

LEGAL ALERT

EUROPEAN RULES ON RESTRICTIVE MEASURES: CRIMINAL OFFENCES AND PENALTIES

On 19 May, an important piece of legislation entered into force with the aim of ensuring the effective application of restrictive European Union (EU) measures:¹ [Directive \(EU\) 2024/1226 of the European Parliament and of the Council of 24 April 2024](#) (Directive), on the definition of criminal offences and penalties for the violation EU restrictive measures and amending [Directive \(EU\) 2018/1673](#).

The present Legal Alert aims to highlight the main obligations for Member States foreseen in the Directive.

I. Subject matter, scope, and definitions

The Directive establishes minimum rules concerning the definition of criminal offences and penalties for the violation of EU restrictive measures, in order to ensure the effective application of EU restrictive measures, the integrity of the internal market, and to achieve a high level of security within the area of freedom, security and justice.

For the purposes of the Directive, the following definitions apply:

- EU restrictive measures, means restrictive measures adopted by the EU on the basis of Article 29 of the [Treaty on European Union](#) or Article 215 of the [Treaty on the Functioning of the European Union](#);

¹ Published in the *Official Journal of the European Union* on 29 April 2024.

- Designated person, entity or body, means a natural or legal person, entity or body subject to EU restrictive measures;
- Funds, means financial assets and benefits of every kind;²
- Economic resources, means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;
- Freezing of funds, means preventing the move, transfer, alteration or use of funds or access to funds, or dealing with funds in a way that would result in a change in their volume, amount, location, ownership, possession, character, destination or in a change that would enable the funds to be used, including portfolio management;
- Freezing of economic resources, means preventing the use of economic resources to obtain funds, goods or services, including, but not limited to, by selling, hiring or mortgaging them.

II. Criminal offences

Under Article 3, the Directive determines Member States to ensure that, where it is intentional and in violation of a prohibition or an obligation that constitutes a EU restrictive measure or that is set out in a national provision implementing a EU restrictive measure, where national implementation is required, the following conducts constitute a criminal offence:

- Making funds or economic resources available directly or indirectly to, or for the benefit of, a designated person, entity or body in violation of a prohibition that constitutes a EU restrictive measure;
- Failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body in violation of an obligation that constitutes a EU restrictive measure;

² Including, but not limited to:

- a) Cash, cheques, claims on money, drafts, money orders and other payment instruments;
- b) Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- c) Publicly-traded and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- d) Interest, dividends or other income on assets or value accruing from or generated by assets;
- e) Credit, right of set-off, guarantees, performance bonds or other financial commitments;
- f) Letters of credit, bills of lading, bills of sale;
- g) Documents showing evidence of an interest in funds or financial resources;
- h) Crypto-assets as defined in Article 3(1), point (5), of [Regulation \(EU\) 2023/1114 of the European Parliament and of the Council](#).

- Enabling designated natural persons to enter into, or transit through, the territory of a Member State, in violation of a prohibition that constitutes a EU restrictive measure;
- Entering into or continuing transactions with a third State, bodies of a third State or entities or bodies directly or indirectly owned or controlled by a third State or by bodies of a third State, including the award or continued execution of public or concession contracts, where the prohibition or restriction of that conduct constitutes a EU restrictive measure;
- Trading, importing, exporting, selling, purchasing, transferring, transiting or transporting goods, as well as providing brokering services, technical assistance or other services relating to those goods, where the prohibition or restriction of that conduct constitutes a EU restrictive measure;
- Providing financial services or performing financial activities, where the prohibition or restriction of that conduct constitutes a EU restrictive measure;
- Providing other services, where the prohibition or restriction of that conduct constitutes a Union restrictive measure;
- Circumventing a EU restrictive measure;³ and
- Breaching or failing to fulfil conditions under authorisations granted by competent authorities to conduct activities, which in the absence of such an authorisation amount to a violation of a prohibition or restriction that constitutes a UE restrictive measure.

³ By:

- a) Using, transferring to a third party, or otherwise disposing of, funds or economic resources directly or indirectly owned, held, or controlled by a designated person, entity or body, which are to be frozen pursuant to a EU restrictive measure, in order to conceal those funds or economic resources;
- b) Providing false or misleading information to conceal the fact that a designated person, entity or body is the ultimate owner or beneficiary of funds or economic resources which are to be frozen pursuant to a EU restrictive measure;
- c) Failing by a designated natural person, or by a representative of a designated entity or body, to comply with an obligation that constitutes a EU restrictive measure to report to the competent administrative authorities funds or economic resources within the jurisdiction of a Member State, belonging to, owned, held, or controlled by them;
- d) Failing to comply with an obligation that constitutes a EU restrictive measures to provide the competent administrative authorities with information on frozen funds or economic resources or information held about funds or 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, where such information was obtained in the performance of a professional duty.

Under Article 4 of the Directive, inciting, and aiding and abetting, is punishable, as well as an attempt to commit some of the abovementioned offences.⁴

The Directive allows Member States not to foresee criminal offences if:

- The first, second, and eight of the abovementioned conducts involve funds or economic resources of a value of less than EUR 10 000;
- The fourth, fifth, sixth, seventh, and ninth of the aforesaid conducts involve goods, services, transactions or activities of a value of less than EUR 10 000.

The threshold of EUR 10 000 or more may be met through a series of conducts, that are linked and of the same kind, where those conducts are carried out by the same offender.

As to the fifth of the abovementioned conducts, it shall constitute a criminal offence also if committed with serious negligence, at least where that conduct relates to items included in the [Common Military List of the European Union](#) or to dual-use items listed in Annex I and IV to [Regulation \(EU\) 2021/821](#).

According to the Directive, nothing in it shall be understood as:

- Imposing any obligations on natural persons that would prejudice the right not to incriminate oneself and to remain silent, as enshrined in Article 7 of [Directive \(EU\) 2016/343](#), and in Article 48 of the [Charter of Fundamental Rights of the European Union](#);
- Imposing an obligation on legal professionals to report information that they receive from, or obtain on, one of their clients in the course of ascertaining the legal position of that client or performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceeding;
- Resulting in the discrimination against clients of credit and financial institutions or in their undue exclusion from access to financial services;

⁴ The Directive imposes only the punishability of an attempt of the offences referred to in Article 3(1) (a), (c to g), and (h)(i) and (ii).

- Criminalising humanitarian assistance for persons in need or activities in support of basic human needs provided in accordance with the principles of impartiality, humanity, neutrality and independence and, where applicable, with international humanitarian law.

III. Penalties for natural persons

Under Article 5 of the Directive, the criminal offences shall be punishable by effective, proportionate and dissuasive criminal penalties, and the offences foreseen in Article 3 shall be punishable by a maximum penalty of imprisonment.

The minimum term of the maximum penalties that Member States shall link to the criminalised conducts vary between one and five years, depending, in some cases, of the funds, goods and services reaching the EUR 100 000 threshold on the date when the offence was committed. The threshold of EUR 100 000 may be met through a series of offences, that are linked and of the same kind, where those offences are committed by the same offender.

Member States shall take the necessary measures to ensure that natural persons who have committed the criminal offences foreseen in the Directive may be subject to accessory penalties or measures which may include the following:

- Fines that are proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the natural person concerned;
- Withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence;
- Disqualification from holding, within a legal person, a leading position of the same type used for committing the criminal offence;
- Temporary bans on running for public office;
- Where there is a public interest, following a case-by-case assessment, publication of all or part of the judicial decision that relates to the criminal offence committed and the penalties or measures imposed, which may include the personal data of convicted persons only in duly justified exceptional cases.

IV. Liability and penalties for legal persons

The Directive foresees criminal liability of legal persons, where the offences have been committed for their benefit by any person who has a leading position within the legal person concerned, based on a power of representation of the legal person, an authority to take decisions on its behalf, or an authority to exercise control within the legal person.

Moreover, the Directive states that legal persons shall be held liable where the lack of supervision or control by one of the abovementioned persons made the commission of a criminal offence possible by a person under its authority for the benefit of that legal person.

Under the Directive, legal persons shall be punishable fines or other penalties or measures, such as:

- Exclusion from entitlement to public benefits or aid;
- 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 which have resulted in the relevant criminal offence;
- Placing under judicial supervision;
- Judicial winding-up;
- Closure of establishments used for committing the criminal offence;
- Where there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

The Directive determines that the maximum level of fines applicable to legal persons, depending on the particular conduct, shall not be less than:

- 1% or 5% of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine; or
- An amount corresponding to EUR 8 000 000 or EUR 40 000 000.

V. Aggravating and mitigating circumstances

The Directive provides for aggravating circumstances, to the extent that the following circumstances do not form part of the constituent elements of the criminal offences:

- The offence was committed in the framework of a criminal organisation as defined in [Framework Decision 2008/841/JHA](#);
- The offence involved the use by the offender of false or forged documents;
- The offence was committed by a professional service provider in violation of the professional obligations of such professional service provider;
- The offence was committed by a public official when performing his or her duties or by another person performing a public function;
- The offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, to the extent that such benefits or expenses can be determined;
- The offender destroyed evidence, or intimidated witnesses or complainants;
- The natural or legal person had previously been convicted by a final judgment of offences covered by the Directive.

Likewise, the Directive provides for the obligation of Member States to ensure that one or more of the following circumstances can, in accordance with national law, be regarded as a mitigating circumstance:

- 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;
- The offender provides the competent authorities with information they would not otherwise have been able to obtain, helping them to find evidence.

VI. Freezing and Confiscation, Limitation Periods, Investigative Tools, and Protection of Whistleblowers

The Directive demands Member States to take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences it foresees, in accordance with [Directive 2014/42/EU](#) of the European Parliament and of the Council shall take those necessary measures in accordance with that Directive. In addition, Member States shall enable the

freezing and confiscation of funds or economic resources subject to EU restrictive measures in respect of which the designated natural person, or the representative of a designated entity or body, commits, or participates in, an offence covered by Article 3(1), point (h)(i) or (ii).

With respect to limitation periods, the Directive determines that the limitation period regarding the procedure shall be of at least five years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least five years. Moreover, the sanction applied because of a criminal offence provided for in the Directive will expire in a period of at least five years from the date of the final conviction for a criminal offence that enables the enforcement of the following penalties imposed following that conviction: a penalty of imprisonment of more than one year, or a penalty of imprisonment for a criminal offence punishable by a maximum term of imprisonment of at least five years. Lastly, Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that such limitation period may be interrupted or suspended in the event of specified acts.

As to the investigative tools, Member States shall ensure that effective and proportionate investigative tools are available for investigating or prosecuting the criminal offences. Where appropriate, those tools shall include special investigative tools, such as those used in combatting organised crime or in other serious crime cases.

Furthermore, Member States shall take the necessary measures to ensure that [Directive \(EU\) 2019/1937](#) is applicable to the reporting of violations of EU restrictive measures and to the protection of persons reporting such violations, under the conditions established therein.

VII. Jurisdiction and judiciary cooperation

The Directive also determines that Member States shall take the necessary measures to establish its jurisdiction over the criminal offences where:

- The criminal offence was committed in whole or in part within its territory;
- The criminal offence was committed on board a ship or an aircraft registered in the Member State concerned or flying its flag; or
- The offender is one of its nationals.

Additionally, a Member State shall inform the Commission where it decides to extend its jurisdiction to one or more criminal offences which have been committed outside its territory, where:

- The offender is a habitual resident in its territory;
- The offender is one of its officials who acts in his or her official duty;
- The offence is committed for the benefit of a legal person which is established in its territory; or
- 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.

Where a criminal offence falls within the jurisdiction of more than one Member State, those Member States shall cooperate to determine which Member State is to conduct criminal proceedings, and, if a consensus turns out unfeasible, the matter shall be referred to Eurojust.

Furthermore, according to the Directive, Member States shall designate, from among their competent authorities and without prejudice to judicial independence, a unit or body for ensuring coordination and cooperation between law enforcement authorities and authorities in charge of implementing EU restrictive measures, in relation to the criminal activities covered by this Directive.

This unit or body shall have the following tasks:

- To ensure common priorities and understanding of the relationship between criminal and administrative enforcement;
- To exchange information for strategic purposes, within the limits set out in applicable EU and national law;
- Consultation in individual investigations, within the limits set out in applicable EU and national law.

Moreover, where criminal offences referred to in the Directive are suspected to be of a cross-border nature, the competent authorities of the Member States concerned shall consider referring the information related to those criminal offences to appropriate competent bodies, meaning that they shall cooperate, without prejudice to the rules on cross-border cooperation and mutual legal

assistance in criminal matters, with Europol, Eurojust, the European Public Prosecutor's Office and the Commission.

VIII. Amendment to Directive (EU) 2018/1673 and transposition

Finally, the Directive amends Directive (EU) 2018/1673, hereinafter considering the violations of EU restrictive measures as a predicate offence for money laundering in accordance with that Directive.

And, to conclude, the Directive foresees that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 May 2025.

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