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Strengthening EU asset recovery and sanction tracing against transnational high-level corruption

EU Sanctions Implementation and Enforcement: Legal and Policy Recommendations

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Table of Contents

List of abbreviations

AML	Anti-Money Laundering
AMLA	Authority for Anti-Money Laundering and Countering the Financing of Terrorism
CFSP	Common Foreign and Security Policy
CFT	Countering the financing of terrorism
CJEU	Court of Justice of the European Union
Commission	European Commission
Council	Council of the European Union
EPPO	European Public Prosecutor's Office
EU	European Union
FAQ	Frequently Asked Questions
FATF	Financial Action Task Force
MFA	Ministry of Foreign Affairs
NCA	National Competent Authorities
OFAC	Office of Foreign Assets Control
PEP	Politically exposed person
SME	Small and medium-sized enterprise
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNSC	United Nations Security Council

Executive Summary

- The anti-corruption package presented by the European Commission in May 2023 includes a proposal by the High Representative of the Union for Foreign Affairs and Security Policy to introduce a new EU sanctions regime to fight serious acts of corruption worldwide. While the EU considers this proposal, other states have already introduced similar anti-corruption sanctions regimes. In this report, we analyse and compare existing anti-corruption sanctions frameworks. The report finds that while national frameworks for anti-corruption sanctions share certain similarities, they also differ in their implementation and effectiveness. Our recommendations highlight the need for a more unified approach to enhance the impact of these sanctions, i.e. multilateralize anti-corruption sanctions.
- A new EU sanctions regime targeting acts of significant corruption, if adopted, will rely upon the existing system governing the implementation and enforcement of EU restrictive measures (sanctions). With this in mind, we described the current system for implementing and enforcing EU restrictive measures, which is complex and involves multiple actors. Recent efforts to enhance this system have also been outlined.
- In order to illustrate inconsistencies and challenges in the uniform and effective application of EU restrictive measures, we summarized the most common types of sanctions circumvention. The report identifies several common methods used to circumvent EU sanctions, including the abuse of exceptions, obfuscation of the destination and the end-users of dual-use goods and the use of family members to conceal ownership of assets. These and other practices undermine the effectiveness of EU sanctions.
- While this report identifies loopholes and challenges in EU sanctions implementation and enforcement, we prepared recommendations to address some of these problems. The report recommends enhancing cooperation between the NCAs of the Member States, educating national court judges on EU restrictive measures and engaging with the private sector to improve the implementation and enforcement of EU sanctions. It also suggests creating a centralized database of licenses and authorizations granted by the NCAs and making information on beneficial ownership available to the private sector.
- The report outlines policy recommendations for a new EU sanctions regime targeting significant acts of corruption, in the event that it is adopted. It emphasizes the need for a clear definition of sanctionable conduct and suggests that high-level corruption should be sanctioned. The report also emphasizes the need to address the involvement of professional enablers in hiding the proceeds of corruption. It suggests sanctioning immediate family members of sanctioned individuals and leveraging civil society to collect information on potential corruption schemes and the actors involved. Finally, it discusses the political implications of anti-corruption sanctions and the potential for retaliatory actions by other states, emphasizing the need for careful consideration of these risks and the importance of being prepared for possible retaliatory measures.

"It is a world where kleptocracy is political, global, and professional."

***Indulging Kleptocracy*,**

John Heathershaw, Tena Prelec and Tom Mayne

1. Introduction

In her 2022 State of the Union Address, the President of the European Commission, Ursula von der Leyen, announced that fighting corruption both at home and abroad should be a priority for the EU.[1] Building on this, in May 2023, the Commission presented an anti-corruption package composed of three elements:[2]

- a joint communication by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy on the fight against corruption;
- a proposal by the High Representative of the Union for Foreign Affairs and Security Policy to introduce a new EU sanctions regime to fight serious acts of corruption worldwide; and
- a proposal for a directive on combating corruption by means of criminal law, based on Article 83 of the Treaty on the Functioning of the European Union (TFEU).[3]

The European Parliament has been a vocal supporter of a new EU sanctions regime targeting serious acts of corruption. In 2021, the European Parliament called on the Commission "to come forward with a legislative proposal to amend the current EU GHRSR [Global Human Rights Sanctions Regime] legislation by extending its scope to include acts of corruption".[4] The following year, the European Parliament reiterated its request to either broaden the scope of the existing EU GHRSR to include acts of corruption or to adopt a new thematic sanctions regime targeting serious acts of corruption.[5] A year after that, in its resolution of 9 November 2023 on the effectiveness of the EU sanctions on Russia, the European Parliament explicitly requested that the Council "accelerate its work towards reaching an agreement for the swift adoption of the proposed regulation on restrictive measures against serious acts of corruption".[6]

Despite the aspiration of the President of the European Commission to incorporate corruption into the list of acts of wrongdoing that provide the basis for the adoption of the EU restrictive measures[7] and the proposal of the High Representative of the Union for Foreign Affairs and Security Policy to establish a new EU sanctions regime targeting serious acts of corruption worldwide[8], an agreement has not yet been

[1] European Commission, 2022 State of the Union Address by President von der Leyen, (2022), https://ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493.
[2] Piotr Bąkowski, *Combating corruption in the European Union* (European Parliamentary Research Service December 2024).
[3] The Treaty on the Functioning of the European Union (TFEU) includes corruption on the list of "particularly serious crime with a cross-border dimension", allowing the European Parliament and the Council to establish minimum rules concerning the definition of criminal offences and sanctions (Article 83(1) of the TFEU). On this basis, in May 2023, the Commission made a proposal for a directive that seeks to approximate national criminal laws on corruption.
[4] European Parliament Resolution of 8 July 2021 on the EU Global Human Rights Sanctions Regime (EU Magnitsky Act) (2021/2563(RSP)).
[5] European Parliament Recommendation of 17 February 2022 to the Council and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy concerning corruption and human rights (2021/2066(INI)), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0042_EN.pdf.
[6] European Parliament Resolution of 9 November 2023 on the effectiveness of the EU sanctions on Russia, (2023/2905(RSP)), at para. 23.
[7] Ursula von der Leyen declared: "We will also propose to include corruption in our human rights sanction regime, our new tool to protect our values abroad."
[8] European Commission, *Anti-corruption: Stronger rules to fight corruption in the EU and worldwide*, Press Release, 3 May

reached. It should be noted that a number of states, including the United States, Canada, the United Kingdom and Australia, already sanction acts of significant corruption under their human rights sanctions regimes (Magnitsky-style sanctions).[9]

THE OBJECTIVES OF THE REPORT

Against the background of current discussions concerning a new EU sanctions regime targeting acts of significant corruption, this report pursues three intertwined objectives. First, we analyse and compare the existing anti-corruption sanctions frameworks introduced by the United States, Canada, the United Kingdom and Australia (Section 2). Second, we describe the current system for the implementation and enforcement of EU restrictive measures, along with recent efforts to update it (Section 3). We also provide a summary of the most common types of EU sanctions circumvention (Section 4). Third, we present two lists of recommendations: the first relates to the enhancement of the current system governing the implementation and enforcement of EU restrictive measures (Section 5), whereas the second concerns a prospective EU sanctions regime targeting acts of significant corruption (Section 6).

THE LIMITATIONS OF THE REPORT

The report will not discuss the recently adopted Directive (EU) 2024/1260 on asset recovery and confiscation published in May 2024, nor will it discuss the existing rules on asset recovery and compensation.

METHODOLOGY

To achieve the research objectives outlined above, three major types of legal research have been employed – doctrinal research (black-letter research), empirical legal research and comparative legal research – each with its own methodological approaches. Doctrinal research involves the analysis of primary and secondary sources of law, which entails the use of interpretative tools and legal reasoning. Within the context of this project, empirical legal research required the use of qualitative methods, such as observation and semi-structured interviews with diverse groups of stakeholders. The interviews with private-sector stakeholders were accompanied by a wide range of interviews with the officials from EU Member States responsible for the implementation and enforcement of EU restrictive measures (e.g. representatives of various NCAs). Interviews were conducted with government officials from NCAs in five EU Member States – Lithuania, Spain, Malta, Romania and Latvia. Furthermore, interviews were also conducted with investigative journalists and a representative of an international database that, among other things, collects and systematizes information on EU restrictive measures and their targets. Finally, with regard to comparative legal research, we conducted a comparative analysis of the existing anti-corruption sanctions frameworks in various jurisdictions. The results are presented in the body of the report as well as in Annex 1.

2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2516.

[9] Martin Russell, *Mapping Magnitsky laws: The US, Canadian, UK and EU approach* (European Parliamentary Research Service November 2021).

2. Anti-Corruption Sanctions: A Comparative Analysis of the Relevant Laws and Practices in Different Jurisdictions

Starting from the early 2010s, states and groups of states – e.g. the EU, which enacts economic sanctions that are binding on its Member States under the CFSP – began putting into place economic sanctions targeting serious corruption abroad. At first, designations for significant corruption were made under the country-specific sanctions frameworks, such as with the EU's efforts to impose sanctions on corrupt regimes that had been ousted in Tunisia, Egypt and Ukraine – colloquially known as "misappropriation sanctions". Subsequently, thematic (horizontal) sanctions regimes emerged that dealt specifically with grave human rights violations and serious corruption. The tragic death of a Russian lawyer, Sergei Magnitsky, set this process in motion, which, with the unwavering support of the British-American businessman Bill Browder, culminated in the adoption of similar regimes in the United States, Canada, the United Kingdom, the European Union and Australia.

While national frameworks for anti-corruption sanctions share certain similarities, there also exist significant differences. This section of the report presents an analysis of the various frameworks for anti-corruption sanctions, the similarities and differences between them and the obstacles to their effectiveness.

2.1. The EU's Experiences with Misappropriation Sanctions

In response to the events in Tunisia and Egypt, known as the Arab Spring, as well as the Ukrainian Revolution of Dignity (Maidan Revolution), the EU implemented a special sanctions regime in the form of EU misappropriation sanctions.[10] Strictly speaking, the EU misappropriation sanctions were enacted as three separate, country-specific sanctions regimes. As events unfolded, notoriously corrupt regimes were forced to give up power. In order to prevent the flight of stolen public assets and to stabilize the situations in the affected countries, the EU agreed to enact misappropriation sanctions targeting regime leaders and other high-ranking government officials, as well as their family members and associates.[11]

General assessments of the EU misappropriation sanctions and their effectiveness tend to be more negative than positive.[12] There are two (partially intertwined) reasons for their mediocre performance: first, individuals who were initially designated under these sanctions regimes were successful in challenging the designation before the Court of Justice of the European Union (CJEU), and, second, the asset-recovery process that should have logically followed the initial asset freeze met with only limited success. Both of these factors can be further explained by legal obstacles and coordination problems between the EU, on the one hand, and Tunisia, Egypt and Ukraine, on the other.

[10] Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (renewed until 31 January 2026); Council Decision 2011/172/CFSP of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (this sanctions framework was repealed in 2021 by Council Decision (CFSP) 2021/449); Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (extended until 6 March 2025).

[11] Clara Portela, *Sanctioning kleptocrats: An assessment of EU misappropriation sanctions* (CiFAR – Civil Forum for Asset Recovery 2019).

[12] Portela (n 11); Andreas Boogaerts, 'Short-term success, long-term failure? Explaining the signalling effects of EU misappropriation sanctions following revolutionary events in Tunisia, Egypt, and Ukraine', (2020) J Int Relat Dev 23, 67–91.

A major problem was that the initial designations under these regimes and the subsequent extensions of the asset freezes relied heavily upon the evidence provided by the states whose public funds were misappropriated, namely Tunisia, Egypt and Ukraine.[13] As Clara Portela aptly put it: "Since the EU does not conduct independent investigations, the Council [responsible for the imposition and renewal of restrictive measures on the part of the EU] depends on the information submitted by foreign prosecutor offices."[14] Unfortunately, those states whose funds were allegedly misappropriated either provided evidence too late or did not provide evidence at all.[15] This, in turn, compelled the Council to remove the designation from certain individuals or provided legal grounds for the CJEU to rule in favour of targeted individuals and annul their designations.[16]

Thus, the lack of co-operation from government agencies and courts in the affected states made the EU misappropriation sanctions particularly vulnerable to legal challenges. As a result of this and other developments, the sanctions evolved as follows:

i. Initially, EU restrictive measures were imposed on 48 individuals from Tunisia, although at the time of writing, only 30 remain on the list;[17]

ii. All 19 sanctioned persons from Egypt were de-listed and the sanctions framework was repealed in 2021;[18]

iii. 22 Ukrainian nationals were sanctioned at the outset, while only three were still subject to sanctions in February 2025.[19]

2.2. The United States: Various Sanctions Frameworks and Sanctioning Corruption Networks

At present, there exist three statutory foundations for the imposition of US sanctions in response to acts of significant corruption: the Sergei Magnitsky Rule of Law Accountability Act of 2012, the Global Magnitsky Human Rights Accountability Act and Executive Order 13818. It is worth mentioning that Congress also has the power to enact country-specific laws authorizing sanctions in response to acts of corruption, while the President can use the authority granted under the International Emergency Economic Powers Act (IEEPA), National Emergencies Act (NEA) and the Immigration and Nationality Act (INA) to impose country-specific anti-corruption sanctions.[20]

In 2012, the Congress passed the Sergei Magnitsky Rule of Law Accountability Act of 2012 (Magnitsky Act),[21] authorizing the imposition of targeted sanctions against certain categories of individuals involved

[13] Portela (n 11).
[14] Ibid, at p. 8.
[15] Ibid.
[16] Ibid; Anton Moiseienko, 'Are EU misappropriation sanctions dead?' (Völkerrechtsblog 8 August 2019) https://voelkerrechtsblog.org/are-eu-misappropriation-sanctions-dead/.
[17] Annex A, List of persons and entities referred to in Article 1, Council Decision 2011/72/CFSP of 31 January 2011(n 10).
[18] Council Decision (CFSP) 2021/449 of 12 March 2021 repealing Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt, OJ L 87 15.03.2021.
[19] Annex A, List of persons, entities and bodies referred to in Article 1, Council Decision 2014/119/CFSP of 5 March 2014 (n 10).
[20] Michael A. Weber, *Human rights and anti-corruption sanctions: The Global Magnitsky Human Rights Accountability Act* (Congressional Research Service 7 November 2024).
[21] Sergei Magnitsky Rule of Law Accountability Act of 2012, Public Law 112–208, 126 Stat. 1502, (hereinafter Sergei Magnitsky Rule of Law Accountability Act of 2012).

in grave human rights violations in the Russian Federation.[22] This law, like similar acts that were later adopted by Canada, the United Kingdom and the European Union, was named after Sergei Magnitsky, a Russian lawyer who uncovered a major corruption scheme run by Russian officials. After exposing it, Magnitsky was arrested, tortured, denied adequate medical care and died in pre-trial detention.[23]

While the Magnitsky Act acknowledges that "[s]ystemic corruption erodes trust and confidence in democratic institutions, the rule of law, and human rights protections", it does not impose general sanctions on corrupt foreign officials. According to the Act, only one category of corrupt Russian officials was to be subject to economic sanctions, namely individuals who were "involved in the criminal conspiracy [i.e. the embezzlement of funds from the Russian Treasury and the misappropriation of three private companies] uncovered by Sergei Magnitsky".[24]

In December 2016, the Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act) was passed,[25] extending the application of US human rights sanctions at the global level, as well as enabling sanctions to be imposed on corrupt foreign government officials and their accomplices.[26] US human rights and anti-corruption sanctions have various goals, including: "(1) disrupting and deterring serious human rights abuse and corruption, (2) promoting accountability for perpetrators who otherwise are acting with impunity, and (3) upholding global norms and U.S. leadership on anti-corruption and human rights promotion."[27] One distinctive feature of this sanctions regime is that targeted sanctions can be lifted if a sanctioned individual is prosecuted for the activity that justified the imposition of the sanctions in the first place.[28] In Annex 1 of this report, we compare the relevant provisions of the Global Magnitsky Act with similar laws adopted in other jurisdictions.

In December 2017, President Trump issued Executive Order 13818, which declared that "the prevalence and severity of human rights abuse and corruption that have their source […] outside the United States […] have reached such scope and gravity that they *threaten the stability of international political and economic systems* (emphasis added)."[29] It further proclaimed that "serious human rights abuse and corruption around the world constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States", thus enabling the imposition of economic sanctions.[30] In comparison to the Global Magnitsky Act, Executive Order 13818 broadens the range of grounds for imposing anti-corruption sanctions (see Annex 1).

A unique feature of US anti-corruption sanctions is that they often target complex networks of corruption involving numerous participants, including family members, legal entities, various intermediaries and facilitators engaged in corrupt activities. Several examples are worth mentioning here. In December 2017, the businessman Dan Gertler was sanctioned for his "opaque and corrupt mining and oil deals in the Democratic Republic of the Congo (DRC)".[31] The US Department of the Treasury accused Gertler of

[22] Ibid.
[23] In a 2019 decision, the European Court of Human Rights unanimously found that the Russian Federation had violated numerous obligations under the Convention. ECtHR 27 Aug. 2019, 32631/09 and 53799/12 Magnitskiy and Others v. Russia.
[24] Sergei Magnitsky Rule of Law Accountability Act of 2012, Section 4(a)(1).
[25] The Global Magnitsky Human Rights Accountability Act, Public Law 114–328, Title XII, Subtitle F (hereinafter The Global Magnitsky Human Rights Accountability Act).
[26] Ibid, Section 3(a)(3) and (4).
[27] Weber, (n 20).
[28] The Global Magnitsky Human Rights Accountability Act, Section 3 (g)(2).
[29] President, Executive Order 13818: Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption, 20 December 2017.
[30] Ibid.
[31] US Department of the Treasury, *United States sanctions human rights abusers and corrupt actors across the globe*, Press Release, 21 December 2017, https://home.treasury.gov/news/press-releases/sm0243.

using "his close friendship with DRC President Joseph Kabila to act as a middleman for mining asset sales in the DRC" and, as a result, causing a loss of "over $1.36 billion in revenues" for the DRC.[32] Initially, sanctions were imposed not only on Gertler himself, but also on one of his associates and 19 affiliated entities.[33] Six months later, in June 2018, the Department of the Treasury extended the previously imposed sanctions to cover 14 companies that were owned or controlled by Gertler or his companies.[34] In 2021, another individual and 12 additional entities were sanctioned for "providing support to sanctioned billionaire Dan Gertler".[35] Ultimately, Gertler and his network of 47 collaborators – encompassing both individuals and legal entities – were all subject to sanctions.

Another notable example is the designation of Vassil Kroumov Bojkov, a prominent Bulgarian businessman and oligarch, along with his network, encompassing 58 entities.[36] In its official announcement of the sanctions, the US Department of the Treasury explicilty referred to an investigation conducted by the Prosecutor's Office of the Republic of Bulgaria that accused Bojkov of "leading an organized crime group, coercion, attempted bribery of an official, and tax evasion".[37]

On International Anti-Corruption Day (December 9th), the Office of Foreign Assets Control (OFAC) traditionally announces new waves of economic sanctions targeting actors involved in acts of significant corruption. Most recently, in 2024, 28 individuals and businesses "involved in a global gold smuggling and money laundering network based in Zimbabwe" were sanctioned.[38]

2.3.Canada: From Targeted Sanctions to Asset Confiscation

Since 2011, Canada has frozen the property of current and former foreign officials, as well as their family members, at the request of a foreign state, if allegations of property misappropriation have been made. The Freezing Assets of Corrupt Foreign Officials Act provides the legal basis for this procedure. Pursuant to this law, a foreign state should assert in writing that "a person has misappropriated property of the foreign state or acquired property inappropriately by virtue of their office or a personal or business relationship".[39] If certain preconditions are met, Canadian authorities may freeze or seize the property of the person in question, as well as restrict any transactions related to the property.[40]

Tunisia and Egypt were the first two countries to request that the government of Canada freeze the assets of certain of their nationals – specifically, politically exposed persons affiliated with the previous governments who had allegedly misappropriated state funds.[41] In March 2011, Canada correspondingly enacted regulations to freeze the property of the designated politically exposed persons.[42] In the following years, the lists of designated persons whose property was frozen were amended several times at the request

[32] Ibid.
[33] Ibid.
[34] US Department of the Treasury, *Treasury Sanctions fourteen entities affiliated with corrupt businessman Dan Gertler under Global Magnitsky*, Press Release, 15 June 2018, https://home.treasury.gov/news/press-releases/sm0417.
[35] US Department of the Treasury, *Treasury targets corruption linked to Dan Gertler in the Democratic Republic of Congo*, Press Release, 6 December 2021, https://home.treasury.gov/news/press-releases/jy0515.
[36] US Department of the Treasury, *Treasury sanctions influential Bulgarian Individuals and their expansive networks for engaging in corruption*, Press Release, 2 June 2021, https://home.treasury.gov/news/press-releases/jy0208.
[37] Ibid.
[38] US Department of the Treasury, *Treasury sanctions global gold smuggling network*, Press Release, 9 December 2024, https://home.treasury.gov/news/press-releases/jy2740.
[39] Freezing Assets of Corrupt Foreign Officials Act S.C. 2011, c. 10, Section 4(1).
[40] Ibid, Sections 4(1), 4(2) and 4(3).
[41] Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations, (SOR/2011-78), 23 March 2011.
[42] Ibid.

of Egypt.[43] After the five-year period expired in March 2016, Canada decided to continue listing eight individuals from Tunisia, but de-listed the remaining 196 Egyptian and Tunisian nationals.[44] Afterwards, the regulations regarding the situation in Tunisia were extended twice, with the most recent extension remaining in force until March 2026.[45]

In 2014, at the request of Ukraine, Canada froze the assets of the former Ukrainian president Yanukovych and other high-ranking officials from his regime who misappropriated Ukrainian state funds and fled the country following massive protests.[46] The initial list of Ukrainian politically exposed persons included 18 individuals, two of whom were removed in 2019.[47]

In 2017, Canada enacted its Sergei Magnitsky Law, known as the Justice for Victims of Corrupt Foreign Officials Act. The law allows for sanctions to be imposed on foreign public officials and their associates, as well as on other foreign nationals who assist or provide financial, material or technological support for acts of significant corruption.[48] The Canadian government can thus impose economic sanctions in response to acts of significant corruption, whose gravity should be defined "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".[49] In line with the Sergei Magnitsky Law, the Special Economic Measures Act, which allows Canada to impose autonomous sanctions (i.e. without authorization from the UNSC), was amended to include gross human rights violations and acts of significant corruption as grounds for sanctions.[50]

In November 2017, Canada sanctioned 52 individuals under its Sergei Magnitsky Law, including nationals of Venezuela "responsible for or complicit in acts of significant corruption including incidents of money laundering and public officials diverting state revenues for personal use".[51] Examples of more recent designations include the case of three Lebanese nationals – the Governor of the Lebanese Central Bank, his brother and another associate – who were responsible for the misappropriation of public assets for personal gain (more than US$330 million) and their transfer abroad.[52]

In June 2022, Canada adopted a law amending its two sanctions laws – i.e. the Special Economic Measures Act and the Sergei Magnitsky Law – so as to allow for the confiscation of sanctioned assets regardless of whether such assets were acquired legally or illegally.[53] As a result, a property owned or controlled by (i)

[43] Regulations Amending the Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations (SOR/2012-284) 14 December 2012; Regulations Amending the Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations (SOR/2014-33) 28 February 2014; Regulations Amending the Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations (SOR/2015-152) 17 June 2015.
[44] Regulations Amending the Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations (SOR/2016-41) 11 March 2016.
[45] Order Extending the Application of the Freezing Assets of Corrupt Foreign Officials (Tunisia) Regulations (SOR/2021-26) 26 February 2021.
[46] Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations, (SOR/2014-44) 5 March 2014.
[47] Regulations Amending the Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations (SOR/2019-68) 4 March 2019.
[48] Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), S.C. 2017, c. 21, Sections 4(2)(c) and (d).
[49] Ibid, Section 4(2)(c).
[50] Bill S-226: An Act to provide for the taking of restrictive measures in respect of foreign nationals responding for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act.
[51] Justice for Victims of Corrupt Foreign Officials Regulations (SOR/2017-233) 3 November 2017, including Regulatory Impact Analysis Statement.
[52] Regulations Amending the Justice for Victims of Corrupt Foreign Officials Regulations, (SOR/2023-179) 4 August 2023.
[53] Bill C-19: An Act to implement certain provisions of the budget tabled in Parliament on 7 April 2022 and other measures <www.parl.ca/DocumentViewer/en/44-1/bill/C-19/first-reading>.

a foreign state, (ii) any person in that foreign state or (iii) a national of that foreign state who does not ordinarily reside in Canada can be confiscated.[54] These confiscated assets can then be used for the following purposes: "(a) the reconstruction of a foreign state adversely affected by a grave breach of international peace and security; (b) the restoration of international peace and security; and (c) the compensation of victims of a grave breach of international peace and security, gross and systematic human rights violations or acts of significant corruption."[55]

2.4. The United Kingdom: Between Indulging Kleptocrats and Fighting Corruption Worldwide

In the context of Brexit, the United Kingdom enacted regulations concerning misappropriation sanctions to replace EU misappropriation sanctions relating to Tunisia, Egypt and Ukraine that had previously been binding on the UK as an EU Member State.[56] Subsequently, in April 2021, the UK government adopted new Global Anti-Corruption Sanctions Regulations.[57] The stated purpose of the new regulations is "to prevent and combat serious corruption".[58] To this end, they confer on the Secretary of State the power to designate individuals as persons involved in serious corruption, as well as to impose financial sanctions and travel bans on them. While corruption is defined as one of the two possible activities – (i) active and passive bribery or (ii) misappropriation of property[59] – the regulations remain silent on what constitutes serious corruption.

A government policy paper issued the day the Global Anti-Corruption Sanctions Regulations were adopted provides an illustrative list of factors that should be taken into account when imposing such a designation: e.g. the government's anti-corruption policy priorities; the scale, nature and impact of the serious corruption; the status, connections and activities of the person involved; collective international action; interactions with law enforcement activities; and the risk of reprisals.[60] Concurrently, the government prepared an information note for non-government organizations "to support understanding of the regime for those who may wish to submit information […] concerning specific designations".[61]

As of February 2025, 53 individuals are designated under the UK Global Anti-Corruption Sanctions Regulations, while not a single legal entity appears on the sanctions list.[62] The following are examples of designated individuals:[63]

i. the Vice President of Equatorial Guinea for "his involvement in the misappropriation of state funds, corrupt contracting arrangements and soliciting bribes to fund a lavish lifestyle in various countries abroad";

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[54] Ibid.
[55] Ibid.
[56] The Misappropriation (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/1468) (revoked).
[57] The Global Anti-Corruption Sanctions Regulations 2021 (S.I. 2021/488).
[58] Ibid.
[59] Ibid, Part 1, Regulation 4.
[60] Foreign, Commonwealth & Development Office, *Global anti-corruption sanctions: Consideration of designations*, Policy Paper, 26 April 2021, https://www.gov.uk/government/publications/global-anti-corruption-sanctions-factors-in-designating-people-involved-in-serious-corruption/global-anti-corruption-sanctions-consideration-of-designations.
[61] Office of Financial Sanctions Implementation, and Foreign, Commonwealth & Development Office, *Global anti-corruption sanctions: information note for non-government organisations*, Guidance, 26 April 2021, https://www.gov.uk/government/publications/global-anti-corruption-sanctions-information-note-for-non-government-organisations/global-anti-corruption-sanctions-information-note-for-non-government-organisations#legal-tests.
[62] The UK Sanctions List, available at https://www.gov.uk/government/publications/the-uk-sanctions-list.
[63] Statement by Dominic Raab, Secretary of State for Foreign, Commonwealth and Development Affairs, *Anti-Corruption Update*, 22 July 2021, https://questions-statements.parliament.uk/written-statements/detail/2021-07-22/HCWS244.

ii. a former Iraqi Governor, who "misappropriated public funds intended for reconstruction efforts and to provide support for civilians, and improperly awarded contracts and other state property";
iii. two businessmen with links to the Maduro regime "for exploiting two of Venezuela's public programmes which were set up to supply poor Venezuelans with affordable foodstuffs and housing";
iv. a Zimbabwean businessperson "whose involvement in misappropriation was at the expense of the country's macroeconomic stability."

The number of designations is negligible, given that the UK is one of the leading global financial centres, which attracts kleptocrats and their family members.

2.5.Australia: A Cautious Player in the Sanctions Game

Australia's framework for anti-corruption sanctions was established on 21 December 2021, after the Autonomous Sanctions Regulations 2011 was amended by the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021. As with the UK sanctions framework, Australia's regulations define corruption as either bribery or the misappropriation of property.[64] Economic sanctions can be imposed for serious acts of corruption after consideration of the following criteria: "(a) the status or position of the person or entity; (b) the nature, extent and impact of the conduct of the person or entity; (c) the circumstances in which that conduct occurred; (d) any other matters the Minister considers relevant."[65]

The Autonomous Sanctions Regulations 2011 allow for the imposition of anti-corruption sanctions on several different categories of actors:

i. a person or an entity who has engaged in, has been responsible for or has been complicit in a serious act of corruption;[66]
ii. a person who is an immediate family member of a person sanctioned for serious corruption;[67]
iii. a person or entity that has obtained a financial or other benefit as a result of an act of serious corruption, for which another person or entity was sanctioned.[68]

In the context of the application of sanctions, the term "immediate family member of a person" includes: (a) a spouse of the person; or (b) an adult child of the person; or (c) a spouse of an adult child of the person; or (d) a parent of the person; or (e) a brother, sister, step-brother or step-sister of the person; or (f) a spouse of a brother, sister, step-brother or step-sister of the person.[69] Australia's Autonomous Sanctions Regulations 2011 do not explicitly list the sources of information that should be used for making sanctions designations. At the same time, an information note prepared by the government encourages civil society organisations to provide pertinent information and guarantees that it will be treated as confidential.[70]

[64] Autonomous Sanctions Regulations 2011, No. 247, 2011, Regulation 3.
[65] Ibid, Regulation 6A(6).
[66] Ibid, Regulation 6A(5).
[67] Ibid, Regulation 6A(8).
[68] Ibid, Regulation 6A(9).
[69] Ibid, Regulation 3.
[70] Department of Foreign Affairs and Trade, *Information Note: Autonomous Human Rights and Corruption Sanctions*, https://www.dfat.gov.au/sites/default/files/cso-information-note-22082024.pdf.

3. The Existing System Governing the Implementation and Enforcement of EU Restrictive Measures (Sanctions) and Efforts to Update It

The legal and institutional frameworks underpinning the adoption, implementation and enforcement of EU restrictive measures (sanctions) reflect the legal character of the European Union, as well as the division of competencies between EU institutions and Member States. The life cycle of EU restrictive measures can be divided into three interrelated stages, as illustrated in Graph 1.

The design stage encompasses the political decision to impose EU restrictive measures, along with the adoption of the legal documents necessary to achieve this end. Regarding the latter aspect, the political decision to impose EU restrictive measures takes legal shape through two instruments: Decisions and Regulations. The Council's Decisions are only binding on EU Member States, whereas Regulations are directly applicable within the Member States and are binding on their domestic constituencies (legal entities, individuals).[71]

The implementation stage starts once the legal documents imposing restrictive measures have been adopted. This stage encompasses actions on the part of the EU Member States that aim at the implementation of travel bans, as well as actions on the part of the private sector actors that aim at the implementation of economic and financial restrictions, such as import/export prohibitions and asset freezes. The process by means of which EU restrictive measures are implemented is also characterized by sanctions updates and guidance issued by the competent EU institutions. Since February 2022, both the Council and the Commission have updated the existing documents and prepared new ones. For example, in July 2024, the Council updated the EU Best Practices for the effective implementation of restrictive measures.[72] The consolidated list of all designations under EU restrictive measures is regularly updated and is freely available on the EU Sanctions Map.[73]

Pursuant to Article 17 of the TEU, the Commission oversees the uniform application of EU restrictive measures by the EU Member States.[74] In exercising this function, the Commission provides guidance on the implementation of EU restrictive measures. This guidance takes the form of FAQs, guidelines and non-binding opinions. For example, in order to facilitate compliance with the EU restrictive measures against Russia, the Commission has continuously updated its FAQ. The most recent version, as of February 2025, is more than 400 pages long.[75] Furthermore, in 2023, the Commission prepared guidance for the EU operators on implementing enhanced due diligence in the context of sanctions against Russia.[76] The Commission also has the power to issue non-binding opinions.[77]

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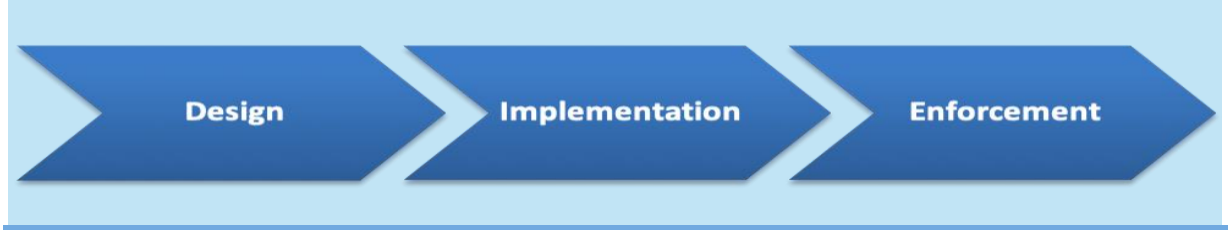
[71] Article 288, Treaty on the Functioning of the European Union (TFEU).
[72] Council of the European Union, *EU Best Practices for the effective implementation of restrictive measures*, 3 July 2024, https://data.consilium.europa.eu/doc/document/ST-11623-2024-INIT/en/pdf.
[73] The EU Sanctions Map can be accessed at https://www.sanctionsmap.eu/#/main.
[74] The relevant section of Article 17 of the TEU reads as follows: "It [the Commission] shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them."
[75] European Commission, *Consolidated FAQs on the implementation of Council Regulation No 833/2014, Council Regulation No 269/2014, Council Regulation (EU) No 692/2014 and Council Regulation (EU) 2022/263*, last update: 14 February 2025, available at https://finance.ec.europa.eu/document/download/66e8fd7d-8057-4b9b-96c2-5e54bf573cd1_en?filename=faqs-sanctions-russia-consolidated_en.pdf.
[76] European Commission, *Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention*, 2023.
[77] For example, Commission Opinion of 08/06/2021 on Article 2(2) of Council Regulation (EU) No 269/2014.

Graph 1[78]. The life cycle of EU restrictive measures: the sequence of steps, actions and actors involved



Design	Implementation	Enforcement
Actions	**Actions**	**Actions**
▪ Political decision to impose sanctions ▪ Formulation of particular legal rules (legal formalization)	▪ Compliance or non-compliance by the private sector ▪ Clarification of the rules by the issuing bodies ▪ Issuing of licences/authorizations for certain transactions (e.g. basic need exceptions)	▪ Monitoring compliance with economic sanctions ▪ Investigations and other enforcement actions
Actors involved	**Actors involved**	**Actors involved**
<u>EU institutions:</u> - High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission - European Commission - Council of the European Union	<u>EU institutions:</u> - The Council of the European Union issued Basic Principles on the Use of Restrictive Measures (2004), Guidelines on the implementation and evaluation of restrictive measures (2018) and EU Best Practices for the effective implementation of restrictive measures (2022, updated in 2024). - The European Commission provides guidance to national authorities, EU operators and citizens regarding the implementation and the interpretation of the relevant Council Regulations (FAQ, Guidelines) and can issue non-binding opinions on the application of specific provisions.	<u>EU institutions:</u> - The European Commission monitors the restrictive measures operation, along with the EEAS and the Council. - Since November 2022, when violating EU restrictive measures became a crime under Art. 83(1) TFEU, the European Commission has the power to elaborate a common definition of the crime and establish minimum penalties (e.g. Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of EU restrictive measures)
<u>EU Member States</u> (vote in the Council, propose new sanctions regimes and specific designations under the existing sanctions frameworks)	<u>EU Member States</u> (appoint national competent authorities responsible for various aspects of implementation) <u>National competent authorities</u> (e.g.review authorization requests) <u>Private sector</u> (businesses, including SMEs, financial institutions and legal advisors, who advise the private sector on sanctions compliance)	<u>EU Member States</u> (amend their domestic legislation on violations of EU restrictive measures) <u>National competent authorities</u> (each EU Member State has its own system of agencies responsible for monitoring compliance and enforcement actions)

Source: compiled by Iryna Bogdanova

[78] Graph 1 does not explicitly mention the renewal of EU restrictive measures, successful court challenges against EU restrictive measures that result in their annulment or the lifting of EU restrictive measures.

In January 2021, the Commission recognized "the full and uniform implementation of EU sanctions" as one of its priorities.[79] This commitment entailed the development of the Sanctions Information Exchange Repository (SIER), a database to "enable prompt reporting and exchange of information between Member States and the Commission on the implementation and enforcement of sanctions."[80] A SIER repository was set up. In interviews, NCA officials acknowledged having positive experiences with this database, but admitted that the exchange of information between NCAs could be enhanced (e.g. by making it obligatory to post all the authorizations granted by NCAs with an explanation of the reasons why a particular decision was made).

The Commission also set up a central contact point on EU sanctions for foreign authorities and operators.[81] Furthermore, the Commision hosts regular meetings of the High-Level Expert Group on Union Restrictive Measures, composed of high-level representatives from Member States, the Commission and the European External Action Service.[82] Some commentators assert that the current state of global affairs has strengthened the Commission's role in the process of formulating and implementing restrictive measures.[83]

Other initiatives that aim to enhance the implementation and enforcement of EU restrictive measures include the establishment of the EU Freeze and Seize Task Force – which is composed of the Commission, representatives of the Member States, Eurojust, Europol and other EU agencies (if necessary) and which is responsible for EU-level coordination to implement sanctions against listed Russian and Belarussian oligarchs[84] – and the launch of the EU Sanctions Whistleblower Tool.[85] Some of the EU Member State officials interviewed for this report gave a positive evaluation of the role of the Freeze and Seize Task Force, but they were unsure about how effective the EU Sanctions Whistleblower Tool has been. This uncertainty is mainly due to the fact that the Whistleblower Tool is administered by the Commission and the interviewed officials did not have access to the corresponding data.

In order to make the restrictive measures against Russia more effective and to prevent them from being circumvented, the Council updated the EU sanctions framework, introducing new reporting obligations that are binding on sanctioned individuals and legal entities.[86] In an attempt to annul these new reporting and cooperation obligations, several sanctioned Russian oligarchs brought two cases before the CJEU –

[79] European Commission, *The European economic and financial system: fostering openness, strength and resilience*, COM(2021) 32 final, 19 January 2021, at p. 16.
[80] Ibid.
[81] European Commission, *European Commission sets up central contact point on EU sanctions for foreign authorities and operators*, News Article, 27 April 2023, https://finance.ec.europa.eu/news/european-commission-sets-central-contact-point-eu-sanctions-foreign-authorities-and-operators-2023-04-27_en.
[82] European Commission, *Statement by Commissioner McGuinness on the outcomes of the fifth high-level meeting on sanctions implementation*, 29 April 2024, https://finance.ec.europa.eu/news/statement-commissioner-mcguinness-outcomes-fifth-high-level-meeting-sanctions-implementation-2024-04-29_en.
[83] Clara Portela, 'Sanctions and the geopolitical Commission: The war over Ukraine and the transformation of EU governance', (2023) European Papers Vol. 8, No 3.
[84] European Commission, *Enforcing sanctions against listed Russian and Belarussian oligarchs: Commission's "Freeze and Seize" Task Force steps up work with international partners*, Press Release, 17 March 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1828.
[85] The EU Sanctions Whistleblower Tool can be accessed at https://eusanctions.integrityline.com.
[86] Since 2022, sanctioned individuals and legal entities are obliged to disclose to the competent authorities of EU Member States funds or economic resources that they own, hold or control, if such funds or economic resources are located within the European Union's jurisdiction. Non-compliance (i.e. failure to make a timely report) is to be treated as a breach of the EU restrictive measures. Council Regulation (EU) 2022/1273 of 21 July 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 194 21.07.2022.

Fridman and Others v Council (case T-635/22)[87] and Timchenko and Timchenko v Council (case T-644/22)[88]. The General Court rejected all the legal claims advanced by the applicants – or rather, their lawyers – in both cases.[89] On 21 November 2024, Gennady and Elena Timchenko filed an appeal before the CJEU challenging the General Court's judgment in case T-644/22.[90]

In parallel to the EU efforts to enhance the implementation and enforcement of sanctions, some EU Member States have engaged in regional cooperation initiatives. A case in point is the Agreement on Regional Approach to Ensure Uniform Customs Controls and Information Exchange for Implementation of the EU Restrictive Measures, which was signed in May 2024 by the customs authorities of Estonia, Finland, Latvia, Lithuania and Poland.[91] This Agreement contains specific rules on customs controls, along with obligations to exchange information and coordinate.

In addition to the Commission's FAQ, the NCAs of some EU Member States also prepare FAQs tailored to the needs of their domestic constituencies. For instance, the MFA of the Republic of Latvia has prepared Guidelines for the effective implementation of sanctions in Latvia that can be accessed online.[92]

Since the private sector is at the forefront of the implementation of EU restrictive measures, the Council Regulations incorporate anti-circumvention clauses.[93] However, as the Commission's FAQ details "underlying means (due diligence) used by the operators to ensure compliance with the above-mentioned obligations and prohibitions are not further specified in EU legislation."[94] It is further emphasized that "[i]t is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic areas of operations and specificities and related risk-assessment regarding customers and staff."[95] To assist with this task, the Commission prepared the abovementioned guidance for EU operators in 2023.[96]

The enforcement stage involves monitoring the compliance with EU restrictive measures of both EU Member States and private-sector actors, as well as carrying out investigations and other enforcement actions, where necessary. Although the decentralized nature of the implementation and enforcement of EU restrictive measures has been the subject matter of several recent studies,[97] there is still a need for a comprehensive and in-depth analysis of EU practices vis-à-vis the implementation and enforcement of

[87] Judgment of the General Court, *Fridman and Others v Council*, Case T-635/22, 11 September 2024, ECLI:EU:T:2024:620.
[88] Judgment of the General Court, *Timchenko and Timchenko v Council*, Case T-644/22, 11 September 2024, ECLI:EU:T:2024:621.
[89] *Fridman and Others v Council* (n 87), *Timchenko and Timchenko v Council* (n 88).
[90] Case C-805/24 P: Appeal brought on 21 November 2024 by Gennady Nikolayevich Timchenko and Elena Petrovna Timchenko against the judgment of the General Court (Grand Chamber) delivered on 11 September 2024 in Case T-644/22, *Timchenko and Timchenko v Council*, OJ C C/2025/253 20.01.2025.
[91] The text can be accessed at: https://lrmuitine.lt/mport/failai/naujienos/2024/Regional_Approach_on_alignment_of_customs_controls_5_MS.pdf#en.
[92] *The Guidelines for the effective implementation of sanctions in Latvia* can be accessed at https://www.mfa.gov.lv/en/media/14418/download?attachment.
[93] E.g. Article 12 of Council Regulation 833/2014; Article 9 of Council Regulation 269/2014; Articles 2c and 5 of Council Regulation 692/2014; and Articles 5 and 8 of Council Regulation 2022/263.
[94] European Commission, *Consolidated FAQs* (n 75) at p. 13.
[95] Ibid.
[96] European Commission, *Guidance for EU operators* (n 76).
[97] Clara Portela and Kim B. Olsen, *Implementation and monitoring of the EU sanctions' regimes, including recommendations to reinforce the EU's capacities to implement and monitor sanctions* (2023) Study requested by the AFET Committee; Francesco Guimelli et al., 'United in diversity? A study on the implementation of sanctions in the European Union' (2022) Politics and Governance Vol. 10 No. 1; Kim B. Olsen and Simon Fasterkjær Kjeldsen, *Strict and uniform: Improving EU sanctions enforcement* Policy Brief (German Council on Foreign Relations 2022).

restrictive measures.

The economic sanctions that the EU imposed on Russia in response to its unprovoked military aggression have brought to light inconsistencies in the implementation and enforcement of sanctions by EU Member States. Among other things, these inconsistencies include differences in national laws regarding the criminalization of sanctions violations and the penalties imposed for such violations.[98] In order to remedy this situation, in November 2022, the Council added the violation of EU restrictive measures to the list of serious cross-border crimes in Article 83(1) TFEU.[99] Subsequently, on 24 April 2024, the European Parliament and the Council adopted Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of EU restrictive measures.[100] Against this backdrop, the discussions about the role of the European Public Prosecutor's Office (EPPO) in the investigation and prosecution of EU sanctions violations are ongoing.[101] Another initiative for improving EU sanctions implementation and enforcement includes a proposal to establish an EU equivalent to the OFAC. This idea was endorsed by some stakeholders and criticized by the others.[102]

Some of the government officials of EU Member States interviewed for this report expressed the view that the criminalization of EU restrictive measures is a positive step that will lead to more uniform enforcement. They also believe that the prospects of severe criminal punishment may have a deterrent effect and disrupt the low risk–high profit calculus that currently prevails.

4. The Most Common Types of Sanctions Circumvention Practices

In her 1980 book *Economic Sanctions and International Enforcement*, Margaret Doxey identifies the following strategies for circumventing the negative effects of economic sanctions:[103]

- anticipatory actions (e.g. stockpiling, cultivating alternative external supply sources, stimulating and diversifying production)
- defence of the economy under sanctions (e.g. implementing measures to increase self-sufficiency, developing economic links with non-participating states and countermeasures against sanctioning states)
- evasion of sanctions

Despite its age, Doxey's classification is still useful. This section of the report focuses on the last type of

[98] Network for investigation and prosecution of genocide, crimes against humanity and war crimes, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: A comparative analysis* (Eurojust 2021).
[99] Council of the European Union, *Sanctions: Council adds the violation of restrictive measures to the list of EU crimes*, Press Release, 28 November 2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/sanctions-council-adds-the-violation-of-restrictive-measures-to-the-list-of-eu-crimes/.
[100] Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, OJ L, 2024/1226, 29.04.2024.
[101] Anna Caprile and Cristina Cirlig, *EU sanctions against Russia 2025: State of play, perspectives and challenges*, (European Parliamentary Research Service February 2025).
[102] Portela and Olsen (n 97), at pp. 43-44.
[103] Margaret Pamela Doxey, *Economic sanctions and international enforcement* (2nd ed., Macmillan Press 1980), at pp. 106–124.

actions – evasion of sanctions. Different terms are used to describe the practice of non-compliance with economic sanctions or intentionally breaching them: e.g. sanctions avoidance, sanctions evasion, sanctions violations, sanctions circumvention and sanctions busting. All of these terms designate the same types of actions or omissions that aim to bypass economic sanctions. For the purposes of our analysis, we will use the term "sanctions circumvention", and we will avoid any discussion of the legality of such actions under EU law or the laws of EU Member States.[104]

In the following, we describe the most common ways of circumventing sanctions.

4.1. The abuse of exceptions and derogations granted under the EU restrictive measures

Taking the EU restrictive measures against Russia as an example, we can analyse how it is possible for exceptions to be exploited to circumvent sanctions. The EU restrictive measures against Russia encompass, among other things, export restrictions on various categories of goods, including electronics, specialised vehicles, machine parts, spare parts for trucks and jet engines.[105] In other words, these goods should not be made available on the territory of the Russian Federation, while other goods, whose export is not prohibited, can be exported. In practice, however, trade in non-prohibited items is often used as a disguise to export prohibited items. In order to do so, the classical methods of customs fraud are employed: misclassifying goods by changing their Harmonized System (HS) code and presenting them as non-prohibited items, declaring a lower value for the goods, a practice known as "undervaluing" (the export of luxury goods to Russia is prohibited) or falsely declaring the destination of the goods (e.g. Kazakhstan or Kyrgyzstan, instead of Russia). Media reports and the interviews conducted for this report confirm that the customs controls on the border between the Baltic states and Russia are particularly vulnerable to these forms of sanctions circumvention.[106]

Another pertinent example is the abuse of the derogations granted under sanctions regimes. Taking into account human rights considerations, EU sanctions frameworks prescribe a number of derogations/exceptions that apply to asset freezes:

- Basic needs exception: to pay for such basic needs as food, rent, medical treatment, reasonable legal fees or other professional fees.[107]
- Humanitarian exception: if funds or economic resources are "necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations".[108]
- Judicial decisions exception: if certain conditions are met, arbitral, judicial or administrative decisions rendered in the European Union or judicial decisions enforceable in an EU Member State

[104] The purpose of this section is to describe the most common techniques used to circumvent economic sanctions. A nuanced discussion of the circumstances under which such actions constitute a violation of EU restrictive measures (sanctions) falls outside the scope of this report.
[105] Council of the European Union, *One year of Russia's full-scale invasion and war of aggression against Ukraine, EU adopts its 10th package of economic and individual sanctions*, Press Release, 25 February 2023, https://www.consilium.europa.eu/en/press/press-releases/2023/02/25/one-year-of-russia-s-full-scale-invasion-and-war-of-aggression-against-ukraine-eu-adopts-its-10th-package-of-economic-and-individual-sanctions/.
[106] Leonie Kijewski, *The Baltic border loophole in EU's Russia sanctions*, POLITICO, 14 February 2024, https://www.politico.eu/article/baltic-latvia-estonia-lithuania-border-loophole-eu-russia-ukraine-sanctions/.
[107] e.g. Article 4, Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I, 07.12.2020.
[108] e.g. Article 5, ibid.

can provide grounds for the release of certain frozen assets.[109]

- Contract payment exception: payment under a contract or agreement that was concluded by, or an obligation that arose for, the sanctioned person or entity, before the date on which that natural or legal person was sanctioned may be permitted in certain circumstances.[110]

Any such derogation is subject to prior authorization by the relevant national authority of each EU Member State. In this regard, it should be noted that the CJEU has ruled that "the release of certain funds is an exception to the freezing of funds principle, that the competent authority must make an assessment on a case-by-case basis and that it is not, therefore, authorised to give general approval to a certain category of transactions in respect of which the entities concerned would be relieved of the need to request authorisation on a case-by-case basis".[111]

A salient example of a possible abuse of the above-mentioned exceptions are unreasonable legal fees charged by law firms. During one of the interviews conducted for this report, an official revealed that there had been a case where a law firm had asked for authorization to unfreeze a substantial part of their client's previously frozen assets. The justification for this course of action was that the basic needs exception permitted their client to pay their legal fees. In that particular case, the NCA responsible for granting these authorizations was required to conduct an assessment, with the assistance of the local bar association, in order to determine whether the fees charged were "reasonable", as required by the relevant Council Regulation. The legal fees charged were ultimately deemed unreasonable in light of the professional services provided.

4.2. Deliberate obfuscation of the destination and end-users of dual-use goods

As part of the broader efforts to halt the Russian war machine, the EU, along with its allies, restricted exports of dual-use goods and other military equipment to Russia.[112] The numerous reports and investigations published since 2022 reveal that, despite the sanctions, Russia employs significant quantities of critical, Western-manufactured components in its military equipment.[113] A thorough investigation conducted by the Royal United Services Institute (RUSI) into the supply chain of Russia's most successful unmanned aerial vehicle (UAV) – the Orlan-10 UAV – confirmed this.[114] In particular, the study convincingly demonstrates how complex multi-jurisdictional schemes spanning various

[109] e.g. Article 6, ibid.
[110] e.g. Article 7, ibid.
[111] Judgment of the Court, *Europäisch-Iranische Handelsbank AG v Council of the European Union*, C-585/13P, 5 March 2015, ECLI:EU:C:2015:145, at para. 76.
[112] Among other things, the export of the following categories of goods is restricted: "dual-use goods and advanced technology, drone engines, and other goods that could be used on the battlefield; aviation, space industry and maritime navigation goods and technology (e.g. semiconductors); IT, electronic and optical components, as well as other goods that could enhance Russia's industrial capacities." Caprile and Cirlig, (n 101).
[113] James Byrne, Gary Somerville, Joseph Byrne, Jack Watling, Nick Reynolds and Jane Baker, *Silicon lifeline: Western electronics at the heart of Russia's war machine* (The Royal United Services Institute (RUSI) August 2022) https://rusi.org/explore-our-research/publications/special-resources/silicon-lifeline-western-electronics-heart-russias-war-machine; David Gauthier-Villars, Steve Stecklow, Maurice Tamman, Stephen Grey and Andrew Macaskill, *As Russian missiles struck Ukraine, Western tech still flowed* (Reuters Special Report 8 August 2022), https://www.reuters.com/investigates/special-report/ukraine-crisis-russia-missiles-chips/.
[114] James Byrne, Jack Watling , Justin Bronk, Gary Somerville, Joe Byrne, Jack Crawford and Jane Baker, *The Orlan complex: Tracking the supply chains of Russia's most successful UAV* (The Royal United Services Institute (RUSI) 15 December 2022), https://rusi.org/explore-our-research/publications/special-resources/orlan-complex-tracking-supply-chains-russias-most-successful-uav.

jurisdictions and numerous intermediaries are used to evade export restrictions on dual-use goods.[115]

These procurement networks were set up with the ultimate goal of obfuscating the identity of the end-users of dual-use goods, thus enabling them to be procured for the Russian military-industrial complex. The authors of the above-mentioned reports acknowledge that "networks such as those profiled in this report are core to Russia's ability to procure advanced microelectronics for its weapons programs".[116] These elaborate procurement networks rely upon a wide range of front companies, some of which are owned by Russian nationals residing abroad, and a decentralized network of transshipment hubs in Europe, Asia and North America.[117]

4.3. The use of family members to conceal the ownership of funds and economic resources

The most common type of EU restrictive measure is the freezing of assets, including funds and economic resources. As a rule, restrictive measures of this kind are formulated in the following terms: "All funds and economic resources *belonging to, owned, held or controlled by* any natural or legal person, entity or body as listed in Annex I shall be frozen" (emphasis added).[118] Annex I lists sanctioned individuals, legal entities and bodies. Since they are aware of the prospect of being sanctioned, potential targets can transfer their assets to family members or close associates.

One recent example of such a practice is the case of Andrey Melnichenko, a Russian industrialist and owner of the major fertiliser producer EuroChem Group, as well as the coal company SUEK.[119] One day before being designated under EU sanctions, he transferred his assets to his wife, the model Aleksandra Melnichenko, who was later sanctioned as well.[120] Melnichenko sought an annulment of his designation before the CJEU, but the court, in turn, refused to recognize the change of ownership:

> […] it is common ground that, at the same time as the applicant relinquished his status as a beneficiary, that status was conferred on Ms Aleksandra Melnichenko, who was his wife at the time the first set of maintaining acts was adopted. Since Ms Melnichenko is not a third party with no link to the applicant, the fact that the applicant relinquished his status as a beneficiary in favour of her cannot constitute a relevant change in his individual situation (see, to that effect, judgments of 20 September 2023, Mordashov v Council, T-248/22, not published, EU:T:2023:573, paragraph 101, and of 15 November 2023, OT v Council, T-193/22, EU:T:2023:716, paragraph 183).[121]

In a similar vein, the CJEU denied a request submitted by Marina Mordashova, the wife of the sanctioned Russian oligarch Alexey Mordashov, to be removed from the EU sanctions list.[122] She specifically argued

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[115] Ibid.
[116] Ibid, at p. 5.
[117] Ibid.
[118] Article 3(1), Council Regulation (EU) 2020/1998 of 7 December 2020 (n 107).
[119] Annex, Council Decision (CFSP) 2022/397 of 9 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 80, 09.03.2022.
[120] European Commission, *EU sanctions tracker*, Aleksandra Melnichenko, https://data.europa.eu/apps/eusanctionstracker/subjects/140921.
[121] Judgment of the General Court, *Andrey Melnichenko v Council of the European Union*, Case T-271/22, 22 January 2025, ECLI:EU:T:2025:47, at para. 98.
[122] Judgment of the General Court, *Marina Alexandrova Mordashova v Council of the European Union*, Case T-497/22, 11 September 2024, ECLI:EU:T:2024:604.

that she should be removed from the sanctions list, because she was no longer married to Alexey Mordashov and the assets she obtained from her husband were for the purposes of succession planning rather than sanctions evasion.[123] The CJEU rejected these arguments, ruling that Mordashova remained a close family member of Alexey Mordashov.[124] From the perspective of the CJEU, it was not necessary to establish complicity, since the mere risk of sanctions circumvention by close family members was sufficient to justify the designation.[125]

However, this approach is not typical of the CJEU's practice. In a growing number of disputes initiated by the sanctioned family members of the primary targets, the CJEU has ruled that a family link – the associated person criterion – does not, on its own, suffice to extend the application of sanctions to these individuals.[126] This happened despite the Council arguing that such extended application of EU restrictive measures is justified by the risk of sanctions circumvention.

4.4.Concealment of the origin or destination of the goods

Since February 2022, a significant share of the bilateral trade between the EU and Russia has been prohibited: the EU restrictive measures include import and export restrictions on a wide range of products.[127] Over time, trade statistics unequivocally demonstrated that while direct trade with Russia plummeted, the flow of goods and services to the states neighbouring Russia skyrocketed.[128] In other words, a false declaration was made with regard to the destination of the goods for the purposes of clearing customs.[129] In a similar vein, investigations conducted by journalists uncovered sanctions circumvention schemes that enabled prohibited items, including arms, to be supplied to Russia via third states ("triangulations with non-EU countries").[130]

To combat such practices, the EU adopted a series of measures. In its 11th sanctions package, it introduced a new "anti-circumvention" tool, which allows the Union to prohibit the export of sanctioned goods to third countries, if such countries "are considered to be at continued and particularly high risk of circumvention".[131] This is done by adding these countries to annex XXXIII of the Council Regulation 833/2014,[132] although no countries are currently listed there.

The EU's 12th package of sanctions against Russia, adopted on 19 December 2023, introduced a new obligation for EU exporters – to include "no re-export to Russia" clauses into their

[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] Judgment of the General Court, *Maya Tokareva v Council of the European Union*, Case T-744/22, 11 September 2024, ECLI:EU:T:2024:608; Judgment of the General Court, *Nikita Dmitrievich Mazepin v Council of the European Union*, Case T-743/22, 20 March 2024, ECLI:EU:T:2024:180.
[127] Caprile and Cirlig, (n 101).
[128] Robin Brooks, *Transshipments from the EU to Russia*, Brookings, 12 September 2024, https://www.brookings.edu/articles/transshipments-from-the-eu-to-russia/.
[129] Ibid.
[130] Edoardo Anziano, Sergey Panov and Lorenzo Bodrero, *Le armi italiane vanno ancora in Russia, nonostante l'embargo*, Irpimedia, 7 February 2024, https://irpimedia.irpi.eu/armi-beretta-russia-societa-mikhail-khubutia-sanzioni/.
[131] European Commission, *EU adopts 11th package of sanctions against Russia for its continued illegal war against Ukraine*, News Article, 23 June 2023, https://enlargement.ec.europa.eu/news/eu-adopts-11th-package-sanctions-against-russia-its-continued-illegal-war-against-ukraine-2023-06-23_en.
[132] "It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology as listed in Annex XXXIII, whether or not originating in the Union, to any natural or legal person, entity or body in the third country specified in that Annex." Council Regulation (EU) 2023/1214 of 23 June 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 159I, 23.06.2023.

export/sale/supply/transfer or similar contracts.[133] Moreover, any contract of this type should contain "adequate remedies" in the event of a breach of the "no re-export to Russia" clause.[134] Yet, this requirement applies only to the defined categories of goods.[135] It does not apply if the goods are supplied to the partner countries listed in Annex VIII of the Council Regulation No 833/2014.[136]

Within the context of the 14th package of economic sanctions against Russia, in June 2024, the Council added the following "best efforts" obligation: "Natural and legal persons, entities and bodies *shall undertake their best efforts* to ensure that any legal person, entity or body established outside the Union that they own or control does not participate in activities that undermine the restrictive measures provided for in this Regulation" (emphasis added).[137]

Another way of circumventing sanctions is to make a fraudulent declaration concerning the origin of the goods. A recent investigation uncovered a large-scale scheme to circumvent sanctions, so as to allow wood from Russia into the EU.[138] Exports of the sanctioned Russian timber into the EU are estimated to be worth over €1.5bn, with the biggest importers being Poland, Italy, Germany, Spain, Portugal, Estonia and Greece.[139] According to the investigation, the wood is shipped to China, Turkey or Kazakhstan, where it is declared to originate in one of these countries and then enters the EU market, where it makes up a fifth of the birch plywood used.[140]

4.5. Setting up new corporate structures in third countries to circumvent sanctions

This type of sanction circumvention represents a classical whack-a-mole problem: establishing a new company is so easy that if one company is sanctioned/blacklisted, another could easily be incorporated in order to continue to circumvent the sanctions. Analysts have provided ample evidence demonstrating significant increases in newly incorporated companies owned by the Russian nationals in such jurisdictions as Turkey, Kazakhstan, Georgia, United Arab Emirates and Serbia.[141]

4.6. The use of shell companies, holding companies, trusts, nominees and stolen/rented identities to obfuscate true ownership of assets and economic resources

Similar to the efforts to obfuscate the ownership of the proceeds of corruption, sanctioned individuals and their professional facilitators/enablers put significant efforts into concealing the true ownership of assets

[133] European Commission, *EU adopts 12th package of sanctions against Russia for its continued illegal war against Ukraine*, News Article, 19 December 2023, https://enlargement.ec.europa.eu/news/eu-adopts-12th-package-sanctions-against-russia-its-continued-illegal-war-against-ukraine-2023-12-19_en.
[134] Article 12g(3), Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended and updated.
[135] "[…] goods or technology as listed in Annexes XI, XX and XXXV to this Regulation, common high priority items as listed in Annex XL to this Regulation, or firearms and ammunition as listed in Annex I to Regulation (EU) No 258/2012 […]" Article 12g(1), ibid.
[136] The listed partner countries are: the United States, Japan, the United Kingdom, South Korea, Australia, Canada, New Zealand, Norway, Switzerland, Liechtenstein and Iceland.
[137] Council Regulation (EU) 2024/1745 of 24 June 2024 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L, 2024/1745, 24.06.2024.
[138] Earthsight, *Blood-stained birch: Exposing the EU trade in Russian conflict ply*, January 2025, https://www.earthsight.org.uk/blood-stained-birch.
[139] Ibid.
[140] Ibid.
[141] Olivia Allison, Alexia Anna Hack, Liam O'Shea and Gonzalo Saiz, *Illuminating the role of third-country jurisdictions in sanctions evasion and avoidance (SEA*) (Research Paper No 21, University of Birmingham 2023), at p. 19.

to prevent them from being frozen. For this purpose, they use shell companies registered in tax havens, employ complex company structures (e.g. holding companies), establish trusts or hide behind nominees and stolen/rented identities.

Attempts have been made by sanctioned individuals to set up trusts and designate themselves as beneficiaries, in order to claim that the assets that are to be frozen according to the EU restrictive measures do not belong to them. In *Melnichenko v Council*, the CJEU noted in this regard: "The fact that the appellant used an intermediate legal structure, such as a trust, is not such as to prevent it from being regarded as the holder of the shareholdings managed by that trust […]. It follows that it may be considered that the applicant, in his capacity as settlor and beneficiary of FirstLine Trust, continued to hold, from an economic point of view, shareholdings in EuroChem and SUEK."[142]

Another similar case is looming on the horizon. Alisher Usmanov, the Uzbekistan-born Russian metals and telecoms tycoon, was sanctioned, as a result of which his luxurious Italian villa was frozen and six firms associated with him were sanctioned.[143] Some of the sanctioned entities filed a complaint before the administrative court of Rome arguing that the sanctions should be lifted because "they were controlled by a trust in Bermuda, Pauillac Property Ltd, set up by Usmanov, but from which the businessman was excluded in February 2022".[144] The Italian court then sent a request for a preliminary ruling to the CJEU,[145] which ought to clarify whether the transfer of a sanctioned entity's shares to a trust is enough to prove that the entity in question is not owned or controlled by a sanctioned individual.

EU operators have complained about the difficulties involved in identifying company owners for the purposes of conducting due diligence with regard to economic sanctions. In its FAQ, the Commission lists the following question: "It can be very tricky for companies/investors to identify owners of companies in order to check whether any of these are sanctioned. This is especially relevant for Russian companies or funds as ownership is often hidden in holding companies, owned by other holding companies etc. Will the Commission provide guidance on what constitutes reasonable efforts on part of companies to identify sanctioned parties in a company structure?"[146] For its parts, the Commission has explicitly mentioned in its guidance for EU operators that, among other factors, the operators should examine whether their business counterparts underwent changes in their ownership structure during or after the adoption of sanctions or whether they were established after the introduction of sanctions.[147]

Use of trusted individuals who mask the true ownership of assets is also commonplace. For example, a recent investigation into how EU sanctions are circumvented in Latvia uncovered how Latvian citizens assist sanctioned Russian oligarchs in hiding their assets by taking nominal ownership of the assets.[148]

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[142] *Andrey Melnichenko v Council*, (n 121) at para. 71.
[143] *Italy court refers case on unfreezing of Russian billionaire's assets to EU*, Reuters, 13 April 2023, https://www.reuters.com/world/europe/italy-court-refers-case-unfreezing-russian-billionaires-assets-eu-2023-04-13/.
[144] Ibid.
[145] Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 13 June 2024 (FZ AR SpA v Ministero dell'Economia e delle Finanze and Others), C/2024/5219, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202405219.
[146] European Commission, *Consolidated FAQs* (n 75), at p. 14.
[147] European Commission, *Guidance for EU operators* (n 76) Part 1: Enhanced due diligence.
[148] Sergei Ezhov, *"Canned goods" from Riga: Russia's elites, oligarchs, and military contractors are quietly dodging sanctions in Latvia*, The Insider, 5 October 2024, https://theins.ru/en/politics/275067.

5. Policy Recommendations for Improving the Implementation and Enforcement of EU Restrictive Measures

Interviews conducted with government officials of the NCAs in five EU Member States – Lithuania, Spain, Malta, Romania and Latvia – revealed that the most common obstacles to effective implementation and enforcement of the restrictive measures were the following: (i) inconsistencies in the interpretation and implementation of EU restrictive measures in various EU Member States (e.g. states define and apply the concept of "control" differently); (ii) the unwillingness of some EU Member States to share information about certain transactions or information regarding beneficial ownership that undermines the possibility of effective cross-border investigations of sanctions circumvention; (iii) the almost complete impossibility of obtaining information from third countries that have not imposed economic sanctions similar to the EU restrictive measures; (iv) the lack of a single dedicated body/agency at the EU level responsible for the EU restrictive measures implementation and enforcement; (v) the absence of a centralized list of all the authorizations/licences granted by the NCAs of the EU Member States (e.g. customs officials of the Member States bordering Russia have to invest their time and energy into checking the validity of certain licenses issued by other Member States); (vi) the lack of publicly available and verified information on the beneficial ownership of legal entities and non-cooperative behaviour of some Member States in providing such information; (vii) the lack of a centralized database of national court decisions relevant for the implementation and enforcement of restrictive measures.

In this section, we outline six recommendations for enhancing EU restrictive measures implementation and enforcement.

5.1. Engage with allies and other third states

Since the Russian invasion of Ukraine in February 2022, the EU has intensified its cooperation and coordination in relation to the imposition, implementation and enforcement of economic sanctions. The G7 played a pivotal role in these cooperation and coordination efforts by providing countries with a forum to discuss new rounds of economic sanctions and their effective implementation and enforcement. In February 2023, G7 announced the creation of the Enforcement Coordination Mechanism "to bolster compliance and enforcement of multilateral export controls and sanctions".[149] Following this, in September 2024, the G7 Industry Guidance on preventing sanctions evasion was published.[150]

The European Parliament has been vocal about the need for better cooperation with other states.[151] In a similar vein, after conducting a five-year legislative review of Canadian sanctions laws, the Canadian Senate concluded that international coordination and cooperation in the area of economic sanctions should be improved.[152] Specifically, it was noted that the states could achieve a greater impact by multilateralizing

[149] Government of Canada, *Preventing Russian export control and sanctions evasion: Updated guidance for industry*, 18 October 2024, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/2024-09-24-advisory-conseil.aspx?lang=eng#.
[150] European Commission, *Sanctions vis a vis Russia: Commission publishes G7 Industry Guidance on preventing sanctions evasion*, News Article, 24 September 2024, https://finance.ec.europa.eu/news/sanctions-vis-vis-russia-commission-publishes-g7-industry-guidance-preventing-sanctions-evasion-2024-09-24_en.
[151] European Parliament Resolution of 8 July 2021 (n 4).
[152] Senate Standing Committee on Foreign Affairs and International Trade, *Strengthening Canada's Autonomous Sanctions*

their Magnitsky-style sanctions.[153] Thus, more efficient inter-state cooperation and coordination is required if states want their sanctions to bite.

The effectiveness of economic sanctions is significantly undermined by the actions or omissions of third states that do not participate in sanctions efforts. This is convincingly demonstrated by the section of this report where we describe the most common types of sanction circumvention practices. An analysis of the existing literature reveals three broad factors that impact the decision of third countries and their businesses to engage in sanctions circumvention: (i) a third country's geopolitical alignment; (ii) its economic dependence on a state targeted by sanctions; (iii) its trade and commercial capacity, as well as economic interests.[154] Other potential factors include the size of the targeted state's economy and the level of economic integration between a sanctioned state and other states.

While it remains highly unlikely that unwavering support will be secured from the third states that do not impose their own sanctions, a certain degree of limited cooperation and coordination (e.g. in export controls on dual-use goods) could be feasible. In December 2022, the EU created the new mandate of International Special Envoy for the Implementation of EU Sanctions and appointed David O'Sullivan to perform this function.[155] It is advisable to continue engaging with the third states and to periodically report on the results of this engagement.

5.2. Enhance cooperation between the EU Member States' NCAs

Clara Portela and Kim Olsen calculated that more than 160 NCAs are involved in the process of implementing and enforcing EU restrictive measures.[156] The number of agencies involved and the differences between the EU Member States' approaches to sanctions make the task of the uniform and effective implementation and enforcement of sanctions difficult to achieve.

The officials interviewed for this report revealed that while some NCAs might be cooperative and willing to engage with their counterparts in other Member States, others displayed non-cooperative patterns of behaviour (e.g. not providing required information or being willing to investigate potential cases of circumvention of sanctions).

At the same time, successful examples of coordination between the EU Member States have also been reported. In January 2024, Dutch, German, Latvian and Lithuanian authorities conducted an investigation, with the support of Europol and Eurojust, and took concerted action against individuals suspected of circumventing EU sanctions against Russia.[157]

It would be advisable to regularly update the information on the NCAs of the EU Member States and to arrange periodic meetings of the representatives of these NCAs. The latter should foster formal and informal exchanges between the NCAs' employees, including information sharing. It would also be advisable to consider creating a central register/database of the licences and authorizations issued by the

Architecture: Five-Year Legislative Review of the Sergei Magnitsky Law and the Special Economic Measures Act, May 2023, https://sencanada.ca/content/sen/committee/441/AEFA/reports/SEMAandMagnitsky_Final_10report_e.pdf.

[153] Ibid, at pp. 17–18.

[154] Allison, Hack, O'Shea and Saiz, (n 141), at p. 16.

[155] European Commission, *EU appoints David O'Sullivan as International Special Envoy for the Implementation of EU Sanctions*, News Article, 13 December 2022, https://ireland.representation.ec.europa.eu/news-and-events/news/eu-appoints-david-osullivan-international-special-envoy-implementation-eu-sanctions-2022-12-13_en.

[156] Portela and Olsen, (n 97).

[157] Europol, *Three arrested for exporting military goods to Russia*, News, 24 January 2024, https://www.europol.europa.eu/media-press/newsroom/news/three-arrested-for-exporting-military-goods-to-russia.

Member State, as well as decisions to deny authorizations.

5.3.Educate national court judges on EU restrictive measures

While the implementation and enforcement of EU restrictive measures is left in the hands of individual EU Member States, many of the decisions – including decisions to grant exceptions – are made by the NCAs. Such decisions, as a matter of law, fall under the ambit of administrative law of the respective EU Member States. This provides the affected parties with an opportunity to challenge these decisions before the national courts of EU Member States. Moreover, the actions of other parties – e.g. a German notary's refusal to authenticate and execute the contract of sale – might be challenged before the national courts.[158] Faced with a growing number of such disputes, national courts submitted requests for a preliminary ruling to the CJEU.[159]

The role of the national courts in the implementation and enforcement of restrictive measures has not been explored either in academic or policy studies. Employees of the NCAs interviewed for this report emphasized the need to further educate national court judges about EU restrictive measures, including their implementation and enforcement. Moreover, some of the interviewed officials acknowledged that there is a lack of publicly available information on the national court judgements related to EU restrictive measures, their implementation and their enforcement.

5.4.Prioritize engagement with the private sector

The private sector plays an essential role in the effective implementation of sanctions. Yet until recently this role was often overlooked by policymakers, with the notable exception of financial institutions.[160] In other words, the role of financial institutions in sanctions implementation has been widely acknowledged, while the role of other companies, including small and medium-sized enterprises (SMEs), was disregarded to a certain extent.

The interviews with the representatives of the private sector reveal that SMEs often unintentionally neglect economic sanctions compliance, mainly due to a lack of knowledge and understanding about how economic sanctions relate to their business activities.[161] Another serious obstacle for the SMEs is the lack of resources – both human and financial – required to run effective compliance programmes.

Since February 2022, we have observed numerous efforts on the part of EU institutions and individual Member States to educate the private sector and raise awareness about sanctions circumvention. Furthermore, in December 2022, the Commission announced a tender to set up "an EU Sanctions Due Diligence Helpdesk and develop[ing] operational tools necessary for its functioning".[162] It was expected that this helpdesk "would act as central contact point for EU SMEs having questions concerning due diligence for specific business projects in countries subject to EU sanctions".[163] At the time of writing,

[158] Judgment of the Court, request for a preliminary ruling from the Landgericht Berlin, Germany, GM, ON v PR, (Case C-109/23, Jemerak), 5 September 2024, ECLI:EU:C:2024:681.
[159] e.g. Judgment of the Court, request for a preliminary ruling from the Tribunalul București, Romania, Neves 77 Solutions SRL v Agenția Națională de Administrare Fiscală, Direcția Generală Antifraudă Fiscală, (Case C-351/22, Neves 77 Solutions), 10 September 2024, ECLI:EU:C:2024:723.
[160] Iryna Bogdanova, Unilateral Sanctions in International Law and the Enforcement of Human Rights: The Impact of the Principle of Common Concern of Humankind, Brill 2022, pp. 106–109.
[161] Notes of the interviews are in the file with the authors of this study.
[162] European Commission, Support to EU SMEs on EU sanctions due diligence, https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/tender-details/12931.
[163] Ibid.

there was no publicly available information about the tender or its outcome.

There are successful examples of initiatives to raise private sector's awareness on EU restrictive measures, their implementation and their enforcement that have been undertaken by the individual EU Member States. One example is the Romanian national awareness programme "PROTECTOR – Safe Business".[164] To raise awareness about EU sanctions, Romanian officials together with the local Chambers of Commerce organized a series of training sessions for business entities, including SMEs, in several regions of the country. Another good example is the diverse outreach activities undertaken by the Financial Intelligence Unit of Latvia. These activities include the preparation of guidelines (e.g. "Indicators of Sectoral and Targeted Financial Sanction Evasion"[165]), the publication of information on sanctioned persons, their frozen assets and their frozen economic resources[166] and the organization of an international conference "Making Sanctions Work: The Way Forward in 2024", which featured the views of the EU officials, Member State government officials, financial institutions, practitioners and the research community.[167]

The above-mentioned examples should be studied and analysed and the best practices should be replicated in other EU Member States.

5.5. Replicate the OFAC practice of sanctioning networks, instead of listing only designated individuals

The experience of the United States with the implementation and enforcement of economic sanctions demonstrates that sanctioning a networks of individuals, their associates and entities under their ownership and control is more effective than singling out particular individuals and designating them. It requires fewer resources from the private sector to implement economic sanctions when not only individuals are named, but also entities owned/controlled by them and persons associated with the sanctioned individuals. The use of such practice should take into account the relevant case law of the CJEU on sanctions against the family members and associates of the sanctions targets (see the sub-section "Use of family members to conceal the ownership of funds and economic resources").

5.6. Make information on beneficial ownership available to the private sector

The freezing of assets – funds and economic resources – is formulated in the following terms: "All funds and economic resources *belonging to, owned, held or controlled by* any natural or legal person, entity or body as listed in Annex I shall be frozen" (emphasis added).[168] The definitions of "ownership", "control" and "acting on behalf or at the direction" have recently been updated and clarified.[169] While the EU restrictive measures list individuals, legal entities and, on some occasions, persons associated with the

[164] The website of the programme is https://www.protector-romania.ro.
[165] Finanšu izlūkošanas dienests (Financial Intelligence Unit of Latvia), *Indicators of sectoral and targeted financial sanction evasion* (2nd updated edition 2024), English version available at: https://fid.gov.lv/uploads/files/2024/Sanctions%20evasion%20risk%20indicators_2024_ENG%20(002).pdf; Other guidelines and explanations on sanctions implementation are available in Latvian: https://sankcijas.fid.gov.lv/vadlinijas-un-skaidrojumi.
[166] Information is available in Latvian at: https://sankcijas.fid.gov.lv/sankciju-subjekti and https://sankcijas.fid.gov.lv/iesaldetie-saimnieciskie-resursi.
[167] Finanšu izlūkošanas dienests (Financial Intelligence Unit of Latvia), Key highlights of the conference "Making Sanctions Work: The Way Forward in 2024", News, 27 March 2024, https://fid.gov.lv/en/news/key-highlights-of-the-conference-making-sanctions-work-the-way-forward-in-2024.
[168] Article 3(1), Council Regulation (EU) 2020/1998 (n 107).
[169] Council of the European Union, *EU best practices* (n 72).

sanctions targets, the implementation of these measures is in the hands of the private sector. It falls to the private sector (e.g. compliance managers or advisors) to identify entities owned or controlled by the sanctions targets. This is a burdensome and time-consuming process, especially considering the lack of access to the beneficial ownership registers granted to the private sector.

In the past, efforts to combat money laundering and the financing of terrorism resulted in the adoption of Directive (EU) 215/849 (the Fourth AML Directive), which obligated EU Member States to ensure that corporate and other legal entities incorporated within their territory obtain and hold information on their beneficial owners.[170] The Fifth AML Directive (Directive (EU) 2018/843) granted access to the beneficial ownership registers "in all cases" to "any member of the general public".[171] However, in November 2022, the CJEU ruled that such indiscriminate access to the beneficial ownership registers constitutes a serious interference with the fundamental rights to respect for private life, as well as to the protection of personal data, and as a result, overturned the relevant provision in the directive.[172]

The sixth AML Directive (Directive (EU) 2024/1640), adopted in 2024, contains new obligations regarding the central beneficial ownership registers and access to such registers is explicitly granted to "national authorities with designated responsibilities for the implementation of Union restrictive measures identified under the relevant Council Regulations adopted on the basis of Article 215 TFEU".[173]

It is recommended that EU Member States provide legal entities registered on their territory (e.g. financial institutions) with access to their national beneficial ownership registers, and, if necessary, to the central beneficial ownership registers.

6. Policy Recommendations for a New EU Sanctions Regime Targeting Acts of Significant Corruption

At the outset, it should be emphasized that an effective anti-corruption strategy should consist of several layers of government actions. The use of economic sanctions to tackle grand corruption abroad is merely one constitutive element of this process.

6.1. The definition of sanctionable conduct for the purposes of imposing EU restrictive measures

Corruption can take many different forms. Beyond more conventional active and passive bribery, the term

[170] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Fourth AML Directive), OJ L 141, 05.06.2015.
[171] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Fifth AML Directive), OJ L 156, 19.06.2018.
[172] Judgment of the Court, requests for a preliminary ruling from the Tribunal d'arrondissement de Luxembourg, Luxembourg, WM (C-37/20), Sovim SA (C-601/20) v Luxembourg Business Registers (Joined Cases C-37/20 and C-601/20), 22 November 2022, ECLI:EU:C:2022:912.
[173] Article 11(2)(d), Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (Sixth AML Directive), OJ L, 2024/1640, 19.06.2024.

"corruption" can encompass such actions as embezzlement, misappropriation and other diversions of property by a public official, embezzlement in the private sector, trading in influence, abuse of functions, illicit enrichment and the obstruction of justice, as well as other potential actions.[174] It is therefore essential for any new EU sanctions framework to define what actions would constitute sanctionable conduct. Moreover, it would be advisable for the EU to align the definition of sanctionable conduct with the definition of various forms of corruption enumerated in the Proposal for a new EU Directive on combating corruption.[175]

The Proposal for a new EU Directive reflects the approach of the United Nations Convention against Corruption. Although the United Nations Convention against Corruption does not provide a general definition of corruption, it stipulates that the following actions ought to be criminalized: bribery of national public officials,[176] bribery of foreign public officials and officials working in public international organizations,[177] embezzlement, misappropriation or other diversions of property by a public official,[178] trading in influence,[179] abuse of functions,[180] illicit enrichment,[181] bribery in the private sector,[182] embezzlement of property in the private sector,[183] laundering the proceeds of a crime,[184] concealment[185] and the obstruction of justice.[186] For its part, the Proposal for an EU Directive on combating corruption suggests criminalizing the following activities: bribery in the public sector (Article 7); bribery in the private sector (Article 8); misappropriation (Article 9); trading in influence (Article 10); abuse of functions (Article 11); obstruction of justice (Article 12); and enrichment from corruption offences (Article 13). The Proposal for a new EU Directive amends Directive (EU) 2017/1371, which adds passive and active corruption and misappropriation to the list of criminal offences affecting the European Union's financial interests;[187] and replaces Council Framework Decision 2003/568/JHA on combating corruption in the private sector, which criminalizes active and passive corruption in the private sector.[188]

In the documents prepared by the European Parliament Research Service, a distinction is made between "petty" corruption and political or "grand" corruption.[189] The latter is considered to have far more detrimental effects, as it "occurs at high levels where policies and laws are made".[190] The KLEPTOTRACE Handbook on new forms of, and risk factors for, high-level transnational corruption

[174] EY and RAND Europe, *Strengthening the fight against corruption: Assessing the EU legislative and policy framework*, Report prepared for the European Commission, Directorate-General Migration and Home Affairs, 2023.
[175] European Commission, Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council, Brussels, 03.05.2023, COM(2023) 234 final.
[176] Article 15, United Nations Convention against Corruption.
[177] Article 16, ibid.
[178] Article 17, ibid.
[179] Article 18, ibid.
[180] Article 19, ibid.
[181] Article 20, ibid.
[182] Article 21, ibid.
[183] Article 22, ibid.
[184] Article 23, ibid.
[185] Article 24, ibid.
[186] Article 25, ibid.
[187] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.07.2017.
[188] Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector OJ L 192, 31.07.2003.
[189] Bąkowski (n 2).
[190] Ibid, at p. 3.

schemes draws the following distinction: "High-level corruption is distinguished from petty corruption by the abuse of power by high-level officials for the benefit of a few, often involving large sums of money and substantial detrimental impacts on society."[191] This approach is also reflected in the Proposal for an EU Directive on combating corruption,which includes a list of aggravating circumstances, such as when the offender is a high-level official (Article 18(1)(a)), when the offender obtained a substantial benefit or the offence caused substantial damage (Article 18(1)(c)), or when the offender exercises investigation, prosecution or adjudication functions (Article 18(1)(e)). In other words, the distinction considers both qualitative and quantitative elements.

The text of the proposal by the High Representative of the Union for Foreign Affairs and Security Policy to introduce a new EU sanctions regime to fight serious acts of corruption worldwide is not publicly available. Thus, it remains unclear how sanctionable conduct would be defined. It would be advisable for a new EU sanctions framework targeting acts of significant corruption: (i) to define sanctionable conduct in line with the offences criminalized according to the Proposal for an EU Directive on combating corruption; (ii) to provide a list of criteria used to define acts of significant/serious corruption, which should encompass high-level/grand corruption.

6.2.EU anti-corruption sanctions as part of a broader approach to tackling high-level corruption

Who will be sanctioned under new EU anti-corruption sanctions: foreign (non-EU) public officials, individuals who offer bribes and benefit from them or both? How about intermediaries, facilitators and other enablers?

The recently published book *Indulging Kleptocracy*, written by the leading experts on transnational kleptocracy, puts forward the hypothesis that the existence of the professional enablers ("the enabler effect") is the primary mechanism underlying transnational kleptocracy.[192] This implies that "professionals outside of a kleptocratic state work to sustain rather than challenge" all types of foreign kleptocrats, whom they classify into loyalists, opponents and fence-sitters, depending on their attitude towards the regime in their home states.[193] As this study shows, enabling activities take various forms, although their fundamental raison d'être is to transform illegal wealth into legal wealth by "achieving nominal compliance with the law and regulations".[194]

Within this context, it would be advisable to consider whether the imposition of anti-corruption sanctions could be combined with a concerted effort to diminish the role of the professional enablers, including legal and financial professionals, in turning illegal wealth into legal wealth. Specifically, it is recommended that when a foreign government official is sanctioned under the EU anti-corruption sanctions framework and that individual possesses assets and economic resources on the territory of the EU, this action should be combined with an in-depth investigation of the actions/omissions of the professional enablers that made it possible to acquire these assets.

[191] Giovanni Nicolazzo, Caterina Paternoster, Giorgia Cascone, and Laura Ventre, *KLEPTOTRACE Handbook on new forms of, and risk factors for, high-level transnational corruption schemes*, Transcrime 2024, at p. 10.
[192] John Heathershaw, Tena Prelec and Tom Mayne, *Indulging kleptocracy: British Service Providers, Postcommunist Elites, and the Enabling of Corruption*, Oxford University Press, 2025, at p. 65.
[193] Ibid, at p. 64.
[194] Ibid, at p. 58.

6.3. The designation of immediate family members of the individuals sanctioned for significant corruption

In its Recommendation 12 on politically exposed persons (PEPs), the Financial Action Task Force (FATF) advises enhanced due diligence measures not only in relation to PEPs, but also in relation to their family members and close associates.[195] This course of action is justified in virtue of the risks associated with PEPs, including the corruption risks, as well as the potential for abuse of the relationship for the purpose of disguise proceeds of corruption. It is therefore advisable that EU anti-corruption sanctions apply not only to those foreign public officials who are responsible or complicit in the acts of significant corruption, but also to their immediate family members and close associates (i.e. a rebuttable presumption that immediate family members and close associates benefit from the corrupt behaviour).

6.4. Grant civil society an opportunity to provide information on acts of significant corruption, corrupt foreign officials and their associates

Over the years, the CJEU has developed its approach to the burden of proof in cases where the applicant challenges its designation under EU sanctions. On the one hand, it has explicitly stated that "the Council discharges the burden of proof borne by it if it presents to the EU Courts *a sufficiently concrete, precise and consistent body of evidence* to establish that there is a sufficient link between the person or entity subject to a measure freezing his, her or its funds and the regime or, in general, the situations, being combated" (citations omitted, emphasis added).[196] On the other, the Court has recognized that the availability of such evidence might be circumscribed: "[…] it must be noted that *the context of the measures at issue must be taken into account* and *the standard of proof which may be required of the Council must be adapted in the light of the difficulty of obtaining evidence and objective information*" (citations omitted, emphasis added).[197]

The CJEU has pronounced that EU institutions in some instances must rely on publicly available sources of information: "In the absence of investigative powers in third countries, *the assessment of the EU authorities must rely on publicly available sources of information, reports, articles in the press, intelligence reports or other similar sources of information*" (citations omitted, emphasis added).[198]

As the report on the EU sanctions implementation and enforcement reveal, EU Member States and the European External Action Service are already overwhelmed by the number of listed persons under numerous sanctions regimes and the work involved in the collection and verification of the relevant information.[199] In light of this, the role of the civil society in providing information that could serve as grounds for designating certain individuals under the prospective EU anti-corruption sanctions can scarcely be overestimated.

States that impose sanctions for acts of significant corruption rely upon the information provided by civil society (see Table 2). For example, the US Department of the Treasury has acknowledged that closer collaboration with civil society is beneficial for tackling grand corruption: "Treasury highly values the information shared by NGOs all over the globe to expose corruption and human rights abuse, which can

[195] Financial Action Task Force (FATF), FATF Recommendations 2012, adopted on 16 February 2012, last updated in November 2023, https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html.
[196] *Andrey Melnichenko v Council* (n 121), at para. 28.
[197] Ibid, at para. 29.
[198] Ibid, at para. 40.
[199] Portela and Olsen, (n 97), at p. 36.

be used to support and develop cases like Treasury's action today."[200]

Table 2. Sources and information used in anti-corruption sanctions regimes

Country Name	Sources and information used for sanctioning individuals and entities
The United States	i."information provided by the chairperson and ranking member of each of the appropriate congressional committees" (Senate: the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations; House of Representatives: the Committee on Financial Services and the Committee on Foreign Affairs); and i."credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights" (the Global Magnitsky Act allows for the imposition of economic sanctions not only on corrupt foreign officials. but also on perpetrators of gross human rights violations).
Canada	Canadian law does not explicitly refer to the information and sources of information used in imposing sanctioning. However, the law stipulates that the Minister of Foreign Affairs "may require any person to provide to that Minister any information that that Minister believes on reasonable grounds is relevant for the purposes of the making, administration or enforcement of" a decision to impose sanctions or seize sanctioned property. Furthermore, the law prescribes that "every person who is required to provide information […] must comply with the requirement within the time and in the form and manner specified by that Minister [the Minister of Foreign Affairs]."
The United Kingdom	The Secretary of State may designate a person if the Secretary of State "has reasonable grounds to suspect that that person is an involved person" in the sense laid out in the Global Anti-Corruption Sanctions Regulations 2021. The Regulations do not provide further details regarding information required for a designation or the sources of such information. The government's policy paper issued on the same day as the Regulations sets out an illustrative list of factors that are relevant when designating individuals under an anti-corruption sanctions regime.
Australia	The Minister "is satisfied" that a serious act of corruption has occurred and that a person has engaged in, been responsible for or been complicit in this act; the immediate family members of the person, as well as individuals who benefitted financially from the act may also be designated. The Regulations do not explicitly lay out the evidentiary standards or the sources of the information used in making the designation. At the same time, an information note prepared by the government encourages civil society organizations to provide pertinent information and guarantees that it will be treated confidentially.

Prior to the adoption of the UK anti-corruption sanctions regime, Dr Susan Hawley, the Executive Director of Spotlight on Corruption, had already warned of the potentially risk-averse attitude of the government when the evidence of corruption is insufficient.[201] Specifically, Dr Hawley pointed out: "Given the significant amounts of money that kleptocrats have at their disposal to defend their assets and reputations and the difficulties of proving corruption, 'designations' to the corruption regime may be heavily contested. This could make the Government risk averse in who it chooses to put on the list."[202] In this context, she foresees journalists playing a pivotal role: they can provide evidence of corruption and corrupt actors, thus enabling the government to impose anti-corruption sanctions.[203]

[200] US Department of the Treasury, *Treasury targets corruption linked to Dan Gertler* (n 35).
[201] Dr Susan Hawley, *The UK's new corruption sanctions regime – Can it help end the UK's role as a global money laundering centre and what role will journalists play?*, The Foreign Policy Center, 10 March 2021 https://fpc.org.uk/the-uks-new-corruption-sanctions-regime-can-it-help-end-the-uks-role-as-a-global-money-laundering-centre-and-what-role-will-journalists-play/.
[202] Ibid
[203] Ibid.

In light of the above, the EU should consider bolstering existing whistleblower protections. The existing Whistleblower Protection Directive (Directive (EU) 2019/1937) does not grant such a protection for reporting conduct sanctionable under EU restrictive measures.[204] Already in 2021, the European Parliament insisted on the "need for confidentiality and a witness protection mechanism to be put in place for those who provide information" regarding human rights violations.[205]

6.5. The multilateralization of anti-corruption sanctions

Sanctions Watch, an initiative supported by the CiFAR (Civil Forum for Asset Recovery), documents individuals subject to anti-corruption sanctions in several jurisdictions.[206] The most recent list (as of 31 December 2024) contains more than 300 persons.[207] What is noteworthy, however, is that a large majority of sanctioned individuals are designated only in one jurisdiction, or, in some rare cases, two. This illustrates the lack of coordination between the states that have enacted frameworks for anti-corruption sanctions.

In the past, the European Parliament has called for better cooperation on human rights sanctions (Magnitsky-style sanctions).[208] After conducting a five-year legislative review of the Canadian sanctions laws, the Canadian Senate also recommended improving international coordination and cooperation in the area of economic sanctions.[209] Specifically, it was noted that states could achieve greater impact by multilateralizing their Magnitsky-style sanctions.[210] In December 2024, announcing a new wave of economic sanctions targeting significant corruption, the OFAC emphasized "a whole-of-government approach and collaboration with allies and partners" as a way of countering "the globalized nature of corruption".[211]

It is recommended that the EU aligns its anti-corruption sanctions with those of its allies and aims at the multilateralization of such actions.

6.6. The political nature of anti-corruption sanctions and potential retaliatory sanctions imposed by other states

Economic sanctions count among the conventional instruments of foreign policy, and sanctions against acts of significant corruption are no exception. In some instances, such measures might be deployed against heads of the states and senior government officials. For example, in March 2024, the OFAC sanctioned eleven individuals, including Zimbabwe's President Emmerson Mnangagwa, and three entities

[204] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019.
[205] European Parliament Resolution of 8 July 2021 (n 4).
[206] Sanctions Watch documents designations made under the following anti-corruption sanctions regimes: Canadian sanctions under the Freezing Assets of Corrupt Foreign Officials Act; Canadian sanctions under the Justice for Victims of Corrupt Foreign Officials Act; EU misappropriation sanctions (Ukraine, Tunisia); Swiss asset freezing sanctions under the Foreign Illicit Assets Act (Ukraine); UK sanctions under the Global Anti-Corruption Sanctions Regulations; and US sanctions under the Global Magnitsky Human Rights Accountability Act.
[207] The Sanctions Watch database is available here https://sanctionswatch.cifar.eu/about-sanctions-watch.
[208] European Parliament Resolution of 8 July 2021 (n 4).
[209] Senate Standing Committee on Foreign Affairs and International Trade, *Strengthening Canada's Autonomous Sanctions Architecture* (n 152).
[210] Ibid, at pp. 17–18.
[211] US Department of the Treasury, *Treasury sanctions global gold smuggling network* (n 38).

for “their involvement in corruption or serious human rights abuse”.[212]

In some instances, the imposition of economic sanctions might prompt a retaliatory response. In the past, this occurred not only when rounds of economic sanctions were levied, but also when more narrowly defined targeted sanctions were adopted. An example of the former are the retaliatory actions taken by the Russian Federation,[213] while an example of the latter are Chinese sanctions targeting ten individuals and four entities in the EU, including Members of the European Parliament, in response to EU human rights sanctions.[214] It is therefore advisable to consider the risks of possible retaliatory actions and to be prepared for such retaliatory actions on the part of other states.

[212] US Department of the Treasury, *Treasury sanctions Zimbabwe’s president and key actors for corruption and serious human rights abuse*, Press Release, 4 March 2024, https://home.treasury.gov/news/press-releases/jy2154.
[213] e.g. Presidential Decree No. 302 of the Russian Federation of 25 April 2023, which established a legal framework authorizing the government to take control of Russian assets owned or managed by investors associated with “unfriendly” foreign states; Federal law No. 470-FZ, “On Specifics of Corporate Governance in Business Companies which are Economically Significant Organizations”.
[214] Matthew Parry, *Chinese counter-sanctions on EU targets* (European Parliamentary Research Service May 2021) https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690617/EPRS_ATA(2021)690617_EN.pdf.

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certain persons and entities in view of the situation in Tunisia (renewed until 31 January 2026).

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Annex 1

Table 1. Comparative analysis of economic sanctions regimes against corruption

Name of the country	Legal basis	Who could be sanctioned	Sanctionable conduct	Types of sanctions
The United States	*Global Magnitsky Human Rights Accountability Act*	A government official and/or a senior associate of such an official "responsible for, or complicit in" sanctionable conduct; any foreign person who "has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of" the sanctionable conduct	i. "Ordering, controlling, or otherwise directing, *acts of 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"; ii. Material assistance sponsorship or provision of "financial, material, or technological support for, or goods or services in support of" the abovementioned conduct.	**Travel bans** (ineligibility to receive a visa and revocation of the previously issued visas or other documentation); **Blocking of property** ("blocking of all transactions in all property and interests in property" if "such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.")
The United States	*Executive Order 13818*	i. **"**a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in corruption**";** ii. "a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in the transfer or the facilitation of the transfer of the proceeds of corruption"; iii. "a leader or official of: (1) an entity, including any government entity, that has engaged in, or whose members have engaged in, any of the [abovementioned] activities […] relating to the	ii. "responsible for or complicit in, or has directly or indirectly engaged in: (1) corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery; or (2) the transfer or the facilitation of the transfer of the proceeds of corruption"; iii. "to be or have been a leader or official of: (1) an entity, including any government entity, that has engaged in, or whose members have engaged in, any of the [abovementioned] activities […] relating to the leader's or official's tenure; or (2) an entity whose property and interests in property are blocked […] as a result of [such] activities"; iv. "to have attempted to engage in any of the [abovementioned] activities"; v. "any person determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General" if certain preconditions met (Section 1(iii) of the EO 13818)	**Blocking of property** ("All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in"); **Travel bans** ("the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended"); **Prohibition on making donations** (prohibit "the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of" sanctioned persons).

		leader's or official's tenure; or (2) an entity whose property and interests in property are blocked […] as a result of [such] activities"; i. "any foreign person, who have attempted to engage in any of the [abovementioned] activities" iv. "any person determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General" if certain preconditions met (Section 1(iii) of the EO 13818)".		
Canada	*Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law); Special Economic Measures Act; Immigration and Refugee Protection Act*	"a foreign public official or an associate of such an official, is responsible for or complicit in ordering, controlling or otherwise directing acts of corruption — […] — which amount to acts of significant corruption"; "a foreign national has materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of" acts of significant corruption.	i. "ordering, controlling or otherwise directing 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 — 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"; ii. material assistance, sponsorship, or provision of financial, material or technological support for, or goods or services in support of acts of significant corruption.	i. The following activities might be prohibited: (a) the dealing, directly or indirectly, by any person in Canada or Canadian outside Canada in any property, wherever situated, of the foreign national; (b) the entering into or facilitating, directly or indirectly, by any person in Canada or Canadian outside Canada, of any financial transaction related to a dealing referred to in paragraph (a); and (c) the provision by any person in Canada or Canadian outside Canada of financial services or any other services to, for the benefit of or on the direction or order of the foreign national; (d) the acquisition by any person in Canada or Canadian outside Canada of financial services or any other services for the benefit of or on the direction or order of the foreign national; and (e) the making available by any person in Canada or Canadian outside Canada of any property, wherever situated, to the foreign

				national or to a person acting on behalf of the foreign national. i. Immigration and Refugee Protection Act recognises inadmissible to Canada persons sanctioned under the Sergei Magnitsky Law, other than permanent residents.
The United Kingdom	*The Global Anti-Corruption Sanctions Regulations 2021*	i. A person involved in serious corruption, which is defined as follows: "(a) the person is responsible for or engages in serious corruption; (b) the person facilitates or provides support for serious corruption; (c) the person profits financially or obtains any other benefit from serious corruption; (d) the person conceals or disguises, or facilitates the concealment or disguise of – (i)serious corruption, or (ii)any profit or proceeds from serious corruption; (e) the person transfers or converts, or facilitates the transfer or conversion of, any profit or proceeds from serious corruption; (f) the person is responsible for the investigation or prosecution of serious corruption and intentionally or recklessly fails to fulfil that responsibility, or (g) the person uses threats, intimidation or physical force to interfere in, or otherwise interferes in, any law enforcement or judicial process in connection with serious corruption; (h) the person contravenes, or assists with the contravention of, any provision of Part 3 of these Regulations."	Corruption is defined as follows: i. "bribery occurs where: **(a)** a person directly or indirectly offers, promises or gives a financial or other advantage to a foreign public official, and where – (i) the person intends to induce that official or another foreign public official to perform improperly a public function, or (ii) the person intends to reward that official or another foreign public official for improperly performing a public function, or (iii) the person knows or believes that the acceptance of the advantage by that official would constitute improperly performing a public function; **(b)** a foreign public official directly or indirectly requests, agrees to receive or accepts a financial or other advantage, and where – (i) that official intends, in consequence, that the official or another foreign public official should improperly perform a public function, or (ii) the advantage is a reward for that official or another foreign public official improperly performing a public function, or (iii) that official knows or believes that the request for, agreement to receive or acceptance of the advantage by the official would constitute improperly performing a public function; or **(c)** in anticipation of or in consequence of requesting, agreeing to receive or accepting a financial or other advantage, a foreign public official, or another person at that official's request or with their assent or acquiescence, improperly performs a public function;" ii. "misappropriation of property occurs where a foreign public official – **(a)** has been entrusted with property, or has a role in the grant or allocation of property, by virtue of their position, and **(b)** improperly diverts, grants or allocates that property for the benefit of the official or for the benefit of another person."	i. Asset freezes, including prohibition on making funds and economic resources available to designated persons and prohibition on making funds and economic resources available for benefit of designated persons; ii. Director disqualification sanctions ("The effect of the provision is to disqualify persons designated […] from being a director of a UK company or directly or indirectly taking part in or being concerned in the promotion, formation or management of a company.") iii. Travel bans

		ii. In addition, the following persons might be sanctioned: "(b) [person] is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved [involved in serious corruption], (c) [person] is acting on behalf of or at the direction of a person who is or has been so involved, or (d) [person] is a member of, or associated with, a person who is or has been so involved."		
Australia	*Autonomous Sanctions Regulations 2011*	i. A person or an entity could be designated if "the Minister is satisfied that the person or entity has engaged in, has been responsible for or has been complicit in an act of corruption that is serious." ii. A person could be designated if "the Minister is satisfied that the person is an immediate family member of a person who is" sanctioned for serious corruption. iii. A person or an entity could be designated if "the Minister is satisfied that the person or entity has obtained a financial or other benefit as a result of the act of another person or entity" for which that another person or entity were sanctioned as for acts of serious corruption.	Corruption is defined as either bribery or misappropriation of property. i. Bribery means: (a) the promise, offering or giving, to a foreign public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in a particular way in the exercise of the official's official duties; or (b) the solicitation or acceptance by a foreign public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in a particular way in the exercise of the official's official duties. ii. Misappropriation of property means the misappropriation or other diversion by a foreign public official for the official's benefit or for the benefit of another person or entity, of any asset entrusted to the official because of the official's position.	i. Restrictions on providing assets to designated persons or entities; ii. Restrictions on dealing with the assets of designated persons or entities; iii. Travel bans on declared persons.