

Sanctions Update: EU Takes Step to Harmonise Criminal Penalties for Breaches of EU Sanctions

The new Directive (EU) 2024/1226 defines criminal offences and penalties for breaches of EU sanctions. This Client Alert summarises key provisions and implications for businesses.

This Client Alert is published in the context of ongoing developments and should be read in conjunction with Latham's [previous sanctions updates](#). This Client Alert is not intended to take the form of official legal advice. Given the frequency with which different jurisdictions impose new sanctions, and the detailed and nuanced nature of the sanctions updates, businesses exposed to sanctions-related developments should obtain up-to-date legal advice before taking any steps that may have legal consequences.

On 24 April 2024, the European Parliament and the Council adopted Directive (EU) 2024/1226 (Directive), which sets rules for defining criminal offences and penalties for violations of European Union restrictive measures (sanctions). This Directive aims to ensure effective application of sanctions across Member States by harmonising criminal penalties and enhancing enforcement. The Directive was published in the Official Journal of the European Union on 29 April 2024 and entered into force on 20 May 2024. Member States must transpose its provisions into national law by 20 May 2025.

This Client Alert summarises key provisions of the Directive and its implications for businesses.

Key Provisions

Criminal Offences Defined

Member States shall ensure that the following intentional breaches of restrictive measures constitute criminal offences (Article 3):

- Making funds or economic resources available directly or indirectly to designated persons or entities (Article 3(1)(a))
- Failing to freeze funds or economic resources belonging to or owned, held, or controlled by designated persons or entities (Article 3(1)(b))
- Enabling designated persons to enter or transit through Member States (Article 3(1)(c))
- Conducting prohibited transactions with third states or entities (Article 3(1)(d))

- Trading, importing, exporting, selling, purchasing, transferring, transiting, or transporting prohibited goods or services (Article 3(1)(e))
- Providing prohibited financial or other services (Article 3(1)(f) and (g))
- Circumventing restrictive measures through various means, including by transferring funds to conceal their ownership or providing false information about the ownership of funds (Article 3(1)(h))

In certain circumstances, Member States may exercise their discretion to exclude conduct involving funds, economic resources, goods, services, transactions, or activities of a value less than €10,000 from being considered a criminal offence, provided the cumulative value does not exceed this threshold (Article 3(2)).

The Directive also includes provisions for holding individuals criminally liable for serious negligence in cases involving dual-use items or items on the EU Common Military List (Article 3(3)).

Penalties

The Directive mandates effective, proportionate, and dissuasive penalties for both natural and legal persons for breaches of EU sanctions:

- **Natural persons:** Penalties range from one to five years of imprisonment, depending on the severity of the offence (Article 5). Additional penalties may include fines, withdrawal of permits, disqualification from holding certain positions, temporary bans on running for public office, and public disclosure of convictions in exceptional cases (Article 5(3)-(5)).
- **Legal persons:** Companies can face fines of up to 1% of their total worldwide turnover or €8 million for criminal offences covered by Article 3(1), points (h) (iii) — failing to report funds or economic resources belonging to, owned, held, or controlled by designated persons; and (iv) — failure to provide information on frozen funds or economic resources belonging to, owned, held, or controlled by designated persons.

Companies can face fines of up to 5% of their total worldwide turnover or €40 million (Article 7(2)) for criminal offences covered by Article 3(1) points (a) — making funds or economic resources available to, or for the benefit of, designated persons to (g) — providing other services in violation of measures); points (h) (i) — disposing of funds or economic resources owned, held, or controlled by a designated person in order to conceal frozen funds or economic resources; (ii) — providing false or misleading information to conceal the fact that a designated person ultimately owns, or is a beneficiary of, funds or economic resources; and point (i) — breaching or failing to fulfil conditions under authorisations granted by competent authorities. Additional penalties include exclusion from public benefits, judicial supervision, disqualification from business activities, and closure of establishments involved in the offence (Article 7(1)).

Accessory penalties: The Directive provides for additional accessory penalties, such as exclusion from public benefits or aid, exclusion from access to public funding (including tender procedures, grants, and concessions), disqualification from business activities, withdrawal of permits, and authorisations to pursue activities which have resulted in the criminal offence, placement under judicial supervision, judicial winding-up, closure of establishments used for committing the criminal offence, and publication of judicial decisions related to the criminal offences (Article 7(1)(a)-(h)).

Aggravating and Mitigating Circumstances

The Directive provides that Member States shall consider the following aggravating factors when determining penalties (Article 8):

- Offences committed by criminal organisations (Article 8(a))
- Use of false documents (Article 8(b))
- Offences committed by a professional services provider (Article 8(c))
- Offences committed by public officials (Article 8(d))
- Offences that generate substantial financial benefits (Article 8(e))
- Destruction of evidence or intimidation of witnesses (Article 8(f))

Cooperation with authorities and providing information that aids in the prosecution of other offenders are recognised as mitigating factors (Article 9).

Jurisdiction and Cooperation

Member States are required to establish jurisdiction over offences committed within their territories, on their registered vessels or aircraft, or by their nationals (Article 12). They are also required to cooperate with other Member States and EU bodies such as Europol, Eurojust, and the European Public Prosecutor's Office to facilitate investigations and prosecutions (Article 16).

Investigative Tools

Member States are required to ensure effective and proportionate investigative tools are available for investigating or prosecuting offences, including special tools used in combating organised crime (Article 13).

Implementing and Reporting

Member States are required to implement the Directive into domestic law by 20 May 2025 (Article 20). Regular statistical data on enforcement activities must be provided to the European Commission to ensure compliance and facilitate assessment of the Directive's impact (Article 17).

Implications for Businesses

As a best practice, though not required by Directive (EU) 2024/1226, businesses should enhance compliance measures to avoid severe criminal penalties. Key steps include:

- reviewing and updating compliance programmes to ensure adherence to restrictive measures;
- conducting thorough due diligence on transactions and counterparties to prevent inadvertent breaches;
- training employees on the new legal requirements and potential criminal liabilities; and
- ensuring robust internal reporting mechanisms for potential violations.

Key Takeaway

The Directive represents a significant step towards harmonising the enforcement of EU sanctions throughout the EU. To date, there has been relatively little enforcement of EU sanctions by individual Member States, and there is significant variation between the enforcement tools and penalties available in different Member States.

Given this renewed focus on enforcement, businesses operating in the EU should take steps to ensure that they have effective and robust compliance procedures, in particular to the extent they have any dealings with Russia or Belarus, or other jurisdictions that pose enhanced sanctions risks.

Latham & Watkins actively tracks sanctions developments across all regions closely and is well positioned to advise on the legal and practical impacts of these measures.

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