



Including grand corruption in the EU Global Human Rights Sanctions Regime: Why it matters

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Abstract

When the EU adopted the Global Human Rights Sanctions Regime (GHRSR) to impose targeted sanctions on human rights violators, grand corruption remained outside the array of abuses covered by the instrument. Nevertheless, grand corruption creates the conditions for large-scale systemic human rights violations and enables patronal networks whose goals are inherently opposed to those of the EU's values-based foreign policy. The inclusion of grand corruption in the GHRSR would provide Brussels with an instrument to influence these networks to its own advantage, address the root causes of human rights abuses and defend its own democratic institutions. Further changes to the GHRSR, such as the introduction of qualified majority voting and the inclusion of the European Parliament and/or civil society in the listing process, would complete the picture and make this sanctions regime a powerful tool for the Union's foreign policy.

Keywords

Human rights, Sanctions, Common Foreign and Security Policy, Democracy, Foreign policy, QMV, Corruption

Introduction

Adopted in late 2020, the Global Human Rights Sanctions Regime (GHRSR) is also known as the EU's 'Magnitsky sanctions'. Enabling the Union to impose asset freezes and visa bans, it addresses 'serious human rights violations' (Eckes 2021, 1). This

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includes crimes against humanity such as genocide, torture and slavery; extrajudicial, summary or arbitrary executions; forced disappearance of persons; arbitrary arrests or detentions; human trafficking; sexual and gender-based violence; and violations of the freedom of peaceful assembly, association, opinion, expression, religion or belief. It can target ‘natural or legal persons, entities or bodies, who are responsible for’ violations or abuses; those ‘who provide financial, technical, or material support for or are otherwise involved in’ violations and abuses, ‘including by planning, directing, ordering, assisting, preparing, facilitating, or encouraging such acts’; and those who are associated with the former two groups (Council of the European Union, cited in Eckes 2021, 3).

The absence of corruption on the list of crimes covered by the GHRSR sets it apart from its American counterpart. Too often corruption and human rights have been ‘addressed as separate domains of knowledge in both international academic and practical work’ (Andersen 2018, 179). However, they most often share the same root causes (Peters 2019). Corruption often sows the seeds for the dynamics that precede and later inform more serious human rights violations (Andersen 2018).

This article analyses the EU’s foreign-policy objectives and how grand corruption undermines them. It will present the ways in which the introduction of sanctions against those guilty of grand corruption could serve the Union’s foreign policy and will also add a few thoughts on other changes that could strengthen the GHRSR.

The EU’s foreign-policy goals

The EU has been described as a ‘normative power’ (Manners 2002), a term that focuses on the important role values and norms play in the Union’s approach to foreign policy. Article 21(1) of the Treaty on European Union states that ‘the Union’s action on the international scene shall be guided by . . . principles . . . which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights’. The main goals are to avoid state failure or the collapse of state institutions and achieve rules-based stability in the rest of the world, which the Union believes can best be done by boosting the resilience of democracies (Stivachtis and Georgakis 2013, 96). The 2016 EU Global Strategy is clear about this:

It is in the interests of our citizens to invest in the resilience of states and societies to the east stretching into Central Asia, and south down to Central Africa. Fragility beyond our borders threatens all our vital interests . . . resilience is a broader concept, encompassing all individuals and the whole of society. A resilient society featuring democracy, trust in institutions, and sustainable development lies at the heart of a resilient state. (European External Action Service 2016, 23–4)

Non-democratic systems are often built around a patrimonial system (Hale 2014), whereby power is not held by a state with impersonal institutions governed through the rule of law, but by networks of personal connections, at the top of which sit the patrons. Systemic corruption allows these figures to use the country’s resources to run clientele-based pyramids and amass immense power in their hands. Such a situation, in which

personal funds and state funds become one and benefit the heads of certain cliques, undermines the very foundations of a democratic state (Rose-Ackerman 1996).

Building upon the classic theory of linkage and leverage by Levitsky and Way (2006), Tolstrup wrote of the existence of ‘gatekeeper elites’ (2013, 718). However intense the EU’s connections or powerful its coercive might, in non-democratic third countries it must still work through these gatekeeper elites. These are a country’s elites, particularly the ruling ones, who can choose to hinder, allow or even enhance the Union’s influence in the country.

Kleptocratic, patronal elites, however, have no interest in allowing the Union to seriously influence their country’s politics as this would undermine the very structure of power on which they depend. At best, they will allow what some scholars call ‘thin Europeanization’, a few adjustments to comply at a superficial level with EU demands, but not structural change (Buhari-Gulmez 2017, 22). How can the EU seriously address these pyramids, and why should it?

Grand corruption: a threat to EU foreign-policy objectives

Grand corruption is an obstacle to the Union’s foreign policy in three ways: it is a threat to democracy and the rule of law, creating the basis for future human rights violations; it undermines the general stability of a country; and it strengthens hostile networks in the target country.

Grand corruption undermines the rule of law and democracy

Grand corruption typically occurs when public officials or others abuse high-level power for the benefit of the few at the expense of the many, resulting in depriving a substantial part of the population of a fundamental right, or a major financial loss for the state or its people (Duri 2020, 25). Often grand corruption is so prevalent that analysts talk of ‘state capture’, whereby the state has been entirely bent to fulfil private interests (Christelis and Langseth 2004, 23) and laws and regulations are modified depending on the personal incentives of the capturing elite (Kenny and Søreide 2008, 5).

In a resolution on the topic, the Parliamentary Assembly of the Council of Europe asserts (2013, 1):

corruption jeopardizes the good functioning of public institutions and diverts public action from its purpose, which is to serve the public interest. It disrupts the legislative process, affects the principles of legality and legal certainty, introduces a degree of arbitrariness in the decision-making process and has a devastating effect on human rights. Furthermore, corruption undermines citizens’ trust in the institutions.

This means that the rule of law, defined as a fair system in which every citizen is treated equally by an impersonally applied law, is jeopardised by grand corruption, as it introduces a highly personal element into the system and turns the rules into *ad personam*

cases. This not only undermines a key tenet of EU foreign policy, but also infringes the fundamental liberties of the individual, resulting in what is known as negative rights (Balcerowicz 2012) as the citizen does not have any legal certainty to behave freely within the confines of a clearly defined legal framework.

Grand corruption undermines stability

Grand corruption also jeopardises ‘positive’ rights, among which are socio-economic rights to education, public health care, housing, a living wage and so on. Grand corruption depletes the state resources that should grant access to such rights and unfairly places them in the hands of those who belong to certain networks, making the ability to exercise such positive rights dependent on social status and connection (Rose 2016, 433).

Grand corruption also has an adverse impact on key sources of economic growth, such as free competition, entrepreneurship, investment, government efficiency, and improvements in human capital and technology (Gwartney and Stroup 1996, 49). It creates incentives for rent-seeking instead of innovation and socially beneficial entrepreneurship (Tanzi 1998), significantly worsening the living standards of the population. This can greatly affect the political legitimacy of the state, now equated with the ruling networks, and the ensuing legitimacy crisis can lead to upheavals and general instability, an outcome that the EU abhors (Anderson and Tverdova 2003; Seligson 2002).

Ultimately, as was mentioned above, grand corruption is a lifeline for networks that hinder the rule of law and pervert democracy, generating instability and a lack of access to basic rights. The Union needs to hit these malign and subversive networks in the area that keeps them alive and strong—corruption and its profits.

Why targeted sanctions against those guilty of grand corruption?

Altering incentives

Kleptocratic networks, or pyramids, operate according to expectations and personal incentives (Hale 2014). Loyalty within these structures can change depending on the *expectations* of their members: if a leader is perceived to be getting weaker, losing his or her grip or becoming poorer, clients can change networks or apply pressure for a modification in behaviour. Targeted sanctions can therefore have a remarkable influence, because they affect the distribution of resources and the actual power of the leaders of given networks. If a leader or a high-level member is subjected to targeted foreign sanctions this can greatly reduce his or her ability to provide for his or her clients, as well as signalling to them that the cost of loyalty is becoming significantly higher (Shyrokykh 2021, 4). By applying targeted sanctions against leaders, the EU can induce a change in behaviour in the network, forcing low-level members either to convince their leaders to refrain from certain actions or to switch their allegiance to others who are more willing to follow the Union’s lead (Escribà-Folch and Wright 2010, 355; Portela, 2019; Strandow, 2006).

Augmenting leverage

In a kleptocratic system, general sanctions against a whole country cannot deliver, since the burden is then carried by the population at large. The leaders of the patronal networks and their closest clients have various ways of isolating themselves from the economic collapse of their country, often through offshoring their assets, and can easily redistribute the shrinking wealth of the country among themselves, further aggravating the population's suffering (Peksen 2019). Leverage is normally a country-to-country phenomenon; when facing a patronal system or a kleptocracy, this is not the case. Leverage in this instance must be understood as a country-to-individual phenomenon, whereby the EU must target physical persons who hold de facto power in their own private interests. The ability to impose targeted sanctions against those guilty of grand corruption would allow Brussels to greatly increase its leverage vis-à-vis such figures.

Protecting democracies from authoritarian influence

Money that has been stolen in third countries is constantly being invested in the EU, and more generally in Western democracies. Cooley et al. (2018) note the irony of this situation: kleptocrats destroy the rule of law in their own countries in order to enrich themselves, but then store their wealth where they can enjoy solid, reliable legal protection. In addition to this, investments originating from grand corruption help patronal leaders to influence public opinion and policy in democratic countries by 'buying' the support of public relations firms, advisers, politicians, think tanks, newspapers and even universities. The best-known example is arguably Azerbaijan's 'caviar diplomacy', through which Baku offers lavish bonuses to friendly foreign politicians in exchange for their silence about its human rights abuses or even their public praise (Knaus 2015, 11). The ability to impose targeted sanctions against those guilty of grand corruption would allow the EU to freeze the assets of such kleptocrats and protect the democratic environment of the Union, as well as its ability to design and craft its foreign policy without undue, shady influences.

Embracing the full potential of the GHRSR

The ability to impose targeted sanctions against those guilty of grand corruption would greatly improve the Union's ability to influence policy in third countries and its power to uphold its values in its dealings with other countries' leaderships. However, to make the GHRSR truly effective, a few more elements are needed.

As it is currently designed, the GHRSR, as part of the EU's Common Foreign and Security Policy, is decided through unanimity in the Council. Should qualified majority voting (QMV) be adopted instead, the GHRSR would be significantly fortified. QMV would create incentives for forming coalitions and building alliances, as opposed to rewarding obstructionism (Schuette 2019). What further increases the added value of QMV is, as Nováký (2021, 5) argues, that it 'boost[s] the resilience of the EU's foreign-policy system to third-country influence'. When it comes to targeted, personal sanctions

to counter corruption, this is particularly important. Individual member states occasionally oppose personal sanctions on the grounds of geopolitical proximity to a given authoritarian country or personal ties between local political elites and third-country kleptocrats. Big rivals such as China and Russia, which are increasingly pressuring individual EU member states, will only intensify their divide-and-rule tactics, while smaller kleptocracies will seek to influence the weakest elements in the Union's chain to obtain a friendly veto. Finally, on a technical level, implementing this change would be relatively straightforward. It would not necessitate a revision of the treaties, but could be adopted via the 'passerelle' clause enshrined in Article 31(4) of the Treaty on European Union, which provides for the extension of QMV to new areas if the EU member states agree unanimously (Kaca 2018).

The involvement of the European Parliament and civil society in the listing process would also be extremely beneficial to the resilience of targeted sanctions, in particular those imposed on individuals guilty of grand corruption. One of the reasons why grand corruption has not been included in the GHR SR so far is that the burden of proof is particularly hard to carry on the side of the EU: in a captured state or an advanced kleptocracy the judiciary is part of the system and it is extremely unlikely that it would cooperate with the EU to provide the information necessary to uphold certain sanctions against appeals before the Court of Justice. This problem has already become evident in the cases regarding misappropriation sanctions against individuals from Tunisia, Ukraine and Egypt. The Union has lost too many cases in court and has therefore developed a certain fear of corruption sanctions as they can be hard to substantiate (Portela 2019). However, there are ways to remedy this. As Portela (2020, 8) writes: In sum, in order to withstand Luxembourg's scrutiny, it is vital that designations are supported by ample and solid evidence. Civil society organisations can make a useful contribution by collecting open source documentation of gross human rights violations thanks to their specialised local knowledge and presence on the ground.

The institutionalisation of civil society's inputs to the GHR SR listing process—or at the very least, of the European Parliament's inputs, as Members of the European Parliament are often close to civil society organisations—would allow the Union to outsource some of its background research to actors who have an enormous amount of knowledge and expertise. This would allow the Union to impose sanctions that are backed by facts and can withstand scrutiny.

Conclusion

Grand corruption is the blood of a system that breeds human rights violations. The deterioration of the rule of law, the loss of the independence of the judiciary and the embezzlement of public funds can all undermine positive rights and create negative ones, preventing citizens from enjoying the basic protection of their human dignity. This alone requires the EU to adopt a sanctions regime that can target grand corruption, as while corruption is not in itself a violation of human rights, it creates the conditions for countless abuses.

Grand corruption is, however, also an impediment to some key EU foreign-policy objectives, such as the promotion of democracy, safeguarding the rule of law in third countries and regional stability. If the Union wants to enhance its influence as a normative power and shape partner countries in a way that is reliable, sustainable and resilient, it must have the proper instruments at its disposal to target the kleptocratic networks that hold actual power in the identified countries. It is therefore not merely a matter of a moral commitment to human rights: being able to disrupt or affect ruling circles by targeting their sources of power would greatly augment the Union's leverage and power. It would also protect its internal politics from the undue influence that can result from the investment of dirty money in the EU.

Including the ability to levy sanctions against those guilty of grand corruption would significantly improve the GHRSR's effectiveness and importance. To solidify such an advantage, it is also important to move away from a veto-based system, and to include civil society and the European Parliament in the listing process. These steps would provide important inputs in terms of the documentation of cases and would make the listing process less susceptible to disruption by a single actor.

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