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## Implementation and scope of Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures

On 29 April, [Directive \(EU\) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive \(EU\) 2018/1673](#), which establishes minimum rules concerning the definition of criminal offences and penalties associated with violations of restrictive measures imposed by the European Union, hereinafter referred to as the “**Directive**”, was published in the Official Journal of the European Union (“**OJEU**”).

In order to ensure the effective implementation of European Union (“**EU**”) restrictive measures, it is necessary for Member States (“**MS**”) to provide for effective, proportionate and dissuasive criminal and administrative penalties for violations of such measures.

This legal briefing analyses the key aspects of the Directive with a view to increasing understanding of its scope and implementation.

### 1. Definition of common minimum rules

The Directive requires MS to adopt minimum rules defining criminal conduct violating Union restrictive measures. Such conduct should be considered a criminal offence if it is intentional and violates a Union prohibition or obligation or a national provision implementing a Union restrictive measure.

In addition, certain conduct may be considered a criminal offence if it is carried out with serious negligence. The concept of serious negligence must be interpreted in accordance with national law and the case law of the Court of Justice of the European Union.

It is also worth noting the obligation imposed on MS to treat violations of Union restrictive measures as predicate offences for money laundering, in accordance with Directive (EU) 2018/1673.

Finally, MS are empowered not to criminalise transactions that are in violation of EU restrictive measures but do not exceed a quantitative threshold of EUR 10,000.

### 2. Criminal behaviour

The Directive requires MS to criminalise the following conduct:

- a) Providing funds or resources to a sanctioned entity in violation of a Union prohibition.
- b) Failing to freeze funds or resources of a sanctioned entity in violation of a Union obligation.
- c) Enabling the entry or transit of persons sanctioned in a MS in violation of a Union prohibition.
- d) Transacting with a third State or entities controlled by a third State in violation of a Union prohibition.
- e) Trading, importing, exporting, selling, purchasing, transferring, transiting or transporting goods, or providing related services, in violation of a Union prohibition.

- f) Providing financial services or performing financial activities in breach of a Union prohibition.
- a) Circumventing a Union restrictive measure by any means, including using or transferring funds to a third party interposed between the offender and the sanctioned person, and providing false or misleading information in order to conceal a prohibited transaction with a sanctioned person.

### **3. Criminal liability of legal persons**

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Legal persons may also commit these offences, either through direct action or negligence in the supervision of employees.

For the purpose of determining the criminal liability of legal persons, the same criteria already established by the Spanish Criminal Code will be taken into account, namely: (i) the offence must have been committed by an officer, director or employee in the exercise of their corporate functions; and (ii) the conduct must have resulted in a benefit to the legal person.

### **4. Penalties**

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#### **4.1. For natural persons**

Prison sentences of one year, three years or five years are foreseen, depending on the seriousness of the offence committed and the value of the funds or economic resources involved.

In addition, ancillary measures are foreseen, which may include the withdrawal of licences and permits, disqualification from holding a leading position, a temporary ban on running for public office and/or publication of the judicial decision.

#### **4.2. For legal persons**

It provides for the imposition of fines proportionate to the gravity of the offence and taking into account the economic and/or other circumstances applicable to the legal person. For this purpose, the Directive provides that the maximum fine may amount to up to 5% of the total turnover of the legal person concerned or EUR 40 million.

Furthermore, legal persons responsible for these offences may be punished with penalties including exclusion from public benefits, exclusion from access to public funding, prohibition of business activities, withdrawal of permits and authorisations, judicial supervision, judicial winding-up, closure of establishments and publication of the judicial decision.

### **5. Freezing and confiscation**

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MS should take measures to facilitate the freezing and confiscation of instrumentalities and proceeds from the offences covered by the Directive and should also enable the freezing and confiscation of funds or economic resources subject to Union restrictive measures.

### **6. Jurisdiction and limitation periods**

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With regard to jurisdiction, the Directive ensures that MS have the capacity to effectively prosecute offences related to EU restrictive measures, including when they occur outside their borders or involve their nationals. MS must establish jurisdiction over offences where: (i) the offence is committed in whole or in part within its

territory; (ii) the offence is committed on board a ship or aircraft registered under its flag or registered in that MS; or (iii) the offender is a national of the MS.

In addition, MS may extend their jurisdiction to offences committed outside their territory in the following circumstances: (i) where the offender is habitually resident in its territory; (ii) where the offender is an official of the MS acting in his or her official duty; (iii) where the offence is for the benefit of a legal person established in its territory; or (iv) where the offence is for the benefit of a legal person and relates to business done in its territory.

With regard to cooperation in the event of multiple jurisdiction, the Directive provides that, if an offence falls under the jurisdiction of several MS, they must cooperate to decide who will conduct the investigation and subsequent prosecution of the case.

Finally, as a general rule, the Directive provides that MS should, as a minimum, set the limitation period for offences related to restrictive measures at five years.

## 7. Transposition and entry into force

The Directive will enter into force 20 days after its publication in the OJEU and MS have to transpose the Directive into national law by **20 May 2025** at the latest.

## 8. Conclusion

Until now, criminal law has largely remained under the sovereignty of each of the MS, but recent European trends point towards the homogenisation of a European criminal law framework. In this case, although each of the MS retain some capacity for self-regulation in criminal matters, the Directive defines the offences associated with the violation of restrictive measures that Member States must prosecute and punish.

Although the Directive sets out a clear and detailed framework of minimum standards to be followed by MS in order to ensure that EU restrictive measures are respected and that violations are adequately penalised, this trend reflects a clear decline in the importance of the *ultima ratio* principle of criminal law and an increase in its use as an instrument of economic and social policy.

Finally, the obligation to consider the criminal liability of legal persons for these new offences will undoubtedly make it necessary to update the criminal risk assessments of the crime prevention systems and to approve and update all internal policies related to the prevention of non-compliance with international sanctions in relations with clients and suppliers.

## CONTACTS



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