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**NOTE**

From:	General Secretariat of the Council
To:	Delegations
Subject:	Adding the violation of Union restrictive measures to the areas of EU-crime - enabling common action

Delegations will find attached the presentation made by the Commission at the informal videoconference of the members of the COPEN Working Party of 7 June 2022.



# Adding the violation of Union restrictive measures to the areas of EU-crime - enabling common action

*COPEN, 7 June 2022*

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PUBLIC

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# 1. Context: Russian invasion of Ukraine

- Aim of restrictive measures: **preserve international peace and security**
- They include:
  - targeted individual measures, i.e., **asset freezes**, prohibitions to **make funds and economic resources available** and restrictions on admissions (**travel bans**)
  - sectoral restrictive measures, i.e. **arms embargoes** or economic and financial measures (e.g. **import and export restrictions**, restrictions on the provision of certain services, such as **banking services**)
- **'Freeze and Seize' Task Force**: aimed at enhancing compliance with past and current Union restrictive measures

## 2. Problems to be addressed

- In practice, very few individuals or legal persons responsible for the violation of Union restrictive measures are effectively held accountable.
- In only a few Member States judicial proceedings related to the violation of Union restrictive measures are ongoing.
- Law enforcement and judicial authorities face significant hurdles due to the specific category of offenders and the complex nature of the offences concerned.
- There is a lack of common criminal definitions and deterrent penalties to take decisive (cross-border) action against violations of Union restrictive measures.

# Overview Table

Categorisation of the violation of Union restrictive measures	Member States
The violation of restrictive measures is either criminal or administrative offence	BE, BG, CZ, DE, EE, IE, EL, IT, LT, AT, PL, RO, SI
The violation of restrictive measures is a criminal offence	DK, FR, HR, CY, LV, LU, HU, MT, NL, PT, FI, SE
The violation of restrictive measures is an administrative offence	ES, SK

# Considerable differences in national systems

- **Penalty systems for natural persons also differ substantially** across the MS. In **14 MS**, the maximum length of imprisonment is **between 2 and 5 years**. In **eight MS**, maximum sentences **between eight and 12 years** are possible
- The **maximum fine** that can be imposed for the violation of Union restrictive measures – either as a criminal or as an administrative offence – varies greatly across Member States, **ranging from EUR 1 200 to EUR 500 000**
- **14 MS** provide for **criminal liability of legal persons** for the violation of Union restrictive measures . In addition, **twelve MS** provide for **administrative penalties**, notably fines, which may be imposed on legal persons when their employees or their management violate restrictive measures. Maximum fines for legal persons **range from EUR 133 000 to 37.5 million**

# Examples of negative consequences

- Member State A imposes a **higher monetary threshold** for an offence related to the violation of restrictive measures to be deemed **serious** enough for it to be treated under criminal law or imposes a **significantly lower minimum-maximum sentence** than Member State B
- Consequence: **no cross border cooperation** or **similar investigative tools might not be available**.



### 3. Objective of the proposal

- **Urgent need to end impunity** for violations of restrictive measures following Russia's invasion of Ukraine.
- This proposal aims at **initiating the procedure set out in Article 83(1), third subparagraph, TFEU**. This will lead to the **addition of violation of restrictive measures to the “EU-crimes”** under Art.83(1) TFEU.

## 4. Adding an EU-crime under Art.83(1) TFEU

**Criteria** referred to in Article 83(1) TFEU for adding therein a **new area of crime**, relating to the cross-border dimension of that area of crime, **are met**:

1. This is a **particularly serious area of crime**, since
  - I. it may perpetuate threats to international peace and security,
  - II. undermine the support for **democracy, the rule of law and human rights**;
  - III. result in significant **economic, societal and environmental damage**.

## 4. Adding an EU crime under Art.83(1) TFEU (ctd.)

2. **It has a clear and at times even inherent cross-border dimension**, which requires a uniform cross-border response at EU level and global level.
3. Due to the very different definitions and penalties for the violation of Union restrictive measures **the same conduct might be sanctioned with different penalties and different enforcement levels**.
4. The very different definitions and penalties **represent an obstacle to the consistent application of Union policy on restrictive measures**. This may lead to “**forum-shopping**” by offenders and ultimately to their impunity.

## 5. Added Value

- **Strengthen the enforcement of restrictive measures** in the Member States, thereby complementing measures taken in accordance with Art.29 TEU and Article 215 TFEU. This will **contribute to maintaining international peace and security as well as Union values**.
- Harmonization of definitions and sanctions will help to **overcome fragmented approach**. It will **decrease the risk of forum-shopping** by offenders and **increase the deterrent effect of sanctions**.
- It will contribute **towards a level playing field among Member States and on a global level**.
- It will complement and ensure consistency with other policy areas: complement the Commission Proposal for a Directive on **asset recovery and confiscation**, implement the **Security Union Strategy** and the **EU Strategy to tackle organized crime**.

## 6. The proposed way forward

- Proposal for a **Council Decision** on adding the violation of Union restrictive measures to the areas of crime laid down in Art.83(1) TFEU
- **Communication from the Commission** to the European Parliament and the Council: Towards a Directive on criminal penalties for the violation of Union restrictive measures

Once the **Council agrees** (after consent of the European Parliament) to add the violation of restrictive measures as an area of crime under Art.83(1) TFEU, the Commission will be able to **propose a Directive** immediately following the publication of the Council decision in the Official Journal.

**Thank you for your attention!**