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Houses of the Oireachtas

An Comhchoiste um Dhlí agus Ceart, Gnóthaí Baile agus Imirce
Teach Laighean
Baile Átha Cliath 2

Joint Committee on Justice, Home Affairs and Migration
Leinster House
Dublin 2

Tel: (01) 618 3899
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34/JC/01

16th July 2025

Mr Jim O'Callaghan TD,
Minister for Justice, Home Affairs and Migration,
51 St Stephen's Green,
Dublin 2, D02 HK52.

By e-mail to: EXMcHugh@justice.ie

Our Ref: JC/7/1/E

RE: General Scheme of the Criminal Justice (Violation of EU Restrictive Measures) Bill 2025

Dear Minister,

I am writing to you in relation to the General Scheme of the *Criminal Justice (Violation of EU Restrictive Measures) Bill 2025* which was referred to the Committee for Pre-Legislative Scrutiny (PLS).

The Committee agreed to commence PLS by requesting an oral briefing from Departmental Officials on this matter.

On Tuesday 15th July 2025, the Committee received a briefing from your officials which provided an opportunity for members to clarify a number of matters as part of this process.

In the course of the briefing, the Committee raised a number of questions with the officials.

The Committee has now concluded PLS on this General Scheme and looks forward to further engagement and debate on this Bill in the course of its consideration and passage through both Houses.

The Committee further agreed to publish the written briefing provided as an appendix to this letter and lay it before both Houses.

Cuirfear fáilte roimh chomhfhreagras i nGaeilge

Yours sincerely,

Matt Carthy

Matt Carthy TD
Cathaoirleach

Cuirfear fáilte roimh chomhfhreagras i nGaeilge

Joint Committee on Justice, Home Affairs and Migration

General Scheme of the
Criminal Justice (Violation of EU Restrictive Measures) Bill 2025

Pre-Legislative Scrutiny 15 July 2025

Briefing Note

Introduction and Context

The purpose of this Bill is to transpose Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures (sanctions). The Directive sets out the minimum scope of criminal offences applicable to sanctions breaches and penalties applicable to those offences.

Restrictive measures (sanctions) are adopted under the framework of the Common Foreign and Security Policy (CFSP). They include targeted individual measures, such as asset freezes and travel bans, and sectoral measures including import/export restrictions, and restrictions on the provision of financial and other services.

Notably, in respect of restrictive measures arising from the Russian invasion of Ukraine, two instruments – Council Regulation (EU) No 269/2014 and Council Regulation (EU) No 833/2014 of 31 July 2014 – each provide for a wide range of matters and are regularly amended and extended.

Although restrictive measures are adopted at a central level, their implementation and enforcement are primarily a matter for individual Member States. EU Regulations require member states to adopt national rules providing for effective, proportionate and dissuasive penalties for infringements, however, national systems differ significantly. Not all member states treat the violation of sanctions as a criminal offence, and those that do provide for widely differing penalties, leading to inconsistent and varying enforcement across the EU, undermining the effectiveness of the EU sanctions regimes.

Against this background, in December 2022, the Commission submitted a proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures. Following extensive negotiations, agreement on the Directive was concluded and on 24 April 2024. It was published in the Official Journal on 29 April 2024 and entered into force on 19 May 2024. The transposition deadline was 20 May 2025.

General Provisions of the Directive

Member States are obliged to criminalise specified forms of conduct to the extent that they violate a restrictive measure (whether that restrictive measure has already been adopted or which may be adopted in the future).

The Directive adopts a minimum harmonisation approach. Member States are obliged to ensure that certain forms of conduct are criminalised and carry at least a specified maximum penalty (e.g. the maximum penalty available for certain offences must be at least 5 years). These 'minimum maximum' penalties do not imply any form of mandatory minimum sentences. Member States are free to adopt a broader criminalisation where appropriate.

Standard ancillary provisions apply in respect of penalties for natural and legal persons, criminalisation of attempt, aiding and abetting, jurisdiction, aggravating and mitigating circumstances and limitation periods.

Provision is also made for the freezing and confiscation of assets where certain offences are committed in relation to those assets by or on behalf of the relevant sanctioned person. This extends beyond the usual consideration of whether such assets are proceeds or instrumentalities of the crime in question and effectively requires provision for punitive confiscation in respect of the offence.

Further provisions are made in respect of the availability of investigative tools, protections for the reporting of breaches, statistical reporting and cooperation between relevant authorities.

Irish Context

In Ireland, statutory instruments made pursuant to the European Communities Act 1972 ('the 1972 Act') have been used to give effect to restrictive measures to date. Under the 1972 Act, such instruments are limited to what is necessitated by the restrictive measures, and offences introduced by such statutory instruments are limited to a maximum penalty of three years' imprisonment.

Consultation

In addition, the Department of Justice has engaged with key stakeholders, including the Garda Síochána, the Director of Public Prosecutions, and the Cross-Departmental International Sanctions Committee (CDISC). CDISC is chaired by the Department of Foreign Affairs and brings together representatives from all Government Departments and Agencies involved in the domestic implementation of sanctions. In addition, the Department has consulted with the Advisory Council against Economic Crime and Corruption, a cross-sectoral, partnership-based group comprising members from the public sector, academia, civil society, and the business and financial sectors.

Main provisions of the proposed Bill

Head 1 is a standard provision that provides that different provisions of the Bill can be commenced and come into operation on different days as ordered by the Minister.

Head 2 implements Article 2 of the Directive, which provides for relevant definitions. However, several changes have been adopted for alignment with existing legislative measures. Notably, 'designated person, entity or body' is relabelled to 'sanctioned person' to avoid conflict with the use of 'designated person' in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

Head 3 provides for a general definition of 'in contravention of a restrictive measure'. In principle, conduct constitutes an offence only if, and to the extent that it breaches a restrictive measure. However, it does not constitute an offence if the conduct falls within a valid exception, such as an exemption or derogation authorised by a competent authority.

Head 4 provides for the offence of 'making funds or economic resources available, directly or indirectly, to or for the benefit of a designated person' under Article 3(1)(a) of the Directive. This offence is distinct from dealing in already frozen assets (under Head 5), as it applies even where the asset being made available is not itself subject to freezing measures and extends to situations where an otherwise unfrozen asset is made available to a sanctioned person, in contravention of a restrictive measure.

Head 5 provides for the primary frozen asset offences and relies on the definition of 'freezing measure' in Head 2, which is a subset of restrictive measures concerning frozen assets. Subheads (1) and (2) cover 'failure to freeze', which may involve breaching the freezing measure directly or allowing access to or dealing in the frozen assets in the actor's possession or control.

Head 6 provides for the offence of 'enabling designated [i.e. sanctioned] natural persons to enter into, or transit through, the territory of a Member State' in Article (3)(1)(c) of the Directive by amending the Criminal Justice (Smuggling of Persons) Act 2021 which provides for general measures against the facilitation of illegal entry, transit or presence in the State.

Head 7 provides for the offence of 'entering into or continuing transactions with a third State, bodies of a third State or entities or bodies directly or indirectly owned or controlled by a third State or by bodies of a third State, including the award or continued execution of public or concession contracts' in Article (3)(1)(d) of the Directive.

Head 8 provides for the trading and import/export offences in Article (3)(1)(e) of the Directive, including where Article 3(3) applies. Article 3(3) provides that where the items traded are included in the Common Military List of the European Union or dual-use items, conduct constitutes a criminal offence if committed with 'serious negligence'. The approach to subhead (2) proceeds on the basis that recklessness (the conscious running of a substantial and unjustified risk) is an appropriate equivalent within the Irish legal framework for the purposes of transposition of an EU concept of 'serious negligence' as provided for in the Directive.

Head 9 provides for the offence of 'providing financial services or performing financial activities' in Article 3(1)(f) of the Directive.

Head 10 provides for the offence of 'providing services other than those referred to in point (f)' [i.e. other than financial services] in Article 3(1)(g) of the Directive. These 'other services' include but are not limited to the provision of legal advisory services, trust services, public relations services, accounting, auditing, bookkeeping and tax consulting services, business and management consulting, IT consulting, broadcasting, architectural and engineering services.

Head 11 provides for the offence of 'breaching or failing to fulfil conditions under authorisations granted by competent authorities' in Article 3(1)(i) of the Directive.

Head 12 provides for the offences of failing to comply with a reporting obligation or to comply with an obligation to provide a competent authority with information concerning frozen assets in Article 3(1)(h)(iii) and (iv).

Head 13 provides that offences contrary to Regulations made under section 3 of the 1972 Act may attract certain powers associated with arrestable offences notwithstanding the maximum three-year penalty that may be provided for them under the 1972 Act. It further provides that, to the extent that such offences are so specified

for the purpose, the maximum penalties applicable is increased to align with offences created under this Bill, and that forfeiture penalties under this Bill may applied to them.

Head 14 provides for certain evidential matters arising in possible proceedings in relation to the offences under the Bill.

Head 15 provides for the penalties applicable to offences under Heads 4 to 12. This head implements Article 5, which provides that the offences in Article 3 are punishable by effective, proportionate and dissuasive criminal penalties.

Head 16 provides for a humanitarian assistance exception, implementing Article 3(5) of the Directive. In practice, conduct being permissible by virtue of constituting humanitarian assistance may also include conduct that is the subject of an express exemption or authorisation in the instrument in question.

Head 17 implements Article 6, which contains obligations to ensure the liability of legal persons for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit, and Article 7, which sets out the penalties applicable to legal persons. Transposition relies on common law principles in respect of corporate liability and the provisions of the Interpretation Act 2005, which also provides that 'a reference to a person in relation to an offence (whether punishable on indictment or on summary conviction) shall be read as including a reference to a body corporate.'

Head 18 implements specific aspects of Articles 8 and 9 in respect of aggravating factors.

Head 19 provides for extra-territorial jurisdiction pursuant to Article 12. Dual criminality is not provided for in respect of the mandatory categories, and not provided for in respect of national officials and trade to and from the State. Dual criminality is provided for in respect of conduct in other categories committed outside the EU.

Head 20 implements Article 10(2) of the Directive which requires Member States to take necessary measures to enable the freezing and confiscation of frozen assets or assets made available to a sanctioned person where certain offences have been committed or participated in by a sanctioned person.

Head 21 extends the applicability of the administrative restraint provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to services and transactions which may constitute violations of restrictive measures.

Head 22 provides for the inclusion of the offences created by the Bill in the Schedules to certain other enactments.