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The simple answer to the question, "Does the EU need a Magnitsky Law?" is yes

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On November 16, 2009, no-one could have foreseen the impact that the death of a young tax attorney would soon have on American policy toward Russia. Just months before, in March, the administration had unveiled a new policy premised on the idea that it was possible for Washington and Moscow to end a "dangerous drift" in relations and begin a new era of cooperation on matters of mutual interest. "It is time," Vice President Joseph D Biden told the annual Munich Security Conference, "to press the "reset" button and to revisit the many areas where we can and should be working together with Russia."

In the Obama administration's view, the US could deal pragmatically with Moscow unhampered by fundamental disagreements or the lack of shared values. Cooperation was possible, the administration believed, on discrete issues, such as missile defense, Afghanistan, and Iran. Backsliding on democracy and human rights, and growing impunity for corruption and violence under Vladimir Putin's rule, would not be allowed to interfere. There were no barriers to dealing with Moscow, and certainly the Putin regime's growing authoritarianism did not present one.

At first, Sergei Magnitsky's death did not challenge the "reset". Magnitsky was not well known. A tax lawyer, his imprisonment stemmed from his legal

representation of a businessman, William Browder, once the largest foreign investor in Russia, who is now barred from the country. Other extreme abuses of human rights, including the murder and assault of journalists and activists, harassment of non-governmental organizations and silencing of independent media, had not kept the incoming Obama administration from declaring a new era in US-Russia relations.

Indeed, the administration initially resisted calls to impose consequences on officials responsible for Mr Magnitsky's death. Only Mr Browder's sustained campaign and public pressure from Congress, led by Senator Ben Cardin and Representative Jim McGovern, led the administration to quietly put individuals connected to the case on a visa ban list. Administration officials then used its actions to claim that "existing authorities" allowing for visa bans and asset freezes obviated the need for passage of the Magnitsky Act. The argument failed to dissipate pressure for a public list based on other cases of serious abuses and corruption. "Why should others have to go through that same ordeal that we went through?" Browder argued in support of a broader list.

The administration opposed the Magnitsky Law even as it pushed to terminate one of its "existing authorities" to pressure Russia on human rights – the Jackson-Vanik amendment. The amendment to the governing trade law linked normal trade status for the Soviet Union and non-market economies to freedom of emigration. Its authors, Senator Henry M. Scoop Jackson and Representative Charles A. Vanik, saw immigration as a fundamental human right, and the ability for Soviet citizens to leave Russia as a tangible concession that Soviet officials could make. For years, the amendment provided extraordinary power through its annual review and waiver process. "Every year Scoop would sit down with various Eastern European ambassadors and negotiate freedom for people whose names had become known to us," a former Jackson staffer told an audience at the Woodrow Wilson Center for Scholars in 2011. "So he would say to the ambassador, 'If you want a waiver this year, here is the list of people who are going to have to be granted freedom to leave.' ... Scoop was a tough negotiator - he invariably came back with promises of visas for everyone on the list, in some cases hundreds of people. Only when those promises were fulfilled would a waiver be granted."

Now Russia no longer restricts emigration – indeed, educated Russians

are leaving the country in large numbers. Moreover, for the US to benefit from Russia's negotiated accession to the WTO, the US would have to terminate Jackson-Vanik. This, claimed Ambassador Michael McFaul, was a "total no brainer". Jackson-Vanik's importance, he argued, lay in the leverage it provided for negotiators seeking a better deal for American exports of pork and poultry to Russia. McFaul's boss, Secretary Clinton, argued that Jackson Vanik "long ago achieved [its] historic purpose" and dropping it in favor of a WTO agreement with Russia would contribute to a "more transparent and accountable government". Both Ambassador McFaul and Secretary Clinton misrepresented the position of the Russian democratic opposition, which favored both the end of Jackson-Vanik and the enactment of the Magnitsky bill.

Congress was not as willing to minimize the importance of the Jackson-Vanik amendment. It had prior experience with ending its application to a repressive country on the theory that trade and WTO membership would lead to improvements in human rights. Although inspired by the experience of Soviet refuseniks and dissidents, the Jackson-Vanik amendment applied also to China. For years, the debate in Congress over the annual waiver of Jackson-Vanik needed to preserve China's favorable trade status, provided a public forum for cataloging Chinese abuses. But pressuring China on human rights wasn't a top priority. Until the fall of the Soviet Union, Washington, DC viewed Beijing as a counterweight to Moscow. Only the end of the Cold War and the Tiananmen massacre of June 1989 raised the prospect that America's trade leverage might be used to force concession.

For a brief time, it did. After the Tiananmen massacre, support grew in Congress to condition China's trade status on human rights improvements. In Beijing, an internal debate opened up in China's Communist Party between moderates who wanted to maintain good ties - and access to US technology and goods - and hardliners. For a time, the moderates gained the upper hand. Beijing made concessions, including buying American-made Boeing airplanes—and more important, releasing hundreds of political prisoners.

We will never know whether sustained pressure on China through trade might have led to significant improvements in human rights. The Bush administration soon signaled to China that the US was eager to get back to business as usual. Despite accusing Bush of coddling the "Butchers of Beijing", and

negotiating conditional Most Favored Nation (MFN) status with Congress, President Bill Clinton formally "de-linked" Beijing's human rights record from America's trade policy. In 2000, entranced by the notion of engagement through trade and investment, and under pressure from the business community, Congress adopted permanent normal trade relations for China. Human rights never regained the importance it once had in US policy towards China.

By passing the Magnitsky Act, Congress avoided making the same mistake that it made more than a decade earlier towards China. Rather than abandon its leverage altogether, Congress decided to tailor it to fit current circumstances. Of course, the Magnitsky Law isn't the first or only instance of visa bans or asset freezes. Such penalties have been imposed elsewhere, in Burma and Belarus, for example. What makes the Magnitsky legislation – and the campaign to adopt it – so significant is the historical and policy context in which it is being adopted.

The Magnitsky Law signals to Russian citizens that the US identifies with them rather than with corrupt or abusive officials – or private individuals. Boris Nemtsov, a democratic opposition leader, called it "the most pro-Russian law passed in the United States in the history of our countries". Polls show the Magnitsky legislation is popular with Russians despite the anti-Americanism the Putin government does its best to stoke. It sends the same message directly to officials and may already be deterring abuses. The inclusion of four Moscow judges in the first list provided to Congress under the Magnitsky Law might, as Vladimir Kara-Murza has noted, have influenced a judge to overturn a lower court's extension of pre-trial detention for a Bolotnaya demonstrator whose eyesight was deteriorating precipitously while in jail and was unable to receive treatment.

The simple answer to the question posed by the title of this volume, "Does the EU need a Magnitsky Law?" is yes. The US has already enacted such a law, but Europe is the primary destination for property investment, bank accounts, vacations and education by Russians of means. Visa bans and asset freezes implemented there would be an effective deterrent and appropriate penalty for Russians, mainly officials, linked to violations of human rights. Europe's adoption of the Magnitsky Law will do far more than prevent corrupt, abusive Russians from enjoying in the south of France the property rights and

civil liberties their fellow citizens are denied at home. Much as Jackson-Vanik provided a check on the prevailing policy of "détente", the Magnitsky Law will check the core belief of the "reset" that fundamental values can be set aside in the pursuit of cooperation with an undemocratic Russia.

When the first list under the Magnitsky Act was submitted to Congress, a US official observed that previous administrations had found implementation of Jackson-Vanik difficult but that eventually they found it a useful policy tool. One day American officials – and one hopes European ones as well – will feel the same way about Magnitsky legislation and the principles it represents.