



2022/0398(COD)

12.6.2023

OPINION

of the Committee on Budgets

for the Committee on Civil Liberties, Justice and Home Affairs

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

(COM(2022)0684 – C9-0401/2022 – 2022/0398(COD))

Rapporteur for opinion: Vlad Gheorghe

PA_Legam

SHORT JUSTIFICATION

Since the starts of the Russian unjustified and unprovoked aggressive military aggression against Ukraine on 24 February 2022, EU has adopted an unprecedented package of restrictive measures against individuals and legal entities directly involved or facilitating the war. Such measures have both political and economic objectives aiming at reducing the capacity of Russia to continue military attacks on Ukraine. Considering a broad sector of entities covered by sanctions it is essential to increase the effort for their effective implementation on the EU level.

The addition of the crime of sanction circumvention to the list of the EU crimes requires specific efforts to be made on the national and on the EU level to fight such phenomenon. It is essential to strengthen the effectiveness of the existing sanctions, so as to achieve their economic effect on the targeted persons and entities. This report aims to stress the paramount role the EPPO plays in the investigation of sanction circumvention as the EU body best positioned to fight the crimes involving the EU financial interests. Moreover, since the illicit acquisition of gains through sanction circumvention is connected to the EU financial interests, the EPPO should have the same level of access to information, as national competent authorities do, also in view of a potential extension of the EPPO competence to the fight against sanction evasion.

Moreover, the report follows-up on the call to use the assets confiscated as a result of sanction circumvention of the EU restrictive measures against Russia for the purpose of compensation to the victim population in Ukraine. The monetary value of such assets should serve the goal of building and rebuilding of the infrastructure in Ukraine, as well as the compensation for the victim population.

The report underlines among others, the need to apply proportionate fines in cases of sanction circumvention and strengthen the cooperation among the national authorities, including through the establishment of a joint sanction enforcement structure, with a view to supporting Member States in the implementation of Union restrictive.

AMENDMENTS

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take the following into account:

Amendment 1

Proposal for a directive Recital 6

Text proposed by the Commission

(6) Persons, entities and bodies, which are designated individually in Union restrictive measures and subject to those Union restrictive measures, may often be

Amendment

(6) Persons, entities and bodies, which are designated individually in Union restrictive measures and subject to those Union restrictive measures may often be

involved as instigators and accomplices. For instance, the practice by designated persons and entities of transferring funds, property or economic resources to a **third party** with a view to circumvent Union restrictive measures is increasingly widespread. Therefore, this conduct is covered by the circumvention offence approximated by this Directive.

involved as instigators and accomplices. For instance, the practice by designated persons and entities of transferring funds, property or economic resources to a **party closely related, including dependants**, with a view to circumvent Union restrictive measures is increasingly widespread **and needs to be addressed since it undermines the effectiveness of Union restrictive measures**. Therefore, this conduct is covered by the circumvention offence approximated by this Directive.

Amendment 2

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Violation of the Union restrictive measures is often linked to other criminal activities and most notably motivated by considerations of financial gain. While generating profits, the circumvention of restrictive measures enables the continued use of assets. It undermines the objectives and effectiveness of those restrictive measures and hence needs to be addressed. Proceeds resulting from the violation of Union restrictive measures or instruments used to pursue the violation of restrictive measures should become the object of confiscation. Where the confiscated assets stem from the violation of the Union restrictive measures imposed on Russia following the war of aggression against Ukraine, the net revenues resulting from the liquidation of such assets should serve the goal of building and rebuilding of the infrastructure in Ukraine including through the use of financial instruments, as well as the compensation for the victim population.

Amendment 3

Proposal for a directive Recital 19

Text proposed by the Commission

(19) To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States' competent authorities should cooperate through and with Europol, Eurojust and the European Public Prosecutor's Office (EPPO). These competent authorities should also share information among each other and with the Commission on practical issues.

Amendment

(19) To ensure the effective investigation and prosecution of violations of Union restrictive measures, Member States' competent authorities should cooperate through and with Europol, Eurojust and the European Public Prosecutor's Office (EPPO) ***in accordance with their respective mandates***. These competent authorities should also share information among each other and with the Commission on practical issues.

Amendment 4

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) For the purpose of this directive, asset recovery offices should closely cooperate with the central and decentralised levels of the European Public Prosecutor's Office (EPPO) with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO if applicable under Regulation (EU) 2017/1939^{1a} ('the EPPO Regulation'). Asset recovery offices should therefore incur the reporting obligations under the EPPO Regulation, reporting to the EPPO in the same way as they do to national competent authorities and Financial Intelligence Units.

^{1a} Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

(‘the EPPO’) (OJ L 283, 31.10.2017, p. 1).

Amendment 5

Proposal for a directive

Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) Offences consisting in violation of the Union restrictive measures which involve designated persons, their dependants, entity or body, listed in the legal acts of the Union on restrictive measures, such as Council Regulation (EU) No 269/2014^{1a} and Council Regulation (EU) No 833/2014^{1b}, need to be considered in the light of the crimes against the financial interests of the Union.

^{1a} 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 (OJ L 78, 17.3.2014, p. 6)

^{1b} Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1.

Amendment 6

Proposal for a directive

Recital 23

Text proposed by the Commission

Amendment

(23) The objectives of this Directive, namely to ensure common definitions of offences related to the violation of Union restrictive measures and the availability of effective, dissuasive and proportionate

(23) The objectives of this Directive, namely to ensure common definitions of offences related to the violation of Union restrictive measures and the availability of effective, dissuasive and proportionate

criminal penalties for serious offences related to the violation of Union restrictive measures cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, taking into account the inherent cross-border nature of the violation of Union restrictive measures and their potential to undermine the achievement of the Union objectives to safeguard international peace and security as well as to uphold Union common values. Therefore the Union may adopt measures, in accordance with the principle of subsidiarity as set out in accordance with Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

criminal penalties for serious offences related to the violation of Union restrictive measures cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, ***including through the active involvement of EPPO within the scope of its mandate***, taking into account the inherent cross-border nature of the violation of Union restrictive measures and their potential to undermine the achievement of the Union objectives to safeguard international peace and security as well as to uphold Union common values ***and defend the Union financial interests. EPPO, as the Union body specialised in the investigation of the crimes against the financial interests of the Union, should play a crucial role in the investigation of crimes of circumvention of the Union restrictive measures when they are deemed to undermine those financial interests.*** Therefore the Union may adopt measures, in accordance with the principle of subsidiarity as set out in accordance with Article 5 TEU. ***Among others, increased efforts for preventing the evasion of Union restrictive measures should be explored with a view to supporting Member States in the implementation of Union restrictive measures.*** In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment 7

Proposal for a directive

Article 2 – paragraph 2 – point b

Text proposed by the Commission

(b) ‘designated person, entity or body’, means those natural or legal persons, entities or bodies subject to Union restrictive measures consisting in the freezing of funds and economic resources

Amendment

(b) ‘designated person, entity or body’, means those natural or legal persons, entities or bodies subject to Union restrictive measures consisting in the freezing of funds and economic resources

and the prohibition to make funds and economic resources available;

and the prohibition to make funds and economic resources available, ***including Union travel restrictions***;

Amendment 8

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

(3) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(2), points (h)(iii), (iv) and (v), are punishable by a maximum penalty of at least one year of imprisonment when they involve funds or economic resources of a value of at least EUR **100 000**. Member States shall ensure that the threshold of EUR **100 000** or more ***may*** also be met through a series of linked offences referred to in Article 3(2), points (h)(iii), (iv) and (v), when committed by the same offender.

Amendment

(3) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(2), points (h)(iii), (iv) and (v), are punishable by a maximum penalty of at least one year of imprisonment when they involve funds or economic resources of a value of at least EUR **50 000**. Member States shall ensure that the threshold of EUR **50 000** or more ***can*** also be met through a series of linked offences referred to in Article 3(2), points (h)(iii), (iv) and (v), when committed by the same offender.

Amendment 9

Proposal for a directive Article 5 – paragraph 4

Text proposed by the Commission

(4) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(2), points (a) to (g), (h)(i) and (ii), and point (i), are punishable by a maximum penalty of at least five years of imprisonment when they involve funds or economic resources of a value of at least EUR 100 000. Member States shall ensure that the threshold of EUR 100 000 or more ***may*** also be met through a series of linked offences referred to in Article 3(2), points (a) to (g), (h)(i) and (ii), and point (i), by the same offender.

Amendment

(4) Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3(2), points (a) to (g), (h)(i) and (ii), and point (i), are punishable by a maximum penalty of at least five years of imprisonment when they involve funds or economic resources of a value of at least EUR 100 000. Member States shall ensure that the threshold of EUR 100 000 or more ***can*** also be met through a series of linked offences referred to in Article 3(2), points (a) to (g), (h)(i) and (ii), and point (i), by the same offender.

Amendment 10

Proposal for a directive Article 5 – paragraph 5

Text proposed by the Commission

(5) Member States shall take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 may be subject to additional penalties. **Those additional penalties** shall include fines.

Amendment

(5) Member States shall take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 may be subject to additional penalties **which** shall include fines. **Such fines shall be proportionate to the amount of funds or economic resources involved in the offence with a maximum of at least EUR 10 000 000 when those offences involve funds or economic resources of a value of at least EUR 100 000.**

Amendment 11

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

(2) Member States shall take the necessary measures to ensure that for legal persons held liable pursuant to Article 7 the criminal offences referred to in Article 3(2), points (h) (iii) to (v), are punishable by fines, the maximum limit of which should be not less than **1** percent of the total worldwide turnover of the legal person in the business year preceding the fining decision.

Amendment

(2) Member States shall take the necessary measures to ensure that for legal persons held liable pursuant to Article 7 the criminal offences referred to in Article 3(2), points (h) (iii) to (v), are punishable by fines, the maximum limit of which should be not less than **5** percent of the **consolidated** worldwide turnover of the legal person in the business year preceding the fining decision.

Amendment 12

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

(3) Member States shall take the necessary measures to ensure that for legal persons held liable pursuant to Article 7 the criminal offences referred to in Article 3(2), points (a) to (f), (h)(i) and (ii), and point (i), are punishable by fines, the maximum limit of which should be not less than **5** percent of the total worldwide turnover of the legal person in the business year preceding the fining decision.

Amendment

(3) Member States shall take the necessary measures to ensure that for legal persons held liable pursuant to Article 7 the criminal offences referred to in Article 3(2), points (a) to (f), (h)(i) and (ii), and point (i), are punishable by fines, the maximum limit of which should be not less than **10** percent of the **consolidated** worldwide turnover of the legal person in the business year preceding the fining decision.

Amendment 13

**Proposal for a directive
Article 10 – paragraph -1 (new)**

Text proposed by the Commission

Amendment

Member States shall ensure that funds or economic resources subject to Union restrictive measures in respect of which the designated person, entity or body, listed in Council Regulation (EU) No 269/2014 and Council Regulation (EU) No 833/2014, commits or participates in an offence referred to in Article 3(2) shall be frozen and confiscated as per Articles 11 to 18 of Directive (EU) [.../.../] of the European Parliament and the of the Council [on asset recovery and confiscation]^{1a}. In addition, Member States shall ensure that regarding the party closely related to suspected, accused or convicted person as defined in Directive (EU) [.../.../][on asset recovery and confiscation], Article 13 of the same Directive is fully implemented and without undue delay.

^{1a} COM(2022) 245.

Amendment 14

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The proceeds shall be used for public interest or social purposes, with a particular focus on the victims wherever possible. Member States shall decide for which areas of public interest and social purposes the proceeds or the net revenues resulting from the liquidation of the proceeds may be used except for the latter when they are established as an own resource in accordance with Article 311(3) TFEU and when they are related to the Russian aggression against Ukraine, in which case they shall constitute external assigned revenue in accordance with Article 21(5) of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council^{1a} ('the Financial Regulation') until the establishment of the relevant own resource in accordance with Article 311(3) TFEU and without prejudice to restitution, compensation, to the victims and public concerned and Member States' capacity to implement the Directive. Those external assigned revenues shall be mainly assigned to the Neighbourhood, Development and International Cooperation Instrument – Global Europe on the Eastern Neighbourhood line (14 02 01 11) and, where appropriate, to the NDICI - Global Europe - provisioning of the common provisioning fund line (14 02 01 70) under Heading 6 and the successor budget lines in the next multiannual financial framework.

^{1a} Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU)

No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Amendment 15

Proposal for a directive

Article 10 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Where the fines referred to in Article 5(5) and Article 7(2) and (3) are related to the offences referred to in Articles 3 and 4 and are linked to the violation of Union restrictive measures in the context of the Russian war of aggression against Ukraine, they should serve the goal of rebuilding the infrastructure and compensating the victim population.

Amendment 16

Proposal for a directive

Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

For the purposes of this Directive, when the notion of competent authorities refers to investigating and prosecuting authorities, it shall be interpreted as including the central and decentralised levels of the EPPO with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO. Asset recovery offices shall therefore incur the obligations under the EPPO Regulation, including the obligation to report to the EPPO under Article 24 of the EPPO Regulation, undertaking of measures if instructed as a competent authority under

Article 28(1) of the EPPO Regulation and access to information under Article 43(1) of the EPPO Regulation.

Amendment 17

**Proposal for a directive
Article 15 – paragraph 1**

Text proposed by the Commission

Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in investigating organised crime or other serious crime cases, are also available for investigating or prosecuting offences referred to in Articles 3 and 4.

Amendment

Member States shall take the necessary measures to ensure that effective investigative tools ***and mechanisms***, such as those which are used in investigating organised crime or other serious crime cases, are also available for investigating or prosecuting offences referred to in Articles 3 and 4.

Amendment 18

**Proposal for a directive
Article 15 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

Offences referred to in Articles 3 and 4 which involve designated persons, entity or body, listed in the legal acts of the Union on restrictive measures, such as Council Regulation (EU) No 269/2014 and Council Regulation (EU) No 833/2014 and fall within the mandate of the EPPO, shall be referred to the EPPO for investigating, prosecuting and bringing to judgment.

Justification

Since the confiscated resources resulting from the violation of sanctions against individuals and entities involved in Russian aggression against Ukraine shall become part of the EU budget, such resources belong to the financial interests of the EU. Therefore the prosecution of such offences should be carried out by the EPPO, which is the best equipped EU body to deal with the cross-border character of sanction circumvention.

Amendment 19

Proposal for a directive

Article 16 – paragraph 1

Text proposed by the Commission

(1) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States' authorities, Europol, Eurojust, the European Public Prosecutor's Office, and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3 and 4. To that end, the Commission, and where appropriate, Europol and Eurojust, shall provide technical and operational assistance in order to facilitate the coordination of investigations and prosecutions by the competent authorities.

Amendment

(1) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States' authorities, Europol, Eurojust, the European Public Prosecutor's Office, ***when Member States participating in the enhanced cooperation on the establishment of the EPPO are involved*** and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3 and 4. To that end, the Commission, and where appropriate, Europol and Eurojust ***and EPPO in regards to Member States participating in the enhanced cooperation on the establishment of the EPPO are involved***, shall provide technical and operational assistance in order to facilitate the coordination of investigations and prosecutions by the competent authorities.

Amendment 20

Proposal for a directive

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Commission, Europol, Eurojust as well as authorities of the Member States, in particular Asset Recovery Offices and Asset Management Offices, in accordance with Directive (EU) [.../...] [Directive on asset recovery and confiscation], shall cooperate with the EPPO on offences referred to in Articles 3 and 4 which involve designated person, entity or body, listed in Council Regulation (EU) No 269/2014 and which are referred to the EPPO for investigating, prosecuting and

bringing to judgment.

Amendment 21

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

(2) Member States' competent authorities shall also regularly share information on practical issues, in particular, patterns of circumvention, e.g. structures to conceal the beneficial ownership and control of assets, with the Commission and other competent authorities.

Amendment

(2) Member States' competent authorities shall also regularly share information on practical issues, in particular, patterns of circumvention, e.g. structures to conceal the beneficial ownership and control of assets, with the Commission, **EPPO** and other competent authorities, ***within the exercise of their respective competences.***

Amendment 22

Proposal for a directive

Article 19 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) the number of criminal proceedings referred to the EPPO.

Amendment 23

Proposal for a directive

Article 19 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the monetary value of funds and economic resources frozen and confiscated in each case of violation of Union restrictive measures;

Amendment 24

Proposal for a directive

Article 19 – paragraph 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) the types of national authorities involved in investigations and criminal proceedings.

Justification

The scope is to identify which of the national authorities are most solicited and as a consequence might require additional financial and technical resources.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Definition of criminal offences and penalties for the violation of Union restrictive measures						
References	COM(2022)0684 – C9-0401/2022 – 2022/0398(COD)						
Committee responsible Date announced in plenary	LIBE 12.12.2022						
Opinion by Date announced in plenary	BUDG 16.3.2023						
Rapporteur for the opinion Date appointed	Vlad Gheorghe 28.3.2023						
Discussed in committee	26.4.2023						
Date adopted	8.6.2023						
Result of final vote	<table> <tr> <td>+: </td><td>21</td></tr> <tr> <td>–: </td><td>1</td></tr> <tr> <td>0: </td><td>2</td></tr> </table>	+:	21	–:	1	0:	2
+:	21						
–:	1						
0:	2						
Members present for the final vote	Olivier Chastel, Andor Deli, Pascal Durand, José Manuel Fernandes, Vlad Gheorghe, Valérie Hayer, Eero Heinäluoma, Niclas Herbst, Adam Jarubas, Moritz Körner, Zbigniew Kuźmiuk, Camilla Laureti, Siegfried Mureşan, Dimitrios Papadimoulis, Bogdan Rzońca, Eleni Stavrou, Nils Ušakovs						
Substitutes present for the final vote	Jonás Fernández, Jens Geier, Fabienne Keller, Petri Sarvamaa						
Substitutes under Rule 209(7) present for the final vote	Asim Ademov, Markus Ferber, Massimiliano Smeriglio						

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

21	+
PPE	Asim Ademov, Markus Ferber, José Manuel Fernandes, Niclas Herbst, Adam Jarubas, Siegfried Mureşan, Petri Sarvamaa, Eleni Stavrou
Renew	Olivier Chastel, Vlad Gheorghe, Valérie Hayer, Fabienne Keller, Moritz Körner
S&D	Pascal Durand, Jonás Fernández, Jens Geier, Eero Heinäluoma, Camilla Laureti, Massimiliano Smeriglio, Nils Ušakovs
The Left	Dimitrios Papadimoulis

1	-
NI	Andor Deli

2	0
ECR	Zbigniew Kuźmiuk, Bogdan Rzońca

Key to symbols:

+ : in favour

- : against

0 : abstention