

Thematic dossier:
Global Sanctions against Corruption and Asset Recovery

Developed by Dr. Georgios Pavlidis, Jean Monnet Chair, NUP

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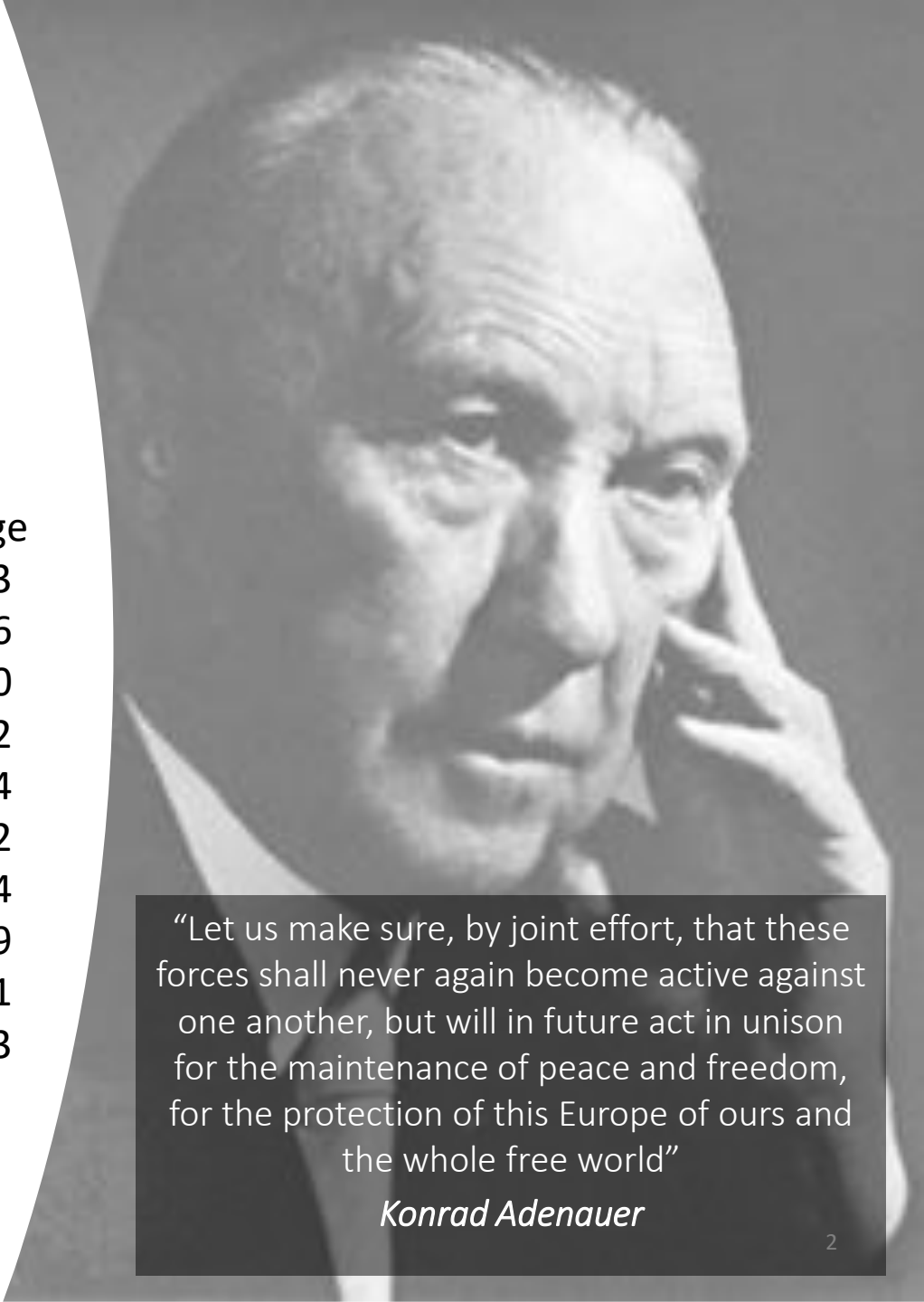


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“Let us make sure, by joint effort, that these forces shall never again become active against one another, but will in future act in unison for the maintenance of peace and freedom, for the protection of this Europe of ours and the whole free world”

Konrad Adenauer

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About this OER



About this OER

1. **Author:** This OER has been developed by Dr Georgios Pavlidis, Assistant Professor of International and EU law at NUP, Cyprus as part of the activities of the Jean Monnet Chair. You can find more information about this projects at <https://www.nup.ac.cy/jean-monnet-chair/>
2. **Methodology:** This OER was developed in accordance with the principles of the UNESCO Recommendation on Open Educational Resources, as well as the Cape Town Open Education Declaration and the Paris OER Declaration, which deal with the application of open licenses to educational materials.
3. **Target audience:** This OER is designed for undergraduate students in the fields of law, political sciences, social sciences, etc, as well as for lawyers, judges, prosecutors and practitioners who are interested in the EU action in the areas of asset recovery and AML.
4. **The topic of this OER:** This OER deals with global sanctions against corruption and the EU possible action in this regard (see sections **Learning Objectives** and **Learning Outcomes**)



About this OER

5. **Navigation:** This OER is structured into several sections, including an introduction, main content, learning activities, and additional resources. Use the table of contents provided to navigate through the OER and locate specific sections of interest.
6. **Reading and Understanding:** Begin by reading the introduction to gain an overview of the OER's purpose and learning objectives. Proceed to the main content, where you will find in-depth information and key concepts related to the topic. Take your time to understand the presented information and ensure comprehension before moving forward.
7. **Learning Activities:** In this OER you will encounter learning activities designed to enhance your understanding and application of the concepts covered. Engage with these activities to reinforce your learning and test your knowledge. Feel free to discuss the activities with peers or seek additional resources to deepen your understanding further.
8. **Reflection and Critical Thinking:** As you progress through the OER, take the opportunity to reflect on the concepts presented and consider their implications. Encourage critical thinking by asking questions, analyzing examples, and connecting the information to real-world scenarios.



About this OER

9. **Additional Resources:** The OER provides a list of additional resources, such as books, articles, websites, or videos, that you can explore for further study or to delve deeper into specific topics covered. Take advantage of these resources to expand your knowledge and explore related areas of interest.
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11. **Continuous Learning:** The field of knowledge covered by this OER is continually evolving. Stay updated by seeking current research, publications, or news related to the topic. Consider engaging in discussions or attending relevant events to stay connected with advancements in the field.

We hope that this OER serves as a valuable resource for your learning journey. If you have any questions or require further assistance, please reach out to us at: g.pavlidis@nup.ac.cy

Enjoy your exploration and learning!

Georgios Pavlidis

Jean Monnet Chair, NUP

Learning Objectives

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Learning Objectives

1. Understand the need for a global sanctions regime against corruption.
2. Analyze the potential benefits and challenges of implementing a dedicated framework for combating corruption.
3. Examine legislative developments and regulations related to global sanctions against corruption and asset recovery.
4. Evaluate the role of the European Union in the international fight against corruption.

Learning Outcomes

The slide features a dark background with several lightbulbs. Along the top edge, there are five unlit lightbulbs drawn in white. On the right side, there are three unlit lightbulbs in white and one lit lightbulb in yellow. The lit lightbulb is positioned lower than the others and has several short lines radiating from it to represent light. The main content is on a white rectangular area that has a torn bottom edge.

Learning Outcomes

1. Identify the key reasons why a global sanctions regime against corruption is necessary.
2. Assess the feasibility and potential effectiveness of implementing a dedicated framework for combating corruption.
3. Analyze recent legislative developments and regulations related to global sanctions and asset recovery.
4. Discuss the role of the European Union in combating corruption and its impact on the internal market.

Main Content

Intruduction

- Systemic corruption of public officials has negative effects on economy, politics, and society.
- Corruption undermines public trust, the rule of law, human rights, and democratic institutions.
- It hampers foreign investment, economic development, and free markets.
- Corruption is self-reinforcing and incentives for corruption increase as it becomes more widespread.

Intruduction

- Measuring corruption accurately is challenging due to its obscure nature.
- Tracing and confiscating corruption proceeds is difficult, hindered by money laundering techniques, judicial complexity, lack of resources, and political will.
- International legal instruments like the UNCAC and OECD Convention have improved anti-corruption efforts, but their impact is limited.
- The EU's current legal framework fails to effectively prevent corruption proceeds from entering its territory and financial system. Harmonization efforts are not targeted specifically at corruption proceeds from third countries, and mutual legal assistance is fragmented. A dedicated EU global sanctions regime against corruption could be a powerful tool for freezing, confiscating, and repatriating such proceeds.

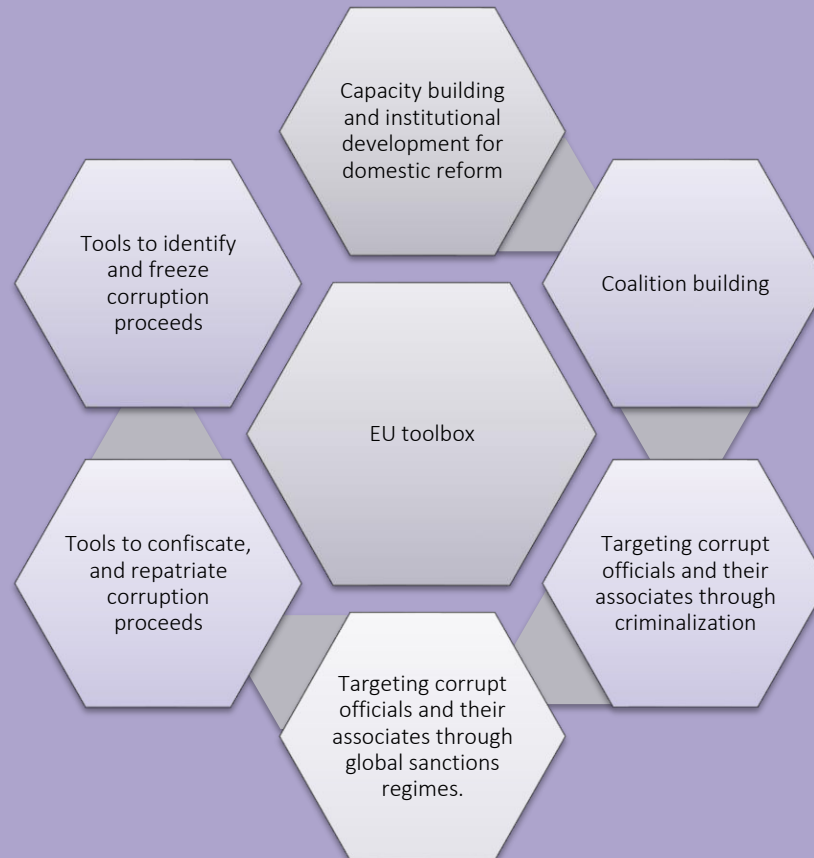
External Dimension of the EU's Fight against Corruption

- The EU aligns its rules and policies with the anti-corruption objectives of the UNCAC.
- Corruption in third countries has repercussions for the EU, as corrupt officials try to use the EU territory and financial system for illicit activities.
- Inflow of corruption proceeds in the EU poses risks such as contaminating the legal economy, creating asset bubbles, and undermining local public institutions.
- Accumulation of illicit proceeds by kleptocrats enables them to stay in power longer, oppress populations, violate human rights, and export security threats.

External Dimension of the EU's Fight against Corruption

- Inaction against corruption risks tarnishing the EU's reputation and signalling it as a safe haven for corruption proceeds.
- Effective EU action should consider legal, political, and economic aspects of corruption in affected countries.

External Dimension of the EU's Fight against Corruption



External Dimension of the EU's Fight against Corruption

- Soft approaches involve capacity building, institutional development, and coalition building for domestic reform.
- More proactive approaches target corrupt officials and their associates, as well as the proceeds of corruption, through criminalization and global sanctions regimes.
- The EU can deploy a dedicated global sanctions regime against corruption, supported by enhanced asset recovery tools, to identify, freeze, confiscate, and repatriate corruption proceeds.

The Rise of Global Sanctions against Corruption: A Model for the EU

- The US and UK have implemented successful global sanctions regimes against corruption that can serve as models for the EU.
- The US Magnitsky Act targets individuals, entities, and their associates involved in corruption offenses, imposing travel bans and asset freezes.
- The UK's autonomous sanctions regime initially focused on human rights violations but was expanded to include serious corruption offenses.
- Both regimes require due diligence from financial institutions and businesses and provide avenues for administrative review and legal challenges.

The Rise of Global Sanctions against Corruption: A Model for the EU

- The hybrid nature of targeted sanctions presents challenges in terms of procedural safeguards and judicial review.
- The ECtHR emphasizes the importance of effective remedies, time limits, and adherence to principles of legality and proportionality for asset-freezing measures.
- Similar principles and safeguards can be incorporated into an EU global sanctions regime against corruption.



Basic Principles for Asset-Freezing Measures (ECtHR Case-Law)

Effective remedies

Time limits

Principles of legality

Proportionality

From Ad Hoc Interventions to the EU Sanctions Act: Is It Enough?

- The EU has implemented targeted sanctions for human rights violations and misappropriation of public funds in third countries under the Common Foreign and Security Policy.
- These sanctions include travel bans and asset freezes on politically exposed persons (PEPs).

From Ad Hoc Interventions to the EU Sanctions Act: Is It Enough?

- The EU sanctions regime has been effective in signaling intent but has shortcomings related to asset restitution, predictability, and inconsistent outcomes.
- The Dutch government, European Parliament, and High Representative of the EU have worked towards a new regime.
- In December 2020, the EU adopted Regulation 2020/1998 and Decision 2020/1999, establishing the EU global sanctions regime for human rights violations.

From Ad Hoc Interventions to the EU Sanctions Act: Is It Enough?

- The regime targets individuals and entities regardless of the location of the violations.
- Corruption offenses are not explicitly included in the list of punishable offenses, but there is a provision for "other human rights violations or abuses."

From Ad Hoc Interventions to the EU Sanctions Act: Is It Enough?

- The European Parliament advocates for the explicit inclusion of corruption in the sanctions regime and calls for its involvement in the listing process.
- The new regime represents a paradigm shift towards thematic sanctions rather than country-based sanctions.
- However, the exclusion of corruption as a punishable offense diminishes the EU's role in the global fight against corruption compared to the more proactive approaches of the US and the UK.

The Next Step Forward: An EU Global Magnitsky Act

- A separate and dedicated legal framework, an EU Global Magnitsky Act, is necessary to blacklist kleptocrats and their associates from third countries.
- Fragmented and inconsistent regimes at the member state level allow for forum shopping and hinder the fight against corruption.
- Options for an EU Global Magnitsky Act include solely resorting to visa bans, using both visa bans and asset freezes, or covering the entire circle of asset recovery.

The Next Step Forward: An EU Global Magnitsky Act

- Visa bans pose less litigation risk as they are issued at the discretion of the issuing state and cannot be challenged before the European Court of Justice.
- Asset freezes, while riskier in terms of litigation, are more effective in combating corruption as kleptocrats may prioritize retaining their ill-gotten gains over traveling to the EU.
- An advanced option is to include the entire asset recovery process, including asset freezes, repatriation of corruption proceeds, and restitution of assets, similar to the Swiss Asset Recovery Law.

The Next Step Forward: An EU Global Magnitsky Act

- Mechanisms for facilitating asset restitution under an enhanced EU Global Magnitsky Act can include the spontaneous exchange of information and technical assistance.
- The Act can provide a legal basis for sharing information confidentially and offering technical assistance to the third country of origin, even without an official request.
- Non-conviction-based confiscation of frozen assets can be introduced in exceptional cases, particularly when there is a change in political regime in the third country and a disproportionate possession of assets by a politically exposed person (PEP).

The Next Step Forward: An EU Global Magnitsky Act

- A legal basis for the restitution of confiscated assets to the country of origin can also be established.
- In an advanced model, the burden of proof as to the origin of the frozen assets can be reversed, requiring the PEP to rebut a presumption of illicit origin to avoid confiscation.
- The reversal of the burden of proof should respect human rights standards, including the right to a fair trial, effective remedies, and proportionality.

Key Takeaways



Key Takeaways

1. The establishment of a global sanctions regime against corruption is crucial for mitigating risks to the EU internal market.
2. Developing a dedicated framework for combating corruption supports international efforts to fight corruption and enhance the recovery of corruption proceeds.
3. Legislative developments, such as the EU Global Human Rights Sanctions Regime and the UK Global Anti-Corruption Sanctions regulations, contribute to the foundation of a potential EU-dedicated global sanctions regime against corruption.
4. Money laundering, confiscation, and the actions of kleptocrats are key focus areas in the fight against corruption and the implementation of global sanctions.
5. The Magnitsky Act serves as a relevant example of a legislative measure targeting corruption and human rights abuses.

Learning Activity

Learning Activity



Title: Considering developments on global sanctions

In this interactive learning activity, you will have the opportunity to deepen your understanding of recent legislative developments related to global sanctions against corruption and asset recovery. Through peer-review and collaborative discussions, you will analyze and evaluate the effectiveness of these legislative measures.

Formation of Groups: You will be divided into small groups of 3-4 students, each group assigned a different recent legislative development or regulation related to global sanctions against corruption and asset recovery. Examples include the EU Global Human Rights Sanctions Regime, the UK Global Anti-Corruption Sanctions regulations, or other relevant legislation.

Learning Activity



Research and Analysis: Within your assigned groups, conduct comprehensive research on your designated legislative development. Delve into its provisions, objectives, and potential impact. Explore how it contributes to the global fight against corruption and enhances asset recovery efforts.

Presentation Preparation: Based on your research findings, prepare a presentation summarizing the key aspects of the legislative development. Include its relevance to the broader context of combating corruption, as well as any potential challenges or limitations in its implementation.

Peer-Review and Feedback: Engage in a peer-review session where each group exchanges their presentations with another group. Carefully review and provide constructive feedback on their analysis of the legislative development. Consider the strengths, weaknesses, and potential implications of their findings.

Learning Activity



Presentation Revision: After receiving peer feedback, revise your presentation, incorporating the valuable criticism and suggestions provided by your peers. Ensure that your revised presentation reflects a comprehensive and well-rounded analysis of the legislative development.

Group Presentations: Each group presents their revised presentation to the entire class, highlighting the key aspects of the legislative development they analyzed and addressing the feedback received. Encourage class-wide discussions and debates on the various legislative developments, fostering critical thinking and deeper understanding.

Learning Activity



Class-wide Reflection: Facilitate a reflection session where students collectively evaluate the overall effectiveness and feasibility of implementing a global sanctions regime against corruption, considering the analyzed legislative developments as evidence. Discuss the potential impact of these measures on the fight against corruption and asset recovery efforts.

Individual Exploration: Encourage students to further explore the topic individually, conducting additional research or engaging in writing assignments that delve deeper into specific aspects of global sanctions against corruption and asset recovery. Foster independent thinking and self-directed learning.

Through this interactive learning activity, you will develop a comprehensive understanding of recent legislative developments in global sanctions against corruption. You will also enhance your analytical and critical thinking skills, while actively engaging in collaborative discussions and receiving valuable feedback from your peers.

Self-Assessment Questions

Self-Assessment Questions

Why is a global sanctions regime against corruption necessary for the European Union?

What are the potential benefits and challenges associated with implementing a dedicated framework to combat corruption?

How do recent legislative developments contribute to the establishment of a potential EU-dedicated global sanctions regime against corruption?

What are the key focus areas in the fight against corruption, particularly concerning money laundering, confiscation, and kleptocrats?

How does the Magnitsky Act relate to the broader context of combating corruption and human rights abuses?

Additional Resources

Additional Resources at EU level

Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014, p. 39.

Regulation 2018/1805/EU of the European Parliament and of the Council on the mutual recognition of freezing orders and confiscation orders, OJ L 303, 28.11.2018, p. 1.

Council Decision 2008/801/EC on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption, OJ L 287, 29.10.2008, p. 1.

2004 EU Basic Principles on the use of restrictive measures

2012 Council's Guidelines on the implementation and evaluation of restrictive measures in the framework of the EU Common Foreign and Security Policy.

Council Regulation 2020/1998/EU concerning restrictive measures against serious human rights violations and abuses, OJ L 410I, 7.12.2020, p. 1;

Council Decision 2020/1999/CFSP concerning restrictive measures against serious human rights violations and abuses, OJ L 410I, 7.12.2020, p. 13.

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Thank you once again for being part of our educational journey. We are grateful to have had the opportunity to inspire and empower you and we wish you success in all your future endeavors.

With gratitude,

Georgios Pavlidis

Jean Monnet Chair, NUP

Open Educational Resources (OER) NUP Jean Monnet Chair

The Jean Monnet Chair at NUP

Since 2020, Neapolis University Pafos has the honor to be the host of a prestigious Jean Monnet Chair, which has been awarded to Dr. George Pavlidis to further promote his teaching and research into innovative methods for “Targeting Criminal Assets in the European Union”. The Jean Monnet Chair at NUP fosters the development of existing and new teaching, including Open Educational Resources (OER), while research activities and events give greater visibility to this field of study at national and regional level. The promotion of knowledge sharing through OERs, a working papers series and a knowledge database on asset recovery fall within the mission objective of the NUP School of Law, which aims to consolidate a strong contribution to the discussion on the future of the European integration.

