

# The Council of Europe Approves a Directive on the Definition of Criminal Offences and Penalties for Violations of EU Restrictive Measures (the "Directive")

Prior to the Council of Europe's adoption, the Directive was approved by the European Parliament on March 12, 2024. It will enter into force 20 days after its publication in the Official Journal of the European Union. EU member states will have 1 year to transpose provisions of the Directive into their national legislation.

The adoption of the Directive by the European Parliament and by the Council of Europe was the result of the European Commission's proposal on the harmonization of criminal liability for breach of EU sanctions, submitted to the European Parliament back in December 2022.

## Why is this important?

The harmonization of the approach to criminal liability in the EU for sanctions violations and circumvention will tighten the European companies' sanctions compliance with respect to their transactions with Russian and third-country persons, and the compliance of third-country persons with respect to their transactions with Russian persons.

## 1. Who could be considered an offender according to the Directive?

According to Article 12 of the Directive, EU Member States will be obliged to prosecute a person for sanction offenses if:

- the criminal offence was committed in whole or in part within its territory;
- the criminal offence was committed on board a ship or an aircraft registered in the Member State concerned or flying its flag;
- the offender is one of its nationals.

Thus, minimum rules for the prosecution of violation or circumvention of EU sanctions apply only to offenses within the EU territory or committed by EU citizens.

However, a Member State may decide to extend its jurisdiction to criminal offenses that were committed outside its territory if:

- the offender is a habitual resident in its territory;
- the offender is one of its officials who acts in his or her official duty;
- the offence is committed for the benefit of a legal person which is established in its territory;
- the offence is committed for the benefit of a legal person in respect of any business done in whole or in part on its territory.

## 2. What would be considered a sanctions offense?

Article 3 of the Directive states that the following willful acts, if committed in breach of EU sanctions, will be criminalized:

- a) making funds or economic resources available directly or indirectly to, or for the benefit of, a designated person, entity or body in violation of a prohibition that constitutes a Union restrictive measure;
- b) failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body in violation of an obligation that constitutes a Union restrictive measure;
- c) enabling designated natural persons to enter into, or transit through, the territory of a Member State, in violation of a prohibition that constitutes a Union restrictive measure;
- d) entering into or continuing transactions with a third State, bodies of a third State or entities or bodies directly or indirectly owned or controlled by a third State or by bodies of a third State, including the award or continued execution of public or concession contracts, where the prohibition or restriction of that conduct constitutes a Union restrictive measure;
- e) 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;
- f) providing financial services or performing financial activities, where the prohibition or restriction of that conduct constitutes a Union restrictive measure;
- g) providing services other than those referred to in point (f), where the prohibition or restriction of that conduct constitutes a Union restrictive measure;
- h) circumventing a Union restrictive measure by:
  - (i) using, transferring to a third party, or otherwise disposing of, funds or economic resources directly or indirectly owned, held, or controlled by a designated person, entity or body, which are to be frozen pursuant to a Union restrictive measure, in order to conceal those funds or economic resources;
  - (ii) 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 which are to be frozen pursuant to a Union restrictive measure;
  - (iii) failing by a designated natural person, or by a representative of a designated entity or body, to comply with an obligation that constitutes a Union restrictive measure to report to the competent administrative authorities funds or economic resources within the jurisdiction of a Member State, belonging to, owned, held, or controlled by them;
  - (iv) failing to comply with an obligation that constitutes a Union restrictive measures to provide the competent administrative authorities with information on frozen funds or economic resources or information held about funds or economic resources within the territory of the Member States, belonging to, owned, held or controlled by designated persons, entities or bodies and which have not been frozen, where such information was obtained in the performance of a professional duty;
- i) breaching or failing to fulfil conditions under authorisations granted by competent authorities to conduct activities, which in the absence of such an authorisation amount to a violation of a prohibition or restriction that constitutes a Union restrictive measure;

Where the conduct listed in (a), (b) or (h) involves assets with a value of less than €10,000 and the conduct listed in (d) to (g), (i) are committed in relation to goods, services, transactions or activities of a value of less than €10,000, this does not constitute a criminal offence.

Member States in adopting their domestic regulation shall ensure that the following conduct constitutes a criminal offence:

- inciting, aiding and abetting the commission of the offenses listed above,
- attempts to commit offences referred to in paragraphs (a), (c)-(g), (h)(i)-(ii),
- the offences set forth in (e) above committed with serious negligence, at least where such conduct relates to items on the EU Common Military List or to dual-use items listed in Annexes I and IV to Regulation (EU) 2021/821.

### 3. What penalties are provided for sanction offenses?

The Directive provides for the following liability for sanctioning offenses:

**For individuals:** fines, disqualification, withdrawal of licenses or permits, temporary bans on running for public office or imprisonment for 1, 3 or 5 years.

**For legal entities:** exclusion from access to public funding, including tender procedures, grants and concessions, disqualification from the practice of business activities, withdrawal of permits and authorisations to pursue activities which have resulted in the relevant criminal offence, judicial supervision, judicial winding-up, and fines from 1% to 5% of worldwide turnover or fixed fines from €8 million to €40 million.

### 4. Is there a provision for confiscation?

The Directive states that EU Member States shall take the necessary measures to enable:

- freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in paragraph 2 above;
- freezing and confiscation of funds or economic resources subject to Union restrictive measures of designated persons that they conceal or provide false or misleading information such frozen assets as set out in paragraph 2 (h), (i) and (ii) above.

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We will be happy to answer any questions you may have on this subject.



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