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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION 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
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COUNCIL DECISION (EU) 2022/...

of ...

**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**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ Consent of ... (not yet published in the Official Journal).

Whereas:

- (1) Article 29 of the Treaty on European Union (TEU) provides that the Council can adopt decisions defining the approach of the Union to a particular matter of a geographic or thematic nature, including restrictive measures.
- (2) Article 215 of the Treaty on the Functioning of the European Union (TFEU) enables the Council to adopt restrictive measures against natural or legal persons and groups, or non-State entities, or to adopt measures providing for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, on the basis of a decision pursuant to Article 29 TEU. Member States should have effective, proportionate and dissuasive penalties in place for violations of Council Regulations on Union restrictive measures.
- (3) This decision covers only Union restrictive measures that the Union has adopted on the basis of Article 29 TEU or Article 215 TFEU, such as measures concerning the freezing of funds and economic resources, the prohibition on making funds and economic resources available and the prohibition on entry into the territory of a Member State of the Union, as well as sectoral economic measures and arms embargoes.

- (4) It is necessary that Member States have effective, proportionate and dissuasive penalties in place for the violation of Union restrictive measures. It is also necessary that those penalties address the circumvention of Union restrictive measures.
- (5) The Commission ensures coordination among Member States and Union agencies in the enforcement of the Union restrictive measures adopted in the context of Russia's war of aggression against Ukraine and has assessed the interplay between restrictive measures and criminal law measures.
- (6) Article 83(1) TFEU currently does not provide for the establishment of minimum rules concerning the definition of and penalties for the violation of Union restrictive measures, since their violation as such is not yet covered by the areas of crime listed in that Article. The areas of crime currently listed in Article 83(1), second subparagraph, are terrorism, trafficking in human beings, 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. The violation of Union restrictive measures can however in some cases be related to criminal offences covered by some of the listed areas of crime, such as terrorism and money laundering.

- (7) Article 83(1) third subparagraph TFEU allows for a special procedure whereby the Council may identify new areas of crime. This may only be done after a careful assessment of the criteria set out in the Treaty, which reflect the exceptional nature of the procedure. The developments in crime witnessed following Russia's war of aggression against Ukraine constitute exceptional circumstances.
- (8) The criteria referred to in Article 83(1) first subparagraph TFEU relating to the cross-border dimension of an area of crime, namely the nature, or impact of criminal offences and the special need to combat them on a common basis are inter-linked and cannot be assessed in isolation.
- (9) The violation of Union restrictive measures should be identified as an area of crime in order to ensure the effective implementation of the Union's policy on restrictive measures. The violation of Union restrictive measures is already categorised as a criminal offence by a majority of the Member States. Some Member States which categorise the violation of restrictive measures as a criminal offence, have broad definitions in place, such as 'breach of UN and EU sanctions' or 'breach of EU regulations', whereas others have more detailed provisions, for instance providing a list of prohibited conduct. The criteria according to which the conduct falls within the scope of criminal law vary among Member States, but they are usually related to their gravity (serious nature), or determined in qualitative (intent, serious negligence) or quantitative (damage) terms.

- (10) The violation of Union restrictive measures is a particularly serious area of crime, which, in terms of gravity, is of a similar degree of seriousness to the areas of crime listed in Article 83(1) TFEU, since it can perpetuate threats to international peace and security, undermine the consolidation of and support for democracy, the rule of law and human rights and result in significant economic, social, societal and environmental damage. Because of such violations, individuals and entities whose assets are frozen or whose activities are restricted continue to be able to access their assets and support regimes that are targeted by Union restrictive measures or continue to access State funds that were misappropriated. Similarly, the money generated by the exploitation of goods and natural resources traded in violation of Union restrictive measures can allow the regimes targeted by those restrictive measures to purchase arms and weapons, with which they commit their crimes. Furthermore, the violation of Union restrictive measures relating to trade could contribute to the illegal exploitation of natural resources in the jurisdiction targeted by those restrictive measures.
- (11) In United Nations Security Council Resolution (UNSCR) 1196 (1998), the United Nations Security Council highlighted the importance of strengthening the effectiveness of arms embargoes as a means to diminish the availability of arms with which to pursue armed conflicts. It also encouraged States to consider, as a means of implementing their obligations to carry out decisions of the Security Council on arms embargoes, the adoption of legislation or other legal measures making the violation of arms embargoes established by the Security Council a criminal offence.

- (12) The fact that Member States have very different definitions of and penalties for the violation of Union restrictive measures under their national laws contributes to different degrees of enforcement of sanctions, depending on the Member State where the infringement is pursued. This undermines the Union objectives of safeguarding international peace and security and upholding Union common values. Therefore, there is a particular need for common action at Union level to address the violation of Union restrictive measures by means of criminal law.
- (13) Violations of Union restrictive measures have a clear and, at times, even inherently cross-border dimension. Not only can such violations be committed by natural persons or with the involvement of legal entities operating on a global scale, but in some cases Union restrictive measures, such as restrictions on banking services, even prohibit cross-border operations. Their violation therefore equates to conduct on a cross-border scale requiring a common cross-border response at Union level.
- (14) The different definitions of and penalties for the violation of Union restrictive measures under Member States' national laws hinder the consistent application of Union policy on restrictive measures. They can even lead to forum shopping by offenders and a form of impunity because they could choose to conduct their activities in those Member States that provide for less severe penalties for the violation of Union restrictive measures. Harmonisation of penalties for the violation of Union restrictive measures would increase the effectiveness, proportionality and dissuasiveness of such penalties.

- (15) The violation of Union restrictive measures should therefore be identified as an ‘area of crime’ for the purposes of Article 83(1) TFEU as it meets the criteria specified in that Article.
- (16) Common action at Union level would not only contribute towards a level playing field among Member States and enhance law enforcement and judicial cooperation in addressing the violation of Union restrictive measures; it would also contribute towards a global level playing field in terms of law enforcement and judicial cooperation with third countries on the violation of Union restrictive measures.
- (17) The objective of this Decision, namely identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) TFEU, has to be achieved at Union level. It therefore complies with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve this objective.
- (18) The identification of the violation of Union restrictive measures as an areas of crime for the purposes of Article 83(1)TFEU is necessary, as a first step, to enable, as a second step, the adoption of substantive secondary legislation, inter alia on the establishment of minimum rules concerning the definition of criminal offences and penalties for the violation of Union restrictive measures.

- (19) This Decision does not affect any actions undertaken thereafter, in accordance with the legislative procedures laid down in the Treaty. In particular, it does not determine or pre-empt the scope and content of any secondary legislation proposed subsequent to the application of this Decision.
- (20) It is essential that any legislative proposal for such secondary legislation be prepared in line with the principles of better regulation.
- (21) In particular, due consideration needs to be given to the diversity of national systems and the fundamental aspects of the Member States' criminal justice systems, including as regards the organisation of penalties. Due consideration needs to be given also to the safeguards for fundamental rights, the principle of non retroactivity of criminal offences, the principles of legality and proportionality of criminal offences and penalties enshrined in Article 49 of the Charter of Fundamental Rights of the European Union, as well as the requirements of-precision, clarity and intelligibility of criminal law.
- (22) 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 Decision and is not bound by it or subject to its application.

(23) [non-participation:] In accordance with Articles 1 and 2 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, and without prejudice to Article 4 of that protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

OR [participation:] 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...], its wish to take part in the adoption and application of this Decision.

(24) In order to enable, as a matter of urgency, the adoption of secondary legislation establishing minimum rules on the definition of and penalties for the crime of violating Union restrictive measures, this Decision should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The violation of Union restrictive measures shall be an area of crime within the meaning of Article 83(1), second subparagraph, TFEU.

Article 2

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

Done at ...,

For the Council

The President
