Questions and Answers: Commission proposes to criminalise evasion of EU sanctions

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Since the start of the war in Ukraine, the EU has adopted restrictive measures against Russian and Belarussian individuals. However, oligarchs trying to avoid the freezing of their property sometimes try to hide it or siphon it off. For example, by transferring ownership of sanctioned property to a non-sanctioned third party. They are helped by existing legal loopholes, as the criminal law provisions on breaches of EU sanctions vary across Member States. Freezing of assets controlled by oligarchs and other individuals linked to the Russian aggression is key to disrupt the Russian war machine.

The Commission has followed a two-step approach to pass legislation that would help end impunity for those violating EU sanctions. As a first step, on 25 May the Commission put forward a proposal for a Council Decision identifying the violation of EU sanctions as an EU crime.

Following the adoption of a Council Decision on 28 November 2022 the Commission is now putting forward a proposal for a Directive on the definition of criminal offences and penalties for the violation of EU restrictive measures, as a second step.

**Why is the Commission proposing a Directive on the violation of restrictive measures?**

Harmonising the criminal definitions and the types and levels of penalties for the violation of sanctions will make it easier to investigate, prosecute and punish such violations in all Member States alike.

The violation of restrictive measures is considered a crime in most Member States. It is a particularly serious area of crime, since it may perpetuate threats to international peace and security, undermine the consolidation and support for democracy, the rule of law and human rights and result in significant economic, societal, and environmental damage. It has a clear cross-border nature, which requires a uniform cross-border response at EU level and global level.

Different definitions and penalties of the violation of restrictive measures however are an obstacle to the consistent application of the EU's sanctions policy. It creates a risk of 'forum shopping' whereby criminals operate in the Member States with the lowest risk of prosecution, or the lowest possible penalty. An inconsistent enforcement of restrictive measures undermines the credibility of the Union’s objectives to maintain international peace and security and uphold common Union values.

**Why did the Council need to adopt a Decision first identifying the violation of Union restrictive measures as an EU crime?**

EU crimes are particularly serious crimes that take place across the EU and have impact beyond national borders. This is why they are criminalised at the EU level. There are currently 10 areas of crime, as listed in Article 83(1) TFEU: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

Additional EU-crimes can only be defined by unanimous decision of the Council and with the prior consent of the European Parliament. On 28 November, the Council unanimously adopted a decision to add the violation of restrictive measures to the list of EU crimes included in the Treaty on the Functioning of the EU.

**What are the main elements of the Commission’s proposal?**

The Directive will include precise **definitions of the criminal offences** related to violations of EU restrictive measures, notably:

- making funds or economic resources available to a natural or legal person subject to restrictive measures;
- failing to freeze without undue delay funds or economic resources belonging to a natural or
legal person subject to restrictive measures;
- engaging in financial activities, which are prohibited or restricted; and
- engaging in prohibited or restricted trade.

The offences will also cover the **circumvention of EU sanctions**, for instance by the concealing the fact that a person subject to restrictive measures is the owner or beneficiary of certain funds. In this regard, it should also be pointed out that persons on a restrictive measures' list may often be involved as instigators and accomplices in these offences.

The proposed Directive will also provide for **penalties for natural persons**. These penalties will be applicable to all offences mentioned above, and equally require Member States to apply effective, proportionate, and dissuasive penalties. For the most serious offences, the proposed Directive will set a maximum penalty of at least five years of imprisonment that judges in Member States should impose on natural persons.

The future Directive would also establish **common basic standards for penalties for legal persons** across the Member States, including: criminal or non-criminal fines of up to 5% of the annual worldwide turnover; exclusion from access to public funding; disqualification from the practice of business activities; withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence; placing under judicial supervision; judicial winding-up; closure of establishments used for committing the offence. Liability of legal persons shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences covered by the Directive.

Finally, the Directive also clarifies which EU jurisdiction is responsible to prosecute the crime of evasion of EU **restrictive measures**.

### What is the offence of circumvention?

The circumvention offence will cover:

- **failure by a designated person, entity, or body to comply** with an obligation under EU restrictive measures to report funds or economic resources within the jurisdiction of a Member State, belonging to, owned, held, or controlled by them; and

- **failure to comply with an obligation under EU restrictive measures** to provide without undue delay **information** on funds or economic resources frozen or information held about funds or economic resources owned, held, or controlled by a designated person, entity or body which have not been frozen, to the relevant administrative authorities.

### Are there safeguards for listed persons and legal professionals?

There are two specific safeguards for listed persons and lawyers included in the proposal.

The criminal offences do not impose obligations on them contrary to the right not to incriminate oneself and to remain silent, as enshrined in the Charter and the Directive on the presumption of innocence. They also do not impose an obligation on legal professionals to report information which is obtained in strict connection with judicial, administrative, or arbitral proceedings. Legal advice in those circumstances is to be protected by professional secrecy, except where the legal professional is taking part in violation of EU restrictive measures, the legal advice is provided for the purposes of violating EU restrictive measures, or the legal professional knows that the client is seeking legal advice for the purpose of violating Union restrictive measures.

### Can the assets of persons, entities or bodies circumventing EU sanctions be confiscated?

In May 2022, the Commission proposed a Directive on asset recovery and confiscation, which would apply in such situations, as it expands the possibilities to confiscate proceeds from a wider set of crimes, including the violation of EU restrictive measures.

Today's proposal ensures that funds or economic resources gained by the circumvention of EU restrictive measures should be considered a "proceed of crime". This includes:

- concealing funds or economic resources owned, held, or controlled by a designated person, entity, or body; or
- concealing the fact that a person, entity, or body subject to restrictive measures is the ultimate owner or beneficiary of funds or economic resources.

**For More Information**

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