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The circumvention of sanctions: Lessons for anti-corruption regimes

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Several countries have introduced targeted sanctions against persons suspected of corruption. However, evidence indicates these may be undermined by methods – especially those relating to financial secrecy – used to circumvent the asset freezes and travel bans that sanctions carry as well as third parties' obligation to cease transactions with designated persons. This Helpdesk Answer draws on evidence from various targeted sanction regimes to identify potential lessons for ensuring greater enforcement of sanctions against designated persons and compliance from third parties.

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Query

Please describe how the circumvention of anti-corruption sanctions occurs and what measures can be taken against it.

Main points

- There is a growing literature on the use of targeted, Magnitsky style sanctions against corrupt actors, but the circumvention or evasion of these is an understudied aspect.
- The existing anti-corruption regimes penalise circumvention, but existing data on enforcement and the rate of circumvention is limited.
- Anecdotal evidence, however, indicates that designated persons may make use of several circumvention methods analogous to those used for money laundering in order to overcome asset freezes and travel bans entailed by sanctions.
- They are typically assisted by 'enablers', professional third parties, such as wealth managers, who provide these methods as a service. Other third parties may also wittingly or unwittingly continue to transact with a designated person, violating the sanction and their obligation to carry out due diligence on clients.
- The causes of circumvention include a lack of investment in enforcement, insufficient international coordination across jurisdictions, challenges faced in sanctions screening and the abuse of financial secrecy rules, especially in so-called circumvention hubs.
- The literature, especially pertaining to other sanctions regimes, identifies potential measures to address these causes and counter these methods. These include: investing in institutional capacity to enforce compliance with sanctions; strengthening beneficial ownership and asset transparency laws; and promoting international cooperation.
- Some measures take a punitive, deterrent approach, such as extending the primary sanction to family members of the designated person or introducing robust penalties or even secondary sanctions against enablers. Several commentators stress these should align with legal safeguards.
- Other measures take a more incentive based approach with, for example, the state more proactively supporting companies to fulfil their legal obligation to carry out due diligence and sanctions screening, including using timely information and technology opportunities.

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Background

Sanctions can broadly be understood as restrictive measures imposed by one jurisdiction against another jurisdiction, company or individual.[1] A sanctions regime refers to sanctions that are grounded around a common theme, such as human rights violations or nuclear proliferation (Dornbierer 2023). Since the early 2010s, several sanction regimes against corruption have emerged.

The restrictive measures anti-corruption sanctions carry primarily relate to the finances and movement of sanctioned individuals and companies or 'designated persons' (DPs) who are listed in response to corrupt practices such as bribery and embezzlement of public funds. These measures are broadly intended to carry punitive and deterrent effects by, for example, targeting the luxury lifestyles or business interests of DPs (Moiseienko 2019: 119). They include the freezing of the DPs' assets – for example, by their bank accounts – and preventing funds or other assets from being made available for the benefit of the DP – for example, by trading with a company in which the DP has shares (Haberstroh and Zaugg 2023). While Moiseienko (2019: 19) finds the literature focuses on these financial restrictions because of the greater personal impact they have, DPs are also liable to face a ban preventing them from travelling to the sanctioning country (CiFAR 2021:8).

Once sanctions are imposed by a state, all nationals and legal entities established under the law of its jurisdiction are obliged to comply with them (CiFAR no date b).[2] This includes obligations on DPs not to violate asset freezes or travel bans and for third parties, such as financial institutions, to refrain from business and transactions with the DPs (Oldfield 2022). Additionally, it entails states, through sanctions monitoring bodies, which carry a responsibility for monitoring compliance with these obligations. Furthermore, since anti-corruption sanctions regimes typically provide the basis for freezing but not confiscating assets (duRivage 2022a), the monitoring of assets is normally required for as long as the asset freeze lasts, which may, in reality, turn out to be indefinitely (Rose 2023).

[1] See, for example, this definition provided by the government of Sweden.

[2] In practice, sanctions often also have relevance for actors based outside the jurisdiction in which they are active. For example, Moiseienko et al. (2023: 41) argue that, since the US anti-corruption sanction regime creates compliance obligations on the US based banks and correspondent banks in other countries, non-US financial institutions must uphold these obligations to work with these banks and access the dollar market.

This Helpdesk Answer focuses on situations when these obligations are not upheld and DPs and third parties circumvent (or evade) anti-corruption sanctions; while it primarily considers where these actors intentionally circumvent sanctions, it also takes into account where they do so unwittingly. It sets out to describe the different methods of circumvention and the extent to which these occur and identify potential lessons for prevention.

An overview of anti-corruption sanctions regimes

This introductory section describes key characteristics of anti-corruption sanctions, what distinguishes them from other regimes, their evolution and scale of use, before setting out caveats to keep in mind for the remainder of the paper.

Anti-corruption sanctions are an instrument administered by executive rather than judicial actors and typically entail a lower evidentiary burden than that of criminal or civil legal proceedings (Moiseienko et al. 2023: 6). For example, in the US, sanctions can be administered if the government decides on the basis of credible evidence that a person has been involved in or supported a corrupt act (Zambrano 2020: 933), and in Australia if the minister for foreign affairs 'is satisfied the person or entity has engaged in, has been responsible for, or has been complicit in an act of corruption that is serious' (Department of Foreign Affairs and Trade, Australia no date). DPs may have recourse to challenge the legality of the sanction and access remedies for damages incurred (Pavlidis 2023).

Generally, sanctions are imposed on a multilateral (for example, as mandated by a UN security council resolution) or on a unilateral basis. Thus far, anti-corruption sanctions have been primarily unilateral and targeted in nature; that is, imposed against individuals or companies as opposed to comprehensive sanctions which may take the form of an embargo against entire foreign markets or sectors. Accordingly, DPs are typically added to a sanctions list by the state on the basis of criteria laid out in a legislative act (Portela 2018: 9).

This distinguishes anti-corruption sanctions from what is sometimes termed economic sanctions which typically restrict trading with entire national markets or at least certain sectors, such as the export of certain technologies. Some commentators argue this helps ensure that the impact of the sanctions is as limited as possible to the perpetrators of corruption (Open Society Foundation 2022). Nevertheless, a tidy distinction is not always possible as states may elect to impose targeted sanctions in tandem with broader economic sanctions as part of their foreign policy (Bradshaw 2020; Kerr and Sexton 2022).

While ostensibly targeting the misappropriation of state assets, the EU introduced standalone, country specific regimes targeting of suspected corrupt officials in the aftermath of the political revolutions in Tunisia, Ukraine and Egypt during the 2010s (Portela 2019). Other regimes were later established by the EU for individuals suspected of 'serious financial misconduct, concerning public funds' in Lebanon and Moldova (Herbert and Bird Ruiz-Benitez De Lugo 2023; Jozwiak 2023a). Independently, Switzerland has also introduced a regime focusing on the misappropriation of assets relating to Ukraine (Oldfield 2022). In the aftermath of the 2022 Russian full-scale invasion of Ukraine - which DuRivage (2022a) argues increased the interest in asset freezing sanctions – country specific regimes were introduced by many Western countries against individuals and entities considered to be important supporters of the Russian regime (Russia related sanctions). While these targeted sanctions often use language pertaining to corruption – for example, 'sanctioned oligarchs and facilitator networks supporting the Russian regime' (US Department of Justice 2024) – designations need not necessarily be grounded on a specific act or allegation of corruption.

The United States' targeted sanction regime against corruption originates with the 2016 Global Magnitsky Human Rights Accountability Act, which along with a 2017 executive order, which creates a legal basis for sanctioning foreign officials suspected of serious human rights violations or corruption. This marked an important distinction from previous country specific regimes because the Global Magnitsky regime has global scope and designations are not dependent on the DP being from a particular country or being associated with its ruling elite. Furthermore, while corruption forms part of the justification for designation under country specific regimes, under Global Magnitsky sanctions, corruption or human rights violations must form the basis of the designation.

Along with the US, Australia, Canada and the United Kingdom have also established Magnitsky style sanction regimes which carry financial restrictions and travel bans on DPs (Rose 2023: 13-14). As of July 2024, the European Commission reportedly had prepared a draft proposal for a Magnistky style anti-corruption regime which was undergoing discussion by member states (European Parliament 2023; Jozwiak 2023b; Jozwiak 2024).

The Civil Forum for Asset Recovery (CiFAR) maintains a sanctions watch database with the number of current designations under what it considers to be anti-corruption sanction regimes[3] (see Table 1 below for the data as of December 2023).

[3] As alluded to above, country specific regimes such as the Swiss Foreign Illicit Assets Act (Ukraine) may not unanimously be considered anti-corruption sanctions.

Table 1: CiFAR's summary of 2023 changes to its sanctions watch database

Regime	Total corruption designations as of Dec 2023
US Global Magnitsky Human Rights Accountability Act	108
UK Global Anti-Corruption Sanctions Regulations	39
EU misappropriation sanctions Tunisia	35
EU misappropriation sanctions Ukraine	3
Canadian Freezing Assets of Corrupt Foreign Officials Act	24
Canadian Justice for Victims of Corrupt Foreign Officials Act	55
Swiss Foreign Illicit Assets Act (Ukraine)	0
Total all regimes	264[4]

Source: Bergin 2024 based on CiFAR 2023

Some commentators draw attention to the relative underutilisation of anti-corruption sanctions in comparison to other regimes, such as those concerning human rights violations (see Human Rights First 2022). Indeed, partially due to this, and their relative recency, Moiseienko (2019: 17) argues that anti-corruption sanctions were largely understudied when writing in 2019.

In recent years, however, the literature has grown, which tends to coalesce around common, often controversial aspects, of anti-corruption sanctions. This includes studies that have questioned the utility of sanctions, due to their reportedly limited success in returning assets because they do not by default lead to the opening of anti-corruption investigations by authorities (Bradshaw 2020; Oldfield 2022). Elsewhere, it has been found sanctions may be inefficient in deterring corrupt behaviour (Portela 2018; Peksen 2019) and may even create unintended forms of corruption (Jermano 2021). Finally, several commentators have expressed concerns about the compatibility of sanctions regimes with due process, which can pose threats to protected rights and make sanctions susceptible to legal challenges (Bradshaw 2020; Spaggiari 2024).

[4] CiFAR (2023) explains that '[t]he total number of listed individuals is lower (230) than the number of designations (264) because some individuals are designated multiple times, across different jurisdictions'.

Nevertheless, there remains a significant literature gap on the circumvention of anti-corruption sanctions. However, circumvention has featured high on the political agenda in recent years with regards other sanctions regimes, especially Russia related sanctions (US Department of Justice 2024; Jozwiak 2023b; Transparency International 2022) which has led to a greater volume of literature on the topic

Accordingly, this paper relies on this literature and at certain points explores possible applications of findings regarding other types of sanction regimes to anti-corruption sanctions. It generally does not consider the literature on economic sanctions but focuses on other targeted sanction regimes such as Magnitsky style human rights sanctions and Russia related sanctions as these are considered more relevant for and analogous to targeted anti-corruption sanctions. Nevertheless, as this relies on a degree of inference, readers are cautioned against drawing definite conclusions in such instances.

Further caveats include that this paper generally does not address the aforementioned separate debates on anti-corruption sanctions' efficiency or their compliance with legal rights insofar as they do not relate to the primary topic. In terms of what is meant by circumvention, DPs may have recourse to different means to offset the impact of sanctions on their lives, such as political support (Moiseienko et al. 2023). For example, entrepreneur Serhiy Kurchenko was listed on the Canadian Magnistky and EU misappropriation sanctions lists due to allegations his companies embezzled up to US$1bn from the Ukrainian state, reportedly relocated to Russia where he was supported in establishing a profitable business presence (CiFAR no date f). However, this paper takes a narrower understanding of circumvention, focusing on how DPs aim to evade the specific restrictions placed on their assets and their freedom of movement.

Lastly, this paper does not attempt to comprehensively cover all of the aforementioned sanction regimes and their respective approaches towards circumvention in equal detail but highlights certain cases for illustrative purposes; these primarily derive from the US and UK regimes due to their comparatively higher rate of imposition.

State of affairs

This section describes the de jure measures built into sanction regimes to address and prevent circumvention and then describes the de facto situation regarding the implementation of these measures, within the limits of available data.

Anti-corruption regimes typically penalise the circumvention of sanctions and provide accord responsibility for enforcement to specific bodies. The example of the UK is provided in Box 1.

Box 1: Circumvention under UK's Global Anti-Corruption Sanctions Regulations 2021

The UK's Global Anti-Corruption Sanctions Regulations 2021 imposes asset freezes and a travel ban on DPs, as well as prohibition on third parties to make funds or economic resources available to them.

If these are violated by either the DP or third parties, it constitutes 'an offence that is triable either way and carries a maximum sentence on indictment of 7 years' imprisonment or a fine (or both)' in line with regulation 31.

Regulation 16(1) adds that 'a person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly) (a) to circumvent any of the prohibitions in regulations 11 to 15, or (b) to enable or facilitate the contravention of any such prohibition'. This suggests that some threshold of intentionality and knowledge must be met to obtain an indictment for circumvention.

Furthermore, regulation 24 requires relevant firms to report instances where they have reasonable cause to suspect any person they are transacting with is a DP, as well as other obligations. Under regulation 31, failure to do so constitutes a summary offence which carries a maximum sentence of six months' imprisonment or a fine. The regulations also impose penalties on airline carriers who fail to implement a travel ban and deny boarding to a DP.

These requirements apply to persons living and companies operating within the territory of the United Kingdom, as well as UK citizens or UK companies operating overseas. There are no exemptions from these requirements for small businesses.

The UK's Office of Financial Sanctions Implementation (OFSI) is responsible for monitoring compliance with the regulations. It has the power to impose monetary penalties for minor breaches and to refer cases to law enforcement for further investigation of serious breaches.

(UK 2021a; FCDO 2021b)

Similar measures are provided for under other sanction regimes, although the maximum financial penalties and prison sentences can vary.[5] Furthermore, while the EU's misappropriation regimes prohibit the circumvention of asset freezes (Portela 2019), it is its member states that are responsible for the enforcing this 'including through the application of penalties in case of violations' (European Commission no date).

Despite these measures being in place, the general failure to collect or make data publicly available on the de facto implementation of anti-corruption sanctions makes it difficult to assess the scale of circumvention and to what extent penalties against it are exercised. For example, the civil society organisation (CSO) Redress argues that the UK only publishes limited information about 'how many investigations have been initiated for sanction breaches' (Redress 2024: 6). However, it found that over a period of almost two years in which OFSI received 463 reports of suspected breaches of targeted financial sanctions (including but not limited to anti-corruption sanctions), it imposed only two fines totalling £45,000 on firms, which Redress attributed to insufficient resourcing for OFSI (Kubesch and Terranova 2024). A 2017 report into the Canadian Magnitsky regime also found that its agencies responsible for enforcing sanctions were under-resourced (Nault 2017).

In terms of how third parties are supposed to avoid the risks of transacting with DPs or relocating their assets, in practice they are typically expected to conduct due diligence by means of 'sanctions screening'. This can entail taking measures to identify the owner of an asset and cross-checking if they appear on an applicable sanctions list. Exact due diligence expectations are not usually not set out in legislation, but guidance may be provided; for example, while the European Commission stated that 'while there is no single model for conducting due diligence', it issued a guidance for EU operators on due diligence to avoid circumvention of both economic and targeted sanctions which third parties are expected to align their efforts with (European Commission 2023).

[5] For a comparison of different penalties for violations of UNSC sanctions, see: Eurojust. 2021. Prosecution of sanctions (restrictive measures) violations in national jurisdictions: A comparative analysis.

However, in practice, compliance with due diligence and sanctions screening may be patchy. In 2023, the Financial Conduct Authority carried out a survey of 90 financial services firms on their screening of UK sanctions regimes. Their results indicated mixed performances across the firms, with gaps identified including inadequate resourcing causing backlogs of transactions to check, the use of poorly functioning screening tools and inconsistent timeliness in reporting suspicions to the authorities (Financial Conduct Authority 2023).

It should be noted issues that enforcement typically also exists for other types of targeted sanction regimes. For example, the Financial Action Task Force (FATF) assesses jurisdictions' compliance with recommendation 19 on the implementation of targeted financial sanctions against terrorism and its financing. Purcell et al. (2023: 13) found that out of 127 jurisdictions assessed by May 2022, only 19 were considered to be sufficiently effective in implementation. Common shortcomings included 'inadequate sensitization, guidance, or supervision on the part of relevant authorities' and 'wide disparities in the resources and motivation of private sector actors'.

How circumvention occurs

This section outlines the various methods which DPs and third parties may use to circumvent targeted anti-corruption sanctions, as well as the actors who help enable it.

Methods

Several commentators have described how the methods used for circumventing sanctions are akin to the methods used to launder the proceeds of crime (Jermano 2021; Haberstroh and Zaugg 2023; Transparency International 2022). This point may be particularly acute for targets of anti-corruption sanctions who, being familiar with methods and have access to networks to launder the proceeds of corruption, may do the same for their frozen assets (Spaggiari 2024: 193).

When a sanction triggers an asset freeze, it ought to prevent the DP from relocating that asset, such as shares in a company, from the sanctioning jurisdiction, meaning they effectively cannot access or enjoy it for the duration of the freeze. DPs may elect to sell assets (even at a loss) in anticipation of sanctions before they take effect (NCA 2022a), but they may also attempt to hide their assets and transfer them out of the jurisdiction to escape the effects of the freeze entirely.

Hiding assets can be achieved in various ways. This includes transferring the ownership of assets to trusted proxies such as relatives, employees or other associates (NCA 2022a). Moiseienko et al. (2023: 34) argue it is likely that, even before anti-corruption sanctions are imposed against them, many DPs are likely to be holding their assets in the names of proxies to avoid the tracing of their assets. Gudzowska et al. (2024) highlight the case of the oligarch Alisher Usmanov who was subject to Russia related sanctions and whose sister was listed as the beneficial owner of up to 27 Swiss bank accounts.

A related tactic is the exploitation of ownership threshold rules. In some jurisdictions, share reporting and other obligations are not required if a person's ownership of a legal entity or arrangement[6] falls below a certain percentage which can give DPs the opportunity to dilute their ownership stakes and still avoid detection (Gudzowska et al. 2024). For example, Knobel (2022: 22) describes the case of an oligarch who

[6] Depending on the jurisdiction, beneficial ownership reporting may be required for legal entities (such as shares in a company) along with other legal arrangements such as trusts (see Transparency International 2016 for further details).

transferred equity in his US based entities to various international partners and entities so that the entities would be below the ownership threshold mandated by the OFAC's Russia related sanctions regime and therefore not identifiable; even with a reduced level of shares, the oligarch still reportedly maintained effective control over his companies by brokering voting coalitions among shareholders.

Indeed, there can be detection challenges to identify owners of entities even where the threshold is surpassed. Powell (2019) refers to the US Global Magnitsky sanctions imposed on brothers Ajay, Atul and Rajesh Gupta for operating a significant corruption network in South Africa. While this entails a prohibition on doing business with any entity that the Guptas owned 50% or more of the shares, he argues this would be difficult for third parties to enforce in practice because company shareholding information is not publicly available in South Africa.

Evidence indicates that DPs may use financial vehicles such as shell companies and offshore trusts to enable a level of corporate anonymity for their assets (Chandra 2020). When based in jurisdictions other than the sanctioning jurisdiction, these vehicles may not fall under the scope of the sanction, although in practice may be subject to the restrictions if they engage in international financial markets (The Sentry 2021).

An investigation by Transcrime (2022) found that 33 individuals that were subject to Russia related sanctions had declared shares in 1,402 firms in the European Union, United Kingdom and Switzerland. They found that these firms – which were primarily from the financial services and holdings, business consultancy, tourism and real estate sectors – demonstrated more 'corporate anomalies' than similar companies in which there were no identified sanctioned persons in shareholder positions. Indicators of anomalies included the complexity of the firms' corporate structures, such as the number of layers of intermediate entities present, the high use of legal arrangements such as trusts and the existence of entities or beneficial owners within the corporate structure who were featured in leaks such as the Panama Papers or were linked to jurisdictions grey listed by FATF (Transcrime 2022: 6). The combination of different vehicles – for example, trust structures and multiple anonymous companies – may be an intentional effort to obscure the ultimate beneficial owner of an entity (Transparency International 2022).

The sheer complexity is key as Chang et al. (2023: 2) find government agencies often do not have the time or money at hand to unravel such complex schemes. Indeed, the case of Slobodan Tešić and his alleged persistent attempts at circumvention illustrates the ongoing and diligent monitoring required to enforce anti-corruption sanctions.

Slobodan Tešić

Slobodan Tešić from Serbia is widely considered to be one of the biggest arms dealers in the Balkan region and is alleged to have engaged in bribery to secure contracts. In 2017, the US imposed Global Magnitsky sanctions against him, and in 2022 the UK also sanctioned him for allegedly bribing Bosnia's former chief state prosecutor and former defence minister.

Tešić set up a network of proxy firms to enable him to continue to sell in the US market, but this was uncovered by US authorities when the companies attempted to claim money from creditors. In response, in 2019, the US sanctioned nine associates of Tešić as well as the companies they operated. In 2022, the US authorities initiated civil forfeiture proceedings in an effort to seize the funds held in American banks by three of these companies.

Nevertheless, subsequent investigations carried out by the Balkan Investigative Reporting Network (BIRN) in 2022 and the Organized Crime and Corruption Reporting Project (OCCRP) in 2024 uncovered evidence that Tešić had begun to exploit more sophisticated corporate anonymity schemes and shifted his business operations to two Belgrade registered firms which continued to export to US markets in violation of the sanctions and securing millions of dollars in earnings.

BIRN also reported Tešić's sanction circumvention efforts may benefit from his personal connections to Serbian intelligence; for example, former intelligence chief Alexandar Vulin who was later sanctioned by the US for his mutually beneficial relationship with Tešić.

(Moiseienko et al. 2023: 27; Dragojo and Djordjevic 2022; CiFAR no date c; Dojcinovic and Peco 2024)

Evidence also indicates DPs may attempt to benefit from investor citizenship or so-called golden passport schemes for circumvention. Some jurisdictions operate schemes in which foreign nationals can obtain citizenship in return for investments over a certain threshold, often a large scale; for example, the European Commission found that five Caribbean states have sold citizenship to 88,000 individuals (Jolly and O'Carroll 2023). The US imposed Magnitsky sanctions on Mir Rahman Rahmani and his son Ajmal Rahmani for their alleged role in embezzling millions of dollars in defence and security funds provided to Afghanistan by US government. The Rahmanis are alleged to have purchased Cypriot citizenship (CiFAR no date e), although it is unclear if they have tried to avail of this citizenship for circumvention purposes.

The European Commission argued golden passports impede the effectiveness of border controls and the enforcement of sanctions since it becomes harder to detect the identities of DPs; for example, under some of these schemes, people can even change their names and identities upon obtaining double citizenship (Jolly and O'Carroll 2023). The FATF (2023) found that golden passport schemes 'can allow criminals more global mobility and help them hide their identity and criminal activities behind shell companies in other jurisdictions'. While there is limited evidence on the extent to which DPs attempt to violate travel bans and, if so, how they achieve this, this could theoretically be facilitated by golden passport schemes and exploiting visa-free travel arrangements between certain countries (Dixon 2023).

DPs may rely on money laundering networks operated by organised criminal groups (Gudzowska et al. 2024) and circumvention could be enabled through using commodities that are more difficult to track than fiat money. The current president of Zimbabwe, Emmerson Mnangagwa and the first lady Auxillia Mnangagwa, had been placed under the now obsolete sanctions regime against the Zimbabwean government administered by the US; however, in 2023 both were subsequently placed under Global Magnitsky sanctions for their suspected role in a corruption scheme through which illicit smuggling rings brought gold and diamonds to Dubai where it was resold on the international market, which US authorities argued was an attempt to circumvent the original sanctions they faced (CiFAR 2024).

Enablers

DPs rarely implement circumvention methods solely by themselves, but normally are assisted by so-called enablers. The term has been applied to professions including, but not limited to, lawyers, wealth or investment advisers, accountants or also 'one-stop-shop' consultant firms that provide a combination of such services to support money laundering or the circumvention of sanctions (Gudzowska et al. 2024). Certain enablers can carry significant influence. In their study, Chang et al. (2023) used a network science approach to analyse the links between sanctioned oligarchs from Russia to offshore wealth managers based on data from the International Consortium of Investigative Journalists' (ICIJ) Offshore Leaks Database; one of their findings was that the same set of wealth managers tend to cater to multiple sanctioned oligarchs.

Gudzowska et al. (2024) state that, while some enablers actively seek to collude with DPs, others can rather be considered 'wilfully blind' and ignore red flags concerning their clients. The UK National Crime Agency (NCA 2022a) suggests that enablers may also be third parties that are entirely 'unwittingly involved' in sanctions circumvention. Spaggiari (2024) argues that sanctions may incentivise public officials

to engage in corruption and, for example, accepting bribe offers from enablers to ignore circumvention attempts.

Furthermore, some jurisdictions and offshore financial centres – referred to as circumvention hubs by Haberstroh and Zaugg (2023) – domicile many service providers that enable circumvention. For example, Teichmann et al. (2020) describe how sanctioned officials seeking to relocate their assets are attracted by the financial secrecy of the UAE's free trade zones, including lax due diligence requirements and the opportunities to quickly form companies.

Dan Gertler

Dan Gertler is an Israeli billionaire acting as president of DGI (Dan Gertler International), which is a group of companies active primarily in natural resources extraction. In 2017, Gertler was placed on the US Global Magnitsky sanctions list in connection with 'opaque and corrupt mining and oil deals in the Democratic Republic of the Congo (DRC)', including through his close relationship with former president Kabila.

An investigation by the CSO Global Witness alleged that Gertler was circumventing the sanctions through an international money laundering network that included multiple Congolese shell companies. On top of this, some leading multinational mining companies, including those based in the EU, reportedly continued to engage in lucrative business with Gertler, but made payments in euros rather than dollars to avoid coming under the scope of the sanctions.

Numerous individuals and entities linked to Gertler were later sanctioned. For example, an associate of Gertler, Alain Mukonda, reportedly made 16 cash deposits with a combined estimated value of more than US$11 million dollars into accounts of companies which he had incorporated but which Gertler's family were suspected of ultimately owning to help him evade sanctions. The US later imposed Global Magnitsky sanctions against Mukonda.

Global Witness also claimed that Gertler's circumvention efforts were enabled by a bank called Afriland First Bank, a branch of a Cameroonian bank based in the DRC. For example, the bank reportedly held at least 20 accounts connected to Gertler's network, including US dollar accounts.

In terms of the bank's complicity, Global Witness argued that, at the very least, Afriland DRC failed to carry out adequate customer due diligence, but also alleged that 'Afriland DRC's senior management knew not only that the bank was offering services companies that were acting as a network of proxies for Gertler, but also seem to have actively assisted in putting it in place'.

Afriland DRC refuted the allegations, stating: '[t]he bank has not violated any OFAC provisions and has not assisted any of its customers in circumventing US sanctions'.

(Global Witness 2020; Moiseienko et al. 2023: 23; US Treasury 2018; CiFAR no date b.)

Potential measures against circumvention

This section provides an overview of different anti-circumvention measures that have been put forward in the literature, including highlighting emerging examples in practice. It should be noted that – while not the focus of this paper – concerns have been raised about some measures to intensify the enforcement of sanctions, especially their potentially overbearing effect on due process and the legal rights of accused individuals (see, for example, Spaggiari 2024).

Extending sanctions

As the circumvention of sanctions typically involves actors other than the immediate DP, some argue for extending, via different avenues, the application of sanctions to such actors who either are complicit or at least pose a circumvention risk.

Indeed, under the Magnitsky sanction regimes it is not uncommon for new sanctions to be imposed on persons suspected of having aided DPs in the circumvention of the sanctions they face. In this sense, active monitoring and enforcement of sanctions can be used as intelligence to inform potential future sanction designations. For example, the US imposed Global Magnitsky sanctions on South Sudanese businessman and politician Benjamin Bol Mel in 2017 for allegedly facilitating corruption. After finding Bol Mel was depositing his funds into the bank account of a company owned by an associate of his known as Al-Cardinal to circumvent the sanctions, the US then imposed new sanctions on Al-Cardinal (US Department of Treasury 2019).

In some jurisdictions, the restrictions entailed by sanctions are extended to family members to prevent the risk that the DPs hide their assets in the family members' name. For example, Australia's Autonomous Sanctions Regulations 2011 stipulates that 'the listing criteria for the corruption framework also covers an "immediate family member" of a designated person and a person or entity that has obtained a financial or other benefit as the result of an act of a designated person or entity' (Department of Foreign Affairs and Trade, Australia no date).

Gudzowska et al. (2024) recommends that, exactly when sanctions are imposed on an oligarch, they should simultaneously be extended to their family members and associates 'to minimise opportunities to shift assets'. However, other voices are more sceptical about the legal soundness of sanctions against family members, arguing that

the approach risks treating them as guilty by association (Bradshaw 2020; Butler 2023). Some countries appear to require a reasonable suspicion threshold be met before listing family members. For example, the US imposed Global Magnitsky sanctions on Kun Kim, a general in the Royal Cambodian Armed Forces who was suspected of abusing his role and instructing soldiers to support him with a land grab on behalf of a private company; the OFAC also extended sanctions to three members of his family 'for acting or purporting to act for or on behalf of, directly or indirectly, Kim' (CiFAR no date d). Moiseienko (2024) proposes that sanctions against family members of primary targets should be accompanied by an opportunity for the family members to demonstrate they do not support or benefit from the primary target's actions' and be delisted.

Another form of sanctions are secondary sanctions (or alternatively derivative sanctions) which are imposed on persons or entities that transact with the DP subject to primary sanctions (Haynie 2024). Dornbierer (2023: 11) describes how such sanctions are intended to overcome bottlenecks where enablers of circumvention reside in foreign countries not subject to the jurisdiction imposing the sanction. Haynie (2024) argues they can be effective in deterring enablers by threatening to cut off their access to the market of the sanctioning jurisdiction.

Furthermore, after identifying that many oligarchs aiming to circumvent Russia related sanctions are enabled by the same wealth management firms, Chang et al. (2023) concluded that sanctioning the enablers may even be a more effective measure than sanctioning individual oligarchs. The use of secondary sanctions against enablers is reportedly growing under US sanctions regimes and Gudzowska et al. (2024) argue the UK and EU should likewise increase their efforts.

However, the importance of proportionality in designating secondary sanctions has been stressed by Bradshaw (2020: 134), who argues it is important to distinguish between directly complicit or enablers and third parties that may have unwittingly transacted with DPs. Similarly, in the US context, Haynie (2024) argues that secondary Global Magnitsky sanctions should not apply to 'any person or entity that engages in any kind of transaction with someone on the [Globa Magnitsky] sanctions list' but rather should be reserved for professional services providers who significantly enable circumvention.

Lastly, Stępień et al. (2024) suggest that even in the absence of secondary sanctions, sanctions monitoring bodies can play on enablers' fears about reputational repercussions by threatening to publicly name and shame firms suspected of enabling the circumvention of sanctions.

Support for sanctions screening

In contrast to the more punitive approaches outlined in the previous section, other enforcement approaches prioritise the incentivisation of third parties' compliance with sanctions (European Parliament 2017). For example, the European Parliament (2017) argues there may be a role for greater public celebration of positive compliance efforts by firms. Further, Montenarh and Marsden (2024: 2) argue for framing compliance obligations as a form of public-private cooperation which can act as an early warning system for sanctions circumvention. In its 2024 sanctions strategy, the UK committed to regularly engage the private sector on compliance matters, but also to receive input from them on anti-circumvention efforts (HM Government 2024: 17).

A more supportive role from the state may be especially relevant for the aforementioned unwitting third parties who find fulfilling their anti-circumvention obligations resource intensive and difficult; indeed, this would become even more relevant if the number of persons designated under anti-corruption sanctions increases and screening becomes more onerous (duRivage 2022b).

Supporting the private sector is an important element of other sanctions regimes; for example, the FATF recommends that, in terms of ensuring compliance with recommendation 19 on the implementation of targeted financial sanctions against terrorism and its financing, 'countries need to be aware of the impact compliance with these laws has on their business activities, and seek to minimise the costs of compliance as far as possible' as well as undertake communication measures to ensure relevant private sector actors are aware of asset freezes and their obligations to enforce them (FATF 2013).

One way this may be realised is the provision of technical support for sanctions screening. Many third parties rely on specialised screening software to cross-check parties to a transaction against sanctions lists to overcome resource challenges. However, these may be inadequate and subject to error by, for example, failing to account for alternative spellings of names (Steele et al. 2023). Furthermore, unlike the systems used for monitoring suspicious transactions related to money laundering and terrorist financing, sanctions screening must be done in real time and before a transaction has taken place, which underscores the need for strong technology tools (Haberstroh and Zaugg 2023).

In the context of terrorist and terrorist financing sanctions, Purcell et al. (2023: 145) argue that states should proactively develop improved tools for automated sanctions screening for use by the private sector. For example, Steele et al. (2023) highlight that software exists with the ability to detect so-called fuzzy matches, making it possible to

identify variant spellings of names. Therefore, automated tools relying on machine learning can support third parties to process large volumes of available data provided by the government and identify red flags (Montenarh and Marsden 2024: 12). Nevertheless, some authors caution that automated systems are always liable to error and need some level of human input (Hackney and Huggins 2023)

Another failure commonly cited in conducting due diligence is a reliance on outdated sanctions screening lists (Steele et al. 2023). Moiseienko et al. (2023: 35) explain that these lists are often compiled by third-party service providers who do not have the same access to information or overview of suspicious entities as the state. Therefore, sanctions enforcement bodies could improve efforts to centralise data gathered on DPs and to communicate it to third parties, including by explicitly naming DPs, their associates and the financial vehicles they are suspected of owning (Moiseienko et al. 2023: 35). Purcell et al. (2023) recommend that sanction monitoring bodies establish hotlines through which obligated reporting entities can ask operational questions and receive real-time support.

Beneficial ownership transparency

Beneficial ownership transparency (BOT) frameworks are widely viewed as a best practice in tackling the use of vehicles availing of financial secrecy to hide assets and circumvent targeted sanctions (Castro Orduna and Granjo 2023). These can not only improve sanctions enforcement bodies' detection of shell companies, trusts and other vehicles but they also enable more thorough sanction screening by third parties, meaning excuses from companies that they did not know a client transaction was a listed DP would be less justifiable.

Transparency International defines a beneficial owner as 'the natural person who ultimately owns, controls or benefits from a legal entity or arrangement and the income it generates', which is contrasted by 'with the legal or nominee company owners and with trustees, all of whom might be registered as the legal owners of an asset without actually possessing the right to enjoy its benefits' (Transparency International 2016:4). Therefore, identifying a beneficial owner can help sanctions enforcement bodies assess if DPs are behind legal entities held in others' names.

An oft-proposed BOT measure is the establishment of public registers requiring the mandatory disclosure of information on the identity of beneficial owners of companies, legal arrangements and other entities (Transparency International no date). As of July 2024, Open Ownership found that 85 countries have launched such registers, 19 were in the process doing so and 49 were planning to do so (Open Ownership no date). However, even where they exist, evidence suggests that there are

often implementation gaps with such registers in offshore finance jurisdictions (see, for example, Mason et al. 2023), something which can also affect the circumvention hubs. For example, there may be multiple unlinked registers, causing persistent tracing issues (Neef et al. 2022: 7). Accordingly, Gudzowska et al. (2024) argue for the importance of centralised BOT regimes. Additionally, Transparency International (2022: 35) recommends that BO registers are published in open data formats and that independent verification of information reported by companies and individuals is carried out.

BOT frameworks often only mandate reporting on beneficial ownership of legal entities and arrangements, but this is not extended to certain types of assets such as real estate and luxury goods (Transparency International 2022: 20). Nevertheless, DPs may store their vast amounts of wealth in such assets while ensuring the ownership is not in their name. Transparency International (2022: 36) recommends that states mandate reporting on and publicly disclose the beneficial owners of real estate and luxury goods to counter kleptocrats' efforts to hide assets from sanctions.

In 2021, the US Congress created BO reporting requirements for select companies in order to support anti-money laundering reporting efforts and sanctions compliance (Herbert Smith Freehills 2024). Based on these reports, FinCEN, the financial intelligence unit in the US, maintains a national registry of beneficial owners of entities, which finally became active in 2024. An opinion piece published by Herbert Smith Freehills (2024) argued that the registry should facilitate grater sanctions compliance as third parties can now request and review BO information on a potential client as part of their due diligence on sanctions.

However, it should be noted that the BO reporting requirements under the US system only capture instances in which DPs own 50% or more of an entity (Herbert Smith Freehills 2024). Therefore, due to the various ways DPs can dilute their ownership below this threshold, effective sanction screening and identification of ownership may remain elusive despite the availability of more data (Steele et al. 2023).

Accordingly, some are leading calls for stronger transparency measures on legal entities and assets. In 2023, an amendment was tabled to the UK's Russia related sanction regime which would make it a criminal offence for DPs to fail to disclose their assets in the UK within a prescribed period after the sanction was imposed; if a DP failed to disclose assets, it could trigger criminal proceedings towards their confiscation (Ochab 2023). Redress (2024: 25) argues that this amendment could be introduced across all of the UK's targeted sanction regimes (Redress 2024: 25). A similar obligation was introduced by the EU regarding its targeted Russia related sanctions regime to address sanction circumvention schemes (Ochab 2023).

Enhancing the capacity of sanctions enforcement bodies

Several authors stress how important it is that sanctions enforcement bodies are adequately resourced and have the necessary mandate to detect circumvention and penalise it so as to deter future offenders.

Dornbierer (2023:11-12) stresses the criticality of having a designated agency for sanctions monitoring with broad enforcement powers. For example, OFAC in the US has generous subpoena powers to help them identify the ownership of assets and can impose civil fines against third parties for evading sanctions without having to prove they did so intentionally, essentially making sanctions evasion a strict liability offence (Dornbierer 2023:11-12; Mortlock et al. 2023). Indeed, Steele et al. (2023) report that OFAC has reached numerous penalty settlements with financial institutions and non-financial service providers over their failure to carry out adequate carry sanctions screening. Reynolds and Campbell (2016) note that some observers have expressed reservations about a strict liability approach, fearing that it could be abused to, for example, increase revenue from civil fines.

Similarly, Oldfield (2022:11) highlights how OFSI in the UK enjoys statutory powers to 'compel the production and sharing of information relating to individuals and their assets'. Furthermore, legal amendments were made to ensure that parties cannot rely on a defence of unknowing or unintentional breaching of sanctions to escape fines and that even where no fine is imposed, OSFI can name the person or entity involved or suspected to be involved in the breach (Oldfield 2022:11). However, such sanctions enforcement bodies typically cannot undertake criminal investigations or initiate criminal proceedings. Indeed, this has been a common criticism of sanctions based asset freezes, namely that often they do not provide a clear legal basis for subsequent confiscation (Bergin 2024; Spaggiari 2024). Without the possibility of confiscation, DPs may be incentivised to repeatedly circumvent the asset freeze, which in turn requires ongoing and resource intensive monitoring efforts.

In this regard, some voices argue for the added value in investing in the capacity and mandate of bodies responsible for the criminal enforcement of sanctions compliance. Under the UK regime, sanctions circumvention can trigger criminal proceedings, meaning the 'onward transfer of funds or assets would likely become proceeds of crime and recoverable property under the Proceeds of Crime Act 2002' (NCA 2022b). Accordingly, the National Crime Agency (NCA) recently established and accorded a dedicated budget to the Combating Kleptocracy Cell with a focus on 'criminal investigation of breaches that reach the sufficient threshold for a criminal justice system intervention' (Transparency International 2022; NCA 2022b). The cell is

comprised of a multi-disciplinary, cross-agency team and targets circumvention activities by DPs and third-party enablers.

Other commentators have argued for improved coordination between financial intelligence units (FIUs) and sanctions enforcement bodies for anti-circumvention efforts. In contrast to sanctions enforcement bodies, FIUs are mandated to focus on money laundering and terrorist financing, but they often obtain relevant information since they act as the main recipients of suspicious transaction reports (STRs). Furthermore, they benefit from more established international cooperation mechanisms in addressing money laundering and, due to the overlap between money laundering and circumvention methods, FIUs are likely to possess the relevant expertise (Transparency International 2022). For similar reasons, Haberstroh and Zaugg (2023) argue on behalf of an enhanced role of FIUs in analysing suspicious cases of circumventions and then sharing intelligence with the sanctions enforcement body.

Lastly, the role of civil society actors in sanctions enforcement should not be overlooked. For example, the investigative non-profit organisation The Sentry carried out an open-source intelligence analysis (OSINT) of the social media presence of a South Sudanese businessman subject to US Global Magnitsky sanctions and identified that the beneficial owner of a suspicious shell company was in fact his wife (The Sentry 2021). Furthermore, CiFAR maintains a database of the individuals listed under the various anti-corruption sanction regimes, making it a useful tool for businesses operating across different jurisdictions. The EU sanctions whistleblower tool allows citizens to directly report suspected sanction violations.

Multilateral cooperation

Another line of argument holds that enhanced forms of international cooperation are required to tackle circumvention. One reason is that other jurisdictions – especially circumvention hubs – give DPs continued opportunities to hide their assets even when the sanctioning jurisdiction has blocked such opportunities. Indeed, Shumanov (2022) argues that, due to the availability of enablers in other jurisdictions, essentially 'higher ethical standards among financial and non-financial intermediaries in all countries' are needed to counter circumvention.

Gudzowska et al. (2024) support more stringent measures, arguing that sanctioning countries should put more pressure on 'enabler jurisdictions such as Cyprus, the British Virgin Islands, the UAE and Türkiye' to stop facilitating circumvention and should classify them as 'jurisdiction of primary sanctions evasion concern' and warn third parties from conducting business with them. They also call for international

cooperation towards addressing the abuse of golden passport schemes and ensure other jurisdictions impose visa bans following the imposition of sanctions.

Another aspect is harmonisation between sanctions regimes. Some argue that, if different regimes sanction the same DPs, it would make sanctions more effective and give DPs less manoeuvring room for circumvention (Human Rights First 2022; Redress 2023). Conversely, one could argue that decisions to impose anti-corruption sanctions tend to be informed by foreign policy positions, and this could lead to a risk that countries indiscriminately adopt the same designation without having established their own legitimate grounds for doing so.

While the number of anti-corruption sanctions regimes are limited and are currently only operated by Western countries, there is little harmonisation even among them. Human Rights First (2022) reviewed how the Magnitsky style anti-corruption sanctions regimes of Canada, the UK and US were used between 2017 and 2022, finding that for a total of 314 designations (of which the US accounted for 285), in only 6% of cases had a DP been sanctioned by more than one jurisdiction; however, they note this may change given the relatively recent implementation of the UK and Canadian regimes. Indeed, in 2023, the UK introduced multiple initiatives to enhance the coordination of sanctions, including signing the Atlantic Declaration with the US which launched more structured collaboration measures between OFSI and OFAC with, for example, exchange programmes for personnel (HM Government 2024)

Another important form of cooperation for anti-circumvention efforts is information sharing between national authorities' which can enhance asset tracing across different jurisdictions (Transparency International 2022: 11). However, as Bradshaw (2020) suggests, the lack of multilateral cooperation may be partly explained by scepticism in some countries towards how international cooperation regarding sanctions is conducted, tending to bypass the traditional and perhaps more legally secure mutual legal assistance (MLA) processes used for asset freezing. Indeed, there may not be an existing legal basis or available mechanisms for the cross-border data exchange on information relevant to sanctions (Haberstroh and Zaugg 2023). This seems dependent on the existence of formal cooperation mechanisms between states.

Within the EU misappropriation regimes, anti-circumvention clauses give a legal basis for member states to share information on suspected sanction breaches (Finelli 2023). Furthermore, Dunin-Wasowicz and Saiz Erausquin (2024) argue that law enforcement cooperation between member states (and EU institutions) could be enhanced and streamlined by developing more common approaches, such as a typology of red flags. In its 2024 strategy, the UK committed to stepping up coordination and information sharing with EU member states and holding a regular sanctions coordinators forum that gathers EU and G7 state officials (HM Government 2024).

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