

As of today, the EU has over 40 sanctions regimes in place against countries, entities, legal and natural persons, either through United Nations Security Council sanctions or based on EU autonomous decisions.

Restrictive measures include arms embargoes, import and export bans on certain objects or substances, freezing of funds and economic resources and travel bans.

In this scenario, and although sanctions are adopted at the EU level, the EU gives member states the power to impose their own enforcement measures, which results in a lack of harmonisation between these national rules. Consequently, national systems differ considerably in terms of criminalisation of breaches of EU sanctions, including the nature of the offence (criminal or administrative) and the sanctions applied.

At present, the diversity of sanctions can lead to forum shopping, i.e. the practice of looking for the member states with the weakest enforcement, as well as inconsistent penalties. Thus, the European Commission considers that this inconsistent application of EU sanctions has undermined their effectiveness.

The EU has, therefore, adopted a new set of rules, yet to be formally adopted as an EU Directive (Directive) to ensure real and enforceable compliance with EU sanctions.

The main objectives of the Directive is to align the definitions of criminal offences related to breaches of EU sanctions and to ensure effective, dissuasive and proportionate types and levels of sanctions for such offences.

The Directive provides consistent definitions of violations that member states will sanction if committed intentionally. This includes violations of prohibitions and restrictions contained in EU sanctions, conduct aimed at circumventing EU sanctions and noncompliance with the conditions of authorisations granted by competent authorities to carry out certain prohibited activities. Certain violations of EU sanctions would also be a criminal offence when committed with gross negligence. The Directive also criminalises inciting and aiding and abetting the commission of the offences covered, as well as attempts to commit most of these offences.

Among the most relevant specific conduct described in the Directive may be the failure to freeze funds, the transfer of funds to persons subject to sanctions, concealing or transferring funds that should be frozen, hiding the true ownership of assets and failing to report necessary information. The provision of financial services or legal advice in violation of sanctions will also become a punishable offence.

Minimum rules on penalties for both natural and legal persons are also established. For natural persons, it establishes a threshold of €100,000 to distinguish the most serious offences, which should be punishable by at least one year or five years imprisonment, depending on the offence. Sanctions against legal persons should include criminal or noncriminal fines and other sanctions detailed. Depending on the offence, legal persons will be liable to a fine of at least 1% or 5% of their overall turnover in the previous year, being left to the arbitration of the judge as to whether impose a maximum penalty based on the worldwide annual turnover of the company or based on absolute maximum amounts.

This new legislation still has to be formally approved by the European Council before it can become law. It will enter into force 20 days after its publication in the EU's Official Journal, after which member states will have one year to transpose it into national law.

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