



Worldwide Global Magnitsky Act Legislation

Australia • Canada • Estonia • European Union
Gibraltar • Jersey • Latvia • Lithuania
United Kingdom

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Comparative Summary

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This report discusses the Global Magnitsky Act as it was implemented in the **United States (US)**, and provides comparative information about foreign laws that operate in a similar manner. Individual country reports, when applicable, are also included after the comparative section.

The Global Magnitsky Human Rights Accountability Act (Global Magnitsky) gives the **US** president the authority to sanction foreign persons engaged in human rights abuses or corruption.¹ Sanctions can be economic, and they can include denial of entry into the **US**. Global Magnitsky was originally tailored to address Russian corruption; however, the law was amended in 2017 to extend the authority globally.² The law was implemented through Executive Order 13818, which provides the designation criteria for individuals subject to the law. EO 13818 delegates the power to designate to the secretary of the Treasury, in consultation with the secretary of State and the attorney general.³

Several jurisdictions have laws similar to Global Magnitsky. **Lithuania** and **Estonia** have domestic legislation implementing similar provisions. These two countries are unique among the **European Union (EU)** regarding their domestic legislation on this topic. Other **EU** nations do not have domestic legislation; instead, they rely on the **EU** regulations that have provisions similar to Global Magnitsky. The **United Kingdom (U.K.)** has enacted a similar law. The **U.K.** law also applies to British Overseas Territories, such as the **Cayman Islands** and **Bermuda**. Both **Jersey** and **Gibraltar** have legislation that generally aligns with the **U.K.** law. **Australia** and **Canada** have also implemented legislation similar to Global Magnitsky.

Several jurisdictions have also attempted to pass similar laws; however, these efforts stalled in their legislatures. Legislation was introduced in **Moldova**, **Ukraine**, **Romania**, **Georgia**, and **Kosovo** that never passed into law. A bill was also introduced in **Taiwan** but failed to pass.⁴ In **Japan**, although a bill introduced in the most recent legislative session did not pass, it will carry over into the next session. The **Czech Republic** is in the process of passing its own law.⁵ In general, these proposed laws are similar in scope to the legislation passed in the jurisdictions

¹ The Global Magnitsky Human Rights Accountability Act was passed as part of the 2017 National Defense Appropriations Act, Pub. L. 114-328, 22 U.S.C. § 2656 note. The relevant part of the legislation appears in Subtitle F of Title XII of Pub. L. 114-328, <https://perma.cc/5Y8H-H6XK>.

² Michael A. Weber & Edward J. Collins-Chase, Cong. Rsch. Serv., IF10576, *The Global Magnitsky Human Rights Accountability Act* (2020), <https://perma.cc/PFC7-MAPD>. The authors also wrote a more detailed report, R46981, *The Global Magnitsky Human Rights Accountability Act: Scope, Implementation, and Considerations for Congress* (2021), <https://perma.cc/FG4V-G5A3>.

³ Exec. Order No. 13818, § 1(a)(ii), 82 Fed. Reg. 60,839 (Dec. 20, 2017), <https://perma.cc/EDR9-L4E8>.

⁴ Taiwan Global Magnitsky Human Rights Accountability Act, Taiwan Yuan, <https://perma.cc/YT8L-DNB2>.

⁵ Daniela Lazarová, *Czechia Preparing Its Own Version of US Magnitsky Act*, Radio Prague Int'l (July 14, 2022), <https://perma.cc/LLQ2-HJ37>.

discussed below. **Latvia** in 2018 adopted a resolution to impose an entry (or travel) ban on 49 Russian individuals named by the **US** in its Global Magnitsky reporting.⁶

Comparative Analysis

Global Magnitsky authorizes sanctions on foreign persons engaging in a gross violation of international human rights or corruption.⁷ The law also provides a list of specific actions that are subject to the law's sanctions, focusing on persons responsible for extrajudicial killings or torture of individuals who attempt to expose corruption or other illegal activities or who defend or advance globally recognized human rights, as well as government officials engaged in corruption.⁸ The Global Magnitsky Act covers both human rights violations and acts of serious corruption, while the Executive Order broadens the scope of sanctioning power by expanding the categories of persons to be sanctioned, and broadens the scope of sanctionable corruption, by removing the "acts of significant corruption" designation and extending sanction authority to behaviors deemed to fall into a general "corruption" category.⁹

The primary distinction between individuals subject to the human rights and corruption aspects of the Global Magnitsky Act and the human rights and corruption aspects of the EO is that Global Magnitsky covers any foreign individual responsible for a human rights violation (as defined within the law), while the corruption aspects apply to government officials and those acting in a government capacity, with an option for the president to designate foreign persons who have supported acts of corruption.¹⁰ The Executive Order expands the reach of the law to include any individual (foreign or domestic) that has supported human rights violations or corruption, or has made an attempt to do the same.¹¹ The EO also

EO 13818 provides criteria for persons subject to the law. "Persons" includes both individuals and entities. The order also includes a list of persons to be initially designated under the law. The following persons are subject to sanction under the order:

- persons responsible for or complicit in human rights abuses,
- current or former government officials, or a person acting on behalf of such an official who is responsible for or complicit in corruption or the transfer of proceeds of corruption,
- leaders or officials of an entity that has engaged in these actions,
- anyone who has attempted to engage in these actions, and

⁶ Press Release, Latvijas Republikas Saeima, Saeima Approves Proposed Sanctions Against the Officials Connected to the Sergei Magnitsky Case (Feb. 8, 2018), <https://perma.cc/LWQ4-B7B5>.

⁷ Pub. L. 114-328 § 1262.

⁸ Id. § 1263.

⁹ See Weber & Collins-Chase, *supra* note 2, at 4-5.

¹⁰ Id. at 5.

¹¹ Id. at 5-6

- persons who have provided support for these actions, whether it be materially, financially, or technologically.¹²

The order directs the various involved federal agencies effectively to freeze the assets of those so designated.¹³ The following comparisons are illustrative of the more in-depth information available in the individual country reports that follow in the next section of this memo. In all cases, the laws have similar conditions for sanctions; however, some laws require more specificity when it comes to the individuals and entities who can be sanctioned.

In **Canada**, the 2017 Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) provides criteria similar to **US** law for seizing or freezing assets. **Canada**'s law contains provisions related to internationally recognized human rights violations almost identical to those seen in Global Magnitsky. **Canada**'s law also includes a provision for threats to international peace and security. Similar to the **US** designation of sanction targets by the secretary of the Treasury in consultation with the secretary of State and the attorney general, **Canada**'s law relies on the federal cabinet to identify and sanction persons.

In **Australia**, the 2021 Autonomous Sanctions Amendment (Magnitsky-Style and Other Thematic Sanctions) Act provides similar criteria to the laws in **Canada** and the **US**, but goes further by providing an avenue to sanction those engaged in the proliferation of weapons of mass destruction, malicious cyber activity, and threats to international peace and security. Enforcement of **Australia**'s law is similar to that of the law in the **US**, through the minister of Foreign Affairs and the attorney-general.

The **EU** enacted its Global Human Rights Sanctions Regime, colloquially known as the European Magnitsky Act, in December 2020. The **EU**'s regime is made up of two elements, a Council Regulation and a Council Decision. The regime is similar in scope to **Australia**'s law, with regard to the specificity of acts defined within the laws. Similar to the laws in other jurisdictions, the **EU**'s regime focuses on overarching human rights violations. The **EU** legislation describes both genocide and crimes against humanity as acts subject to the sanctions. Like the other countries, the sanctions cover both individuals and entities. Similar to those in the **US**, **Canada**, and **Australia**, the laws do not require the actor be a government member, allowing for sanctions against nongovernmental persons; indeed, the EU sanctions regime is designed so the sanctions can take place anywhere in the world, against any bad actor. While the **EU** has adopted provisions that generally cover all members of the union, several Baltic states have also passed their own domestic legislation.

Most **EU** countries rely on the sanctions regime instead of domestic legislation; however, **Estonia** and **Lithuania** have introduced legislation codifying Magnitsky laws. In **Estonia**, the Magnitsky law focuses on travel bans rather than financial sanctions. **Estonia**'s domestic law applies only to those individuals working in intelligence or security services; however, **Estonia** also relies on the **EU** sanctions regime in its overall Magnitsky sanctions law: it allows for the automatic recognition of sanctions directed in other **EU** member states. **Lithuania**'s Magnitsky legislation is

¹² Exec. Order No. 13181 § 1(a).

¹³ Id.

an amendment to its 2018 Law on the Legal Status of Foreigners. **Lithuania's** law includes an entry ban, similar to the laws of the **EU**, **Canada**, **Australia**, and the **US**; it allows for an entry ban on any foreign national who has been involved with a human rights violation, and provides a domestic option to extend an entry ban for more than five years. The laws in both **Lithuania** and **Estonia** also focus on individuals who pose a threat to North Atlantic Treaty Organization (NATO) and EU security.

In 2017, the **U.K.** amended its 2002 Proceeds of Crime Act with the Criminal Finances Act of 2017. The 2017 amendment aligns with the laws of **Canada** and the **US** in limiting the conduct addressed to human rights violations. The **U.K.** law also requires a government actor, and it is limited to asset seizure. In **Gibraltar**, the Proceeds of Crime Act of 2015 is identical to the **U.K.** law.

In addition, the **U.K.** has passed the Sanctions and Anti-Money Laundering Act of 2018, which also includes Magnitsky elements concerning human rights violations but provides an avenue for sanctions against bad actors. Likewise, in **Gibraltar**, a 2019 law allows for sanctions. **Jersey** has implemented legislation that effectively gives the government the power to sanction and seize based on decisions by the **U.K.** and the **EU**.

In the **US**, sanctions and travel bans are covered in the same section of Global Magnitsky. The **US** enforces travel bans by revoking or refusing to issue visas. The **US** will allow entry into the country for law enforcement purposes and international obligations. In the **EU**, financial sanctions and travel bans are applied by member states. Like the **US**, the **EU** allows for exemptions from travel bans for judicial purposes. The **EU** also allows an exemption if the country is under an international obligation to allow the person entry into the country.

In the **EU**, provisions allow for economic penalties against entities that do not comply with the sanctions, even if they are not the target of the sanctions. This is similar to **US** law, where entities that hinder a sanction can be subject to penalties. Likewise, in **Canada**, financial institutions are on notice that any property belonging to a person subject to sanctions should be reported to the authorities.

In **Canada**, the list of affected persons is available online through Global Affairs Canada. In the **US**, the Department of Treasury Office of Foreign Asset Control maintains a list of affected persons and publishes it online.¹⁴ The **EU** also maintains a sanctions list online.

The following surveys provide explanations of each jurisdiction's Magnitsky legislation.

¹⁴ *Global Magnitsky Sanctions*, US Treasury Dep't, <https://perma.cc/SG3Q-8YBC>.

Australia

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In December 2021, Australia enacted the Autonomous Sanctions Amendment (Magnitsky-Style and Other Thematic Sanctions) Act 2021 (Cth).¹ Following the amendments, the Autonomous Sanctions Act 2011 (Cth)² now provides that autonomous sanctions established under the act can be either country-specific or thematic. It also “sets out the decision-making process for imposing targeted financial sanctions and travel bans on persons and entities under thematic sanctions regimes.”³ The amended act provides that autonomous sanctions may address one or more of the following:

- (a) the proliferation of weapons of mass destruction;
- (b) threats to international peace and security;
- (c) malicious cyber activity;
- (d) serious violations or serious abuses of human rights;
- (e) activities undermining good governance or the rule of law, including serious corruption;
- (f) serious violations of international humanitarian law.⁴

In terms of the process, a new subsection 10(4) of the act requires that, “[w]hen making a thematic sanctions listing decision, the Minister for Foreign Affairs must consult and obtain the agreement in writing of the Attorney-General, as First Law Officer of the Commonwealth. The Minister for Foreign Affairs must also consult with such other Ministers as the Minister considers appropriate.”⁵ The relevant regulations have been amended to introduce thematic listing criteria to enable a person or entity to be designated for targeted financial sanctions or for a person to be declared for a travel ban. The designations and declarations are made by legislative instrument and are disallowable by Parliament.⁶

¹ Autonomous Sanctions Amendment (Magnitsky-Style and Other Thematic Sanctions) Act 2021 (Cth), <https://perma.cc/9EES-GUP7>.

² Autonomous Sanctions Act 2011 (Cth), <https://perma.cc/ZGM2-AWGF>.

³ Revised Explanatory Memorandum, Autonomous Sanctions (Magnitsky-Style and Other Thematic Sanctions) Bill 2021, at 1, <https://perma.cc/2LZ9-7W6H>.

⁴ Autonomous Sanctions Act 2011 (Cth) s 3(3).

⁵ Explanatory Memorandum, *supra* note 3, at 2.

⁶ Autonomous Sanctions Regulations 2011 (Cth) reg 6A, <https://perma.cc/Y8K6-NLKJ>. See also Explanatory Statement, Autonomous Sanctions Amendment (Magnitsky-Style and Other Thematic Sanctions) Regulations 2021, <https://perma.cc/4DWR-2CU2>.

Canada

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In 2017, the Canadian Parliament enacted the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law).¹ The act allows for the federal cabinet to “cause to be seized, frozen or sequestered in the manner set out in the order any of the foreign national’s property situated in Canada” under prescribed circumstances:

- (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).²

The act imposes obligations on financial institutions to determine whether or not they are in possession of any property owned by an individual subject to sanctions of the act, and any individual is required to report any such property to either the Royal Canadian Mounted Police or the Canadian Security Intelligence Service. The person subject to sanctions may make an appeal to the Minister of Foreign Affairs.

¹ Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), <https://perma.cc/YC6P-GWRQ>.

² *Id.* § 4(2).

Worldwide Global Magnitsky Act Legislation: Canada

The list of persons sanctioned through regulation by the federal cabinet are listed online. In addition, Canada also uses the Special Economic Measures Act,³ to sanction foreign nationals for human rights abuse, threats to international peace and to follow through on sanctions imposed by multilateral organizations of which Canada is a member. The regulations under the Special Economic Measures Act are enacted geographically and currently include citizens of Libya, Belarus, Burma, North Korea, Iran, Nicaragua, China, Russia, South Sudan, Syria, Ukraine, Venezuela, and Zimbabwe.⁴

Further information on Canada's sanctions regime is provided online by the Government of Canada.⁵

³ Special Economic Measures Act, <https://perma.cc/55ET-FV4R>.

⁴ Special Economic Measures Act Regulations, <https://perma.cc/E34E-BVC9>.

⁵ Global Affairs Canada, *Canadian Sanctions Legislation*, <https://perma.cc/RJ9A-RPAT>.

Estonia

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On December 8, 2016, the Estonian legislature approved amendments to the Obligation to Leave and Prohibition on Entry Act.¹ This act, which regulates the procedure for crossing the Estonian state border by foreigners, was amended with provisions aimed at expanding the possibility of banning entry to Estonia for foreigners whose presence may endanger or contradict the interests of Estonia, other EU and NATO member states, or states participating in the Schengen Convention. The ban might apply to those who

- work or are otherwise associated with intelligence or security services;
- incite political, national, religious, or racial hatred in Estonia or in another country; and
- if “there is information or there are reasonable grounds to believe that a foreigner has participated in or contributed to a violation of human rights in a foreign country, which has resulted in a person's death, serious health damage, his unjustified conviction for a crime with political motives, or other serious consequences.”²

The law allows Estonia to impose an entry ban on foreign government officials who violate human rights or execute government policies which result in human rights violations. Under this law, sanctions introduced in other EU member states against human rights violators are automatically recognized and implemented in Estonia.³ The previously established five-year duration of the prohibition to enter Estonia, which could be extended upon recommendation of security authorities, was not changed by the 2016 amendments.⁴

As stated in the explanatory note to the 2016 Amendment Law, the passage of this law was “guided” by the European parliament and the OSCE Parliamentary Assembly resolutions calling for the member countries to “take measures to impose a visa ban on those responsible for the Magnitsky case.”⁵ It was reported in 2018 that the Estonian Magnitsky list included 49 Russian nationals accused of human rights violations.⁶

¹ Act Amending the Obligation to Leave and Prohibition on Entry Act, Act No. 262SE, Dec. 8, 2016, <https://perma.cc/V45B-GEBL> (in Estonian), English translation of the consolidated version, <https://perma.cc/4FZF-3Z9C>.

² Obligation to Leave and the Prohibition of Entry Act, consolidated version, supra note 1, § 29(1)1.

³ Id.

⁴ Id. § 7.

⁵ Foreign Affairs Committee, *Explanation Letter on the Act Amending the Obligation to Leave and Prohibition on Entry Act*, Riigikogu.ee, <https://perma.cc/A7YN-RAV2> (in Estonian).

⁶ Truth Hounds et al., *Magnitsky Laws: Practical Guide to Sanctioning Human Rights Violators* 8 (Kyiv 2018), <https://perma.cc/U9NN-NZLY>.

European Union

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On December 7, 2020, the European Union (EU) enacted its Global Human Rights Sanctions Regime, also referred to as the “European Magnitsky Act,” to hold perpetrators of serious human rights violations and abuses accountable.¹ It consists of two acts, Council Regulation (EU) 2020/1998 (Regulation) and Council Decision (CFSP) 2020/1999 (Decision).² The sanctions regime enables the EU to implement targeted restrictive measures no matter who is responsible for the respective infringements or where they occur. The EU Global Human Rights Sanctions Regime is in addition to the existing geographic sanctions regimes that address human rights violations and abuses.

The EU sanctions framework applies to serious human rights violations or abuses worldwide.³ The sanctions regime provides a non-exhaustive list of offenses that qualify as such—in particular, genocide and crimes against humanity.⁴ Other human rights violations or abuses fall under the regime’s provisions if they “are widespread, systematic or are otherwise of serious concern as regards the objectives of the common foreign and security policy set out in Article 21” of the Treaty on European Union (TEU).⁵ To make the determination that a human rights violation has taken place, the law provides that “regard should be had to customary international law and widely accepted instruments of international law.”⁶

The sanctions regime covers natural and legal persons, entities, or bodies that may include state actors, other actors exercising effective control or authority over a territory, or other non-state actors.⁷ Anyone who provides financial, technical, or material support, or is otherwise involved in a human rights abuse or violation or associated with the perpetrators may also be targeted with restrictive measures.⁸

Persons, entities, or bodies that are subject to sanctions are listed in the annex to the Decision and the Regulation. Proposals for inclusion in the list may be submitted by the EU Member States and

¹ Martin Russell, Legislative Train Schedule: A European Magnitsky Act, European Parliament Members’ Res. Serv. (June 23, 2022), <https://perma.cc/4HZZ-Y8PJ>.

² Consolidated Version of Council Regulation (EU) 2020/1998, 2020 O.J. (L 410I) 1, <https://perma.cc/KS33-BPYW>; Consolidated Version of Council Decision (CFSP) 2020/1999, 2020 O.J. (L 410I) 13, <https://perma.cc/58VH-KWPQ>.

³ Decision art. 1, para. 1, sentence 1.

⁴ Decision art. 1, para. 1; Regulation art. 2, para. 1.

⁵ Decision art. 1, para. 1(d); Regulation art. 2, para. 1(d); Consolidated Version of the Treaty on European Union (TEU), art. 21, 2016 O.J. (C 202) 1, <https://perma.cc/9PVJ-BW5W>.

⁶ Decision art. 1, para. 2; Regulation art. 2, para. 2.

⁷ Decision art. 1, para. 3; Regulation art. 2, para. 3.

⁸ Decision art. 2, para. 1(b)-(c); Regulation art. 3, para. 3(b)-(c).

the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) to the Council of the European Union (Council), the co-legislator of the EU. The Council establishes and amends the list by unanimous decision.⁹ The Council Implementing Regulation that contains the amendment of the list is published in the Official Journal of the European Union. In addition, the names and identifying information of the listed persons/entities are added to the EU Sanctions Map and the Financial Sanctions List, both of which are publicly available online free of charge.¹⁰

The grounds for the listing must be communicated to the person, entity, or body concerned, followed by an opportunity for them to present their observations.¹¹ Such a communication can be made either directly if the address is known or by public notice.¹² A revision of the list must take place at least every 12 months.¹³ The grounds for the listing are also included in the annex.¹⁴

Two types of measures comprise the sanctions regime: financial sanctions, such as asset freezes and bans on making funds and economic resources available, and restrictions on movement (travel bans).¹⁵ The Regulation deals with financial sanctions, whereas the Decision deals with travel bans. EU sanctions are applied by the EU Member States. They are obligated to inform each other and the European Commission of measures taken, in particular regarding the freezing of funds or any national enforcement problems.¹⁶ The European Commission monitors the enforcement and uniform implementation of sanctions by the Member States. The competent authorities in the EU Member States may make an exception from the sanctions imposed in certain cases and release frozen funds or economic resources, such as when there is a specific need, for humanitarian aid, in relation with arbitral, judicial, or administrative decisions, or in connection with a prior contract.¹⁷

With regard to travel bans, certain exemptions are possible as well—for example, if the Member State is bound by an obligation under international law or the entry is necessary for judicial proceedings.¹⁸ The Member State must inform the Council about any granted exemptions and, in certain cases, Council members can raise objections in writing within two working days of

⁹ Decision, art. 5, para. 1.

¹⁰ EU Sanctions Map, EU, <https://perma.cc/GH2L-RC33> (last updated June 26, 2022); European Union Consolidated Financial Sanctions List, European Commission (last updated July 8, 2022), <https://perma.cc/E7C6-4L5B>.

¹¹ Regulation art. 14, para. 2; Decision art. 5, para. 2.

¹² Id.

¹³ Regulation art. 14, para. 4.

¹⁴ Regulation art. 15; Decision art. 6, para. 1.

¹⁵ Regulation art. 3; Decision art. 2, para. 1.

¹⁶ Regulation art. 13.

¹⁷ Id. arts. 4-7.

¹⁸ Decision art. 2, paras. 3-4, 6-7.

receiving notice of the exemption.¹⁹ In such a case, the Council decides by a qualified majority whether the proposed exemption is granted.²⁰

Member States must also determine penalties for EU economic operators that do not comply with the sanctions imposed under the sanctions regime.²¹ The penalties provided for must be “effective, proportionate and dissuasive.”²² Non-EU operators are not obligated to comply with the sanctions imposed unless their business is conducted at least partly within the EU.²³

¹⁹ Id. art. 2, paras. 5, 8.

²⁰ Id. art. 2, para. 8.

²¹ Regulation art. 19.

²² Id. art. 16.

²³ Id. art. 19.

Gibraltar

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Gibraltar enacted a Proceeds of Crime Act in 2015.¹ It includes a provision mirroring section 241A of the United Kingdom's (UK's) Proceeds of Crime Act. The UK's Proceeds of Crime Act was amended to model the United States' Magnitsky Act.² Gibraltar's Proceeds of Crime Act 2015 was amended in 2018 by the Proceeds of Crime (Amendment) Act to include gross human rights abuses or violations in the definition of unlawful conduct. It gives the provisions extraterritorial application.³

The 2015 act enables the attorney general to use civil proceedings to recover property or cash that has been obtained, or represents property or cash obtained, through unlawful conduct. The attorney general may also use the courts to seek the forfeiture of cash that is intended to be used in unlawful conduct.⁴ The court must decide, on the balance of probabilities, whether any unlawful conduct has occurred or any person intended to use any cash in unlawful conduct.⁵

In order to constitute a gross human rights abuse or violation, as in the UK, three conditions must be met. The first is

- (a) the conduct constitutes the torture of a person who has sought-
 - (i) to expose illegal activity carried out by a public official or a person acting in an official capacity; or
 - (ii) to obtain, exercise, defend or promote human rights and fundamental freedoms; or
- (b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.⁶

The two other conditions continue to mirror the UK's Proceeds of Crime Act 2002. The second condition is that the abuse or violation must have occurred as a result of the person engaging in the activities listed above. The third condition is that the act or acts must have been conducted by a public official or a person acting in an official capacity, or have been consented to or acquiesced by a person in such a position.⁷

A person is considered to engage in conduct connected with the commission of a gross human rights abuse or violation if he or she directs, sponsors, profits, or materially assists in these

¹ Proceeds of Crime Act 2015, No. 22 of 2015, <https://perma.cc/5E37-7MTK>.

² Proceeds of Crime Act 2002, c. 29, <https://perma.cc/E9U9-L9B5>.

³ Proceeds of Crime (Amendment) Act 2018, No. 1 of 2018, § 3(5), <https://perma.cc/BW9R-RM6K>.

⁴ Proceeds of Crime Act 2015, § 69(1).

⁵ Id. § 70(3).

⁶ Id. § 70A(2).

⁷ Id. § 70A(3)-(4).

activities, such as through the provision of goods, services, or financial or technical support, or acts “as an agent for another in connection with activities relating to conduct constituting the commission of a gross human rights abuse or violation.”⁸ Conduct that constitutes torture involves the “intentional infliction of severe pain or suffering on another person.”⁹ Pain and suffering under this provision can be both mental and physical and caused by an act or omission.¹⁰

Gibraltar has enacted the Sanctions Act 2019.¹¹ It has provisions that mirror the Magnitsky elements of the UK’s Sanctions and Anti-Money Laundering Act 2018.¹² The Sanctions Act 2019 provides the government with the ability to introduce regulations to impose sanctions, including financial, trade, and immigration sanctions, against individuals or entities that have engaged in gross human rights abuses or violations. Specifically, regulations can be introduced to impose sanctions for human rights abuses, as determined in accordance with section 70A of the Proceeds of Crime Act 2015, to “provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote - (i) compliance with international human rights law, or (ii) respect for human rights.”¹³

⁸ Id. § 70A(5)(a).

⁹ Id. § 70A(6).

¹⁰ Id. § 70A(7).

¹¹ Sanctions Act 2019, No. 6 of 2019, <https://perma.cc/CX94-PS98>.

¹² Sanctions and Anti-Money Laundering Act 2018, c. 13, <https://perma.cc/3XGD-TNAJ>.

¹³ Sanctions Act 2019, § 16(2)(e).

Jersey

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Jersey enacted a Proceeds of Crime Law in 1999, and while it has undergone a number of amendments, it appears it has not been amended to include provisions modeled on the United States' Magnitsky Act.¹

Jersey enacted the Sanctions and Asset Freezing (Jersey) Law in 2019.² This act does not appear to allow Jersey to independently sanction those found responsible for gross human rights abuses or violations, but it does enable Jersey to implement certain sanctions from the United Kingdom (UK) and European Union (EU). Specifically, the act allows the Minister for External Relations and Financial Services to make an order if it appears to be "necessary or expedient"³ to give effect, either wholly or in part, to:

- (a) a UK sanctions provision is a provision made in the UK by or under regulations made under Part 1 of the Sanctions and Anti-Money Laundering Act 2018 of the UK; and
- (b) an EU sanctions provision is a provision made by any EU institution, by an instrument that is adopted under any one or more of –
 - (i) Chapter 2 of Title V of the Treaty on European Union,
 - (ii) Article 75 of the Treaty on the Functioning of the European Union, and
 - (iii) Article 215 of the Treaty on the Functioning of the European Union.⁴

Orders issued under this Article may incorporate, by either referencing, annexing, or other means, a UK or EU sanctions provision or provisions. The order may specify that the sanction is subject to exceptions, adaptations or modifications.⁵ The act limits orders from imposing imprisonment for more than seven years for a criminal offense, imposing or increasing taxes, or having effect before the date of the order.⁶

¹ Proceeds of Crime (Jersey) Law 1999, 08/780 (Official Consolidated Version (2022), <https://perma.cc/9JPD-459E>).

² Official Consolidated Version (2022), <https://perma.cc/YD6R-JJPU>.

³ Id. arts. 3(1) and 6(1).

⁴ Id. art. 3(2).

⁵ Id. art. 3(4).

⁶ Id. art. 3(5).

Latvia

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It appears that Latvia does not have a special legislative act similar to the Global Magnitsky Act. However, on February 8, 2018, the legislature approved a resolution prepared by the Parliament's Commission on Foreign Affairs titled the Proposal to Introduce Sanctions Against the Officials Connected to the Sergei Magnitsky Case. The resolution calls on the Latvian government to impose an entry ban on 49 Russian individuals named in the U.S. Magnitsky Act who are associated with large-scale corruption, money laundering, or human rights violations.¹

¹ Press Release, Saeima Approves Proposed Sanctions Against the Officials Connected to the Sergei Magnitsky Case, Latvijas Republikas Saeima (Feb. 8, 2018), <https://perma.cc/LWQ4-B7B5>.

Lithuania

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In Lithuania, Magnitsky legislation was adopted in the form of amendments to the Law on the Legal Status of Foreigners, which entered into force on January 1, 2018.¹ A provision allows the extension of the entry ban to the country beyond the regular five-year term for those foreign nationals who are suspected of serious human rights violations or involvement in corruption and money laundering schemes. The law states:

A foreigner may be prohibited from entering the Republic of Lithuania for a period longer than 5 years, if he may pose a threat to state security or public order, or to the security or public order of another member state of the European Union or the North Atlantic Treaty Organization, if there is information or serious grounds for suspecting that the foreigner has committed, participated in or otherwise contributed to large-scale corruption or money laundering, or to a human rights violation, as a result of which the person against whom the human rights violation was committed died or suffered serious injuries, was unjustly convicted for political reasons, or suffered other serious negative consequences.²

Following the passage of this amendment, the Lithuanian Interior Ministry and the Migration Department issued a list of 70 Russian nationals prohibited from entering Lithuania.³

¹ Law of Nov. 16, 2017 on Amending Article 133 of the Act No. IX-2206, Seimas.lrs.lt (official publication, in Lithuanian), <https://perma.cc/DBL9-UW7Z>.

² Id. amended art. 133, para. 3.

³ *Ban on 44 Russians to Enter Lithuania Takes Effect*, Delfi.lt (Mar. 27, 2018), <https://perma.cc/RRN6-EBBS>.

United Kingdom

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The United Kingdom (UK) has amended its domestic legislation to introduce elements modeled after the United States' Magnitsky Act.¹ The Proceeds of Crime Act 2002 was amended in 2017 by the Criminal Finances Act 2017 to include gross human rights abuses or violations in the definition of unlawful conduct and enable the UK to undertake a variety of actions relating to the proceeds of a crime. The provisions have extraterritorial application.²

The 2002 act uses the civil courts to recover any property, including cash, that has been or represents property that has been obtained through unlawful conduct, or to forfeit property that is or represents property that has been obtained through unlawful conduct, or property that is intended to be used in unlawful conduct.³ In order to constitute a gross human rights abuse or violation, three conditions must be met. The first is

- (a) the conduct constitutes the torture of a person who has sought—
 - (i) to expose illegal activity carried out by a public official or a person acting in an official capacity, or
 - (ii) to obtain, exercise, defend or promote human rights and fundamental freedoms, or
- (b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.⁴

The second condition is that the abuse or violation must have occurred as a result of the person engaging in the above activities. The third condition is that the act or acts must have been conducted by a public official, or person acting in an official capacity, or have been consented to or acquiesced by a person in such a position.⁵ The court must decide, on the balance of probabilities, whether any unlawful conduct has occurred or any person intended to use any property or cash in unlawful conduct.⁶

Conduct is considered to be connected with the commission of a gross human rights abuse or violation if the person directs, sponsors, profits or materially assists in these activities, such as through the provision of goods, services, or financial or technical support, or acts "as an agent for another in connection with activities relating to conduct constituting the commission of a gross

¹ Ben Smith & Joanna Dawson, Briefing Paper CBP 8374, Magnitsky Legislation, HC Libr. (July 13, 2020), <https://perma.cc/4WYY-L932>.

² Proceeds of Crime Act 2002, c. 29, <https://perma.cc/E9U9-L9B5>; Criminal Finances Act 2017, c. 22, <https://perma.cc/P6TW-UT4Q>.

³ Proceeds of Crime Act 2002, § 240.

⁴ Id. § 241A(2).

⁵ Id. § 241A.

⁶ Id. § 241(3).

human rights abuse or violation.”⁷ Conduct that constitutes torture involves the “intentional infliction of severe pain or suffering on another person.”⁸ The pain and suffering can be both mental and physical and caused by an act or omission.⁹

The Sanctions and Anti-Money Laundering Act 2018 also includes Magnitsky elements, enabling the UK to introduce regulations to impose sanctions, including financial, trade, and immigration sanctions, against individuals or entities that have engaged in gross human rights abuses or violations.¹⁰ Specifically, regulations can be introduced to impose sanctions for human rights abuses, as determined according to section 241A of the Proceeds of Crime Act 2002, which are those to “provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote - (i) compliance with international human rights law, or (ii) respect for human rights.”¹¹

⁷ Id. § 241A(5).

⁸ Id. § 241A(6).

⁹ Id. § 241A(7).

¹⁰ Sanctions and Anti-Money Laundering Act 2018, c. 13 § 1, <https://perma.cc/3XGD-TNAJ>.

¹¹ Id. § 1(2)(f).