



# ARTICLE

## SANCTIONS FOLLOWING THE DEATH OF ALEXEI NAVALNY: A NEW ILLUSTRATION OF THE RISE OF INTERNATIONAL SANCTIONS IN CASE OF HUMAN RIGHTS VIOLATIONS

| 19/06/24 | Olivier Attias



### BUSINESS AND HUMAN RIGHTS

In response to the death on February 16, 2024, of Russian opposition leader Alexei Navalny in the IK-3 penal colony, the Council of the European Union (EU) adopted, on May 27, 2024, Decision (CFSP) 2024/1484 which establishes a framework for targeted restrictive measures due to the situation in Russia and the internal repression exercised there. Specifically, it provides for:

- (i) a travel ban, the freeze of their assets and economic resources, and the prohibition on providing funds and economic resources to certain individuals and entities; and
- (ii) sectoral restrictions on the export of goods that could be used for internal repression, surveillance, or interception of information and telecommunications security.

Based on this decision, Council Regulation (EU) 2024/1485 and its Implementing Regulation (EU) 2024/1488 were adopted on the same day to define the precise scope of these sanctions as well as the terms of their implementation, including the list of natural or legal persons, entities, and bodies targeted by the new restrictive measures. Among these individuals and entities are notably the Federal Penitentiary Service of the Russian Federation - the IK-6 penal colony and the maximum-security IK-3 penal colony - where Navalny was detained from June 2022 until his death, judges, prosecutors, and magistrates involved in his death and in the cases of other opponents, as well as senior officials of the penitentiary system and the Ministry of Justice.

This new series of sanctions highlights the EU's strong concern over the continuous degradation of human rights in Russia, which has intensified since the attack on Ukraine. These new measures specifically target the tightening of repression of civil society and political opposition, which undermines democracy and the rule of law in Russia[1]. Recall that on March 16, 2022, the Russian Federation was already excluded from the Council of Europe in reaction to the armed conflict engaged against Ukraine since February 24, 2022, due to serious human rights violations and international humanitarian law violations[2].

More generally, these new measures characterize the rise in international sanctions in the fight against human rights violations.

Indeed, since December 8, 2020, Decision (CFSP) 2020/1999 and Regulation (EU) 2020/1998 have established a global sanctions regime of the Union that allows targeting individuals, companies, and bodies responsible, involved, or associated with serious human rights violations and abuses worldwide, wherever they occur[3]. The individuals and entities listed are subject to an asset freeze within the EU and a travel ban. Moreover, EU persons and entities are prohibited from making funds available to those listed, directly or indirectly.

Through the voice of its High Representative of the Union for Foreign Affairs and Security Policy Josep Borrell, this new regime aims to "impose sanctions regardless of where human rights violations and abuses occur, without the need to create new sanctions regimes specific to each country, as we had to do until now." [4]

Thus, it is on the basis of this new corpus that the European Union has been able to deploy sanctions targeting large-scale arbitrary detentions, such as those of Uighurs and other Muslim ethnic minorities in Xinjiang, China, repression in the Democratic People's Republic of Korea of political dissidents, extrajudicial executions, and enforced disappearances in Libya, massive and systematic persecutions against LGBTI persons and political opponents in Chechnya, Russia, as well as torture, executions, and extrajudicial, summary or arbitrary killings in South Sudan and Eritrea[5]. Alongside non-binding European Parliament resolutions - with some recent ones concerning state repression against journalists and lawyers in Tajikistan[6] - - this corpus demonstrates the European will to make human rights the spearhead of its international policy, through the broadest possible holistic approach.

However, these recent developments, which demonstrate a more proactive approach by the European Union in this area, actually reflect more of Europe catching up with Anglo-Saxon legislation.

Currently, the Union's global sanctions regime on human rights violations applies to 105 individuals and 23 entities or bodies[7]. By comparison, the analogous British regime targets 110 individuals and 13 entities[8], while that of the United States targets more than 650 individuals and entities since its creation in 2017[9]. This alignment of the European regime with its Anglo-Saxon counterparts can be explained in particular by the fact that Regulation (EU) 2020/1998, described at its adoption as the "European Magnitsky Act," was largely inspired by the 2012 Magnitsky



Act and the 2017 Global Magnitsky Human Rights Accountability Act. The latter allowed targeting those responsible for the death of Sergei Magnitsky, a Russian lawyer who died in custody in 2009 after being tortured, having revealed a massive corruption case involving officers of the Russian Interior Ministry.[10].

This law and the other laws derived from it authorize U.S. authorities to impose financial sanctions and visa restrictions on foreign individuals or entities who have committed serious human rights violations or acts of corruption anywhere in the world, similar to the recent sanctions taken against the president of Zimbabwe.[11].

More generally, the adoption of this text by the United States has served as a model and has been pioneering, leading to similar legislation in Canada (also called the "Sergei Magnitsky Law"), the United Kingdom, and Australia, and giving rise to what is now commonly referred to as "Magnitsky-style sanctions."

Faced with the multiplication of regimes and the rise of the EU in this area, international sanctions today represent a minefield for businesses. At first glance, given the specificity of the profiles targeted by the sanctions (penitentiary services, parastatal organizations, or senior officials), these sanctions seem limited to particular profiles, with little tangible impact on the actual activity of commercial entities. It could thus be argued that the impact on the economic world is marginal or residual. However, the accumulation of sanction lists and the multiplication of applicable rules and regimes (human rights, corruption, dual-use goods, etc.) create a complex and uncertain environment for businesses.

Businesses must therefore deploy rigorous sanction monitoring and implement due diligence, KYC, and beneficial owners identification procedures. These processes are costly, complex, and time-consuming, especially as the multiplication of regimes, sometimes overlapping, complicates the situation further. Moreover, doctrinal uncertainty regarding the notions of "detention" or "control,[12], as well as the lack of alignment of national competent authorities among Member States, necessarily increases the risk of error and non-compliance. These ambiguities complicate the determination of entities or individuals concerned by the sanctions and increase significant penal and reputational risks.

Consequently, the new 'Navalny' regulations are emblematic of the new role of sanctions in international economic life and the complex and growing challenge now facing businesses. A fundamental trend is thus emerging, marked by the need for businesses to constantly adapt to an ever-evolving legal landscape, while managing compliance risks with increased vigilance.

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[1] EU Sanctions Against Russia - Consilium (europa.eu)

[2] War in Ukraine: Russia Excluded from the Council of Europe | vie-publique.fr

[3] Restrictive Measures in Response to Serious Human Rights Violations and Abuses | EUR-Lex (europa.eu)

[4] The Long and Difficult Path to an EU Global Sanctions Regime on Human Rights, intervention de Josep Borrel du 31 octobre 2020

[5] Council Implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses

[6] Human Rights Violations in China, Sudan, and Tajikistan

[7] Regulation (EU) 2020/1998, Annexes I and II

[8] Office of Financial Sanctions Implementation, « Current List of Designated Persons: Global Human Rights », 3 mai 2024.

[9] Federal Register, « Global Magnitsky Human Rights Accountability Act Annual Report (2023) », 23 février 2024.

[10] European Magnitsky Act: A New Sanctions Regime Against Human Rights Violations Worldwide

[11] U.S. Department of Treasury, « Treasury Sanctions Zimbabwe's President and Key Actors for Corruption and Serious Human Rights Abuse », 4 mchs 2024.



[12] O. Attias et C. Veltz, « "Contrôle" et "détention" : entre uniformité théorique et disparités pratiques dans l'application de notions communautaires », La Revue des juristes de Sciences Po n° 24, juillet 2023, 11.

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