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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Towards a Directive on criminal penalties for the violation of Union restrictive measures

1. INTRODUCTION

1.1. Union law on restrictive measures

Restrictive measures are an essential tool for the promotion of the objectives of the Common Foreign and Security Policy ('CFSP'), as set out in Article 21 of the Treaty on European Union ('TEU'). These objectives include safeguarding the Union's values, maintaining international peace and security as well as consolidating and supporting democracy, the rule of law and human rights.

For the sake of preserving these values, the Union may impose restrictive measures against third countries, entities or individuals. These measures include targeted individual measures, i.e., asset freezes and restrictions on admissions (travel bans), 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)¹. Currently, the Union has over forty different regimes of restrictive measures in place and their use has intensified in recent times. Some of these regimes implement restrictive measures by the United Nations Security Council and in some cases impose additional restrictions; others are adopted autonomously by the Union. In addition to regimes addressing country-specific situations, the Union has also adopted horizontal regimes targeting the proliferation and use of chemical weapons, cyberattacks, human rights violations and terrorism².

Preserving international peace and security is critical in the current context of Russia's invasion of Ukraine. The Union has put in place a series of restrictive measures against Russian and Belarusian individuals and companies, as well as sectoral measures some of which date back to 2014. In this context, in order to enhance Union-level coordination in the enforcement of these restrictive measures, the Commission set up the 'Freeze and Seize' Task Force, in which Commission services, Member States' representatives and Union agencies, such as Eurojust and Europol, participate³. Besides ensuring coordination among Member States, the Task Force seeks to explore the interplay between restrictive measures and criminal law measures.

¹ The Council adopts restrictive measures. The Council first adopts a CFSP Decision under Article 29 TEU. The measures envisaged in the Council Decision are implemented either at Union or at national level. It has been the practice so far that measures such as arms embargoes or restrictions on admission are implemented directly by the Member States, which are legally bound to act in conformity with CFSP Council Decisions. Other measures interrupting or reducing, in part or completely, economic relations with a third country as well as individual measures freezing funds and economic resources, prohibiting the making available of funds and economic resources, are implemented by means of a Regulation adopted by the Council, acting by qualified majority, on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, under Article 215 of the Treaty on the Functioning of the European Union. Anti-circumvention provisions can be found in both types of act.

² For an overview, see the EU sanctions Map, available at <https://www.sanctionsmap.eu/#/main>.

³ 'Enforcing sanctions against listed Russian and Belarusian oligarchs: Commission's "Freeze and Seize" Task Force steps up work with international partners', Press release European Commission, 17.03.2022, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1828; 'Freeze and Seize Task Force': Almost €30 billion of assets of Russian and Belarusian oligarchs and entities frozen by the EU so far', Press release European Commission, 08.04.2022, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2373.

1.2. Need to enhance the enforcement of restrictive measures through criminal law

The implementation and enforcement of restrictive measures are primarily the responsibility of Member States. Competent authorities in Member States must assess whether there has been a infringement of the relevant Council Regulation and take adequate steps. In this regard, Council Regulations adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union (‘TFEU’) systematically include a provision requiring Member States to adopt national rules providing for effective, proportionate and dissuasive penalties, to be applied in the event of infringements of the provisions of the relevant Regulation⁴. These Regulations generally include:

- the restrictive measures;
- the anti-circumvention clause, which prohibits knowing and intentional participation in activities that seek to circumvent the restrictive measures in question⁵; and
- other obligations, in particular to report on steps taken to implement the restrictive measures (e.g. reporting to authorities the amount of assets that have been frozen).

In the absence of Union-level harmonisation, national systems differ significantly as far as criminalisation of the violation of Union law on restrictive measures (‘Union restrictive measures’) is concerned. In 12 Member States, the violation of Union restrictive measures is solely a criminal offence. In 13 Member States, the violation of Union restrictive measures can amount to an administrative or a criminal offence⁶. The criteria according to which the conduct falls within one or the other regime category are usually related to its gravity (serious nature), either determined in qualitative (intent, serious negligence) or quantitative (damage) terms⁷, but they are different in each Member State. In two Member States, the specific offence of violation of Union restrictive measures can currently only lead to administrative penalties⁸.

Penalty systems also differ substantially across the Member States. As regards prison sentences, in 14 Member States, the maximum length of imprisonment is between 2 and 5 years. In eight Member States, maximum sentences between eight and 12 years are possible⁹. The maximum fine that can be imposed for the violation of Union restrictive measures – either as a criminal or as an administrative offence – varies greatly across Member States, ranging from EUR 1 200 to EUR 500 000¹⁰.

⁴ For an example, see Article 8 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, consolidated text available at [EUR-Lex - 02014R0833-20220413 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/02014R0833-20220413-EN-EUR-Lex).

⁵ For an example, see Article 12 of Council Regulation (EU) No 833/2014. It is noted that that this clause is also applicable if the restrictive measures have not been breached; it is enough to participate in schemes created to that end.

⁶ Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, Annex, available at https://www.eurojust.europa.eu/sites/default/files/assets/genocide_network_report_on_prosecution_of_sanctions_restrictive_measures_violations_23_11_2021.pdf. In view of a presentation in the Council Working Party on Judicial Cooperation in Criminal Matters (COPEN), the report was also published in Council doc. 7274/22 of 16 March 2022.

⁷ Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, section 5.1., p. 22.

⁸ Idem.

⁹ Idem, section 5.2., p.23.

¹⁰ Idem, section 5.3., p.24.

14 Member States provide for criminal liability of legal persons for the violation of Union restrictive measures¹¹. In addition, twelve Member States provide for administrative penalties, notably fines, which may be imposed on legal persons when their employees or their management violate restrictive measures. Maximum fines for legal persons range from EUR 133 000 to 37.5 million¹².

The Commission and the High Representative for Foreign Affairs and Security Policy have proposed to strengthen the provision on penalties in Council Regulations 833/2014 and 269/2014 in the framework of the sixth package of restrictive measures in response to the Russian aggression against Ukraine. The amended provisions would oblige Member States to lay down the rules on penalties, including as appropriate criminal penalties, applicable to infringements of the provisions of these regulations. Member States need to take all measures necessary to ensure that these penalties are properly implemented and applied. The penalties must be effective, proportionate and dissuasive. Member States must also provide for appropriate measures for the confiscation of the proceeds of such infringements. Restrictive measures are adopted on the basis of Article 29 TEU and Article 215 TFEU. While these provisions serve as a legal basis for obliging Member States to lay down penalties, including criminal penalties, neither can be used for defining the exact types and levels of criminal penalties. The limited impact of obliging Member States to have criminal penalties in place, without approximating criminal definitions and penalties by a Directive based on Article 83 TFEU, means that Member States would still not have a harmonised approach towards confiscation measures, relative to the violation of Union restrictive measures, as well as freezing, management, and confiscation measures as provided for in the current and future Union acquis on asset recovery and confiscation would not apply to the violation of Union restrictive measures. Even if in several Member States the violation of Union restrictive measures has already been criminalised, differences among Member States can lead to a fragmented approach in cross-border cases.

Against this background, the Commission is issuing a proposal for a Council decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU¹³. Adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU would enable the Commission, as a second step, to immediately propose a Directive under the ordinary legislative procedure to approximate the definition of criminal offences and penalties. Such approximation of criminal definitions and penalties for the violation of Union restrictive measures would complement the Commission proposal for a Directive of the European Parliament and the Council, also adopted today, on asset recovery and confiscation¹⁴.

¹¹ Idem, based on the report of the Genocide Network and further investigation by the Commission.

¹² Idem.

¹³ European Commission, Proposal for a Council Decision on adding the violation of Union restrictive measures, restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM (2022) 247 of 25.05.2022.

¹⁴ European Commission, Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, COM (2022) 245 of 25.05.2022.

This proposal significantly reinforces the current EU asset recovery framework, composed of the Confiscation Directive and the Council Decision on asset recovery offices¹⁵.

The proposed Directive on asset recovery and confiscation contributes to the effective application of Union restrictive measures in two ways. Firstly, it requires Member States to launch asset tracing and identification investigations where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures, and to extend the mandate of asset recovery offices to swiftly trace and identify property of individuals and entities subject to EU targeted financial sanctions, and urgently freeze it whenever necessary to prevent its removal from the jurisdiction. Secondly, by making the enhanced rules on asset recovery and confiscation applicable to the criminal offence of violation of Union restrictive measures, the proposal would ensure the effective tracing, freezing, management and confiscation of proceeds derived from the violation of Union restrictive measures, pending the approximation of criminal definitions and penalties for the violation of Union restrictive measures.

As explained in more detail in the proposal for a Council decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU¹⁶, the criteria referred to in Article 83(1) TFEU for adding therein a new area of crime, relating to the cross-border dimension of that area of crime (nature, impact, special need to combat on a common basis), are met.

This is the case because the violation of Union restrictive measures should be qualified as an area of crime and is already categorised as such by a majority of Member States¹⁷, but not yet covered by the existing list of Union crimes provided for by Article 83(1) TFEU. Moreover, this is a particularly serious area of crime, since it may perpetuate threats to international peace and security, undermine the consolidation and support for democracy, the rule of law and human rights and result in significant economic, societal and environmental damage.

Furthermore, the violation of Union restrictive measures has a clear and at times even inherent cross-border dimension, which requires a uniform cross-border response at EU level and global level. Not only are these crimes usually committed by natural and legal persons operating on a global scale but in some cases Union restrictive measures even forbid cross-border operations (e.g. restrictions on banking services).

In addition, the fact that Member States have very different definitions and penalties for the violation of Union restrictive measures under their administrative and/or criminal law suggests that the same conduct might be sanctioned with different penalties and different enforcement levels. This creates a risk of forum shopping by individuals and companies and, generally,

¹⁵ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014, p. 39–50; Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332, 18.12.2007, p. 103–105.

¹⁶ European Commission, Proposal for a Council Decision on adding 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.

¹⁷ See the overview provided for by Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021.

undermines the credibility of the Union's objectives to maintain international peace and security and uphold common Union values. Therefore, there is a special need for common action at Union level to address the violation of Union restrictive measures by means of criminal law. The Union could also promote a global level playing field in this respect.

Finally, the different definitions and penalties for the violation of Union restrictive measures under Member States' administrative and/or criminal law represent an obstacle to the consistent application of Union policy on restrictive measures.

In view of the urgent need to hold individuals and legal persons involved in the violation of Union restrictive measures accountable, the annex to this Communication already outlines the main elements that a future Directive on criminal penalties for the violation of Union restrictive measures could contain. This will facilitate swift engagement with the European Parliament and the Council on the matter.