44th Parliament, 1st Session
(November 22, 2021 - Present)

CANADA'S SANCTIONS REGIME

On Wednesday, September 21, 2022, the committee adopted the following motion:
That, pursuant to Standing Order 108(2), the committee conduct a follow-up study to the 2017 committee study on Canada's sanctions regime titled "A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond"; that the committee review the government's implementation of the recommendations in the 2017 report; that the committee review the need for new recommendations, if any, resulting from Canada's response to the situation in Ukraine and other situations since 2017; that the committee hold no fewer than two meetings; that the committee report its findings to the House; and that pursuant to Standing Order 109, the government table a comprehensive response to the report.

Recommendations for the House of Commons' FAAE Standing Committee
Dr. Andrea Charron, Professor, Political Studies, University of Manitoba
Andrea.Charron@umanitoba.ca
3 June 2023

We are in the age of autonomous sanctions exemplified by the SEMA and JVCFOA which means that multiple allies need to coordinate lists, measures, and metrics of effectiveness. Multilateral sanctions (under the UN Act) will be few and far between given the dysfunction at the UNSC. Coordination between allies and Canada should enhance the impact of sanctions. The coordination is particularly significant given the economic size of North America and Europe. The EU is the largest single market area in the world, and the Canada-US-Mexico Agreement (CUSMA, formerly NAFTA) is the largest free trade region in the world and draws businesses to North America. Businesses operating in Canada (foreign and Canadian) must abide by Canadian sanctions laws. Given the interconnectedness of businesses among the three countries party to the CUSMA, for example a company in Mexico with dealings in Canada, Canadian sanctions can have effects throughout the CUSMA territories, beyond Canada itself.

The EU has recently entered into a comprehensive economic and trade agreement (CETA) with Canada, together forming yet another of the largest free trade areas in the world. The CETA enhances the attractiveness of both the EU and Canadian markets for economic operators. Operators trading between the EU and Canada would be obliged to comply with the sanctions of both jurisdictions.

In the annex, I have provided part of a detailed analysis of the SEMA and JVCFOA and convergence/divergence with the EU's Global Human Rights Sanctions regime assisted by Danielle Cherpako and Nathanial Tilahun. The report was commissioned by the EU and GAC but never made public. Below I summarize key concerns for Canada and for Canada's coordination with allies.

Canada specific issues

Lack of tracking metrics and informing targets

- GAC does not release any effectiveness measures, does not release reviews of sanctions, and does not provide the data related to targets that is easily searchable. There is no yearly review or report on sanctions. Sanctions lists are most effective when they evolve to circumstances. Canada should consider legislating regular reviews of the lists to allow for dynamic delisting and new listings allowing Canada to adjust with changing circumstances and align with allies. For example, enforcement statistics, such as number of permits, exemptions, de-listing requests, and size of frozen assets, can serve as indicators of impact. Retaliatory sanctions applied against Canadians need to be tracked as well. Publication of such data can serve as proxy evidence for at least the awareness that sanctions are in force. Some other data that should be tracked include:
    - the names and entities listed in common with allies;
    - prosecutions of operators breaching sanctions;
    - monetary value of property and assets frozen;
    - length of time sanctions have been in place.
- Under both the SEMA and JVCFOA regulations, the publicly sourced evidence to list targets is not available in the regulations. It is acknowledged that that there are limitations on the information that can be shared publicly about listed persons due to Cabinet confidence and restrictions on how personal information can be collected, shared, and published due to privacy considerations. There is usually a broad narrative provided in press releases following a decision to apply autonomous sanctions, but the exact circumstances for listing particular individuals or entities is not always specified. In contrast, allies detail listings, including identifying information and reasons for listing are provided and publicised.
- Allies notify targets that they have been listed, Canada does not. Sanctions are most effective at the signalling and communication stage. By not informing targets that they have been listed, a signalling opportunity may be lost. Canada needs to clearly articulate the transgression and what is required for sanctions to be lifted.
- There is no push notification one can sign up for to receive notices of changes to sanctions regimes. For example, the UK provides an email of new listing and changes to sanctions.
- One cannot search Canada's consolidated autonomous sanctions list if one does not know the spelling Canada uses for targets (this is especially a problem for Asian names with completely different alphabets). It is a clunky system. (And Canada does not point to the UN's lists on its websites).

Designations/Listing Targets

- The EU courts have been the greatest source of oversight and correcting factor for problematic listings by Canada. A judicial review of a decision to deny a delisting application under the JVCFOA is currently underway and may offer some additional

guidance that could also apply in the SEMA context upon completion (Court File No. T-1079-20).

- The designations under Canadian sanctions legislation can take effect before the implementing regulations are officially published in the *Canada Gazette.* This can be problematic for banks and institutions.
- the SEMA target three sets of actors for human rights abuses: those responsible for human rights violations, those who support the perpetration (financially, materially, or technically), and those who are 'associated with' the perpetrators and supporters. The SEMA does not mention which actors are relevant for the commission of 'gross and systemic' rights violations would be listed, but the implementing Regulations contain the expansive set of actors**.**
- The JVCFOA targets only individuals who are directly responsible for or complicit in gross human rights violations. The JVCFOA explicitly targets individuals who provide 'support' to perpetrators in the case of corruption, but similar wording is not provided in the case of human rights violations. This could indicate that the 'complicit in' is to be interpreted as referring to only those who are directly implicated in the human rights violation, and not supporters of the violation in a broad sense. Moreover, the JVCFOA does not cover persons who are 'associated with' the perpetrators or supporters of human rights violation. The absence of the categories of 'supporters' and 'associates' from targeting under the JVCFOA could be a gap that weakens the sanctions and enables circumvention. On the other hand, a less-defined category provides some positives such as flexibility in who can be captured.
- the quantity of names listed for targeting does not equate to quality. Canada has over 2000 names listed for various target regimes but no studies on whether listing such entities helps to underline human rights and other international norms or simply creates the impetus for entities to rename and reorganize to make tracking their abuses harder. Furthermore, state-owned entities targeted with sanctions may disrupt necessary services to civilians. The principle of limiting the humanitarian impact of targeted sanctions is still important to Canada. Maximizing the number of names may damage the legitimacy of the sanctions. Rather than aiming to sanction the maximum number of people, the key decision makers and perpetrators must be the goal and at the highest levels if the goal is to underline the importance of human rights protection as an international norm. Judicious application should be the approach taken, with a view to targeting key perpetrators only and mitigating negative impact on civilians.

Administration and Legislation Issues

- Canada has no sanctions training programs or certification.
- Consider renaming the SEMA and JVCFOA to better reflect their purposes. The JVCFOA preamble, for example, is highly problematic for its Russian-only focus; the JVCFOA applies to anyone in the world.
- GAC should indicate that inadmissibility (travel sanctions) applies on their websites with an icon as they do for all other measures; the signalling of sanctions is vital for restrictive measures to have effect and will aid EU and other allies track coordinated measures. Furthermore, The decision to make anyone subject to sanctions inadmissible to Canada is highly problematic. See Mario Bellissimo's testimony

https://www.bellissimolawgroup.com/media/mario-bellissimo-testifies-before-the-house-of-commons-standing-committee-on-foreign-affairs-and-international-development-on-bill-s-8/

- While it is understandable that there is some variation due to unique circumstances, standardize, as much as possible, the SEMA and JVCFOA regulations terminology and order of categories (permits, certificates, definitions of property, reasons for sanctions vice narratives). For example, sometimes definitions are part of the regulations, sometimes an interpretation is provided, sometimes a section on duty to determine and disclosure is included or application for certificates and exceptions are listed but in other cases not. Also, it would be helpful to attach the press releases to the regulations as the press releases provide important information for future studies and for one stop communication to allies and targets. Any streamlining of information that makes it easier to understand the measures in place will assist with better convergence of measures with allies and contribute to the overall understanding of Canada's sanctions policies.
- There is very little engagement of GAC, CBSA, RCMP or FINTRAC with the academic community – there is still only one book on Canadian sanctions by Kim Richard Nossal published in 1994. GAC has commissioned several reports by key academics on sanctions (including Erica Moret , Tom Biersteker, Nathanael Tilahun, and me). They have not been made public despite being unclassified and paid for by taxpayer money. The fear is that GAC is not making them public because they point out several weaknesses and failures of Canada's sanctions regimes. GAC needs research chairs in foreign policy and sanctions specifically.
- Review and report on the progress from the Standing Committee on Foreign Affairs and International Development's report with 13 recommendations to improve the effectiveness of Canada's JVCFOA and SEMA legislation,[1]as well as those recommendations in the Foreign Affairs Minister's response. Other reports written for GAC with similar recommendations are recommended as well.[2] This report echoes many of the issues raised in these other reports (for example, the lack of basic identifying information about the targets.) Likewise, in 2018, Canada's budget noted "sanctions are an important foreign policy tool for Canada: they serve as a way to respond to rapidly developing international crises, violations of international peace and security, and with the new Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), to gross violations of human rights or acts of significant corruption".[3] The Government proposed to provide $22.2 million over five years, starting in 2018-19, with $4.3 million per year thereafter, to Global Affairs Canada and the Canada Border Services Agency to strengthen Canada's sanctions

[1] "A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond" *Government of Canada Publications* (April 2017), online: http://publications.gc.ca/collections/collection_2017/parl/xc11-1/XC11-1-1-421-7-eng.pdf (the "**Report**").

[2] Letter to the Standing Committee on Foreign Affairs and International Development from the Minister of Foreign Affairs, *Global Affairs Canada* (July 17, 2017), online: https://www.ourcommons.ca/content/Committee/421/FAAE/GovResponse/RP9072713/421_FAAE_Rpt07_GR/421_FAAE_Rpt07_GR-e.pdf. The 2019 CDSS report found at https://umanitoba.ca/centres/media/Canadian-Economic-Sanctions-Workshop_finalreport_Nov-2019.pdf and others.

[3] See, Government of Canada website, https://www.budget.gc.ca/2018/docs/plan/chap-04-en.html.

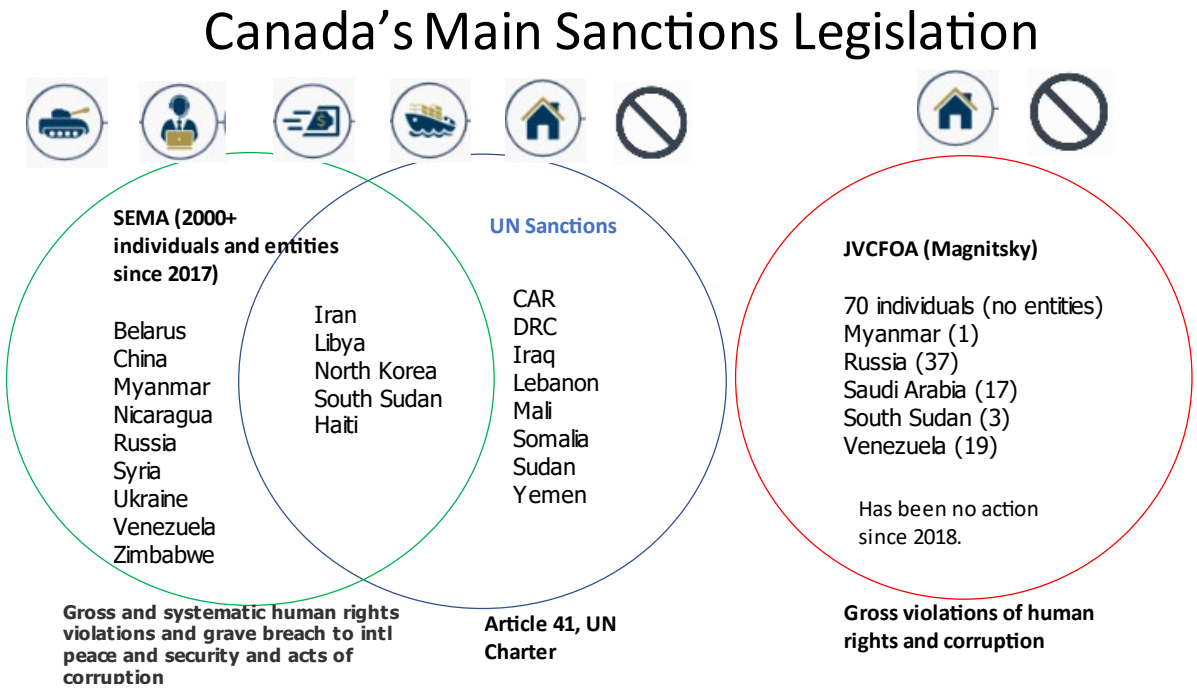
system, including funds for the development of sanctions policy, coordination with international partners, and providing guidance to Canadians on sanctions obligations. Has there been any update on the budget and progress made?

Better coordination with allies, especially the EU

- The SEMA and JVCFOA have a less defined listing criteria compared to the EU's *Global Human Rights Sanctions Regime* (EUGHRSR). The SEMA applies to all "gross and systematic violation of human rights". It does not enumerate or further specify relevant human rights violations outside of its regulations. The JVCFOA applies with respect to extra-judicial killings, torture and any other 'gross violations of internationally recognized human rights. This means while the JVCFOA allows sanctions in response to isolated grave violations, the SEMA only permits action if a violation is gross and systematic. The EUHRSR has a more defined listing criteria, which consists of twelve specific human rights violations, with a caveat that it can also exceptionally cover other human rights violations that are 'widespread, systematic or otherwise of serious concern as regards the [CFSP objectives of the EU]'. The specificity of the EUGHRSR listing criteria limits the range of human rights issues on which the EU and Canada can cooperate within the framework of human rights sanctions regimes.
- Whenever possible, align narratives with those of the EU and partners so that there is a consistent message and reinforcement of the human rights norm. For example, the EU notes violations against particularly vulnerable groups such as gay and lesbian persons. Canada can use its GBA+ analysis to make these connections more explicit. Canada should also retroactively apply a GBA+ analysis to older sanctions regimes that lack such treatment.
- Enhance the legitimacy of coordinated action through more consistent deployment and coordinated monitoring. Currently, trans-Atlantic human rights sanctions coordination is concentrated almost exclusively on China and Russia. Coordinated listing must be seen not simply as convergence of the EU and Canadian geopolitical interests, but also as a defence of universally accepted norms – and as such should be demonstrated by adopting coordinated listing in instances of gross human rights violations outside of geopolitical rivals. Coordinated monitoring of the effectiveness of sanctions, for example by exchanging information on impact indicators, is also recommended.
- Spirit of multilateralism must be preserved in application of sanctions. EU-Canada coordination should drive broad-based partnership for human rights sanctions and complement – not overshadow or undermine – existing global human rights and criminal justice institutions (e.g., use findings of such global bodies as basis for listing and de-listing).
- Issue joint statements not only in adopting coordinated sanctions, but also in response to retaliations.
- Publicise enforcement statistics, such as number of permits, exemptions, de-listing requests, and size of frozen assets, to the extent possible to serve as indicators of impact.
- Coordinate listing so that a similar package of restrictive measures would be applied by both the EU and Canada to eliminate circumvention avenues.
- Cooperate or form joint radar in identifying major human rights crises and gathering evidence for listing. It is crucial to make instances of use of human rights sanctions as factually compelling to the outside world as possible, not only among like-minded allies.

- Coordinate in releasing publicly accessible listing information, such as details of individuals. There could be instances where due to various aliases used, the same targeted individual could appear as two different individuals in the EU and Canadian lists and drive 'overcompliance' among economic operators.
- In upcoming revisions of the sanctions regimes, consider extending the listing criteria to include actors that frustrate investigation or prosecution processes for human rights violations, like the UK global human rights sanctions regime. Currently the regimes only target the perpetrators, supporters, and those associated with either of the two.
- Elevate the bilateral working-level exchange between the European External Action Service (EEAS) and Global Affairs Canada to coordinate sanctions timing and possibly lists.

Annex: Overview of SEMA, JVCFOA and Convergence/Divergence with EUGHRSR



An Overview of the Special Economic Measures Act (SEMA)

Legal framework and origins

The SEMA is enabling legislation adopted originally in 1992 and amended in 2017 to allow for sanctions against human rights abusers and corrupt foreign officials. The Governor in Council (GiC) makes separate regulations for each regime because regulations under the SEMA must relate to a foreign state, a person in that foreign state, an entity in that foreign state[4] or a national of the foreign state who is not ordinarily resident in Canada.

Measures can include sector-wide bans, transfer and shipment bans, docking or landing rights bans in Canada, 'prohibitions on dealings and activities,' technical assistance bans, inadmissibility (travel bans), asset freezes and financial prohibitions and bans on facilitation.[5] The phrase 'prohibitions on dealings

[4] The definition of an entity is: a body corporate, trust, partnership, fund, an unincorporated association or organization or a foreign state.

[5] 'SEMA measures could include: a dealings ban; restrictions or prohibitions on trade; restrictions or prohibitions on financial transactions or other economic activity between Canada and the target state; and/or restrictions on activities such as the docking of ships or landing of aircraft from the foreign state in Canada',

and activities' could encompass various activities depending on the specific sanctions regime. For example, the SEMA sanctions regime against Belarus for human rights violations prohibits 'dealings in property, wherever situated, that is owned, held or controlled by listed persons or a person acting on behalf of a listed person.'[6] Sanctions regimes under the SEMA related to human rights abuses as of 15 August 2021 include: Belarus, China, Russia, and Nicaragua. Other SEMA regimes (against Venezuela, Ukraine, Syria, South Sudan, Myanmar, Iran, North Korea Zimbabwe, Russia, and Libya) are either for the association of states trigger or for grave breaches of international peace and security that have resulted or are likely to result in a serious international crisis.

It is important to note that the triggers in SEMA are not grounds for listing. They are the possible circumstances for which the GiC can make certain orders under the SEMA (e.g., create the regulation and impose measures in relation to a foreign state, a person in that foreign state, an entity or a national of that foreign state who does not ordinarily reside in Canada). Listings can be made in relation to the triggers, but it isn't strictly necessary for them to match exactly. For example, while a regulation may be implemented due to gross and systematic human rights violations in a country, an individual may be listed for being a senior official in the governing regime.

Only details of the SEMA as they relate to human rights abuses are discussed below. There are no SEMA regimes dedicated solely to corruption currently.[7] The SEMA is due to be reviewed prior to 18 October 2022.

Scope of application

Note: Issue of jurisdiction (i.e., whether Canadian law applies) is separate from issue of ownership/control (i.e., whether specific Canadian sanction covers it). We use the heading "scope of application" to cover both.

The SEMA targets states (or political subdivisions of a foreign state), individuals or entities from around the world. The sanctions are enforceable within Canada's jurisdictional reach, i.e., no extra-territoriality, encompassing all individuals, entities or property within Canada or any Canadians or Canadian-owned entities outside of Canada. Global Affairs Canada notes that whether a corporation is Canadian is governed by elements such as where the headquarters or subsidiary is located/where the corporation is registered.

The SEMA prohibits dealings in the property, including financial assets, of persons designated under the regulations. It is not clear if property jointly owned by designated and non-designated actors are also subject to restrictive measures. In theory, the non-designated person subsequently requests the release of their part of the property from the joint ownership. The sanctions also apply on properties that are directly or indirectly controlled by designated persons. There is no *Best Practices* guide (equivalent to the one adopted by the EU) outlining circumstances amounting to 'control', such as

see GAC website, https://www.international.gc.ca/transparency-transparence/briefing-documents-information/briefing-books-cahiers-breffage/2021-01-fa-ae.aspx?lang=eng#a5_8.

[6] See, GAC website, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/belarus.aspx?lang=eng.

[7] For example, there is wide scale corruption in Syria, but the SEMA regulations only note "Whereas the Governor in Council is of the opinion that the situation in Syria constitutes a grave breach of international peace and security that has resulted or is likely to result in a serious international crisis". https://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-114/page-1.html

managing a business, sharing its liabilities, and exercising the power to appoint majority of its administrators. The newly enacted 50% rule is helpful but not sufficient.

Listing criteria and evidence

The human rights violations that make up the listing criteria under the SEMA must be "gross and systematic human rights violations…committed in a foreign state".[8] Definitions for these terms are not specified. The term 'gross' references the gravity and 'systematic' means widespread, not isolated. For example, Myanmar would qualify for gross and systematic human rights abuses, but instead sanctions vis-a-vis Myanmar concern a grave breach to international peace and security.[9] The GAC website, however, notes "that sanctions related to Myanmar were enacted under the Special Economic Measures Act to respond to the human rights and humanitarian situation in Myanmar."[10] In other words, the justification for the application of sanctions, even when there are human rights abuses, can include wider contexts.

The SEMA does not require specific, personal conduct that links the target with the human rights violation. The triggers for imposing the regulations are: (a) responsible for the act, (b) otherwise involved in the act, or (c) associated with actors falling under (a) or (b). Support to targets in the form of supply or shipment of prohibited goods, provision of financial services or assistances, docking, landing and overflight are all restricted and prohibited activities under Article 2 of the SEMA While a regulation can be made due to a linkage to human rights violations, it's possible to list individuals and entities in order to exert a change in behaviour to address those violations without establishing that direct link (e.g. by listing government officials, or entities providing support to the regime, etc.). This, however, makes the reasoning for the sanctions opaque.

Evidence

Global Affairs Canada (GAC) uses only publicly sourced evidence to list individuals and entities. As there has only been one case of a company pleading guilty to violating regulations under the SEMA (which was before the latest changes allowing Canada to sanction for human rights and corruption), Canadian sanctions specific case law does not yet exist.[11] It is important to note, however, that a judicial review of a decision to deny a delisting application under the JVCFOA is currently underway, and may offer some additional guidance that could also apply in the SEMA context upon completion (Court File No. T-1079-20).

---

[8] SEMA, 4 (1.1)(c) . Note on the Canadian sanctions' website, it notes sanctions are applied against persons '(i) responsible for, or complicit in, extrajudicial killings, torture, or other gross violations of internationally recognized human rights but this specificity does not appear in the Act or regulations. See https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/current-actuelles.aspx?lang=eng

[9] See, Canada Justice Laws Website, https://laws-lois.justice.gc.ca/eng/regulations/SOR-2007-285/FullText.html

[10] See, GAC website https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

[11] Lee Specialties pleaded guilty to violations under the Iran Regulations. https://www.cbc.ca/news/canada/calgary/alberta-firm-fined-90k-for-shipping-nuclear-use-product-to-iran-1.2609590

Exceptions

Note: We are following a generic approach for purposes of consistency with the EU side. In the EU side, there is a distinction between what are called 'exemptions' and 'derogations', and if we go into details each item does not necessarily have an exact counterpart in the other jurisdiction, therefore we use the general term 'exceptions' to capture the different types of deviations from the sanctions application.

The SEMA authorizes certain specified activities or transactions that are otherwise prohibited via Ministerial permit on an exceptional basis.[12] Note, a permit may only be issued to persons in Canada and Canadians outside Canada.

Article 4(3) of SEMA provides the authority for legislated exceptions to be included in the specific regulations which means each regulation has specific grounds, with some regulations including if funds are for repayment of a loan, a benefit under a federal or provincial pension fund, funds to obtain legal services, if held by a diplomatic mission, any transaction with any international organization with diplomatic status, with any United Nations agency, with the International Red Cross and Red Crescent Movement or with any entity that has entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development; and any transaction by the Government of Canada that is provided for in any agreement or arrangement between Canada and the targeted state.[13] While there may be some common exceptions across regulations, there are important differences in how these are drafted and applied based on the unique nature of each situation.

Under section 35 of the IRPA, inadmissibility for SEMA (and the JVCFOA) is only applicable to foreign nationals, and not to Canadians or permanent residents. The right of return for Canadian citizens should not be engaged in the sanctions context since inadmissibility would not apply to them.

Compensation

A designated Minister may submit a report to the GiC to receive and assess reasonable claims for compensation from any person who alleges to have suffered any loss or damages because of anything done or purported to have been done under this Act or any order or its regulations.

Listing and De-listing Process

Listing

Canada maintains that sanctions are more effective when applied in coordination with partners and seeks opportunities to do so, where appropriate.

Proposals for listing may come from a petition by a human rights group or NGO or individuals to a Member of Parliament or if required by a regional organization to which Canada belongs (e.g., the Organization of American States). Listing proposals are considered by the sanctions division and geographic divisions within GAC and in close consultation with the Department of Justice. . While these proposals may be reviewed, the decision-making authority to recommend to GiC rests with the Minister of Foreign Affairs, and the GiC ultimately provides approval on new listings.

---

[12] SEMA, art 5. (Note certificates are granted in exceptional circumstances when certain activities are prohibited under the United Nations Act.). The different language (permits vs. certificates) is confusing and should be standardized.

[13] See section 4 Regulations for Belarus. https://laws-lois.justice.gc.ca/eng/regulations/SOR-2020-214/page-1.html#docCont

While Canada has a House of Commons Standing Committee on Human and Rights and Justice, the more usual committees that discuss sanctions are the House of Commons Standing Committee on Foreign Affairs and International Development (FAAE) and the Senate Standing Committee on Foreign Affairs and International Trade (AEFA). It should be noted that while the EU equivalent to Canada's legislative preparatory bodies (FAAE and AEFA standing committees) would be the European Parliament's Subcommittee on Human Rights (DROI), the later is not formally involved in sanctions regimes or listing preparations. Instead, the functional counterpart to Canada's parliamentary preparatory bodies is the EU Council's COHOM.

Names of individuals and entities targeted under the SEMA and individuals under the JVCFOA can now be found in Canada's consolidated autonomous sanctions list.[14]Canada's consolidated list is comprehensive, easily searchable, and includes our full range of autonomous sanctions. .

Note: The designations under Canadian sanctions legislation can take effect before the implementing regulations are officially published in the Canada Gazette.

De-listing process and Mistaken Identity

Individuals and entities can both apply for delisting under SEMA. The term "person" used in the Act and regulations includes both.

An application for delisting is made by the listed person (or a representative of that person) and allows them to apply to the Minister of Foreign Affairs to have their name removed from the relevant schedule. The Minister must decide whether there are reasonable grounds to recommend to the GiC that the applicant's name should be removed. This process may result in regulatory amendments to the regulations, while a certificate of mistaken identity would not affect the underlying listing/regulation.

The specific processes for making such applications are set out in the regulations.

The SEMA also provides de-listing possibility if there are 'reasonable grounds' to do so, a discretion left to the Minister of Foreign Affairs, within the bounds of administrative law. To date, there is no public list of delisting. Deceased individuals may be retained on the current sanctions list, for various reasons, example, including to be able to continue to freeze the assets of the deceased. Within 30 days after the day on which the Minister receives the application, the Minister must either issue the certificate, or, if it is determined that there has not been a material change in circumstances, must provide notice to the applicant of this determination.

Separate from delisting, there is a procedure for certifying mistaken identity. An application for a certificate of mistaken identity can only be made by an individual or entity whose name is similar or the same as the name of a listed person. The Minister of Foreign Affairs may issue a certificate stating that the applicant is not the listed person if this can be established. This is intended to be a form of relief so a person with the same or similar name as a listed person does not face difficulties or damages due to that similarity.

[14] Found at https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/consolidated-consolide.aspx?lang=eng

Implementation

Implementation of the SEMA is largely dependent on third parties, especially regulated financial institutions such as banks, loan and credit offices and businesses. Canadian sanctions legislation imposes a screening obligation on regulated financial institutions, including banks, credit unions, trust and loan companies, insurance companies, securities dealers, and money services businesses that open accounts for clients. Every person in Canada, every Canadian outside Canada and every entity must disclose without delay to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service (CSIS):

> **(a)** the existence of property in their possession or control that they have reason to believe is owned, held, or controlled by or on behalf of a listed person; and
> **(b)** any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

Regulated financial institutions (financial institutions, including banks, credit unions, trust and loan companies, insurance companies, securities dealers, and money services businesses that open accounts for clients) have strict and continual screening and reporting requirements.

Any property of a designated or related person, identified because of screening or otherwise, must be frozen and reported without delay to the Canadian law-enforcement authorities. Regulated financial institutions are also required to disclose to their principal federal or provincial regulator, whether they are in possession or control of property of a person designated under the *Criminal Code* regulations or the sanctions regulations now monthly (as of 29 July 2021). The Office of the Superintendent of Financial Institutions outlines the requirements.[15] For example, an institution may only unfreeze property if the Government issues a certificate allowing a designated person to use the property following an application for same made by the designated person, or if the Designated Person is de-listed. Similar processes may apply under foreign legislation in the case of branch operations outside Canada.

Enforcement

The Minister of Foreign Affairs is ultimately responsible for the administration and the enforcement of the Act; however, GAC is neither an investigative department nor does it have enforcement powers. The Canada Border Services Agency (CBSA) ensures related import and export bans as well as inadmissibility measures are enforced. The Royal Canadian Mounted Police (RCMP) are responsible for any investigations or arrests. The Federal Public Prosecution Service of Canada is responsible for the ultimate prosecution of charges under the various SEMA regulations.

GAC does not provide legal advice about sanctions. The GAC the sanctions website has undergone recent enhancements, including about its consolidated list of autonomous sanctions, and a basic Frequently Asked Questions section.[16]

---

[15] See Designated Persons Listing and Sanctions Law at https://www.osfi-bsif.gc.ca/Eng/fi-if/amlc-clrpc/Pages/dsninstr.aspx

[16] See GAC website, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/faq.aspx?lang=eng

Every person who wilfully contravenes or fails to comply with an order or regulation made under the SEMA (a) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or (b) is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years.[17]

Regulations often include a costs clause which allows for costs incurred by the Government in relation to the seizure, freezing or sequestration of property to be recovered by the listed person or entity.

An Overview of the Justice for Victims of Corrupt Foreign Officials Act (JVCFOA)

Legal framework and origins

The JVCFOA was adopted in 2017. Designations under the JVCFOA apply against foreign nationals who, in the government's view, are responsible for, or complicit in, gross violations of internationally recognized human rights, or foreign public officials and their associates responsible for, or complicit in, acts of significant corruption. Note: entities are not covered by the JVCFOA. On 3 November 2017, the Government of Canada introduced its first designations under the JVCFOA. when the regulations were initially adopted. This included 52 nationals from three jurisdictions (Russia, South Sudan, and Venezuela). Since those initial listings, the Act's regulations JVCFOA list have been amended on two more occasions to add additional names. The first time, one individual from Myanmar was added in February 2018, and 17 Saudi Arabian individuals were added in November 2018.[18] In total, there have been 70 designated foreign nationals listed with the most recent listings being made 29 November 2018.

There is a one-time comprehensive review requirement for the JVCFOA within five years of it coming into force which means before 18 October 2022.

Scope of application

Note: Issue of jurisdiction (i.e., whether Canadian law applies) is separate from issue of ownership/control (i.e., whether specific Canadian sanction covers it). We use the heading "scope of application" to cover both.

The JVCFOA authorizes the Government of Canada to designate foreign nationals who are responsible for, or complicit in, gross violations of internationally recognized human rights. A designation under JVCFOA may also be made in respect of foreign public officials (or their associates) who, in the government's view, are responsible for, or complicit in, acts of significant corruption. Inadmissibility (colloquially referred to as "travel bans") are enacted under the *Immigration and Refugee*

[17] Note, for contraventions of the UNA it is $100,000CA and 10 years.
[18] SOR/2017-233; SOR/2018-25, s. 1; SOR/2018-259, s. 1

Protection Act.[19] "Inadmissibility" is automatic for a permanent resident or a foreign national who violates human or international rights.[20]

Under the JVCFOA, persons in Canada and Canadian-incorporated entities and Canadian citizens outside Canada are prohibited from:

- Dealing, directly or indirectly, in any property of a designated foreign national;
- Entering into or facilitating, directly or indirectly, of any financial transaction related to a dealing in property of a designated foreign national;
- Providing financial services or any other services to, for the benefit of, or on the direction or order of, a designated foreign national;
- Acquiring financial services or any other services for the benefit of, or on the direction or order of, a designated foreign national; and
- Making available any property to a designated foreign national or to a person acting on his or her behalf.

Listing criteria and evidence

The listing criteria, or qualifying circumstances under which JVCFOA may be invoked against listed individuals, need not be systemic in nature and need not relate to broader circumstances in a particular country. In other words, individuals may be listed due to isolated incidents of egregious abuses. The JVCFOA may be used when a foreign national is responsible or complicit in internationally recognized human rights violations and if those acts are committed against individuals who are seeking to expose illegal activities or corruption, or who are attempting to exercise, defend or promote human rights or freedoms. The JVCFOA may also be used when a foreign public official or an associate of such an official, is responsible for or complicit in ordering, controlling or otherwise directing acts of significant corruption, or supporting or sponsoring corruption. However, all listings thus far have been accompanied with narratives that refer to human rights abuses, with acts of corruption being additionally referred to in some cases.

---

[19] Immigration and Refugee Protection Act (S.C. 2001, c. 27).

20 35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for:

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the Crimes Against Humanity and War Crimes Act;

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution, or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

(d) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the Special Economic Measures Act on the grounds that any of the circumstances described in paragraph 4(1.1)(c) or (d) of that Act has occurred; or

(e) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law).

Evidence

Global Affairs Canada (GAC) uses publicly sourced evidence to list foreign nationals who, in the opinion of the Governor in Council, has committed an act set out in subsection 4(2) of the *Justice for Victims of Corrupt Foreign Officials Act*.

Exceptions

There is no "exceptions" clause in the JVCFOA. Nevertheless, orders can be permitted by the GiC and issued by the Minister of Foreign Affairs to Canadians (in or outside of Canada) to allow for specific or general exemptions from the sanctions measures.[21] A foreign national who is the subject of an order or regulation may apply to the Minister in writing for a certificate to exempt property from the application of the order or regulation if the property is necessary to meet the reasonable expenses of the person and their dependents. The orders must be tabled in Parliament within 15 days of issue.

As well, the Minister may issue a permit or general permit, subject to any terms and conditions that are, in the opinion of the Minister, consistent with the Act and any order or regulations made under this Act.

Note, the discussion about applications for certificates in the case of mistaken identity are covered under 'delisting'.

Listing and Delisting

Listing

Canada maintains that sanctions are more effective when applied in coordination with partners and seeks opportunities to do so, where appropriate.

As with the SEMA, proposals for listing may come from a petition by a human rights group or NGO or civil organization to a Member of Parliament or if required by a regional organization to which Canada belongs (e.g., the Organization of American States). Allied sanctioning activity, however, is a key impetus for Canada to sanction as well. Overall, regional measures have been the more likely tool used.

Listing proposals are considered by the sanctions division and geographic divisions within GAC and in close consultation with geographic divisions and the Department of Justice. While these proposals may be reviewed, the decision-making authority to recommend listings rests with the Minister of Foreign Affairs, and the GiC ultimately provides approval on new listings.

The circumstances for listing include:

[21] Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) (S.C. 2017, c. 21)., https://laws-lois.justice.gc.ca/eng/acts/J-2.3/page-2.html?txthl=act. See Section 4 a) and b).

(a) a foreign national is responsible for, or complicit in, extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign state who seek

> **(i)** to expose illegal activity carried out by foreign public officials, or
>
> **(ii)** to obtain, exercise, defend or promote internationally recognized human rights and freedoms, such as freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association, and the right to a fair trial and democratic elections.

(b) a foreign national acts as an agent of or on behalf of a foreign state in a matter relating to an activity described in paragraph (a);

(c) a foreign national, who is 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 — 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; or

(d) a foreign national has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in paragraph (c).

Delisting and Mistaken Identity

An application for a certificate of mistaken identity and an application for delisting are very different. These mechanisms do not have the same intent, nor do they offer the same relief.

An application for mistaken identity can only be made by an individual or entity whose name is similar or the same as the name of a listed person. The Minister of Foreign Affairs may issue a certificate stating that the applicant is not the listed person if this can be established. Mistaken identity certificates do not result in a delisting but offer individuals with the same or similar name as a listed person some protection from the possibility that they will face restrictions because of this similarity.

An application for delisting is made by the listed person (or a representative of that person) and allows them to apply to the Minister of Foreign Affairs to have their name removed from the schedule to the JVCFOA. The Minister must decide whether there are reasonable grounds to recommend to the GiC that the applicant's name be removed. Between the two, only a delisting application will potentially result in a change to the listings/regulations under the Act.

With respect to the threshold, this is explicitly set out in s.8(2) of the JVCFOA, which reads as follows (emphasis added):

"8(2). On receipt of the application, the Minister must decide whether there are reasonable grounds to recommend to the Governor in Council that the order or regulation be amended or repealed, as the case may be, so that the applicant ceases to be the subject of it."

Global Affairs Canada requires a detailed description of the relevant circumstances and reasons supporting the application. Specifically, the application should include: the applicant's contact information, and, (in the case of an application for a certificate of mistaken identity), the name of the individual or entity for whom/which the applicant is claiming to have been mistaken.[22] In the case of de-listing, if there has been a material change in the applicant's circumstances since their last application was submitted, they may submit another application.

Implementation

Like the SEMA, JVCFOA imposes a screening obligation on regulated financial institutions, including banks, credit unions, trust and loan companies, insurance companies, securities dealers, and money services businesses that open accounts for clients. These institutions are required to determine, on a continuing basis, whether they are in possession or control of property owned or controlled by, or on behalf of, any person designated.

Any property of a designated or related person, identified because of screening or otherwise, must be frozen and reported immediately to the Canadian law-enforcement authorities. And regulated financial institutions are also required to disclose to their principal federal or provincial regulator, whether they are in possession or control of property of a person designated under the *Criminal Code* regulations or the sanctions regulations as of 29 July 2021 monthly.

For SEMA regulations, the dealings ban typically includes restrictions on property that is "owned, held, or controlled" by a listed person or by a person acting on their behalf, while the JVCFOA specifically focuses on property of the listed person. GAC has provided some education outreach presentations more recently which is appreciated and should continue and be expanded.

Enforcement

The Royal Canadian Mounted Police (RCMP) and the Canadian Border Services Agency (CBSA) are responsible for the enforcement of regulations under this Act. (Financial regulatory bodies, especially Office of the Superintendent of Financial Institutions also have reporting regulations).

The penalties for violating the measures under the JVCFOA are the same as those under the SEMA legislation.[23] The offence provisions only apply to orders made under section 4. Section 11, the offence provision, sets out the details of what might constitute an offence.

Offences

Offence and punishment

[22] "Listed Persons," Global Affairs Canada, Government of Canada. https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/listed_persons-personnes_inscrites.aspx?lang=eng, Accessed 10 July 2021.

[23] In comparison the penalties under Canada's *United Nations Act* stipulate that the maximum penalty for a summary conviction is a $100,000 fine or 1-year in prison or both, and a conviction on indictment can carry a 10-year prison term.

Every person who knowingly contravenes or fails to comply with an order or regulation made under section 4.

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years; or

(b) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than $25,000 or to imprisonment for a term of not more than one year, or to both.

According to the legislation, a person who acts reasonably and in good faith to comply with the orders or regulations under the JVCOA is not liable in any related civil action. While this civil protection exists in relation to orders under section 4, section 7(3) refers to disclosures made in good faith and notes that no proceedings under the Act or civil proceedings will lie against a person for a disclosure made in good faith under subsection 7(1) or 7(2). This only refers to the disclosure of information associated with the reporting requirements set out in section 7 and does not apply to broader compliance with respect to the broader orders made under section 4 or other requirements set out in the Act.

Convergence and Divergence between the EUGHRSR, SEMA, and JVCFOA on Human Rights Violations

Choice of legislation

In practice, both Canada and the EU have used their geographic sanctions legislation (in Canada's case, the SEMA) more often in the event of human rights violations rather than their horizontal, thematic sanctions legislation. In Canada's case, the choice of sanctions legislation is determined by the nature of the crisis leading to the use of sanctions (i.e., the involvement of the state or connection to broader circumstances in that state) or Canada's ability to leverage other measures, such as embargoes and measures against entities under the SEMA. These options are not available when using the JVCFOA. In the EU, geographic sanctions have naturally been more in use than the EUGHRSR as the later is relatively new. The choice between the EUGHRSR and geographic sanctions is determined on a case-by-case basis and the political consensus reached among member states in Council. The actual measures adopted through the EUGHRSR, and geographic sanctions are often similar, though geographic regimes may also involve economic measures such as export bans on goods used for internal repression.

Listing Details and Notification

Under both the SEMA and JVCFOA regulations, the publicly sourced evidence to list targets is not available in the regulations. It is acknowledged that that there are limitations on the information that can be shared publicly about listed persons due to Cabinet confidence and restrictions on how personal information can be collected, shared, and published due to privacy considerations. There is usually a broad narrative provided in press releases following a decision to apply autonomous

sanctions, but the exact circumstances for listing particular individuals or entities is not always specified. In EU sanctions, details of listings, including identifying information and reasons for listing are provided and publicised. The EU notifies targets that they have been listed, Canada while Canada provides details on the listing should the target contact GAC. By not informing targets that they have been listed, a signalling opportunity may be lost.

Parliamentary involvement

In Canada there is active parliamentary participation in the creation of sanctions regimes via standing committees but limited parliamentary involvement in the listing process. Lists are made via Orders in Council that requires Cabinet engagement in the decision-making process.[24] In contrast to this, the European Parliament does not have co-legislative power or involvement in the establishment and subsequent decision-making under the EUGHRSR. It is noteworthy, however, that the European Parliament has been vocal in supporting efforts for the establishment of the EUGHRSR as well as in urging its application in specific instances through its (non-binding) resolutions. Sanctions, as part of the EU's CFSP, is an area reserved to the Council, which is the most intergovernmental organ of the Union. As such, decision-making concerning the EUGHRSR is heavily controlled by member states (via the Council) than the EU as an organization. Sanctions decisions are taken not by the executive organs of the EU or through majority voting system, but through unanimous voting system at the Council, which makes the decision-making process beholden to the consent of each member state. This makes operationalizing the sanctions regime a delicate and slow process. As the EU Commission President Von Der Leyen remarked, Council decisions are sometimes 'delayed, watered down or held hostage'.[25]

The EU courts have been the greatest source of oversight and correcting factor for problematic listings. A judicial review of a decision to deny a delisting application under the JVCFOA is currently underway and may offer some additional guidance that could also apply in the SEMA context upon completion (Court File No. T-1079-20).

Types of Targets and Restrictions

The EU and Canadian regimes similarly impose freezing of funds or economic resources, travel bans (or in Canada's case "inadmissibility"), and prohibition of making funds or economic resources available to or for the benefit of designated actors. However, the Canadian regimes have two distinctive features compared to the EUGHRSR:

- The SEMA goes beyond targeted actions and allows for the application of sectoral sanctions against a foreign state, such as restrictions of financial services, technical assistance, transport and aviation, and export/import.

[24] See for example, Report 5 from FAAE recommending "sanctions' against China. https://www.ourcommons.ca/DocumentViewer/en/43-2/FAAE/report-5/

[25] State of the Union Address by President von der Leyen at the European Parliament Plenary, 16 September 2020, available at https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_1655. Full quote: "But what holds us back? Why are even simple statements on EU values delayed, watered down or held hostage for other motives? When Member States say Europe is too slow, I say to them be courageous and finally move to qualified majority voting – at least on human rights and sanctions implementation."

- The JVCFOA can only apply against individuals unlike the SEMA and EUGHRSR, which can also target entities.

Restricted Funds and Resources

The Canadian SEMA regime follows an approach similar to the EUGHRSR by targeting property that is both owned, held or controlled by designated persons. For SEMA regulations, the dealings ban typically includes restrictions on property that is "owned, held, or controlled" by a listed person or by a person acting on their behalf, while the JVCFOA specifically focuses on property of the listed person.

Listing criteria

Autonomous v. Multilateral

The SEMA allows for the adoption of sanctions not only as an enforcement of sanctions applied by a regional organization to which Canada belongs (the Organization of American States (OAS), for example), but also in solidarity with global action when such recommendations or calls are made by allies. As there is a separate *UN Act* that is meant to transpose Canada's obligations arising from the UNSC resolutions, the SEMA serves to coordinate with the global community for discretionary measures.

More Defined v. Less Defined

The SEMA and JVCFOA have a less defined listing criteria compared to the EUGHRSR. The SEMA applies to all "gross and systematic violation of human rights". It does not enumerate or further specify relevant human rights violations outside of its regulations. The JVCFOA applies with respect to extra-judicial killings, torture and any other 'gross violations of internationally recognized human rights. This means while the JVCFOA allows sanctions in response to isolated grave violations, the SEMA only permits action if a violation is gross and systematic. The EUHRSR has a more defined listing criteria, which consists of twelve specific human rights violations, with a caveat that it can also exceptionally cover other human rights violations that are 'widespread, systematic or otherwise of serious concern as regards the [CFSP objectives of the EU]'. The specificity of the EUGHRSR listing criteria limits the range of human rights issues on which the EU and Canada can cooperate within the framework of human rights sanctions regimes.

Perpetrators Only v. Supporters and Associates

The EUGHRSR and the SEMA target three sets of actors: those responsible for human rights violations, those who support the perpetration (financially, materially, or technically), and those who

are 'associated with' the perpetrators and supporters. The EUGHRSR explicitly mentions these categories of targets. The SEMA does not mention which actors are relevant for the commission of 'gross and systemic' rights violations would be listed, but the implementing Regulations contain the expansive set of actors similar to the EUGHRSR. For example, the Regulations for Russia include:

(a) a person engaged in activities that directly or indirectly facilitate, support, provide funding for or contribute to a violation or attempted violation of the sovereignty or territorial integrity of Ukraine or that obstruct the work of international organizations in Ukraine.

(a.1) a person who has participated in gross and systematic human rights violations in Russia;
(b) a former or current senior official of the Government of Russia;
(c) an associate or family member of a person described in any of paragraphs (a) to (b);
(d) an entity owned or controlled by, or acting on behalf of, a person described in any of paragraphs (a) to (c); or
(e) a senior official of an entity described in paragraph (d)[26]

The JVCFOA targets only individuals who are directly responsible for or complicit in gross human rights violations. The JVCFOA explicitly targets individuals who provide 'support' to perpetrators in the case of corruption, but similar wording is not provided in the case of human rights violations. This could indicate that the 'complicit in' is to be interpreted as referring to only those who are directly implicated in the human rights violation, and not supporters of the violation in a broad sense. Moreover, the JVCFOA does not cover persons who are 'associated with' the perpetrators or supporters of human rights violation. The absence of the categories of 'supporters' and 'associates' from targeting under the JVCFOA could be a gap that weakens the sanctions and enables circumvention. On the other hand, a less-defined category provides some positives such as flexibility in who can be captured.

Although the EUGHRSR, in principle, covers actors that support or are associated with those who commit human rights violations, this is not easy to apply as the test of personal conduct must be fulfilled. That is, the support or association of the said actor with the human rights violators must be substantiated to stand judicial scrutiny. Therefore, targeting financial backers of a repressive regime in general is difficult to maintain, unless the financial support could be directly linked to the human rights violation. In connection with Navalny's poisoning, sanctions were imposed only on relevant Russian officials, and not oligarchs that were allegedly behind or benefitted from the actions of the officials, despite requests by the European Parliament, Alexei Navalny, and other civil advocacy groups.

Grounds of Exceptions

Note: based on EU feedback, we do not distinguish between the various categories of exceptions and discuss all types exceptions together/generically, as the different categories are difficult to correspond with the EU system.

Canadian exclusions mostly concern Canada's own legal obligations and the interests of bona fide third parties, whereas the EUGHRSR gives attention to the needs of designated persons or indirectly affected societies as well. The SEMA grants the Governor in Council an open-ended discretion to issue permits (equivalent to EU 'derogations') with respect to any activity, as well as some basic needs

[26] https://laws.justice.gc.ca/eng/acts/J-2.3/page-1.html

or urgent and humanitarian needs of the designated as grounds for derogation. Regulations implementing the SEMA provide exclusions or non-application (equivalent to EU 'exemptions') on various contractual, legal, and diplomatic grounds, such as repayment of loans, transactions with international organizations, and transactions by the Government of Canada. From these exclusions/exemptions, one directly concerns the needs of the designated person – pension payments for Canadian residents or Canadians outside Canada and payment to obtain legal services with respect to the sanctions. Under the JVCFOA, there is one general permit/derogation for 'reasonable expenses' of the designated persons and their dependants. This speaks to the basic and humanitarian needs of the targets. Like the SEMA, this derogation fully depends on the discretion of the Minister of Foreign Affairs. It is not clear, for example, whether expenses for other routine items such as insurance premiums or membership fee to a professional association do fall under 'reasonable expenses' or not.

The EUGHRSR, contains derogations for various needs of designated persons, including basic needs of designated persons and their families, humanitarian needs (both at individual and societal levels), and 'extraordinary expenses' for exceptional/unforeseen needs. Furthermore, in the context of Covid-19, an EU-level contact point has been established to facilitate humanitarian work in areas subject to sanctions. This will be valuable to support humanitarian activity particularly in conflict areas.

Grounds of De-listing

The EU and Canadian regimes similarly provide opportunity for listed persons to request de-listing by directly communicating with the designating organ.

Although explicit de-listing grounds are not provided under both the EU and Canadian regimes, the EU courts have recognized various grounds for de-listing, ranging from due process infringements to the factual robustness and proportionality of the listings (see section 2.5 above). In Canada, there is no comparable developed case-law establishing grounds for de-listing, although broader administrative law jurisprudence provides some parameters. Note that there is an ongoing judicial review for the JVCFOA which may provide more direction.

On the other hand, the Canadian regimes expressly recognize mistaken identity as a ground for a certificate and provide expedited procedure and time limit (30 days under SEMA; 45 days under JVCFOA) for the processing of such administrative "fixes". The EUGHRSR does not provide simplified or accelerated process for mistaken identity cases.

Processing Time Limits

The Canadian regimes impose certain time limits in processing de-listing and exceptions requests from designated persons. Both the SEMA and JVCFOA stipulate a 90 days' time limit for the Minister to process de-listing requests. Furthermore, the JVCFOA stipulates similar 90 days' time limit for processing 'reasonable expenses' exception requests. The EUGHRSR does not provide time limit in processing de-listing or exceptions.

Invocation/Use

The decision to apply human rights sanctions for both Canada and the EU is based on political and foreign policy considerations, while the normative imperative of upholding human rights also certainly

weighs on the decision-making for listing. While Canada and the EU (and EU member states) have some common foreign policy interests and a common commitment to human rights promotion, there may be situations in which foreign policy interests conflict with a desire to sanction in coordination, despite there being a very real instance of a universally recognized human rights abuse occurring. Canada and the EU agree on coordinated sanctions against Russian and Chinese actors, as there are both clear human rights abuses occurring, and a foreign policy interest for both Canada and the EU to align themselves with other like-minded allies against these powerful states. However, in cases where the foreign policy imperative is not as compelling for one or the other, coordination is less likely to occur.

Implementation

Obtaining a comprehensive view of implementation actions and information is a recurring challenge on the EU side as it is handled by individual member states, with the Commission relying on the information from member states. Due to this, it is difficult to compare the implementation performance of the EU and Canadian regimes.

The Canadian regimes require economic operators to report to competent authorities not only instances of sanctions enforcement, but also attempted transactions by designated persons. The EUGHRSR does broadly require 'supplying information' but not explicitly regarding attempted transactions. The Commission guidance elaborates that the latter is indeed expected of economic operators. Explicit stipulation of this in the EUGHRSR would be more helpful for uniform application, particularly given that not all member states establish specific reporting procedures.

About other good faith acts or omissions of compliance with the sanctions, the EUGHRSR provides economic operators immunity from both civil and criminal liability, whereas the Canadian regimes contain civil and criminal liability.