













Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2022/0398(COD) Procedure completed, awaiting publication in Official Journal
Definition of criminal offences and penalties for the violation of Union restrictive measures	
Subject 6.10.05 Peace preservation, humanitarian and rescue tasks, crisis management 6.10.08 Fundamental freedoms, human rights, democracy in general 7.30.30 Action to combat crime 7.40.04 Judicial cooperation in criminal matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs	 IN 'T VELD Sophia	28/03/2023
		Shadow rapporteur	
		 LÓPEZ GIL Leopoldo	
		 REUTEN Thijs	
		 BRICMONT Saskia	
		 VISTISEN Anders	
		 JAKI Patryk	
		 DALY Clare	
		Committee for opinion	Rapporteur for opinion
 Budgets	 GHEORGHE Vlad	28/03/2023	
 Economic and Monetary Affairs	The committee decided not to give an opinion.		
 Legal Affairs	The committee decided not to give an opinion.		
Council of the European Union	Commission DG	Commissioner	

Key events

02/12/2022	Legislative proposal published	COM(2022)0684	Summary
12/12/2022	Committee referral announced in Parliament, 1st reading		
06/07/2023	Vote in committee, 1st reading		
06/07/2023	Committee decision to open interinstitutional negotiations with report adopted in committee		
07/07/2023	Committee report tabled for plenary, 1st reading	A9-0235/2023	Summary
10/07/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/07/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
23/01/2024	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE758.098 GEDA/A/(2023)007162	
11/03/2024	Debate in Parliament		
12/03/2024	Decision by Parliament, 1st reading	T9-0125/2024	Summary
12/04/2024	Act adopted by Council after Parliament's 1st reading		
24/04/2024	Final act signed		

Technical information

Procedure reference	2022/0398(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 083-p1-a1; Treaty on the Functioning of the EU TFEU 83-p1-a3
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed, awaiting publication in Official Journal
Committee dossier	LIBE/9/10833

Documentation gateway

Legislative proposal	COM(2022)0684	02/12/2022	EC	Summary
Economic and Social Committee: opinion, report	CES3748/2022	22/03/2023	ESC	
Committee draft report	PE746.946	03/05/2023	EP	
Amendments tabled in committee	PE749.179	26/05/2023	EP	

Committee opinion	BUDG	PE746.791	12/06/2023	EP	
Committee report tabled for plenary, 1st reading/single reading		A9-0235/2023	07/07/2023	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2023)007162	20/12/2023	CSL	
Text agreed during interinstitutional negotiations		PE758.098	23/02/2024	EP	
Text adopted by Parliament, 1st reading/single reading		T9-0125/2024	12/03/2024	EP	Summary
Draft final act		00095/2023/LEX	24/04/2024	CSL	

Definition of criminal offences and penalties for the violation of Union restrictive measures

PURPOSE: to ensure common definitions for offences related to the violation of EU restrictive measures and the availability of effective, dissuasive and proportionate criminal penalties for serious offences related to the violation of Union restrictive measures.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: EU restrictive measures, such as measures concerning the freezing of funds and economic resources, prohibitions on making funds and economic resources available, prohibitions on entry into or transit through the territory of a Member State, as well as sectoral economic measures and arms embargoes, are an essential tool for the promotion of the objectives of the Common Foreign and Security Policy as set out in Article 21 of the Treaty on European Union.

Those objectives include safeguarding the Unions 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.

Currently, the EU has over 40 sets of restrictive measures in place. Some of these implement restrictive measures adopted by the United Nations; others are adopted autonomously by the EU.

As the adoption of Union restrictive measures has intensified over recent decades, so too have the schemes to circumvent them. The Commission has previously pointed to inconsistent enforcement of restrictive measures and the fact that this undermines their efficacy and the EU's ability to speak with one voice. Speaking with one voice has become particularly urgent in the current context of Russia's military aggression against Ukraine.

In the absence of harmonisation at EU level, national systems differ considerably with regard to the criminalisation of the violation of EU law on EU restrictive measures. Penalty systems also differ significantly between Member States, as do the maximum fines that can be imposed (which range from EUR 1200 to EUR 5 million).

In practice, very few individuals or legal persons responsible for violations of EU restrictive measures are actually held accountable. In many Member States, insufficient priority is given to the investigation and prosecution of violations of EU restrictive measures.

Against this background, following a European Commission [proposal](#) presented on 25 May 2022, the Council has decided to identify the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) TFEU. This has enabled the Commission to adopt this proposal for a Directive under the ordinary legislative procedure, which aims to approximate the definition of criminal offences and penalties for the violation of Union restrictive measures.

CONTENT: the aim of this proposal is to establish minimum rules concerning the definition of criminal offences and penalties with regard to the violation of Union restrictive measures. It seeks to: (i) approximate definitions of criminal offences related to the violation of Union restrictive measures; (ii) ensure effective, dissuasive and proportionate penalty types and levels for criminal offences related to the violation of Union restrictive measures; (iii) foster cross-border investigation and prosecution; and (iv) improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning.

The main elements of the proposal are as follows:

(1) A list of criminal offences, which violate EU sanctions, such as:

- making funds or economic resources available to, or for the benefit of, a designated person, entity or body;
- failing to freeze these funds;
- enabling the entry of designated people into the territory of a Member State or their transit through the territory of a Member State;
- entering into transactions with third countries, which are prohibited or restricted by EU restrictive measures;
- trading in goods or services whose import, export, sale, purchase, transfer, transit or transport is prohibited or restricted;
- providing financial activities which are prohibited or restricted; or
- providing other services which are prohibited or restricted, such as legal advisory services, trust services and tax consulting services.

- circumvention of an EU restrictive measure: this means bypassing or attempting to bypass restrictive measures by concealing funds or concealing the fact that a person is the ultimate owner of funds.

(2) Minimum standards for criminal sanctions: as regards natural persons, the proposal requires Member States to establish specific sanction levels and types for criminal offences related to the violation of Union restrictive measures. The categorisation proposed reflects the seriousness of the offences. A monetary threshold of EUR 100 000 is set as a way to distinguish more serious offences that should be punishable by a maximum term of imprisonment of at least 5 years. should include fines.

The proposal also sets out the sanctions applicable to legal persons involved in criminal offences related to the violation of EU restrictive measures. Companies could be liable to penalties of no less than 5% of the total worldwide turnover of the legal person in the business year preceding the fining decision.

In addition, the proposal:

- criminalises inciting, and aiding and abetting, the commission of criminal offences related to the violation of the Unions restrictive measures;
- establishes aggravating and mitigating circumstances to be taken into account when imposing penalties;
- includes provisions on jurisdiction to ensure that Member States establish their jurisdiction for offences covered by the proposal;
- lays down provisions on limitation periods to allow the competent authorities to investigate, prosecute and adjudicate criminal offences covered by this proposal during a certain time period;
- concerns the protection of whistle-blowers reporting information or providing evidence to a criminal investigation relating to the violation of Union restrictive measures;
- requires Member States authorities, Europol, Eurojust, the European Public Prosecutors Office, and the Commission, within their respective competence, to cooperate with each other in the fight against criminal offences referred to.

Definition of criminal offences and penalties for the violation of Union restrictive measures

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Sophia INT VELD (Renew, NL) on the 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 committee responsible recommended that the European Parliaments position adopted at first reading in the ordinary legislative procedure should amend the proposal as follows:

Violations of Union restrictive measures

Member States should take the necessary measures to ensure that the violation of a Union restrictive measure by any natural or legal person, entity or body constitutes a criminal offence when committed intentionally.

The list of criminal offences violating EU sanctions should include:

- making funds or economic resources available directly or indirectly to, or for the benefit of, a designated person, entity or body;
- enabling the entry of designated natural persons into the territory of a Member State, including its territorial seas and airspace;
- enabling the stay in the territory of a Member State of a designated natural person, including by granting citizenship by investments or residence by investments schemes, in violation of a Union restrictive measure;
- entering into financial or corporate transactions or public procurement with a third State, bodies of a third State, entities and bodies directly or indirectly owned or controlled by a third State or bodies of a third State, which are prohibited or restricted by Union restrictive measures;?
- trading in goods, services or technology whose import, export, sale, purchase, transfer, transit or transport is prohibited or restricted by Union restrictive measures, as well as acting as an intermediary or providing brokering services or other services relating to those goods and services;
- moving, transferring, altering, using, accessing, dealing with, selling, hiring or mortgaging funds or economic resources directly or indirectly owned, held, or controlled by a designated person, entity or body, which should be frozen in accordance with a Union restrictive measure, to a third party to conceal those funds or economic resources enabling the designated persons to continue to use them.

Criminal penalties for natural persons

Criminal offences should be 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 50 000 (instead of EUR 100 000 according to the proposal). A monetary threshold of EUR 100 000 is set to distinguish more serious offences which should be punishable by a maximum penalty of imprisonment of at least 5 years.

Such fines should be proportionate to the amount of funds or economic resources involved in the offence and the maximum limit of such fines shall be not less than EUR 10 million where those offences involve funds or economic resources of a value of at least EUR 100 000.

Those additional penalties should also include:

- withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
- disqualification from exercising a leading position within a legal person of the type used for committing the offence;
- temporary bans on running for elected or public office;
- national or Union-wide publication of the judicial decision relating to the conviction or any sanctions or measures applied.

Sanctions against legal persons

In addition to 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 sanctions, such as:

- temporary or permanent disqualification from the practice of business activities;
- national or Union-wide publication of the judicial decision relating to the conviction or any sanctions or measures applied, including by referring such judicial decision, sanctions or measures to relevant Union institutions.

Companies could be liable to penalties amounting to at least 5% or at least 15% of the consolidated worldwide turnover of the legal person in the business year preceding the fining decision.

Aggravating circumstances

The following circumstances may be regarded as aggravating circumstances:

- the offence was committed in violation of a Union restrictive measure imposed in relation to crimes within the jurisdiction of the International Criminal Court including the crime of genocide, crimes against humanity, war crimes and the crime of aggression or of a Union restrictive measure imposed in relation to serious human rights violations and abuses;
- the offence involves the export of military technology or equipment as defined in Council Common Position 2008/944/CFSP;
- the offence involved serious acts of corruption or the use of false or forged documents;
- the offence was committed by a public official, whether a member of the civil service or the government including at the highest level, when performing his or her duties;
- the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly;
- the offender actively obstructs the inspection, custom controls or investigation activities, destroys evidence, or intimidates or interferes with witnesses or complainants.

Member States should take the necessary measures to ensure that, in the assessment of mitigating circumstances, competent authorities take into account the nature, timing, and extent of the information provided by the offender and the level of cooperation provided by the person in question.

Confiscation

Proceeds resulting from the violation of Union restrictive measures or instruments used to pursue the violation of restrictive measures should become the object of confiscation. Where the assets are confiscated in connection with the Russian war of aggression on Ukraine or associated crimes, the confiscated assets or the net proceeds resulting from the liquidation of such assets should be assigned to contributions towards the reconstruction efforts of Ukraine.

Coordination and cooperation

Each Member State should establish or designate a dedicated body for the purpose of coordination and cooperation at strategic and operational levels between all its competent administrative, law enforcement and judicial authorities within its territory.

Member States competent authorities, Europol, Eurojust, the EPPO and the Commission should, within their respective competences and in the limits of their respective remit, cooperate with competent authorities of third countries in the fight against the criminal offences, in full respect of fundamental rights and international law.

Definition of criminal offences and penalties for the violation of Union restrictive measures

The European Parliament adopted by 543 votes to 45, with 27 abstentions, a legislative resolution on the 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's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

The proposed Directive aims 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.

Violation of Union restrictive measures

Member States should ensure that, where it is intentional and in violation of a prohibition or an obligation that constitutes a Union restrictive measure, the following conduct constitutes a criminal offence:

- 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;
- 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;
- 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;
- 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;
- 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;
- circumventing a Union restrictive measure by 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.

The text stipulated that humanitarian assistance for persons in need or activities in support of basic human needs should not be considered as violations.

Criminal penalties for natural and legal persons

Criminal offences will be punishable by effective, proportionate and dissuasive criminal penalties. They will be punishable by a maximum of at least one year's imprisonment where they involve funds or economic resources of a value of at least EUR 100 000. The most serious offences will carry a maximum prison sentence of at least 5 years.

Accessory criminal or non-criminal penalties may include the following:

- fines that are proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the natural person concerned;
- withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence;
- disqualification from holding, within a legal person, a leading position of the same type used for committing the criminal offence;
- temporary bans on running for public office;
- 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.

In the event that companies violate or circumvent the sanctions, judges must be able to impose dissuasive fines. However, Member States should choose to impose a maximum penalty either on the basis of the company's worldwide annual turnover or on the basis of fixed maximum amounts.

According to the offence, companies could be liable to penalties ranging from 1% to 5% of the consolidated worldwide turnover of the legal person in the business year preceding the fining decision.

Freezing and confiscation

Member States should take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in the Directive. They should 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.

Transparency				
GHEORGHE Vlad	Rapporteur	BUDG	07/06/2023	DiXi Group
IN 'T VELD Sophia	Rapporteur	LIBE	02/05/2023	UK Mission to the European Union
IN 'T VELD Sophia	Rapporteur	LIBE	24/04/2023	Transparency International Liaison Office to the European Union
BRICMONT Saskia	Shadow rapporteur	LIBE	19/04/2023	CiFAR - Civil Forum for Asset Recovery e.V. Norwegian Refugee Council Europe Transparency International Liaison Office to the European Union fair trials ICRC Open Society Foundation