

December 10, 2020

## THE EU ADOPTS MAGNITSKY-STYLE GLOBAL HUMAN RIGHTS SANCTIONS REGIME

To Our Clients and Friends:

On December 7, 2020, the Foreign Affairs Council of the Council of the European Union, adopted Decision (CFSP) 2020/1999 (the **Council Decision**) and Regulation (EU) 2020/1998 (the **Council Regulation**) concerning restrictive measures against serious human rights violations and abuses, which together establish the first global and comprehensive human rights sanctions regime to be enacted by the European Union (the **EU**) (the **EU Human Rights Sanctions**).

The EU Human Rights Sanctions will allow the EU to target individuals and entities responsible for, involved in or associated with serious human rights violations and abuses and provides for the possibility to impose travel bans, asset freeze measures and the prohibition of making funds or economic resources available to those designated.

The adoption of the EU Human Rights Sanctions emphasizes that the promotion and protection of human rights remain a cornerstone and priority of EU external action and is expected to contribute towards progressing global human rights by strengthening the international community's ability to hold individuals and entities accountable for decisions or actions that lead to blatant or systematic human rights violations.

### **Background**

The need for adopting a regime that specifically addresses serious human rights violations worldwide has long been the subject of debate in the EU.

In November 2018, the Dutch Government launched preliminary discussions among EU member states for a specific human rights sanctions regime. In March 2019, the European Parliament adopted a resolution calling “for the swift establishment of an autonomous, flexible and reactive EU-wide sanctions regime”. However, it was only in December 9, 2019, that the Council of the European Union formally reflected on how to improve the EU's toolbox when it comes to addressing human rights violations, and the EU High Representative announced the launch of preparatory work on a possible sanctions regime.

More recently, on September 16, 2020, in her State of the Union Address, European Commission President Ursula von der Leyen prompted member states to “be courageous and finally move to qualified majority voting – at least on human rights and sanctions implementation”. She not only recalled that the EU Parliament had already called for a “European Magnitsky Act” many times, but also announced that the European Commission “will now come forward with a proposal”.

Moving towards this goal, on November 17, 2020, the European Council approved conclusions on the *EU Action Plan on Human Rights and Democracy 2020-2024* which set out the EU's priorities in this field and contained a commitment to developing a new EU global human rights sanctions regime.

It is important to note that the enactment of the EU Human Rights Sanctions comes after the adoption of the U.S. Magnitsky Act of 2012, and its 2016 expansion, the U.S. Global Magnitsky Human Rights Accountability Act (collectively, the *Magnitsky Act*), which was the first legal instrument worldwide addressing human rights violations through sanctions. Since then, Canada, Estonia, Latvia, Lithuania and the United Kingdom (for more details on the UK regime please see *Gibson Dunn Client Alert of July 9, 2020*) have also adopted Magnitsky-like sanctions regimes. Other countries, including Japan and Australia, are also considering adopting similar legislation.

## ***Scope of application***

Mirroring the Magnitsky Act, the new sanctions regime will provide the EU with a legal framework to target natural and legal persons, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses worldwide, regardless of where these might have occurred.

The EU Human Rights Sanctions applied to acts such as genocide, crimes against humanity and other serious human rights violations or abuses, such as torture, slavery, extrajudicial killings, arbitrary arrests or detentions. Other human rights violations or abuses can also fall under the scope of the sanctions regime where those violations or abuses are widespread, systematic or are otherwise of serious concern as regards the objectives of the common foreign and security policy set out in Article 21 of the Treaty on European Union.[1]

Notably, contrary to the U.S. and Canadian sanctions regimes, and similarly to the United Kingdom human rights sanctions regime, the list of human rights violations does not include corruption.

## ***Restrictive measures***

Under the EU Human Rights Sanctions designated human rights offenders can be targeted by travel bans (applying to individuals) and asset freezes (applying to both individuals and entities). In addition, individuals and entities in the EU will be forbidden from making funds available, either directly or indirectly, to the designated individuals or entities. Further, it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent EU Human Rights Sanctions.

Similarly to other EU sanctions regimes, under the EU Human Rights Sanctions, the competent authorities of the member states may authorize the release of certain frozen assets and the provision of certain funds and economic resources on the basis of humanitarian grounds.

Member states may also grant exemptions from travel restrictions where travel is justified on the grounds of an urgent humanitarian need, in order to facilitate a judicial process or on grounds of attending intergovernmental meetings, where a political dialogue is conducted that directly promotes the policy objectives of restrictive measures, including the ending of serious human rights violations and abuses.

## *Procedural Aspects*

Following the structure of existing sanctions programs, the EU Human Rights Sanctions were introduced by the Council of the European Union through a Council Decision (setting out key principles binding to the member states) and a Council Regulation (with more detailed provisions that are directly binding to any person subject to the EU's jurisdiction).

It will now be for the Council of the European Union, acting upon a proposal from a member state or from the High Representative of the EU for Foreign Affairs and Security Policy, to establish, review and amend the list of those individuals and entities that are subject to EU Human Rights Sanctions. Designating an individual or an entity will require a significant degree of consensus, as the Council of the European Union can only proceed with designations on the basis of unanimity among all member states.

Enforcing the EU Human Rights Sanctions, including determining the applicable penalties for the infringement of the restrictive measures, falls within the competency of member states.

## *Outlook*

Human rights violations have already been subject to EU sanctions, imposed on the basis of a sanctions framework linked to specific countries, conflicts or crises.<sup>[2]</sup> Linking the possibility of sanctioning human rights violations to specific countries or conflicts, however, limited the EU's ability to respond swiftly whenever a new crisis emerged.

EU Human Rights Sanctions are expected to confer more flexibility and speediness to the EU's response to significant human rights violations. Since EU Human Rights Sanctions put the emphasis on the individual responsibility of designated persons and entities (rather than on their nationality), it dissociates to a certain extent the geographical link between the perpetrator of a human rights violation and third countries. This provides the EU with the opportunity to proceed with designations, without necessarily entailing political, economic and strategic conflicts with third countries.

U.S. Secretary of State Mike Pompeo said that the U.S. “welcomes” the EU's sanctions regime, calling it a “groundbreaking accomplishment” and encouraging the EU “to adopt its first designations as soon as possible”.

Additionally, despite welcoming the EU's move, several civil society organizations called for additional rules to also target corruption.

The adoption of the restrictive measures under the EU Human Rights Sanctions means that companies active in the EU will be obliged to freeze the assets of designated human rights offenders and must not make funds or economic resources available to them. Further, it will limit access to the EU by imposing travel bans on those designated.

Although no specific individual or entity have yet been designated under EU Human Rights Sanctions, companies active in the EU should be mindful of this new sanctions regime and take it into consideration in their compliance efforts.

---

[1] Such violations may, *inter alia*, include: (i) trafficking in human beings, as well as abuses of human rights by migrant smugglers as referred to in that Article; (ii) sexual and gender-based violence; (iii) violations or abuses of freedom of peaceful assembly and of association; (iv) violations or abuses of freedom of opinion and expression and; (v) violations or abuses of freedom of religion or belief.

[2] 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).



*Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the above developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's International Trade practice group, or the following authors:*

*Attila Borsos – Brussels (+32 2 554 72 11, aborsos@gibsondunn.com)*  
*Patrick Doris – London (+44 (0) 20 7071 4276, pdoris@gibsondunn.com)*  
*Michael Walther – Munich (+49 89 189 33-180, mwalther@gibsondunn.com)*  
*Richard W. Roeder – Munich (+49 89 189 33-160, rroeder@gibsondunn.com)*  
*Maria Francisca Couto – Brussels (+32 2 554 72 31, fcouto@gibsondunn.com)*  
*Vasiliki Dolka – Brussels (+32 2 554 72 01, vdolka@gibsondunn.com)*

***International Trade Group:***

***Europe and Asia:***

*Peter Alexiadis – Brussels (+32 2 554 72 00, palexiadis@gibsondunn.com)*  
*Attila Borsos – Brussels (+32 2 554 72 10, aborsos@gibsondunn.com)*  
*Nicolas Autet – Paris (+33 1 56 43 13 00, nautet@gibsondunn.com)*  
*Susy Bullock – London (+44 (0)20 7071 4283, sbullock@gibsondunn.com)*  
*Patrick Doris – London (+44 (0)20 7071 4276, pdoris@gibsondunn.com)*  
*Sacha Harber-Kelly – London (+44 (0)20 7071 4205, sharber-kelly@gibsondunn.com)*  
*Penny Madden – London (+44 (0)20 7071 4226, pmadden@gibsondunn.com)*  
*Benno Schwarz – Munich (+49 89 189 33 110, bschwarz@gibsondunn.com)*  
*Michael Walther – Munich (+49 89 189 33-180, mwalther@gibsondunn.com)*  
*Richard W. Roeder – Munich (+49 89 189 33-160, rroeder@gibsondunn.com)*

# GIBSON DUNN

*Fang Xue – Beijing (+86 10 6502 8687, fxue@gibsondunn.com)*

*Qi Yue – Beijing (+86 10 6502 8534, qyue@gibsondunn.com)*

## **United States:**

*Judith Alison Lee – Co-Chair, International Trade Practice, Washington, D.C. (+1 202-887-3591, jalee@gibsondunn.com)*

*Ronald Kirk – Co-Chair, International Trade Practice, Dallas (+1 214-698-3295, rkirk@gibsondunn.com)*

*Jose W. Fernandez – New York (+1 212-351-2376, jfernandez@gibsondunn.com)*

*Marcellus A. McRae – Los Angeles (+1 213-229-7675, mmcrae@gibsondunn.com)*

*Adam M. Smith – Washington, D.C. (+1 202-887-3547, asmith@gibsondunn.com)*

*Stephanie L. Connor – Washington, D.C. (+1 202-955-8586, sconnor@gibsondunn.com)*

*Christopher T. Timura – Washington, D.C. (+1 202-887-3690, ctimura@gibsondunn.com)*

© 2020 Gibson, Dunn & Crutcher LLP

*Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.*