

THE EUROPEAN UNION JOINS THE GLOBAL MAGNITSKY MOVEMENT

DAVID I. HAMER*

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I. INTRODUCTION

On December 7, 2020, the European Union implemented a new sanctions regime aimed at punishing and deterring human rights violations occurring anywhere in the world. According to the European Union, the “E.U. Global Human Rights Sanctions Regime” (E.U. Regime) empowers it to advocate for human rights, a fundamental E.U. value, in a tangible and direct way.¹ The European Council is now authorized to impose financial sanctions, in the form of asset freezes, and restrict the movement of persons it determines have committed serious human rights abuses, in the form of travel bans. This is the European Union’s first autonomous sanctions regime focused solely on the theme of human rights, joining an existing arsenal of national and thematic sanctions regimes.² While the operative sanctions are common to most of the Eu-

* LL.M. candidate, New York University School of Law. I am grateful to Pauline Morgan and Ryan Woods for their significant assistance. Any and all errors are my own.

1. *Questions and Answers: EU Global Human Rights Sanctions Regime*, EUROPEAN EXTERNAL ACTION SERVICE (EEAS) (Jul. 12, 2020), https://eeas.europa.eu/headquarters/headquarters-homepage/90013/questions-and-answers-eu-global-human-rights-sanctions-regime_en.

2. E.U. Sanctions Map, <https://sanctionsmap.eu> (last visited Apr. 6, 2021).

ropean Union's other sanctions regimes,³ they are, in the human rights context, also the hallmark sanctions of the burgeoning Magnitsky-style regimes that are increasingly being implemented across the world (Magnitsky sanctions). This piece considers the likely harmony between the operations of the E.U. Regime and the archetypical Magnitsky regime established by the United States.

II. GLOBAL MAGNITSKY MOVEMENT

Magnitsky sanctions emerged from the U.S. Sergei Magnitsky Rule of Law Accountability Act (2012).⁴ Introduced in response to the torture and death of a Russian tax lawyer, the act imposed financial sanctions and entry bans on certain persons who were either involved in the events surrounding Magnitsky's death, or were responsible for certain "gross violations of human rights."⁵ In 2016, under the Global Magnitsky Human Rights Accountability Act of 2016 (2016 Act), the regime's scope was dramatically expanded to impose sanctions in relation to any gross violation of human rights anywhere in the world. Subsequently, President Trump issued Executive Order (E.O.) 13818, which implemented and built upon the 2016 Act. This E.O., combined with the 2016 Act and other legal instruments, forms the sanctions regime (GLOMAG Framework).⁶ The U.S. legislation spawned the implementation of similar regimes across the world in a phenomenon called the "Magnitsky movement."⁷ Similar regimes have been

3. *Commission Guidance Note on the Implementation of Certain Provisions of Council Regulation (EU) 2020/1998*, at 2, COM (2020) 9432 final (Dec. 17, 2020), https://ec.europa.eu/info/sites/info/files/business_economy_euro_banking_and_finance/documents/201217-human-rights-guidance-note_en.pdf.

4. Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, 126 Stat. 1496 (codified as amended in scattered sections of 19 U.S.C.).

5. *Id.* § 404.

6. Other relevant instruments include the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701–06 (1977), and the Global Magnitsky Sanctions Regulations 31 C.F.R. § 583 (2021). *Global Magnitsky Sanctions*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/global-magnitsky-sanctions> (last visited Apr. 6, 2021).

7. *The Magnitsky Act at Five Years: Assessing Accomplishments and Challenges Hearing Before the Commission on Security and Cooperation in Europe*, 115th Cong.

adopted in Estonia, Canada, Lithuania, Gibraltar, Latvia, Jersey, Kosovo, and the United Kingdom.⁸

In this context, the E.U. Regime is a prominent new star in a burgeoning constellation, whose contribution will extend far beyond its borders. Not only does it represent a powerful normative statement by one of the world's leading institutional defenders of human rights, it also brings considerable operative value to the global movement. By their nature, these regimes are more effective when they act in concert, as their punitive and deterrent impacts are multiplied. In terms of the travel bans, William Browder⁹ noted that human rights violators would be devastated should they be banned from the European Union, as well as the United States and Canada.¹⁰ The accumulation of financial sanctions bears an even greater impact, given the European Union's economic status as the world's largest financial bloc and financial market.¹¹ U.S. Secretary of State Michael Pompeo noted that the E.U. Regime would complement existing efforts by the United States, the United Kingdom, and Canada to sanction human rights violators and deter future violations globally.¹²

Interestingly, his comments may reflect not only expressions of support, but also a celebration of significant U.S. lobbying and pressure behind the scenes. The 2016 Act has an

8. (2017) (statement of William Browder, CEO, Hermitage Capital Management); Joint Standing Committee on Foreign Affairs, Defense and Trade, Parliament of Australia, *Inquiry into Targeted Sanctions to Address Human Rights Abuses*, (Final Report, Dec. 2020) 39–41.

8. Alena Douhan (Special Rapporteur), Negative Impact of Unilateral Coercive Measures: Priorities and Road Map, at 8, U.N. Doc. A/HRC/45/7 (2020).

9. The most prominent individual driver of the Magnitsky Movement, and Sergei Magnitsky's client in the Russian investigations that led to his death.

10. William Browder (@Billbrowder), TWITTER (Dec. 9, 2019, 8:41 AM), <https://twitter.com/Billbrowder/status/1204033355811082240>.

11. Stef Blok, Minister of Foreign Affairs, Government of the Netherlands, Closing Remarks at a meeting on the EU Global Human Rights Sanction Regime (Nov. 20, 2018) (transcript available at <https://www.government.nl/documents/speeches/2018/11/20/blok-on-eu-global-human-rights-sanction-regime>).

12. Michael Pompeo, *On the EU's Adoption of a Human Rights Sanctions Framework*, U.S. DEPARTMENT OF STATE (Dec. 7, 2020), <https://2017-2021.state.gov/on-the-eus-adoption-of-a-human-rights-sanctions-framework/index.html>.

inherent proselytizing bent, requiring that the administration's annual report to Congress on the Act describe efforts made to encourage other governments to implement similar sanctions regimes.¹³ Indeed, in the years after 2016, the United States engaged in a diplomatic program intending to ultimately secure a "multilateral, trans-Atlantic human rights sanctions regime."¹⁴ Naturally, for this coordination to have the desired effect, the contours of the individual regimes will require a high degree of congruity (most particularly, in the designation processes), otherwise the target of one regime may remain unrestricted in others. In this regard, a former special advisor to the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) reportedly said: "The U.K. named many of the most infamous U.S. designees in order to affirm the U.S. approach and build solidarity around the practice of using sanctions to expose and target human rights abuse."¹⁵ As suggested, the levels of coordination have not always been absolute, as many, but not all of the United Kingdom's first forty-nine designations were also designees of the U.S. regime.¹⁶ Another example relates to the Saudi Arabian perpetrators of journalist Jamal Khashoggi's murder. The United Kingdom designated twenty individuals, adding three more to the list of seventeen designated by the United States and Canada.¹⁷

To gain a prospective sense of the level of coherence that the E.U. Regime is likely to have with the United States as a proxy for the global Magnitsky movement, the balance of this paper will review the origins of the E.U. Regime and outline its legislative framework, before comparing key operative components in the E.U. and U.S. regimes. An understanding of both the complementary and tension points between the regimes

13. Global Magnitsky Human Rights Accountability Act of 2016 § 1264(a)(6), 42 U.S.C. § 2656 (note).

14. Global Magnitsky Human Rights Accountability Act Annual Report, 83 Fed. Reg. 67460 (Dec. 19, 2018).

15. Hilary Hurd, *What Britain's New Sanctions Reveal About U.S.-U.K. Relations*, LAWFARE (Jul. 17, 2020, 4:38 PM), <https://www.lawfareblog.com/what-britains-new-sanctions-reveal-about-us-uk-relations>.

16. *The UK Sanctions List*, Gov.UK (last updated Apr. 7, 2021), <https://www.gov.uk/government/publications/the-uk-sanctions-list>; *see also id.*

17. Hurd, *supra* note 15.

will provide an insight into the likelihood of full realization of the trans-Atlantic human rights sanctions regime.

III. THE NEW E.U. “GLOBAL HUMAN RIGHTS SANCTIONS REGIME”

Upholding “the universality and indivisibility of human rights and fundamental freedoms [and] respect for human dignity” is a fundamental tenet of the European Union’s foreign policy.¹⁸ Prior to the enactment of its regime, the European Union had a robust and extensive sanctions regime in place, forming part of its foreign policy efforts to address human rights violations and abuses. At the time the E.U. Regime was introduced, there were already some two hundred individuals and entities designated for human rights violations under existing geographical sanctions regimes.¹⁹ However, the absence of a global sanctions regime hindered the European Union’s capacity to respond to violations efficiently and flexibly as it was required to utilize the extant framework of country-specific regimes.²⁰

There had been calls in the E.U. Parliament for a regional human rights sanctions mechanism since 2010, though the process only gained real impetus at a November 2018 meeting that conceptualized an E.U. Global Human Rights Sanction Regime.²¹ There, the Dutch Foreign Minister noted that a thematic regime would allow the European Union to combat human rights violations globally while sidestepping the political sensitivities associated with blunt geographic sanctions.²² The United States was reportedly involved in these developments, as its contemporaneous Magnitsky report suggested that several countries had endorsed an E.U. human rights regime following an extensive U.S. outreach campaign.²³ By December 2019, the E.U. Foreign Affairs Council had announced the commencement of preparatory work on a horizontal

18. Foreign and Security Policy, EUROPA (Mar. 11, 2021), https://european-union/topics/foreign-security-policy_en.

19. EEAS, *supra* note 1.

20. *Id.*

21. Eur. Parl. Doc. P8_TA(2019)0215 (2019).

22. Blok, *supra* note 11.

23. Global Magnitsky Human Rights Accountability Act Annual Report, *supra* note 14.

human rights regime,²⁴ leading to the E.U. Regime's eventual adoption on December 7, 2020. The regime is comprised of two legal instruments: Council Decision (CFSP) 2020/1999 (Decision) and Council Regulation (E.U.) 2020/1998 (Regulation).²⁵ The Decision outlines the key principles creating obligations on E.U. Member States, while the Regulation details those principles, particularly as they create obligations for all persons subject to E.U. jurisdiction.

IV. COMPARATIVE DIFFERENCES AND IMPACT ON THE "TRANS-ATLANTIC REGIME"

This section examines the following operative components of the E.U. and U.S. regimes: the nature and scope of conduct targeted, the designation processes, and the due process rights afforded to designees. This comparison will provide some insight into the degree of unanimity that can be expected between the two regimes.

A. *Scope of Conduct*

E.U. Regime

The E.U. Regime targets persons²⁶ who are responsible for, or are otherwise involved in, serious human rights violations or abuses anywhere in the world.²⁷ It provides a comprehensive list of acts that constitute "serious human rights violations."²⁸ The Regime also extends to cover other human rights violations that are "widespread, systematic, or are otherwise of serious concern" with respect to the European Union's common foreign security policy. This category contains three examples of relevant conduct while being non-exhaustive.²⁹ Unlike the GLOMAG Framework, the E.U. Regime does not seek to confront corruption, to the extent that it does not otherwise constitute a human rights violation.

24. *Foreign Affairs Council, 9 December 2019*, EUROPEAN COUNCIL (Dec. 9, 2019), <https://www.consilium.europa.eu/en/meetings/fac/2019/12/09/>.

25. Commission Guidance Note, *supra* note 3, at 1.

26. Encompassing natural and legal persons, and state and non-state actors.

27. Council Reg. 2020/1998, art. 2.3, 2020 O.J. (L 410/1).

28. *Id.*, art. 2.1(a)–(c).

29. *Id.*, art. 2.1(d).

U.S. Regime

The 2016 Act authorized the U.S. President to deny entry into the United States (or revoke any existing visa), and freeze any U.S. assets of any foreign person (natural or legal) that the President determines is responsible for either “extrajudicial killings, torture, or other gross violations of internationally recognized human rights” committed against certain persons.³⁰ Sanctions are also authorized against foreign government officials responsible for acts of significant corruption, or anyone who has materially assisted or financed such corruption.³¹ “Gross violations of internationally recognized human rights” is defined as a non-exhaustive category with several examples of relevant conduct.³²

E.O. 13818, issued a year later, included changes in language that significantly expanded the regime’s contours.³³ In issuing the order, President Trump declared that the global frequency and scale of human rights abuses threatened the stability of international political and economic systems and invoked emergency powers. Crucially, the E.O. appears to reduce the threshold of sanctionable conduct from responsibility for “gross” human rights violations to being “responsible or complicit in, or to have directly or indirectly engaged in serious human rights abuse,” without giving content to this new standard.³⁴ It is not clear whether this change is one of degree and/or kind, and it leaves the administration with broad discretion. Additionally, the E.O. expands the categories of potential designees.

B. *Processes of Designation*

E.U. Regime

Responsibility for establishing and amending the list of designated individuals lies with the European Council, a body

30. Global Magnitsky Human Rights Accountability Act of 2016, *supra* note 13, § 1263 (a)(1).

31. *Id.* §1263 (a)(3)–(4).

32. Pursuant to 22 U.S.C. § 2304(d)(1); *see* Global Magnitsky Human Rights Accountability Act of 2016, *supra* note 15, at § 1262.

33. Michael Weber & Edward Collins-Chase, CONG. RSCH. SERV., IF10576, THE GLOBAL MAGNITSKY HUMAN RIGHTS ACCOUNTABILITY ACT (2020), 1.

34. Exec. Order No. 13818, 82 Fed. Reg. 60839 § 1(a)(ii)(A) (Dec. 20, 2017).

comprised of the heads of the E.U. Member States and two E.U. executives. Listing decisions are only effected with the unanimous vote of all twenty-nine members of the Council, despite earlier calls for effect by qualified majority vote.³⁵ Proposals for inclusions on the list can be made by E.U. Member States or the E.U. High Representative.³⁶ The list of designated individuals is reviewed for the purposes of possible removals through one of three triggers: a listed person provides the Council with observations on their listing, the Council receives substantial new evidence regarding a listing, or under the Council's periodic review occurring at least annually.³⁷

U.S. Regime

While the 2016 Act vested authority in the President to list and delist designated persons, E.O 13818 delegates that responsibility to the Secretary of the Treasury, "in consultation with the Secretary of State and the Attorney General."³⁸ The 2016 Act empowered the President with the discretion to impose sanctions based on determinations made on "credible evidence." Christina Eckes suggests that, as a matter of practice, the U.S. government tries to exceed the statutory level of proof in most cases.³⁹ In the course of making a determination, the President is required to consider information provided by certain congressional committees, and "credible information" provided by other countries and non-governmental organizations.⁴⁰ The E.O. then delegated the President's designation powers to the Treasury, mandating only that the Secretary of the Treasury needs to consult with the Secretary of State and the Attorney General regarding designees for financial sanctions; in relation to travel restrictions, consulta-

35. Ursula von der Leyen, President, European Council, State of the Union Address at the European Parliament Plenary 2020 (Sep. 16, 2020) (transcript available at https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_1655).

36. Council Decision 2020/1999, art. 5.1, 2020 O.J. (L 410/13).

37. *Id.*, art. 14.2–4.

38. Exec. Order No. 13818, *supra* note 34, at § 1.

39. Christina Eckes, *EU Human Rights Sanctions Regime: Ambitions, Reality, and Risks*, 20 (The Amsterdam Centre for European Studies SSRN Research Paper 2020/10).

40. 2016 Act, sec 1263(a) & (c).

tion is only required with the Secretary of State. The “credible evidence” standard remains applicable.⁴¹

C. *Due Process Rights*

E.U. Regime

The rights of the sanctioned individual have been a major focus of the E.U. sanctions framework, particularly in the context of the counter-terrorism regimes.⁴² The March 2019 Parliamentary Motion specifically called attention to the need for any human rights sanctions to adhere to prevailing sentiments on adequate protections for designated individuals, warning that the legitimacy of the regime is contingent on its full compliance with due process rights and insisting that listing and delisting decisions “should be based on clear and distinct criteria . . . in order to guarantee a thorough judicial review and redress rights”⁴³ Reflecting historic evolutions in E.U. sanctions jurisprudence, the E.U. Regime contains several exemptions or derogations from the implementation of sanctions against designated individuals on humanitarian or other grounds, such as satisfaction of basic needs and payment of legal fees.⁴⁴ These exemptions do not, however, remove the person from the list.

Regarding due process rights concerning designations, Elana Chacko has identified that international bodies, including the European Union, have considered the following factors relevant: “adequate notification stating the reasons for a designation; sufficient evidence (without clear evidentiary standards); a hearing; and access to review by an impartial tribunal.”⁴⁵ In terms of notice, the E.U. Regime ensures that the

41. *Implementation of the Global Magnitsky Act: What Comes Next?*, 1, CTR. FOR ADVANCEMENT PUB. INTEGRITY (2018), <https://web.law.columbia.edu/https%3A//www.law.columbia.edu/public-integrity-/magnitsky-implementation> [hereinafter CAPI].

42. There is a considerable body of scholarship on the subject. See, e.g., Jessica Almqvist, *A Human Rights Critique of European Judicial Review: Counter-Terrorism Sanctions*, 57 ICLQ 303 (2008).

43. Resolution on a European Human Rights Violations Sanctions Regime, Eur. Parl. Doc. (B8-0180) (2019).

44. Council Decision, *supra* note 36, arts. 2.6–7, 3.3–4, and 4.

45. Elena Chacko, *Due Process Is in The Details: U.S. Targeted Economic Sanctions and International Human Rights Law*, 113 AJIL UNBOUND 157, 159 (2019).

European Council must communicate the listing and the relevant grounds to the designated person,⁴⁶ and that the designee must have an opportunity to respond.⁴⁷ This opportunity could be considered a form of administrative review. Surprisingly, neither the standard of evidence required for the European Council to list an individual, nor the right of judicial review for designated individuals, is apparent from the text of the E.U. Regulation or Decision. Regarding the latter, it is clear that designations of the Council will be subject to judicial protection by the E.U. courts.⁴⁸ The E.U. courts have a robust history of involvement in and scrutiny of the European Union's sanctions regimes. Readers may be aware of the notable *Kadi* line of European cases, in which the E.U. courts rejected the European Union's implementation of certain aspects of a U.N. Security Council counter-terrorism sanctions regime due to the absence of due process rights afforded to designated individuals.⁴⁹ E.U. courts have also adjudicated hundreds of targeted sanctions cases, invalidating dozens of sanctions on due process grounds.⁵⁰ In recent times, however, European scholars have noted that individual listing challenges have been less successful, with a growing jurisprudence accepting that the broader a regime's listing criteria is, the more discretion is permitted to Council decisions.⁵¹ On the evidentiary burden, there is no jurisprudence delineating a specific criterion of satisfaction that the Council must meet to justify a listing. The public reasons are demonstrably vague, and yet the E.U. courts have indicated that it is sufficient for only one of the Council's several reasons to be substantiated.⁵² From the existing jurisprudence, it appears that the E.U. courts have accepted a "rebuttable implicit presumption that contextual evidence justifying designation reverses the burden

46. Council Decision, *supra* note 36, arts. 5.2, 6.

47. *Id.* art. 5.2.

48. Eckes, *supra* note 39, at 15–16.

49. *See* Yassin Abdullah Kadi and Al Barakaat Int. Found. v. Council of the European Union and Commission of the European Communities (2008) E.C.R. 402/05 and 415/05.

50. Chacko, *supra* note 45, at 158–59.

51. Eckes, *supra* note 39, at 17.

52. *Id.* at 21.

of proof” as against the designated individual seeking delisting.⁵³

U.S. Regime

Designees under the GLOMAG Framework are placed on the OFAC’s Specially Designated Nationals (SDN) list.⁵⁴ Like the E.U. Regime, the GLOMAG Framework contemplates a limited range of derogations for legal and medical purposes.⁵⁵ The Framework does not appear to require that determinations are communicated directly, as designees receive “constructive notice” once the listings are made publicly available.⁵⁶ The President or a delegate is required to make an annual report to Congress detailing the year’s sanction actions and the reasons for those decisions.⁵⁷ The OFAC’s public notices of new GLOMAG SDN listings do not always disclose the Treasury’s reasons, with implications on a designee’s ability to understand and challenge the decision.⁵⁸

While the GLOMAG Framework is silent with respect to challenging designations, OFAC regulations allow listed persons to seek delisting by either requesting an “administrative reconsideration” of their designation, or by providing further information. The OFAC must provide a written decision in response to a delisting request, although there is no designated timeframe.⁵⁹ The Administrative Procedure Act (APA) governs judicial review of OFAC designated decisions.⁶⁰ As of 2019, the bulk of the few individual challenges to OFAC designations had been related to terrorism or narcotics, and none of those have been directly considered by the U.S. Supreme Court.⁶¹ Relevantly, at the time of writing, the author has not

53. *Id.* at 23. See *Yanukovych v Council* (2017) E.C.R 599/16.

54. *FAQ: Global Magnitsky Sanctions*, U.S. Dep’t Treas. (2017), https://home.treasury.gov/system/files/126/12212017_glomag_faqs.pdf.

55. Global Magnitsky Sanctions Regulations, *supra* note 6, at Subpart E.

56. *Id.* § 583.201, note 1, § 583.302.

57. Global Magnitsky Human Rights Accountability Act of 2016, *supra* note 13, § 1264.

58. There is an ad hoc practice of providing press releases for certain designations; see, e.g., *Global Magnitsky Designations*, U.S. Dep’t Treas. (Nov. 25, 2020), <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20201125>.

59. See Global Magnitsky Sanctions Regulations, *supra* note 6, §501.807.

60. Administrative Procedures Act of 1946, 5 U.S.C. §706(2)(A).

61. Chacko, *supra* note 45, at 160.

identified any published cases challenging a GLOMAG listing. This may reflect the difficulties that foreigners have as the principal targets of the GLOMAG Framework in seeking judicial checks on adverse administrative designations, since they lack significant ties to the United States and are not afforded constitutional protections.⁶² This carries serious consequences. While foreign nationals are still permitted statutory review of an OFAC decision under the APA, the judiciary applies a less stringent lens to review of statutory claims than those incorporating constitutional concerns.⁶³ Moreover, the Supreme Court has confirmed that the fundamental sovereign nature of immigration controls ensures that decisions by the Secretary of State to issue travel bans will not be judicially reviewable.⁶⁴

Absent jurisprudence on the GLOMAG Framework, it is difficult to know what sort of threshold “credible evidence” constitutes. Some guidance can be gleaned from cases dealing with E.O. 13224, which established a counterterrorism-related sanctions regime. Under E.O. 13224, the Ninth Circuit Court of Appeals (in *Al Haramain Islamic Federation v. U.S. Department of Treasury*)⁶⁵ held that: a) the authorities can rely on classified information when making designation determinations; and b) “review—in an area at the intersection of national security, foreign policy, and administrative law—is extremely deferential.”⁶⁶ This could suggest that GLOMAG designees face substantial barriers in overturning their designations. Of course, the E.O.s’ contextual differences (counterterrorism versus foreign human rights violations) could warrant less judicial deference in GLOMAG cases.⁶⁷

V. CONCLUSION

In her paper foreshadowing the publication of the E.U. Regime, Eckes warned that, “the [E.U. Regime] may be inspired by the U.S. regime but [it] cannot and should not be followed too closely as it does not offer judicial protection to

62. *Id.*

63. *Id.* at 161.

64. *Fiallo v. Bell*, 430 U.S. 787 (1977); CAPI, *supra* note 41, at 2.

65. 686 F.3d 965 (9th Cir. 2012).

66. *Id.* at 979.

67. CAPI, *supra* note 41, at 2.

those sanctioned in a way that would meet due process guarantees under the Charter of Fundamental Rights.”⁶⁸ When considering the texts of the two regimes in light of their broader legal frameworks and thematic jurisprudence, the comparative analysis suggests that the actual E.U. Regime differs from the GLOMAG Framework in aspects beyond its due process requirements. The sum of those differences suggests that the E.U. Regime will not always be positioned to match U.S. designations. This flows from two general conclusions: it appears to be both more difficult to get onto the E.U. sanctions list, and easier to be de-listed from it. The former derives from the differing scope and designation procedure. The E.U. Regime is more definitive about what conduct warrants sanctions, leaving less discretion to the authorities. Moreover, designations require the unanimous consent of the European Council, as opposed to the extraordinary discretion allowed the Treasury Secretary under the GLOMAG Framework. Subsequently, despite comparable principles of judicial deference to policy issues, there is more scope under the E.U. Regime for a designee to have their listing reviewed by a court. There is also a greater likelihood of an administrative de-listing in the European Union too, as E.U. lists are reviewed annually. Of course, in addition to the possible differences arising from the contours of the legal framework, divergences in the actors’ policy considerations will also cause the regimes to pursue different targets. In the end, the European Union’s unique history with sanctions could ensure that the trans-Atlantic human rights sanctions regime may not function exactly as the United States would like it to.

68. Eckes, *supra* note 39, at 15.