

Alert | Export Controls & Economic Sanctions



June 2022

European Commission Proposes Criminalizing Economic Sanctions Violations and Bolsters Asset Recovery Measures

This GT Alert covers the following:

- The European Commission has proposed adding the violation of EU restrictive measures to the list of EU crimes alongside new reinforced rules on asset recovery and confiscation.
- These proposals aim to create a common standard on penalties and criminal offences among EU Member States for EU sanctions violations.

To make it easier to investigate, prosecute, and punish violations of restrictive measures in all EU Member States, on May 25, 2022, the European Commission (Commission) **proposed** making the violation of EU sanctions an EU crime. Simultaneously, the Commission proposed a new **Directive** on asset recovery and confiscation. If adopted, the new rules would contribute to the implementation of EU restrictive measures against Russian and Belarusian individuals and companies.

To ensure enforcement of these sanctions measures, the Commission previously set up the “**Freeze and Seize**” **Task Force**, which works with the G7 “Russian Elites, Proxies, and Oligarchs (REPO)” Task Force to guarantee the efficiency of the sanctions on a global level.

Adoption of these proposed rules would encourage greater implementation of the restrictive measures and ensure stricter punishment for violations of the measures. The proposal, which will require buy-in from the Council and the European Parliament, is expected to have broad support among Member States and reinforces the EU's commitment to impose and implement new sanctions (e.g., the sanctions against Russia and Belarus) but also to enforce sanctions measures. However, it may take time – e.g., up to two years – until the proposed rules are adopted. Criminalizing sanctions violations would bring the EU closer to the U.S. sanctions regime under which individuals and corporations may each face civil and/or criminal liability for violations of economic sanctions laws and regulations.

Criminalization of the Violation of EU Restrictive Measures

Criminalizing the violation of restrictive measures in the EU means that such violations would fall within the scope of [Article 83\(1\) of the Treaty on the Functioning of the European Union \(TFEU\)](#). Thus, the Commission aims to set a common standard on penalties and criminal offences among EU Member States by “*establishing minimum rules concerning the definition of criminal offences and sanctions in the areas of a 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 [Communication from the Commission to the European Parliament and the Council towards a Directive on criminal penalties for the violation of Union restrictive measures](#) (Communication) lists several examples of criminal offences related to violations of EU restrictive measures, including: (i) making funds or economic resources available directly or indirectly, to, or for the benefit of, a designated person/entity; (ii) failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person/entity; (iii) engaging in prohibited financial activities, such as providing prohibited loans or credit, and; (iv) engaging in prohibited trade, commercial or other activities, such as importing or exporting goods and technology covered by trade bans, or providing prohibited services.

The Communication further lists examples of possible penalties, such as fines or temporary exclusion from public funding, and possible aggravating and mitigating circumstances, such as when the offence was committed in the context of private professional activity or when the offence involved the use of false or forged documents.

If the Council reaches an agreement and the European Parliament consents to adding the violation of EU restrictive measures to the areas of crime listed in Article 83(1) TFEU, the Commission can propose a Directive based on the Communication.

Directive on Asset Recovery and Confiscation

One of the main goals of the proposal for a Directive is to strengthen the asset recovery and confiscation capabilities of relevant authorities to ensure that crime is effectively penalized. Under the proposed rules, asset recovery offices, to be established by each of the EU Member States, would work closely with the European Public Prosecutor's Office and Europol and Eurojust according to their area of competence. EU Member States would ensure that asset recovery offices have direct access to and use the Secure Information Exchange Network Application (SIENA) system for exchanging information. Moreover, asset recovery offices, as well as separate asset management offices, are expected to work and exchange information with their counterparts in third countries, where necessary. The asset management offices in all EU Member States would manage frozen and confiscated property and help preserve its value, pending a final decision on confiscation.

The proposed Directive would establish minimum rules on the tracing and identification, freezing, confiscation, and management of property within the framework of proceedings in criminal matters. Essentially, the asset recovery rules would empower investigative authorities to swiftly trace and identify assets of individuals and entities subject to EU restrictive measures. Moreover, with these rules, assets would be subject to confiscation from a wider set of crimes, including criminal violations of EU restrictive measures (e.g., those against Russia and Belarus).

Conclusion

If the violation of EU sanctions is added to the scope of Article 83(1) TFEU, crimes related to the measures could result in more serious penalties enforceable in all EU Member States. Concurrently, the proposed Directive on asset recovery and confiscation would make it easier for the authorities of EU Member States to trace and confiscate property tied to the violation of EU restrictive measures. Companies may wish to conduct thorough due diligence regarding the origin (and optics) of assets in proposed transactions.

The Commission's proposals come amid discussions of a new package of sanctions **currently being considered by the EU**.

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