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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	8501/23
Subject:	Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures - Mandate for negotiation with the European Parliament

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**BACKGROUND**

1. On 2 December 2022, the Commission submitted a proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures.<sup>1</sup> The legal basis of the proposal had been provided through 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 Union.<sup>2</sup>

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<sup>1</sup> 15653/22.

<sup>2</sup> OJ L 308 p. 18, 29.11.2022.

2. The proposal was based on the assessment that it is necessary to establish minimum rules concerning the definition of criminal offences and penalties with regard to the violation of Union restrictive measures, 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.
3. Following the submission of the proposal, the Working Party on Judicial Cooperation in Criminal Matters (COPEN) and JHA Counsellors examined the proposal under the Czech and Swedish Presidencies of the Council. A general approach was reached in June 2023.

### **NEGOTIATION IN TRILOGUES**

4. The negotiations in trilogues have been going on since July 2023. Two political trilogues and a considerable number of technical meeting were held between July and the latter part of November. Delegations have been regularly informed and consulted on the negotiations. The discussions have been very constructive and in November the negotiators of all three institutions considered that a political agreement was within reach.
5. However, the third political trilogue on 30 November 2023 did not lead to the political agreement hoped for. In short, the EP made requests on two points that the Presidency was not, in accordance with its mandate, able to meet, namely:
  - Guarantees that a sufficiently strong provision on the use of the confiscated instrumentalities, proceeds and property for compensation, restitution and reparations towards States will be included in the separate Directive of asset recovery and confiscation. The Presidency believes that this point is about to be solved at the third political trilogue on the said file, scheduled for the 12 December.

- A broader criminalisation of conduct committed with serious negligence, according to Article 3(3). On this point, the Presidency proposed a provision that would criminalise serious negligence in relation to the trade ban, “at least when it related to items included in the Common Military List of the European Union or dual use items...”. The Rapporteur did not accept this proposal and requested “a longer list of conducts” for which serious negligence would be criminalised. Concretely, the example of a bank that allows major transfers of money to or from a designated person through serious negligence was mentioned as a conduct that would need to be covered by the Directive.

The Presidency considers that the text of the draft Directive as provisionally agreed with the EP on the other points must be considered a good negotiation result for the Council. In this light, it wishes to invite Coreper to consider whether there is room for one last step towards the EP, with a view to reaching an agreement on this important file.

In the Annex to this note, delegations will find a consolidated text of the draft Directive, with provisional modifications in relation to the general approach indicated in **bold underline** or ~~strikethrough~~. The Presidency would draw the particular attention of delegations to Article 3(3) in this text, where a part of the provision has been left blank within brackets as follows:

“The conduct referred to in paragraph 2 points [...] shall constitute a criminal offence if committed with serious negligence”.

It is the conviction of the Presidency that it will be possible to convince the Parliament to confirm a political agreement on the whole text, if the text "[a) and (b), and point (e)] when 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]" is included within those brackets. Reference is made to Article 3(2), (b) and (e) in the draft text attached, for the full picture of the implication of such a text. It is possible but far from certain that the Parliament would also confirm a political agreement if only two of the said points are included in the text, or that it would confirm the agreement even if the scope of point (e)(i.e. trade ban) would be limited to “at least when it related to items included in the Common Military List of the European Union or dual use items”.

**In this light, the permanent representatives are invited to consider to what extent they could agree to the inclusion, in the text quoted in the previous paragraph, of the points [(a) and (b), and point (e) when 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], alternatively or cumulatively, as a final effort in view of reaching a political agreement with the Parliament.**

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the definition of criminal offences and penalties for the violation of Union restrictive measures**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to 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 Union, and in particular Article 1 thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

- (2) Union restrictive measures, such as measures concerning the freezing of funds and economic resources, the prohibitions on making funds and economic resources available and the prohibitions on entry into or transit through the territory of a Member State, as well as sectoral economic and financial measures and arms embargoes, are an essential tool for the promotion of the objectives of the Common Foreign and Security Policy ('CFSP'), as set out in Article 21 of the Treaty on European Union ('TEU'). Those objectives include safeguarding the Union's values, security, independence and integrity, consolidating and supporting democracy, the rule of law, human rights and the principles of international law and preserving international 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 penalties **and sanctions** in place for the violation of those Union restrictive measures, including obligations, such as reporting, established therein. It is also necessary that those penalties **and sanctions** address the circumvention of Union restrictive measures.

- (4) The effective application of Union restrictive measures calls for common minimum rules concerning the definitions of criminal conduct violating prohibitions and obligations included in Union restrictive measures. Member States should ensure that this conduct constitutes a criminal offence when committed with intent, **and in violation of a prohibition or obligation** ~~in so far as it amounts to an infringement of a prohibition or an obligation~~ set out in a Union restrictive measure or set out in a national provision implementing a Union restrictive measure, where national implementation of these measures is required. **The commission of certain crimes with serious negligence should also be criminalised. With regard to the criminal offences provided for in this Directive, the notion of at least 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.** ~~The Directive should cover only serious violations. Thus, it should not apply to Member States may decide not to criminalise~~ violations involving funds, economic resources, goods, services, transactions or activities of a value of less than EUR 10 000. ~~Furthermore, minor cases of violations related to travel bans should be excluded from its scope. The notion of minor cases is to be interpreted in accordance with national law. As this Directive establishes only minimum rules, Member States may decide whether to extend their national criminal law to such conduct.~~ The exclusion of certain violations from the scope of this Directive does not affect any obligations set out in Union restrictive measures to ensure that violations are punishable by effective, proportionate and dissuasive criminal or other sanctions.

- (4a) Union restrictive measures may provide for exceptions in the form of exemptions or derogations from the prohibitions laid down therein. These are of particular importance for example for the delivery of humanitarian aid. A conduct either covered by an exemption provided for in a Union restrictive measure or authorised by the competent authorities of the Member States by means of a derogation in accordance with a Union restrictive measure should not be regarded as a violation of a Union restrictive measure. ~~In implementing this Directive, Member States will take into account that, in line with international humanitarian law, the law of armed conflict and restrictive measures, the implementing rules should not prevent the delivery of humanitarian aid in line with principles of impartiality, humanity, neutrality and independence.~~
- (4b) In particular, the effective application of Union restrictive measures calls for common minimum rules for the violations of asset freeze measures as laid down in the relevant Council Regulations. These measures include the prohibition to make funds or economic resources available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies subject to asset freeze measures, as well as the obligation to freeze all funds and economic resources belonging to, owned, held or controlled by the same persons, entities or bodies.
- (4c) Union restrictive measures also lay down restrictions on admission (travel bans) which should be covered by this Directive. Such measures, usually laid down in a Council Decision adopted on the basis of Article 29 TEU and implemented by means of national law, require Member States to take the necessary measures to prevent the **designated persons from entering** entry into, or **transiting** through, **all zones of the territory of a their territories of the Member State.** ~~natural persons who are subject to Union restrictive measures.~~

**(4ca) 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 them for violating such measures.**

(4d) Entering into or continuing any form of transactions, including but not limited to financial transactions as well as the award or continued execution of any public or concession contract falling within the scope of the public procurements Directives, with a third State, bodies of a third State, entities and bodies **directly or indirectly** owned or controlled by a third State or bodies of a third State, should also constitute a criminal offence, to the extent it is prohibited by a Union restrictive measure.

(4e) In addition, rules on the prohibition of trading, importing, exporting, selling, purchasing, transferring, transiting or transporting goods or services are called for. The violation of such prohibitions, **including the cases of importing or exporting goods from or to a third country in order to have them transferred to a destination to which their import, export, sale, purchase, transfer, transit or transport is prohibited by a Union restrictive measure, should constitute a criminal offence.** ~~as well as~~ The provision, directly or indirectly, of technical assistance, brokering services, insurance, and any other service related to these goods or services should constitute a criminal offence. For this purpose, the notion of goods includes items, such as military technology and equipment, goods, software and technology, which are included in the Common Military List of the European Union or are listed in Annexes I and IV to Regulation (EU) 2021/821.

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

**(4ga) 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, for the Member States bound by it, and Article 48 of the Charter of Fundamental Rights of the European Union.**

- (5) The effective application of Union restrictive measures also calls for common minimum rules concerning the criminal definitions of conduct circumventing a Union restrictive measure.
- (6) An example of circumvention that is increasingly widespread is the practice by designated persons, ~~and~~ entities **and bodies** of **using**, transferring **to a third party or otherwise disposing of** funds, ~~property~~ or economic resources **directly or indirectly owned, held or controlled by them** to a third party with a view to circumventing Union restrictive measures **in order to conceal those funds or economic resources**. Therefore, when committed by designated natural persons or by representatives of designated entities or bodies this conduct is covered by the circumvention offence approximated by this Directive. Furthermore, the practice of providing false or misleading information, **including relevant incomplete information, with a view in order** to concealing 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, ~~these~~ ~~is~~ ~~conducts~~ ~~is~~ **are** covered by the circumvention offence approximated by this Directive.
- (6a) Failure to comply with the reporting ~~and cooperation~~ obligations should also be covered by the circumvention offence, to the extent that a corresponding obligation to report ~~and cooperate with~~ **to** the competent administrative authorities is laid down by a Union restrictive measure.

- (6cd) The effective application of Union restrictive measures furthermore calls for common minimum rules concerning the criminal law definition of conduct breaching or failing to fulfil the specific conditions under authorisations granted by the competent authorities to conduct certain activities, which in the absence of such an authorization are prohibited or restricted under a Union restrictive measure. Any activity conducted in the absence of an authorisation would instead constitute a violation of such measures and, as appropriate, could be considered as a breach of asset freeze measures, travel bans, arm embargoes or other sectoral economic and financial measures.
- (7) Legal professionals, as defined by the Member States, should be subject to this Directive, **including the obligation to report the violation of Union restrictive measures, when providing services in the context of professional activities, such as legal, financial and trade services. 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 is obtained from, 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, the legal advice is provided for the purposes of violating Union restrictive measures, or the legal professional knows that the client is seeking legal advice for the purposes of violating Union restrictive measures.
- (8) Union restrictive measures should not result in the discrimination against clients of credit and financial institutions and their undue exclusion from access to financial services.**

- (9) **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.**
- (10) Penalties for the offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. Additional penalties or measures should also be available in criminal proceedings. ~~They may include fines, taking into account that the violation of Union restrictive measures is mostly motivated by economic considerations.~~
- (10a) Inciting, aiding and abetting, ~~and attempt~~ to commit offences under the Directive should also be criminalised. **Attempt to commit some of the offences under the Directive should also be criminalised.**

(11) Given that legal persons are also subject to Union restrictive measures, legal persons should also 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. Member States whose national law provides for the criminal liability of legal persons should ensure that their national laws provide for effective, dissuasive and proportionate criminal sanction types and levels as laid down in this Directive in order to achieve its objectives. The maximum levels of fines provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences. The seriousness of the conduct, as well as the individual, financial and other circumstances of the legal persons, should be taken into account to ensure the effectiveness, dissuasiveness and proportionality of the sanction imposed. With regard to maximum levels of fines in national law, Member States may either use a percentage of the total worldwide turnover of the legal person concerned, or they may determine the maximum level of fines in absolute amounts. Member States should decide which alternative they choose when transposing this Directive.

(11a) Where, with regards to the determination of fines to be imposed on legal persons, Member States opt to implement the criterion of the total worldwide turnover of a legal person, they should decide whether to calculate the total worldwide turnover based on either the business year preceding the one in which the offence was committed, or the business year preceding the fining decision, when transposing this Directive. They should also consider providing for rules for cases where it is not possible to determine the amount of a fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision. In such cases, it should be possible to take into account other criteria, such as the total worldwide turnover in one of the other preceding business years. Where those rules include the setting of amounts of fines in absolute numbers, then the maximum levels of these should not have to reach the levels established in this Directive as the minimum requirement for the maximum level of fines determined in absolute amounts.

- (11b) Where Member States opt for maximum level of fines determined in absolute amounts, such levels should be laid down in national law. The highest levels of such fines should apply to the most serious forms of offences provided for in this Directive, which are committed by financially strong legal persons. Member States may decide on the method of calculation of those levels of fines including specific conditions for the highest levels of those fines. Member States should be invited to regularly review the levels of fines determined in absolute amounts with regard to rates of inflation and other fluctuations in monetary value, in line with procedures set out in their national law. Member States that do not have the euro as their currency should provide for maximum levels of fines in their currency corresponding to the levels determined in this Directive in euro on the date of adoption of this Directive. Those Member States are invited to regularly review the levels also with regard to the development of the exchange rate.
- (11c) The definition of the maximum level of fines is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases. As this Directive does not set out any minimum levels of fines, the judges or courts should, in any case, impose appropriate sanctions taking into account the individual, financial and other circumstances of the legal person concerned and the seriousness of the conduct. ~~While the maximum level of fine provided for the respective criminal offence by this Directive should be taken into account, the actual fine imposed in an individual case should not have to reach the maximum level of fine determined by this Directive.~~

- (12) A further approximation and effectiveness of level of penalties imposed in practice should be fostered through common aggravating circumstances that, in accordance with relevant provisions of national law, reflect the severity of the crime committed. The notion of aggravating circumstances should be understood either as facts allowing the national judge or court to pronounce a higher sentence for the same offence than the one incurred without these facts, or as the possibility of retaining several offences cumulatively in order to increase the level of the penalty. **Such aggravating circumstances may be situations in which the offence was committed in the framework of a criminal organization within the meaning of Framework Decision 2008/841/JHA, situations in which the offence involved false or forged documents, situations in which the offence was committed by a professional service provider in violation of the professional obligations of such professional service provider. Other aggravating circumstances may be situations in which the offence was committed by a public official when performing his or her duties, which 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, situations in which the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, situations in which the offender destroys evidence, or intimidates or influences witnesses or complainants, or situations in which the natural or legal person has previously been definitively convicted.** Member States should provide for the possibility of at least one of these aggravating circumstances in accordance with applicable rules established by their legal system on aggravating circumstances. In any case, it should remain within the discretion of the judge or the court to determine whether to increase the sentence, taking into account all the circumstances of the individual case.

- (13) Member States ~~may~~ **should** also ensure, in accordance with relevant provisions of national law, that ~~in~~ **at least one of the following** situations **may be regarded as a mitigating circumstance**: where the offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them **either** to identify or bring to justice other offenders or to find evidence, ~~such conduct may be regarded as mitigating circumstance~~. **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 all the circumstances of the individual case. The latter could notably include the nature, timing and extent of the information provided and the level of cooperation provided by the offender.**
- (14) The freezing of funds and of economic resources imposed by Union restrictive measures is of an administrative nature. As such it should be distinguished from freezing measures of a criminal nature, as referred to in Directive 2014/42/EU. Member States should enable the freezing and confiscation of instrumentalities and proceeds from the offences referred to in this Directive. Member States bound by Directive 2014/42/EU should do so in accordance with that Directive.

- (15) 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, the designated person, entity or body may continue to access and make full use or dispose of the funds or economic resources subject to Union restrictive measures which have been concealed. Such funds or economic resources should therefore be subject to freezing and confiscation, in accordance with ~~the safeguards, including the respect for the principle of proportionality in individual cases, set out in~~ Directive 2014/42/EU. The rights of bona fide third parties should not be prejudiced.
- ~~:(i) transferring funds or economic resources owned, held, or controlled by a designated person to be frozen in accordance with a Union restrictive measure to a third party, conceal those funds or economic resources; or (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 there is a need to enable the freezing and confiscation of funds and economic resources subject to Union restrictive measures, even where they may not constitute instrumentalities or proceeds under Directive 2014/42/EU. In those circumstances, as a consequence of the conduct of concealing.~~
- (16) Given, in particular, the global activities of the perpetrators of illegal conduct covered by this Directive, together with the cross-border nature of the offences and the possibility of cross-border investigations, Member States should establish jurisdiction in order to counter such conduct effectively.

- (17) Member States should lay down rules concerning limitation periods necessary to enable them to counter offences related to the violation of Union restrictive measures effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement. Where Member States are permitted to derogate from the limitation periods, provided that the period may be interrupted or suspended in the event of specified acts, such acts may be defined in accordance with the legal system of each Member State.
- (18) To ensure an effective, integrated and coherent enforcement system, Member States should organise internal cooperation and communication between all actors along the administrative and criminal enforcement chains.

**(19) To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States' competent authorities should cooperate through and with Europol, Eurojust and the European Public Prosecutor's Office (EPPO), within their respective competences and in accordance with the applicable legal framework. These competent authorities should also share information among each other and with the Commission on practical issues. The Commission, where needed, could establish a network of experts and practitioners to share best practices and provide technical and operational support in order to facilitate the coordination of investigations and prosecutions by Member States' competent authorities, Europol, Eurojust, the EPPO [and the European Anti-Fraud Office].**

(20) Persons referred to in Article 4 of Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>3</sup> 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 whistleblowers' reports can strengthen enforcement 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 whistleblowers to use confidential channels, to alert the competent authorities and to protect them from retaliation. For that purpose, it should be provided that Directive (EU) 2019/1937 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.

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<sup>3</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17–56.

(21) To ensure the effective investigation and prosecution of violations of Union restrictive measures, **Member States** those responsible for investigating or prosecuting these offences **should make available effective** should have the possibility of using investigative tools **such as those which exist in their national law for** if and to the extent that the use of these tools is appropriate and proportionate to the nature and gravity of the offences as defined in national law. Where those offences could be considered serious according to national law, and within the criminal category of violation of restrictive measures, investigative tools such as those which are used in combating organised crime or other serious crimes, **if and to the extent that** tshould be available. **Tthe** use of **those** such tools, in accordance with national law **is appropriate and proportionate to the nature and gravity of the offences, as this nature and gravity are defined in national law.** **Tools such as the interception of communications, covert surveillance including electronic suveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools could be included. These tools,** should be **applied in line with** targeted and take into account the principle of proportionality and **in full respect of the Charter of Fundamental rights of the European Union.** the nature and seriousness of the offences under investigation as well as respectThee right to the protection of personal data **must be respected.**

(21a) — To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States' competent authorities should cooperate through and with Europol, Eurojust and the European Public Prosecutor's Office (EPPO), within their respective competences and in accordance with the applicable legal framework. These competent authorities should also share information among each other and with the Commission on practical issues.

- (22) An amendment to Directive (EU) 2018/1673 on combatting money laundering by criminal law<sup>4</sup> should ensure that the violation of Union restrictive measures will be considered a predicate offence for money laundering according to that Directive.
- (23) The objectives of this Directive, namely to ensure common minimum rules concerning the definitions of offences related to the violation of Union restrictive measures and the availability of effective, dissuasive and proportionate criminal penalties for serious offences related to the violation of Union restrictive measures cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, taking into account the inherent cross-border nature of the violation of Union restrictive measures and their potential to undermine the achievement of the Union objectives to safeguard international peace and security as well as to uphold Union common values. Therefore the Union may adopt measures, in accordance with the principle of subsidiarity as set out in accordance with Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

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<sup>4</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, [PE/30/2018/REV/1](#), OJ L 284, 12.11.2018, p. 22-30.

- (24) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the rights to liberty and security, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence including the right not to incriminate oneself and to remain silent, the principles of legality, including the principle of non-retroactivity of criminal penalties and proportionality of criminal offences and penalties, as well as the principle of *ne bis in idem*. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly.
- (25) In implementing this Directive, Member States should ensure that the procedural rights of suspected or accused persons in criminal proceedings are observed. In this regard, the obligations under this Directive should not affect Member States obligations under Union law on procedural rights in criminal proceedings, in particular Directives 2010/64/EU<sup>5</sup>, 2012/13/EU<sup>6</sup>, 2013/48/EU<sup>7</sup>, (EU) 2016/343<sup>8</sup>, (EU) 2016/800<sup>9</sup> and (EU) 2016/1919<sup>10</sup> of the European Parliament and of the Council.

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 4.11.2016, p. 1).

- (26) In view of the urgent need to hold individuals and legal persons involved in the violation of Union restrictive measures accountable, Member States should bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 12 months after the entry into force of this Directive.
- (26a) ~~The criminalisation of violations of Union restrictive measures under this Directive is aimed to ensure that these violations will be punishable as criminal offences and enforceable in every Member State. In line with the case law of the Court of Justice of the European Union, Member States are required to adopt in their national legal systems all the measures necessary to ensure that the Directive is fully effective, in accordance with the objective which it pursues. Member States may choose the form and method for implementing this requirement, specific express legal provisions not always having to be adopted, while ensuring that provisions of this Directive are implemented with unquestionable binding force, and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty, granting appropriate publicity for the national measures adopted pursuant to EU rules in such a way as to enable the persons concerned by such measures to ascertain the scope of their rights and obligations.~~ **To effectively tackle the criminal offences referred to in this Directive, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable statistical data on the violation of Union restrictive measures. Member States should therefore be obliged to ensure that an adequate system is in place for the recording, production and transmission of existing statistical data on the offences referred to in this Directive. Those statistics should be used to serve the operational and strategic planning of enforcement activities, to analyse the scale of and trends in environmental offences, 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 collected from such data that already exist at a centralised level or a decentralised level throughout the whole Member State. The Commission should regularly assess and publish the results based on the data transmitted by the Member States.**

- (27) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (28) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified, by letter of 3 March 2023, its wish to take part in the adoption and application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Subject matter*

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

*Article 2*

*Scope*

This Directive applies to violations of Union restrictive measures.

*Article 2a*

*Definitions*

- (2) For the purposes of this Directive, the following definitions apply:
- (a) ‘Union restrictive measures’, means restrictive measures adopted by the Union on the basis of Article 29 TEU or Article 215 TFEU;
  - (b) ‘designated person, entity or body’, means a natural or legal person, entity or body subject to Union restrictive measures;

- (c) ‘funds’ means financial assets and benefits of every kind, including, but not limited to:
- (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
  - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
  - (iii) publicly-traded and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
  - (iv) interest, dividends or other income on or value accruing from or generated by assets;
  - (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
  - (vi) letters of credit, bills of lading, bills of sale;
  - (vii) documents showing evidence of an interest in funds or financial resources;
  - (viii) crypto assets as defined in **Article 3(5) of Regulation (EU) 2023/1114 of the European Parliament and of the Council**;<sup>11</sup>
- (d) ‘economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

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<sup>11</sup> 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.

- (e) ‘freezing of funds’ means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management;
- (f) ‘freezing of economic resources’ means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.

### *Article 3*

#### *Violation of Union restrictive measures*

- (1) Member States shall take the necessary measures to ensure that, **where it is intentional and in violation** of a prohibition or and obligation set out in a Union restrictive measure or ~~set out~~ in a national provision implementing a Union restrictive measure, where national implementation is required, the following conduct constitutes a criminal offence, ~~when committed intentionally~~.
- (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 imposed by 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 set out in a Union restrictive measure;

- (c) enabling the entry of designated natural persons into, or their transit through, the territory of a Member State in violation of a prohibition imposed by a Union restrictive measure;
- (d) entering into or continuing transactions with a third State, bodies of a third State, entities or 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, including the award or continued execution of public or concession contracts;
- (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, in violation of a prohibition imposed by a Union restrictive measure;
- (f) providing financial services or performing financial activities which are prohibited or restricted by Union restrictive measures;
- (g) providing other services which are prohibited or restricted by Union restrictive measures;
- (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 in accordance with a Union restrictive measure, **in order** ~~to a third party~~ 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 in accordance with 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 imposed by ~~under~~ Union restrictive measures to report funds or economic resources within the jurisdiction of a Member State, belonging to, owned, held, or controlled by them;
- (iv) failing to comply with an obligation imposed by ~~under~~ Union restrictive measures to provide ~~without undue delay~~ information obtained in the performance of professional duty on frozen funds or economic resources ~~frozen~~ or information held about funds or ~~and~~ economic resources within the territory of the Member States, belonging to, owned, held or controlled by designated persons, entities or bodies and which have not been frozen, to the competent administrative authorities;
- ~~(v) failing to cooperate with the competent administrative authorities in any verification of information under points (iii) and (iv), upon their reasoned request;~~

- (i) breaching or failing to fulfil conditions under authorizations granted by competent authorities to conduct activities, which in the absence of such an authorization are prohibited or restricted under a Union restrictive measure.

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

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

(2c) Member States **shall take the necessary measures to ensure that the threshold of EUR 10 000 or more may also be met through a series of linked violations of the same kind** ~~may provide that the violation~~ referred to in paragraph 1, point **(a), (b), (c), (d) to (i)** of this Article, **when committed by the same offender.** ~~does not constitute a criminal offence in minor cases.~~

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

[...]

(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 their client, or performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.

**(6) Nothing in paragraphs 1, 2 and 3 shall be understood as criminalising<sup>12</sup> humanitarian assistance for persons in need in accordance with international humanitarian law, or activities in support of basic human needs or human rights in line with principles of impartiality, humanity, neutrality and independence.**

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<sup>12</sup> It should be noted that the EP may prefer the wording “... be understood as criminalising humanitarian assistance for persons...”

*Article 4*

*Inciting, aiding and abetting, and attempt*

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

*Article 5*

*Criminal penalties for natural persons*

- (1) Member States shall ensure that the criminal offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
- (2) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 are punishable by a maximum penalty which provides for imprisonment.
- (3) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(1), points (h)(iii); and (iv), are punishable by a maximum penalty of at least one year of imprisonment when they involve funds or economic resources of a value of at least EUR 100 000.
- (4) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(1), points (a), (b) and (h)(i) and (ii), are punishable by a maximum penalty of at least five years of imprisonment when they involve funds or economic resources of a value of at least EUR 100 000 on the date when the offence was committed.

**(4aa) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(1), point (c) is punishable by a maximum penalty of at least three years of imprisonment.**

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

**(-a) fines, which shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the natural person concerned.**

**(a) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;**

**(b) disqualification from exercising a leading position within a legal person of the type used for committing the offence;**

**(c) temporary bans on running for public office;**

**[(d) where there is a public interest, publication of all or part of the judicial decision that relates to the criminal offence committed and the sanctions or measures imposed following a case-by-case assessment. The personal data of convicted persons may be published 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 offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person;
  - (c) an authority to exercise control within the legal person.
- (2) Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.
- (3) Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

## *Article 7*

### *Sanctions for legal persons*

- (1) Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6<sup>7</sup> is punishable by effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, which shall include criminal or non-criminal fines and may include other criminal or non-criminal sanctions or measures ~~s~~, such as:
  - (a-1) exclusion from entitlement to public benefits or aid;

- (a-2) exclusion from access to public funding, including tender procedures, grants and concessions;
- (a) disqualification from the practice of business activities;
  - (b) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
  - (c) placing under judicial supervision;
  - (d) judicial winding-up;
  - (e) closure of establishments, which have been used for committing the criminal offence;

**(ea) where there is a public interest, publication of all or a part of the judicial decision that relates to the criminal offence committed and the sanctions 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, for legal persons held liable pursuant to Article 6, offences referred to in Article 3(1) are punishable by criminal or non-criminal fines, the amount of which shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level~~limit~~ of the fines is not less than:
- (a) 1 percent of the total worldwide turnover of the legal person, either in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision~~-,~~ for offences referred to in Article 3(1), points (h) (iii) to (iv), and 5 percent of the total worldwide turnover of the legal person, either in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision, for offences referred to in Article 3(1) points (a) to (g), (h)(i) and (ii), and point (i);

or, alternatively

- (b) an amount corresponding to EUR 8 million for offences referred to in Article 3(1), points (h) (iii) to (iv) and EUR 40 million for offences referred to in Article 3(1) points (a) to (g), (h)(i) and (ii), and point (i).

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

#### *Article 8*

#### *Aggravating circumstances*

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

- (a) the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA<sup>13</sup>;
- (b) the offence was committed by a professional service provider in violation of ~~the~~ his or her professional obligations **of such professional service provider**;
- (c) the offence was committed by a public official when performing his or her duties or another person performing a public function;

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<sup>13</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime OJ L 300, 11.11.2008, p. 42-45.

**(da) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, to the extent that they can be determined.**

**(db) the offender destroys evidence, or intimidates witnesses or complainants.**

**(dc) the natural or legal person has previously been definitely convicted for offences covered by Articles 3 and 4.**

*Article 9*

*Mitigating circumstances*

~~Provided this is not already an obligation under Union restrictive measures,~~ Member States ~~may~~ **shall** take the necessary measures to ensure that, in relation to the **relevant** offences referred to in Articles 3 and 4, **one or several of the following may**, and in accordance with the relevant provisions of national law, ~~it may~~ be regarded as a mitigating:

- (a)** ~~circumstance that~~ the offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them to identify or bring to justice the other offenders; **or**
- (b)** **the offender** provides the competent authorities with information they would not otherwise have been able to obtain, helping them to find evidence.

*Article 10<sup>14</sup>*  
*Freezing and confiscation*

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

*Article 11*  
*Jurisdiction rules*

- (1) Member States shall take the necessary measures to establish their 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 it or flying its flag;
  - (c) the offender is one of its nationals;

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<sup>14</sup> Note that the Council has not accepted the introductions of paragraphs 1a or 1b as proposed by the EP in this Article. These issues will be addressed in the Draft Directive on asset recovery and confiscation.

- (1a) A Member State shall inform the Commission where it decides to extend its jurisdiction to one or more offences referred to in Articles 3 and 4 which have been committed outside its territory, where:
- (a) the offender is one of its habitual residents;
  - (b) the offender is one of its officials who acts in his or her official duty;
  - (c) the offence is committed for the benefit of a legal person which is established on its territory;
  - (d) the offence is committed for the benefit of a legal person in respect of any business done in whole or in part on its territory.
- (2) Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State, these Member States shall cooperate to determine which Member State is to conduct criminal proceedings. The matter shall, where appropriate, be referred to Eurojust in accordance with Article 12 of Council Framework Decision 2009/948/JHA<sup>15</sup>.
- (3) In cases referred to in paragraph 1, point (c), Member States shall take the necessary measures to ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a denunciation from the State of the place where the criminal offence was committed.

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<sup>15</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, OJ L 328 of 15.12.2009, p. 42.

*Article 12*  
*Limitation periods*

- (1) Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3 and 4 for a sufficient period of time after the commission of those criminal offences, so that those criminal offences can be tackled effectively.
- (2) Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3 and 4 which are punishable by a maximum penalty of at least five years of imprisonment, for a period of at least five years from the time when the offence was committed.
- (3) Member States shall take the necessary measures to enable the enforcement of:
  - (a) a penalty of more than one year of imprisonment; or alternatively
  - (b) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum penalty of at least five years of imprisonment,  
  
imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least five years from the date of the final conviction.

- (4) By way of derogation from paragraphs 2 and 3, Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that the period may be interrupted or suspended in the event of specified acts.

*Article 13*

*Coordination and cooperation between competent authorities within a Member State*

Member States shall **designate, from among their competent authorities and without prejudice to judicial independence, a unit or body** take the necessary measures to establish appropriate mechanisms for coordination and cooperation **between law enforcement authorities and authorities in charge of implementing restrictive measures, in relation to the criminal activities covered by this Directive.** ~~among all their competent administrative, law enforcement and judicial authorities.~~

**The unit or body referred to in the first subparagraph shall have the following tasks:** ~~Such mechanisms could include~~

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

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

#### *Article 14*

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

Member States shall take the necessary measures to ensure Directive (EU) 2019/1937<sup>16</sup>, 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*

##### *Investigative tools*

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

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<sup>16</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56.

Article 16

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

- (1) **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 shall consider referring the information related to these cases to appropriate competent bodies.**

Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, ~~the~~ Member States' authorities, Europol, Eurojust, the European Public Prosecutor's Office, and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3 and 4. To that end, ~~the Commission, and where appropriate,~~ Europol and Eurojust shall, **where appropriate** provide technical and operational assistance **as the competent national authorities need** ~~in order to facilitate the coordination of their investigations. and prosecutions by the competent authorities.~~

- (1a) The Commission, where needed, may establish a network of experts and practitioners to share best practices and, if 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.**

**(1b) When the cooperation referred to in paragraph 1 involves cooperation with competent authorities of third countries, this should take place with full respect of fundamental rights and international law.**<sup>17</sup>

- (2) Member States' competent authorities shall also **on a frequent and** regular **basis** share information on practical issues, in particular, patterns of circumvention, e.g. structures to conceal the beneficial ownership and control of assets, with the Commission and other competent authorities.

*Article 17*

*Amendments to Directive (EU) 2018/1673 **on combating money laundering by criminal law***

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

‘(w) violation of Union restrictive measures’.

*Article 18*

*Transposition*

- (1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP- please insert the data- within 12 months after entry into force of the Directive]. They shall immediately inform the Commission thereof. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by the Directive.
- (2) When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The method of making such a reference shall be laid down by Member States.

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<sup>17</sup> In return for this, the EP has agreed to drop its proposed Article 16a.

Article 19

Data collection and statistics

1. **Member States shall ensure that a system is in place for the recording, production and provision of anonymised statistical data measuring the reporting, investigative and judicial phases concerning the offences referred to in Articles 3 and 4 in order to monitor the effectiveness of their systems 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 the following statistical data to the Commission on the criminal offences referred to in Articles 3 and 4, ~~if they are available at central level in the Member States concerned:~~
  - ~~(a) — the number of criminal proceedings initiated, dismissed, resulting in an acquittal, resulting in a conviction and ongoing;~~  
  
**(a) the number of offences registered and adjudicated by the Member States;**  
  
**(aa) the number of dismissed court cases, including due to the expiry of the limitation period;**
  
  - (b) the number of natural persons that are**
    - (i) prosecuted,**
  
    - (ii) convicted;**
  
  - (c) the number of legal persons that are**
    - (i) prosecuted,**
  
    - (ii) convicted or fined;**

(d) the types and levels of penalties and sanctions **imposed on natural and legal persons;**

3. Member States shall **ensure that a consolidated review of their statistics is published at least every three years.** ~~submit the statistical data referred to in paragraph 2 to the Commission using the dedicated reporting tools set up by the Commission for reporting in the field of restrictive measures.~~

*Article 19a*

*Evaluation, ~~and~~ reporting **and review***

- (1) By [OP- please insert the date- two years after the transposition period is over] the Commission shall submit a report to the European Parliament and **to** the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive. Member States shall provide the Commission with the necessary information for the preparation of that report.
- (2) **By five years after the transposition period is over, the Commission shall 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. The report shall be accompanied by a legislative proposal, if necessary.**<sup>18</sup>

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<sup>18</sup> The introduction of this paragraph – inspired by the envicrime text - is the result of a global compromise with the EP, which in return agrees to the deletion of its proposed provision in Article 3(2)(h)(va).

~~(3) Member States shall submit the statistical data referred to in paragraph 2 to the Commission using the dedicated reporting tools set up by the Commission for reporting in the field of restrictive measures.~~

~~(4) By [OP please insert the data five years after the transposition period is over], the Commission shall carry out an evaluation of the impact of this Directive and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of that report.~~

*Article 20*

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

*Article 21*

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*