's case in Russia. [Magnitsky](#) was a Russian auditor and tax advisor who, after claiming to have uncovered massive fraud involving corrupt tax officials and criminal organisations, was himself accused of tax evasion and arrested in 2008; he died in prison a year later, after having been severely beaten and denied access to medical treatment. The case caused an international outcry and, in its aftermath, the US was the first country to adopt [targeted sanctions](#) against Russian officials in relation to this case in 2012 and then to move to a [global sanctions regime](#) in 2017.

Unlike the US and Canadian Magnitsky laws,¹ the EU system does not include corruption among the grounds for applying sanctions, despite calls in this respect made by the European Parliament during the preparation of the legislation (see section below). The growing recognition of the negative effects of corruption on democracy and the rule of law in the world (including the risk that it distorts decision-making in democracies), but also on peace and stability as illustrated by the war unleashed against Ukraine by a deeply [corrupt Russian regime](#), has put this issue back on the political agenda.

Corruption: A heavy burden on democracy and sustainable development

There is wide recognition of the deleterious effects of corruption on human rights, the state of democracy, the functioning of state institutions, and social and economic development. A [declaration](#) adopted in June 2021 by the United Nations (UN) General Assembly's [special session](#) on corruption emphasised that corruption is an 'impediment to the achievement of the 2030 Agenda for Sustainable Development and an obstacle to the efficient mobilization of resources and means for sustainable development'. According to the same declaration, corruption undermines the institutions and values of democracy and nations' ethical values and justice, and jeopardises the rule of law. The declaration reaffirmed the UN member states' common commitment to ending impunity for corruption offences.

Despite such international pledges, corruption remains a pervasive phenomenon that often goes unpunished particularly when linked to those in power. [Grand corruption](#) – 'the abuse of high-level power that benefits the few at the expense of the many' – is the phenomenon's most toxic facet. According to [Transparency International](#), 'kleptocrats often enjoy impunity for grand corruption because the national judicial systems are unable or unwilling to hold them accountable'. Transparency International's Corruption Perception Index (CPI)² emphasises the correlation between human rights and democracy, on the one hand, and the absence of corruption, on the other: 'The [2021 CPI results](#) show that countries with well-protected civil and political liberties generally control corruption better'. Conversely, corruption, especially grand corruption, [contributes](#) to the deterioration of the basic elements of the rule of law underpinning democracy.

It is therefore clear that corruption [undermines](#) the main objectives of the EU's external action listed in Article 21(2) of the Treaty on European Union (TEU), which are to consolidate and support: democracy, the rule of law, human rights and international law, and foster the sustainable economic, social and environmental development of developing countries. Consequently, the fight against corruption is a legitimate part of the pursuit of these objectives.

Corruption under existing sanctions regimes

Corruption-related EU sanctions

In the 1990s, the EU began adopting country-based sanctions, including targeted [restrictive measures](#) against individuals and entities on grounds of gross violations of human rights, and/or on grounds of actions undermining democracy and the rule of law (e.g. [Belarus](#) 2004, Myanmar 1996, [Venezuela](#) 2017).

Initially, EU sanctions programmes were always geographically directed at individual countries, but the EU gradually started developing thematic sanctions in line with similar trends in certain major democracies. In 2001, the EU adopted a counter-terrorism sanctions [framework](#) with unlimited geographical scope. In 2018, it set up a sanctions [mechanism](#) targeting the use of chemical weapons, and in 2019 [another](#) targeting cyberattacks.

At the end of 2020, the EU adopted legislation establishing a new global human rights sanctions [regime](#).³ The legislation includes a [decision](#) under Title V on the common foreign and security policy (CFSP) of the [TEU](#). This decision, adopted unanimously by the Council, sets out the political and legal basis for sanctions. The Council further adopted an EU [regulation](#) outlining uniform financial measures, more specifically asset freezes, to be applied across the EU. Although [inspired by](#) the US Magnitsky Acts and similar Canadian legislation, the EU's legislation differs in that it leaves out corruption as grounds for imposing sanctions on individuals or entities.

So far, the EU has used geographical sanctions to target cases of grand corruption. In three cases, the EU applied sanctions against leaders and high-ranking officials from authoritarian regimes, which had been toppled by popular uprisings, in order to facilitate the recovery and restitution of stolen assets, namely in [Egypt](#), [Tunisia](#) and [Ukraine](#). The [sanctions regime](#) adopted by the EU in 2021 in view of the situation in Lebanon also targets serious financial misconduct concerning public funds that would qualify as corruption under international norms, but no individual measures have yet been adopted.

So far, these are the only cases where the EU has applied sanctions targeting corruption.⁴ Their exclusive targets were persons already under investigation in their own countries, a circumstance that significantly limits the possible scope of EU sanctions.⁵ Moreover, the main aim of these sanctions was not to fight corruption but rather to apply a 'foreign policy rationale', according to [research](#) on the matter. Such sanctions remain fragile and vulnerable to challenges before the European Court of Justice (CJEU).⁶ Since the EU has no competence to conduct its own investigations, the Council has had to rely on evidence from the requesting states' prosecution offices and to make sure this evidence was obtained in line with the rules on due process. However, according to a CJEU judgment on persons accused of misappropriation of state funds in Egypt ([C-220/14 P – Ezz and Others v Council](#)), the Council did not have to verify whether the investigations to which the appellants were subject were well founded or not, but only to verify whether its own decision to freeze funds was well founded in the light of the evidence submitted to it.

Overall, thematic sanctions are considered to have several general advantages over country sanctions, insofar as:

- they are more flexible, and once the system is in place, only a Council decision is needed to add the names of those subject to sanctions to the list, instead of establishing a new system each time;
- they do not target the country of those subject to sanctions and therefore do not necessarily damage bilateral relations so much (although governments, for instance China's, have retaliated);
- they have unlimited geographical scope;
- they allow for easier coordination with other like-minded democracies (sanctions are more effective when applied in a multilateral manner⁷);

- unlike general economic and trade sanctions (which are a type of country sanctions that the EU only imposes in extreme circumstances, for instance, against Syria, Russia or Iran), they affect ordinary people to a much lesser extent, because their effect on trade and the economy is limited.⁸

Risk of sanctions being challenged before the European Court of Justice

The biggest challenge for various EU sanctions mechanisms is their legal vulnerability. Under EU sanctions, including the geographical ones, persons and organisations targeted have the right to know the reasons for their designation and to challenge them in court. Many of those designated have used this right. Between 2017 and 2021, [163 cases](#) (almost 5 % of all cases) were brought before the CJEU to challenge EU sanctions. The high number of challenges in court proves that sanctions have a potential impact and that the individuals/entities concerned are worried not only about their specific effect but about their reputational consequences as well.

The Council lost some of these cases and was forced to drop the designations. According to [Clara Portela](#), an academic researcher on sanctions, 'Unfavourable rulings are seen as impinging upon the Council's credibility and prestige'. Moreover, if it loses a case, the Council may have to pay compensation. In the *Safa Nicu Sepahan Co. v Council* [case](#) (2014), the CJEU decided for the first time to order the Council to pay compensation in respect of the reputational damage sustained by a person designated without substantiating evidence for the statement of reasons in the Council's decision. Obtaining compensation however remains [highly difficult](#), as establishing a serious breach of EU law requires more than just establishing that the sanctions are unlawful.

Corruption-related sanctions imposed by major democracies

The US has the Magnitsky Act and the [UK](#) and Canada have Magnitsky-style legislation that include corruption among the grounds for targeted sanctions.

Table 1 – Comparison of core provisions on corruption in third countries' sanctions regimes

	US	Canada	UK
Applicable law	Global Magnitsky Human Rights Accountability Act, 22 USC 2656	Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)	The Global Anti-Corruption Sanctions Regulations 2021
Type of corruption covered	significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions (SEC. 1263(3))	acts of corruption –including bribery, the misappropriation of private or public assets for personal gain, the transfer of the proceeds of corruption to foreign states or any act of corruption related to expropriation, government contracts or the extraction of natural resources (Article 4.2))	(a) bribery; or (b) misappropriation of property (Article 4.2)
Link to government	[it] is a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption [as explained above] (SEC. 1263(3))	a foreign public official or an associate of such an official (Article 4.2(c))	a foreign public official [for definition see Article 4.5] is or has been involved in serious corruption (Article 6.2)

	US	Canada	UK
Threshold	significant corruption (SEC. 1263(3))	acts of corruption ... which amount to acts of significant corruption when taking into consideration, among other things, their impact, the amounts involved, the foreign national's influence or position of authority or the complicity of the government of the foreign state in question in the acts (Article 4.2(c))	serious corruption (Article 6.2)
Persons other than the main perpetrator covered by the law	foreign person... who has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in paragraph (3) [see type of corruption covered for paragraph 3]	an associate of such an [public] official, [who] is responsible for or complicit in ordering, controlling or otherwise directing acts of corruption (4.2(b)) [who] has materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of, an activity described in paragraph (c). (Article 4.2(d))	[person other than the main perpetrator involved in serious corruption:] (b) is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved, (c) is acting on behalf of or at the direction of a person who is or has been so involved, or (d) is a member of, or associated with, a person who is or has been so involved (Article 6.3)

Data source: Compiled by the author based on the legislative texts referenced in the table. All passages, except those in square brackets, are direct quotes from these laws.

According to an Open Society Foundations [2022 report](#), 'Of the three, the U.S. has been the most robust in its use of corruption-related sanctions, outnumbering Canada and the UK nearly ten-fold', but it should be taken into account that the UK regime entered into force in 2021, the other two in 2017. According to the same source, this discrepancy is also to be explained by the fact that the US sanctions often target the entire corrupt network of associates.

What would an EU corruption sanctions regime entail?

In her [2022 State of the Union address](#), the European Commission President, Ursula von der Leyen, proposed that corruption be included in the EU global human rights sanction regime. The Council has not yet come up with an official position. A discussion on the appropriateness of using CFSP sanctions to target corruption is ongoing in the Council. The Working Party on Human Rights ([COHOM](#)) is the group involved in the preparatory work in the Council.

There are different options available to the EU when it comes to imposing sanctions on corruption globally. As explained above, corruption can be included on a case-by-case basis in geographical country-based sanctions regimes. Establishing a specific global corruption sanctions regime can be done in one of two ways, as proposed in the European Parliament recommendation of February 2022 (see section below). One involves amending the existing human rights sanctions mechanism to include corruption, as suggested in von der Leyen's address. However, corruption does not always constitute a human rights abuse, even if it is often [connected](#) with serious violations of human rights. The corruption sanctions regime may therefore need to be justified by its link with different CFSP objectives set out in [Article 21 TEU](#). This makes the case for using the second approach, which involves establishing a new distinct sanctions regime that would cover corruption.

For this to happen, a double legislative proposal needs to be put forward, which the Commission cannot do on its own. Adoption of EU sanctions takes place under the CFSP framework (Title V on

CFSP of the TEU). [EU sanctions](#) are laid down in a CFSP decision, adopted by unanimity by the Council, based on a proposal made by the High Representative of the Union for Foreign Affairs and Security Policy. This decision outlines the political and the legal basis of the regime. If it includes asset freezes or other economic and/or financial sanctions (as would most likely be the case for corruption-related sanctions), these need to be laid out in a Council regulation, proposed jointly by the High Representative and the Commission. This regulation is adopted by qualified majority in the Council. Once in place, the sanctions are normally reviewed and renewed every 12 months.

Main issues to be considered by a new legislative proposal

The main issues that are relevant in the context of the possible legislative process include:⁹

- the legal basis under the Treaty (e.g. Article 21 TEU – CFSP objectives such as the rule of law, democracy, international security);
- the need to define corruption. One [recommendation](#) from a civil society expert in this respect is that 'The definition of corruption must be clear and consistent with other existing regulations, like the United Nations Convention against Corruption ([UNCAC](#))';
- the need to define threshold of gravity: international sanctions are applied to serious violations, as is also the case with the EUGHR SR (Article 2 – which limits the scope of the regime to the most severe human rights violations). How is the threshold of gravity to be defined in the case of corruption?;
- the question of where the initiative for listings of perpetrators should come from? Based on Article 30 TEU, under the existing EUGHR SR, according to Article 5 of the relevant Council decision, only the High Representative and the EU Member States can make proposals for listings, which the Council would then endorse by acting by unanimity. Under the EUGHR SR, the Commission, the Parliament and civil society do not play a formal role in the process, but there is no legal obstacle, for example, to the High Representative taking into account their recommendations when making proposals for a listing. In its abovementioned 2021 resolution, the Parliament asks to be granted 'an enhanced role' and proposes to exercise parliamentary scrutiny over the regime. It further recommends a better institutionalised involvement of civil society as a provider of evidence in the new/amended regime (through 'an EU-level advisory committee and regular meetings').
- the need for the regime to provide adequate safeguards to protect the fundamental rights of those designated, in line with a 2008 CJEU [ruling](#).¹⁰

An important element is the type of agreement needed in the Council for designating entities or individuals under the future system. Doing so requires unanimity under the existing systems, which can make decisions difficult and slow. That is why several EU institutions support a shift to [qualified majority](#) in selected CFSP decisions. For example, the Commission and the High Representative made a [proposal](#) for the activation of the [passerelle clause](#) with respect to EU external action on human rights in an annex to the [EU action plan on human rights and democracy 2020-2024](#), but did not get sufficient backing in the Council. The [Conference on the Future of Europe](#) expressed support for moving to majority voting on issues related to human rights in external policies, a [position](#) endorsed by the Parliament specifically with regard to sanctions.

Civil society and academic views

Civil society organisations have expressed strong support for an EU regime of sanctions on corruption. In a [statement](#) published in December 2020, soon after the EU adopted its human rights sanctions regime, several civil society expressed strong support for the establishment of a specific EU sanctions regime for corruption, noting that, with other major democracies having such systems in place, 'the EU risks becoming a loophole and a safe haven for the corrupt'. According to a March 2022 [report](#) by Open Society European Policy Institute, the recent revelations made by the Pandora and Panama papers 'show the urgent need to act against kleptocratic and illicit money

flows', which also undermine EU democracy at home by exercising undue influence. The report considers that 'corruption is a threat to the stability and security of democracy, rule of law, and human rights'; this should motivate the EU and its Member States to adopt an anti-corruption sanctions regime. Equally importantly, such a regime would enable the EU to coordinate with like-minded democracies such as the US, the UK, Canada, and Australia. Sanctions are much more effective if applied in a multilateral coordinated manner. The need to involve civil society in order to gather the necessary evidence to protect due process has also been underlined by [an expert from the same institute](#).

Academic research has focused on the issues of effectiveness and compatibility with due process and human rights norms. Travel bans and asset freezes directly affect only those who have assets or want to travel to the EU, which may often not be any of the designated persons (though in the case of [Russian oligarchs](#), EU asset freezes have been highly effective). Given this limited direct effect, one of the most debated aspects among scholars has been the effectiveness of targeted sanctions in general.¹¹ According to Carla Portela,¹² sanctions aim to achieve a change of behaviour in third countries not only from persons subject to sanctions, but also by deterring other potential abuses (an effect that is hard to measure though); sanctions can also pursue a multiplicity of other political objectives at home and in the targeted country.

With regard to legal and procedural issues, according to [Antonino Ali](#), associate professor at the University of Trento, (2019) 'there are serious issues in the decision mechanism of the [EU] "sanctions machine"', such as the insufficiency of evidence and the complexity of the administrative procedure. The same author notes however that 'the quality of sanctions listing has improved, with better definition and more substance underpinning the reasons for listing'. Another [concern](#) refers to the fact that when the EU relies on evidence provided by third countries' authorities, there is a risk that its measures can be used to target political opponents. The need to ensure the compatibility of international sanctions regimes not only with EU law and fundamental rights but also with international law, and particularly international human rights norms, has also been underlined.¹³

Parliament's position

The European Parliament has been a vocal supporter of Magnitsky-style human rights sanctions from the beginning of the debate. Parliament insisted that the human rights sanctions regime that the EU adopted in December 2020 should also cover corruption. For example, in resolutions adopted as early as [2012](#) and [2017](#), the Parliament asked for the Russian state officials responsible for the death of Russian whistle-blower Sergei Magnitsky to be included on an EU sanctions list. In a 2019 [resolution](#) on a European human rights violations sanctions regime, Parliament stressed that restrictive measures should be imposed 'against any individual or entity responsible for, involved in or which has assisted, financed or contributed to the planning, directing or committing of gross human rights violations, abuses and acts of systemic corruption related to grave human rights violations'. In a [resolution of 8 July 2021](#) on the EU global human rights sanctions regime, Parliament called on the Commission and the High Representative to put forward a legislative proposal in order to include corruption in the EUGHR SR.

On 17 February 2022, the Parliament adopted a [recommendation](#) to the Council and the High Representative concerning corruption and human rights. Among other measures, the Parliament proposed that the EU either extend the scope of the human rights sanctions mechanism to include acts of corruption or alternatively come forward with a legislative proposal to adopt a new thematic sanctions regime against serious acts of corruption. Moreover, Parliament insisted that the EU move to qualified majority voting for the adoption of sanctions under the new sanctions regime and ensure a proactive role for the Parliament in this regime.

MAIN REFERENCES

Russell M., [Global human rights sanctions – Mapping Magnitsky laws: The US, Canadian, UK and EU approach](#), briefing, EPRS, November 2021.

Portela C., [Targeted sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level](#), study, DG EXPO, 2018.

Portela C., [Sanctioning kleptocrats. An assessment of EU misappropriation sanctions](#), CiFAR – Civil Forum for Asset Recovery, 2019.

Open Society European Policy Institute, [Why the European Union Needs Anticorruption Sanctions. A powerful tool in the fight against corruption](#), 2022.

ENDNOTES

- ¹ The UK has two separate sanctions regimes addressing human rights and corruption respectively.
- ² According to the organisation's [webpage](#), 'The Index ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople'.
- ³ Pending the adoption of the EUGHR SR, the three Baltic countries – Estonia, Lithuania and Latvia – [passed](#) their own versions of the Magnitsky law, banning perpetrators of grave human rights violations, particularly from Russia and Belarus, from travelling to their territories.
- ⁴ [EU sanctions against Russian oligarchs](#) do not mention corruption. They target these oligarchs' role in supporting or benefitting from Russian actions undermining Ukraine's territorial integrity, as well as their economic role in Russia.
- ⁵ Particularly in corrupt authoritarian regimes, ruling elites are much less likely to face prosecution for corruption. According to [UNODC/GRACE Module Series on Anti-Corruption](#), 'While some autocracies have managed to control petty and bureaucratic corruption, the forms of corruption that benefit the ruling elite tend to remain unchanged'.
- ⁶ According to Portela, the EU sanctions regime for asset recovery has been inactive since 2014, when it was last applied to Ukraine. This inactivity has to do with the difficulties involved in gathering sufficient evidence from third countries. Judicial proceedings in Egypt, Tunisia and Ukraine have been slow and vulnerable to political interference. One solution proposed by the author is to replace EU-level measures with national-level measures once illegal assets have been identified in certain Member States. This would minimise the risk of these measures being challenged before the CJEU.
- ⁷ See Open Society Foundations, [Multilateral Magnitsky Sanctions at Five Years](#), November 2022.
- ⁸ See in this respect, Ghodsi, Mahdi; Karamelikli, Hüseyin (2020): [The impact of sanctions imposed by the European Union against Iran on their bilateral trade: General versus targeted sanctions](#), wiiw Working Paper, No 181, The Vienna Institute for International Economic Studies (wiiw), Vienna.
- ⁹ According to EU officials involved in the process, and to other independent experts indicated in the section on academic views.
- ¹⁰ Judgment of the Court (Grand Chamber) of 3 September 2008. *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*.
- ¹¹ See European Parliament study on [Targeted sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level](#), DG EXPO, 2018. On the effectiveness of UN targeted sanctions, see T. J. Biersteker, M. Tourinho and S. E. Eckert [The effectiveness of United Nations targeted sanctions](#).
- ¹² See C. Portela, [Sanctioning kleptocrats. An assessment of EU misappropriation sanctions](#), 2019, p. 5.
- ¹³ For example, Anton Moiseienko, [Corruption and Targeted Sanctions: Law and Policy of Anti-Corruption Entry Bans](#), 2019.

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