

# Proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures

Position paper – Executive summary  
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**The European Savings and Retail Banking Group (ESBG) welcomes the initiative to harmonize the definitions of criminal offences and penalties for the violation of EU restrictive measures. We believe it would ensure a more consistent enforcement of restrictive measures between EU Member States, even if this enforcement is not centralized at EU level.**

## **ESBG response to the European Commission's call for feedback on the proposed Directive**

### **1. Limiting the directive to offences committed with intention**

The draft directive not only penalizes criminal offences when committed with intent, but also includes serious negligence. Despite the many different quality assurance measures credit institutions have in place (e.g. trainings, four-eyes principle, several 'lines of defence') to avoid or correct such errors, sanction checks still include manual steps that potentially result in human errors. The draft directive does not take into account that such errors cannot be completely ruled out. Moreover, credit institutions would have to ensure that normal banking business does not constitute an 'aggravating circumstance' within the meaning of Article 8. In our opinion, the human error of a compliance officer should not be stronger punished than someone's intentional engagement in evasion activities or the concealment of such. We suggest removing the penalization of serious negligent violations.

### **2. Introducing a non-punishable voluntary self-disclosure**

We believe that the directive should provide for a voluntary self-denunciation to exempt oneself from the criminal consequences of a human error. The mitigating circumstances in Article 9 do not sufficiently protect employees from the criminal consequences of their mistakes and national laws foresee such provisions in various cases. Therefore, we would welcome a provision introducing a non-punishable voluntary self-disclosure.

### **3. Stipulating the rights and obligations of economic operators clearly**

Criminal liability requires a clear and precise conceptual delineation of rights and obligations of the involved actors. For example, credit institutions often do not have the necessary background information to uncover concealment tactics. Accordingly, it is essential to factor in if institutions have access to the necessary information that would allow them to uncover such behaviour. Consequently, we think that clear and precise provisions and implementation instructions, accompanied by an appropriate implementation period, are needed.

Furthermore, we provide detailed explanations on specific provisions that are based on the observations of several experienced experts within our membership. For more details, please see the full position paper.