

# Definition of criminal offences and penalties for the violation of Union restrictive measures

2022/0398(COD) - 02/12/2022 - Legislative proposal

**PURPOSE:** to ensure common definitions for offences related to the violation of EU restrictive measures and the availability of effective, dissuasive and proportionate criminal penalties for serious offences related to the violation of Union restrictive measures.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** EU restrictive measures, such as measures concerning the freezing of funds and economic resources, prohibitions on making funds and economic resources available, prohibitions on entry into or transit through the territory of a Member State, as well as sectoral economic measures and arms embargoes, are an essential tool for the promotion of the objectives of the Common Foreign and Security Policy as set out in Article 21 of the Treaty on European Union.

Those objectives include safeguarding the Union's values, security, independence and integrity, consolidating and supporting democracy, the rule of law, human rights and the principles of international law and maintaining international peace, preventing conflicts and strengthening international security in line with the aims and principles of the United Nations Charter.

Currently, the EU has over 40 sets of restrictive measures in place. Some of these implement restrictive measures adopted by the United Nations; others are adopted autonomously by the EU.

As the adoption of Union restrictive measures has intensified over recent decades, so too have the schemes to circumvent them. **The Commission has previously pointed to inconsistent enforcement of restrictive measures** and the fact that this undermines their efficacy and the EU's ability to speak with one voice. Speaking with one voice has become particularly urgent in the current context of Russia's military aggression against Ukraine.

In the absence of harmonisation at EU level, **national systems differ considerably** with regard to the criminalisation of the violation of EU law on EU restrictive measures. Penalty systems also differ significantly between Member States, as do the maximum fines that can be imposed (which range from EUR 1200 to EUR 5 million).

In practice, very few individuals or legal persons responsible for violations of EU restrictive measures are actually held accountable. In many Member States, insufficient priority is given to the investigation and prosecution of violations of EU restrictive measures.

Against this background, following a European Commission [proposal](#) presented on 25 May 2022, the Council has decided to identify the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) TFEU. This has enabled the Commission to adopt this proposal for a Directive under the ordinary legislative procedure, which aims to approximate the definition of criminal offences and penalties for the violation of Union restrictive measures.

CONTENT: the aim of this proposal is to **establish minimum rules concerning the definition of criminal offences and penalties with regard to the violation of Union restrictive measures**. It seeks to: (i) approximate definitions of criminal offences related to the violation of Union restrictive measures; (ii) ensure effective, dissuasive and proportionate penalty types and levels for criminal offences related to the violation of Union restrictive measures; (iii) foster cross-border investigation and prosecution; and (iv) improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning.

The main elements of the proposal are as follows:

*(1) A list of criminal offences, which violate EU sanctions*, such as:

- making funds or economic resources available to, or for the benefit of, a designated person, entity or body;
- failing to freeze these funds;
- enabling the entry of designated people into the territory of a Member State or their transit through the territory of a Member State;
- entering into transactions with third countries, which are prohibited or restricted by EU restrictive measures;
- trading in goods or services whose import, export, sale, purchase, transfer, transit or transport is prohibited or restricted;
- providing financial activities which are prohibited or restricted; or
- providing other services which are prohibited or restricted, such as legal advisory services, trust services and tax consulting services.
- circumvention of an EU restrictive measure: this means bypassing or attempting to bypass restrictive measures by concealing funds or concealing the fact that a person is the ultimate owner of funds.

*(2) Minimum standards for criminal sanctions*: as regards natural persons, the proposal requires Member States to establish specific sanction levels and types for criminal offences related to the violation of Union restrictive measures. The categorisation proposed reflects the seriousness of the offences. A monetary threshold of **EUR 100 000** is set as a way to distinguish more serious offences that should be punishable by a **maximum term of imprisonment of at least 5 years**. should include fines.

The proposal also sets out the sanctions applicable to **legal persons** involved in criminal offences related to the violation of EU restrictive measures. Companies could be liable to penalties of no less than 5% of the total worldwide turnover of the legal person in the business year preceding the fining decision.

In addition, the proposal:

- criminalises inciting, and aiding and abetting, the commission of criminal offences related to the violation of the Union's restrictive measures;
- establishes aggravating and mitigating circumstances to be taken into account when imposing penalties;

- includes provisions on jurisdiction to ensure that Member States establish their jurisdiction for offences covered by the proposal;
- lays down provisions on limitation periods to allow the competent authorities to investigate, prosecute and adjudicate criminal offences covered by this proposal during a certain time period;
- concerns the protection of whistle-blowers reporting information or providing evidence to a criminal investigation relating to the violation of Union restrictive measures;
- requires Member States authorities, Europol, Eurojust, the European Public Prosecutor's Office, and the Commission, within their respective competence, to cooperate with each other in the fight against criminal offences referred to.