

## Navigating Europe's fragmented sanctions landscape: Italy's move towards criminalization of EU restrictive measures' violations

### 1. A fragmented enforcement landscape

Across the European Union ("EU"), the enforcement of restrictive measures<sup>1</sup> has long been characterized by fragmentation. While sanctions are adopted at Union level, their implementation and enforcement remain the responsibility of Member States — resulting in a **patchwork of divergent penalties, investigative approaches and 'levels' of enforcement**.

Indeed, in some jurisdictions, breaches are treated merely as administrative violations; in others, they are prosecuted as criminal offences, often entailing imprisonment and/or corporate liability. This lack of uniformity has raised persistent concerns in Brussels, primarily because it encourages *forum shopping* by economic operators attempting to seek jurisdictions with softer enforcement. In this context, many called for deeper harmonisation, advocating for shared investigative standards and stronger cross-border coordination to close enforcement gaps<sup>2</sup>.

At the same time, sanctions regimes have grown increasingly sophisticated — and so have methods of **circumvention**. As a result, the EU has faced growing challenges in preventing indirect trade flows through third countries and in detecting evasive structures. In response, the EU has significantly **reinforced the legal instruments within its sanctions enforcement arsenal to counter circumvention**, starting with the introduction of the so-called '**anti-circumvention tool**' by means of the 11th Russia Sanctions Package and the subsequent call for **heightened due diligence and compliance requirements** — including the need for EU companies to undertake all actions that are suitable and necessary to achieve the result of **preventing the undermining of EU restrictive measures** (so-called '**best efforts**').

Within this context, the EU Directive 2024/1226<sup>3</sup> (the "**Directive**") represents a significant milestone, as it requires Member States to **criminalize serious breaches of restrictive measures**, to introduce corporate liability for such offences, and to ensure

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1 With the term "restrictive measures" we intend to refer here to the measures adopted by the European Union within the framework of the Common Foreign and Security Policy (CFSP), pursuant to Articles 29 of the Treaty on European Union (TEU) and 215 of the Treaty on the Functioning of the European Union (TFEU). Such measures may include, *inter alia*, asset freezing, prohibitions on making funds or economic resources available, restrictions on trade in goods and services, limitations on access to financial markets, and transit/entry bans.

2 See, amongst others, Non-paper by the Netherlands, *Strengthening European cooperation to reinforce national efforts on the implementation and enforcement of EU restrictive measures*, 2024

3 Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, OJ L 2024/1226, 2024.

that sanctions are “*effective, proportionate and dissuasive.*” Once fully transposed, the Directive aims to ensure that comparable conduct is met with comparable consequences, thereby consolidating both the credibility and deterrent effect of sanctions enforcement throughout the EU.

## 2. A delayed but decisive transposition effort

Member States were required to transpose the Directive by 20 May 2025, yet progress across Member States has been uneven. By mid-2025, fewer than half had completed transposition. In July 2025, the European Commission initiated **infringement proceedings against eighteen Member States** — including, *inter alia*, Italy, France and Germany — for failing to communicate or adopt relevant national measures<sup>4</sup>. The Commission emphasized that delayed transposition undermines the EU’s capacity to ensure consistent sanctions enforcement.

Italy, albeit belatedly, has now taken decisive steps through **Legislative Decree no. 211/2025** (the “**Decree**”), submitted by the Italian Government to Parliament in October 2025 and ultimately approved on 30 December 2025. The Decree, which entered into force on 24th January 2026, aims at transposing the Directive comprehensively, *inter alia* by introducing new criminal offences for violations of EU restrictive measures and extending the scope of corporate criminal liability under Legislative Decree no. 231/2001 (the “**231 Decree**”).

The accompanying **Explanatory Report** (the “**Report**”) clarifies that the reform aims at guaranteeing uniform and effective application of EU restrictive measures, as well as at reinforcing Italy’s credibility as an enforcement jurisdiction, all while meeting the requirements imposed by the delegation law<sup>5</sup>: which were, namely, *i*) introducing effective, dissuasive, and proportionate sanctions for individuals and legal entities; *ii*) designating a body responsible for coordinating Italian enforcement Authorities and other competent bodies; and, *iii*) adopting any further necessary amendments to national law to facilitate the effective achievement of the Directive’s objectives.

## 3. The new criminal framework: Chapter I-bis of the Italian Criminal Code

At the heart of the reform lies a structural addition to the Italian Criminal Code (“**ICC**”): a new **Chapter I-bis**, titled “*Crimes against the Common Foreign and Security Policy of the European Union.*” Comprising **Articles 275-bis** to **275-decies**, this chapter establishes, for the first time, a self-contained criminal regime within the ICC addressing violations of EU restrictive measures.

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<sup>4</sup> European Commission, Commission takes action to ensure complete and timely transposition of EU sanctions enforcement Directive, Press Release, 2025, available at: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_25\\_1842](https://ec.europa.eu/commission/presscorner/detail/en/inf_25_1842)

<sup>5</sup> Italy, Law No. 91 of 13 June 2025, “*Delegation to the Government for the transposition of European directives and the implementation of other European Union acts – European Delegation Law 2024*”, Official Gazette no. 138, 2025.

According to the Report, the decision not to embed these offences within any other special legislation was deliberate, aimed at underscoring their significance as matters of public order and national security, as well as ensuring interpretive consistency and visibility of the newly introduced crimes across the Italian criminal system.

### 3.1. From intent to negligence: broadening criminal liability

At its core, the Decree, having first established a **comprehensive set of definitions** (Article 2 of the Decree)<sup>6</sup>, introduces **new criminal and administrative offenses** (Article 3 of the Decree).

In particular, **Article 275-bis ICC** (para. 1) establishes criminal liability for anyone who, **in violation of EU restrictive measures** or implementing national legislation, engages in the following conduct: (a) providing, directly or indirectly, **funds or economic resources to, or to the benefit of, designated persons**; (b) **failing to freeze funds or resources** belonging to or controlled by designated persons; (c) **carrying out economic, commercial, or financial transactions**, including public contracts or concessions, with third states or their controlled entities; (d) **importing, exporting, trading, selling, purchasing, transferring** (also in an 'intangible' form), **transporting goods** or providing related **services**; and (e) **providing any services**, including financial services and operations.

In addition, **Article 275-bis ICC** (paras. 2 and 5) further prohibits:

- circumvention of **restrictive measures**, entailing (a) transferring or otherwise disposing of frozen funds or resources held by designated persons, and (b) submitting or using false statements or documents to conceal the beneficial owner of frozen assets;
- those transactions carried out either **without a license**, or with a license obtained **providing false statements or documents**.

The Decree also establishes criminal liability for other cases in which relevant reporting obligations and authorization requirements were not met, and, in particular, for:

- designated persons (or legal representatives of designated entities) who **fail to report to competent authorities the funds or economic resources** they own, control, possess, or hold within the national territory, in violation of EU restrictive measures or implementing national legislation (Article 275-ter, para. 1 ICC);

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<sup>6</sup> In greater detail, the Decree defines: (a) **restrictive measures of the EU**: the measures adopted by the Union pursuant to Article 29 of the Treaty on European Union and Article 215 of the Treaty on the Functioning of the European Union; (b) **designated persons, entities or bodies**: any natural or legal person, entity, body or group subject to EU restrictive measures; (c) **funds**: financial assets and benefits of every kind, including: cash, cheques, bills of exchange, money orders and other payment instruments; deposits with financial institutions or other entities, account balances, debts and debt securities; publicly or privately traded securities and debt instruments, including shares, share certificates, bonds, promissory notes, warrants, mortgage-backed securities and derivative financial contracts; interest, dividends or other income on assets, or capital gains generated therefrom; credits, rights of set-off, guarantees, sureties or other financial commitments; letters of credit, bills of lading and deeds of assignment; documents evidencing an interest in funds or financial resources; crypto-assets, as defined in Article 3(1)(5) of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023; (d) **economic resources**: tangible or intangible, movable or immovable assets of any kind that are not funds but may be used to obtain funds, goods or services; (e) **freezing of funds**: the prohibition to move, transfer, alter, use, manage or access funds in any way that would change their volume, amount, location, ownership, possession, nature or purpose, or otherwise enable their use, including through portfolio management; (f) **freezing of economic resources**: the prohibition to use economic resources to obtain funds, goods or services, including by selling, leasing or mortgaging them.

- individuals who, due to their office or profession, are aware of such assets but **omit to provide relevant information to Authorities** (Article 275-ter, para. 2 ICC);
- whoever acts **in breach of conditions attached to authorizations** required under EU restrictive measures (Article 275-quater ICC).

A notable innovation is found in **Article 275-quinquies ICC**, which extends criminal liability to cases of **serious negligence (colpa grave)** involving import, export, trade, sale, purchase, transfer (also in an 'intangible' form), transit, transportation, or the provision of related services, of/in relation to **EU-listed military equipment and dual-use items**.

The penalty for the criminal offences above ranges up to a maximum of **six years' imprisonment** and **fining up to €250,000**; special **aggravating** and **mitigating circumstances** are also provided for (Articles 275-sexies and 275-septies ICC)<sup>7</sup>. **Mandatory confiscation** (direct, or in 'equivalent form') and the **publication of the conviction** (for imprisonment above three years) would also apply (Articles 275-octies and novies ICC).

An **administrative (pecuniary) fine only** would be applicable when the value of the funds, resources, goods, services, transactions, or activities relevant for the offences above is **below €10,000**<sup>8</sup>, except for violations involving EU-listed military equipment or dual-use goods.

### 3.2. The impact of the Decree on corporate criminal liability

Notably, the Decree (Article 6) introduces **significant amendments to the 231 Decree** in line with the requirements of the Directive, which explicitly mandated the introduction of corporate liability for EU restrictive measures' violations.

Consequently, the Decree **introduces a new provision in the 231 Decree** (Article 25-octies.2), including some of the above-mentioned offences amongst the predicated crimes that may trigger corporate criminal liability in Italy. In particular, the Decree establishes for legal entities the following **turnover-based sanctions** in case of violation<sup>9</sup>, thereby departing from the traditional 'quota system' on which pecuniary sanctions pursuant to the 231 Decree are based:

7 Special **aggravating circumstances** are provided for by the Decree when the conduct is considered to be more 'offensive' (e.g. when involving complex corporate structures, falsification of documents, links to banking or financial activities, significant profits, concealment and destruction of documents that hinder the investigation, or false statements to judicial authorities) (Article 275-sexies ICC). Moreover, another aggravating circumstance is introduced in Article 12, paragraph 1-bis, of Legislative Decree No. 286 of July 25, 1998, for those cases when acts facilitating irregular immigration are committed in violation of a prohibition, obligation, or restriction imposed by an EU restrictive measure, thereby allowing or otherwise facilitating the entry into the territory of the State of designated natural persons (Article 5 of the Decree). On the contrary, **mitigating circumstances** may apply where the offender actively attempted either to prevent further consequences of the crime, to secure evidence, to identify other persons involved in the offence, or to allow the seizure of assets, funds, or economic resources linked to the offense(s) (i.e. *ravvedimento operoso*, Article 275-septies ICC).

8 For determining the threshold, the Decree clarifies that smaller transactions forming part of the same economic plan are aggregated to prevent artificial fragmentation.

9 In this respect, the Decree (Article 6) correspondingly amends Article 10 of the 231 Decree, clarifying that, in those cases provided for by the law, pecuniary sanctions for legal entities should be calculated as a percentage of the entity's total global turnover in the financial year preceding the commission of the crime or, if lower, the financial year preceding the decision to impose the pecuniary sanction. The Decree further specifies that, when it is not possible to ascertain the entity's global total turnover, the pecuniary sanctions is applied in the fixed amount determined for each offence.

- for the most serious offences (Article 275-bis paras 1, 2, and 5 ICC; Article 275-quarter, para. 1 ICC; Article 12, paragraph 1-bis, of Legislative Decree No. 286 of July 25, 1998), a **sanction ranging from 1% to 5% of the company's total global turnover** in the financial year preceding the commission of the crime or, if lower,
- the financial year preceding the decision to impose the pecuniary sanction; if the global annual turnover cannot be determined, the sanction is determined in a **fixed amount**, i.e. **between 3 and 40 million EUR** for the offences above;
- for offences related to the violation of reporting obligations (Article 275-ter, paras 1 and 2 ICC), the same mechanism described above applies, but with lower thresholds (i.e. **from 0,5% to 1% of the entity's total global turnover**, and **between 1 and 8 million EUR**, respectively).

In addition, in case of conviction, **disqualifying sanctions** under Article 9 para. 2 of the 231 Decree<sup>10</sup> shall apply, with a duration of **2–6 years** for crimes committed by top managers (*apicali*), and **1–3 years** if committed by employees (*subordinati*) (Article 6 of the Decree). Finally, **repeated offenses** shall lead to a **one-third increase in pecuniary sanctions** (Article 6 of the Decree).

Finally, the amended 231 compliance framework is completed by Article 7 of the Decree, which **extends whistleblower protection** to individuals reporting violations of EU restrictive measures, in line with Article 14 of the Directive.

### 3.3. Additional provisions

The Decree further introduces additional complementary provisions designed to enhance coherence within the Italian enforcement framework, particularly in relation to jurisdictional matters and the delineation of competences between relevant judicial and administrative Authorities.

First, the **jurisdiction of Italian criminal courts** over the above-mentioned offenses, when committed **abroad by Italian citizens**, is established (Article 275-*decies* ICC).

Second, in light of the complexity that may characterize the related criminal investigations, which may entail letters rogatory and/or financial analyses, investigative powers for the newly introduced crimes are assigned to **district public prosecutors**, and the **maximum duration of the preliminary investigation phase is extended to two years** (Article 4 of the Decree).

Third, the national authorities responsible for imposing administrative sanctions are identified, depending on the relevant offences, in either the **Ministry of Economy and Finance** or the **Ministry of Foreign Affairs (UAMA)**, in particular, and, residually, in the same Authority who issued the relevant license/authorization (Article 9 of the Decree).

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<sup>10</sup> For the sake of completeness, the disqualifying sanctions applicable under Article 9 para. 2 of the 231 Decree are as follows: a) debarment; b) suspension or revocation of authorizations, licenses, or permits used to commit the offense; c) prohibition from entering into contracts with public administrations, except for obtaining public services; d) exclusion from benefits, financing, grants, or subsidies, and possible revocation of those already granted; e) prohibition from advertising goods or services.

Specific **coordination and cooperation mechanisms** are established to ensure information on newly introduced offenses is transmitted from administrative Authorities to the **Attorney General at the Court of Appeal of Rome**, who, in turn, will **oversee coordination** among all (criminal and administrative) Authorities involved (Article 10 of the Decree).

Finally, to ensure coherence within Italy's existing sanctions regime, the Decree **rationalizes pre-existing legislation**<sup>11</sup> (Article 12 of the Decree).

## 4. Outlook and compliance considerations for companies

The Decree marks a decisive step toward harmonizing Italian law with the EU's evolving sanctions enforcement paradigm, particularly with regard to the recent anti-circumvention efforts now deemed pivotal at the EU level.

For businesses operating in or through Italy, it is foreseeable that, in the current increasingly geopolitical and shifting business environment, those who adapt promptly will be best positioned to navigate the new requirements introduced by the Decree, once fully in force.

With respect to corporate criminal liability, the Decree represents a further stimulus for companies to effectively identify and mitigate compliance risks and, more generally, adopt a culture of proactive compliance. Entities that fail to adopt and implement an adequate internal control system, now that the Decree has entered into force, may be even more exposed to severe pecuniary and disqualifying sanctions, whereas those that can evidence a living, well-functioning compliance program would be best positioned to mitigate — or even avoid — corporate criminal liability.

Companies seeking to take proactive steps to ensure they are well prepared, they may consider (re-)mapping their sanctions and export controls risks holistically, with a view to fully integrating trade compliance within their 231 and whistleblowing internal control framework.

Risk assessment activities should be aimed at assessing, amongst others, any relevant touchpoints of the company 'to the outside world' (with a particular focus on clients, suppliers, products/services, and relevant jurisdictions), possibly adopting an holistic perspective that considers trade compliance, AML, anti-corruption, ESG, and other risk areas altogether, recognizing their interconnections and potential cumulative impact. In this context, particular attention should be devoted to introducing solid risk-based screening, preferably including ongoing monitoring mechanisms and providing for enhanced due diligence whenever red flags arise.

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<sup>11</sup> Given the breadth of the newly introduced criminal offences, the Decree repeals paragraphs 1, 2, and 3 of Article 20 of Legislative Decree No. 221 of 15 December 2017 ("**Decree 221**"). Criminal sanctions under Articles 18 and 19 of Decree 221 remain in force, but only for the measures covered by letters (a) and (b) of Article 1(1). In contrast, as clarified in the Report, since the scope of Decree 221 partially overlaps with that of Directive 2024/1226, paragraphs 1, 2, and 3 of Article 20, which sanction conduct related to products listed under EU restrictive measures, can be repealed, as this would ensure continuity with the new provisions introduced by the Decree.

Most notably, especially for those companies that still do not have a trade compliance program or policies in place already, leadership commitment and ongoing awareness and training initiatives would prove beneficial in fostering a strong compliance culture that, now more than ever, should embrace also sanctions and export controls risks.

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