

European Union Law Working Papers

Editors: Siegfried Fina and Roland Vogl

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Abstract

In a world of increasing conflicts and tensions between states and other actors, sanctions play a continuously more important role in international law and politics as a measure to influence the behaviour of countries and individuals without or in addition to engaging in armed conflict. For businesses, sanctions constitute a significant compliance risk. Sanctions can restrict businesses from importing and exporting certain products and services, engaging in trade with designated natural and legal persons, and be obliged to comply with asset freezing orders, etc. Violation of sanctions carries the risk of enforcement and penalisation against the offender. However, the extent of enforcement actions against businesses and individuals for violating EU sanctions has been limited and, arguably, penalties imposed have been soft and lacked uniformity across EU Member States, all posing a risk of impairing the effectiveness and purposes of EU sanctions measures. In response to this, the European Parliament and the Council have adopted a new directive on the definition of criminal offences and penalties for the violation of Union restrictive measures. The directive establishes minimum rules concerning the definition of criminal offences and penalties with regard to the violation of EU sanctions and increases uniformity in how EU Member States enforce and penalise EU sanctions violations.

This Master Thesis analyses the present state of the law for enforcement and penalisation of violation of EU sanctions whilst considering the recently adopted EU directive. In this context, the Master Thesis provides answers to several research questions. Firstly, the Master Thesis explains the concept of EU sanctions and the procedure for adoption of EU sanctions whilst considering the legal framework for enforcement and penalisation of violations of EU sanctions. Secondly, the Master Thesis explains and analyses case law from EU Member States in which natural and legal persons have been penalised for violation of EU sanctions to establish the state of the law for penalisation of violation of EU sanctions in the EU. The analysis shows that there are significant differences, but also similarities, in how violation of EU sanctions is punished in EU Member States.

The Master Thesis, thirdly, explains and analyses the concept of EU crimes and the impact of having added sanctions violations to the list of EU crimes. Fourthly, the Master Thesis explains and analyses the main provisions of the new directive which requires EU Member States to ensure that violating EU sanctions is punishable by effective and proportionate criminal penalties. The analysis shows that the directive represents a change to the current state of the law for violation of EU sanctions setting new liability and penalty standards which generally toughen the length of imprisonment and increase the fining level. Comparing the directive and the analysed case law reveals discrepancies between the penalties hitherto imposed by EU Member States and the directive which some EU Member States potentially will have to address when transposing the directive into national law.

Finally, the Master Thesis draws relevant perspectives to the impact of the directive on businesses located or operating in the EU, to sanctions enforcement standards in the U.S., and to a potential, future enforcement role of the European Public Prosecutor's Office.

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Chapter 1: Introduction

1.1 Introduction and Topic

Sanctions play an increasingly important role in international law and politics. Conflicts in the Middle East and North Africa, the Russian aggression against Ukraine and geopolitical disagreements have, in a globalized world with a high degree of economic interdependency, given even greater importance to sanctions as a measure to influence the behaviour of countries and individuals without engaging in armed conflict.

During the twentieth century, the use of trade and economic (or financial) sanctions on foreign jurisdictions and individuals has become an increasingly important weapon of foreign policy in the toolboxes of the United Nations (“UN”), United States (“U.S.”), United Kingdom (“UK”), and the European Union (“EU”).

The Arab Spring across the Middle East and North Africa in 2011 and the wars that followed triggered the imposition of comprehensive sanctions regimes against a number of countries and sanctions list designations of a large number of individuals. In 2014, following Russia’s annexation of Crimea and with Russia’s full-scale war against Ukraine in 2022 onwards, the extent and complexity of sanctions measures reached an unprecedented level¹.

Besides tying up greater resources for countries to implement and enforce sanctions, the comprehensive sanctions regimes created a significant compliance risk towards internationally operating businesses in the U.S., UK, and the EU. Businesses were and are, inter alia, restricted from importing and exporting certain products and services, engaging in trade with designated natural and legal persons, and obliged to comply with asset freezing orders, etc.

¹ For an overview of EU sanctions measures, see the European Commission’s EU Sanctions Map <<https://sanctionsmap.eu/>> accessed 15 March 2024.

The extent of publicly available enforcement actions against businesses and individuals for violating EU sanctions has been limited. Where businesses and individuals, after all, have been convicted, critics say that penalties imposed are too soft or that there is no uniformity in how EU Member States (“Member States”) penalizes EU sanctions violations. This is despite that fact that recent studies and investigations² have shown that circumvention of EU sanctions is posing an increasingly high risk of impairing the effectiveness and purposes of EU sanctions.

The consequences of non-compliance with sanctions can be severe. Businesses can incur criminal liability with the risk of being imposed heavy fines and imprisonment if not complying with sanctions. This has also been confirmed in enforcement actions brought against companies, management and employees having violated EU sanctions.

Although national provisions criminalizing sanctions violations and providing legal basis for criminal or administrative penalties for such violations are in place in many Member States, the enforcement framework in across Member States is fragmented and the imposed penalties too. This is because the enforcement and punishment of EU sanctions rests with the respective Member States on a national level. This leaves an incoherent picture of the Member States’ enforcement and imposition of penalties for EU sanctions violations.

With the overall topic of enforcement of EU sanctions, this master thesis (“Master Thesis”) focuses on analysing the present state of the law for enforcement of violation of EU sanctions whilst considering the recently adopted EU directive on criminal offences and penalties for violation of

² See Olena Bilousovay et al, “Challenges of Export Controls Enforcement – How Russia Continues to Import Components for its Military Production” (2024) Yermak-McFaul International Working Group on Russian Sanctions and the Kyiv School of Economics Institute, p. 2. <[Challenges-of-Export-Controls-Enforcement.pdf \(kse.ua\)](#)> accessed 15 March 2024, and Nikolay Staykov, “Catching spiders: Russia’s drone companies and sanctions evasion”, the Insider (2024) <[Catching spiders: Russia’s drone companies and sanctions evasion \(theins.ru\)](#)> accessed 15 March 2024, and European Commission “Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention”(2023).

Union restrictive measures³. A directive that is intended to pave the way for increased uniformity in how Member States enforces and penalises EU sanctions violations.

1.2 Purpose, Problem, and Research Question

The purpose of this Master Thesis is to examine and clarify the state of the law for penal consequences for businesses violating EU sanctions, and to analyse how the state of the law corresponds with the addition of EU sanctions violations to list of EU Crimes and the EU directive on the definition of criminal offences and penalties for the violation of Union restrictive measures⁴.

Although EU sanctions regulations are providing a uniform legal framework that is accessible for international businesses operating in the EU, businesses face different challenges when it comes to predicting and understanding the different consequences violation of EU sanctions can imply in the various Member States as implementation and enforcement of EU sanctions are primarily the responsibility of the Member States on a national level.

For the effectiveness of the EU sanctions and for businesses operating in the EU, it is pivotal that criminalization and consequences for violating EU sanctions is predictable, transparent, and uniform.

A recent study by the Genocide Network⁵ established by the Council of the European Union and hosted by Eurojust shows that there is a significant disparity among Member States on the type and

³ 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 [OJ L no. pending].

⁴ Ibid.

⁵ See official description of the Genocide Network on Eurojust's website ([Genocide Network | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](https://www.eurojust.europa.eu/genocide-network)).

content of sanctions laid down⁶. In view of this disparity and in the context of the complex enforcement of EU sanctions against Russia, the European Commission, in May 2022, issued a proposal for a Council decision on adding the violation of EU sanctions to the areas of crime laid down in Article 83(1) of the TFEU⁷ which were adopted by the Council on 28 November 2022⁸.

Following the adoption of this decision, the European Commission, on 2 December 2022, adopted a proposal for a directive on the definition of criminal offences and penalties for the violation of Union restrictive measures⁹. After first reading negotiations between the European Parliament and the Council, the directive was finally adopted by the Council on 12 April 2024¹⁰ and published in the Official Journal of the EU on 29 April 2024¹¹. The directive requires Member States to make violation of EU sanctions a criminal offence under their national law and sets forth common penalties, as opposed to the up until now existing framework where penalizing sanctions violations are fixed individually on a national level by the Member States.

Against this background, the research aim of this Master Thesis is to examine and clarify the state of the law for penalisation of violation of EU sanctions and compare and analyse the state of the law with the directive on the definition of criminal offences and penalties for the violation of Union restrictive measures. By examining this research gap, the intention of the Master Thesis is to clarify

⁶ Genocide Network, “Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis” (2021).

⁷ See COM/2022/247 final, 25 May 2022.

⁸ Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union.

⁹ European Commission, “Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures”, COM/2022/684 final, 2 December 2022.

¹⁰ Council of the European Union, press release, “Council gives final approval to introduce criminal offences and penalties for EU sanctions’ violation” <[Council gives final approval to introduce criminal offences and penalties for EU sanctions’ violation - Consilium \(europa.eu\)](#)> accessed 17 April 2024.

¹¹ 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 [OJ L no. pending].

the state of the law for penalisation of EU sanctions violations in the EU and explain how the state of the law is likely to develop and, if that is the case, change with the new directive.

In order to examine and clarify the state of the law for punishment of violation of EU sanctions, the Master Thesis shall analyse selected case law from Member States and outline the consequences of violating EU sanctions in the Member States in question and conclude on the findings from the case law analysis, in particular on the differences and similarities in how violations of EU sanctions are punished in the Member States.

The conclusions from this case law analysis shall be compared with the directive on the definition of criminal offences and penalties for the violation of Union restrictive measures¹² in order to analyse and assess whether and, if so, how the directive changes the way Member States hitherto has enforced violations of EU sanctions.

To this end, the central research questions of the Master Thesis can be summarized as follows:

- What is the state of the law for enforcement and penalization of violation of EU sanctions in the EU?
- What are the differences and similarities in how violation of EU sanctions is punished in Member States?
- What significance does it have that violation of EU sanctions have been added to the list of EU crimes in Article 83(1) of the TFEU?
- How, if so, does the “Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures”¹³ represent a change to the current state of the law for violation of EU sanctions?

¹² Ibid.

¹³ Ibid.

- How, if so, does the directive impact businesses located or operating in the EU?

1.3 Methodology

The Master Thesis applies legal dogmatic research¹⁴ as method for the purpose of examining and clarifying the state of the law for violation of EU sanctions. Legal dogmatic method is a legal science method which has the purpose of explaining applicable law (*de lege lata*¹⁵). Furthermore, the Master Thesis will include considerations of a more judicial political nature (*de lege ferenda*¹⁶) with the purpose of describing how the state of the law should or will be.

1.4 Sources of Law

The Master Thesis applies different sources of law in order to answer the research questions¹⁷, just as relevant principles of legal interpretation are applied.

The sources of law applied in the Master Thesis include sources on an EU level and sources on national level of the Member States.

On EU level, sources of law include sources of primary law, i.e. EU treaties and charters, and sources of secondary law, i.e. regulations and directives (including proposals) and guidelines and

¹⁴ Legal dogmatic research (also referred to as legal doctrine) can be defined as systematic exposition of the principles, rules and concepts governing a particular legal field or institution and analyses the relationship between these principles, rules and concepts with a view to solving unclarity and gaps in the existing law, cf. Rob van Gestel et al, *Rethinking Legal Scholarship – A Transatlantic Dialogue* (Cambridge University Press 2017), p. 207-228.

¹⁵ The law as it is, cf. Jonathan Law, *Oxford Dictionary of Law* (Oxford University Press 7th edn 2013), p. 162.

¹⁶ What the law ought to be or may be in the future, cf. Jonathan Law, *Oxford Dictionary of Law* (Oxford University Press 7th edn 2013), p. 162.

¹⁷ See para. 1.2 of the Master Thesis.

internal working drafts¹⁸. In addition, sources of law also include general principles of EU law and case law from the Court of Justice of the European Union (“CJEU”).

On national level, sources of law include laws, regulations, case law and administrative decisions of the Member States. As for some of the case law analysed in the Master Thesis, the criminal nature of judgments limits disclosure and availability to the public. Where that is the case, the case law is based on valid and credible media sources referencing case law.

As for principles of legal interpretation, the Master Thesis is, inter alia, based on regulations and directives having direct effect¹⁹, directives having indirect effect²⁰, and the principle of supremacy of EU law over Member States’ law²¹.

1.5 Demarcation

The scope of research under this Master Thesis is limited to enforcement of EU sanctions.

Consequently, the Master Thesis does not deal with enforcement of third countries’ enforcement of EU sanctions, e.g. enforcement of sanctions in the U.S. or UK which, nevertheless, are important sanctions regimes for internationally operating businesses from a sanctions compliance perspective.

Analysis of the Member States’ national legislation criminalising or otherwise regulating enforcement and penalisation of EU sanctions violations falls outside the scope of the Master Thesis which instead focuses on analysing designated case law from Member States regarding enforcement and penalisation of the EU sanctions violations.

¹⁸ EUR-Lex, Summaries of EU Legislation, Sources of European Union Law ([Sources of European Union law | EUR-Lex \(europa.eu\)](#)).

¹⁹ Cf. Case 26/62, *Van Gend en Loos* [1963] ECR 1 and Case 41/74, *Van Duyn v. Home Office* [1974] ECR 1337.

²⁰ Cf. Case 14/83, *Von Colson* [1984] ECR 1891.

²¹ Cf. Case 6/64, *Costa v. ENEL* [1964] ECR 585.

Moreover, the Master Thesis does not cover questions about conflicting sanctions regimes, such as regulated by the EU Blocking Statute²², and neither does the Master Thesis cover questions about counter sanctions²³, or whether EU sanctions achieves the political objectives underlying the adoption of the sanctions.

Although the directive on the definition of criminal offences and penalties for the violation of Union restrictive measures²⁴ includes provisions amending the directive on combating money laundering by criminal law²⁵, analysis of the said amendments falls outside the scope of the Master Thesis.

Albeit demarcated from the scope of research of the Master Thesis, references outside the area of enforcement and penalisation of EU sanctions appear under the perspective section of the Master Thesis²⁶.

1.6 Structure of the Master Thesis

The Master Thesis is divided into four chapters of which *Chapter 1* provides an introduction to the Master Thesis and outlines the framework of the Master Thesis.

²² Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (1996) OJ L 309, as amended.

²³ Retaliatory sanctions adopted by a third country in response to sanctions targeting the third country or interests of the third country.

²⁴ 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 [OJ L no. pending].

²⁵ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (2018), OJ L 284.

²⁶ Section 4.3 of the Master Thesis.

Chapter 2 constitutes an explanatory part of the Master Thesis and explains to a relevant extent the procedure for adoption of EU sanctions, the legal framework of EU sanctions, types of sanctions, legal subjects and their obligations, and enforcement of EU sanctions.

Chapter 3 constitutes an analytical part of the Master Thesis and analyses selected case law on enforcement of EU sanctions and the current state of the law for violation of EU sanctions. The chapter also devotes focus on analysing the significance of adding EU sanctions to the list of EU Crimes, the “Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures”, and to what extent the directive represents a change to the current state of the law for violation of EU sanctions.

Finally, *Chapter 4* sets out the findings of the analysis and concludes on the findings and research questions of the Master Thesis. In view of the findings and conclusions, the Master Thesis outlines relevant perspectives of the future of EU sanctions enforcement and what it means for businesses affected.

Chapter 2: Adoption and Enforcement of EU Sanctions

2.1 Adoption of EU Sanctions

Until the 1990s, the main feature of the European Community’s (“EC”) sanctions policy was of a reactive nature in the sense that it mainly implemented UN sanctions on both EC and national level²⁷. Since the 1990s, the EU sanctions policy has been subject to significant changes, in particular, with the establishment of the CFSP (Common Foreign and Security Policy)²⁸ which

²⁷ Radka Druláková et al, *Assessing the Effectiveness of EU Sanctions Policy* (Central European Journal of International and Security Studies 2010), p. 109.

²⁸ Ibid, p. 109.

formed the second pillar under the three-pillar structure of the Treaty of Maastricht lasting, formally, up until the 2009 Treaty of Lisbon²⁹ by which the pillar structure was abolished and replaced by a single legal framework for Union action³⁰. With the establishment of the CFSP, the frequency of autonomous sanctions (sanctions adopted autonomously by the EU in contrast to implementing sanctions adopted by the UN) increased and established the EU as an actor on the sanctions scene³¹.

The EU's adoption of sanctions shall be considered an essential foreign policy tool to pursue its objectives in accordance with the principles of CFSP. In general terms, EU sanctions are imposed to bring about a change in policy or activity by the targeted country, entity or individual. Sanctions as an instrument is intended to allow the EU to respond swiftly to political challenges and developments and to be used as part of a comprehensive policy approach involving political measures³².

EU sanctions must be proportionate to their objectives, respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy in full conformity with the jurisprudence of the EU Courts and the EU's Charter of Fundamental Rights³³.

2.1.1 Procedure for adoption of EU Sanctions

Within the legal framework of the EU's CFSP set out in Chapter 2 of the Treaty on European Union ("TEU"), the Council³⁴ may decide to impose restrictive measures³⁵ (also referred to as sanctions)

²⁹ Graham Butler, *Constitutional Law of the EU's Common Foreign and Security Policy: Competence and Institutions in External Relations* (Hart Publishing/Bloomsbury 2019), p. 25.

³⁰ Allan Rosas et al, *EU Constitutional Law: An Introduction* (Bloomsbury Publishing 3rd edn 2018), p. 244-245.

³¹ Radka Druláková et al, *Assessing the Effectiveness of EU Sanctions Policy* (Central European Journal of International and Security Studies 2010), p. 109.

³² Council, Guidelines on the implementation and evaluation of restrictive measures (sanctions) (2018), as amended, p. 46.

³³ Ibid.

³⁴ As set out in Articles 13 and 16 of the TEU.

³⁵ The official terminology used by the EU is "restrictive measures" (instead of sanctions). For linguistic simplicity and ease of reference, this master thesis uses the internationally applied term "sanctions".

against third countries, entities, and individuals. Pursuant to Article 23 of the TEU, actions by the EU on the international scene, which includes the imposition of sanctions, shall be guided by the general provisions on the EU's external action laid down Article 21 of the TEU³⁶.

Article 24 of the TEU sets out the EU's competence in matters of the CFSP determining that it shall cover all areas of foreign policy and all questions relating to the EU's security. As for the Member States, Article 24(3) lays down the duty of loyalty and mutual solidarity requiring all Member States to actively and unreservedly comply with the EU's actions in this area.

The procedure for adoption of EU sanctions is codified in Article 29 of the TEU and Article 215 of the Treaty on the Functioning of the European Union ("TFEU"). The procedure for adoption of sanctions is further explained in detail in the Council's guidelines on the implementation and evaluation of restrictive measures of 4 May 2018.

Article 29 of the TEU provides legal basis for the Council to adopt restrictive measures against governments of countries that are not part of the EU, non-state entities and individuals to bring about a change in their policy or activity.

Accordingly, the competence of imposing sanctions rests with the Council. The Council's imposition of sanctions shall, however, take place in conformity with the general principles under Article 21 of the TEU, including with respect to inter alia safeguarding values, fundamental interest, security, and consolidate and support democracy, the rule of law, human rights, etc.³⁷.

The procedure for adoption of sanctions within the CFSP can generally be divided into a two-tier system in which each tier makes a decision. CFSP decisions have special characteristics in the sense that, firstly, they are applied to determine the actions or positions that shall be adopted by the EU

³⁶ Council, Guidelines on the implementation and evaluation of restrictive measures (sanctions) (2018), as amended, p. 5.

³⁷ Cf. Article 21(2)(a)-(b) of the TFEU.

which shall, hereafter, be applied to adopt the arrangements for the selfsame actions or positions, cf. Article 25 of the TEU.

The right to state proposals for imposition of sanctions lies with any Member State, the High Representative of the Union for Foreign Affairs and Security Policy (“HR/VP”)³⁸, and the HR/VP supported by the European Commission³⁹, cf. Article 30 of the TEU. A proposal shall, hereafter, be discussed in the relevant bodies of the Council, and the Council can, hereafter, unanimously adopt a decision, cf. Article 31 of the TEU.

The sanction proposal, which is often announced in general terms at the Foreign Affairs Council (“FAC”), shall be discussed in the Political and Security Committee (“PSC”) and scrutinised by the competent geographical working groups of the Council where Member States’ delegates negotiate and decide by consensus who is to be sanctions listed and on what basis. The last step before the approval through the Committee of Permanent Representatives II (“COREPER II⁴⁰”) and the Council is the Foreign Relations Counsellors Working Group (“RELEX⁴¹”) where the representatives of Member States negotiate the specific and concrete terms of the sanctions. Throughout these procedures, the European External Action Service (“EEAS”) makes suggestions about what sanctions measures are advisable, whom to target with sanctions, etc.⁴². These sanctions measures

³⁸ The High Representative of the Union for Foreign Affairs and Security Policy (whom is also Vice-President of the European Commission) is the chief co-ordinator and representative of the CFSP within the EU, cf. Article 18 of the TEU. The High Representative leads the European External Action Service (EEAS).

³⁹ As set out in Articles 13 and 17 of the TEU.

⁴⁰ As set out in Article 240(1) of the TFEU. COREPER is the Council's main preparatory body and is composed of each member states' permanent representatives. COREPER II prepares the work of 4 Council configurations: economic and financial affairs, foreign affairs, general affairs, and justice and home affairs, cf. The European Council and Council of the European Union, COREPER II: [Coreper II - Consilium \(europa.eu\)](https://www.europa.eu/coreper), accessed 15 March 2024.

⁴¹ RELEX is a working party that deals with legal, financial and institutional issues of the CFSP, cf. The European Council and Council of the European Union, Working Party of Foreign Relations Counsellors (RELEX): [Working Party of Foreign Relations Counsellors \(RELEX\) - Consilium \(europa.eu\)](https://www.europa.eu/relex), accessed 15 March 2024.

⁴² Francesco Giumelli, *How EU Sanctions Work: A New Narrative* (European Union Institute for Security Studies, Chaillot Papers no. 129, 2013), p. 11.

proposed by the EEAS are then examined and discussed by the relevant Council preparatory bodies before decision is then adopted by the Council by unanimity⁴³.

Implementation of sanctions on the level of the Member States is governed by Article 215 of the TFEU. Pursuant to Article 215, the Council may adopt necessary measures to implement decisions adopted under Article 29 of the TEU to ensure they are applied uniformly in all Member States.

If the Council decision on sanctions measures includes types of sanctions such as asset freeze and/or other types of economic and trade sanctions and/or financial sanctions, those measure need to be implemented in a Council regulation. The HR/VP and the European Commission present a joint proposal for a Council regulation which is examined by RELEX and forwarded to COREPER and the Council for adoption. The Council then informs the European Parliament of the adoption of the Council regulation⁴⁴. However, Article 75 of the TFEU establishes an exception that when the EU acts to prevent and combat terrorism and related activities, the Council and the Parliament should adopt a regulation via the ordinary legislative procedure⁴⁵.

As for other sanctions measures, namely travel bans and arms embargoes, they do not need further legislation from the EU beyond the Council's decision with the exception of specifically listed items under arms embargoes, such as dual-use items, that can be compiled by the Council in ad hoc regulations^{46 47}.

⁴³ The European Council and Council of the European Union, Adoption and Review Procedure for EU Sanctions: [Adoption and review procedure for EU sanctions - Consilium \(europa.eu\)](https://www.consilium.europa.eu/en/press/communications/14143/), accessed 15 March 2024.

⁴⁴ Ibid.

⁴⁵ Francesco Giumelli, *How EU Sanctions Work: A New Narrative* (European Union Institute for Security Studies, Chaillot Papers no. 129, 2013), p. 11.

⁴⁶ Namely Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (2021) OJ L 206, as amended.

⁴⁷ Francesco Giumelli, *How EU Sanctions Work: A New Narrative* (European Union Institute for Security Studies, Chaillot Papers no. 129, 2013), p. 11.

In conclusion, EU sanctions are adopted by the Council and, while certain measures are directly implemented through Council decision, other types of measures require adoption of a Council regulation directly applicable in Member States.

2.1.2 Types of sanctions

The sanctions measures applied by the EU are often categorized as either arms embargoes, restrictions on admissions, freezing of assets, or economic sanctions⁴⁸.

The sanctions measures applied are many and can cover, inter alia, freezing of funds and economic resources, restrictions on admission, arms embargoes, embargoes on equipment that might be used for internal repression, export and import restrictions, flight bans, financial services bans, and investment bans⁴⁹.

2.1.3 Actors targeted by sanctions

EU sanctions can be targeted at individuals, groups, entities, countries, products, economic sectors, etc.⁵⁰. In the joint cases C-402/05 P and C-415/05 P, the *Kadi* case, which concerned the hierarchy between international law and the general principles of EU law, the European Court of Justice (“ECJ”) ruled in 2008 that the competence to impose sanctions against third countries could also be extended to imposing sanctions against individuals⁵¹. This principle was later codified in Article 215(2) of the TFEU.

⁴⁸ The European Council and Council of the European Union, Different Types of Sanctions: [Different types of sanctions - Consilium \(europa.eu\)](#), accessed 15 March 2024.

⁴⁹ Council, Guidelines on the implementation and evaluation of restrictive measures (sanctions) (2018), as amended, p. 8.

⁵⁰ Francesco Giumelli, *How EU Sanctions Work: A New Narrative* (European Union Institute for Security Studies, Chaillot Papers no. 129, 2013), p. 7.

⁵¹ C-402/05 P and C-415/05 P, *Kadi and AL Barakaat International v. Council and Commission* [2008] ECR 6351, para. 55 and 197-202.

EU sanctions should target those identified as responsible for the policies or actions that have prompted the EU decision to impose sanctions and their beneficiaries and supporters⁵².

2.1.4 Responsibility for compliance with EU sanctions

Council sanctions regulations are directly applicable in the Member States and are binding on any person or entity with Member State nationality, located within the EU, or with respect to business done in the EU⁵³. Hence, businesses in the EU are, of its own motion, obliged to comply with EU sanctions. It is, thus, the responsibility of a business to ensure that sanctions are not violated.

This responsibility appears from the various sanction regulations adopted by the Council. Pursuant to the Council's guidelines on the implementation and evaluation of restrictive measures, the standard clause setting out to what extent EU sanctions should apply states that:

“This Regulation shall apply [...]

(c) to any person inside or outside the territory of the Union who is a national of a Member State;

(d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.”⁵⁴.

⁵² Council, Guidelines on the implementation and evaluation of restrictive measures (sanctions) (2018), as amended, p. 8.

⁵³ Council, Guidelines on the implementation and evaluation of restrictive measures (sanctions) (2018), as amended, p. 6 and 19-20.

⁵⁴ Ibid, p. 42.

2.2 Enforcement of EU Sanctions and Penalization of Sanctions Violations

2.2.1 Enforcement of EU sanctions

In order to achieve its purpose, proper effectiveness of EU sanctions is pivotal. The effectiveness of EU sanctions (and EU's credibility) hinges largely on correct and timely implementation of sanctions and prompt enforcement of sanctions, without exceptions, in all Member States⁵⁵.

Implementation and enforcement of EU sanctions is primarily the responsibility of Member States⁵⁶.

Member States should take appropriate measures to ensure that EU sanctions are complied with⁵⁷, and Member States must lay down rules on penalties applicable to violations of sanctions regulations and take all measures necessary to ensure that they are implemented⁵⁸.

Hence, not only implementation and enforcement, but also penalties for EU sanctions violations are a matter of Member State law.

2.2.2 Penalization of EU sanctions

Pursuant to the Council's guidelines on the implementation and evaluation of restrictive measures, the standard clause regarding penalties to be taken in case of infringements in Council sanction regulations set out that:

*"[...] The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive."*⁵⁹.

⁵⁵ Ibid, p. 44.

⁵⁶ Communication from the Commission to the European Parliament and the Council, "Towards a Directive on criminal penalties for the violation of Union restrictive measures", COM(2022) 249 final (2022).

⁵⁷ Council, Guidelines on the implementation and evaluation of restrictive measures (sanctions) (2018), as amended, p. 20.

⁵⁸ Ibid, p. 19.

⁵⁹ Ibid, p. 42

The responsibility for investigating and penalizing violations of EU sanctions, therefore, rests with the Member States. Based on the wording of the above-cited standard clause, Member States are, in principle, free to decide the nature of penalties, however, provided that they are effective, proportionate, and dissuasive.

Certain Council sanction regulations, nevertheless, provide more detailed provisions on penalization of sanctions violation. By way of example, Article 15(1) of Council Regulation (EU) No. 269/2014⁶⁰, imposing sanctions against Russia for its war of aggression against Ukraine, states that:

“Member States shall lay down the rules on penalties, including as appropriate criminal penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall also provide for appropriate measures of confiscation of the proceeds of such infringements.”⁶¹.

The cited provision, thus, adds to the standard clause by requiring Member States to lay down rules that imposes criminal penalties, though as appropriate, and rules providing for appropriate measures of confiscation of the proceeds from sanctions violations.

However, the freedom of Member States to decide the level of intensity in enforcement and penalization of EU sanctions creates a risk of disparity among Member States on the type of content of enforcement and penalization of EU sanctions violations. The existence of such disparity has, to

⁶⁰ Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 78, as amended.

⁶¹ Adopted by Council Regulation (EU) 2022/880 of 3 June 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2022) OJ L 153.

some extent, been confirmed in a study⁶² by the Genocide Network⁶³ established by the Council and hosted by Eurojust⁶⁴.

2.2.3 Case law analysis

With the purpose of determining the state of the law of penalization of EU sanctions violations, the Master Thesis shall, in the following subparagraphs, analyse the types and levels of penalties in certain Member States based on selected and publicly available national case law imposing penalties for EU sanctions violations.

The case law identified is limited to cases that constitutes final judgments by a court in a Member State, out of court settlement with or administrative decision by a public authority in a Member State. Thus, cases that are subject to investigation, pending trial or appeal have been disregarded for the purpose of the Master Thesis. Furthermore, the identified case law is limited cases that involves violation of EU sanctions. Hence, cases on related matters, such as violation of export control legislation or AML⁶⁵/KYC⁶⁶ legislation is out the scope of the below case law.

Because of the nature of criminal convictions, including regard for the convicted offender, not all Member States make publicly available criminal judgments. The analysed case law is, therefore, partly based on sources of law in the form of judgments, where available, news from government authorities, and articles from reliable and recognized media sources.

2.2.3.1 Dan-Bunkering et al (Denmark)⁶⁷

Facts of the case:

⁶² Genocide Network, “Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis” (2021).

⁶³ The European Network for investigation and prosecution of genocide, crimes against humanity and war crimes.

⁶⁴ The European Union Agency for Criminal Justice Cooperation.

⁶⁵ Anti-money laundering.

⁶⁶ Know your customer.

⁶⁷ *Dan-Bunkering et al v. the Danish Prosecution Service* [2021], Judgment of 14 December 2021, Odense District Court, Case 5-11669/2020.

The Danish company A/S Dan-Bunkering Ltd. (“Dan-Bunkering”), which is one of the world’s largest bunkering⁶⁸ firms, had in the period from 2015 to 2017 carried out 33 deals on the delivery of jet fuel amounting to 172,000 tons and worth DKK 639 million (equivalent to EUR 85.7 million).

The jet fuel was sold via Dan-Bunkering’s subsidiary in Kaliningrad to two Russian companies, Joint Stock Company Sovfracht and Maritime Assistance LLC which were agents of the Russian navy. The fuel sold was delivered to tankers in the eastern part of the Mediterranean Sea. The deliveries began just as the Russian Air Force entered the civil war in Syria for the benefit of the so-called Assad regime. The fuel was allegedly, subsequently, used to supply the Russian planes' bombing runs from a base near the port city of Baniyas in Syria.

Dan-Bunkering, its parent company Bunker Holding A/S, and the CEO of Bunker Holding A/S was charged and later indicted by the Danish Prosecution Service, the State Prosecutor for Serious Economic and International Crime, for violation of Council Regulation (EU) No. 36/2012 and the Danish Criminal Code.

Applicable sanctions legislation:

Under Council Regulation (EU) No. 36/2012⁶⁹, the Council, in 2012, adopted sanctions against the Assad-regime for its human rights violations, massacres, atrocities, etc., in Syria. On 12 December 2014, the Council expanded the sanctions measures against Syria and imposed a prohibition on export of items that were used to undertake air attacks against the civilian population of Syria. It is stated in Article 7a(1)(a) of the Council regulation that:

⁶⁸ Bunkering is the supplying of fuel for use by ships, including the logistics of loading and distributing the fuel.

⁶⁹ Council Regulation No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (2012) OJ L 16, as amended.

“[...] It shall be prohibited to: [...] sell, supply, transfer or export, directly or indirectly, jet fuel and fuel additives as identified in Annex Va to any person, entity or body in Syria, or for use in Syria [...]”⁷⁰.

Violation of EU sanction regulations adopted under Article 215 of the TFEU is, generally, criminalized under Section 110 c of the Danish Criminal Code⁷¹ whereby intentional violations are penalized with fines or imprisonment of up to 4 years, whereas negligent violations are punishable by fine or imprisonment of up to 2 years.

Verdict and penalties:

On 14 December 2021, Odense District Court in Denmark ruled that Dan-Bunkering had intentionally violated the Article 7a(1)(a) of Council Regulation (EU) No. 36/2012 by having supplied jet fuel as listed in Annex Va to agents of the Russian navy for the use in Syria.

The Court also found that the parent company Bunker Holding A/S and its CEO were negligently and passively complicit in 8 out of the 33 unlawful supplies of jet fuel.

Pursuant to Section 110 c of the Danish Criminal Code, the Court imposed a fine of DKK 30 million (approx. EUR 4 million) and confiscation of approximately DKK 15.6 million (approx. EUR 2 million) against Dan-Bunkering; a fine of DKK 4 million (approx. EUR 536,600) against Bunker Holding A/S; and suspended imprisonment sentence of 4 months against the CEO of Bunker Holding A/S.

⁷⁰ Ibid.

⁷¹ Danish Criminal Code [2022], Consolidated Act no. 1360 of 28 September 2022, as amended.

The fines were measured by the Court based on the calculated profits achieved by the companies from the illegal trades. The fines were then reached by doubling the profit achieved by the companies.

Analysis and remarks:

Thus, the sentenced criminal subjects include both natural and legal persons, while the imposed penalties include fines, confiscation, and suspended imprisonment. The case also exemplifies that a parent company incurs criminal liability for sanctions violations committed by its domestic and foreign subsidiaries, including a third country subsidiary, i.e. group criminal liability.

The case, moreover, confirms that not only direct but also indirect export of a sanction listed item incurs criminal liability and is penalized. The judgment does not indicate that the penalized companies and CEO have obtained any reduction or discount on the sentence because of the exports having taken place indirectly for use in Syria.

From a sanctions compliance perspective, the case also give rise to consideration about the extent of due diligence that needs to be conducted in connection with export of products, in particular sanction listed items. Considering the facts of the case, Dan-Bunkering delivered jet fuel to Russian entities in the Mediterranean Sea. Usually, the starting point of sanction screening due diligence measures would be focused on the customer, ultimate beneficial owners, recipients of the export item and country or area of export. In this case, the EU sanctions measures against Russia in view of its aggression against Ukraine, namely Council Regulation (EU) No 833/2014⁷², would arguably be the natural place to start the analysis of whether jet fuel was subject to export restrictions, and whether counterparties and export country or area would be in scope of sanctions or designated.

⁷² Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

However, the case shows that businesses should be very alert to the end-use risk, i.e. the final destination and intended use of the export item. Considering the facts of the case, the end-use of the export, according to the Danish State Prosecutor for Serious Economic and International Crime, took place in Syria on Russian air force bombers. In light of this, businesses are required to look beyond sanctions regulations that, at a glance, are applicable to the facts of the prospective export and consider all possible end-uses, in this case, for the use in Syria which was prohibited under Council Regulation (EU) No 36/2012. Consequently, businesses are required to have robust and effective sanctions compliance program that ensures thorough due diligence and screening.

In certain jurisdictions, having an effective compliance program can be a mitigating circumstance when the court measures the penalty.

2.2.3.2 AAE Chemie Trading et al (Belgium)⁷³

Facts of the case:

AAE Chemie Trading, a wholesaler of chemical products for industrial use declared bankrupt in 2018, Anex Customs, a company providing administrative services declared bankrupt in 2017, and Danmar Logistics, a logistics company, were between 2014 and 2016 cooperating on the export of chemicals to Syria and Lebanon.

Between May 2014 and December 2016, the three companies made 24 deliveries to Syria containing, inter alia, 168 tonnes of isopropanol. Isopropanol is a chemical substance commonly known as rubbing alcohol that has many uses. Isopropanol is, however, also known as a precursor to

⁷³ As explained in several publicly available media sources, namely, NGO Syrian Archive, “Antwerp court convicts three Flemish firms for shipping 168 tonnes of isopropanol to Syria” (2019) <[Antwerp court convicts three Flemish firms for shipping 168 tonnes of isopropanol to Syria | Syrian Archive](#)> accessed 21 March 2024 and the Flemish magazine Knack, “Hoge boetes voor export van isopropanol naar Syrië zonder vergunning” (2019) <[Hoge boetes voor export van isopropanol naar Syrië zonder vergunning \(knack.be\)](#)> accessed 21 March 2024.

Sarin, a nerve gas that can be used as a chemical weapon prohibited under the Chemical Weapons Convention⁷⁴.

From 2013 onwards, the Assad regime reportedly used sarin gas during the Syrian civil war against the regime's own population⁷⁵.

Applicable sanctions legislation:

Under Council Regulation (EU) No. 36/2012⁷⁶, the Council, in 2012, adopted sanctions against the Assad-regime for its human rights violations, massacres, atrocities, etc., in Syria. On 15 June 2012, the Council provided for additional measures against Syria and included prohibition or prior authorisation requirements on the sale, supply, transfer or export of goods and technology which might be used for internal repression⁷⁷. It is stated in Article 2b(1) of the Council regulation that:

*"[...] A prior authorisation shall be required for the sale, supply, transfer or export, directly or indirectly, of equipment, goods or technology which might be used for internal repression or for the manufacture and maintenance of products which might be used for internal repression, as listed in Annex IX, whether or not originating in the Union, to any person, entity or body in Syria or for use in Syria."*⁷⁸.

⁷⁴ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction [1994], C.N.246.1994.TREATIES-5, as amended.

⁷⁵ See e.g. Nawal al-Maghafi, "How chemical weapons have helped bring Assad close to victory", BBC (2018) <[How chemical weapons have helped bring Assad close to victory \(bbc.com\)](https://www.bbc.com/news/world-middle-east-37484444)>, accessed 21 March 2024.

⁷⁶ Council Regulation No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (2012) OJ L 16, as amended.

⁷⁷ Council Regulation No 509/2012 of 15 June 2012 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (2012) OJ L 156.

⁷⁸ Council Regulation No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011, as amended.

In view of the situation in Syria, the Council, on 22 July 2013, amended Annex IX (as referred to in the above-cited Article 2b(1)) by including, inter alia, the chemical isopropanol in 95% concentration or greater⁷⁹.

Consequently, as of 22 July 2013 the export of isopropanol under the EU sanctions measures against Syria required prior authorization from the competent Belgian authority, cf. Annex III of Council Regulation (EU) No. 36/2012.

The matter was initially investigated and reported by specific media and NGOs which uncovered the flow of isopropanol to Syria⁸⁰. Criminal proceedings were initiated in May 2018 by the Belgium Public Prosecutor's Office and the Belgium Customs Authority.

Verdict and penalties:

On 7 February 2019, Antwerp Criminal Court in Belgium convicted the three Flemish companies; AAE Chemie Trading, Anex Customs, and Danmar Logistics and two managers for having shipped 168 tonnes of isopropanol to Syria between 2014 and 2016 without required export license.

The Court imposed AAE Chemie Trading a conditional fine of EUR 346,443 of which EUR 50,000 was effective; a conditional fine of EUR 500,000 against Anex Customs of which EUR 100,000 was effective; a conditional fine of EUR 75,000 against Danmar Logistics of which 50.000 was effective; suspended imprisonment of 4 months against the managing director of AAE Chemie Trading; and 12 months of imprisonment against a manager of Anex Customs and Danmar Logistics.

⁷⁹ Council Regulation No 697/2013 of 22 July 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (2013) OJ L 198.

⁸⁰ Namely the Flemish magazine Knack and the German NGO Syrian Archive, see footnote 63.

Analysis and remarks:

The sentenced criminal subjects include both natural and legal persons, while the imposed penalties include conditional and effect fines and suspended and unsuspended imprisonment.

It is noteworthy that the businesses and managers incurred criminal liability and were penalized regardless of there being no evidence that the exported chemicals had been used in the development and use of chemical weapons in Syria. The criminal offence, therefore, already occurs when the product is exported without required license.

Notably, no profits or assets were confiscated in connection with the conviction of the companies and managers.

2.2.3.3 EU-Russia embargo case (Germany)^{81 82}

Facts of the case:

A German citizen and entrepreneur from Augsburg with the assistance of a German citizen from Munich, in the period from 2015 to 2018, carried out, on several occasions, delivery of metal processing equipment to two Russian state-owned companies Almaz-Antey Air and Space Defence Corp. of which the contact persons of the German citizens were employees of the Russian secret service.

Between 2015 and 2018, the German citizens made a total of 7 deliveries to the Russian state-owned companies which counted at least 15 pieces of equipment or machinery. The Russian

⁸¹ *German citizens v. German Federal Public Prosecutor General* [2012], Hanseatic Higher Regional Court, Az.: 3 St 2/20.

⁸² As explained in several publicly available media sources, namely, Deutsche Welle, “Germany: Trial starts over sales to Russian missile firms” (2020) <[Germany: Trial starts over sales to Russian missile firms – DW – 12/14/2020](#)> accessed 21 March 2024, Süddeutsche Zeitung, “Haft für Verstöße gegen Russland-Embargo” (2021) <[Prozesse - Hamburg - Haft für Verstöße gegen Russland-Embargo - Bayern - SZ.de \(sueddeutsche.de\)](#)> accessed 21 March 2024, TRT Deutsch, “Lieferung von Rüstungsgütern nach Russland – Haftstrafe für Embargoverstoß” (2021) <[Lieferung von Rüstungsgütern nach Russland – Haftstrafe für Embargoverstoß \(trtdeutsch.com\)](#)> accessed 21 March 2024.

companies were known to produce, among other things, surface-to-air missiles used by Russian separatists in Ukraine. The delivered metal processing equipment or machinery could have been used in military missile production.

The deliveries took place in the years after the Russian annexation of Crimea in 2014 which prompted the EU to adopt comprehensive sanctions against Russia.

Applicable sanctions legislation:

On 31 July 2014, the European Parliament and the Council adopted Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine⁸³. The Council regulation was adopted in response to Russia's annexation of Crimea and destabilization of the Luhansk and Donetsk regions in Ukraine in March 2014 onwards and has been subject to comprehensive amendments since, particularly, in light of the Russian aggression against Ukraine in February 2022 onwards.

Council Regulation (EU) No 833/2014 prohibits natural and legal persons from delivering dual-use items⁸⁴ to or for the use in Russia. Hence, it is set out in Article 2(1) that:

*"[...] It shall be prohibited to sell, supply, transfer or export, directly or indirectly, dual-use goods and technology, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia."*⁸⁵.

⁸³ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

⁸⁴ Under Article 2(1) of Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 (2021) OJ L 206, 'dual-use items' means items, including software and technology, which can be used for both civil and military purposes, and includes items which can be used for the design, development, production or use of nuclear, chemical or biological weapons or their means of delivery, including all items which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices.

⁸⁵ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

By “dual-use goods and technology” the Council regulation refers to the items listed in Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council⁸⁶, i.e. the so-called Dual-Use Regulation⁸⁷, previously and applicable at the time of the offences committed the two German Citizens; Council Regulation (EC) No 428/2009⁸⁸.

Annex 1⁸⁹ to Regulation (EU) 2021/821 and Council Regulation (EC) No 428/2009 lists a comprehensive number of dual-use items, including categories of special materials and related equipment.

Furthermore, the Russian companies Almaz-Antey Air and Space Defence Corp., which the German Citizens had delivered equipment to, were designated (sanctions listed in Annex IV to Regulation (EU) 2021/821) in September 2014⁹⁰. Under Article 2a(1) of Regulation (EU) 2021/821:

“[...] It shall be prohibited to sell, supply, transfer or export, directly or indirectly, dual-use goods and technology as included in Annex I to Regulation (EC) No 428/2009, whether or not originating in the Union, to natural or legal persons, entities or bodies in Russia as listed in Annex IV to this Regulation.”⁹¹.

Any form of delivery of dual-use items to these two Russian companies was, therefore, prohibited from September 2014 onwards.

⁸⁶ Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (2021) OJ L 206, as amended.

⁸⁷ Cf. Article 1(a) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

⁸⁸ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (recast) (2009) OJ L 134, as amended.

⁸⁹ This list implements internationally agreed dual-use controls including the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group (NSG), the Australia Group and the Chemical Weapons Convention (CWC).

⁹⁰ Under the company name OAO Almaz Antey, cf. Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 271.

⁹¹ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

Verdict and penalties:

In March 2021, the Hanseatic Higher Regional Court convicted the entrepreneur from Augsburg for violation of EU sanctions against Russia and sentenced the entrepreneur to 3 years and 9 months of imprisonment. In addition, approximately EUR 8 million was confiscated from the entrepreneur. The confiscated amount was equal to the profit gained by the entrepreneur by selling the metal equipment to the Russian state-owned companies.

The second person involved, a German citizen from München, was sentenced 2 years of imprisonment on probation for complicity by aiding and abetting to the violations committed by the entrepreneur. In addition, approximately EUR 184,000 was confiscated from the German citizen amounting to the profit gained and an order to pay EUR 150,000 was issued as a condition for probation.

Analysis and remarks:

The sentenced criminal subjects include both natural and legal persons, while the imposed penalties include both prison sentences and confiscation of profits gained from the sanctions violating trades.

It is noteworthy that no enforcement actions were undertaken against the companies of the convicted German citizens, although facts of the case suggests that they were involved in the sanctions violation scheme.

2.2.3.4 *Microchip sanctions circumvention case (The Netherlands)*⁹²

Facts of the case:

A Russian citizen and his Dutch company incorporated in the Netherlands from February 2022 and for more than 7 months exported technology and electronic goods, in particular microchips, to Russia to the Russian IT company SpetzPromSvyaz via third countries, including e.g. Turkey and Kazakhstan. According to the Dutch Public Prosecution Service, the Russian IT company is by FSB (Russian Intelligence Service) license supplying a Russian defense company Rostec⁹³.

By creating false invoices and end-user declarations, the Russian citizen and Dutch company indicated that the exported goods went to the Maldives or Ukraine.

At least eleven types of technology and electronic goods, including microchips, were exported to Russia in more than fifteen shipments over a period of seven months, with a trade value of more than EUR 1.4 million.

The goods were, according to the Public Prosecution Service⁹⁴, found in Ukraine in destroyed or seized Russian missiles, radar systems and military vehicles on the battlefield in Ukraine between 2022 and 2023.

The suspicious trading was reported by a Dutch bank to the Dutch Financial Conduct Authority that notified the Dutch Public Prosecution Service.

⁹² *Russian citizen and Dutch company v. Dutch Prosecution Service* [2023], Court of Rotterdam, ECLI:NL:RBROT:2023:10072.

⁹³ Openbaar Ministerie, “36 maanden cel geëist voor handel in sanctie- en dual-use goederen naar Rusland” (2023) <<https://www.om.nl/actueel/nieuws/2023/10/17/36-maanden-cel-geest-voor-handel-in-sanctie--en-dual-use-goederen-naar-rusland>> accessed 22 March 2024.

⁹⁴ Ibid.

Applicable sanctions legislation:

On 31 July 2014, the European Parliament and the Council adopted Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine⁹⁵. The Council regulation prohibits natural and legal persons from delivering certain items listed in Annex VII to or for the use in Russia. Hence, it is set out in Article 2a(1) that:

“[...] It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology which might contribute to Russia’s military and technological enhancement, or the development of the defence and security sector, as listed in Annex VII, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia.”⁹⁶

On 25 February 2022, the Council adopted amendments to Annex VII by adding, inter alia, various electronic devices and components, including microchips (semiconductors).⁹⁷

Verdict and penalties:

On 31 October 2023, the Court of Rotterdam in the Netherlands convicted the Russian citizen for violation of EU sanctions legislation applicable on 25 February 2022 by exporting microchips that could contribute to Russia’s military reinforcement to Russian companies in Russia.

The Russian citizen was sentenced to 18 months of imprisonment without suspension. The company that the Russian used as a vehicle to violate EU sanctions was imposed a fine of EUR 200,000.

⁹⁵ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended. The Council regulation was adopted in response to Russia’s annexation of Crimea destabilization of the Luhansk and Donetsk regions in Ukraine in March 2014 onwards and has been subject to comprehensive amendments since, particularly, in light of the Russian aggression against Ukraine in February 2022.

⁹⁶ Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

⁹⁷ Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2022) OJ L 49.

Analysis and remarks:

The sentenced criminal subjects include both natural and legal persons, while the imposed penalties include both prison sentence and fine. The case illustrates that deliberate circumvention of EU sanctions measures against Russia takes place and, if detected, is investigated and punished.

2.2.3.5 Kerch Bridge cases (the Netherlands and Germany)^{98 99}

Facts of the cases:

In the period from 2014 to 2017, four unnamed Dutch companies sold and supplied parts and provided on- and offsite technical assistance for the construction of the Kerch Bridge connecting Crimea and the Krasnodar Territory of Russia mainland over the Kerch Strait in the Black Sea. The parts consisted of pile hammers, vibratory hammers, and power packs.

Prompted by an investigative news article from September 2017, Dutch authorities began to investigate the four companies.

In a separate but similar matter, an unnamed German company based in Schleswig-Holstein between 2016 and 2017 exported hydraulic hammers to Russia for the use of constructing the Kerch Bridge. Such hammers can be used for driving piles into the seabed. The matter was notified to the German Public Prosecutor's Office which commenced investigations in 2020.

⁹⁸ Openbaar Ministerie, "Straffen voor Nederlandse bedrijven en personen vanwege betrokkenheid bij bouw Krimbrug" (2023) <[Straffen voor Nederlandse bedrijven en personen vanwege betrokkenheid bij bouw Krimbrug | Nieuwsbericht | Openbaar Ministerie \(om.nl\)](#)> accessed 22 March 2024.

⁹⁹ As explained in several media, namely, Focus, "Deutsche Firma beliefert Putin trotz Sanktionen und muss hohe Strafe zahlen" (2023) <[Deutsche Firma beliefert Putin trotz Sanktionen und muss hohe Strafe zahlen - FOCUS online](#)> accessed 22 March 2024 and ARD1 Tagesschau, "Strafbefehl gegen Unternehmen" (2023) <[Verstoß gegen EU-Sanktionen - Strafbefehl gegen Unternehmen | tagesschau.de](#)> accessed 22 March 2024.

Applicable sanctions legislation:

In the wake of Russia's annexation of Crimea, the European Parliament and the Council, on 23 June 2014, adopted Council Regulation (EU) No 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol¹⁰⁰. Under Article 2b(1)-(2) of the regulation it shall be prohibited:

[...] to sell, supply, transfer, or export goods and technology as listed in Annex II:

(a) to any natural or legal person, entity or body in Crimea or Sevastopol, or

(b) for use in Crimea or Sevastopol.

[...] to:

(a) provide, directly or indirectly, technical assistance or brokering services related to the goods and technology as listed in Annex II, or related to the provision, manufacture, maintenance and use of such items to any natural or legal person, entity or body in Crimea or Sevastopol or for use in Crimea or Sevastopol; [...]¹⁰¹.

Annex II of Council Regulation (EU) No 692/2014 lists, inter alia, various machine tools, including hammers.

Settlement, verdict and penalties:

On 13 October 2023, the Dutch Public Prosecution Service penalized the four Dutch companies and eight people for violating EU sanctions measures. The penalization is part of an out-of-court

¹⁰⁰ Council Regulation (EU) 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 183, as amended.

¹⁰¹ Ibid.

settlement in which the companies and persons pleaded guilty to the charges and accepted the penalties.

The eight people was sentenced with community service ranging from 20 to 60 hours, whilst the four companies was imposed fines that in total amounted to EUR 160,000. In determining the fines, the Public Prosecution Service took into account the maximum fine in the relevant period, the number of criminal offences, the years since the offenses were committed, the seriousness of the offenses and the period over which the offenses were committed.

One company had gained a profit of EUR 71,330 from supplying goods and services to the Kerch Bridge project. This amount was confiscated by the Public Prosecution Service as part of the settlement.

Separately, in the German case, the District Court of Kiel convicted the German company and a representative of the company for violating the EU sanctions measures. The court ordered confiscation of EUR 1.3 million from the German company equal to the profits gained from the illicit trades, whilst the representative of the company was imposed a fine of EUR 18,000.

Analysis and remarks:

The sentenced criminal subjects include both natural and legal persons. In the Dutch case, the imposed penalties include both community service, fines and confiscation of profits gained from the sanctions violating trades, whereas in the German case, the penalties were limited to fine and confiscation.

Notably, the Dutch matter was resolved by an out-of-court settlement between Public Prosecution Service and the defendants. The advantages of such settlements are that businesses can avoid the high degree publicity that comes with court hearings under criminal procedure, cost of litigation, and lengthiness of court proceedings. Instead, business can obtain a quick decision, however,

depending on of the Member State law, without a judge to hear and rule in favor of the position of the defendant.

Although facts and circumstances that lays the basis for penalty decisions, whether by a court or out-of-court settlement, the company in the German case was not imposed a fine for the misconduct but the punishment was limited to confiscation. Nevertheless, the confiscated amount in the German appears as more significant punishment than the fines against the Dutch companies when considering the amounts involved.

2.2.3.6 *Neves case (Romania)*¹⁰²

Facts of the case:

In January 2019, the Romanian company Neves 77 Solutions SRL (“Neves”), having as its main activity brokering in the sale of products within aviation, contracted with the Ukrainian company SFTE Spetstechnoexport (“SFTE”) to supply it with 32 radio sets, which were to be delivered to the United Arab Emirates (“UAE”).

In turn, Neves contracted with a Portuguese company to buy the 32 radio sets, 20 of which were manufactured and exported from Russia to the UAE, after which, Neves then transferred those 20 radio sets to India as per SFTE’s request.

In July 2019, the Romanian Department of Export Control inquired Neves about the purchase of 20 radio sets from Russia.

¹⁰² Referenced in Case C-351/22, *Neves 77 Solutions SRL v. Agenția Națională de Administrare Fiscală – Direcția Generală Antifraudă Fiscală* [2023] ECR 907, Opinion of AG Ćapeta, paras. 5-24.

Applicable sanctions legislation:

In the wake of Russia's annexation of Crimea, the Council, on 23 June 2014, adopted Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine¹⁰³. Article 2(2)(a) of Council Decision 2014/512/CFSP states that it shall be prohibited:

“[...] to provide technical assistance, brokering services or other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, directly or indirectly to any natural or legal person, entity or body in, or for use in Russia; [...]”¹⁰⁴.

Verdict and penalties:

By infringement notice of 12 May 2020, the Romanian National Tax Administration Agency, Tax Fraud Department considered that Neves had violated EU sanctions measures against Russia.

Neves was imposed a fine of RON 30,000 (approximately EUR 6,000), and the sum of RON 14,113,003 (EUR 2,984,961.40) was confiscated, representing the payment Neves received from SFTE for brokering the transaction of radio sets.

Neves' subsequent contest of the infringement notice was dismissed by the Court of First Instance in Romania. The appeal by Neves to the Regional Court in Bucharest was referred to the Court of Justice of the European Union with request of preliminary ruling¹⁰⁵.

¹⁰³ Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended.

¹⁰⁴ Ibid.

¹⁰⁵ The request for a preliminary ruling from the Tribunalul București (Regional Court), under the preliminary ruling procedure in Article 267 of the TFEU, is currently undecided. The question before the CJEU, which has been addressed by the Advocate General is, essentially, whether the confiscation of gross profits was compatible with fundamental

Analysis and remarks:

The sentenced criminal subjects include legal persons, while the imposed penalties include both fines and confiscation of profits gained from the prohibited brokering.

Notably, this case is an example of a public authority imposing administrative penalties on a legal person. The resolution of the case on an administrative level, even though contested in the court system, potentially also comes with the consequence that no criminal penalty was brought against any individuals of Neves.

2.2.4. Summary and conclusion on case law analysis

In view of the above-stated review and analysis of selected case law, the Master Thesis shall in this paragraph summarize and conclude on findings to determine the state of the law of penalization of EU sanctions violations.

Criminal legal subjects and liability:

The majority of the case law goes to show that both natural and legal persons are penalized for sanctions violations. In only one case did penalization not extend to a natural person, e.g. a company representative¹⁰⁶. This could be because that no evidence of criminal liability could be provided in the case or because this was a consequence of the case being resolved administratively by a public authority and not a court which is the appropriate venue for convicting natural persons in case of any sentencing of imprisonment.

principles of EU law, including whether it was a proportionate abrogation of the right to property. The Advocate-General's opinion is that such confiscations are not a breach of EU law, namely, the principle of legal certainty, the principle of *nulla poena sine lege* and the fundamental right to property, cf. para. 82 of the Advocate General Opinion of 23 November 2023 in case C-351/22.

¹⁰⁶ See para. 2.2.3.6 Neves case.

The case law shows that in some cases the criminal liability is extended to subsidiaries of companies and vice versa in the sense that parent companies and management are held accountable for the sanctions violations committed by subsidiaries, even though located in a third country¹⁰⁷.

The case law further shows that business partners and intermediaries in separate legal entities are penalized for involvement in sanctions violations¹⁰⁸.

Scope of criminal offences:

All of the case law concerns conviction and penalization for violations EU sanctions, namely, sanctions measures adopted by the European Parliament and Council in relation to Syria, Russia and Ukraine.

Type and level of penalties:

The reviewed case law shows that violations of EU sanctions measures have been enforced in Member States in different ways. Although most commonly cases have been resolved before the courts, certain cases have also been resolved by way of settlements¹⁰⁹ or by decision of a public authority¹¹⁰. Hence, both administrative and criminal penalties have been imposed by Member States for sanctions violations.

The type of penalties imposed by the Member States includes criminal and administrative fines, imprisonment, confiscation of profits, and community services. In some of the cases, penalties were suspended or conditional.

¹⁰⁷ See para. 2.2.1.1 Dan-Bunkering case.

¹⁰⁸ See para. 2.2.3.2 AAE Chemie Trading et al case and 2.2.3.3 Russia embargo case.

¹⁰⁹ See para. 2.2.3.5 Kerch Bridge cases.

¹¹⁰ See para. 2.2.3.6 Neves case.

The level and frequency of confiscations, fines, and imprisonments can be summarized in the table below (hereinafter referred to as “Table 1”) as follows:

Case (MS)	Confiscation (EUR)	Fines (EUR)	Imprisonment
Dan-Bunkering (DK)	2 million	4 million 536,600	4 months, suspended
AAE Chemie Trading (BE)	N/A ¹¹¹	346,443 500,000 75,000	4 months, suspended 12 months, unsuspended
EU-Russia embargo (DE)	8 million 184,000	N/A	3 years and 9 months, unsuspended 2 years, suspended ¹¹²
Microchip (NL)	200,000	N/A	18 months, unsuspended
Kerch Bridge (NL, DE)	71,330 1.3 million	160,000 ¹¹³ 18,000	N/A ¹¹⁴
Neves (RO)	2.9 million	6,000	N/A

As for *confiscation*, this measure has been applied frequently by enforcement authorities and recognized by the courts, i.e. in 5 out of 6 of the cases. In all the cases, the target of confiscation has been the profits or assets obtained from the illegal trades. By confiscating a certain value from the offender, authorities aim to ensure that the offender does not benefit from the crime.

¹¹¹ Not applicable.

¹¹² Payment order of EUR 150,000 as condition for suspension of imprisonment.

¹¹³ Total of four fines imposed on four different companies.

¹¹⁴ In the Dutch matter, 8 people was sentenced to community service ranging between 20 and 60 hours.

The level of *fin*es varies significantly between cases. In a few cases where fines were not imposed, the offence was instead penalized by imprisonment and confiscation. The fines imposed are spanning from EUR 6,000 in the Neves case up to EUR 4 million in the Dan-Bunkering case.

As for *imprisonment*, the level varies significantly too between the cases. In a few cases, no prison sentences were imposed, although fines and confiscation measures were imposed instead.

Moreover, there is variation as to whether imprisonment is made suspended or unsuspended. The imprisonment sentences imposed are spanning from 4 months suspended imprisonment in the Dan-Bunkering case and AAE Chemie Trading case up to 3 years and 9 months unsuspended imprisonment in the EU-Russia embargo case.

For the adjudication of fines and imprisonment, it should, however, be taken into consideration when concluding on findings of this analysis that the cases are judged on the basis of different factual circumstances, both aggravating and mitigating, which can result in fines of different sizes and varying length of imprisonment, suspension and not, for otherwise comparable EU sanctions violations. Particularly decisive for the sentencing is whether the offence can be attributed to the offender as intentional or grossly negligent of which intention, naturally, should result in a severe punishment.

Nevertheless, the significant differences in penalties for comparable offences suggest that Member States' enforcement and penalization of EU sanctions measures are to some extent uneven.

Sanctions compliance considerations:

The cases show that businesses are vigilant and have a in place and effective sanctions compliance program to mitigate the risk of violation EU sanctions. Having the in mind the Dan-Bunkering case, businesses are required to look beyond sanctions regulations that, at a glance, are applicable to the facts of a prospective export and consider all possible end-uses. Businesses are, therefore, required

to have a robust and effective sanctions compliance program that ensures thorough due diligence and screening.

Chapter 3: Directive on the Definition of Criminal Offences and Penalties for the Violation of Union Restrictive Measures

3.1 EU Sanctions Violations as an EU Crime

On 28 November 2022, the Council unanimously adopted a decision to add the violation of EU sanctions to the so-called list of “EU Crimes”¹¹⁵. The list of EU Crimes refers to the listed areas of crime set out in Article 83(1) of the TFEU.

Pursuant to Article 83(1), set out under Chapter 4 on judicial cooperation in criminal matters, the European Parliament and the Council may establish¹¹⁶ minimum rules on the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension and where there is a special need to combat such crime on a common basis.

Article 83(1), subparagraph 2, lays down an exhaustive list of the areas of crime about which the European Parliament and the Council can establish minimum rules on the definition of criminal offences and sanctions. Although related to already listed crimes such as terrorism, money laundering, and corruption, EU sanctions did, before the Council decision of 28 November 2022, not feature on the list. Hence, the European Parliament and the Council could not adopt minimum rules on the definition of criminal offences and sanctions to combat EU sanctions crime.

¹¹⁵ Council of the EU, press release, “Sanctions: Council adds the violation of restrictive measures to the list of EU crimes” (2022) <[Sanctions: Council adds the violation of restrictive measures to the list of EU crimes - Consilium \(europa.eu\)](#)> accessed 11 April 2024.

¹¹⁶ By means of directives adopted in accordance with the ordinary legislative procedure (OLP).

Nevertheless, Article 83(1), subparagraph 3, allows for a special procedure whereby the Council may identify new areas of crime and adopt decisions regarding such crime pursuant to Article 83(1), subparagraph 1.

In view of the EU sanctions measures taken against Russia for its aggressions against Ukraine and with the purpose of ensuring that measures are fully implemented in Member States and that the violation of those measures must not be allowed to pay off, the European Commission on 25 May 2022 proposed to add violation of EU sanctions to the list of EU Crimes¹¹⁷. In its proposal for a Council decision¹¹⁸, the European Commission essentially argues that:

*“[...] in the absence of Union-level harmonisation, national systems differ significantly as far as criminalisation of the violation of Council Regulations on Union restrictive measures (‘violation of Union restrictive measures’) is concerned. Equally, criminal penalty systems differ substantially.”*¹¹⁹.

With reference to a study¹²⁰ by the Genocide Network¹²¹, the European Commission, moreover, points out issues in Member States, i.e., that very few individuals or legal persons responsible for the violation of EU sanctions are effectively held accountable, that insufficient priority is given to investigating and prosecuting the violation of EU sanctions, that law enforcement authorities face

¹¹⁷ European Commission, press release, “Ukraine: The Commission proposes rules on freezing and confiscating assets of oligarchs violating restrictive measures and of criminals” (2022) <[IP_22_3264_EN.pdf \(europa.eu\)](#)> accessed 11 April 2024.

¹¹⁸ European Commission, Proposal for a Council decision on adding the violation of EU sanctions to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM/2022/247 final, 25 May 2022.

¹¹⁹ Ibid, p. 2.

¹²⁰ Genocide Network, “Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis” (2021)

¹²¹ The European Network for investigation and prosecution of genocide, crimes against humanity and war crimes.

significant hurdles due to the complex nature of the offences concerned, and the difficult access to confiscation measures¹²².

It is against this background that the European Commission proposed to add the violation of EU sanctions to the list of EU crimes in Article 83(1) with the purpose of having that:

*“[...] the Commission will be in a position to propose a Directive under the ordinary legislative procedure, which could approximate the definition of criminal offences and sanctions.”*¹²³.

With consent from the European Parliament, the proposal was adopted by the Council on 28 November 2022¹²⁴ and expressed that following the adoption of the decision, the European Commission would present a proposal for a directive containing minimum rules concerning the definition of criminal offences and penalties for violation of EU sanctions measures¹²⁵.

In conclusion, adding violations of EU sanctions to the Article 83(1) list of EU crimes, first and foremost, completes the first formal and necessary step in combatting impunity for violation of EU sanctions on an EU-level. It, thus, provides the European Parliament and the Council with the competence to adopt directives that can set a common basic standard on criminal offences and penalties across the EU regarding sanctions violations. Having such common EU rules would make it easier to investigate, prosecute and punish violations of restrictive measures in all Member States alike.

¹²² European Commission, Proposal for a Council decision on adding the violation of EU sanctions to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM/2022/247 final, 25 May 2022, p. 3-6.

¹²³ Ibid, p. 2.

¹²⁴ Council of the EU, press release, “Sanctions: Council adds the violation of restrictive measures to the list of EU crimes” (2022) <[Sanctions: Council adds the violation of restrictive measures to the list of EU crimes - Consilium \(europa.eu\)](#)> accessed 11 April 2024.

¹²⁵ Ibid.

In addition to completing a necessary legislative step, adding EU sanctions violations to the list of EU crimes also sends an important political message to the Member States, perpetrators and all natural and legal persons required to comply with EU sanctions.

3.2 A “Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures”¹²⁶

On 2 December 2022, shortly after the adoption of Council decision on EU crimes¹²⁷, the European Commission released its proposal for a directive on the definition of criminal offences and penalties for the violation of Union restrictive measures (the “Proposed Directive”). The drafted proposal and procedure for adoption has taken place within the framework of the ordinary legislative procedure under Article 294 of the TFEU pursuant to Article 83(1) of the TFEU.

On 17 May 2023, the Council shared its view on the European Commission’s Proposed Directive, and, on 9 June 2023, the Council settled on its negotiation position on the Proposed Directive as basis for negotiations with the European Parliament to reach a common position on the Proposed Directive¹²⁸. On 6 July 2023, the European Parliament MEPs in the Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted its negotiation mandate¹²⁹ and, on 12 July 2023, the

¹²⁶ European Commission, “Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures”, COM/2022/684 final, 2 December 2022.

¹²⁷ See paragraph 3.1 of the Master Thesis.

¹²⁸ Council of the EU, press release, “EU sanctions: Council finalises position on law that aligns penalties for violations” (2023) <[EU sanctions: Council finalises position on law that aligns penalties for violations - Consilium \(europa.eu\)](https://europa.eu/europa/en/press-releases/2023/06/09/eu-sanctions-council-finalises-position-on-law-that-aligns-penalties-for-violations)> accessed 11 April 2024.

¹²⁹ European Parliament, press release, “EU sanctions: new law to crack down on violations” (2023) <https://www.europarl.europa.eu/pdfs/news/expert/2023/7/press_release/20230703IPR01909/20230703IPR01909_en.pdf> accessed 11 April 2024.

plenary of the European Parliament confirmed the decision to enter into inter-institutional negotiations¹³⁰.

On 12 December 2023, the Council and the European Parliament concluded its trilogue negotiations¹³¹ and reached a political agreement on the European Commission's Proposed Directive¹³². Next, the provisional agreement on the Proposed Directive was submitted to the Member States' representatives in COREPER for endorsement.

On 11 March 2024, the Proposed Directive was debated in the European Parliament and subsequently adopted by the European Parliament on 12 March 2024¹³³. The Proposed Directive was subsequently and finally adopted by the by the Council on 12 April 2024¹³⁴ (hereinafter referred to in the Master Thesis as the "EU Criminal Offences and Penalties Directive" or the "Directive").

The Directive was signed by presidents of the European Parliament and of the Council, respectively, on 24 April 2024 and published in the Official Journal of the EU on 29 April 2024¹³⁵.

The Directive shall enter into force on the 20th day following its publication in the Official Journal of the EU, cf. Article 297(2) of the TFEU (and Article 21 of the Directive), hence the date of the

¹³⁰ Legislative Train Schedule of the European Parliament, Proposal for a directive on the definition of criminal offences and penalties for the violation of Union restrictive measures <[Carriages preview | Legislative Train Schedule \(europa.eu\)](#)> accessed 11 April 2024.

¹³¹ Negotiations between the institutions on legislative proposals generally take the form of tripartite meetings ('trilogues') between Parliament, the Council and the Commission, cf. the European Parliament website on the Ordinary Legislative Procedure, 29 February 2024 ([Interinstitutional negotiations | Ordinary Legislative Procedure | European Parliament \(europa.eu\)](#)).

¹³² Council of the EU, press release, "Council and Parliament reach political agreement to criminalise violation of EU sanctions" (2023) <[Council and Parliament reach political agreement to criminalise violation of EU sanctions - Consilium \(europa.eu\)](#)> accessed 11 April 2024.

¹³³ European Parliament Legislative Observatory, Procedure File: 2022/0398(COD) <[Procedure File: 2022/0398\(COD\) | Legislative Observatory | European Parliament \(europa.eu\)](#)> accessed 12 March 2024.

¹³⁴ Council of the European Union, press release, "Council gives final approval to introduce criminal offences and penalties for EU sanctions' violation" <[Council gives final approval to introduce criminal offences and penalties for EU sanctions' violation - Consilium \(europa.eu\)](#)> accessed 17 April 2024.

¹³⁵ 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 [OJ L no. pending].

effect of the Directive is 19 May 2024. Member States have 12 months to transpose the provisions of the Directive into their national legislation. Member States shall, thus, comply with the Directive by 20 May 2025, cf. Article 20 of the Directive.

The Master Thesis shall, in the following, explain and analyse the main features of the Directive¹³⁶.

Overall, the EU Criminal Offences and Penalties Directive establishes minimum rules concerning the definition of criminal offences and penalties with regard to the violation of EU sanctions, cf. Article 1 of the Directive, while ensuring effective application of EU sanctions measures, the integrity of the internal market, and a high level of security within the area of freedom, security and justice¹³⁷. In other words, the rules will harmonise the relevant criminal offences related to violation of EU sanctions and penalties for those offences across the EU and will also make it easier to investigate, prosecute and punish such violations in all Member States in the same way to avoid divergent levels of enforcement of EU sanctions. The Directive will, furthermore, establish the same level of penalties in all Member States¹³⁸, with the intention to close existing legal loopholes, prevent forum-shopping, increase the deterrent effect of violating EU sanctions and mitigate the increased risk of circumvention of EU sanctions¹³⁹.

¹³⁶ A general reference for the following subsections is made to the 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 [OJ L no. pending].

¹³⁷ Cf. Recital 1 of the Directive.

¹³⁸ Except for Denmark because of the country's opt-out on Justice and Home Affairs concerned laws that are regulated by the EU, cf. Articles 1 and 2 of Protocol No. 22 on the position of Denmark appended to the TEU and TEUF with the effect that no measures adopted under Title V of Part Three of the TFEU shall be binding upon or applicable in Denmark, and cf. Recital 39 of the 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 [OJ L no. pending].

¹³⁹ European Commission, press release, "Commission welcomes political agreement on new rules criminalising the violation of EU sanctions" (2023) <[Commission welcomes political agreement on new rules criminalising the violation of EU sanctions \(1\).pdf](#)> accessed 11 April 2024.

To this end, the Directive contains a wide range of legislative measures, including a list of criminal offences, common basic standards for penalties and liability, and rules on freezing and confiscations of proceeds and assets subject to EU sanctions.

3.2.1 Criminal offences

The EU Criminal Offences and Penalties Directive defines violation of EU sanctions in Article 3(1). Article 3(1) provides a comprehensive list of conduct constitutes a criminal offence. The offences cover violations of the prohibitions and restrictions set out in EU sanctions regulations. This list of offences includes, for example, engaging in business with designated (sanctions listed) persons, groups, entities, or bodies of a third state by, e.g. making available or failing to freeze funds or economic resources, failing to enforce travel bans, entering into transactions, trading in goods or services, or providing financial activities or other services, see Article 3(1)(a)-(g).

To combat the rising issue of circumvention of EU sanctions that threatens to undermine especially the sanctions against Russia¹⁴⁰, the Directive criminalises circumvention of EU sanctions where the circumvention, for example, is done by using, transferring or concealing funds or economic resources of a designated person, entity or body, or through the provision of false or incomplete information concealing that a person, entity or body is designated, see Article 3(1)(h).

Finally, the Article 3(1)(i) states that violating conditions under authorisations granted by competent authorities to conduct certain activities otherwise prohibited by EU sanctions is also a criminal offence.

¹⁴⁰ See e.g. European Commission, news article “Sanctions: Commission publishes guidance to help European operators assess sanctions circumvention risks” (2023) <[Sanctions: Commission publishes guidance to help European operators assess sanctions circumvention risks - European Commission \(europa.eu\)](https://ec.europa.eu/press-room/en/infographic-sanctions-commission-publishes-guidance-to-help-european-operators-assess-sanctions-circumvention-risks)> accessed 15 April 2024 and European Commission “Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention” (2023).

The Directive provides an option for the Member States to limit the scope of criminal offences to a materiality threshold of EUR 10,000, cf. Article 3(2). This means that violations involving funds, economic resources, goods, services, transactions or activities of a value of less than EUR 10,000, the violation shall not constitute a criminal offence under the Directive.

Noteworthy, in particular for companies and NGOs engaged in export of products and services for humanitarian purposes, humanitarian aid is exempted from the list of criminal offences, cf. Article 3(5). This follows the previous and existing approach from the European Commission for matters falling within the scope of international humanitarian law¹⁴¹ and has also been recognised by the European Parliament and the Council¹⁴².

3.2.2 Liability standards

The EU Criminal Offences and Penalties Directive also sets out liability standards that Member States shall comply with. Under Article 6, Member States are required to ensure liability for legal persons for the criminal offences referred to in the Directive.

Member States are, furthermore, required to make sure that legal persons can be held accountable for a lack of supervision and control that has made possible the commission of a criminal offence referred to in the Directive for the benefit of the legal person.

The liability standards also provides that liability of legal persons should not exclude criminal proceedings against natural persons. Thus, the Directive encourages to hold individuals accountable for sanctions violations.

¹⁴¹ European Commission, “Commission guidance note on the provision of humanitarian aid in compliance with EU restrictive measures (sanctions)” C(2022)4486 (2022).

¹⁴² European Parliament, Briefing Note, “Proposal for a directive on the violation of Union restrictive measures” (2023), p. 11-12.

Finally, Member States shall take necessary measures to ensure that complicity¹⁴³ in violation of EU sanctions and attempt to violate are criminalized, cf. Article 4 of the Directive.

3.2.3 Penalty standards

In Articles 5 and 7, the EU Criminal Offences and Penalties Directive sets minimum standards to ensure that the criminal offences referred to in Articles 3 and 4 are punishable by effective, proportionate, and dissuasive penalties. In setting standards for penalization of violation of EU sanctions, the Directive distinguishes between natural and legal persons.

Natural persons:

As for natural persons, the Directive calls for criminal penalties for criminal offences that shall be punishable by a maximum penalty which provides for imprisonment, cf. Article 5(1)-(2).

The Directive requires that Member States establish specific sanction levels and types for criminal offences related to the violation of EU sanctions.

To reflect the seriousness of the offence, Article 5(3) and (4), categorizes the offences referred to in Article 3(1) meaning that certain criminal offences carry a higher maximum penalty than others. A monetary threshold of EUR 100,000 is set to distinguish more serious offences that should be punishable by a maximum term of imprisonment of at least 5 years.

For the offences referred to in Article 5(3)(a)¹⁴⁴, these are punishable by a maximum penalty of at least *1 year of imprisonment* when they involve funds or economic resources of a value of at least EUR 100,000.

¹⁴³ Complicity by inciting, aiding and abetting the offences referred to in Article 3 of the Directive.

¹⁴⁴ Article 3(1), points (h)(iii) and (iv).

For the offence referred to in Article 5(3)(c)¹⁴⁵, this is punishable by a maximum penalty of at least *3 years of imprisonment* without any threshold.

For the offences referred to in Article 5(3)(b), (d)-(e)¹⁴⁶, these are punishable by a maximum penalty of at least *5 years of imprisonment* when they involve funds or economic resources of a value of at least EUR 100,000, except for (e) that set out no materiality threshold.

For some of the offences, the threshold of EUR 100,000 or more may also be met through a series of linked offences by the same offender, i.e. by accumulating the total value of the offences, cf. Article 5(4).

Finally, Article 5(5) sets out that accessory criminal or non-criminal penalties or measures should also be available in criminal proceedings against natural persons, including fines, withdrawal of permits and authorisations, disqualification from a leading position, temporary bans on running for public office, and publication of all or part of the judicial decision that relates to the criminal offence committed.

Legal persons:

With regards to legal persons, Article 7(1) of the Directive lays down several possible penalties, including criminal or non-criminal (also known as administrative) fines, exclusion from entitlement to public benefits or aid, exclusion from access to public funding (including tender procedures, grants and concessions). In addition, other penalties may include disqualification from the practice of business activities, withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence, placing under judicial supervision, judicial winding-up, closure

¹⁴⁵ Article 3(1), point (c).

¹⁴⁶ Article 3(1), points (a), (b), (d)-(e), (g)-(h)(i) and (ii), and (i).

of establishments which have been used for committing the criminal offence, and publication of all or part of the judicial decision relating to the criminal offence committed.

To reflect the seriousness of the offence, Article 7(2) categorizes the offences referred to in Article 3(1) meaning that certain criminal offences carry a higher maximum penalty than others.

For the offences referred to in Article 7(2)(a)¹⁴⁷, these shall be punishable by fines, the maximum limit of which should be *not less than 1 % 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*.

For the offences referred to in Article 7(2)(b)¹⁴⁸, these shall be punishable by fines, the maximum limit of which should be *not less than 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 40 000 000*.

Aggravating circumstances:

Article 8 of the Directive sets out aggravating circumstances to be taken into account when penalties are applied to the criminal offences. The aggravating circumstances include offences committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA¹⁴⁹, or where the offences committed by a professional service provider in violation of their professional obligations, by a public official when performing their duties, or by another person when performing a public function. Also, offences generating substantial financial benefits or avoided substantial expenses are considered as aggravating circumstances. The same

¹⁴⁷ Article 3(1), points (h) (iii) and (iv).

¹⁴⁸ Article 3(1), points (a)-(g), (h)(i) and (ii), and point (i).

¹⁴⁹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (2008) OJ L 300.

goes for offenders destroying evidence, or intimidated witnesses or complainants, and the natural or legal person having previously been convicted by a final judgment of offences covered by Articles 3 and 4 of the Directive.

Accordingly, the Directive encourages Member States to impose particularly harsh penalties where EU sanctions violations are committed as part of organized crime, professional service providers and public officials or functions.

Mitigating circumstances:

Article 9 of the Directive sets out mitigating circumstances to be taken into account when penalties are applied to the criminal offences. The mitigating circumstances include situations where the offender provides the authorities with information they would not otherwise have been able to obtain, helping them to identify or bring to justice the other offenders and/or find evidence.

3.2.4 Enforcement related standards

In Article 11 of the Directive, provisions on limitation periods are set out. The limitation periods shall allow the competent Member State authorities to investigate, prosecute and adjudicate criminal offences covered by this proposal during a certain time period. For the offences referred to in Articles 3 and 4 which are punishable by a maximum penalty of at least 5 years of imprisonment, the limitation period shall be at least 5 years from the time when the offence was committed.

Moreover, Article 11(3) stipulates that necessary measures shall be taken by the Member States to enable the enforcement of imprisonment sentences imposed following a final conviction for a criminal offence referred to in Articles 3 and 4 for at least 5 years from the date of the final conviction.

Member States can, however, derogate from 5 years limitation period but not shorter than 3 years, cf. Article 11(4).

Article 12 of the Directive lays down rules on jurisdiction. The rules require Member States to establish jurisdiction for the offences referred to in the Directive. Accordingly, Member States shall, inter alia, take necessary measures to exercise jurisdiction over offences committed in their territory and where the offences are committed for the benefit of a legal person established in their territory and in respect of any business done in whole or in part within its territory.

3.2.5 Other provisions

In addition to the above-stated provisions, the Directive, inter alia, also lays down rules on freezing and confiscation (Article 10), investigative tools (Article 13), reporting of offences and protection of persons who report offences related to the violation of Union restrictive measures or assist the investigation (Article 14), coordination between competent authorities within a Member State (Article 15), cooperation between Member States' authorities, the Commission, Europol, Eurojust and the European Public Prosecutor's Office (Article 16), and statistical data (Article 17).

3.3 The State of the Law for Punishment of Violation of EU Sanctions vis-à-vis the EU Criminal Offences and Penalties Directive

In the following, the state of the law for penalisation of violation EU sanctions is compared with the EU Criminal Offences and Penalties Directive in order to emphasize conformities and discrepancies between the current state of the law and new rules under the Directive.

3.3.1 Liability standards

The Directive sets out liability standards that Member States shall comply with. With reference to the case law analysis¹⁵⁰, the enforcing Member States have rendered liability for legal persons sanctions violation possible as laid down in Article 6 of the Directive. However, Member States will have to make sure that the criminal liability for legal persons covers all the offences listed in the Directive.

The Directive encourages to hold individuals accountable for sanctions violations. Notably, Table 1¹⁵¹ shows that in 2 out of 6 cases no natural person was held liable for the offences committed by a legal person which indicates that a discrepancy between the state of the law in some Member States and the Directive.

Pursuant to Article 4 of the Directive, Member States shall take necessary measures to ensure that complicity¹⁵² in violation of EU sanctions and attempt to violate are criminalized. In only 2 out of the 6 cases, offenders were convicted for their complicity. Although that does not mean that complicity for sanctions violations is not criminalized in the other enforcing Member States, it goes to show a potential discrepancy. If not in terms of criminalization, then potentially in terms of enforcement against complicit offenders.

3.3.2 Penalty standards

The Directive lays down minimum standards on penalties against natural and persons, hence, imprisonment and fining standards.

¹⁵⁰ See para. 2.2.3 of the Master Thesis.

¹⁵¹ See para. 2.2.4 of the Master Thesis.

¹⁵² Complicity by inciting, aiding and abetting the offences referred to in Article 3 of the Directive.

The case law analysis¹⁵³ show that *imprisonment* was sentenced in 4 out of 6 cases. In the two cases where offenders were not sentenced to imprisonment¹⁵⁴, the confiscated amounts indicate that the value of the illegal trades was above the monetary threshold of EUR 100,000 laid down in the Directive. The confiscated amounts and the facts of the case indicate that the monetary threshold was also met and exceeded in the other four cases of which the severest sentence was imposed in the EU-Russia embargo case¹⁵⁵ with 3 years and 9 months unsuspended imprisonment.

In contrast, Article 5 of the Directive requires Member States to provide for maximum penalties of at least up to 5 years of imprisonment depending on the offence¹⁵⁶. Against the background of the case law, there is a significant discrepancy between the length of currently imposed prison sentences and the length of imprisonment in the Directive, thus, requiring Member States to toughen imprisonment sentences for EU sanctions violations.

Adding to this conclusion, the Genocide Network¹⁵⁷, explains that the maximum length of imprisonment in 14 Member States is, currently, between 2 and 5 years, and in 8 Member States, maximum sentences are between 8 and 12 years are possible¹⁵⁸. Accordingly, certain Member States will have to amend their legislation to adapt to the Directive.

With respect to *finés*, the case law analysis¹⁵⁹ show that this type of penalty was imposed in 4 out of 6 cases. In the two cases where offenders were not imposed a fine¹⁶⁰, the confiscated amounts indicate that the value of the illegal trades was way beyond the monetary threshold of EUR 100,000

¹⁵³ See para. 2.2.3 of the Master Thesis.

¹⁵⁴ See Table 1, para. 2.2.4 of the Master Thesis.

¹⁵⁵ See para. 2.2.3.3 of the Master Thesis.

¹⁵⁶ See para. 3.2.3 of the Master Thesis.

¹⁵⁷ Genocide Network, "Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis" (2021), p. 23.

¹⁵⁸ Genocide Network, "Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis" (2021), p. 23

¹⁵⁹ See para. 2.2.3 of the Master Thesis.

¹⁶⁰ See Table 1, para. 2.2.4 of the Master Thesis.

laid down the Directive. The confiscated amounts and the facts of the case indicate that the monetary threshold was also met and exceeded in the other four cases of which the severest fine was imposed in the Dan-Bunkering case¹⁶¹ with EUR 4 million.

In contrast, Article 7 of the Directive requires Member States to provide a maximum penalty limit of which should be not less than either 1 % or 5 % of the total worldwide turnover of the legal person in the business year preceding the fining decision, depending on the offence¹⁶². When comparing the case law there is, arguably, a significant discrepancy between the level of fines imposed against offenders for violation of EU sanctions under the current state of the law and the Directive. Whether the Directive in fact represents a toughening of fines for sanctions violations, naturally, depends on the total worldwide turnover of the legal person in question. Nevertheless, having in mind the current fining level in several Member States, the Directive should bring about significant toughening of the fines imposed against legal persons for sanctions violations.

Adding to this conclusion, the Genocide Network¹⁶³ explains that level of maximum fines that can be sentenced between some Member States ranges from EUR 133,000 to EUR 37.5 million¹⁶⁴.

Accordingly, Member States will have to amend their legislation to adapt to the Directive.

As for *confiscation* of profits or other proceeds from sanctions violations, the case law analysis¹⁶⁵ show that confiscation remedies were imposed in 5 out of 6 cases. In all cases, the amount confiscated amounted to the profits gained by the offender from the illegal trades. This is also in line with the Directive that does not regulate confiscation of the proceeds from sanctions violations as such but in

¹⁶¹ See para. 2.2.3.1 of the Master Thesis.

¹⁶² See para. 3.2.3 of the Master Thesis.

¹⁶³ Genocide Network, “Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis” (2021), p. 24.

¹⁶⁴ *Ibid*, p. 24.

¹⁶⁵ Para. 2.2.3 of the Master Thesis.

its Explanatory Memorandum to the Directive¹⁶⁶, the European Commission refers to certain, specific EU sanctions regulations in which it is codified that Member States must also provide for appropriate measures for the confiscation of the proceeds from violations.

In conclusion, the Directive generally represents a significant increase in penalties in comparison with the current state of the law as expressed by the analyzed case law from Member States, both in terms of the length of imprisonment of liable natural persons but also a significant toughening of the fines that Member States authorities, going forward, shall impose on legal persons violating EU sanctions.

Although pivotal, the Directive does not only require Member States to impose fines and imprisonment on liable persons. For legal persons, the Directive also requires that penalties include exclusion from entitlement to public benefits or aid, exclusion from access to public funding, and may include disqualification from the practice of business activities, withdrawal of permits and authorisations to pursue activities, placing under judicial supervision, judicial winding-up, and closure of establishments. None of these types of penalties have been explicitly imposed against the offenders in the case law analysis¹⁶⁷. This fact could indicate possible discrepancies vis-à-vis Member States' legislation.

¹⁶⁶ European Commission, "Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures", COM/2022/684 final, p. 6.

¹⁶⁷ Notwithstanding, Member States can and do have legislation that, inter alia, per se debar legal persons from tenders, etc., or can prompt a competent authority to withdraw permits or license, regardless of whether this is outside the scope of the penalties imposed against an offender.

Chapter 4: Findings, Conclusions, and Perspective

4.1 The Current State of Sanctions Adoption, Enforcement, and Penalization

EU sanctions measures are adopted by way of Council decisions under Article 29 of the TEU and regulations of the European Parliament and of the Council pursuant to Article 215 of the TFEU.

Implementation and enforcement of violations of EU sanctions is the responsibility of the Member States. Investigation and penalization of EU sanctions violations too is a matter of Member State law. Member States are, in principle, free to decide the nature of penalties, however, provided that they are effective, proportionate and dissuasive. EU sanctions regulations can also require Member States to lay down rules that imposes criminal penalties and rules providing for appropriate measures of confiscation of the proceeds from sanctions violations.

With reference to paragraph 2.2.4 of the Master Thesis, the analysed case law shows that the criminal liability includes both natural and legal persons that subjects to penalties for sanctions violations, and that criminal liability can be extended to management, subsidiaries and intermediaries.

The case law also shows that violations of EU sanctions have been enforced and resolved differently in Member States, i.e. both before the courts and by way of settlement or decision of a public authority. Hence, both administrative and criminal penalties have been imposed for sanctions violations. The type of penalties imposed by the Member States includes fines, imprisonment, confiscation of profits, and community service. Whereas the level of fines and length of prison sentences imposed varies significantly between the Member States, the case law shows some consistency with regard to confiscation of profits. In all, the significant differences in penalties for comparable offences suggest that Member States' enforcement and penalization of EU sanctions measures are to some extent uneven.

4.2 The Directive and the Future of EU Sanctions Enforcement and Penalisation

The EU Criminal Offences and Penalties Directive shall have its date of effect on 19 May 2024¹⁶⁸, and Member States have 12 months to transpose the provisions of the Directive into their national legislation. The transposition deadline is 20 May 2025¹⁶⁹.

Overall, the Directive requires Member States to ensure that violating EU sanctions is punishable by effective and proportionate criminal penalties, in particular prison sentences and fines.

On liability standards, the Directive requires Member States to establish criminal liability for the sanctions offences listed in the Directive, including liability for legal persons when an offence has been committed by a person with a leading position in the organisation of the legal person.

On penalty standards, the Directive lays down a significant toughening of the penalties imposed under the current state of the law for EU sanctions violations. This applies to both fines and imprisonment.

Against the background of the case law analysis, the Directive generally toughens the length of imprisonment compared to the sentences imposed in the analysed Member State case law. Similarly, the fining model laid down in the Directive should lead to significant increase in the fining level when compared with the analysed Member State case law.

The comparative analysis between the Directive and the analysed case law, thus, reveals discrepancies between the penalties hitherto imposed by Member States. This may reflect potential differences between current laws of the Member States on criminalization and penalization of EU sanctions violations that Member States will have to address when transposing the Directive into national law. For some Member States it may be that national legislation already is virtually in

¹⁶⁸ Cf. Article 21 of the Directive.

¹⁶⁹ Cf. Article 20 of the Directive.

accordance with the Directive, but that the prosecutors or civil servants shall claim imprisonment, fines, or other penalty measures in accordance with the Directive.

In any case, natural and legal persons subject to EU sanctions measures shall prepare for increased enforcement and tougher consequences if violating EU sanctions. Consequently, businesses located or operating in the EU should review and enhance their sanctions compliance program to mitigate the risk of being exposed to the toughened penalties violations of EU sanctions shall carry going forward.

4.3 Perspective

The EU Criminal Offences and Penalties Directive brings about a change to the current enforcement and penalisation of EU sanctions violation with minimum rules for the prosecution of violation or circumvention of EU sanctions in Member States, including criminalization of certain sanctions violations and toughening penalties. Many perspectives can, arguably, be drawn to the new Directive of which some are discussed in the following with particular emphasis on businesses as the indirect subject of the Directive.

With the new rules, the Directive puts an end to potential “forum shopping” in the sense that businesses can no longer conduct trades with a high risk of exposure to sanctions violation from a Member State with the most lenient enforcement and penalty framework. In fact, the changes that the Directive brings about promote the legal certainty and predictability for businesses knowing that the penalties imposed across Member States rest on the rules laid down in the Directive.

Whilst the Directive naturally has consequences for the Member States in terms of implementation, the Directive also has implications for natural and legal persons (businesses, management, affiliates, business partners, etc.) that are required to comply with EU sanctions. The Directive represents a

significant strengthening of consequences for violation EU sanctions that stands in contrast to the current state of the law for enforcement and penalisation of sanctions violations. Businesses in the EU and businesses operating on the EU market should be aware of the increased penalty risk impact that EU sanctions violations can have going forward.

Fines of up to no less than 5 percent of the total worldwide turnover of the legal person in the business year preceding the fining decision and/ or a maximum penalty of up to at least 5 years of imprisonment are severe and deterrent consequences for EU sanctions violations that can have an enormous impact on a business and on a private level for imprisoned individuals.

In addition to the increased penalty risks under the Directive that impacts businesses financially and employees and management on a personal level, businesses also face the risk of irreparable reputational damage, loss of customer and business partners, material breach of contracts with customers, business partners and financial service providers, all which can be devastating to a business.

Taking for instance the sanctions violations risks vis-à-vis businesses' financial service providers. The legal and financial risks for financial undertakings in having a customer relationship with a business violating sanctions are remarkable having in mind that financial undertakings can incur criminal liability and severe penalties for processing transactions that violates sanctions¹⁷⁰. Hence, loan or credit facility agreements with financial undertakings often include contract clauses that require the borrowing business to notify the financial undertakings of actual or potential sanctions violations, including inquiries or investigations by authorities, and contract clauses whereby sanctions violations constitutes material breach of contract. Similar provisions can be found in

¹⁷⁰ See e.g. *U.S. Department of Justice v. BNP Paribas S.A.* [2014], Plea Agreement of 27 June 2014, where BNP Paribas agreed to pay USD 8.9 billion for processing transactions in violation of U.S. economic sanctions.

contracts with customers or business partners that equally can be exposed to great pressure for not engaging with a business suspected or convicted for having violated sanctions.

The risk of devastating consequences should, therefore, prompt businesses to introduce, test and/ or enhance their EU sanctions compliance programmes to reduce enforcement risk. Depending on the determined sanctions risk exposure, this should at least involve the minimum hallmarks of a compliance program, i.e. risk assessment, monitoring and controls, due diligence, audit, training, sanctions and dual-use items screenings, and governance¹⁷¹. If implemented effectively, such compliance initiatives will inevitably also impact management, business partners and value chain in the EU and in third countries that will be expected to meet higher demands or fall short in view of the risk appetite of businesses subject to EU sanctions measures and Member States' legislation adjusted to the Directive. In that sense, the Directive can have broader consequences beyond the natural and legal persons subject to EU sanctions measures.

One can ask whether the Directive can reach its desired intent of ensuring that punishment for violating and circumventing sanctions is dissuasive and evenly imposed in all Member States? A report by Kyiv School of Economics published in January 2024 concludes that Russia continues to be able to import large amounts of goods needed for military production and that major changes to the current enforcement approach are needed to improve their effectiveness and to stop comprehensive circumvention via third countries such as China, Turkey and Kazakhstan¹⁷². When disregarding criminals, individuals and companies working on behalf of a sanctioned entity or country that will attempt to violate sanctions regardless of the toughening that the Directive brings

¹⁷¹ See e.g. the U.S. Department of the Treasury's Office of Foreign Assets Control's (OFAC), "A Framework for Sanctions Compliance Programs" (2022) applicable to U.S. organizations and foreign entities doing business in or with U.S. parties or goods and U.S. persons.

¹⁷² Olena Bilousovay et al, "Challenges of Export Controls Enforcement – How Russia Continues to Import Components for its Military Production" (2024) Yermak-McFaul International Working Group on Russian Sanctions and the Kyiv School of Economics Institute, p. 2.

about, it is likely that the proposal can have effect of businesses' and individuals' perception and will to prioritize compliance with EU sanctions, in particular thorough due diligence of end-use of products. However, it is uncertain and remains to be seen to what extent the Directive can prevent the current circumvention of EU sanctions.

In an effort to further strengthening enforcement of EU sanctions, thoughts on centralization have been expressed involving the relatively newly established European Public Prosecutor's Office ("EPPO")¹⁷³. EPPO is competent to investigate, prosecute and bring to judgment crimes in 22 Member States affecting the EU's financial interests (i.e. the EU budget)¹⁷⁴ which currently does not include violations of EU sanctions measures. Notwithstanding, the EPPO with its ability to act directly and simultaneously throughout the EU can theoretically play a role in the enforcement of EU sanctions violations. Alongside the German and French Ministers of Justice¹⁷⁵, Members of the European Parliament have pleaded for extending the competence of the EPPO to investigating and prosecuting violations of EU sanctions¹⁷⁶. In addition to enhancing enforcement, for businesses, this would also imply a risk of facing an authority that they are not used to deal with and would require increased knowledge about the powers and modus operandi of the EPPO.

One can also ask whether the EU is setting a new standard for penalisation of sanctions by the adoption of the new Directive? Based on the case law analysis and the level of penalties imposed, it certainly does. At least in a European context. Looking beyond Europe, one can argue that a standard of tough enforcement and deterrent penalties is not unique. U.S. sanctions enforcement and

¹⁷³ Established by Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (2017) OJ L 283.

¹⁷⁴ As defined in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (2017) OJ L 198.

¹⁷⁵ Le Monde, "Violations of EU sanctions must be prosecuted by the European Public Prosecutor's Office" (2022) <[Violations of EU sanctions must be prosecuted by the European Public Prosecutor's Office' \(lemonde.fr\)](https://www.lemonde.fr)> – accessed 25 April 2024.

¹⁷⁶ As set out by LIBE members in their European Parliament, "REPORT on the proposal for a directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures", A9-0235/2023 (2023).

enforcement of financial crime in general has a reputation of severe punishment. By way of example, in 2023, the U.S. sanctions authority OFAC (Office of Foreign Assets Control) under the U.S. Department of Treasury reportedly imposed over USD 1.5 billion in penalties across 17 resolutions (settlements) of sanctions violations cases representing the highest volume of penalties ever assessed by OFAC in a single calendar year¹⁷⁷. A figure that is way beyond the total amount of the penalties in the analysed case law from Member States and also in terms of resolved enforcement actions. This does not even take into account enforcement actions brought by other U.S. federal or state authorities such as the U.S. Department of Justice. This suggests that for internationally operating businesses, already doing business in the U.S., trading U.S. goods, or conducting transaction in U.S. dollars, the high stakes of international trade is not something new and the high risks of non-compliance with sanctions are already an established business risk.

Putting the Directive into the perspective of U.S. sanctions enforcement, it seems fair to raise the question whether the Directive is far-reaching enough? This remains to be seen, and it will depend on the Member States' implementation of the Directive and their will to prioritize enforcement of sanctions violation, whilst derivative effects such as enhanced sanctions compliance by businesses shall also be taken into account.

¹⁷⁷ Morrison Foerster, news article, "U.S. Sanctions Enforcement: 2023 Trends and Lessons Learned" (2024) <[U.S. Sanctions Enforcement: 2023 Trends and Lessons Learned | Morrison Foerster \(mofo.com\)](#)> accessed 25 April 2024.

ANNEXES

List of Abbreviations

Abbreviation	Definition
AML	Anti-money laundering
BE	Belgium
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
COREPER	Committee of the Permanent Representatives of the Governments of the Member States to the European Union
DE	Germany
DK	Denmark
EC	European Community
ECJ	European Court of Justice
EEAS	European External Action Service
EPPO	European Public Prosecutor's Office
EU	European Union
EUR	Euro
FAC	Foreign Affairs Council
HR/VP	High Representative/ Vice President
KYC	Know your customer
LIBE	Committee on Civil Liberties, Justice and Home Affairs
N/A	Not applicable
NGO	Non-governmental organization
NL	The Netherlands
MEP	Member of Parliament
OFAC	Office of Foreign Asset Control
OJ L	Official Journal of the European Union, legislation
OLP	Ordinary Legislative Procedure
PSC	Political and Security Committee

RELEX	Working Party of Foreign Relations Counsellors
RO	Romania
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
U.S.	United States
USD	U.S. Dollars

Table of Legislation and Case Law

1. Legislation and Other Legal Texts

EU treaties, protocols and charters:

- Treaty on European Union (TEU)
- Treaty on the Functioning of the European Union (TFEU)
- EU Charter of Fundamental Rights
- Protocol 22 to the TEU on Denmark

EU regulations:

- Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (1996) OJ L 309, as amended
- Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (recast) (2009) OJ L 134, as amended
- Council Regulation No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (2012) OJ L 16, as amended
- Council Regulation No 509/2012 of 15 June 2012 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (2012) OJ L 156
- Council Regulation No 697/2013 of 22 July 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (2013) OJ L 198
- Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2014) OJ L 78, as amended
- Council Regulation (EU) 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (2014) OJ L 183, as amended
- Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended
- Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 271

- Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’) (2017) OJ L 283
- Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (2018) OJ L 284
- Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (2021) OJ L 206, as amended
- Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2022) OJ L 49
- Council Regulation (EU) 2022/880 of 3 June 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (2022) OJ L 153
- 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 (2024) [OJ L no. pending]

EU directives (and proposals):

- Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (2017) OJ L 198
- Council of the European Union, “Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures”, 17 May 2023, 9312/23
- European Commission, “Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures”, COM/2022/684 final, 2 December 2022

EU decisions (and proposals):

- Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2014) OJ L 229, as amended
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- European Commission, Proposal for a Council decision on adding the violation of EU sanctions to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM/2022/247 final, 25 May 2022

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- European Parliament Legislative Observatory, Procedure File: 2022/0398(COD) <[Procedure File: 2022/0398\(COD\) | Legislative Observatory | European Parliament \(europa.eu\)](#)> accessed 12 March 2024

Conventions:

- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction [1994], C.N.246.1994.TREATIES-5, as amended.

Member State law:

- Danish Criminal Code [2022], Consolidated Act no. 1360 of 28 September 2022, as amended

Third country guidelines:

- U.S. Department of the Treasury’s Office of Foreign Assets Control’s (OFAC), “A Framework for Sanctions Compliance Programs” (2022)

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