

## EU proposals to strengthen sanctions compliance

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Fraud and financial crime

Whilst the frenzy of Russian related sanctions has been on-going, the European Commission (the “Commission”) recently announced two proposals which aim to strengthen sanctions compliance and effectiveness across the EU.

### Criminalising the violation of EU restrictive measures

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On 25 May 2022, the Commission proposed to add the violation of EU sanctions to the list of EU crimes. Within its [explanatory memorandum](#) the Commission noted that whilst enforcement of sanctions is the responsibility of each Member State, “*inconsistent enforcement [of sanctions] undermines their efficacy and the Union’s ability to speak with one voice*”. It also notes that there is “*insufficient priority given to investigating and prosecuting the violation of*” EU sanctions in some Member States and the use of criminal penalties vary significantly which undermines the objectives of the sanction.

- 13 Member States have criminal and administrative offences for sanctions breaches;
- 12 Member States have criminal offences only; and
- 2 Member States have administrative penalties only.

In order to tackle this, the Commission has proposed to follow the procedure set out in article 83(1) of the Treaty on the Functioning of the European Union (“TFEU”) in order to add violations of EU sanctions to the list of EU crimes.

### What does article 83 do?

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Article 83(1) states the following:

*“The European Parliament and the Council may, by means of directives ..... establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*

*These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.*

*On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph.”*

The Commission states that violations of EU sanctions is a particularly serious area of crime which is of a similar nature to those crimes already listed within article 83(1) since it “*perpetuates threats to international security and peace*”.

The European Parliament will have to agree to add violation of EU sanctions to the areas of crime listed in article 83(1) and if it does so this paves the way for the Commission to then propose a specific directive on the violation of sanctions using normal legislative procedures.

### What could the proposed Directive include?

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As part of its proposal, the Commission has set out, in a [Communication](#), the main elements that such a future directive may contain, which includes:

- a defined list of criminal offences relating to EU sanctions;
- an obligation on Member States to take measures to ensure that money laundering offences apply to property derived from criminal offences relating to sanctions;

- penalties and liability of legal persons for the criminal offences identified as well as for the “lack of supervision of control by persons in a leading position which has made possible the commission.....of any of the....criminal offences for the benefit of that legal person”;
- details of aggravating circumstances to be taken into account when applying financial penalties; and
- jurisdictional rules requiring Member States to establish jurisdiction before pursuing criminal penalties and notifying the Commission if they seek to extend their jurisdiction in certain circumstances. The proposed Directive would require Member States to extend their criminal jurisdiction to non-EU persons outside EU territory insofar as their business has an EU nexus;

These proposed changes will likely have significant impact on the enforcement of sanctions, particularly in those Members States where criminal penalties are not often used. For businesses, particular attention should be paid to any potential offence relating to “lack of supervision” on individual employees, which emphasises the need for strong compliance programmes and culture within firms.

### **Asset recovery and confiscation**

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In March 2022, the Commission set up a “Freeze and Seize” task force to ensure implementation of EU sanctions with respect to both Russian and Belarussian oligarchs. The task force works alongside the Russian Elites, Proxies, and Oligarchs (“REPO”) task force under which the EU operates alongside G7 countries and Australia. Both the Freeze and Seize and REPO task forces aim to ensure the efficiency of sanctions and ensure that the effects are felt globally by those targeted by sanctions. The Freeze and Seize task force aims to co-ordinate actions across the EU to seize and confiscate assets of listed Russian and Belarussian oligarchs where national law allows such actions to be taken.

It is with this background in mind that on 25 May 2022, the Commission proposed a new Directive on asset recovery and confiscation which would apply to the violation of EU sanctions and which aims to deprive “*criminal of their ill-gotten gains and [limits] their capacity to commit further crimes*”.

The proposed Directive would:

- establish minimum rules on “the tracing and identification, freezing, confiscation, and management of property” within criminal proceedings;
- require each Member State to set up at least one asset recovery office to facilitate cross border investigations;
- provide clear rules on asset tracing and identification to boost cross-border cooperation between Asset Recovery Offices and national competent authorities, particularly in the context of preventing, detecting and investigating violations of EU sanctions;
- set out the basis on which information can be shared cross border between Member States;
- implement new urgent freezing powers for Asset Recovery Offices;
- require Member States to take necessary measures to enable confiscation of the proceeds of crime, including from third parties where assets have been transferred to a third party where the third party “knew or ought to have known” that the transfer was to avoid confiscation.

### **What happens next?**

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On 30 June 2022, the European Council requested the consent of the European Parliament to add violation of sanctions to the list of EU crimes in article 83(1). The draft text will be reviewed by the European Parliament and once it gives consent the EU can move to formally adopt a directive.

The proposed directive regarding asset recovery and confiscation is also being considered by the European Parliament and Council.

Timing for these changes is currently unknown but given the continued situation with Russia and the EU’s desire to ensure these sanctions are fully implemented and enforced, we would expect to see these proposals progress quickly.

- [Zia Ullah](#)
- Partner
- [+44 \(0\)207 919 4500](#)
- [+44 \(0\)207 919 4500](#)
- [Connect with Zia Ullah on LinkedIn](#)



- [Victoria Turner](#)
- Principal Associate
- [+44 161 831 8718](#)
- [+44 161 831 8718](#)
- [Connect with Victoria Turner on LinkedIn](#)

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