



Council of the
European Union

123195/EU XXVII. GP
Eingelangt am 05/12/22

Brussels, 5 December 2022
(OR. en)

15653/22

Interinstitutional File:
2022/0398(COD)

JAI 1624
COPEN 431
DROIPEN 163
ENFOPOL 621
CODEC 1932

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	2 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 684 final
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

Delegations will find attached document COM(2022) 684 final.

Encl.: COM(2022) 684 final



EUROPEAN
COMMISSION

Brussels, 2.12.2022
COM(2022) 684 final

2022/0398 (COD)

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**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Restrictive measures are an essential tool for promoting the objectives of the Common Foreign and Security Policy (CFSP), as set out in Article 21 of the Treaty on European Union (TEU). These objectives include safeguarding EU values, maintaining international peace and security, and consolidating and supporting democracy, the rule of law and human rights.

To preserve these values, the EU may impose restrictive measures against non-EU countries, entities, legal or natural persons. These measures comprise targeted individual measures, i.e. targeted financial sanctions (asset freezes) and restrictions on admissions (travel bans), and sectoral measures, i.e. arms embargoes or economic and financial measures (e.g. import and export restrictions, and restrictions on the provision of certain services, such as banking services)¹.

Currently, the EU has over 40 sets of restrictive measures in place. Some of these implement restrictive measures adopted by the United Nations; others are adopted autonomously by the EU. In addition to measures addressing country-specific situations, the EU has also adopted general measures targeting the proliferation and use of chemical weapons, cyberattacks, human rights violations, and terrorism². Restrictive measures are binding on Member States and on any person or entity under the jurisdiction of Member States (EU operators)³.

(1) Inconsistent enforcement of Union restrictive measures

As the adoption of Union restrictive measures has intensified over recent decades⁴, so too have the schemes to circumvent them. The Commission has previously pointed to inconsistent

¹ The Council adopts restrictive measures. The Council first adopts a CFSP Decision under Article 29 TEU. The measures envisaged in the Council Decision are implemented at either EU or national level. It has been the practice so far that measures such as arms embargoes or restrictions on admission are implemented directly by Member States, which are legally bound to act in conformity with CFSP Council Decisions. Other measures include interrupting or reducing, in part or completely, economic relations with a third country and individual measures to freeze funds and economic resources, and to prohibit the making available of funds and economic resources. These measures are implemented by means of a Regulation adopted by the Council, acting by qualified majority, on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, under Article 215 TFEU. Anti-circumvention provisions can be found in both types of acts.

² For an overview, see the EU sanctions map, available at <https://www.sanctionsmap.eu/#/main>.

³ Within the jurisdiction (territory) of the [Union](#), i.e.: (a) within the territory of the Union, including its airspace; (b) on board any aircraft or any vessel under the jurisdiction of a Member State; (c) to any person inside or outside the territory of the Union who is a national of a Member State; (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union (see e.g. Article 17 of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, (OJ L 078 17.3.2014, p. 6)

⁴ See the EU sanctions map, supra note 2.

enforcement of restrictive measures and the fact that this undermines their efficacy and the EU's ability to speak with one voice⁵.

Speaking with one voice has become particularly urgent in the current context of Russia's military aggression against Ukraine. The EU has put in place a series of restrictive measures against Russian and Belarusian individuals and entities, some of which date back to 2014. In this context, in order to enhance EU-level coordination in the enforcement of these restrictive measures, the Commission set up a 'Freeze and Seize' Task Force. This Task Force ensures coordination among Member States and EU agencies such as Europol and Eurojust. It has regularly discussed the need for a common criminal law approach in order to hold accountable natural and legal persons involved in the violation of Union restrictive measures.

The implementation and enforcement of Union restrictive measures is primarily the responsibility of Member States. The competent authorities in Member States have to assess whether there has been a breach of the relevant Council Decisions and Council Regulations adopted under Article 29 TEU or Article 215 of the Treaty on the Functioning of the European Union (TFEU), respectively and to take appropriate measures. In this regard, EU Regulations systematically include a provision requiring Member States to adopt national rules providing for effective, proportionate and dissuasive penalties for infringements of those Union legal acts⁶.

Apart from the restrictions, these Decisions and Regulations generally include:

- an anti-circumvention clause, which prohibits knowing and intentional participation in activities that seek to circumvent the restrictive measures in point⁷; and
- other obligations, in particular to report on steps taken to implement the restrictive measures (e.g. reporting to authorities the amount of assets that have been frozen).

While Article 29 TEU and Article 215 TFEU provide a legal basis for the Council to adopt the necessary measures in the case of adoption of Union restrictive measures, the legal basis for the adoption of restrictive measures does not provide for the approximation of criminal law definitions and the types and levels of criminal penalties⁸.

(2) Differences among Member States' criminal definitions and penalties

⁵ Communication from the Commission, *The European economic and financial system: fostering openness, strength and resilience*, COM(2021) 32 final of 19.1.2021, Section 5 (Strengthening the implementation and enforcement of EU sanctions), p. 16, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0032&from=EN>. In the same Communication, the Commission notes that the implementation of Union restrictive measures is not as uniform across the EU as it ought to be. This creates distortions in the single market as EU companies, including EU subsidiaries of foreign companies, can circumvent prohibitions. This also creates uncertainty among operators. As cited, inconsistent enforcement undermines the efficacy of restrictive measures and the EU's ability to speak with one voice. Among other initiatives, the strategy calls for further coordination work between the Commission and Member States to ensure that national penalties for breaching Union restrictive measures are effective, proportionate and dissuasive.

⁶ As an example, see Article 8 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, consolidated text available at [EUR-Lex - 02014R0833-20220413 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2014/833/oj).

⁷ It is noted that that this clause is also applicable if the restrictive measures have not been breached; it is enough to participate in schemes created to that end.

⁸ The approximation of criminal definitions and sanctions cannot take place on the non-legislative legal basis of Article 29 TEU or Article 215 TFEU.

In the absence of EU-level harmonisation, national systems differ significantly as concerns criminalisation of the violation of EU law on Union restrictive measures. In 12 Member States, the violation of Union restrictive measures is solely a criminal offence. In 13 Member States, the violation of these measures can amount to an administrative or a criminal offence⁹. The criteria according to which the conduct falls within one or other category of measures are usually related to its gravity (serious nature), determined in either qualitative (intent, serious negligence) or quantitative (damage) terms¹⁰, but they are different in each Member State. In two Member States, the specific offence of the violation of Union restrictive measures can, at present, only lead to administrative penalties¹¹.

Penalty systems also differ substantially across Member States. In 14 Member States, the maximum length of imprisonment is between 2 and 5 years. In 8 Member States, maximum sentences between 8 and 12 years are possible¹². 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 5 000 000¹³.

Fourteen Member States provide for criminal liability of legal persons for the violation of Union restrictive measures¹⁴. In addition, 12 Member States 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 EUR 37.5 million¹⁵.

(3) Lack of criminal investigations and prosecutions

In practice, very few individuals or legal persons responsible for the violation of Union restrictive measures are effectively held accountable¹⁶. However, the Genocide Network report notes that ‘a positive trend can be observed recently in the number of enforcement actions launched and the rise in penalties imposed by certain national authorities’¹⁷.

⁹ Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, Annex, available at https://www.eurojust.europa.eu/sites/default/files/assets/genocide_network_report_on_prosecution_of_sanctions_restrictive_measures_violations_23_11_2021.pdf. In view of a presentation in the Council Working Party on Judicial Cooperation in Criminal Matters (COPEN), the report was also published in Council document 7274/22 of 16 March 2022.

¹⁰ Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, Section 5.1., p. 22.

¹¹ Idem.

¹² Idem, Section 5.2., p. 23.

¹³ Idem, Section 5.3., p. 24.

¹⁴ Idem, based on the report of the Genocide Network and further investigation by the Commission.

¹⁵ Idem.

¹⁶ Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, p. 4. An overview of the relevant legislation from Member States and Network Observer States is provided in the annex to the expert report, see https://www.eurojust.europa.eu/sites/default/files/assets/genocide_network_report_on_prosecution_of_sanctions_restrictive_measures_violations_23_11_2021.pdf. In view of a presentation in the Council Working Party on Judicial Cooperation in Criminal Matters (COPEN), the report was also published in Council document 7274 of 16 March 2022.

¹⁷ Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, p. 13.

Despite the positive trends in some Member States, there seem to be only a few in which there are ongoing judicial proceedings related to the violation of Union restrictive measures¹⁸. This can serve as an indication that in many Member States insufficient priority is given to investigating and prosecuting the violation of Union restrictive measures. In this regard, it should be noted that Europol and Eurojust have developed a number of activities to further support police and judicial authorities investigating and prosecuting the violation of Union restrictive measures. They have been cross-checking the list of EU-designated individuals and companies against their databases. Europol has also launched ‘Operation Oscar’¹⁹ to support financial investigations by Member States targeting criminal assets owned by individuals and legal entities subject to Union restrictive measures. At the same time, criminal investigations and prosecutions often build on the detection and referral, from administrative authorities to law enforcement, of violations of Union restrictive measures. The absence of such referrals points to a lack of such operational cooperation within national enforcement chains.

(4) Negative consequences of the status quo

In the absence of law enforcement, and of judicial authorities having appropriate and effective tools and resources available to prevent, detect, investigate and prosecute the violation of Union restrictive measures, designated individuals and legal persons whose assets are frozen may continue to be able to access their assets in practice and to support regimes that are targeted by Union restrictive measures, thus frustrating the objectives of those restrictive measures.

Moreover, Member States have very different definitions of, and disparate penalties for, the violation of Union restrictive measures under their administrative and/or criminal law. This indicates that the same infringement might be punished with different penalties and at different enforcement levels. This weakens the enforcement of Union restrictive measures and undermines the credibility of the EU’s objectives.

Finally, in some cases the proceeds generated by the activities carried out in violation of Union restrictive measures may also allow the entities and individuals targeted by those restrictive measures to continue to engage in the behaviour for which they have been subject to restrictive measures.

(5) Objectives of the proposal

Against this background, following a European Commission proposal presented on 25 May 2022²⁰, the Council has decided to identify the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) TFEU. This has enabled the Commission to adopt this proposal for a Directive under the ordinary legislative

¹⁸ For a selection of cases, see Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, p. 14.

¹⁹ Europol, EU-wide operation targeting criminal assets in relation to the Russian invasion of Ukraine, available at: <https://www.europol.europa.eu/media-press/newsroom/news/eu-wide-operation-targeting-criminal-assets-in-relation-to-russian-invasion-of-ukraine>.

²⁰ European Commission, Proposal for a Council Decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM(2022) 247 of 25.5.2022.

procedure, which aims to approximate the definition of criminal offences and penalties for the violation of Union restrictive measures.

The objectives of this proposal are to:

- (a) approximate definitions of criminal offences related to the violation of Union restrictive measures;
- (b) ensure effective, dissuasive and proportionate penalty types and levels for criminal offences related to the violation of Union restrictive measures;
- (c) foster cross-border investigation and prosecution; and
- (d) improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning.

- **Consistency with existing policy provisions in the policy area**

Article 2 TEU lays down the EU's common values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights. The effective enforcement of restrictive measures, including through criminal law measures aimed at addressing the violation of restrictive measures, supports the upholding of such common values within and outside the EU.

Furthermore, the EU constitutes an area of freedom, security and justice that respects fundamental rights, and different legal systems and traditions of Member States. It aims at ensuring a high level of security through measures that include preventing and combating crime, racism and xenophobia. Under Article 83(1) TFEU, the European Parliament and the Council may 'establish minimum rules concerning the definition of criminal offences and penalties in the areas of particularly serious crime with a cross-border dimension, resulting from the nature or impact of such offences or from a special need to combat them on a common basis.'

The approximation of definitions and penalties for the criminal offence of the violation of Union restrictive measures complements the Commission proposal for a Directive on asset recovery and confiscation, implementing the Security Union Strategy²¹ and the EU strategy to tackle organised crime²². The proposal for a Directive on asset recovery and confiscation aims at strengthening the capabilities of national authorities to trace and identify, freeze and manage property that constitutes the proceeds or instrumentalities of crime. Furthermore, it provides for a reinforced legal framework on confiscation, including specific cases where a conviction for a specific crime is not possible.

In addition, the proposal for a Directive on asset recovery and confiscation contributes to the effective implementation of restrictive measures since it requires Member States to enable the tracing and identification of property linked to violations of Union restrictive measures as

²¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, COM(2020) 605 final of 24.7.2020.

²² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy to tackle organised crime, COM(2021) 170 final of 14.4.2021.

defined under national law. Moreover, the proposal makes the revised rules on asset recovery and confiscation applicable to the criminal offence of the violation of Union restrictive measures.

Following the adoption of this proposal for a Directive approximating the definitions and penalties related to the violation of Union restrictive measures, the rules on tracing and identification, freezing, management, and confiscation measures will become applicable to property related to the violation of Union restrictive measures. In the end, proceeds of the violation of Union restrictive measures, for example in instances where individuals and companies would make funds available to those subject to targeted financial sanctions (i.e. asset freezes), could become the object of confiscation measures. At the same time, instrumentalities used to pursue the violation of restrictive measures could also become the object of confiscation.

- **Consistency with other Union policies**

Council Regulations on Union restrictive measures

The establishment of minimum rules concerning the criminal law definition of, and penalties for, the violation of restrictive measures based on Article 83(1) TFEU would strengthen the enforcement of restrictive measures in Member States, thereby complementing the measures taken in accordance with Article 29 TEU and Article 215 TFEU. The provision on penalties in Regulations No 833/2014 and No 269/2014²³ have been strengthened as part of the sixth package of restrictive measures in response to the Russian war of aggression against Ukraine. The amended provisions oblige Member States to lay down rules on penalties, including criminal penalties, applicable to infringements of these Regulations and to take all measures necessary to ensure that they are implemented. The penalties must be effective, proportionate and dissuasive. Member States must also provide for appropriate measures for the confiscation of the proceeds of such infringements.

On 21 July 2022, the Council adopted Council Regulation (EU) 2022/1273²⁴, which amends Article 8 and Article 9 of Council Regulation (EU) No 269/2014. In particular, in order to ensure the effective and uniform implementation of this Regulation, and in view of the increasing complexity of evasion schemes of restrictive measures, which hamper such implementation, it obliges designated persons and entities with assets within the jurisdiction of a Member State to report these assets and to cooperate with the competent authority in the verification of this reporting (Article 9)²⁵. Failure to respect this obligation will constitute a

²³ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 229, 31.7.2014, p. 1-11, consolidated version available at: [EUR-Lex - 02014R0833-20220604 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eur-lex-content/EN/TXT/?uri=CELEX%3A02014R0833-20220604); Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17.3.2014, p. 6-15, consolidated version available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20220604>.

²⁴ Council Regulation (EU) 2022/1273 of 21 July 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, ST/11451/2022/INIT, OJ L 194, 21.7.2022, p. 1-4.

²⁵ Article 9(1)-(3) of Regulation (EU) No 269/2014 as amended: '1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2. 2. Natural or legal persons, entities or bodies listed in Annex I, shall: (a) report before 1 September 2022 or within 6 weeks from the date of listing in Annex I, whichever is latest, funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or

circumvention²⁶. Regulation 2022/1273 also strengthens the provision on reporting obligations for EU operators, with a view to preventing the breach and circumvention of the freezing of assets (Article 8)²⁷.

However, Article 29 TEU and Article 215 TFEU are not the suitable legal basis for the approximation of criminal definitions and the types and levels of criminal penalties.

2021 Commission Communication on the European economic and financial system

Furthermore, in its 2021 Communication *The European economic and financial system: fostering openness, strength and resilience*²⁸, the Commission notes that the implementation of Union restrictive measures is not as uniform across the EU as it ought to be. This creates distortions in the single market, as EU companies, including EU subsidiaries of foreign companies, can find means to circumvent the restrictive measures. This also creates uncertainty among operators. Inconsistent enforcement undermines the efficacy of Union restrictive measures and the EU's ability to speak with one voice. Among other initiatives, the strategy calls for further coordination work between the Commission and Member States to ensure that national penalties for breaching Union restrictive measures are effective, proportionate and dissuasive.

Technical Support Instrument

Finally, under the Technical Support Instrument²⁹, the Commission supports Member States to provide capacity building and technical advice on the implementation of restrictive measures.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Under Article 83(1) TFEU, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in areas of particularly

controlled by them, to the competent authority of the Member State where those funds or economic resources are located; and (b) cooperate with the competent authority in any verification of such information. 3. Failure to comply with paragraph 2 shall be considered as participation, as referred to in paragraph 1, in activities the object or effect of which is to circumvent the measures referred to in Article 2.'

²⁶ Idem.

²⁷ Article 8(1) of Regulation (EU) No 269/2014 as amended: '1. Notwithstanding the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall: (a) supply immediately any information which would facilitate compliance with this Regulation, such as information on accounts and amounts frozen in accordance with Article 2 or information held about funds and economic resources within Union territory belonging to, owned, held or controlled by natural or legal persons, entities or bodies listed in Annex I and which have not been treated as frozen by the natural and legal persons, entities and bodies obliged to do so, to the competent authority of the Member State where they are resident or located, and shall transmit such information, directly or through the Member State, to the Commission; and (b) cooperate with the competent authority in any verification of such information.'

²⁸ COM(2021) 32 final of 19.1.2021.

²⁹ Commission Implementing Decision of 9.3.2022 on the financing of the Technical Support Instrument and adoption of the work programme for 2022, C (2022) 1379 final of 9.3.2022.

serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism; trafficking in human beings and sexual exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime; and organised crime. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. In doing so, it acts unanimously after obtaining the consent of the European Parliament.

Following the adoption of Council Decision 2022/2332³⁰, the areas of crime listed in Article 83(1) TFEU now also include the violation of Union restrictive measures. This has enabled the Commission to put forward the current proposal for a Directive.

- **Subsidiarity (for non-exclusive competence)**

The objectives of this Directive are to ensure common 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. As discussed in more detail in the following paragraphs, these objectives cannot be sufficiently achieved by Member States. They can instead be better achieved at EU level, by reason of the scale and effects of the conduct at stake, which is of an inherent cross-border nature and which potentially undermines the achievement of EU objectives to safeguard international peace and security, and to uphold EU common values. Therefore, the EU may adopt the necessary measures in accordance with the principle of subsidiarity as set out in Article 5 TEU.

The violation of Union restrictive measures is a particularly serious area of crime, since it may 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 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 thus frustrating the objectives of those restrictive measures. Similarly, the money generated by the exploitation of goods and natural resources traded in violation of Union restrictive measures may also allow the regimes targeted by those restrictive measures to have continued access to the necessary means (i.e. purchase the arms and weapons) with which they maintain repressive practices and continue committing grave crimes. The violation of Union restrictive measures relating to trade could furthermore contribute to the illegal exploitation of natural resources in the jurisdiction targeted by those restrictive measures.

In addition, the fact that Member States, under their administrative and/or criminal law, have very different definitions and penalties for the violation of Union restrictive measures suggests that the same infringement might be punished with different penalties and face different enforcement levels. These differences represent an obstacle to the consistent application of the Union policy on restrictive measures. They may even lead to forum shopping by offenders and could ultimately lead to their (quasi) impunity in case they choose

³⁰ 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, ST/10287/2022/REV/1, *OJ L 308*, 29.11.2022, p. 18–21

to conduct their activities in the Member State(s) that provide for less severe penalties or have a record of being lenient in the prosecution for the violation of Union restrictive measures. This undermines the efficiency of restrictive measures and their enforcement at Union level. Such a situation has the risk of frustrating the EU objectives to safeguard international peace and security and uphold EU common values. Therefore, there is a special need for common action at EU level, by means of criminal law, to address the violation of Union restrictive measures.

Furthermore, violations of Union restrictive measures have a clear and at times even inherent cross-border dimension. Not only are they usually committed by natural persons and legal entities operating on a global scale, but, in some cases, Union restrictive measures, such as restrictions on banking services, even forbid cross-border operations. Hence, by definition, their violation is conduct with a cross-border dimension requiring a common cross-border response at EU level.

Finally, harmonisation would also increase the deterrent effect of penalties for the violation of Union restrictive measures.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5 TEU, this Directive does not go beyond what is necessary to achieve its objective. The approximation of definitions of criminal offences and the types and levels of criminal penalties is limited to what is needed to effectively address the violation of Union restrictive measures in Member States. Measures on the use of investigative tools and information exchange are included only to the extent needed for the proposed criminal law framework to function effectively.

- **Choice of the instrument**

Under Article 83(1) TFEU, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Targeted consultations were conducted with Member States in the Working Party on Judicial Cooperation in Criminal Matters (COPEN) (8 September 2022), Europol (5 September) and Eurojust (13 September). DG JUST also organised an in-depth discussion with members of its Expert Group on EU Criminal Policy (16 September). These consultations were based on a dedicated Commission questionnaire that raised questions on the offences, penalties, jurisdiction rules, and provisions on cross-border cooperation to be included in the future Directive.

- **Collection and use of expertise**

Following Russia's military aggression against Ukraine, the Commission set up the 'Freeze and Seize' Task Force at the beginning of March 2022. Its aim is to ensure coordination among Member States in the enforcement of Union restrictive measures on Russian and Belarusian listed individuals and companies, and to explore the interplay between Union restrictive measures and criminal law measures. These exchanges of views included meetings with national competent authorities for the implementation of restrictive measures, Europol, Eurojust, and the Genocide Network³¹, the Secretariat of which is hosted by Eurojust.

A specific subgroup of the 'Freeze and Seize' Task Force is dedicated to strengthening the implementation of Union restrictive measures. In particular, it tackles questions raised by national authorities and explores possible ways to identify assets proactively. Member State national competent authorities participate in this subgroup. During the exchanges of views in the context of this subgroup, references were made on several occasions to difficulties in holding accountable individuals and legal persons involved in the violation of Union restrictive measures. Participants in such exchanges also argued in favour of a common criminal law approach to the violation of Union restrictive measures.

Evidence of the need for such a common approach is specifically provided for in the Genocide Network report of December 2021³². This report highlights the need for the criminalisation of the violation of Union restrictive measures to ensure that individuals or legal persons responsible for such violations are held accountable³³. It furthermore concludes that 'prosecuting sanctions violations can offer a safety net to avoid impunity', especially in the context of core international crimes³⁴.

Furthermore, discussions within the 'Freeze and Seize' Task Force on the exchange of best practices on both criminal investigations and confiscation demonstrated the importance of a proactive approach and coordination among authorities responsible for the implementation of Union restrictive measures. Financial intelligence units, law enforcement authorities and customs authorities, along with international partners, civil society and investigative journalists, should cooperate and exchange information in order to obtain the leads that will enable law enforcement authorities to start an investigation.

The Commission also consulted its Expert Group on EU Criminal Policy³⁵ on 13 May and 16 September 2022. The group generally welcomed the idea of harmonising definitions and penalties at EU level and provided specific input as regards offences, penalties, jurisdiction rules and cross-border cooperation.

- **Impact assessment**

This proposal for a Directive aims at approximating the definition of criminal offences and penalties in the area of the violation of Union restrictive measures. It follows the adoption of

³¹ Eurojust, Genocide Network, see <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network?msclid=de6a1668cf6011eca5681e93e0033be2>.

³² Genocide Network, *Expert Report on Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021.

³³ Idem, p. 4.

³⁴ Idem, p. 26.

³⁵ European Commission, Expert Group on EU Criminal Policy, <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=2760&msclid=56005123cfaf11ec8de3edb643537b59>.

Council Decision (EU) 2022/2332 on identifying the violation of Union restrictive measures as an area of crime that meets the specified criteria laid down in Article 83(1) of the Treaty on the Functioning of the European Union³⁶.

The European Commission proposal for a Council Decision, presented on 25 May³⁷, was accompanied by a Communication *Towards a Directive on criminal penalties for the violation of Union restrictive measures*³⁸. Because of the urgent need to hold accountable individuals and legal persons involved in the violation of Union restrictive measures, the annex to this Communication already outlined the main elements that a future Directive on criminal penalties for the violation of Union restrictive measures could contain.

Council Decision (EU) 2022/2332 on identifying the violation of Union restrictive measures as an area of crime that meets the specified criteria laid down in Article 83(1) of the Treaty on the Functioning of the European Union also underlines the urgency of the adoption of secondary legislation³⁹.

Given these circumstances, no impact assessment was conducted.

- **Fundamental rights**

This Directive respects fundamental rights and observes the principles laid down in the Charter of Fundamental Rights of the European Union (the Charter)⁴⁰. Notably, the Directive ensures compliance with the following provisions of the Charter: the right to liberty and security (Article 6); the right to protection of personal data (Article 8); the freedom to conduct a business (Article 16); the right to property (Article 17); the right to an effective remedy and to a fair trial (Article 47); the presumption of innocence and right of defence (Article 48); the principles of legality and proportionality of criminal offences and penalties (Article 49); and the right not to be tried or punished twice in criminal proceedings for the same offence (Article 50).

This Directive will have to be transposed into national law respecting fundamental rights. In particular, Member States should ensure that the imposition of criminal and administrative penalties respects the principles of the Charter, including the privilege against self-incrimination, the right to remain silent and the prohibition of being tried or punished twice in criminal proceedings for the same offence. Member States should also ensure that the procedural rights of suspected or accused persons in criminal proceedings are respected. In this regard, the obligations under this Directive are without prejudice to Member States' obligations under EU law on procedural rights in criminal proceedings. Finally, this Directive

³⁶ Supra n. 30.

³⁷ European Commission, Proposal for a Council Decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM(2022) 247 of 25.5.2022.

³⁸ Communication from the European Commission to the European Parliament and the Council, *Towards a Directive on criminal penalties for the violation of Union restrictive measures*, COM(2022) 249 of 25.5.2022.

³⁹ Supra n. 30, recital 24: 'In order to enable, as a matter of urgency, the adoption of secondary legislation establishing minimum rules on the definition of, and the 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'.

⁴⁰ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391-407.

will have to be transposed without prejudice to the applicable rules on reporting, confidentiality and professional secrecy.

4. BUDGETARY IMPLICATIONS

The current proposal has negligible budgetary implications for Member States and for the Commission. Specific information on the financial implications for the Commission can be found in the legislative financial statement attached to this legislative package.

As provided for in Article 19(1) and (4) of the current proposal, the Commission will have to undertake a number of reporting obligations. Two years after the end of the transposition period, the Commission will have to produce a report on how Member States transposed the Directive. Five years after the end of the transposition period, the Commission must produce a study on the Directive's effectiveness to evaluate its added value. The latter will only happen after the end of the current multiannual financial framework.

The first report relates to transposition of the Directive by Member States. The second report that the Commission has to produce is a study that will assess the effectiveness of the Directive, with respect to a specified series of indicators.

In addition, the legislative financial statement details the costs for the collection and analysis of statistics on the criminal offences referred to in Articles 3, 4 and 5. Member States have to submit these statistics to the Commission on an annual basis, in accordance with Article 19(2) and (3) of the current proposal.

Besides the costs for the Commission, the proposal will also have limited financial implications for Member States. These financial implications can be divided into three parts.

- (1) As provided for in Article 15 of the current proposal, Member States will have to ensure that effective investigative tools are made available for the investigation of offences related to the violation of Union restrictive measures.
- (2) In accordance with Article 13 of the current proposal, Member States will have to ensure coordination and cooperation at strategic and operational level among all their competent authorities involved in the prevention, investigation and prosecution of offences related to the violation of Union restrictive measures.
- (3) Member States will face some costs related to the above-mentioned obligation to submit, on an annual basis, statistics on the criminal offences referred to in Articles 3, 4 and 5. However, insufficient data are available to enable an exact cost estimate of the related costs.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Member States will have six months after the entry into force of the Directive to transpose it into national legislation. Two years after the end of this transposition period, the Commission will have to produce a report on how Member States transposed the Directive. Five years after

the end of the transposition period, the Commission must produce a study on the Directive's effectiveness to evaluate its added value.

- **Detailed explanation of the specific provisions of the proposal**

Article 1: Subject matter

This provision sets out the purpose of the Directive, in particular its aim of ensuring the effective application of Union restrictive measures.

Article 2: Scope and definitions

This provision sets out the scope of the Directive. It applies to violations of Union restrictive measures adopted by the EU on the basis of Article 29 TEU or Article 215 TFEU. Such measures include the freezing of funds and economic resources, prohibitions on making funds and economic resources available and prohibitions on entry into, or transit through the territory of a Member State of the European Union, as well as sectoral economic measures and arms embargoes. Furthermore, this provision provides definitions of terms used in the Directive, including of the 'designated person, entity or body', 'funds' and 'economic resources'.

Article 3: Violation of Union restrictive measures

This provision describes the criminal offences covered by this Directive. The offences cover violations of the prohibitions and restrictions contained in Union restrictive measures, conduct intended to circumvent Union restrictive measures⁴¹, and breaching conditions under authorisations granted by competent authorities to conduct certain activities otherwise prohibited by the restrictive measures. These offences are not to be understood as imposing obligations on natural persons contrary to the right not to incriminate oneself and to remain silent as set out in the Charter and Directive (EU) 2016/343⁴². In addition, they do not affect the applicable rules on reporting, confidentiality and professional secrecy.

Moreover, activities which concern the provision of goods and services of daily use for the personal use of designated natural persons, such as food and healthcare products and services, or of petty cash, where it is clearly limited to fulfilling the basic human needs of such persons and their dependent family members are excluded from criminalisation. The failure to report such activities are also excluded from criminalisation. In addition, the delivery of humanitarian aid to persons in need is excluded from criminalisation. Such humanitarian aid must be provided strictly in accordance with international humanitarian law and can notably consist of food and nutrition, shelter, health care, water and sanitation. Furthermore, in implementing this Directive, Member States should take into account that International Humanitarian Law, the law of armed conflict, requires that restrictive measures should not prevent the delivery of humanitarian aid in line with principles of impartiality, humanity, neutrality and independence.⁴³

⁴¹ See Article 8 and 9 of Regulation (EU) No 269/2014, as amended.

⁴² 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).

⁴³ Commission notice, Commission guidance on the provision of humanitarian aid in compliance with EU restrictive measures (sanctions), C (2022) 4486 of 30.06.2022.

Certain violations of Union restrictive measures also constitute a criminal offence when committed with serious negligence. In particular, professionals, such as in legal, financial and trade services, should exercise due diligence to prevent any violation of Union restrictive measures.

Article 4: Inciting, aiding and abetting, and attempt

Article 4 criminalises inciting, and aiding and abetting, the commission of criminal offences referred to in Article 3. Also, attempts to commit criminal offences listed in Articles 3 are criminalised.

Article 5: Criminal penalties for natural persons

Article 5 provides minimum standards to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties. The proposal requires that Member States establish specific sanction levels and types for criminal offences related to the violation of Union restrictive measures. The categorisation proposed reflects the seriousness of the offences. A monetary threshold of EUR 100 000 is set as a way to distinguish more serious offences that should be punishable by a maximum term of imprisonment of at least 5 years. As mentioned, currently, in 14 Member States, the maximum length of imprisonment is between 2 and 5 years. In 8 Member States, maximum sentences between 8 and 12 years are possible⁴⁴. Additional penalties or measures should also be available in criminal proceedings against natural persons. They should include fines.

Article 6: Liability of legal persons

Article 6 contains obligations to ensure the liability of legal persons for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit. This Article also provides that Member States should make sure that legal persons can be held accountable for a lack of supervision and control that has made possible the commission of an offence referred to in Article 3 and 4 for the benefit of the legal person. Furthermore, the liability of the legal person should not exclude criminal proceedings against natural persons.

Article 7: Penalties for legal persons

Article 7 sets out penalties applicable to legal persons involved in the criminal offences covered by this proposal. In particular, Member States are required to take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive penalties, including: criminal or non-criminal fines; exclusion from access to public funding, including tender procedures, grants and concessions; disqualification from the practice of business activities; withdrawal of permits and authorisations to pursue activities that have resulted in committing the offence; placing under judicial supervision; judicial winding up; and closure of establishments that have been used for committing the criminal offence.

In addition, this Article provides that Member States should take the necessary measures to ensure that legal persons that benefit from the commission by others of offences in violation of Union restrictive measures are punishable by fines, the maximum limit of which should be not less than 5 per cent of the total worldwide turnover of the legal person in the business year

⁴⁴ Genocide Network, Section 5.2., p. 23

preceding the fining decision. The liability of legal persons does not exclude the possibility of criminal proceedings against natural persons who are the perpetrators of criminal offences specified in Articles 3 and 4.

Article 8: Aggravating circumstances

Article 8 sets out the aggravating circumstances to be taken into account when penalties are applied to an offence referred to in Articles 3 and 4. Any of the following circumstances should be considered an aggravating circumstance: the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA⁴⁵; the offence was committed by a professional service provider in violation of their professional obligations; the offence was committed by a public official when performing their duties; and the offence was committed by another person when performing a public function.

Article 9: Mitigating circumstance

Article 9 sets out a mitigating circumstance to be considered when penalties are applied to an offence referred to in Articles 3 and 4. This would be where the offender provides the administrative or judicial authorities with information they would not otherwise have been able to obtain, helping them to: (i) identify or bring to justice the other offenders; and/ or (ii) find evidence.

Article 10: Freezing and confiscation

Article 10 clarifies the concept of ‘proceeds’⁴⁶ specifically in situations in which the designated person, entity or body commits or participates in the specific circumvention offences under Article 3(2)(h)(i) and (ii). The proportionality of confiscation will have to be observed in each individual case.

Article 11: Jurisdiction rules

Article 11 lays down provisions on jurisdiction to make sure that Member States establish jurisdiction for offences covered by the proposal. Member States should exercise jurisdiction over offences committed by legal persons established in their territory and where the offences are committed for the benefit of a legal person in respect of any business done in whole or in part within the EU. In particular, the 2021 report of the Genocide Network mentions several relevant cases⁴⁷ of companies established in a Member State violating restrictive measures in non-EU countries. Furthermore, the establishment of jurisdiction over legal persons in respect of any business done in whole or in part within the EU is of particular importance to tackle the violation of Union restrictive measures. This will enable Member States to prosecute violation with an EU connection that is conducted via non-EU countries and/or by non-EU

⁴⁵ 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.

⁴⁶ Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, COM (2022) 245 of 25.5.2022, Article 3(1): ‘proceeds’ means any economic advantage derived directly or indirectly from a criminal offence consisting of any form of property, and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits.’

⁴⁷ Genocide Network, *Expert Report on Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021 p. 14-20.

persons, e.g. exports from the EU to a targeted destination or end-user, or transfers of assets from the EU to a listed person.

Article 12: Limitation periods

Article 12 lays down provisions on limitation periods in order to allow the competent authorities to investigate, prosecute and adjudicate criminal offences covered by this proposal during a certain time period.

Article 13: Coordination and cooperation between competent authorities within a Member State

This provision requires Member States to ensure coordination and cooperation at strategic and operational level among all their competent authorities involved in the prevention, investigation and prosecution of offences related to the violation of Union restrictive measures.

Article 14: Reporting of offences and protection of persons who report offences related to the violation of Union restrictive measures or who assist the investigation

This provision concerns the protection of whistle-blowers reporting information or providing evidence to a criminal investigation relating to the violation of Union restrictive measures.

Article 15: Investigative tools

This provision lays down that effective investigative tools, such as those that are used in organised crime or other serious crime cases, shall also be available for investigating or prosecuting offences referred to in Articles 3 and 4.

Article 16: Cooperation between Member States, the Commission, Europol, Eurojust and the European Public Prosecutor's Office

This provision requires Member States authorities, Europol, Eurojust, the European Public Prosecutor's Office, and the Commission, within their respective competence, to cooperate with each other in the fight against criminal offences referred to in Articles 3 and 4. The competent authorities of the Member States should also share information on practical issues.

Article 17: Amendments to Directive (EU) 2018/1673

The provision amends Article 2 of Directive (EU) 2018/1673 on combatting money laundering by criminal law⁴⁸ by defining the violation of Union restrictive measures as “criminal activities”. As a consequence, money laundering as described in Article 3 of Directive (EU) 2018/1673 involving property derived from the criminal offences covered by this Directive constitutes a criminal offence.

Articles 18-21

These Articles contain further provisions on transposition by Member States, reporting by Member States, evaluation and reporting by the Commission, entry into force, and addressees

⁴⁸ 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.

of this Directive. Given the urgent need to hold accountable individuals and legal persons involved in the violation of Union restrictive measures, Member States should bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 6 months after the entry into force of this Directive.

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 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 measures and arms embargoes, are an essential tool for the promotion of the objectives of the Common Foreign and Security Policy, as set out in Article 21 of the Treaty on European Union ('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 maintaining international peace, preventing conflicts and strengthening international security in line 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 in place for the violation of those Union restrictive measures, including obligations, such as reporting, established therein. It is also necessary that those penalties address the circumvention of Union restrictive measures.
- (4) The effective application of Union restrictive measures calls for common criminal definitions of conduct infringing Union restrictive measures. Member States should

ensure that this conduct constitutes a criminal offence when committed with intent as well as with serious negligence, in case the natural or legal person knew or should have known, that their conduct would infringe Union restrictive measures.

- (5) The effective application of Union restrictive measures also calls for common criminal definitions of conduct circumventing a Union restrictive measure.
- (6) Persons, entities and bodies, which are designated individually in Union restrictive measures and subject to those Union restrictive measures, may often be involved as instigators and accomplices. For instance, the practice by designated persons and entities of transferring funds, property or economic resources to a third party with a view to circumvent Union restrictive measures is increasingly widespread. Therefore, this conduct is covered by the circumvention offence approximated by this Directive.
- (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. Experience shows that 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 which is obtained in strict connection with judicial, administrative or arbitral proceedings, whether before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Therefore, legal advice in those circumstances should remain subject to the obligation of professional secrecy, except where the legal professional is 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. Knowledge can be inferred from objective factual circumstances.
- (8) The effective application of Union restrictive measures furthermore calls for a common criminal law definition of conduct breaching conditions under authorisations granted by competent authorities to conduct certain activities, which in the absence of such an authorization are prohibited or restricted under a Union restrictive measure.
- (9) It is appropriate to exclude from the criminalisation activities which concern the provision of goods and services of daily use for the personal use of designated natural persons, such as food and healthcare products and services, or of petty cash, where it is clearly limited to fulfilling the basic human needs of such persons and their dependent family members. The failure to report such activities should also be excluded from criminalisation. In addition, it is appropriate to exclude from criminalisation the delivery of humanitarian aid to persons in need. Such humanitarian aid must be provided strictly in accordance with international humanitarian law and can notably consist of food and nutrition, shelter, health care, water and sanitation. Furthermore, in implementing this Directive, Member States should take into account that International Humanitarian Law, the law of armed conflict, requires that restrictive measures should not prevent the delivery of humanitarian aid in line with principles of impartiality, humanity, neutrality and independence.
- (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 should include fines, taking into account that the violation of Union restrictive measures is mostly motivated by economic considerations.

- (11) Given that legal persons are also subject to Union restrictive measures, legal persons should also be held criminally liable for offences related to the violation of Union restrictive measures according to this Directive. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their administrative sanctioning systems provide for effective, dissuasive and proportionate penalty types and levels.
- (12) A further approximation and effectiveness of level of penalties imposed in practice should be fostered through common aggravating circumstances that 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. 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 should also ensure that in situations where 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 other offenders or to find evidence, such conduct may be regarded as mitigating circumstance.
- (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 referred to in Directive (EU) [.../...] [Directive on asset recovery and confiscation].
- (15) There is a need to clarify the concept of proceeds specifically in situations in which the designated person, entity or body commits or participates in: (i) concealing funds or economic resources owned, held, or controlled by a designated person, entity or body, which should be frozen in accordance with a Union restrictive measure, by the transfer of those funds, or economic resources to a third party; or (ii) concealing the fact that a person, entity or body subject to restrictive measures is the ultimate owner or beneficiary of funds or economic resources, through the provision of false or incomplete information. In those circumstances, as a consequence of the conduct of concealing, 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 considered as proceeds of crime for the purposes of Directive (EU) [.../...] [*Directive on asset recovery and confiscation*], it being understood that the proportionality of confiscation of such proceeds will have to be observed in each individual case.
- (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.
- (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). These competent authorities should also share information among each other and with the Commission on practical issues.
- (20) Whistleblowers can provide valuable information to competent authorities concerning past, ongoing or planned violations of Union restrictive measures, including attempts to circumvent them. This information can relate, 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 alert the competent authorities and to protect them from retaliation. For that purpose, it should be provided that Directive (EU) 2019/1937 of the European Parliament and of the Council⁴⁹ is applicable to the reporting of violations of Union restrictive measures and to the protection of persons reporting such violations.
- (21) To ensure the effective investigation and prosecution of violations of Union restrictive measures, those responsible for investigating or prosecuting these measures should have the possibility of using investigative tools such as those which are used in combating organised crime or other serious crimes. The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences under investigation as well as respecting the right to the protection of personal data.
- (22) An amendment to Directive (EU) 2018/1673 on combatting money laundering by criminal law⁵⁰ 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 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

⁴⁹ 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.

⁵⁰ 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.

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.

- (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/EU⁵¹, 2012/13/EU⁵², 2013/48/EU⁵³, (EU) 2016/343⁵⁴, (EU) 2016/800⁵⁵ and (EU) 2016/1919⁵⁶ of the European Parliament and of the Council.
- (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 six months after the entry into force of this Directive.
- (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.

⁵¹ 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).

⁵² 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).

⁵³ 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).

⁵⁴ 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).

⁵⁵ 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).

⁵⁶ 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).

- (28) [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 Directive 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 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 and definitions

- (1) This Directive applies to violations of Union restrictive measures. Those Union restrictive measures cover:
- (a) measures concerning the freezing of funds and economic resources;
 - (b) prohibitions on making funds and economic resources available;
 - (c) prohibitions on entry into, or transit through, the territory of a Member State
 - (d) sectoral economic and financial measures; and
 - (e) arms embargoes.
- (2) For the purposes of this Directive, the following definitions apply:
- (a) ‘Union restrictive measures’ are restrictive measures adopted by the Union on the basis of Article 29 TEU or Article 215 TFEU;
 - (b) ‘designated person, entity or body’, means those natural or legal persons, entities or bodies subject to Union restrictive measures consisting in the freezing of funds and economic resources and the prohibition to make funds and economic resources available;
 - (c) ‘funds’ means:

- (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- 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;
- (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;
 - (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 the violation of a Union restrictive measure constitutes a criminal offence when committed intentionally and provided it falls in one of the categories defined in paragraph 2.
- (2) For the purposes of this Directive, the following shall be regarded as violation of a Union restrictive measure:
 - (a) making funds or economic resources available to, or for the benefit of, a designated person, entity or body in violation of a prohibition by a Union restrictive measure;

- (b) failing to freeze without undue delay funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body in violation of an obligation to do so imposed by a Union restrictive measure;
- (c) enabling the entry of designated natural persons into the territory of a Member State or their transit through the territory of a Member State in violation of a prohibition by a Union restrictive measure;
- (d) entering into transactions with a third State, bodies of a third State, entities and bodies owned or controlled by a third State or bodies of a third State, which are prohibited or restricted by Union restrictive measures;
- (e) trading in goods or services whose import, export, sale, purchase, transfer, transit or transport is prohibited or restricted by Union restrictive measures, as well as providing brokering services or other services relating to those goods and services;
- (f) providing financial activities which are prohibited or restricted by Union restrictive measures, such as 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, provide credit rating services, providing crypto assets and wallets;
- (g) providing other services which are prohibited or restricted by Union restrictive measures, such as legal advisory services, trust services, public relations services, accounting, auditing, bookkeeping and tax consulting services, business and management consulting, IT consulting, public relations services, broadcasting, architectural and engineering services;
- (h) circumventing a Union restrictive measure by:
 - (i) concealing funds or economic resources owned, held, or controlled by a designated person, entity or body, which should be frozen in accordance with a Union restrictive measure, by the transfer of those funds, or economic resources to a third party;
 - (ii) concealing the fact that a person, entity or body subject to restrictive measures is the ultimate owner or beneficiary of funds or economic resources, through the provision of false or incomplete information;
 - (iii) failing by a designated person, entity or body to comply with an obligation 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 under Union restrictive measures to provide without undue delay information on funds or economic resources frozen or information held about funds 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.
- (3) The conduct referred to in paragraph 2, points (a) to (g) shall constitute a criminal offence also if committed with serious negligence.
- (4) Nothing in paragraph 2 shall be understood as imposing obligations on natural persons contrary to the right not to incriminate oneself and to remain silent as enshrined in the Charter of Fundamental Rights of the European Union and Directive (EU) 2016/343.
- (5) Nothing in paragraph 2 shall be understood as imposing an obligation on legal professionals to report information which is obtained in strict connection with judicial, administrative or arbitral proceedings, whether before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Legal advice in those circumstances shall be protected by professional secrecy, except where the legal professional is 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.
- (6) Paragraphs 1, 2 and 3 shall not apply to:
- the provision of goods or services of daily use for the personal use of designated natural persons, such as food and healthcare products and services, or of petty cash, where it is clearly limited to fulfilling the basic human needs of such persons and their dependent family members,
 - to the failure to report such activities;
 - to humanitarian aid provided for persons in need.

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) to (g), (h) (i), (ii) and point (i), 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(2), points (h)(iii), (iv) and (v), 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. Member States shall ensure that the threshold of EUR 100 000 or more may also be met through a series of linked offences referred to in Article 3(2), points (h)(iii), (iv) and (v), when committed by the same offender.
- (4) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(2), points (a) to (g), (h)(i) and (ii), and point (i), 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. Member States shall ensure that the threshold of EUR 100 000 or more may also be met through a series of linked offences referred to in Article 3(2), points (a) to (g), (h)(i) and (ii), and point (i), 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 penalties. Those additional penalties shall include fines.

Article 6

Liability of legal persons

- (1) Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within 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 take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission, by a person under its

authority, of any of the criminal offences referred to in Article 3 and 4 for the benefit of that legal person.

- (3) Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

Article 7

Penalties for legal persons

- (1) Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is subject to effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines, exclusion from entitlement to public benefits or aid, exclusion from access to public funding, including tender procedures, grants and concessions and may include other penalties, such as:
- (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.
- (2) Member States shall take the necessary measures to ensure that for legal persons held liable pursuant to Article 7 the criminal offences referred to in Article 3(2), points (h) (iii) to (v), are punishable by fines, the maximum limit of which should be not less than 1 percent of the total worldwide turnover of the legal person in the business year preceding the fining decision.
- (3) Member States shall take the necessary measures to ensure that for legal persons held liable pursuant to Article 7 the criminal offences referred to in Article 3(2), points (a) to (f), (h)(i) and (ii), and point (i), are punishable by fines, the maximum limit of which should be not less than 5 percent of the total worldwide turnover of the legal person 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 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/JHA⁵⁷;
- (b) the offence was committed by a professional service provider in violation of his professional obligations;
- (c) the offence was committed by a public official when performing his or her duties;
- (d) the offence was committed by another person when performing a public function.

Article 9

Mitigating circumstance

Provided this is not already an obligation under Union restrictive measures, Member States shall take the necessary measures to ensure that, in relation to the offences referred to in Articles 3 and 4, the following may be regarded as a mitigating circumstance:

- (a) 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;
- (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

Freezing and confiscation

Member States shall take the necessary measures to ensure that funds or economic resources subject to Union restrictive measures in respect of which the designated person, entity or body commits or participates in an offence referred to in Article 3(2), points (h)(i) or (ii), are considered as ‘proceeds’ of crime for the purposes of Directive (EU) [...] [Directive on asset recovery and confiscation].

Article 11

Jurisdiction rules

- (1) Each Member State shall take the necessary measures to establish its jurisdiction over the criminal offences referred to in Articles 3 and 4 where:

⁵⁷ 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.

- (a) the criminal offence was committed in whole or in part within its territory, including its airspace;
 - (b) the criminal offence was committed on board of any aircraft or any vessel under the jurisdiction of a Member State;
 - (c) the offender is one of its nationals or habitual residents;
 - (d) the offender is one of its officials who acts in his or her official duty;
 - (e) the offence is committed for the benefit of a legal person which is established on its territory;
 - (f) 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/JHA⁵⁸.
- (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 report made by the victim in the place where the criminal offence was committed, or a denunciation from the State of the place where the criminal offence was committed.

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) By way of derogation from paragraph 2, 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.

⁵⁸ 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.

- (4) 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 four 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. That period may include extensions of the limitation period arising from interruption or suspension.

Article 13

Coordination and cooperation between competent authorities within a Member State

Member States shall take the necessary measures to establish appropriate mechanisms for coordination and cooperation at strategic and operational levels among all their competent administrative, law enforcement and judicial authorities.

Such mechanisms shall be aimed at least at:

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

Article 14

Reporting of offences and protection of persons who report offences related to the violation of Union restrictive measures or assist the investigation

Member States shall take the necessary measures to ensure that the protection granted under Directive (EU) 2019/1937⁵⁹, is applicable to persons reporting criminal offences referred to in Articles 3 and 4 of this Directive.

⁵⁹ 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 15

Investigative tools

Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in investigating organised crime or other serious crime cases, are also available for investigating or prosecuting offences referred to in Articles 3 and 4.

Article 16

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

- (1) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, 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 provide technical and operational assistance in order to facilitate the coordination of investigations and prosecutions by the competent authorities.
- (2) Member States' competent authorities shall also regularly 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

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 date within six 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.

Article 19

Evaluation and reporting

- (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 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) Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the criminal offences referred to in Articles 3 and 4 to the Commission:
- (a) the number of criminal proceedings initiated, dismissed, resulting in an acquittal, resulting in a conviction and ongoing;
 - (b) the types and levels of penalties imposed for violation of Union restrictive measures.
- (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 date-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