

Identification of the violation of Union restrictive measures as crimes under Article 83(1) of the TFEU

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PURPOSE: to add the violation of Union restrictive measures to the areas of crime laid down in Article 83 (1) of the Treaty on the Functioning of the European Union (TFEU).

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: under **Article 83(1) TFEU**, the European Parliament and the Council may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

The areas of crime listed in this article are terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. At present, **this list does not provide minimum rules on the definition of and sanctions for violations of restrictive measures.**

Union restrictive measures are measures falling under Article 29 TEU and Article 215 TFEU, such as, for example, measures to freeze funds and economic resources, prohibitions on making funds and economic resources available, prohibitions on entry into the territory of an EU Member State, as well as sectoral measures, i.e. arms embargoes or economic and financial measures (e.g. import and export restrictions, restrictions on the provision of certain services, such as banking services).

As the adoption of EU restrictive measures has intensified over the last decades, so has the development of mechanisms to circumvent them, including by those listed persons or entities who have significant resources and are able to use ‘facilitators’ (e.g. lawyers, notaries) and ‘tools’ (e.g. complex legal structures to hide the beneficial owners of assets) to evade the application of the measures.

A 2021 report by the European Network of Contact Points on Persons Responsible for Genocide, Crimes against Humanity and War Crimes reveals that, in practice, very few natural or legal persons responsible for violating EU restrictive measures are actually held accountable. The priority given to investigating and prosecuting violations of EU restrictive measures is insufficient in many Member States.

Violation of EU restrictive measures is a particularly serious area of crime. As a result of such violations, persons and entities whose assets are frozen or whose activities are restricted continue to be able to access such assets and support regimes subject to restrictive measures or continue to access allegedly misappropriated public funds. Similarly, money generated from the exploitation of goods and natural resources that have been traded in violation of EU restrictive measures can also enable restrictive regimes to purchase arms with which to commit their crimes.

Currently, more than 40 restrictive measure regimes apply in the EU. **Inconsistent application of restrictive measures undermines their effectiveness** and the Union's ability to speak with one voice. In

the absence of harmonisation at EU level, national systems differ considerably with regard to the criminalisation of the violation of Council Regulations on EU restrictive measures. Similarly, the criminal sanction regimes are very different.

In view of the urgent need to put an **end to impunity for violations of restrictive measures** following the Russian invasion of Ukraine, this proposal aims to open the procedure provided for in the third subparagraph of Article 83(1) TFEU. In accordance with this procedure, depending on developments in crime, the Council may adopt a decision identifying other areas of crime which meet the criteria of Article 83(1) TFEU, in this case the violation of Union restrictive measures.

CONTENT: the Commission proposes to **add the violation of Union restrictive measures to the areas of crime referred to in Article 83(1) TFEU.**

The proposal aims to strengthen the capacity of national authorities to trace, identify, freeze and manage property that is the proceeds or instrumentalities of crime. Furthermore, it strengthens the legal framework for confiscation, including in specific cases where a conviction for a specific crime is impossible.

Furthermore, the new proposal contributes to the effective implementation of the restrictive measures by requiring Member States to allow for the tracing and identification of property related to violations of Union restrictive measures, as defined by their national law, and by ensuring that the revised rules on asset recovery and confiscation are applicable to the criminal offence of violation of Union restrictive measures.

Once the Council reaches an agreement and the European Parliament grants its consent to add the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU, the Commission would be in the position to immediately propose a **Directive** under the ordinary legislative procedure, which could approximate the definition of criminal offences and penalties.