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Preliminary Draft Organic Law criminalising the violation of EU restrictive measures

On 25 March 2025, the Preliminary Draft Organic Law amending Organic Law 10/1995, of 23 November, on the Criminal Code, was approved for the purpose of transposing 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 (the “**Preliminary Draft Law**”, the “**Directive**” and the “**EU**” respectively).

1. Context and rationale

Restrictive measures are an instrument that enables the EU to respond to challenges and developments on the basis of the principles of its Common Foreign and Security Policy (CFSP). They are not directed against countries or entire populations in general, but rather against those responsible for reprehensible behaviour, such as aggression against third countries or actions that destabilise societies, human rights violations, attacks against civilians, coups d'état, cyber-attacks and terrorist attacks.

The aim of this legislation is to prevent certain regimes, entities or individuals from gaining access to goods or services that can be used for harmful purposes. Therefore, the purpose of these measures is to limit access to strategic resources, preventing them from being used to violate fundamental rights or jeopardise international stability. Such measures include, *inter alia*:

- i) **Freezing of assets:** a prohibition on accessing, using or making available funds and economic resources.
- ii) **Trade limitations:** restrictions on the import and export of goods and technologies.
- iii) **Financial limitations:** restrictions on financial services and insurers.
- iv) **Sectoral measures:** specific measures to prevent access to strategic markets such as energy, transport or media.
- v) **Arms embargoes:** a prohibition on the export of weapons and goods for military use or repression.

Currently, the EU has implemented almost 50 restrictive measures regimes, which affect more than 5,000 individuals and entities in over 40 countries.

While these measures are binding on all Member States, their application and monitoring are country-specific, which leads to differences in their application and reduces their effectiveness. In particular, Russia's aggression against Ukraine highlighted the need to harmonise the criminal framework, preventing violations of these restrictions from going unpunished. Therefore, the EU Council adopted Decision 2022/2332 and the Directive, establishing standardised offences and dissuasive sanctions, with the aim of ensuring that restrictive measures are effective throughout the EU.

2. Proposed amendments to the Criminal Code

The Preliminary Draft Law introduces significant amendments to the Criminal Code, notably:

2.1. The introduction of a new Title XXIII *bis* - Offences against the freedom, security and justice of the European Union

A new Title XXIII *bis*, entitled “Offences against the freedom, security and justice of the European Union”, has been added to Book II of the Criminal Code to create a specific criminal category for these new criminally significant acts. The acts in question are as follows:

2.1.1. The violation of EU restrictive measures (Article 604 bis)

The following conduct shall be considered a violation of EU restrictive measures where the value of the transaction or the goods or services involved is equal to or exceeds EUR 10,000. However, if the conduct involves items included on the Common Military List of the EU¹ or dual-use goods,² it will be punishable as a criminal offence regardless of its value.

The conduct criminalised in the Criminal Code includes, *inter alia*:

- i) The making available of funds or economic resources to designated persons or entities, either directly or indirectly.
- ii) The failure to freeze funds or economic resources that belong to designated persons or entities.
- iii) The entering into transactions with a third State, as well as with its bodies or entities that, directly or indirectly, are owned or controlled by such third State, including the concession of or continued execution of public contracts.
- iv) The trade, import, export, sale, purchase, transfer, transit or transport of goods in violation of EU restrictive measures.
- v) The provision of services or the performance of financial or any other activities that could breach EU restrictive measures.
- vi) The circumvention of restrictive measures through the concealment of information or the misuse of funds.

The Preliminary Draft Law provides for prison sentences of up to six years and fines of up to six times the value of the goods or services involved. The severity of the punishment will depend on the value of the goods or services involved and the seriousness of the conduct.

Legal persons may be criminally liable for this offence. Fines for legal persons that commit this offence could be up to 5% of their total worldwide turnover in the financial year preceding that in which the offence was committed.

Judges and Courts may also order the publication of the conviction, at the expense of the convicted person, where there is a public interest.

2.1.2. The circumvention of EU restrictive measures (Article 604 quater)

It is an offence to circumvent restrictive measures by failing to comply with the following obligations:

- i) To report to the authorities any funds or economic resources that belong to such entities, or are in their possession or under their control.
- ii) To provide the competent administrative authorities with information about the funds or economic resources, whether frozen or not, when such information is obtained in the course of the performance of professional duties.

For natural persons, the offence carries a prison sentence of up to two years and a fine of up to three times the value of the goods or services involved.

Legal persons may be criminally liable for this offence. Fines for legal persons that commit this offence may amount to up to 1% of their total worldwide turnover in the financial year preceding that in which the offence was committed.

In this case, it is also envisaged that Judges and Courts may order the publication of the conviction, at the expense of the convicted person, where there is a public interest in doing so.

¹ The Common Military List of the European Union is a list of military goods and technologies whose export is regulated and controlled within the EU. This list includes products and materials that can be used in the manufacture of armaments and other military equipment.

² These are products, including software and technology, which can be used for both civilian and military purposes.

2.1.3. Aggravating and mitigating factors, and specific exemptions (Articles 604 *quinquies*, 604 *sexies* and 604 *septies*)

The Criminal Code will establish circumstances that may modify penalties. Aggravating factors (Article 604 *quinquies*) include the commission of the offence within a criminal organisation, the abuse of a signature or the destruction of documents, the abuse of public functions, obtaining a high profit, the destruction of evidence, and recidivism in similar offences.

Mitigating factors (Article 604 *sexies*) allow for a reduced sentence if the offender voluntarily abandons the criminal activities, confesses the facts to the authorities or actively assists with the apprehension of other offenders.

Finally, Article 604 *septies* establishes that these activities are excluded from criminalisation when their objective is to provide humanitarian aid to persons in need or when the activities support basic human needs.

2.1.4. The violation of measures restricting freedom of movement (Article 604 *bis*)

This offence carries a prison sentence of up to four years for those who allow designated individuals to enter or transit through the territory of a Member State, thus violating a restrictive measure.

Legal persons may be criminally liable for this offence. Fines for legal persons that commit this offence may amount to up to 5% of their total worldwide turnover in the financial year preceding that in which the offence was committed.

In such cases, Judges and Courts may also order the publication of the conviction, at the expense of the convicted person, when there is a public interest in doing so.

2.2. Amendment of the offence of money laundering (Article 301)

It is proposed to increase the penalty for the offence of laundering and receiving when the goods originate from non-compliance with EU restrictive measures.

3. Establishment of the Mixed Coordination Commission

The creation of the Mixed Coordination Commission (*Comisión Mixta de Coordinación*) (hereinafter, the “Mixed Commission”) for the execution of the European Union’s restrictive measures has been proposed. This is a body attached to the Ministry of the Presidency, Justice and Relations with the Courts.

The Mixed Commission shall be composed of representatives of the relevant ministries and competent bodies, as well as the General Council of Judicial Power and the State Prosecutor’s Office. Its main functions will include, among others:

- a) Ensuring coordination and cooperation between competent authorities.
- b) Facilitating the exchange of strategic and operational information.
- c) Conducting consultations in individual investigations.

4. Conclusion

The deadline for the transposition of the Directive is 20 May 2025, which means that we are still waiting to see the final text that the Organic Law may adopt after its parliamentary processing. What is indisputable, however, is that the Criminal Code will incorporate a new catalogue of offences aimed at protecting the integrity and compliance of the restrictive measures imposed by the EU.

This regulatory change has far-reaching implications for companies operating in both public and private sectors, as the new offences affect a wide range of areas, including finance, the industrial sector, and international trade.

Therefore, companies, regardless of their size or sector, must face the challenge of complying with a complex regulatory framework that requires a comprehensive adaptation of their internal processes, including rigorous compliance policies and control mechanisms to ensure that the EU restrictive measures are respected.

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