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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Towards a Directive on criminal penalties for the violation of Union restrictive measures

1. INTRODUCTION

1.1. Union law on restrictive measures

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

For the sake of preserving these values, the Union may impose restrictive measures against third countries, entities or individuals. These measures include targeted individual measures, i.e., asset freezes and restrictions on admissions (travel bans), as well as sectoral measures, i.e. arms embargoes or economic and financial measures (e.g. import and export restrictions, restrictions on the provision of certain services, such as banking services)¹. Currently, the Union has over forty different regimes of restrictive measures in place and their use has intensified in recent times. Some of these regimes implement restrictive measures by the United Nations Security Council and in some cases impose additional restrictions; others are adopted autonomously by the Union. In addition to regimes addressing country-specific situations, the Union has also adopted horizontal regimes targeting the proliferation and use of chemical weapons, cyberattacks, human rights violations and terrorism².

Preserving international peace and security is critical in the current context of Russia's invasion of Ukraine. The Union has put in place a series of restrictive measures against Russian and Belarusian individuals and companies, as well as sectoral measures some of which date back to 2014. In this context, in order to enhance Union-level coordination in the enforcement of these restrictive measures, the Commission set up the 'Freeze and Seize' Task Force, in which Commission services, Member States' representatives and Union agencies, such as Eurojust and Europol, participate³. Besides ensuring coordination among Member States, the Task Force seeks to explore the interplay between restrictive measures and criminal law measures.

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 either at Union or at national level. It has been the practice so far that measures such as arms embargoes or restrictions on admission are implemented directly by the Member States, which are legally bound to act in conformity with CFSP Council Decisions. Other measures interrupting or reducing, in part or completely, economic relations with a third country as well as individual measures freezing funds and economic resources, prohibiting the making available of funds and economic resources, 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 of the Treaty on the Functioning of the European Union. Anti-circumvention provisions can be found in both types of act.

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

³ 'Enforcing sanctions against listed Russian and Belarusian oligarchs: Commission's "Freeze and Seize" Task Force steps up work with international partners', Press release European Commission, 17.03.2022, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1828; 'Freeze and Seize Task Force': Almost €30 billion of assets of Russian and Belarusian oligarchs and entities frozen by the EU so far', Press release European Commission, 08.04.2022, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2373.

1.2. Need to enhance the enforcement of restrictive measures through criminal law

The implementation and enforcement of restrictive measures are primarily the responsibility of Member States. Competent authorities in Member States must assess whether there has been a infringement of the relevant Council Regulation and take adequate steps. In this regard, Council Regulations adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union (‘TFEU’) systematically include a provision requiring Member States to adopt national rules providing for effective, proportionate and dissuasive penalties, to be applied in the event of infringements of the provisions of the relevant Regulation⁴. These Regulations generally include:

- the restrictive measures;
- the anti-circumvention clause, which prohibits knowing and intentional participation in activities that seek to circumvent the restrictive measures in question⁵; 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).

In the absence of Union-level harmonisation, national systems differ significantly as far as criminalisation of the violation of Union law on restrictive measures (‘Union restrictive measures’) is concerned. In 12 Member States, the violation of Union restrictive measures is solely a criminal offence. In 13 Member States, the violation of Union restrictive measures can amount to an administrative or a criminal offence⁶. The criteria according to which the conduct falls within one or the other regime category are usually related to its gravity (serious nature), either determined in qualitative (intent, serious negligence) or quantitative (damage) terms⁷, but they are different in each Member State. In two Member States, the specific offence of violation of Union restrictive measures can currently only lead to administrative penalties⁸.

Penalty systems also differ substantially across the Member States. As regards prison sentences, in 14 Member States, the maximum length of imprisonment is between 2 and 5 years. In eight Member States, maximum sentences between eight and 12 years are possible⁹. The maximum fine that can be imposed for the violation of Union restrictive measures – either as a criminal or as an administrative offence – varies greatly across Member States, ranging from EUR 1 200 to EUR 500 000¹⁰.

⁴ For 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 \(europa.eu\)](#).

⁵ For an example, see Article 12 of Council Regulation (EU) No 833/2014. 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.

⁶ 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 doc. 7274/22 of 16 March 2022.

⁷ Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021, section 5.1., p. 22.

⁸ *Idem*.

⁹ *Idem*, section 5.2., p.23.

¹⁰ *Idem*, section 5.3., p.24.

14 Member States provide for criminal liability of legal persons for the violation of Union restrictive measures¹¹. In addition, twelve 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 37.5 million¹².

The Commission and the High Representative for Foreign Affairs and Security Policy have proposed to strengthen the provision on penalties in Council Regulations 833/2014 and 269/2014 in the framework of the sixth package of restrictive measures in response to the Russian aggression against Ukraine. The amended provisions would oblige Member States to lay down the rules on penalties, including as appropriate criminal penalties, applicable to infringements of the provisions of these regulations. Member States need to take all measures necessary to ensure that these penalties are properly implemented and applied. 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. Restrictive measures are adopted on the basis of Article 29 TEU and Article 215 TFEU. While these provisions serve as a legal basis for obliging Member States to lay down penalties, including criminal penalties, neither can be used for defining the exact types and levels of criminal penalties. The limited impact of obliging Member States to have criminal penalties in place, without approximating criminal definitions and penalties by a Directive based on Article 83 TFEU, means that Member States would still not have a harmonised approach towards confiscation measures, relative to the violation of Union restrictive measures, as well as freezing, management, and confiscation measures as provided for in the current and future Union acquis on asset recovery and confiscation would not apply to the violation of Union restrictive measures. Even if in several Member States the violation of Union restrictive measures has already been criminalised, differences among Member States can lead to a fragmented approach in cross-border cases.

Against this background, the Commission is issuing a proposal for a Council decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU¹³. Adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU would enable the Commission, as a second step, to immediately propose a Directive under the ordinary legislative procedure to approximate the definition of criminal offences and penalties. Such approximation of criminal definitions and penalties for the violation of Union restrictive measures would complement the Commission proposal for a Directive of the European Parliament and the Council, also adopted today, on asset recovery and confiscation¹⁴.

¹¹ Idem, based on the report of the Genocide Network and further investigation by the Commission.

¹² Idem.

¹³ European Commission, Proposal for a Council Decision on adding the violation of Union restrictive measures, 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 25.05.2022.

¹⁴ European Commission, Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, COM (2022) 245 of 25.05.2022.

This proposal significantly reinforces the current EU asset recovery framework, composed of the Confiscation Directive and the Council Decision on asset recovery offices¹⁵.

The proposed Directive on asset recovery and confiscation contributes to the effective application of Union restrictive measures in two ways. Firstly, it requires Member States to launch asset tracing and identification investigations where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures, and to extend the mandate of asset recovery offices to swiftly trace and identify property of individuals and entities subject to EU targeted financial sanctions, and urgently freeze it whenever necessary to prevent its removal from the jurisdiction. Secondly, by making the enhanced rules on asset recovery and confiscation applicable to the criminal offence of violation of Union restrictive measures, the proposal would ensure the effective tracing, freezing, management and confiscation of proceeds derived from the violation of Union restrictive measures, pending the approximation of criminal definitions and penalties for the violation of Union restrictive measures.

As explained in more detail in the proposal for a Council decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU¹⁶, the criteria referred to in Article 83(1) TFEU for adding therein a new area of crime, relating to the cross-border dimension of that area of crime (nature, impact, special need to combat on a common basis), are met.

This is the case because the violation of Union restrictive measures should be qualified as an area of crime and is already categorised as such by a majority of Member States¹⁷, but not yet covered by the existing list of Union crimes provided for by Article 83(1) TFEU. Moreover, this is a particularly serious area of crime, since it may perpetuate threats to international peace and security, undermine the consolidation and support for democracy, the rule of law and human rights and result in significant economic, societal and environmental damage.

Furthermore, the violation of Union restrictive measures has a clear and at times even inherent cross-border dimension, which requires a uniform cross-border response at EU level and global level. Not only are these crimes usually committed by natural and legal persons operating on a global scale but in some cases Union restrictive measures even forbid cross-border operations (e.g. restrictions on banking services).

In addition, the fact that Member States have very different definitions and penalties for the violation of Union restrictive measures under their administrative and/or criminal law suggests that the same conduct might be sanctioned with different penalties and different enforcement levels. This creates a risk of forum shopping by individuals and companies and, generally,

¹⁵ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014, p. 39–50; Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332, 18.12.2007, p. 103–105.

¹⁶ 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.

¹⁷ See the overview provided for by Genocide Network, *Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, 2021.

undermines the credibility of the Union's objectives to maintain international peace and security and uphold common Union values. Therefore, there is a special need for common action at Union level to address the violation of Union restrictive measures by means of criminal law. The Union could also promote a global level playing field in this respect.

Finally, the different definitions and penalties for the violation of Union restrictive measures under Member States' administrative and/or criminal law represent an obstacle to the consistent application of Union policy on restrictive measures.

In view of the urgent need to hold individuals and legal persons involved in the violation of Union restrictive measures accountable, the annex to this Communication already outlines the main elements that a future Directive on criminal penalties for the violation of Union restrictive measures could contain. This will facilitate swift engagement with the European Parliament and the Council on the matter.



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ANNEX

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to the Communication from the Commission to the European Parliament and the Council
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1.1. Introduction

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 ('TFEU') would enable the Commission to propose a Directive under the ordinary legislative procedure, which could approximate the definition of criminal offences and penalties.

Such a Commission proposal would need to comply with the principles of subsidiarity and proportionality governing all EU action¹. It would also need to be in line with Better Regulation requirements². Furthermore, the proposal would need to consider the specificities of criminal law³. In particular, the approximation of criminal law definitions and penalties would have to take into account the differences between the criminal justice systems of the Member States, including as regards penalties.

Moreover, the subsequent Directive would need to respect fundamental rights and observe the principles laid down in the Charter of Fundamental Rights of the European Union ('the Charter')⁴. Notably, compliance of the provisions of the Directive with the rights to liberty and security, the protection of personal data, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, 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*, would need to be ensured.

The future Directive would cover a range of criminal law issues which are customary in Union Directives based on Article 83 TFEU. The following is an illustrative list of possible provisions to be included in the future legislative proposal.

1.2. Scope

The first provision would set out the purpose and scope of the Directive, and in particular clarify that it applies to the violation of Union restrictive measures. These restrictive measures are adopted pursuant to Article 29 of the Treaty on European Union (TEU) and Article 215 TFEU and include targeted individual measures, i.e., asset freezes, prohibitions to make available funds and economic resources and restrictions on admissions (travel bans), as well as sectoral restrictive measures, i.e. arms embargoes or economic and financial measures (e.g. import and export restrictions, restrictions on the provision of certain services, such as banking services).

¹ Articles 5(1) and 5(4) of the Treaty on European Union; Protocol No. 2 on the application of the principles of subsidiarity and proportionality.

² Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1–14.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, COM (2011) 573 final, 20.09.2011; Council conclusions on guidelines for future criminal law in EU legislation, Council doc. 14162/09 of 9.10.2009; European Parliament resolution of 22 May 2012 on an EU approach to criminal law, OJ C 264E, 13.9.2013, p. 7–11.

⁴ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.

1.3. Definitions

This Article of the Directive would contain all relevant definitions, including, when appropriate by means of cross-referencing the provisions of the Council Regulations and Decisions on restrictive measures. These definitions would include, among others ‘restrictive measures’, ‘designated entity’ and ‘designated person’. A relevant example of a criminal law measure in which the use of similar cross-references in the provision on definitions are included, is Directive 2014/57/EU on criminal sanctions for market abuse (Market Abuse Directive)⁵.

1.4. Criminal offences, including incitement, aiding, abetting and attempt

The Articles on the offences to be approximated by the Directive would include precise definitions of various criminal offences related to violations of Union restrictive measures, such as:

- making funds or economic resources available directly or indirectly, to, or for the benefit of, a designated person/entity;
- failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person/entity;
- engaging in prohibited financial activities, such as providing prohibited loans or credit;
- engaging in prohibited trade, commercial or other activities, such as importing or exporting goods and technology covered by trade bans, or providing prohibited services;
- breaching applicable conditions under authorisations granted by competent authorities;
- failure to comply with any obligation to provide information to the authorities, such as the obligation to declare any assets belonging to, owned, held or controlled by a designated person/entity;
- engaging in actions or activities that seek to directly or indirectly circumvent the restrictive measures, with knowledge and intent, including by being involved in schemes designed to conceal the assets or involvement of designated persons/entities, by assisting the targets of restrictive measures to evade their impact, or by providing misleading information to authorities;
- non-reporting a violation of restrictive measures, or activities that seek to circumvent them, in violation of a specific obligation to report.

The offences to be approximated, unless otherwise provided, would require intent, or at least gross negligence based on knowledge that the conduct concerns persons, entities, activities or property subject to restrictive measures, or ignoring restrictive measures or related legal prohibitions (wilful blindness).

The Directive would also include related offences, such as money laundering. For the latter, a provision would oblige Member States to take the necessary measures to ensure that the money

⁵ Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive), OJ L 173, 12.6.2014, p. 179–189, Article 2.

laundering offence, as described in Article 3 of Directive (EU) 2018/1673⁶, applies to property derived from the criminal offences covered by the Directive.

The Directive would furthermore contain a provision obliging Member States to take the necessary measures to ensure that inciting, aiding and abetting the commission of the criminal offences referred to in the Directive, as well as the attempt to commit such offences, are punishable as criminal offences⁷.

1.5. Penalties for natural and legal persons

Council Regulations adopted under Article 215 TFEU systematically include a provision requiring Member States to adopt national rules providing for effective, proportionate and dissuasive penalties to be applied in the event of infringements of the provisions of the relevant Regulation⁸. As this obligation leaves significant gaps between the levels and types of penalties, the future Directive should contain an Article on penalties for natural persons. These penalties would be applicable to all offences mentioned in section 1.4. above, and equally require Member States to apply effective, proportionate and dissuasive penalties as well as to set out a certain minimum of the maximum criminal penalties, including fines for natural persons. Such penalties should be proportionate in relation to the considerable seriousness of the offences⁹.

In addition, the Directive would include a provision on the liability of legal persons. This provision would be applicable to all offences mentioned in section 1.4 above. In accordance with this provision, Member States would need to provide for penalties and the liability of legal persons:

- (i) for any of the criminal offences referred to in section 1.4. committed for their benefit by persons having a leading position within the legal person; or
- (ii) for the lack of supervision or control by persons in a leading position which has made possible the commission, by a person under their authority, of any of the above-mentioned criminal offences for the benefit of that legal person¹⁰.

The Directive would also approximate penalties applicable to legal persons. In particular, the Member States would be required to take the necessary measures to ensure that a legal person held liable pursuant to the relevant provisions discussed in section 1.4. is subject to effective, proportionate and dissuasive penalties, including:

- criminal or non-criminal fines;
- temporary exclusion from access to public funding, including tender procedures, grants and concessions;
- temporary or permanent disqualification from the practice of business activities;

⁶ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, OJ L 284, 12.11.2018, p. 22 -30.

⁷ Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law ('PIF Directive'), OJ L 198, 28.7.2017, p. 29–41, Article 5; Market abuse directive, Article 6.

⁸ For 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 \(europa.eu\)](#).

⁹ See also PIF Directive, Article 7; Market abuse directive, Article 7.

¹⁰ See also PIF Directive, Article 6; Market abuse directive, Article 8.

- withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
- placing under judicial supervision;
- judicial winding-up; and
- temporary or permanent closure of establishments used for committing the offence¹¹.

In addition, the Directive could provide 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 a certain percentage of the total worldwide turnover of the legal person in the business year preceding the fining decision.

The liability of legal persons would not exclude the possibility of criminal proceedings against natural persons who are the perpetrators of the criminal offences provided for in section 1.4.

1.6. Aggravating and mitigating circumstances

The Directive would also contain an Article setting out the aggravating circumstances to be taken into account when penalties are applied for an offence referred to in section 1.4. above. Those aggravating circumstances could include:

- grave consequences of the breach in view of the purposes of the restrictive measures;
- high value of the funds, economic resources, goods or technology in question;
- the offence was committed by a public official when performing his/her duties;
- the offence was committed in the context of private professional activity, including by breaching one's professional duties;
- commission of the offence within the context of a criminal organisation in the sense of Framework Decision 2008/841/JHA¹²;
- the offence involved the use of false or forged documents;
- the offender committed similar previous infringements of Union law on restrictive measures;
- the offender actively obstructed investigation activities, or intimidated or interfered with witnesses; and
- the offence generated or was expected to generate substantial financial benefits (with the notion of substantial financial benefits to be further defined in a recital).

The Directive would equally contain an Article setting out mitigating circumstances to be considered when penalties are applied to an offence referred to in section 1.4. above. In particular, in accordance with this Article, the Member States would be obliged to ensure that, in relation to the above-mentioned offences, certain facts would be regarded as a mitigating circumstance. This would for example apply to the fact that an offender provided the

¹¹ See also PIF Directive, Article 10; Market abuse directive, Article 9.

¹² 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.

administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to identify or bring to justice the other offenders or find evidence.

1.7. Jurisdiction rules

The Directive would also include a provision on jurisdiction rules. Inter alia, following the example of Article 11 of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law ('PIF Directive'), a Member State would need to establish jurisdiction over the offences referred to in section 1.4., where the criminal offence would be committed in whole or in part within its territory or where the offender is one of its nationals. Furthermore, Member States would be obliged to inform the Commission if they decide to extend their jurisdiction over offences committed:

- (i) by habitual residents in their territory;
- (ii) for the benefit of a legal person established in their territory; or
- (iii) by one of their officials acting in his or her official duty.

In cases where the offender is one of their nationals, Member States would not be allowed to make the exercise of jurisdiction subject to the condition that a prosecution can only be initiated following:

- (i) a report made by the victim in the place where the criminal offence was committed; or
- (ii) a denunciation from the State of the place where the criminal offence was committed.

Council Regulations adopted under Article 215 TFEU systematically include the following jurisdiction clause:

“This Regulation shall apply:

- (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.”

This would also be reflected in the Directive. In particular, following paragraph (e) above, Member States would be required to extend their criminal jurisdiction to non-EU persons outside EU territory insofar as their business has an EU nexus (which may, by extension, also concern their assets).

1.8. Limitation periods

The Directive would include a provision applicable to all offences mentioned in section 1.4 above, which would require the establishment of a minimum limitation period, as well as a provision on the limitation period for the enforcement of penalties following a final conviction.

A relevant example may be found in Article 12 of the PIF Directive. In accordance with this Article, Member States have to:

- (i) prescribe limitation periods for a sufficient period of time after commission of the criminal offences referred to in the Directive in order for those criminal offences to be tackled effectively, with minimum limitation periods applying to offences punishable by a maximum penalty of at least four years of imprisonment;
- (ii) take the necessary measures to enable penalties to be enforced.

1.9. Cooperation between Member States, Union institutions, bodies, offices and agencies as well as with third states

To enhance the investigation of cases with a cross-border element, the Directive would include a provision which would require mutual cooperation between Member States' competent authorities, Union institutions, bodies, offices and agencies, including Eurojust and Europol¹³. This provision of the Directive would also facilitate the sharing of information on practical issues (in particular, patterns of circumvention, e.g. structures to hide the true ownership/control of assets) with authorities in other Member States and with the Commission.

1.10. Whistle-blowers

To enhance the effectiveness of the Union restrictive measures, the Commission recently launched the EU Sanctions Whistle-blower Tool¹⁴. Due to the importance of the whistle-blowers' contribution to the proper application of the Union restrictive measures, the Commission proposal would provide for an obligation for Member States to take the necessary measures to ensure that the protection granted under Directive (EU) 2019/1937¹⁵ is applicable to persons reporting criminal offences referred to in the Directive. Furthermore, Member States would be obliged to take all necessary measures to ensure that persons reporting offences referred to in the Directive and providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences, were given the necessary support and assistance in the context of criminal proceedings¹⁶.

2. WAY FORWARD

Once the Council reaches an agreement and the European Parliament grants its consent to add the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU, the Commission would be in the position to immediately propose a Directive under the

¹³ See also PIF Directive, Article 15.

¹⁴ European Commission, Overview of sanctions and related tools, available at https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/overview-sanctions-and-related-tools_en#whistleblower.

¹⁵ 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.

¹⁶ See also Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, COM(2021)851 final, 15.12.2021, Article 13.

ordinary legislative procedure, which could approximate the definition of criminal offences and penalties.

Such a Commission proposal would need to comply with the principles of subsidiarity and proportionality governing all EU action.¹⁷ It would also need to be in line with Better Regulation requirements¹⁸.

¹⁷ Articles 5(1) and 5(4) TEU; Protocol No. 2 on the application of the principles of subsidiarity and proportionality.

¹⁸ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1–14.