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From:	Presidency
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures - Presidency note

Following the discussions in COPEN on 20 April, the assessment of the Presidency is that the Council is now close to general agreement on the text of the draft Directive, with a view of finalising a general approach in the coming weeks.

It is in this light that the Presidency would invite the JHA Counsellors and experts to examine the text in annex to this note and to indicate, at the meeting on 28 April, what provisions they are not able to agree on in the context of a global compromise. Modifications in relation to the original proposal in the annexed text are indicated in **bold** or ~~striketrough~~, with the latest modifications indicated also as **underlined**. Counsellors are in particular invited to consider the following provisions:

- Article 3
- Article 5
- The recitals (note that recitals 11a, 11b, 11c, 17 and 21, as well as parts of other recitals, are based on recitals in the general approach on the Environmental Crimes Directive that relate to articles similar to those in this Directive)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the definition of criminal offences and penalties for the violation of Union restrictive measures

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to ensure the effective application of Union restrictive measures, the integrity of the internal market within the Union, and to achieve a high level of security within the Area of Freedom, Security and Justice, it is necessary to establish minimum rules concerning the definition of criminal offences and penalties with regard to the violation of those Union restrictive measures.

- (2) Union restrictive measures, such as measures concerning the freezing of funds and economic resources, the prohibitions on making funds and economic resources available and the prohibitions on entry into or transit through the territory of a Member State, as well as sectoral economic **and financial** measures and arms embargoes, 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’**). 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.
- (3) To ensure the effective application of Union restrictive measures, it is necessary that Member States have effective, proportionate and dissuasive penalties in place for the violation of those Union restrictive measures, including obligations, such as reporting, established therein. It is also necessary that those penalties address the circumvention of Union restrictive measures.

- (4) The effective application of Union restrictive measures calls for common **minimum rules concerning the criminal definitions of criminal conduct infringing violating prohibitions and obligations included in Union restrictive measures or, where national implementation is required, national provisions implementing those measures.** Member States should ensure that this conduct constitutes a criminal offence when committed with intent, **in so far as it amounts to an infringement of a prohibition or an obligation set out in a Union restrictive measure or set out in a national provision implementing a Union restrictive measure, where national implementation of these measures is required.** as well as with serious negligence, in case the natural or legal person knew or should have known, that their conduct would infringe Union restrictive measures. **The Directive should cover only serious violations. Thus, it should not apply to violations involving funds, economic resources, goods, services, transactions or activities of a value of less than EUR 10 000. Furthermore, minor cases of violations related to travel bans should be excluded from its scope. As this Directive establishes only minimum rules, Member States may decide whether to extend their national criminal law to such conduct. The exclusion of less serious violations from the scope of this Directive does not affect any obligations set out in Union restrictive measures to ensure that violations are punishable by effective, proportionate and dissuasive criminal or other sanctions.**
- (4a) Union restrictive measures may provide for exceptions in the form of exemptions or derogations from the prohibitions laid down therein. **These are of particular importance for example for the delivery of humanitarian aid.** A conduct either covered by an exemption provided for in a Union restrictive measure or authorised by the competent authorities of the Member States by means of a derogation in accordance with a Union restrictive measure should not be regarded as a violation of a Union restrictive measure.

- (4b) In particular, the effective application of Union restrictive measures calls for common minimum rules for the violations of asset freeze measures as laid down in the relevant Council Regulations. These measures include the prohibition to make funds or economic resources available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies subject to asset freeze measures, as well as the obligation to freeze all funds and economic resources belonging to, owned, held or controlled by the same persons, entities or bodies.**
- (4c) Union restrictive measures also lay down restrictions on admission (travel bans) which should be covered by this Directive. Such measures, usually laid down in a Council Decision adopted on the basis of Article 29 TEU and implemented by means of national law, require Member States to take the necessary measures to prevent the entry into, or transit through, their territories of the natural persons who are subject to Union restrictive measures.**
- (4d) Entering into or continuing any form of transactions, including but not limited to financial transactions ~~as~~ as well as the award or continued execution of any public or concession contract falling within the scope of the public procurements Directives, with a third State, bodies of a third State, entities and bodies owned or controlled by a third State or bodies of a third State, should also constitute a criminal offence, to the extent it is prohibited by a Union restrictive measure.**
- (4e) In addition, rules on the prohibition of trading, importing, exporting, selling, purchasing, transferring, transiting or transporting goods or services are called for. The violation of such prohibitions, as well as the provision, directly or indirectly, of technical assistance, brokering services, insurance, and any other service related to these goods or services should constitute a criminal offence. For this purpose, the notion of goods includes items, such as military technology and equipment, goods, software and technology, which are included in the Common Military List of the European Union or listed in Annexes I and IV to Regulation (EU) 2021/821.**

- (4f) In addition, other rules on sectoral economic and financial measures adopted under the CFSP are called for. These refer to rules on the provision of financial services or the performance of financial activities which are prohibited or restricted by Union restrictive measures. Such financial services and activities include but are not limited to financing and financial assistance, providing investment and investment services, issuing transferrable securities and money market instruments, accepting deposits, providing specialised financial messaging services, dealing in banknotes, provide credit rating services, providing crypto assets and wallets.
- (4g) These measures also refer to rules on the provision of other services which are prohibited or restricted by Union restrictive measures. Such services include but are not limited to the provision of legal advisory services, trust services, public relations services, accounting, auditing, bookkeeping and tax consulting services, business and management consulting, IT consulting, broadcasting, architectural and engineering services.
- (5) The effective application of Union restrictive measures also calls for common **minimum rules concerning the** criminal definitions of conduct circumventing a Union restrictive measure.

- (6) Natural persons, entities and bodies, which are designated individually in Union restrictive measures and subject to those Union restrictive measures, may often be involved as instigators and accomplices. For instance, **An example of circumvention that is increasingly widespread** is the practice by designated persons and entities of transferring funds, property or economic resources to a third party with a view to circumventing Union restrictive measures ~~is increasingly widespread~~. Therefore, **when committed by designated natural persons or by representatives of designated entities or bodies** this conduct is covered by the circumvention offence approximated by this Directive. **Furthermore, the practice of providing false or misleading information with a view to concealing that a designated person, entity or body subject to restrictive measures is the ultimate owner or beneficiary of funds or economic resources subject to Union restrictive measures** also amounts to a circumvention of Union restrictive measures. Therefore, **when committed by designated natural persons or by representatives of designated entities or bodies** ~~this~~ **these conducts** ~~are~~ **is** covered by the circumvention offence **approximated by this Directive**.
- (6a) ~~Failures~~ **to comply with the reporting and cooperation obligations should also be covered by the circumvention offence, to the extent** that a corresponding obligation to report and cooperate with the competent administrative authorities is laid down by a Union restrictive measure.
- (6b) **The obligation to cooperate with the competent administrative authorities in the verification of any information covered by a reporting obligation should not be understood to prejudice the right not to incriminate oneself and to remain silent as enshrined under Article 7 of Directive (EU) 2016/343 and Article 48 of the Charter of Fundamental Rights of the European Union. Therefore, failure to cooperate with the competent administrative authorities in the verification of information covered by a reporting obligation, upon their reasoned request, should not constitute an offence under this Directive** ~~where to the extent that~~ **compliance with such a request would prejudice the right to remain silent and the privilege against self-incrimination.**

(6c) The effective application of Union restrictive measures furthermore calls for a common minimum rules concerning the criminal law definition of conduct breaching of failing to fulfil the specific conditions under authorisations granted by the competent authorities to conduct certain activities, which in the absence of such an authorization are prohibited or restricted under a Union restrictive measure. Any activity conducted in the absence of an authorisation would instead constitute a violation of such measures and, as appropriate, could be considered as a breach of asset freeze measures, travel bans, arm embargoes or other sectoral economic and financial measures.

~~(6d) Union restrictive measures do not prohibit the delivery of the humanitarian aid to persons in need in accordance with international humanitarian law. The provision of humanitarian aid should not therefore be regarded as a violation of Union restrictive measures. In implementing this Directive, Member States should take into account that international humanitarian law, the law of armed conflict, requires that restrictive measures should not prevent the delivery of humanitarian aid in line with principles of impartiality, humanity, neutrality and independence.~~

- (7) Legal professionals, as defined by the Member States, should be subject to this Directive, including the obligation to report the violation of Union restrictive measures, when providing services in the context of professional activities, such as legal, financial and trade services. Experience shows that there is a clear risk of the services of those legal professionals being misused for the purpose of violating Union restrictive measures. There should, however, be exemptions from any obligation to report information **which is that they receive from, or is obtained from or, one of their clients, in strict connection with judicial, administrative or arbitral proceedings, whether before, during or after judicial proceedings, or in the course of ascertaining their legal position of a their client, or performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.** Therefore, **such** legal advice in those circumstances should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in the violation of Union restrictive measures, the legal advice is provided for the purposes of violating Union restrictive measures, or the legal professional knows that the client is seeking legal advice for the purposes of violating Union restrictive measures. Knowledge can be inferred from objective factual circumstances.
- (7a) **Directly comparable services should be treated in the same manner when provided by any of the professionals covered by this Directive. In order to ensure respect for the rights guaranteed by the Charter of Fundamental Rights of the European Union, in the case of auditors, external accountants and tax advisors, who, in some Member States, are entitled to defend or represent a client in the context of judicial proceedings or to ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to the reporting obligations laid down in this Directive.**

- ~~(8) — The effective application of Union restrictive measures furthermore calls for a common minimum rules concerning the criminal law definition of conduct breaching conditions under authorisations granted by competent authorities to conduct certain activities, which in the absence of such an authorization are prohibited or restricted under a Union restrictive measure.~~
- ~~(9) — It is appropriate to exclude from the criminalisation activities which concern the provision of goods and services of daily use for the personal use of designated natural persons, such as food and healthcare products and services, or of petty cash, where it is clearly limited to fulfilling the basic human needs of such persons and their dependent family members. The failure to report such activities should also be excluded from criminalisation. In addition, it is appropriate to exclude from criminalisation the delivery of humanitarian aid to persons in need. Such humanitarian aid must be provided strictly in accordance with international humanitarian law and can notably consist of food and nutrition, shelter, health care, water and sanitation. Furthermore, in implementing this Directive, Member States should take into account that International Humanitarian Law, the law of armed conflict, requires that restrictive measures should not prevent the delivery of humanitarian aid in line with principles of impartiality, humanity, neutrality and independence.~~
- (10) Penalties for the offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. Additional penalties or measures should also be available in criminal proceedings. They ~~may~~**should** include fines, taking into account that the violation of Union restrictive measures is mostly motivated by economic considerations. **This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement to individual cases.**

- (10a) Inciting, aiding and abetting, and attempt to commit offences under the Directive should also be criminalised. ~~For pure omission offences, it would not be practically possible to punish attempts. It is for the judge or court to decide, taking into account the specific circumstances of individual cases, whether an attempt to commit these offences is punishable.~~
- (11) Given that legal persons are also subject to Union restrictive measures, legal persons should also be held ~~criminally~~ liable for offences related to the violation of Union restrictive measures as defined in ~~according to~~ this Directive. **Legal persons are thereby understood as any legal entity having such status under the applicable law, except for States or public bodies exercising State authority and for public international organisations.** Member States whose national law provides for the criminal liability of legal persons should ensure that their national laws provide for criminal effective, dissuasive and proportionate sanction types and levels as laid down in this Directive in order to achieve its objectives. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their ~~national laws administrative sanctioning systems~~ provide for non-criminal effective, dissuasive and proportionate penalty types and levels, as laid down in this Directive in order to achieve its objectives. The maximum levels of fines provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences. The seriousness of the conduct, as well as the individual, financial and other circumstances of the legal persons, should be taken into account to ensure the effectiveness, dissuasiveness and proportionality of the sanction imposed. With regard to maximum levels of fines in national law, Member States may either use a percentage of the total worldwide turnover of the legal person concerned, or they may determine the maximum level of fines in absolute amounts. Member States should decide which alternative they choose when transposing this Directive.

- (11a) Where, with regards to the determination of fines to be imposed on legal persons, Member States opt to implement the criterion of the total worldwide turnover of a legal person, they should decide whether to calculate the total worldwide turnover based on either the business year preceding the one in which the offence was committed, or the business year preceding the fining decision, when transposing this Directive. They should also consider providing for rules for cases where it is not possible to determine the amount of a fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision. In such cases, it should be possible to take into account other criteria, such as the total worldwide turnover in one of the other preceding business years. Where those rules include the setting of amounts of fines in absolute numbers, then the maximum levels of these should not have to reach the levels established in this Directive as the minimum requirement for the maximum level of fines determined in absolute amounts.**
- (11b) Where Member States opt for maximum level of fines determined in absolute amounts, such levels should be laid down in national law. The highest levels of such fines should apply to the most serious forms of offences provided for in this Directive, which are committed by financially strong legal persons. Member States may decide on the method of calculation of those levels of fines including specific conditions for the highest levels of those fines. Member States should be invited to regularly review the levels of fines determined in absolute amounts with regard to rates of inflation and other fluctuations in monetary value, in line with procedures set out in their national law. Member States that do not have the euro as their currency should provide for maximum levels of fines in their currency corresponding to the levels determined in this Directive in euro on the date of adoption of this Directive. Those Member States are invited to regularly review the levels also with regard to the development of the exchange rate.**

- (11c) **The definition of the maximum level of fines is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases. As this Directive does not set out any minimum levels of fines, the judges or courts should, in any case, impose appropriate sanctions taking into account the individual, financial and other circumstances of the legal person concerned and the seriousness of the conduct. While the maximum level of fine provided for the respective criminal offence by this Directive should be taken into account, the actual fine imposed in an individual case should not have to reach the maximum level of fine determined by this Directive.**
- (12) A further approximation and effectiveness of level of penalties imposed in practice should be fostered through common aggravating circumstances that, **in accordance with relevant provisions of national law**, reflect the severity of the crime committed. The notion of aggravating circumstances should be understood either as facts allowing the national judge or court to pronounce a higher sentence for the same offence than the one incurred without these facts, or as the possibility of retaining several offences cumulatively in order to increase the level of the penalty. Member States should provide for the possibility of at least one of these aggravating circumstances in accordance with applicable rules established by their legal system on aggravating circumstances. In any case, it should remain within the discretion of the judge or the court to determine whether to increase the sentence, taking into account all the circumstances of the individual case.
- (13) Member States ~~may~~**should** also ensure, **in accordance with relevant provisions of national law**, that in situations where the offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them to identify or bring to justice other offenders or to find evidence, such conduct may be regarded as mitigating circumstance.

- (14) The freezing of funds and of economic resources imposed by Union restrictive measures is of an administrative nature. As such it should be distinguished from freezing measures of a criminal nature, as referred to in Directive 2014/42/EU (EU) [.../...] [~~Directive on asset recovery and confiscation~~]. **Member States should enable the freezing and confiscation of instrumentalities and proceeds from the offences referred to in this Directive. Member States bound by Directive 2014/42/EU should do so in accordance with that Directive.**
- (15) ~~There is a need to clarify the concept of proceeds~~ **In addition**, specifically in situations in which the designated person, or the representative of a designated entity or body, commits or participates in **the offences concerning the violation of asset freeze measures**; (i) **transferring** ~~concealing~~ funds or economic resources owned, held, or controlled by a designated person, entity or body, which ~~should~~ **are to** be frozen in accordance with a Union restrictive measure, ~~by the transfer of those funds, or economic resources to a third party to~~ **conceal those funds or economic resources**; or (ii) **providing false or misleading information**, ~~concealing to conceal~~ the fact that a **designated** person, entity or body ~~subject to restrictive measures~~ is the ultimate owner or beneficiary of funds or economic resources; ~~through the provision of false or incomplete information~~ **there is a need to enable the freezing and confiscation of funds and economic resources subject to Union restrictive measures, even where they do not constitute instrumentalities or proceeds under Directive 2014/42/EU.** In those circumstances, as a consequence of the conduct of concealing, the designated person, entity or body may continue to access and make full use or dispose of the funds or economic resources subject to Union restrictive measures which have been concealed. Such funds or economic resources should therefore be **subject to freezing and confiscation, in accordance with the safeguards, including the respect for the principle of proportionality in individual cases, set out in Directive/2014/42/EU. The rights of bona fide third parties should not be prejudiced.** ~~considered as proceeds of crime for the purposes of Directive (EU) [.../...] [*Directive on asset recovery and confiscation*], it being understood that the proportionality of confiscation of such proceeds will have to be observed in each individual case.~~

- (16) Given, in particular, the global activities of the perpetrators of illegal conduct covered by this Directive, together with the cross-border nature of the offences and the possibility of cross-border investigations, Member States should establish jurisdiction in order to counter such conduct effectively.
- (17) Member States should lay down rules concerning limitation periods necessary to enable them to counter offences related to the violation of Union restrictive measures effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement. **Where Member States are permitted to derogate from the limitation periods, provided that the period may be interrupted or suspended in the event of specified acts, such acts may be defined in accordance with the legal system of each Member State.**
- (18) To ensure an effective, integrated and coherent enforcement system, Member States should organise internal cooperation and communication between all actors along the administrative and criminal enforcement chains.
- ~~(19) To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States' competent authorities should cooperate through and with Europol, Eurojust and the European Public Prosecutor's Office (EPPO). These competent authorities should also share information among each other and with the Commission on practical issues.~~

- (20) **Persons reporting** ~~Whistleblowers can provide valuable~~ information to competent authorities concerning past, ongoing or planned violations of Union restrictive measures, including attempts to circumvent them, **which they have acquired in the context of their work-related activities, risk suffering retaliation in that context.** ~~This~~ **Such whistleblowers' reports can strengthen enforcement by providing** information ~~can~~ related, for example, to facts concerning violations of Union restrictive measures, their circumstances and the individuals, companies and third countries involved. Therefore, it should be ensured that adequate arrangements are in place to enable such whistleblowers **to use confidential channels**, to alert the competent authorities and to protect them from retaliation. For that purpose, it should be provided that Directive (EU) 2019/1937 of the European Parliament and of the Council¹ is applicable to the reporting of violations of Union restrictive measures and to the protection of persons reporting such violations, **under the conditions established therein.**
- (21) To ensure the effective investigation and prosecution of violations of Union restrictive measures, those responsible for investigating or prosecuting these **offences** ~~measures~~ should have the possibility of using investigative tools, **if and to the extent that the use of these tools is appropriate and proportionate to the nature and gravity of the offences as defined in national law. Where those offences could be considered serious according to national law, and within the criminal category of violation of restrictive measures, investigative tools** such as those which are used in combating organised crime or other serious crimes **should be available.** The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences under investigation as well as respecting the right to the protection of personal data.

¹ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17–56.

- (21a) To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States' competent authorities should cooperate through and with Europol, Eurojust and the European Public Prosecutor's Office (EPPO), within their respective competences and in accordance with the applicable legal framework. These competent authorities should also share information among each other and with the Commission on practical issues.**
- (22) An amendment to Directive (EU) 2018/1673 on combatting money laundering by criminal law² should ensure that the violation of Union restrictive measures will be considered a predicate offence for money laundering according to that Directive.
- (23) The objectives of this Directive, namely to ensure common **minimum rules concerning the** definitions of offences related to the violation of Union restrictive measures and the availability of effective, dissuasive and proportionate criminal penalties for serious offences related to the violation of Union restrictive measures cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, taking into account the inherent cross-border nature of the violation of Union restrictive measures and their potential to undermine the achievement of the Union objectives to safeguard international peace and security as well as to uphold Union common values. Therefore the Union may adopt measures, in accordance with the principle of subsidiarity as set out in accordance with Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

² Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, [PE/30/2018/REV/1](#), OJ L 284, 12.11.2018, p. 22-30.

- (24) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the rights to liberty and security, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence including the right not to incriminate oneself and to remain silent, the principles of legality, including the principle of non-retroactivity of criminal penalties and proportionality of criminal offences and penalties, as well as the principle of *ne bis in idem*. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly.
- (25) In implementing this Directive, Member States should ensure that the procedural rights of suspected or accused persons in criminal proceedings are observed. In this regard, the obligations under this Directive should not affect Member States obligations under Union law on procedural rights in criminal proceedings, in particular Directives 2010/64/EU³, 2012/13/EU⁴, 2013/48/EU⁵, (EU) 2016/343⁶, (EU) 2016/800⁷ and (EU) 2016/1919⁸ of the European Parliament and of the Council.

³ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁴ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁵ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁶ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁷ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

⁸ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

- (26) In view of the urgent need to hold individuals and legal persons involved in the violation of Union restrictive measures accountable, Member States should bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 12 [...] six months after the entry into force of this Directive.
- (27) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (28) ~~**[non-participation:] In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.**~~

~~**OR [participation:]**~~ In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified, by letter of **3 March 2023**~~---~~, its wish to take part in the adoption and application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and penalties with regard to the violation of Union restrictive measures.

Article 2

Scope and definitions

- (1) This Directive applies to violations of Union restrictive measures. ~~Those Union restrictive measures cover restrictive measures adopted by the Union on the basis of Article 29 TEU or Article 215 TFEU.~~
- ~~(a) measures concerning the freezing of funds and economic resources;~~
 - ~~(b) prohibitions on making funds and economic resources available;~~
 - ~~(c) prohibitions on entry into, or transit through, the territory of a Member State~~
 - ~~(d) sectoral economic and financial measures; and~~
 - ~~(e) arms embargoes.~~

Article 2a
Definitions

- (2) For the purposes of this Directive, the following definitions apply:
- (a) ‘Union restrictive measures’, ~~means~~ **are** restrictive measures adopted by the Union on the basis of Article 29 TEU or Article 215 TFEU;
 - (b) ‘designated person, entity or body’, ~~means a those~~ natural or legal persons, entities or bodies ~~targeted by~~ subject to Union restrictive measures ~~consisting in the freezing of funds and economic resources and the prohibition to make funds and economic resources available~~;
 - (c) ‘funds’ means **financial assets and benefits of every kind, including, but not limited to:**
 - (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (iii) publicly-**traded** and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - (iv) interest, dividends or other income on or value accruing from or generated by assets;
 - (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;

- (vi) letters of credit, bills of lading, bills of sale;
- (vii) documents showing evidence of an interest in funds or financial resources;
- (viii) crypto assets as defined in **the Regulation xxx/2023 on Markets in Crypto-assets;**⁹
- (d) ‘economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;
- (e) ‘freezing of funds’ means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management;
- (f) ‘freezing of economic resources’ means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.
- ~~(g) ‘legal person’ means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.~~

⁹ Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA) ...

Article 3

Violation of Union restrictive measures

- (1) Member States shall take the necessary measures to ensure that the **following conduct** ~~violation of a Union restrictive measure,~~ **in so far as it amounts to an infringement of a prohibition or an obligation set out in a Union restrictive measure or set out in a national provision implementing a Union restrictive measure, where national implementation is required,** constitutes a criminal offence, when committed intentionally. ~~and shall be regarded as a violation of a Union restrictive measure and provided it infringes a prohibition or an obligation included in a Union restrictive measure or, where national implementation of a Union restrictive measure is required, national provisions implementing that measure~~ falls in one of the categories defined in paragraph 2.
- (2) ~~For the purposes of this Directive, the following shall be regarded as violation of a Union restrictive measure:~~
- (a) making funds or economic resources available to, or for the benefit of, a designated person, entity or body in violation of a prohibition **imposed** by a Union restrictive measure;
 - (b) failing to freeze ~~without undue delay~~ funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body in ~~breach~~ **violation** of an obligation ~~to do so imposed by~~ **set out in** a Union restrictive measure;
 - (c) **enabling** the entry of designated natural persons into, **or their transit through**, the territory of a Member State ~~or their transit through the territory of a Member State in violation of a prohibition by a Union restrictive measure~~ **in violation of a prohibition imposed by a Union restrictive measure;**
 - (d) entering into **or continuing** transactions with a third State, bodies of a third State, entities ~~or and~~ bodies owned or controlled by a third State or bodies of a third State, which are prohibited or restricted by Union restrictive measures, **including the award or continued execution of public or concession contracts;**

(e) trading, ~~in goods or services whose~~ **importing, exporting, sale selling, purchasing, transferring, transiting or transporting goods or the provision of providing such services** is prohibited or restricted by Union restrictive measures, as well as providing brokering services, **technical assistance** or other services relating to those goods and services, **in violation of a prohibition imposed by a Union restrictive measure**;

(f) providing financial **services or performing financial** activities which are prohibited or restricted by Union restrictive measures~~], such as financing and financial assistance, providing investment and investment services, issuing transferrable securities and money market instruments, accepting deposits, providing specialised financial messaging services, dealing in banknotes, provide credit rating services, providing crypto-assets and wallets];~~

(g) providing other services which are prohibited or restricted by Union restrictive measures~~], such as legal advisory services, trust services, public relations services, accounting, auditing, bookkeeping and tax consulting services, business and management consulting, IT consulting, public relations services, broadcasting, architectural and engineering services];~~

(h) circumventing a Union restrictive measure by:

(i) ~~concealing~~ **transferring** funds or economic resources owned, held, or controlled by a designated person, entity or body, which ~~are to~~ **should** be frozen in accordance with a Union restrictive measure, ~~by the transfer of those funds, or economic resources to a third party to conceal those funds or economic resources~~;

(ii) **providing false or misleading information, concealing to conceal** the fact that a **designated** person, entity or body ~~subject to restrictive measures~~ is the ultimate owner or beneficiary of funds or economic resources **which are to be frozen in accordance with a Union restrictive measure**, ~~through the provision of false or incomplete~~ **misleading** information;

- (iii) failing by a designated **natural** person, **or by a representative of a designated** entity or body, to comply with an obligation **imposed by** ~~under~~ Union restrictive measures to report 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 **imposed by** ~~under~~ Union restrictive measures to provide ~~without undue delay~~ information **obtained in the performance of professional duty** on **frozen** funds or economic resources ~~frozen~~ or information held about funds **or** ~~and~~ 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, to the competent administrative authorities;
- (v) failing to comply with an obligation **imposed by Union restrictive measures** to cooperate with the competent administrative authorities in any verification of information under points (iii) **or** ~~and~~ (iv), upon their reasoned request, **to the extent that compliance with such a request would not prejudice the right to remain silent and or the privilege against self-incrimination; or**
- (i) breaching or failing to fulfil conditions under authorizations granted by competent authorities to conduct activities, which in the absence of such an authorization are prohibited or restricted under a Union restrictive measure.

(2) — Where the implementation of a prohibition or obligation imposed by under a Union restrictive measure is required in the Member States, references to Union restrictive measures in paragraph 1 shall be understood as references to such national provisions.

(2a) Member States may provide that the violations referred to in paragraph 1, points (a), (b) and (h) of this Article do not constitute a criminal offence where they involve funds or economic resources of a value of less than EUR 10 000.

(2b) Member States may provide that the violations referred to in paragraph 1, points (d) to (g) and (i) of this Article do not constitute a criminal offence where they involve goods, services, transactions or activities of a value of less than EUR 10 000.

(2c) Member States may provide that the violation referred to in paragraph 1, point (c) of this Article does not constitute a criminal offence in minor cases.

~~(3) — The conduct referred to in paragraph 2, points (a) to (g) shall constitute a criminal offence also if committed with serious negligence.~~

~~(4) — Nothing in paragraph 2 shall be understood as imposing obligations on natural persons contrary to the right not to incriminate oneself and to remain silent as enshrined in the Charter of Fundamental Rights of the European Union and Directive (EU) 2016/343.~~

~~(5) — Nothing in paragraph 12 shall be understood as imposing an obligation on legal professionals to report information **that they receive from, or obtain on, one of their clients**, which is obtained in strict connection with judicial, administrative or arbitral proceedings, whether before, during or after judicial proceedings, or in the course of ascertaining the legal position of a **their client, or performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.** Legal advice in those circumstances shall be protected by professional secrecy, except where the legal professional is taking part in the violation of Union restrictive measures, the legal advice is provided for the purposes of violating Union restrictive measures, or the legal professional knows that the client is seeking legal advice for the purposes of violating Union restrictive measures.~~

~~(6) Paragraphs 1, 2 and 3 shall not apply to:~~

- ~~• the provision of goods or services of daily use for the personal use of designated natural persons, such as food and healthcare products and services, or of petty cash, where it is clearly limited to fulfilling the basic human needs of such persons and their dependent family members,~~
- ~~• to the failure to report such activities;~~
- ~~• to humanitarian aid provided for persons in need.~~

~~(6) Member States may provide for duly justified exemptions from criminal liability with a view to defining a proportionate regime applicable to the provision of humanitarian aid or the provision of goods or services to designated natural persons where this is clearly limited to fulfilling their basic human needs.~~

Article 4

Inciting, aiding and abetting, and attempt

- (1) Member States shall take the necessary measures to ensure that inciting, aiding and abetting the offences referred to in Article 3 is punishable as a criminal offence.
- (2) Member States shall take the necessary measures to ensure that the attempt to commit any of the offences referred to in Article 3 (12), points (a), **(d)** to (g), (h)(i) **and (ii) and point (i)**, is punishable as a criminal offence.

Article 5

Criminal penalties for natural persons

- (1) Member States shall ensure that the criminal offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
- (2) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 are punishable by a maximum penalty which provides for imprisonment.
- (3) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(12), points (h)(iii), (iv) and (v), are punishable by a maximum penalty of at least one year of imprisonment when they involve funds or economic resources of a value of at least EUR 100 000. ~~Member States shall ensure that the threshold of EUR 100 000 or more may also be met through a series of linked offences of the same kind referred to in Article 3(12), points (h)(iii), (iv) and (v), when committed by the same offender.~~
- (4) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(12), points (a), ~~(b) to (g)~~, **and** (h)(i) and (ii), ~~and point (i)~~, are punishable by a maximum penalty of at least five years of imprisonment when they involve funds or economic resources of a value of at least EUR 100 000 ~~on the date when the offence was committed].~~ **Member States shall ensure that the threshold of EUR 100 000 or more may also be met through a series of linked offences of the same kind referred to in Article 3(12), points (a) to (g), (h)(i) and (ii), and point (i), by the same offender.**

- (4a) **Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(1), points (d) to (g) and (i), are punishable by a maximum penalty of at least five years of imprisonment when they involve goods, services, transactions or activities of a value of at least EUR 100 000 [on the date when the offence was committed]. [Where the criminal offence referred to in Article 3(12), point (e) involves items included in the Common Military List of the European Union or dual-use items listed in Annexes I and IV to Regulation (EU) 2021/821, Member States shall take the necessary measures to ensure that it is punishable by a maximum penalty of at least five years of imprisonment irrespective of the value of the items involved.]**
- (4b) **Member States shall take the necessary measures to ensure that the threshold of EUR 100 000 or more may also be met through a series of linked offences of the same kind referred to in Article 3(1), when committed by the same offender.**
- (5) Member States shall take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 may be subject to additional **criminal or non-criminal sanctions or measures which may penalties.** ~~Those additional penalties shall include fines.~~

~~[(5a) Where the criminal offences referred to in Article 3(12), points (a), (b) and (h)(i) and (ii) involve funds or economic resources of a value of less than [EUR 10 000] [on the date when the offence was committed], Member States may provide for sanctions other than criminal sanctions.]~~

~~[(5b) Where the criminal offences referred to in Article 3(12), points (d) to (g) and (i) involve goods, services, transactions or activities of a value of less than [EUR 10 000] [on the date when the offence was committed], Member States may provide for sanctions other than criminal sanctions.]~~

Article 6

Liability of legal persons

- (1) Member States shall ~~take the necessary measures to~~ ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 **where such offences have been committed for their benefit by any person who has a leading position within the legal person**, acting either individually or as part of an organ of the legal person, ~~and having a leading position within the legal person~~, based on:
- (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person;
 - (c) an authority to exercise control within the legal person.

- (2) Member States shall also ~~take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission, by a person under its authority, of any of the criminal offences referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.~~
- (3) Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude ~~the possibility of criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.~~

Article 7

Penalties~~Sanctions~~ for legal persons¹⁰

- (1) Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 67 is **punishable by**~~subject to~~ effective, proportionate and dissuasive **criminal or non-criminal sanctions or measures** ~~penalties~~, which shall include criminal or non-criminal fines, ~~exclusion from entitlement to public benefits or aid, exclusion from access to public funding, including tender procedures, grants and concessions~~ and may include other **criminal or non criminal sanctions or measures** ~~penalties~~, such as:
- (a-1) exclusion from entitlement to public benefits or aid;**
- (a-2) exclusion from access to public funding, including tender procedures, grants and concessions;**

¹⁰ The title of the Article has, in the interest of achieving consistency in the Union legislation, been aligned with the terminology used in the recent Union acquis. The Presidency will in due time consult the quality adviser and the lawyer linguists on the terminology to be used in this provision, in order to exclude any risk of confusion with the term “sanctions” as in “sanctions regime”.

- (a) disqualification from the practice of business activities;
- (b) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) closure of establishments, which have been used for committing the criminal offence.
- (2) Member States shall take the necessary measures to ensure that, for legal persons held liable pursuant to Article 76, ~~the criminal~~ offences referred to in Article 3(12) are punishable by **criminal or non-criminal** fines, **the amount of which shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level** ~~limit~~ **of the fines is which should be not less than:**
- (a) 1 percent of the total worldwide turnover of the legal person, **either in the business year preceding the one in which the offence was committed, or** in the business year preceding the fining decision, **for offences referred to** in Article 3(12), points (h) (iii) to (v), **and 5 percent of the total worldwide turnover of the legal person, either in the business year preceding the one in which the offence was committed, or** in the business year preceding the fining decision, **for offences referred to in Article 3(12) points (a) to (g), (h)(i) and (ii), and point (i);**
- or, alternatively**
- (b) **an amount corresponding to EUR 8 million for offences referred to in Article 3(12), points (h) (iii) to (v) and EUR 40 million for offences referred to in Article 3(12) points (a) to (g), (h)(i) and (ii), and point (i).**

When providing for fines pursuant to Article 7(2) point (a), Member States may provide for rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision.

(3) [...]

Article 8

Aggravating circumstances

In so far as the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Articles 3 and 4, Member States shall take the necessary measures to ensure that one or several of the following circumstances may, **in accordance with the relevant provisions of national law**, be regarded as aggravating circumstances:

- (a) the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA¹¹;
- (b) the offence was committed by a professional service provider in violation of his **or her** professional obligations;
- (c) the offence was committed by a public official when performing his or her duties **or another person performing a public function**;
- ~~(d) the offence was committed by another person when performing a public function.~~

¹¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime OJ L 300, 11.11.2008, p. 42-45.

Article 9

Mitigating circumstance

Provided this is not already an obligation under Union restrictive measures, Member States **may** ~~shall~~ take the necessary measures to ensure that, in relation to the offences referred to in Articles 3 and 4 ~~, the following may,~~ **and in accordance with the relevant provisions of national law, be it may be** regarded as a mitigating circumstance: ~~(a) that the offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them to identify or bring to justice the other offenders or ; (b) — the offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them to find evidence.~~

Article 10

Freezing and confiscation

- 1. Member States shall take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3 and 4. Member States bound by Directive 2014/42/EU of the European Parliament and of the Council shall do so in accordance with that Directive.**

2. Member States shall **also** take the necessary measures to **enable the freezing and confiscation of** ~~ensure that~~ funds or economic resources subject to Union restrictive measures in respect of which the designated **natural person, or by the representative of a designated** entity or body, commits or participates in an offence referred to in Article 3 (~~21~~), points (h)(i) or (ii). **Member States shall do so in accordance with the safeguards set out in Directive 2014/42/EU, including the respect for the principle of proportionality in individual cases.** **This paragraph shall not prejudice the rights of bona fide third parties.** ~~Member States shall take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3 and 4. Member States bound by Directive 2014/42/EU of the European Parliament and of the Council shall do so in accordance with that Directive.]~~

Article 11

Jurisdiction rules

- (1) ~~Each~~ Member States shall take the necessary measures to establish **their its** jurisdiction over the criminal offences referred to in Articles 3 and 4 where:
- (a) the criminal offence was committed in whole or in part within its territory, ~~including its airspace;~~
 - (b) the criminal offence was committed on board ~~of any~~ **a ship or an aircraft registered in it or flying its flag** ~~or any vessel under the jurisdiction of a Member State;~~
 - (c) the offender is one of its nationals ~~or habitual residents;~~
 - (d) ~~the offender is one of its officials who acts in his or her official duty;~~

~~(e) the offence is committed for the benefit of a legal person which is established on its territory;~~

~~(f) 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.~~

(1a) A Member State shall inform the Commission where it decides to extend its jurisdiction to one or more offences referred to in Articles 3 and 4 which have been committed outside its territory, where:

(a) the offender is one of its habitual residents;

(b) the offender is one of its officials who acts in his or her official duty;

(c) the offence is committed for the benefit of a legal person which is established on its territory;

(d) 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) Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State, these Member States shall cooperate to determine which Member State is to conduct criminal proceedings. The matter shall, where appropriate, be referred to Eurojust in accordance with Article 12 of Council Framework Decision 2009/948/JHA¹².

(3) In cases referred to in paragraph 1, point (c), Member States shall take the necessary measures to ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following ~~a report made by the victim in the place where the criminal offence was committed~~, or a denunciation from the State of the place where the criminal offence was committed.

¹² Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, OJ L 328 of 15.12.2009, p. 42.

Article 12

Limitation periods

- (1) Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3 and 4 for a sufficient period of time after the commission of those criminal offences, so that those criminal offences can be tackled effectively.
- (2) Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3 and 4 which are punishable by a maximum penalty of at least five years of imprisonment, for a period of at least five years from the time when the offence was committed.
- ~~(3) By way of derogation from paragraph 2, Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that the period may be interrupted or suspended in the event of specified acts.~~
- ~~(4)~~**(3)** Member States shall take the necessary measures to enable the enforcement of:
- (a) a penalty of more than one year of imprisonment; or alternatively
 - (b) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum penalty of at least ~~five~~**four** years of imprisonment,
- imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least five years from the date of the final conviction. ~~That period may include extensions of the limitation period arising from interruption or suspension.~~
- (4) By way of derogation from paragraphs 2 and 3, Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that the period may be interrupted or suspended in the event of specified acts.**

Article 13

Coordination and cooperation between competent authorities within a Member State

Member States shall take the necessary measures to establish appropriate mechanisms for coordination and cooperation ~~at strategic and operational levels~~ among all their competent administrative, law enforcement and judicial authorities.

Such mechanisms **could include** ~~shall be aimed at least at:~~

- (a) ensuring common priorities and understanding of the relationship between criminal and administrative enforcement;
- (b) exchange of information for strategic and operational purposes, **within the limits set out in applicable rules**;
- (c) consultation in individual investigations, **within the limits set out in applicable rules**;
- (d) the exchange of best practices;
- (e) assistance to ~~networks of~~ practitioners working on matters relevant to investigating and prosecuting offences related to the violation of Union restrictive measures,

and may, as appropriate, take the form of specialised coordination bodies, memoranda of understanding between competent authorities, national enforcement networks and joint training activities.

Article 14

Reporting of violations of Union restrictive measures ~~offences~~ and protection of persons who report ~~offences related to the~~ such violations of Union restrictive measures or assist the investigation

Member States shall take the necessary measures to ensure that ~~persons mentioned in Article 4 of the protection granted under~~ Directive (EU) 2019/1937¹³ is applicable to persons ~~the reporting or publicly disclosing information on~~ of violations of Union restrictive measures ~~criminal offences referred to in Articles 3 and 4 of this Directive and to the protection of persons reporting such violations, under the conditions established are granted the legal protection provided for therein.~~

~~Member States shall take the necessary measures to ensure that the protection granted under Directive (EU) 2019/1937¹⁴, is applicable to persons reporting criminal offences referred to in Articles 3 and 4 of this Directive benefit from a regime of protection and reporting mechanisms equivalent to those set out in Directive (EU) 2019/1937.~~

Article 15

Investigative tools

Member States shall take the necessary measures to ensure that effective **and proportionate** investigative tools ~~are~~, such as those which are used in investigating organised crime or other serious crime cases, ~~are also~~ available for investigating or prosecuting offences referred to in Articles 3 and 4. **Where those offences are serious, special investigative tools, such as those used in countering organised crime, shall be available.**

¹³ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56.

¹⁴ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56.

Article 16

Cooperation between Member States' authorities, the Commission, Europol, Eurojust and the European Public Prosecutor's Office

- (1) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States' authorities, Europol, Eurojust, the European Public Prosecutor's Office, and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3 and 4. To that end, the Commission, and where appropriate, Europol and Eurojust, shall provide technical and operational assistance in order to facilitate the coordination of investigations and prosecutions by the competent authorities.
- (2) Member States' competent authorities shall also regularly share information on practical issues, in particular, patterns of circumvention, e.g. structures to conceal the beneficial ownership and control of assets, with the Commission and other competent authorities.

Article 17

Amendments to Directive (EU) 2018/1673

In Article 2(1) of Directive (EU) 2018/1673, the following point is added:

‘(w) violation of Union restrictive measures’.

Article 18

Transposition

- (1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP- please insert the data- within ~~six~~ **12** months after entry into force of the Directive]. They shall immediately inform the Commission thereof. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by the Directive.

- (2) When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The method of making such a reference shall be laid down by Member States.

Article 19

Evaluation and reporting

- (1) By [OP- please insert the date- two years after the transposition period is over] the Commission shall submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive. Member States shall provide the Commission with the necessary information for the preparation of that report.
- (2) Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the criminal offences referred to in Articles 3 and 4 to the Commission, **if they are available at a central level in the Member State concerned:**
- (a) the number of criminal proceedings initiated, dismissed, resulting in an acquittal, resulting in a conviction and ongoing;
 - (b) the types and levels of penalties **and sanctions** imposed for violation of Union restrictive measures.
- (3) Member States shall submit the statistical data referred to in paragraph 2 to the Commission using the dedicated reporting tools set up by the Commission for reporting in the field of restrictive measures.
- (4) By [OP-please insert the data-five years after the transposition period is over], the Commission shall carry out an evaluation of the impact of this Directive and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of that report.

Article 20

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President