HERMITAGE CAPITAL MANAGEMENT

14 January 2020

Ref: Australian Magnitsky Act

Dear Chairman Fawcett, Chairman Andrews and members of the Committee,

I am writing to support the implementation on an Australian Magnitsky Act in 2020.

I have a very personal connection to this cause. In 2008, my lawyer, Sergei Magnitsky, uncovered a massive fraud committed by Russian government officials that involved the theft of US \$230 million of state taxes. Sergei testified against the officials involved and was subsequently arrested by them, imprisoned, systematically tortured and killed in Russian police custody on November 16, 2009.

Following Sergei Magnitsky's death, the Russian authorities covered up his murder, exonerated all the officials involved and went so far as to offer promotions and state honours to some of the most complicit in his persecution. In the most extreme miscarriage of justice, the Russian government put Sergei Magnitsky on trial three years after they killed him; the first trial against a dead man in the history of Russia.

After discovering there was no possibility of justice in Russia, I chose to seek justice outside of the country. It became evident that the people responsible for Sergei's murder killed him in order to cover up the theft of \$230 million from the Russian Treasury. These types of individuals keep their money in the West, where property rights and rule of law exists. This led to the idea of the Magnitsky Act, which freezes assets and bans visas of human rights violators.

The United States was the first country to pass the *Sergei Magnitsky Accountability Act* in 2012. Vladimir Putin had an extremely negative reaction to it and retaliated by banning the adoption of Russian orphans by American families. He then went on to announce that repealing the Magnitsky Act was among his top foreign policy priorities.

Rather than being intimidated by Putin's aggressive reaction, the U.S. Senators who backed the Magnitsky Act decided to expand this piece of legislation to dictators, kleptocrats and human rights abusers from all over the world. As a result, in 2016 the U.S. Congress passed the *Global Magnitsky Human Rights Accountability Act*.

The United States government has now used the Global Magnitsky Act to impose sanctions on 94 individuals and 102 entities from around the world. This list consists of officials from 24 countries including South Sudan, Uganda, Iraq and Cambodia. It includes such resonant cases as the Myanmar military officials involved in the Rohingya atrocities, Nicaraguan officials involved in the brutal killing of peaceful demonstrators, as well as the Saudi officials involved in the killing and dismemberment of Jamal Khashoggi.



Since the U.S passed the Global Magnitsky Act, Canada, the United Kingdom, Estonia, Latvia, Lithuania, Jersey and Gibraltar have all passed their own versions of this legislation. I am currently working to have a Magnitsky Act passed in the European Union.

As a champion of human rights and anticorruption in the Asia-Pacific, Australia should adopt its own Magnitsky Act. As an integral member of The Five Eyes, it would make sense for Australia to follow in the footsteps of the United States, the United Kingdom and Canada. If Australia does not have its own Magnitsky Act, the country is at risk of becoming a magnet for dirty money from human rights abusers and kleptocrats from around the world.

Some have argued that a legislative framework to impose such sanctions is already in place in Australia. While visas can be cancelled at the discretion of the government, there does not seem to be legislation which enables the government to freeze assets on the basis of human rights violations.

I strongly recommend that Australia adopt a Magnitsky Act in 2020.

- 1. It should include both asset freezes and visa bans
- 2. It should apply to human rights abusers and kleptocrats worldwide
- 3. It should be named after Sergei Magnitsky, whose ultimate sacrifice led to the introduction of Magnitsky Acts around the world.

I am enclosing a number of important and useful documents, including:

- 1. List of countries who have passed Magnitsky Acts
- 2. Nationalities of the individuals sanctioned under Magnitsky Acts
- 3. Press releases and clippings
- 4. Magnitsky resolutions, recommendations and ongoing initiatives

I hope to have the opportunity to testify in person before the committee.

Sincerely,

William Browder Head of the Global Magnitsky Justice Campaign

COUNTRIES WHO HAVE PASSED MAGNITSKY SANCTIONS

No.	Date	Country	Legislation passed	Effects of the Legislation
1.	14.12.2012	United States of America	Sergei Magnitsky Rule of Law Accountability Act of 2012	 Freezes assets Bans visas Applies to Russian human rights violators only 54 individuals + 1 entity on the list (Total: 55)
3.	08.12.2016	Estonia	Amendments to The Law on Amending the Obligation to Leave and Prohibition on Entry Act 262 SE	 Bans visas Applies to foreigners who have committed human rights violations in a foreign state 49 individuals on the list
4.	23.12.2016	United States of America	The Global Magnitsky Human Rights Accountability Act of 2016	 Freezes assets Bans visas Applies globally to human rights violators and perpetrators of grand corruption 94 individuals + 102 entities on the list (Total: 196)
5.	21.02.2017	United Kingdom	"Magnitsky Amendment" to the Criminal Finances Act 2017	 Freezes assets Targets illicit wealth linked to human right abuses Civil recovery of assets held by human rights abusers
6.	19.10.2017	Canada	The Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)	 Freezes assets Bans Visas Applies globally to human rights violators and perpetrators of grand corruption 70 individuals on the list
7.	16.11.2017	Lithuania	Law on the Legal Position of Foreign Affairs No IX- 2206 The Law on Amendment of 133 of Article	 Bans Visas Applies to individuals responsible for largescale corruption, money laundering or violations of human rights 66 individuals on the list
8.	08.02.2018	Latvia	Parliamentary Resolution	 Banned 49 Russian individuals and officials who were involved in the death of Sergei Magnitsky and who benefited from the US\$230million fraud
9.	08.02.2018	Gibraltar	"Magnitsky Amendment" to the Proceeds of Crime Act 2015	 Allows law enforcement agencies to seize the assets of human rights abusers, including for offences committed overseas

COUNTRIES WHO HAVE PASSED MAGNITSKY SANCTIONS

10.	23.05.2018	United Kingdom	"Magnitsky Amendment" to the Sanctions and Anti-Money Laundering Act 2018	 Bans Visas Applies globally to human rights violators
11.	06.12.2018	Jersey	The Sanctions and Asset Freezing Law (Jersey) 2018	 Preserves Jersey's power to impose EU sanctions Allows Jersey to impose UK sanctions made under the UK's Sanctions and Anti-Monday Laundering Act (see above)

NATIONALITIES OF THE INDIVIDUALS SANCTIONED UNDER MAGNITSKY LEGISLATION

USA – "The Sergei Magnitsky Rule of Law Accountability Act" (2012) 55 total (54 individuals and 1 entity)

Country/Nationality	Numbers	
Russia	54	

USA – "The Global Magnitsky Human Rights Accountability Act" (2016) 196 total (94 individuals and 102 entities)

Country/Nationality	Numbers
Saudi Arabia	17
Serbia	10
Myanmar	9
Iraq	8
South Sudan	8
Uganda	7
Cambodia	6
Mexico	4
Nicaragua	4
South Africa	3
Dominican Republic	2
Gambia	2
Pakistan	2
Russia	2
Israel	1
Belgium	1
Guatemala	1
India	1
China	1
Sudan	1
Uzbekistan	1
Slovakia	1
Latvia	1
Libya	1

ESTONIA – "Amendments to the Law on Amending the Obligation to Leave and Prohibition on Entry Act" (2016) 49 total (49 individuals)

Country/Nationality	Numbers
Russia	49

NATIONALITIES OF THE INDIVIDUALS SANCTIONED UNDER MAGNITSKY LEGISLATION

CANADA – "The Justice for Victims of Corrupt Foreign Officials Act - Sergei Magnitsky Law" (2017) 70 total (70 individuals)

Country/Nationality	Numbers
Russia	30
Venezuela	19
Saudi Arabia	17
South Sudan	3
Myanmar	1

LITHUANIA – "Law on the Legal Position of Foreign Affairs No IX- 2206 the Law on Amendment of 133 of Article" (2017) 66 total (66 individuals)

Country/Nationality	Numbers
Russia	49
Saudi Arabia	17

LATVIA – "Magnitsky Parliamentary Resolution" (2018) 49 total (49 individuals)

Country/Nationality	Numbers	
Russia	49	

EXAMPLES OF USA IMPLEMENTING GLOBAL MAGNITSKY SANCTIONS

The New Hork Times | https://nyti.ms/20Gjx6i

U.S. Imposes Sanctions on Myanmar Military Over Rohingya Atrocities

By Edward Wong

Aug. 17, 2018

WASHINGTON — The Treasury Department announced Friday that it had imposed economic sanctions on Burmese security forces for what American officials said was their role in "ethnic cleansing" against Rohingya Muslims and "widespread human rights abuses" against other ethnic minority groups.

The action targets four Burmese military and border guard commanders and two military units. The United States had previously penalized only one Burmese commander for the violence, which has caused 700,000 Rohingya to flee to Bangladesh and other parts of Asia. The European Union and Canada had hit seven officials with sanctions.

"Burmese security forces have engaged in violent campaigns against ethnic minority communities across Burma, including ethnic cleansing, massacres, sexual assault, extrajudicial killings and other serious human rights abuses," Sigal P. Mandelker, a senior Treasury Department official, said in a statement.

"U.S. Imposes Sanctions on Myanmar Military over Rohingya Atrocities" <u>https://www.nytimes.com/2018/08/17/us/politics/myanmar-sanctions-rohingya.html</u> <u>https://home.treasury.gov/news/press-releases/sm460</u>

The New Hork Times https://nyti.ms/2DIVK9w

U.S. Levels Sanctions on 17 Saudis for Alleged Involvement in Khashoggi Killing

By Mark Landler and Gardiner Harris

Nov. 15, 2018

WASHINGTON — President Trump said last week that he would form a "very strong opinion" about how the United States should respond to the brutal killing of Jamal Khashoggi, the Saudi journalist, after Saudi Arabia presented the results of its own investigation of the crime.

But when the Saudis delivered that report on Thursday, Mr. Trump reacted with silence.

Instead, the Trump administration, as expected, imposed sanctions on 17 Saudis accused of involvement in the killing. That came hours after Saudi Arabia's public prosecutor announced that he would seek the death penalty for five people he said took part in Mr. Khashoggi's killing in the Saudi Consulate in Istanbul on Oct. 2.

A senior administration official said the United States was unlikely to take further steps against Saudi leaders, suggesting that both sides hope to put the episode behind them.

"U.S. Levels Sanctions on 17 Saudis for Alleged Involvement in Khashoggi Killing" https://www.nytimes.com/2018/11/15/world/middleeast/saudis-sanctions-khashoggi.html https://home.treasury.gov/news/press-releases/sm547



14-03-2019 - 13:08 Reference No: 20190307IPR30748



MEPs call for EU Magnitsky Act to impose sanctions on human rights abusers

On Thursday, MEPs backed a resolution calling for new EU human rights sanctions to punish state and non-state actors responsible for gross violations of human rights.

In a resolution adopted on Thursday, the European Parliament calls for a new sanctions regime to be established at EU level to impose asset freezes and visa bans on individuals involved in grave human rights violations. The list should include state and non-state actors who have contributed, physically, financially or through acts of systemic corruption, to such abuse and crimes, worldwide.

MEPs state that the decision to list and delist individuals concerned should be based on clear, transparent and specific criteria, directly linked with the crime committed, in order to guarantee a thorough judicial review and redress rights. They also urge EU countries to come up with a mechanism to enforce sanctions and have a European oversight, since over the past months, there have also been cases in which European companies and countries have violated EU sanctions.

The new sanctions regime would strengthen the EU's role as a global human rights actor and should symbolically carry the name of Sergei Magnitsky, MEPs say. Mr Magnitsky was a Russian tax accountant investigating corruption who died in a Moscow prison in 2009, having endured inhumane conditions and torture. Similar legislative frameworks are already in place in the United States, Canada, and several EU countries, namely in Estonia, Latvia, Lithuania and the United Kingdom.

Council should decide by a qualified majority

The European Parliament has also repeatedly asked for a mechanism for sanctions to be introduced to punish individual culprits of human rights atrocities, and the proposal is now gaining momentum, after the Dutch Government initiated a discussion on it among EU member states in November. The proposal is currently being considered, at working group level, in the Council.

MEPs finally welcome the proposal made by the President of the Commission to move beyond unanimity voting, in Common Foreign and Security Policy (CFSP) areas in Council decision-making. In this context, they urge EU member states to adopt this new sanctions instrument so



Press Service, Directorate General for Communication European Parliament - Spokesperson: Jaume DUCH GUILLOT Press switchboard number (32-2) 28 33000



that a qualified majority in the Council may adopt human rights sanctions.

The resolution was adopted by 447 to 70, with 46 abstentions.

Background

The sanctions regime, under discussion, is inspired by the US Magnitsky Act, which was signed by President Barack Obama in December 2012, with the aim of targeting the Russian officials deemed responsible for the death of Russian tax lawyer Sergei Magnitsky.

EU sanctions have already become an integral part of the EU's external relations toolbox in the past two decades. Over 40 different restrictive measures are currently in place against individuals in 34 countries. An estimated two thirds of EU country-specific sanctions have been imposed, in support of human rights and democratic objectives.

Further information

Adopted text will be available here (14.03.2019)

Video recording of the debate (12.03.2019)

EP Research: Targeted sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level (April 2018) EP Multimedia Centre: free photos, video and audio material

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FN

Press Service, Directorate General for Communication European Parliament - Spokesperson: Jaume DUCH GUILLOT Press switchboard number (32-2) 28 33000



Dutch foreign minister Stef Blok (r) with Bill Browder (Photo: government.nl)

By ANDREW RETTMAN (2) (3) BRUSSELS, 9, DEC 2019, 17:00

Human rights abusers around the world will, in future, face EU asset freezes and travel bans under new-model sanctions agreed by foreign ministers in Brussels on Monday (9 December).

https://euobserver.com/foreign/146865

THE IRISH TIMES

Mon, Jan 13, 2020

NEWS	SPORT	BUSINESS	OPINION	LIFE & STYLE	CULTURE
World	Europe Brex	kit ∣ UK ∣ US ∣	Africa Middl	e East Asia-Pacific	;

EU backs initiative for legislation to punish human rights abusers worldwide

Coveney urges EU foreign ministers to make clear the EU would respond to threatened annexation of parts of West Bank by Israel

Ø Mon, Dec 9, 2019, 21:44

https://www.irishtimes.com/news/world/europe/eu-backs-initiative-for-legislation-to-punishhuman-rights-abusers-worldwide-1.4110059





https://www.euractiv.com/section/justice-home-affairs/news/eu-ministers-break-ground-oneuropean-magnitsky-act/

RESOLUTIONS, RECOMMENDATIONS AND ONGOING INITIATIVES

No.	Date	Country	Title	Information
1.	08.07.2012	Parliamentary Assembly of the OSCE	Magnitsky OSCE Resolution "Rule of Law in Russia: Case of Sergei Magnitsky"	 The OSCE Parliamentary Assembly passed a resolution calling on all OSCE member states to impose visa sanctions and asset freezes on the individuals responsible for the murder of Sergei Magnitsky OSCE Parliamentary Assembly supports the legislative initiatives on the Magnitsky case Calls on national parliaments to take action (visa bans + asset freezes)
2.	28.01.2014	Parliamentary Assembly of the Council of Europe	Magnitsky PACE Resolution 1966 "Refusing impunity for the killers of Sergei Magnitsky"	 The Parliamentary Assembly reiterated its strong support for the fight against impunity and against corruption as a threat to the rule of law Invites all other member States of the Council of Europe to considered ways and means of encouraging the Russian authorities to hold to account those responsible for the death of Mr. Magnitsky
3.	02.04.2014	European Parliament	Magnitsky Recommendation "Common visa restrictions for Russian officials involved in the Sergei Magnitsky case"	 MEPs call for EU sanctions against 32 Russian officials Resolution calls on the EU Council of Ministers to establish a list of those responsible for the death of Sergei Magnitsky Impose and implement an EU-wide visa ban on these officials and to freeze any financial assets that they may hold within the European Union
4.	26.07.2018	Moldova	Submission of "Magnitsky Bill" Moldovan Magnitsky Act	 Create legal instruments both to protect the domestic financial and banking system from abuse and to impose restrictions on persons who commit acts of corruption and violations of human rights Restrict entry into Moldova for individuals who have committed serious acts of corruption or violations of human rights, withdraw or refuse to grant citizenship, prohibit use of the domestic banking system and to apply restrictive measures on goods owned by such persons on the territory of Moldova

RESOLUTIONS, RECOMMENDATIONS AND ONGOING INITIATIVES

5.	03.12.2018	Australia	Submission of "Magnitsky Bill" "International Human Rights and Corruption (Magnitsky Sanctions) Bill"	 Submitted by Michael Danby MP as a Private Members Bill Apply targeted sanctions on any individual involved in gross violations of human rights or significant corruption Regulations under this Act may impose immigration, financial or trade sanctions on foreign persons Visa bans + Asset freezes
6.	22.01.2019	Parliamentary Assembly of the Council of Europe	Magnitsky PACE Resolution 2252 "Sergei Magnitsky and beyond – fighting impunity by targeted sanctions"	 The Parliamentary Assembly reaffirmed its commitment to the fight against impunity of perpetrators of serious human rights violations and against corruption as a threat to the rule of law The Assembly warmly welcomes the initiative by the Netherlands and others in the Council of the EU to enact a legal instrument allowing for targeted sanctions Calls on the Council of European Union to include a reference - in the tile of this instrument - to Sergei Magnitsky
7.	06.03.2019	Italy	Submission of "Magnitsky Bill" Italian Magnitsky Act	 Senator Roberto Rampi submitted a Magnitsky Proposal in the Italian Senate Provisions for combating international human rights violations Asset Freezes + Visa Bans
8.	14.03.2019	European Parliament	Magnitsky Resolution "A European human rights violations sanctions regime"	 MEPs backed a resolution calling for new EU human rights sanctions to punish state and non-state actors responsible for gross violations of human rights New sanctions regime to be established at EU level to impose asset freezes and visa bans The new sanctions regime should symbolically carry the name of Sergei Magnitsky
9.	29.03.2019	Romania	Submission of "Magnitsky Bill" Romanian Magnitsky Act	 MPs Cristian Ghinea, Adrian Prisnel and Iulian Bulai submitted a Magnitsky Proposal in the Romanian Parliament Imposing sanctions on foreign citizens responsible for grave violations of human rights Asset Freezes + Visa Bans

RESOLUTIONS, RECOMMENDATIONS AND ONGOING INITIATIVES

10.	03.12.2019	Australia	Inquiry into whether Australia should enact legislation comparable to the United States Magnitsky Act 2012	 On 3rd December, Foreign Minister Marise Payne asked parliament's joint standing committee on Foreign Affairs, Defence and Trade to conduct an inquiry into introducing legislation modelled on the US Magnitsky Act, which allows the imposition of visa and property-related sanctions on foreign individuals who are responsible for human rights violations
11.	09.12.2019	European Union	EU Foreign Ministers vote in favour of EU Human Rights Sanction Regime	 EU Foreign Ministers endorsed an EU Magnitsky Act EU High Representative for Foreign Affairs Josep Borrell described human rights as a "clear priority for Europeans and my mandate"

Ongoing Initiatives:

Despite no bills/draft legislations being put forward as of yet, we have been campaigning in several countries and momentum and support from MPs has picked up in:

- France
- Germany
- Netherlands
- Sweden
- Denmark
- Norway
- Ireland
- Ukraine
- Moldova
- Czech Republic

RESOLUTIONS, RECOMMENDATIONS AND ONGOING INITIATIVES

Relevant Links:

July 2012: "Rule of Law in Russia: Case of Sergei Magnitsky" -

- 1. https://www.oscepa.org/news-a-media/press-releases/press-2012/parliamentarians-vote-for-visa-ban-bill-rule-of-law-in-russia
- 2. https://www.youtube.com/watch?v=YnclqP7IWZg

January 2014: "Refusing impunity for the killers of Sergei Magnitsky" –

1. <u>http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2</u> ZpbGVpZD0yMDQwOSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJIZi1XRC1BVC1YTUwyUERGLnhzb A==&xsltparams=ZmlsZWlkPTIwNDA5

April 2014: "Common visa restrictions for Russian officials involved in the Sergei Magnitsky case" –

- 1. <u>http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2014-0258+0+DOC+PDF+V0//EN</u>
- 2. <u>http://www.europarl.europa.eu/news/en/press-room/20140331IPR41184/magnitsky-list-meps-call-for-eu-sanctions-against-32-russian-officials</u>

July 2018: Moldovan Magnitsky Bill Proposal -

- 1. <u>https://watchdog.md/wp-content/uploads/2018/07/Bill-Magnitsky-Act-Moldova-ENG.pdf</u>
- 2. <u>https://watchdog.md/2018/07/30/will-moldovan-parliament-approve-the-global-magnitsky-act/</u>
- 3. <u>http://parlament.md/LegislationDocument.aspx?Id=469678a1-4f2b-48c6-9ac8-5ada579036cc</u>

December 2018: "International Human Rights and Corruption (Magnitsky Sanctions) Bill 2018" -

- 1. <u>https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6218_first-reps/toc_pdf/18273b01.pdf;fileType=application%2Fpdf</u>
- 2. <u>https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6218 ems 30a6809f-ca12-453f-8e50-751c6be3a578/upload pdf/18273EMDanby.pdf;fileType=application%2Fpdf</u>

RESOLUTIONS, RECOMMENDATIONS AND ONGOING INITIATIVES

January 2019: "Sergei Magnitsky and beyond – fighting impunity by targeted sanctions" –

1. <u>http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2</u> ZpbGVpZD0yNTM1MiZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJIZi1XRC1BVC1YTUwyUERGLnhzbA ==&xsltparams=ZmlsZWlkPTI1MzUy

March 2019: "A European human rights violations sanctions regime" –

- 1. <u>https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2019-0215+0+DOC+PDF+V0//EN</u>
- 2. <u>http://www.europarl.europa.eu/news/en/press-room/20190307IPR30748/meps-call-for-eu-magnitsky-act-to-impose-sanctions-on-human-rights-abusers</u>

March 2019: Italian Magnitsky Bill Proposal -

1. http://www.senato.it/leg/18/BGT/Schede/FascicoloSchedeDDL/ebook/51417.pdf

March 2019: Romanian Magnitsky Bill Proposal –

1. <u>http://www.ces.ro/newlib/PDF/proiecte/2019/b109.pdf</u>

December 2019: Inquiry into whether Australia should enact legislation comparable to the United States Magnitsky Act 2012 –

- 1. <u>https://www.aph.gov.au/About Parliament/House of Representatives/About the House News/Media Releases/Inquiry into a fra</u> mework for autonomous sanctions under Australian law to target human rights abuses
- 2. <u>https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct</u>
- 3. <u>https://www.theaustralian.com.au/nation/politics/morrison-government-to-consider-sanctions-regime-banning-human-rights-offenders/news-story/d2acb3911a497721993df29412f3276b?btr=3db579f2926bf3a29d8472f2efab34ab</u>

December 2019: EU Ministers break ground on European Magnitsky Act -

- 1. <u>https://www.politico.eu/article/eu-to-prepare-magnitsky-style-human-rights-sanctions-regime/</u>
- 2. <u>https://euobserver.com/foreign/146865</u>
- 3. <u>https://www.euractiv.com/section/justice-home-affairs/news/eu-ministers-break-ground-on-european-magnitsky-act/</u>