EUROPE 16.03.2020 | Loraine Rickard-Martin & Jedrzej Nowe

Can the EU create a powerful sanctions regime?

An EU version of the Magnitsky Act would be a demonstration of global leadership against human rights abuses

Read this article in German.

In December, EU foreign ministers agreed to work on a European version of the United States Magnitsky Act – a measure aimed at the perpetrators of serious human rights abuses. The EU's High Representative, Josep Borrell, has said it will be 'a tangible step reaffirming the EU's global lead on human rights'.

He's right. Ultimately, these new sanctions present an opportunity for Europe to move beyond self-interested political calculations and to lead by its values in a world where former leaders are failing to do so. For maximum effect, the EU must also incentivise the rest of the world to follow in the application of due process. In showing global leadership by integrating due process into its sanctions, the EU would avoid creating a paper tiger – ineffective, despite its threats.

Writing in the EUobserver last year, Christina Eckes, professor of European law at the University of Amsterdam, noted that the US regime does not include due process safeguards such as delisting procedures or judicial review that meet the requirements of either the EU Charter of Fundamental Rights or the European Convention on Human Rights. 'The EU's commitment to human rights, including the human rights of those sanctioned,' she wrote, 'requires the EU to distinguish its sanctions regime from the US Global Magnitsky sanctions, not just in substance but also in name.'

An evolution of sanctions

In focusing its planned mechanism on the use of individual targeted sanctions, the EU is responding to realities that spurred the evolution of

multilateral sanctions to mitigate their humanitarian impact.

In the past two decades, UN sanctions have gradually evolved from the blanket trade ban model to targeted measures, primarily in response to the evolving nature of threat actors such as armed non-state combatants, and to diminish their unintended consequences on innocent civilians. A further evolution of threat actors required a trifurcation of sanctions aimed at state and non-state actors responsible for terrorism, civil conflict, and atrocities. However, robust state-driven WMD proliferation has prompted the reintroduction of old-style comprehensive sanctions measures.

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Since the end of the Cold War, sanctions have become the most common tool for maintaining and restoring international peace and security in the global community, for obvious reasons related to the limitations of diplomacy and armed force. In fact, sanctions have been an important tool of EU foreign policy in the past 20 years, primarily to support its human rights and democratic values.

A question often asked about sanctions is 'But do they work?' Those finding easy answers to this question overlook the reality – that sanctions are part of a larger policy package that includes incentives and disincentives. Their effectiveness is related to the level and quality of monitoring and enforcement, and to their global perception as fair, or at least as legitimate. These factors directly relate to the level of political support for sanctions.

A global act

In 2012, in response to the alleged torture and death of Russian lawyer and auditor Sergei Magnitsky in a Russian prison, the US Congress passed a law named after him that imposed individual targeted sanctions on Russian officials and entities committing serious human rights abuses and corruption.

Magnitsky had exposed alleged tax fraud among high-level Russian government officials. The US sanctions include the denial or revoking of visas, and freezes on the assets and property of persons or entities committing or complicit in such acts.

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beyond Russian nationals to include persons anywhere in the world committing such acts. In addition, countries and individuals doing business with such persons or entities can themselves be subject to US sanctions.

Since the sanctions came into effect with the original list of Russian nationals, the US has imposed sanctions on 17 Saudi nationals allegedly involved in the murder of journalist Jamal Khashoggi and on Israeli billionaire Dan Gertler, alleged to be linked to bribery schemes in the Democratic Republic of the Congo, among others.

Among the most recent targets of the act are Cambodian timber tycoon Try Pheap and general Kun Kim, both allegedly linked to serious human rights and environmental abuses; and the commander-in-chief of the Myanmar armed forces, Min Aung Hlaing, alleged to have overseen atrocities and human rights abuses against the Rohingya.

Lifestyles denied

There is no doubt that individual targeted sanctions have a psychological as well as a practical impact. People subject to travel bans or asset freezes, despite protestations to the contrary, suffer from the collective disapproval of the international community. In addition, they and their families are constrained from travelling and lose out on education opportunities abroad. Essentially, they are denied the lifestyles to which they have become accustomed, and which are often the incentives for their misdeeds and political loyalties.

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There is also no doubt that without ensuring the full application of due process, individual targeted sanctions can militate against fundamental human rights. In the UN experience, some people who are delisted have had to wait years before financial institutions unblocked their assets. Ensuring the availability of exemptions based on humanitarian need is also essential.

In 2005 at the UN World Summit, EU states were among those calling for fair and clear procedures. Challenges to sanctions on listed people in European and other national courts have spurred due process reforms in UN sanctions. Indeed, EU states have been at the forefront of the UN effort over the past 15 years to ensure the due process rights of listed individuals, in both listing and delisting.

In need of leadership

The Global Magnitsky Act is viewed as a major development in the prevention of serious human rights and corruption worldwide. Not only is it a deterrent to such abuses, it also has the potential to encourage countries to improve their accountability record.

The UK, Canada and the Baltic states have implemented versions of the Magnitsky Act, and other states are contemplating doing the same. In building on these initiatives, any new EU regime should be in line with the European Convention on Human Rights and the rule of law and supported by all EU member states.

An EU resolution along the lines of the Magnitsky Act would demonstrate a unified response to human rights abuses in a world that is sorely in need of principled leadership. That said, the EU must ensure its initiative is built on lessons learned from its monitoring and implementation of its own regimes, its record of championing human rights and due process in UN sanctions.



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