

Harmonization of EU Member States' Penal Codes for Violations of EU Sanctions Takes German Legislative Hurdle

In the wake of Russia's invasion of Ukraine, the EU has so far imposed eight "sanctions packages" against the Russian Federation and Belarus (the latest one on October 6, 2022), targeting various areas of Russia's and Belarus' economy and certain individuals. The lack of effective enforcement mechanisms in some EU Member States, including Germany, has spurred criticism.

To ensure efficient, effective, and uniform enforcement of EU sanctions – in particular under the impression of the extensive EU sanctions imposed in the wake of Russia's attack on Ukraine – the EU Commission is now aiming at harmonizing the EU Member States' penalties for violations of EU sanctions.

This will require a two-step process: First, the respective EU Member States must confer the competence to harmonize this aspect of law onto the EU. Second, the EU will then enact a directive containing the actual harmonization.

To recall, the EU has the power to impose financial or economic sanctions through EU regulations. These sanctions are binding on anyone within their jurisdictional scope. However, the EU lacks the power to penalize violations of the sanctions. While the EU regulations usually include provisions requiring the EU Member States to adopt national rules enforcing the EU sanctions, the actual implementation of the enforcement mechanism (e.g., fines, exclusion from public tenders or imprisonment) falls within the jurisdiction of the different EU Member States. Accordingly, each EU Member State may decide for itself how to enforce the EU sanctions. This has led to a variety of different enforcement regimes, including with respect to penalizing violations of EU sanctions, both in terms of quality (e.g., categorization of violations as criminal offences vs. administrative offences) as well as in severity of the respective penalties.

Regarding the first step, the EU's jurisdiction to harmonize certain aspects of the EU Member States' criminal laws is governed by Art. 83 (1) TFEU which explicitly lists the areas of criminal law that the EU may regulate. The current EU Commission proposal which has already been approved by the European Parliament on July 7, 2022, seeks to include "*the violation of Union restrictive measures*" into the list in Art 83 (1) TFEU. The EU Commission proposal is awaiting approval of the Council of the European Union, i.e., of the governments of the EU Member States.

In Germany, this approval is subject to the agreement of the German Parliament ("*Bundestag*") together with the German Federal Council ("*Bundesrat*"). The German Parliament's favorable vote of September 29, 2022, and the German Federal Council's approval of October 7, 2022,

laid the foundation Germany's agreement. Germany has thus signaled its willingness to harmonize the EU Member States' criminal laws for cases of violations of EU sanctions.

To enhance enforcement of these EU sanctions, Germany previously adopted the German Sanctions Enforcement Act I ("*Sanktionsdurchsetzungsgesetz I*") earlier this year, *inter alia* giving German authorities additional powers to investigate and seize property of sanctioned persons as well as requiring sanctioned persons to report their property to German authorities. A second German Sanctions Enforcement Act, establishing a national register of sanctioned assets and a procedure to investigate assets of unknown provenance, is said to follow.

Additionally, on the EU level, on April 11, 2022, Europol launched "Operation Oscar" together with the EU Member States, as well as EU central departments Eurojust, and Frontex. The aim of this operation is to support EU Member States' investigations concerning assets owned by sanctioned individuals and legal entities, and criminal investigations by EU Member States concerning the circumvention of EU sanctions.

The recent developments concerning the EU-wide harmonization of the EU Member States' penal laws relating to violations of EU restrictive measures will further enhance the EU's efforts to create an effective sanctions regime.
