

Amendment 92**Juan Fernando López Aguilar**

on behalf of the Committee on Civil Liberties, Justice and Home Affairs

Report**A9-0235/2023****Sophia in 't Veld**

Definition of criminal offences and penalties for the violation of Union restrictive measures (COM(2022)0684 – C9-0401/2022 – 2022/0398(COD))

Proposal for a directive

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AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

DIRECTIVE (EU) 2024/...**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of ...****on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673**

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 Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union¹, and in particular Article 1 thereof,

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■** .

¹ OJ L 308, 29.11.2022, p. 18.

Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee²,
Acting in accordance with the ordinary legislative procedure³,

² OJ C 184, 25.5.2023, p. 59.

³ Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)] and decision of the Council of

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 for 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 preserving peace, preventing conflicts and strengthening international security in accordance 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 criminal and non-criminal penalties in place for the violation of those Union restrictive measures, including obligations, such as that of 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 necessitates common minimum rules concerning the definitions of criminal conduct violating Union restrictive measures. Member States should ensure that such conduct constitutes a criminal offence when it is intentional and in violation of a prohibition or an obligation that constitutes a Union restrictive measure or that is set out in a national provision implementing a Union restrictive measure, where national implementation of that measure is required. Certain conduct should constitute a criminal offence also if carried out with serious negligence. With regard to the criminal offences defined in this Directive, the notion of ‘serious negligence’ should be interpreted in accordance with national law, taking into account relevant case law of the Court of Justice of the European Union. Member States should be able to decide that violations of Union restrictive measures involving funds, economic resources, goods, services, transactions or activities of a value of less than EUR 10 000 do not constitute criminal offences. The exclusion of certain violations from the scope of this Directive does not affect any obligations laid down in acts setting out Union restrictive measures to ensure that violations are punishable by effective, proportionate and dissuasive criminal or non-criminal penalties.

- (5) Acts setting out Union restrictive measures can provide for exceptions from the prohibitions laid down therein in the form of exemptions or derogations. Conduct either covered by an exemption provided for in an act setting out Union restrictive measures or authorised by the competent authorities of the Member States by means of a derogation in accordance with the acts setting out Union restrictive measures should not be regarded as a violation of a Union restrictive measure.
- (6) In particular, the effective application of Union restrictive measures necessitates common minimum rules for the violations of measures consisting in freezing funds or economic resources as laid down in the relevant Council Regulations. Those 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 measures consisting in freezing funds or economic resources, 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.
- (7) Union restrictive measures include 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 designated persons from entering into, or transiting through, all zones of the territory of a Member State.

- (8) Member States are encouraged to pay particular attention to the mechanisms for granting nationality and residence, in order to prevent individuals subject to Union restrictive measures from using those mechanisms for violating such Union restrictive measures.
- (9) Entering into or continuing any form of transaction, including financial transactions, as well as the award or continued execution of any public or concession contract falling within the scope of Directives 2009/81/EC⁴, 2014/23/EU⁵, 2014/24/EU⁶ or 2014/25/EU⁷ of the European Parliament and of the Council, with a third State, bodies of a third State or entities and bodies directly or indirectly owned or controlled by a third State or bodies of a third State, should constitute a criminal offence, where the prohibition or restriction of that conduct constitutes a Union restrictive measure.

⁴ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

⁵ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁷ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

- (10) Union restrictive measures include the prohibition of trading, importing, exporting, selling, purchasing, transferring, transiting or transporting goods or services. The violation of such prohibitions should constitute a criminal offence, including where the goods are imported or exported from or to a third country in order to have them transferred to a destination in regard to which the prohibition to import, export, sell, purchase, transfer, transit or transport those goods constitutes a Union restrictive measure. The provision, directly or indirectly, of technical assistance, brokering services, insurance, and any other service related to those goods or services, should also constitute a criminal offence. For that 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 adopted by the Council on 20 February 2023⁸ or are listed in Annexes I and IV to Regulation (EU) 2021/821 of the European Parliament and of the Council⁹.

⁸ OJ C 72, 28.2.2023, p. 2.

⁹ Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ L 206, 11.6.2021, p. 1).

- (11) Union restrictive measures include sectoral economic and financial measures on the provision of financial services or the performance of financial activities. Such financial services and activities include but are not limited to financing and financial assistance, providing investment and investment services, issuing transferable securities and money market instruments, accepting deposits, providing specialised financial messaging services, dealing in banknotes, providing credit rating services, and providing crypto-assets and wallets. The violation of those sectoral economic and financial measures should constitute a criminal offence.
- (12) Union restrictive measures include sectoral economic and financial measures on the provision of services other than financial services. 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. The violation of those sectoral economic and financial measures should constitute a criminal offence.
- (13) ***None of the provisions of this Directive should be understood as imposing any obligations on natural persons that would prejudice the right not to incriminate oneself and to remain silent, as enshrined in Article 7 of Directive (EU) 2016/343 of the European Parliament and of the Council¹⁰, for the Member States bound by it, and in Article 48 of the Charter of Fundamental Rights of the European Union (the ‘Charter’).***

¹⁰ 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).

- (14) The effective application of Union restrictive measures necessitates common minimum rules concerning the definition of criminal offences consisting of conduct circumventing Union restrictive measures.
- (15) An example of conduct circumventing Union restrictive measures that is increasingly widespread is the practice by designated persons, entities and bodies of using, transferring to a third party or otherwise disposing of funds or economic resources directly or indirectly owned, held or controlled by those designated persons, entities or bodies in order to conceal those funds or economic resources. Furthermore, the practice of providing false or misleading information, including incomplete relevant information, in order to conceal that a designated person, entity or body 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, that conduct circumventing Union restrictive measures should constitute a criminal offence under this Directive.

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- (16) ***Failure to comply with an obligation to report to the competent administrative authorities laid down by acts setting out Union restrictive measures should constitute a criminal offence under this Directive.***
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- (17) The effective application of Union restrictive measures necessitates common minimum rules concerning the definition of criminal offences consisting of conduct breaching or failing to fulfil the specific conditions under authorisations granted by the competent authorities to carry out certain activities, which in the absence of such an authorisation amount to a violation of a prohibition or restriction that constitutes a Union restrictive measure. Any activity conducted in the absence of an authorisation could be considered, depending on the circumstances of the case, a violation of Union restrictive measures that consist in freezing funds or economic resources, travel bans, arm embargoes or other sectoral economic and financial measures.
- (18) 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. 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 that they receive from, or obtain on, one of their clients, in the course of ascertaining their legal position or performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings. Therefore, such legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is intentionally taking part in the violation of Union restrictive measures, where the legal advice is provided for the purposes of violating Union restrictive measures, or where the legal professional knows that the client is seeking legal advice for the purposes of violating Union restrictive measures.

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- (19) Union restrictive measures should not result in the discrimination against clients of credit and financial institutions or in their undue exclusion from access to financial services.
- (20) This Directive does not intend to criminalise humanitarian assistance for persons in need or activities in support of basic human needs provided in accordance with the principles of impartiality, humanity, neutrality and independence, and where applicable, with international humanitarian law.
- (21) Inciting, and aiding and abetting the commission of a criminal offence under this Directive should be criminalised. The attempt to commit certain criminal offences under this Directive should also be criminalised.
- (22) Penalties for natural persons for the criminal offences related to the violation of Union restrictive measures as defined in this Directive should be effective, dissuasive and proportionate. To that end, minimum levels for the maximum term of imprisonment should be set for natural persons. Accessory penalties or measures should also be available in criminal proceedings.

(23) Given that legal persons are also subject to Union restrictive measures, such legal persons should be held liable for offences related to the violation of Union restrictive measures as defined in 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. In order to achieve the objectives of this Directive, Member States which law provides for the criminal liability of legal persons should ensure that their law provides for effective, dissuasive and proportionate types and levels of criminal penalties as laid down in this Directive. In order to achieve the objectives of this Directive, Member States which law does not provide for the criminal liability of legal persons should ensure that their law provides for effective, dissuasive and proportionate types and levels of non-criminal penalties as laid down in this Directive. The maximum levels of fines provided for in this Directive for the offences defined in it should apply at least to the most serious forms of such offences. It is important that the gravity of the conduct, as well as the individual, financial and other circumstances of the legal persons concerned are taken into account to ensure that the penalty imposed is effective, dissuasive and proportionate. Member States should be able to set the maximum levels of fines either as a percentage of the total worldwide turnover of the legal person concerned, or in fixed amounts. Member States should decide which of those two options they will use, when transposing this Directive.

- (24) Where Member States, in the determination of fines to be imposed on legal persons, opt to implement the criterion of the total worldwide turnover of a legal person, they should decide whether to calculate that turnover based on the business year preceding that in which the criminal offence was committed, or on the business year preceding that of the decision to impose the fine. Member States should also consider establishing rules for cases where it is not possible to set the amount of a fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the criminal offence was committed, or in the business year preceding that of the decision to impose the fine. In such cases, Member States should be able to take into account other criteria, such as the total worldwide turnover in a different business year. Where those rules include the setting of fixed amounts of fines, it should not be necessary for the maximum level of those amounts to reach the levels established in this Directive as the minimum requirement for the maximum level of fines set in fixed amounts.

- (25) Where Member States opt for a maximum level of fines set in fixed amounts, such levels should be laid down in national law. The highest levels of such fines should apply to the most serious forms of criminal offences defined in this Directive committed by legal persons of financial strength. Member States should be able to determine the method of calculation of those highest levels of fines, including specific conditions therefor. Member States are invited to regularly review the levels of fines set in fixed amounts having regard to rates of inflation and other fluctuations in monetary value, in accordance with procedures laid down 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 that correspond to the levels determined in this Directive in euro on the date of its entry into force. Those Member States are invited to regularly review the levels of fines also with regard to the development of the exchange rate.
- (26) The establishment of the maximum level of fines is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate penalties in individual cases. As this Directive does not establish any minimum levels of fines, the judges or courts should, in any case, impose appropriate penalties taking into account the individual, financial and other circumstances of the legal person concerned and the gravity of the conduct.

(27) Penalties levels imposed should be further approximated and the effectiveness of such levels should be fostered through introducing common aggravating circumstances that, in accordance with relevant provisions of national law, reflect the gravity of the criminal offence committed. The notion of ‘aggravating circumstances’ should be understood either as facts enabling the national judge or court to pronounce more severe sentences for the same offence than the sentence normally imposed without such facts, or as the possibility to treat several criminal offences cumulatively in order to increase the level of the penalty. Member States should ensure, in accordance with national law, that at least one of the following can be regarded as aggravating circumstances: where the offence was committed in the framework of a criminal organisation as defined in Council Framework Decision 2008/841/JHA¹¹; where the offence involved false or forged documents; where the offence was committed by a professional service provider in violation of the professional obligations of such professional service provider; where the offence was committed by a public official when performing his or her duties, who can be any relevant official, whether holding a formal office in the Union, in the Member States or in third countries, or another person performing a public function; where the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly; where the offender destroyed evidence, or intimidated or influenced witnesses or complainants; or where the natural or legal person had previously been definitively convicted. Member States should ensure that at least one of those aggravating circumstances is provided for as a possible aggravating circumstance in accordance with applicable rules in 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 the specific circumstances in each individual case.

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).

- (28) Member States should ensure, in accordance with national law, that at least one of the following can be regarded as mitigating circumstances: 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 where the offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them to find evidence. In the assessment of mitigating circumstances, it should remain within the discretion of the judge or the court to determine whether to decrease the sentence, taking into account the specific circumstances in each individual case. Those circumstances could include the nature, timing and extent of the information provided and the level of cooperation provided by the offender.
- (29) 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 of the European Parliament and of the Council¹². 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.

In addition, specifically in situations in which the designated person, or the representative of a designated entity or body, commits or participates in certain offences concerning the circumvention of a Union restrictive measure, ***there is a need to enable the freezing and confiscation of funds and economic resources subject to Union restrictive measures, even where they might 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 can 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 Directive 2014/42/EU. The rights of bona fide third parties should not be prejudiced.

¹² 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).

- (30) Member States should lay down rules concerning limitation periods necessary to combat the criminal 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. Member States are permitted under this Directive to establish limitation periods shorter than those laid down in this Directive, provided that in their legal systems it is possible to interrupt or suspend such shorter limitation periods in the event of acts which can be specified in accordance with national law.
- (31) Given, in particular, the global activities of the offenders, together with the cross-border nature of the criminal offences defined in this Directive and the possibility of cross-border investigations being carried out, Member States should establish jurisdiction in order to combat such offences effectively.

- (32) To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States should make available to competent authorities effective investigative tools such as those available under their national law for combatting organised crime or other serious crime cases, if and to the extent that the use of those tools is appropriate and proportionate to the nature and gravity of the criminal offences as provided for in national law. Such tools could include the interception of communications, covert surveillance, including electronic surveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools. Those tools should be used in line with the principle of proportionality and in full respect of the Charter. It is imperative that the right to the protection of personal data be respected.
- (33) Persons referred to in Article 4 of Directive (EU) 2019/1937 of the European Parliament and of the Council¹³ reporting 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. Such reporting persons' reports can strengthen the enforcement of Union restrictive measures by providing information 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 reporting persons 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 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.

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).

- (34) To ensure an effective, integrated and coherent enforcement system, Member States should organise internal cooperation and communication between all their competent authorities involved in administrative and criminal enforcement.
- (35) To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States' competent authorities should cooperate with each other through and with Europol, Eurojust and the European Public Prosecutor's Office, within their respective competences and in accordance with the applicable legal framework. Member States' competent authorities should also share information among each other and with the Commission on practical issues. The Commission, where necessary, could establish a network of experts and practitioners to share best practices and provide assistance to Member States' competent authorities in order to facilitate the investigation of offences related to the violation of Union restrictive measures. Such assistance should not entail the participation of the Commission in the investigation and prosecution of individual criminal cases conducted by Member States' competent authorities and should not be understood as including financial support or any other budgetary commitment by the Commission.

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(36) To effectively address the criminal offences defined in this Directive, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable statistical data on those offences. Member States should therefore ensure that an adequate system is in place for the recording, production and transmission of existing statistical data on the offences defined in this Directive. It is important that those statistical data are used by Member States to serve the strategic and operational planning of enforcement activities, to analyse the scale of and trends in offences related to the violation of Union restrictive measures, as well as for providing information to citizens. Member States should transmit to the Commission relevant statistical data on proceedings related to the violation of Union restrictive measures, extracted from data that already exist at a centralised or decentralised level within the whole Member State. The Commission should regularly assess and publish in a report the results of its assessment based on the statistical data transmitted by the Member States.

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(37) An amendment to Directive (EU) 2018/1673 of the European Parliament and of the Council¹⁴ should ensure that the violation of Union restrictive measures will be considered a predicate offence for money laundering in accordance with that Directive.

¹⁴ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

- (38) 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 months from the date of entry into force of this Directive.
- (39) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.■
- (40) 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.

(41) Since the objectives of this Directive, namely to establish 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 criminal offences related to the violation of Union restrictive measures cannot be sufficiently achieved by the Member States taking into account the inherent cross-border nature of the violation of Union restrictive measures and its potential to undermine the achievement of the Union objectives to safeguard international peace and security as well as to uphold Union common values, but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in 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 those objectives.

- (42) 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/EU¹⁵, 2012/13/EU¹⁶, 2013/48/EU¹⁷, (EU) 2016/343, (EU) 2016/800¹⁸ and (EU) 2016/1919¹⁹ of the European Parliament and of the Council.
- (43) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter, including the right 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 right of defence, including the right not to incriminate oneself and to remain silent, the principles of legality and proportionality of criminal offences and penalties, including the principle of non-retroactivity of criminal penalties, as well as the principle of *ne bis in idem*. This Directive seeks to ensure full respect for those rights and principles and is to be implemented accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹⁵ 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).

¹⁶ 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).

¹⁷ 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).

¹⁸ 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).

¹⁹ 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).

Article 1

Subject matter and scope

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

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘Union restrictive measures’ means restrictive measures adopted by the Union on the basis of Article 29 TEU or Article 215 TFEU;
- (2) ‘designated person, entity or body’ means a natural or legal person, entity or body subject to Union restrictive measures;
- (3) ‘funds’ means financial assets and benefits of every kind, including, but not limited to:
 - (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (c) publicly-traded and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

- (d) interest, dividends or other income on assets or value accruing from or generated by assets;
 - (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - (f) letters of credit, bills of lading, bills of sale;
 - (g) documents showing evidence of an interest in funds or financial resources;
 - (h) ***crypto-assets as defined in Article 3(1), point (5), of Regulation (EU) 2023/1114 of the European Parliament and of the Council²⁰***
- (4) ‘economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;
- (5) ‘freezing of funds’ means preventing the move, transfer, alteration or use of funds or access to funds, or dealing with funds in a way that would result in a change in their volume, amount, location, ownership, possession, character, destination or in a change that would enable the funds to be used, including portfolio management;
- (6) ‘freezing of economic resources’ means preventing the use of economic resources to obtain funds, goods or services, including, but not limited to, by selling, hiring or mortgaging them.

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²⁰ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40).

Article 3

Violation of Union restrictive measures

1. Member States shall ensure that, where it is intentional and in violation of a prohibition or an obligation that constitutes a Union restrictive measure or that is set out in a national provision implementing a Union restrictive measure, where national implementation is required, the following conduct constitutes a criminal offence:



- (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;

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- (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;

2. Member States may provide that the following conduct does not constitute a criminal offence:

- (a) conduct listed in paragraph 1, points (a), (b) and (h) of this Article, where that conduct involves funds or economic resources of a value of less than EUR 10 000;
- (b) conduct listed in paragraph 1, points (d) to (g) and (i) of this Article, where that conduct involves goods, services, transactions or activities of a value of less than EUR 10 000.

Member States shall take the necessary measures to ensure that the threshold of EUR 10 000 or more may be met through a series of conduct listed in paragraph 1, points (a), (b), and (d) to (i) of this Article, that is linked and of the same kind, where that conduct is carried out by the same offender.

3. Member States shall ensure that the conduct listed in paragraph 1, point (e) of this Article, constitutes a criminal offence also if committed with serious negligence, at least where that conduct relates to items included in the Common Military List of the European Union or to dual use items listed in Annex I and IV to Regulation (EU) 2021/821.

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5. Nothing in paragraph 1 shall be understood as imposing an obligation on legal professionals to report information that they receive from, or obtain on, one of their clients in the course of ascertaining the legal position of that 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.
6. Nothing in paragraphs 1, 2 and 3 shall be understood as criminalising humanitarian assistance for persons in need or activities in support of basic human needs provided in accordance with the principles of impartiality, humanity, neutrality and independence and, where applicable, with international humanitarian law.



Article 4

Inciting, aiding and abetting, and attempt

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

Article 5

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 of imprisonment.
3. Member States shall take the necessary measures to ensure that:
 - (a) the criminal offences covered by Article 3(1), points (h)(iii) and (iv), are punishable by a maximum term of imprisonment of at least one year where those criminal offences involve funds or economic resources of a value of at least EUR 100 000 on the date when the offence was committed;
 - (b) the criminal offences covered by Article 3(1), points (a), (b) and points (h)(i) and (ii), are punishable by a maximum term of imprisonment of at least five years where those criminal offences involve funds or economic resources of a value of at least EUR 100 000 on the date when the offence was committed;
 - (c) the criminal offence covered by Article 3(1), point (c), is punishable by a maximum term of imprisonment of at least three years;

- (d) criminal offences covered by Article 3(1), points (d) to (g), and point (i), are punishable by a maximum term of imprisonment of at least five years where those criminal offences involve goods, services, transactions or activities of a value of at least EUR 100 000 on the date the offence was committed;
 - (e) where the criminal offence covered by Article 3(1), point (e) of this Regulation, 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, such criminal offence is punishable by a maximum term of imprisonment of at least five years irrespective of the value of the items involved.
4. Member States shall take the necessary measures to ensure that the threshold of EUR 100 000 or more may be met through a series of offences covered by Article 3(1), points (a), (b) and points (d) to (i), that are linked and of the same kind, where those offences are committed by the same offender.
5. Member States shall take the necessary measures to ensure that natural persons who have committed the criminal offences referred to in Articles 3 and 4 may be subject to accessory criminal or non-criminal penalties or measures which may include the following:
- (a) fines that are proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the natural person concerned;

- (b) withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence;
- (c) disqualification from holding, within a legal person, a leading position of the same type used for committing the criminal offence;
- (d) temporary bans on running for public office;
- (e) where there is a public interest, following a case-by-case assessment, publication of all or part of the judicial decision that relates to the criminal offence committed and the penalties or measures imposed, which may include the personal data of convicted persons only in duly justified exceptional cases.

Article 6

Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for criminal offences referred to in Articles 3 and 4 where such offences have been committed for the benefit of those legal persons by any person who has a leading position within the legal person concerned, acting either individually or as part of an organ of that 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; or
 - (c) an authority to exercise control within the legal person.

2. Member States shall 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 a criminal offence referred to in Articles 3 and 4 for the benefit of that legal person.
3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not preclude criminal proceedings against natural persons who commit, incite or are accessories in to the criminal offences referred to in Articles 3 and 4.

Article 7

Penalties for legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive criminal or non-criminal penalties or measures, which shall include criminal or non-criminal fines and may include other criminal or non-criminal penalties or measures, such as:
 - (a) exclusion from entitlement to public benefits or aid;
 - (b) exclusion from access to public funding, including tender procedures, grants and concessions;
 - (c) disqualification from the practice of business activities;
 - (d) withdrawal of permits and authorisations to pursue activities which have resulted in the relevant criminal offence;
 - (e) placing under judicial supervision;

- (f) judicial winding-up;
- (g) closure of establishments used for committing the criminal offence;
- (h) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 for criminal offences referred to in Article 3(1) is punishable by criminal or non-criminal fines, the amount of which shall be proportionate to the gravity 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 of such fines is not less than:

- (a) for criminal offences covered by Article 3(1), points (h)(iii) and (iv):
 - (i) 1 % of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine, or
 - (ii) an amount corresponding to EUR 8 000 000;
- (b) for criminal offences covered by Article 3(1) points (a) to (g), points (h)(i) and (ii), and point (i):
 - (i) 5 % of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine, or
 - (ii) an amount corresponding to EUR 40 000 000.

Member States may establish 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 that in which the offence was committed, or in the business year preceding the decision to impose the fine.

Article 8

Aggravating circumstances

To the extent that the following circumstances do not 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 more of the following circumstances can, in accordance with national law, be regarded as an aggravating circumstance:

(a) the offence was committed in the framework of a criminal organisation as defined in Council Framework Decision 2008/841/JHA;

(b) the offence involved the use by the offender of false or forged documents;

(c) the offence was committed by a professional service provider in violation of the professional obligations of such professional service provider;

(d) the offence was committed by a public official when performing his or her duties or by another person performing a public function;

- (e) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, to the extent that such benefits or expenses can be determined;
- (f) the offender destroyed evidence, or intimidated witnesses or complainants;
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- (g) the natural or legal person had previously been convicted by a final judgment of offences covered by Articles 3 and 4.

Article 9

Mitigating circumstances

Member States shall take the necessary measures to ensure that, in relation to the relevant criminal offences referred to in Articles 3 and 4, one or more of the following circumstances can, in accordance with national law, be regarded as a mitigating circumstance:

- (a) 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;
- (b) the offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them to find evidence.

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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 take those necessary measures in accordance with that Directive.
2. ***Member States shall take the necessary measures to enable the freezing and confiscation of funds or economic resources subject to Union restrictive measures in respect of which the designated natural person, or the representative of a designated entity or body, commits, or participates in, an offence covered by Article 3(1), point (h)(i) or (ii).*** Member States shall take those necessary measures in accordance with Directive 2014/42/EU.

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Article 11

Limitation periods

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and adjudication of criminal offences referred to in Articles 3 and 4 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.
2. The limitation period referred to in paragraph 1 shall be of at least five years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least five years.
3. **█** Member States shall take the necessary measures to provide for a limitation period of at least five years from the date of the final conviction for a criminal offence referred to in Articles 3 and 4 that enables the enforcement of the following penalties imposed following that conviction :
 - (a) a penalty of imprisonment of more than one year; or
 - (b) a penalty of imprisonment for a criminal offence punishable by a maximum term of imprisonment of at least five years.
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 such limitation period may be interrupted or suspended in the event of specified acts.

Article 12
Jurisdiction

1. Each Member State shall take the necessary measures to establish 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;
 - (b) the criminal offence was committed on board a ship or an aircraft registered in the Member State concerned or flying its flag;
 - (c) the offender is one of its nationals.

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2. A Member State shall inform the Commission where it decides to extend its jurisdiction to one or more criminal offences referred to in Articles 3 and 4 which have been committed outside its territory, where:
 - (a) the offender is a habitual resident in its territory;
 - (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 in 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.
3. Where a criminal offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State, those 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(2) of Council Framework Decision 2009/948/JHA²¹.
4. 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 prosecution can be initiated only following a denunciation from the State of the place where the criminal offence was committed.

²¹ 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 13

Investigative tools

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

Article 14

Reporting of violations of Union restrictive measures and protection of persons who report such violations

Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937 is applicable to the reporting of violations of Union restrictive measures referred to in Articles 3 and 4 of this Directive and to the protection of persons reporting such violations, under the conditions established therein.

Article 15

Coordination and cooperation between competent authorities within a Member State

Member States shall designate, from among their competent authorities and without prejudice to judicial independence, a unit or body for ensuring coordination and cooperation between law enforcement authorities and authorities in charge of implementing Union restrictive measures, in relation to the criminal activities covered by this Directive.

The unit or body referred to in the first subparagraph shall have the following tasks:

- (a) to ensure common priorities and understanding of the relationship between criminal and administrative enforcement;
- (b) to exchange information for strategic purposes, within the limits set out in applicable Union and national law;
- (c) consultation in individual investigations, within the limits set out in applicable Union and national law.

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Article 16

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

1. Where the criminal offences referred to in Articles 3 and 4 are suspected to be of a cross-border nature, the competent authorities of the Member States concerned shall consider referring the information related to those criminal offences to appropriate competent bodies.

Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States, 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, Europol and Eurojust shall, where appropriate, provide the technical and operational assistance needed by the competent national authorities to facilitate the coordination of their investigations.

2. The Commission may, where necessary, establish a network of experts and practitioners to share best practices and, where appropriate, provide assistance to the competent authorities of Member States in order to facilitate the investigation of offences related to the violation of Union restrictive measures. That network, where appropriate, may also provide a publicly available and regularly updated mapping of the risks of violations or circumvention of Union restrictive measures in specific geographic areas, and with respect to specific sectors and activities.

3. Where the cooperation referred to in paragraph 1 involves cooperation with the competent authorities of third countries, that cooperation should take place with full respect of fundamental rights and international law.
4. Member States' competent authorities shall on a frequent and regular basis share information on practical issues, in particular, on patterns of circumvention, such as structures to conceal the beneficial ownership and control of assets, with the Commission and other competent authorities.

Article 17
Statistical data

1. Member States shall ensure that a system is in place for the recording, production and provision of anonymised statistical data on the reporting, investigative and judicial stages in relation to the criminal offences referred to in Articles 3 and 4 in order to monitor the effectiveness of their measures to combat the violation of Union restrictive measures.
2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit to the Commission statistical data on the criminal offences referred to in Articles 3 and 4, which shall, as a minimum, include existing data on:
 - (a) the number of criminal offences registered and adjudicated by the Member States;
 - (b) the number of dismissed court cases, including on the grounds of expiry of the limitation period *for the criminal offence concerned*;
 - (c) the number of natural persons that are:
 - (i) prosecuted,
 - (ii) convicted;
 - (d) the number of legal persons that are:
 - (i) prosecuted,
 - (ii) convicted or fined;
 - (e) the types and levels of penalties imposed.
3. Member States shall ensure that a consolidated review of their statistics is published at least every three years.

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Article 18

Amendment to Directive (EU) 2018/1673

In Article 2(1), the following point is added:

‘(w) violation of Union restrictive measures.’.

Article 19

Evaluation, reporting and review

1. The Commission shall, by... [three years from the date of entry into force of this Directive], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive. Member States shall provide the Commission with the necessary information for the preparation of that report.
2. The Commission shall, by... [six years from the date of entry into force of this Directive], carry out an evaluation of the impact and effectiveness of this Directive, taking into account the annual statistical data provided by the Member States, addressing the need to update the list of the criminal offences related to the violation of Union restrictive measures, 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. Where necessary, that report shall be accompanied by a legislative proposal.

Article 20
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [12 months from the date of entry into force of this Directive]. They shall immediately inform the Commission thereof.

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.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 21

Entry into force

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

Article 22

Addressees

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

Done at ...,

For the European Parliament

The President

For the Council

The President

Or. en