

New Directive Criminalises Violation/Circumvention of EU Restrictive Measures

Thomas Wahl

On 29 April 2024, [Directive \(EU\) 2024/1226](#) of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 was published in the Official Journal (*OJ L*, 2024/1226). The Directive lays down EU-wide minimum rules for the prosecution of violation and circumvention of EU sanctions in Member States. Even though restrictive measures have been an essential part of the Unions foreign and security policy for a longer time, the Directive comes in reaction to Russia's aggression against Ukraine. It is an additional tool of crime control over an unprecedented number of restrictive measures in order to weaken Russia's economic base and curtail its ability to wage war. As a first step, the Council included the violation of Union restrictive measures as "EU crime" in the list of Art. 83(1) TFEU that gives the EP and Council the competence to establish minimum rules concerning the definition of criminal offences and sanctions via Directives. For the context and the Commission proposal, see news by *Anna Pinggen* → [eucrim 4/2022/225](#) and the article by *Wouter Van Ballegooij* → [eucrim 2/2022, 146-151](#).

Member States are obliged to criminalise certain conduct where it is intentional and in violation of a prohibition or an obligation that constitutes a Union restrictive measure or that is set out in a national provision implementing a Union restrictive measure. Such conduct includes:

- Making available funds/economic resources or breaching/circumventing asset freeze and/or economic resources related to a "designated person, entity or body";
- Providing false or misleading information to conceal the fact that a designated person, entity or body is the ultimate owner or beneficiary of funds or economic resources;
- Failing to comply with an obligation to report to the competent administrative authorities laid down by acts setting out Union restrictive measure;
- Breaching and circumventing trade control measures (even if only the result of serious negligence at least where the conduct relates to items included in the Common Military List of the European Union or to dual-use items listed in Annex I and IV to Regulation (EU) 2021/821) - that conduct can involve trading, importing, exporting, selling, purchasing, transferring, transiting or transporting goods, as well as providing brokering services, technical assistance or other services relating to those goods, where the prohibition or restriction of that conduct constitutes a Union restrictive measure;
- Providing financial services or performing financial activities (e.g. financing and financial assistance, providing investment and investment services, issuing transferable securities and money market in-

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struments, accepting deposits, dealing with in banknotes, providing credit rating services and providing crypto-assets and wallets);

- Providing services other than financial ones (e.g., legal advisory services, trust services, public relations services, accounting, auditing, bookkeeping and tax consulting services, business and management services, IT consulting, broadcasting, architectural and engineering services);
- Breaching or failing to fulfil conditions under authorisations granted by competent authorities to conduct activities.

The Directive introduces a monetary threshold. Member States are, in principle, not obliged to establish a criminal offence for the conducts described if they respectively involve funds, economic resources, goods, services, activities, or transactions of a value of less than €10,000. However, Member States must ensure that the threshold is met if an offender carries out a series of acts linked together and of the same kind. The monetary threshold does not apply to violations of travel bans.

The Directive allows two exemptions from criminal liability:

- Legal professionals do not need to report information that they receive from, or obtain on, one of their clients, in the course of ascertaining their legal position or performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, i.e., such legal advice remains subject to the obligation of professional secrecy (except where the legal professional is intentionally taking part in the violation of Union restrictive measures, where the legal advice is provided for the purposes of violating Union restrictive measures, or where the legal professional knows that the client is seeking legal advice for the purposes of violating Union restrictive measures);
- Justified is humanitarian assistance for persons in need or activities in support of basic human needs provided in accordance with the principles of impartiality, humanity, neutrality and independence and, where applicable, with international humanitarian law.

The violation of Union restrictive measures is now also a predicate offence for money laundering in accordance with Directive 2018/1673.

Legal persons may also be held liable if one of the aforementioned offenses is committed for the benefit of that legal person by any person who has a leadership position within the legal person. Liability must also be triggered when the lack of supervision or control by such a person enabled the commission of the offense by a person under their authority. Both legal persons and natural persons may be prosecuted.

Moreover, the Directive directs Member States as regards penalties for natural and legal persons. In order to achieve a level of effective, dissuasive and proportionate penalties, minimum levels for the maximum term of imprisonment are set for natural persons. Depending on the nature of the offense and whether the value of the goods, services, transactions or activities exceeds €100,000, maximum terms of imprisonment range from at least one year to at least five years. Where military equipment or dual-use goods listed in Annex IV to Regulation 2021/821 are involved, the maximum penalty should be at least five years' imprisonment. Accessory penalties or measures, such as fines, withdrawal of permits and authorisations that gave rise to the criminal offence, and disqualifications to hold leading positions within the concerned legal person, should also be available in criminal proceedings.

Penalties against legal persons can be criminal or non-criminal in nature, but the type and level of the fines must be effective, dissuasive and proportional. The maximum levels of fines provided for in the Directive for the offences defined in it should apply at least to the most serious forms of such offences. Member States

can choose to set the maximum levels of fines either as a percentage of the total worldwide turnover of the legal person concerned, or in fixed amounts.

The level of penalties is further approximated through the introduction of common aggravating and mitigating circumstances. Aggravating circumstances include, for instance, the involvement of false or forged documents; commission of the offence by a professional service provider in violation of the professional obligations of such professional service provider; and the offender destroyed evidence, or intimidated or influenced witnesses or complainants.

Next to the level of penalties, the Directive also imposes obligations for limitation periods both for the prosecution/adjudication of the criminal offence and the enforcement of a penalty imposed. Limitations periods shall be at least three years, provided that such limitation period may be interrupted or suspended in the event of specified acts.

Further provisions of the Directive include obligations for Member States to implement measures to enable the freezing and confiscation of instrumentalities and proceeds from criminal offenses and of funds or economic resources subject to EU sanctions. They must also ensure the availability of effective and proportionate investigative tools. Lastly, provisions of the Directive relate to the jurisdiction in particular as regards cross-border offences, the collection of statistical data, the designation of a unit or body ensuring coordination and cooperation between law enforcement authorities and authorities in charge of implementing Union restrictive measures, and cooperation between competent authorities of Member States, the Commission, Europol, Eurojust and the European Public Prosecutor's Office.

Next steps: Member States must transpose the Directive into their national laws by 20 May 2025. The Commission is required to provide an implementation report by 20 May 2027 and a report evaluating the impact and effectiveness of the Directive by 20 May 2030.

For the new Directive, see also the [article](#) "The New Directive on the Violation of Union Restrictive Measures in the Context of the EPPO" by *Peter Csonka* and *Lucia Zoli* (→ related link).

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