



HIGHLIGHT

A NEW EU SANCTIONS REGIME AGAINST HUMAN RIGHTS VIOLATIONS

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On October 19, the European Commission and the High Representative of the EU for Foreign Affairs and Security Policy, Joseph Borrell, put forward a Joint Proposal for a Council Regulation concerning targeted sanctions against serious human rights violations and abuses worldwide.¹

The proposed regime will provide the Union with a new tool of Common Foreign and Security Policy. It will empower the Council to directly target those individuals who are responsible for serious human rights infringements (no matter where the abuses occur).² These sanctions will consist of individualized listing decisions which will heavily impact the fundamental rights and freedoms of the targeted persons,³ mainly by means of asset freezing measures and restrictions on admission into the EU. The ultimate goal is to bring about a change in policy or activity in the targeted persons, with the view of promoting and defending human rights globally.⁴

The new regime has been debated for years. On the other side of the Atlantic, the Global Magnitsky (Human Rights Accountability) Act, adopted by the US Congress in 2016,⁵ represents not only the first legal instrument addressing human rights violations worldwide, but also the main legal model. Following the US approach some EU states have, in the last few years, adopted human rights sanctions laws, also known as “Mag-

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¹ European Commission, Press release of 19 October 2020, ec.europa.eu.

² See Art. 215, para. 2, TFEU.

³ See Opinion of AG Sharpston delivered on 22 September 2016, case C-599/14 P, *Council v. LTTE*, para. 102. See also Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, Doc. 5664/18.

⁴ In line with the objectives set out in Arts 3, para 5, and 21 TEU.

⁵ The text of the Global Magnitsky Act is accessible at www.congress.gov.



nitsky laws" (such as Estonia, Latvia and Lithuania). Then, in December 2018, the Dutch government initially floated the idea of introducing a new EU global sanctions regime.⁶ In March 2019, the European Parliament adopted a detailed Resolution calling for a human rights sanctions policy,⁷ and, in December 2019, the Foreign Affairs Council explicitly reflected on how to improve the EU toolbox on human rights.⁸

Although the EU has already adopted "smart" sanctions against individuals who are responsible for human rights violations, it has always focused on specific geographical areas only.⁹ In fact, almost all (91.2 per cent) EU sanctions regimes are currently geographical, meaning that they impose restrictive measures in specific third countries (e.g. Iran, Turkey, Russia, Syria, Venezuela). The proposed Regulation goes a step further, however. It will establish a new thematic regime,¹⁰ encompassing a strong multilateral, global dimension.

The main advantage is that the new horizontal regime will not take into account territorial borders. Accordingly, it will provide the EU with greater flexibility to target perpetrators of human rights abuses worldwide. Since the new global regime emphasizes the individual responsibility of targeted persons (rather than their nationality), it dissolves the geographical link with third countries. Non-state entities, mainly physical persons, are the true "subjects" of this new policy,¹¹ and, in this way, the Union has the opportunity to become a swifter decision-maker and a more effective actor when addressing human rights perpetrators, thus avoiding potential political, economic and strategic conflicts of interests with third countries and economic partners (*inter alia* Saudi Arabia, Bahrain or China).

The Joint Proposal also introduces an innovative procedural element; for the first time entitling the Commission to oversee the implementation of travel bans. This novelty suggests the need for a more centralized and coordinated implementing process of EU smart sanctions. Nevertheless, it also raises concerns about the traditional role of the Member States in this phase.

In conclusion, the Joint Proposal is currently under discussion at the Council. The establishment of the new sanctions policy requires the combination of two (comple-

⁶ See the Dutch government's proposal: www.government.nl.

⁷ European Parliament Resolution 2019/2580(RSP) of 14 March 2019 on a European human rights violations sanctions regime.

⁸ Conclusions of the Foreign Affairs Council, 9 December 2019.

⁹ See, for instance, Council Regulation (EU) 36/2012 concerning restrictive measures in view of the situation in Syria (including the continued brutal repression and violation of human rights by the Government of Syria); Council Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya (including serious human rights abuses); Council Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela (including the continuing deterioration of human rights).

¹⁰ In addition to three existing EU thematic regimes, *i.e.* against chemical weapons, cyber-attacks and terrorism.

¹¹ S. POLI, *The Turning of Non-state Entities from Objects to Subjects of EU Restrictive Measures*, in S. BARDUTZY, E. FAHEY (eds), *Framing the Subjects and Objects of Contemporary EU law*, Cheltenham, UK, Northampton, MA, USA: Edward Elgar, 2017, p. 158 *et seq.*

mentary) legal instruments, and it will enter into force only once both a Council Decision and a Council Regulation have been adopted. Although the final decision is clearly in the hands of the Council, it is important to recall that both the Commission and the High Representative have expressed their political support on the issue (particularly in the framework of the EU Action Plan on Human Rights and Democracy for 2020-2024).¹² President Von der Leyen made an explicit reference to the new policy during her first State of the Union speech.¹³ The High Representative has affirmed its support to the “the idea of a global sanctions policy to tackle human rights abuses, instead of having to evaluate on a case by case basis as we do now”.¹⁴ He hopes to approve the new regime by the time of the Foreign Affairs Council in December (recalling that December 10 is Human Rights Day and would therefore be a perfect occasion).

¹² European Commission, Joint Communication JOIN(2020) 5 final of 25 March 2020 to the European Parliament and the Council, eur-lex.europa.eu.

¹³ State of the Union Address by President von der Leyen at the European Parliament Plenary, 16 September 2020.

¹⁴ See European Union External Action, *The long and complex road towards an EU Global Human Rights Sanctions Regime*, 31 October 2020, eeas.europa.eu.

