

Managing Global Compliance from an EU Perspective

30 September 2021

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Agenda points

- “Euro-crimes” and the evolving landscape of other EU offences
- EU enforcement agenda
- Local law developments
- The Blocking Statute
- Compliance



EU Criminal law, restrictive measures and treaty-based offences

Criminal matters

- The concept of “**Euro-crimes**” covers: Terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime
- Other regulatory/criminal areas, e.g. financial crimes (“PIF-crimes”) and market abuse
- MLA, E-evidence package

Foreign policy “crimes” – The so-called “restrictive measures”

- EU’s classic sanctions portfolio directed at third party countries (e.g. financial sanctions, travel bans and export/import bans)
- Human rights violations and cybercrime added to the portfolio

Treaty-regulated matters

- Competition law
- ECB (significant banks)

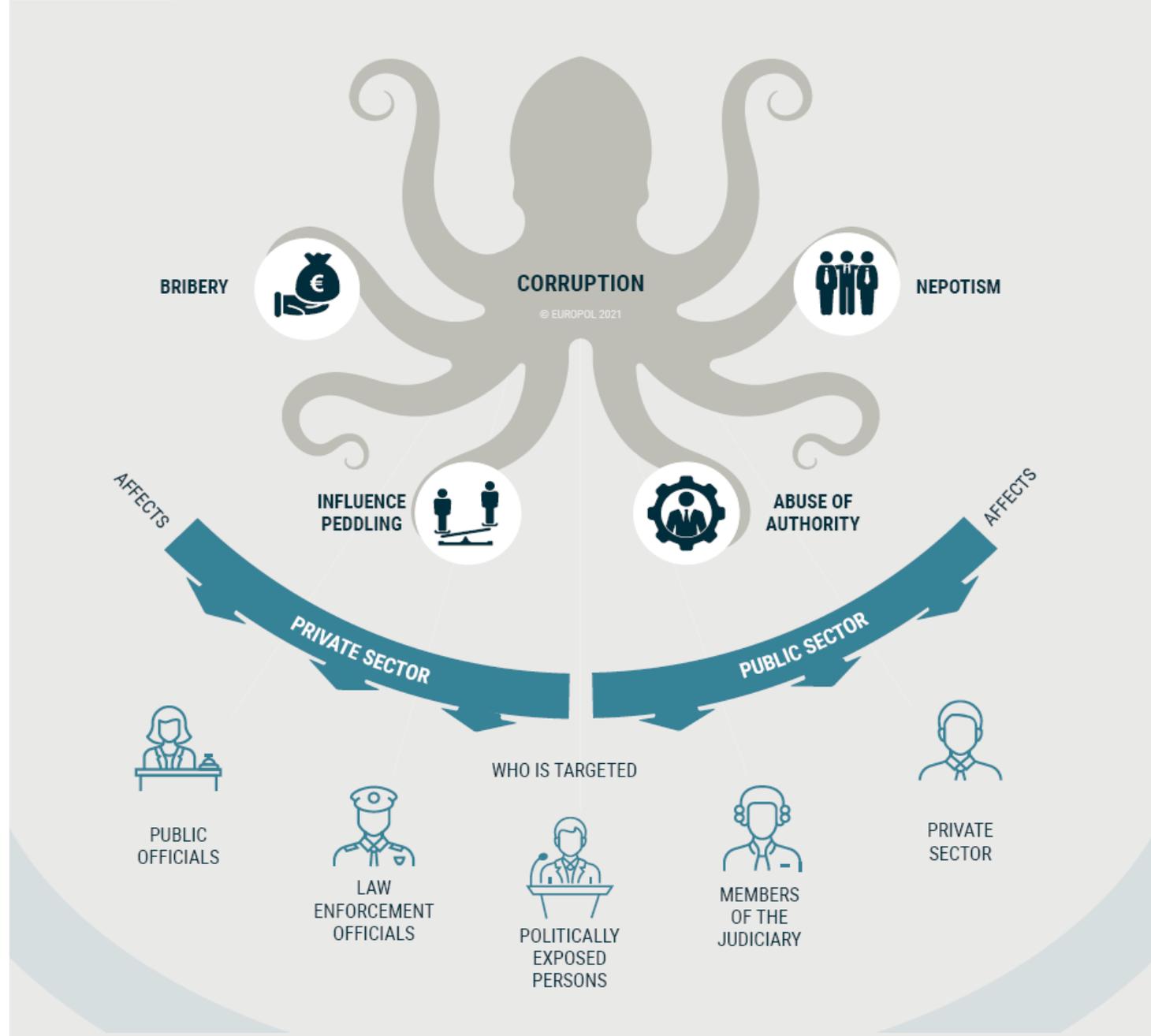


SOCTA 2021

“[...]Corruption is an integral element of almost every organised crime activity. It is used to gain influence and to infiltrate private and public sector organisations.

[...]

Though widespread, corruption is insidious and often invisible. Presumed chronic under-reporting of corruption makes it difficult to evaluate the phenomenon as a criminal threat. The underlying mechanics of corruption have not changed over time. However, the means by which it is implemented reflects changes in technology and society. For instance, cryptocurrencies are increasingly used to make payments to corrupt officials and for money-laundering purposes. In addition, the digitalisation of public administration will lead to the increased targeting of individuals within companies and public services who can manipulate processes and decisions in digital systems or can otherwise facilitate access to valuable information.”



Financial crime: The European Public Prosecutor's Office ("EPPO") took office on 1 June 2021

- Cross-border VAT fraud involving total damages of at least EUR 10,000,000
- Other types of fraud affecting the EU's financial interests
- Corruption that damages, or is likely to damage, the EU's financial interests
- Misappropriation of EU funds or assets by a public official
- Money-laundering and organised crime, as well as other offences inextricably linked to one of the previous categories

Participating EU Member States

Austria	Estonia	Latvia	Romania
Belgium	Finland	Lithuania	Slovakia
Bulgaria	France	Luxembourg	Slovenia
Croatia	Germany	Malta	Spain
Cyprus	Greece	Netherlands	
Czechia	Italy	Portugal	

Non-participants (may join any time)

Hungary
Ireland
Poland
Sweden

Opt-out from AFSJ

Denmark

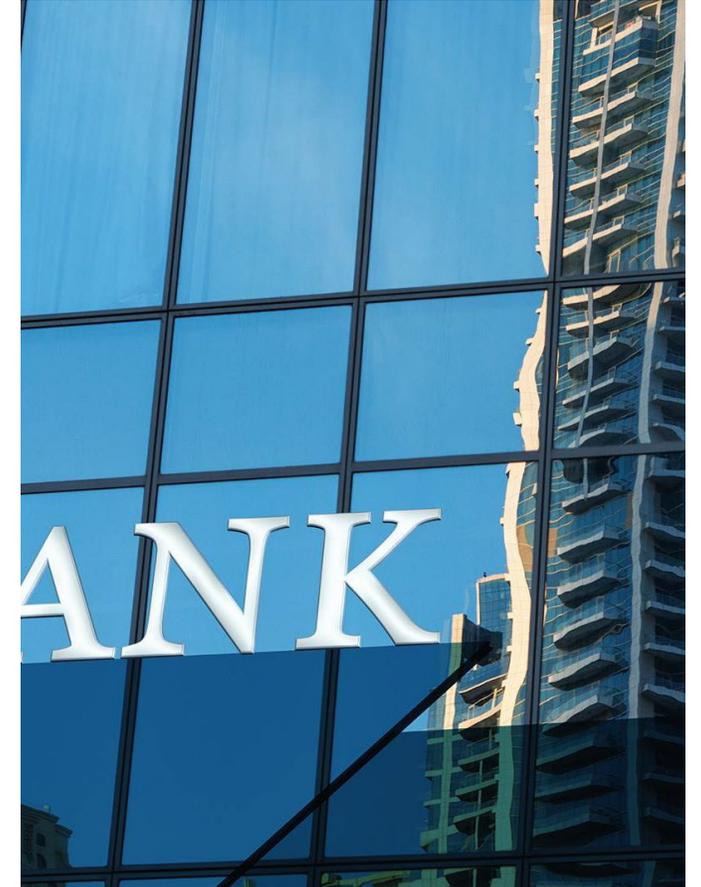


New comprehensive AML package

The aim of the package is to establish a more robust AML/CFT enforcement system in EU.

The package consists of 4 legislative proposals (only highlights):

- The establishment of a new EU AML/CFT Authority (the “**AMLA**”) with relevant enforcement powers
- Change of legal basis for AML control and supervision, including targeted financial sanctions
- A new AMLD6 replacing the existing directives containing rules concerning national supervisors, FIU’s and approximation of sufficiently deterrent financial sanctions etc
- A recast of the regulation on Transfers of Funds



Enforcement of sanctions and responses to extra-territoriality

Mission letter to Commissioner McGuinness (13 September 2020)

- *“To support our economic sovereignty, I want you to develop proposals to ensure Europe is more **resilient to extraterritorial sanctions by third countries**. I want you to **ensure that the sanctions imposed by the EU are properly enforced**, notably throughout its **financial system**.”.*

New EU strategy presented on 19 January 2021: Openness, strength and resilience of Europe’s economic and financial system (selected key actions):

- Analysis of tools to prevent undue interference with EU-based financial market infrastructures
- Working group to assess possible technical issues relating to transfer of financial contracts denominated in euro cleared outside the EU to central counterparties located in the EU
- Exploration of ways to ensure the uninterrupted flow of essential financial services, including payments
- Review of practices that circumvent and undermine sanctions
- Central database with sanctions enforcement information
- Establishing of a single point of contact for enforcement and implementation issues which have cross-border dimensions
- Set-up of a dedicated system to allow for anonymous whistleblowing



National level: Recent developments in leading member states

“Strengthening the capacity of the criminal justice system to fight corruption:

*For example, the anti-corruption law adopted in January 2019 in **Italy** has tightened sanctioning for corruption crimes and suspended limitation periods after the first instance judgments. In addition, a comprehensive reform to streamline criminal procedure is being discussed in Parliament, as the dissuasive impact of sanctions is hampered by the excessive length of criminal proceedings. **Spain** has also sought to increase the capacity of prosecution by allocating additional resources and updating criminal legislation to extend the statute of limitations for serious offences and introduce more severe sanctions for corruption-related crimes. Similarly, **France** has recently taken measures to reorganize the financial police, and a 2020 report showed that corruption-related cases have increased significantly as a proportion of all cases. “*

“The latest Eurobarometer perception surveys show that corruption remains a serious concern for EU citizens and businesses. Over seven in ten Europeans (71%) believe that corruption is widespread in their country and over four in ten Europeans (42%) consider that the level of corruption has increased in their country.”

Danish Police Reform: Establishment of the new "Special Crime Unit" (in Danish "NSK")

Operational
from 1
January
2022

»§ 110 a. National enhed for Særlig Kriminalitet varetager for hele landet efterforskningen og strafforfølningen af forbrydelser, hvor der er grund til at antage, at overtrædelsen har et særligt betydeligt omfang, er et led i organiseret kriminalitet, indebærer kompleks samarbejde med udenlandske retshåndhavende myndigheder, er udført ved anvendelse af særegne metoder eller på anden måde er af særlig kvalificeret karakter.

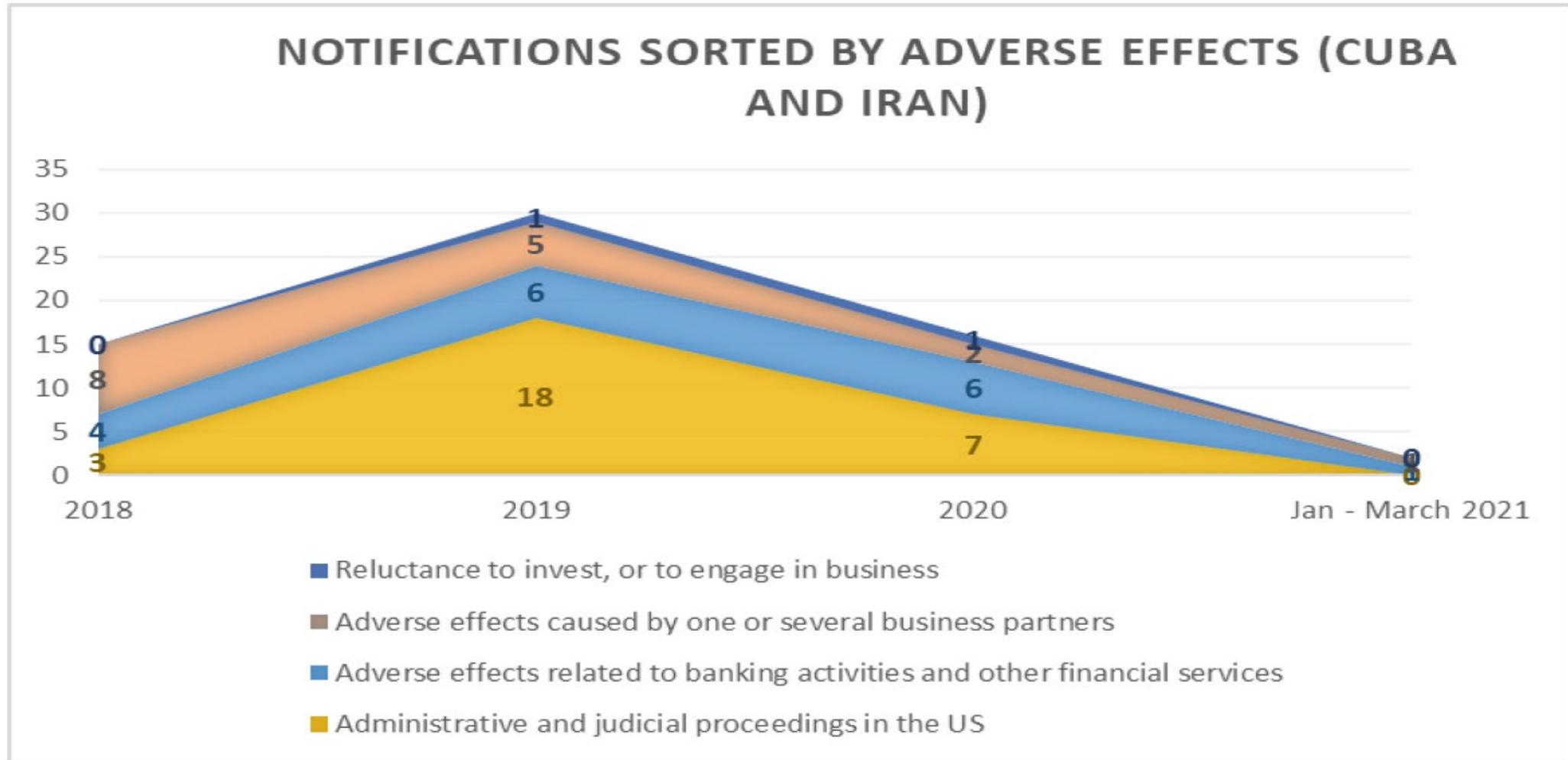


 **SKATTE
STYRELSEN**


FINANSTILSYNET


ERHVERVSTYRELSEN

The Blocking Statute - EU/US controversies



Case C-124/20, Opinion of the Advocate General G. Hogan

“136. In conclusion, I cannot avoid observing that it gives me no particular pleasure to arrive at this particular result. As the facts of this case have highlighted, the EU blocking statute is a very blunt instrument, designed as it is to sterilise the intrusive extraterritorial effects of US sanctions within the Union. This sterilisation method will inevitably bring casualties in its wake and many may think that Telekom Deutschland will be among the first to suffer, not least given its large US operations. As I have already hinted, these are matters which the EU legislature may well wish to ponder and consider.

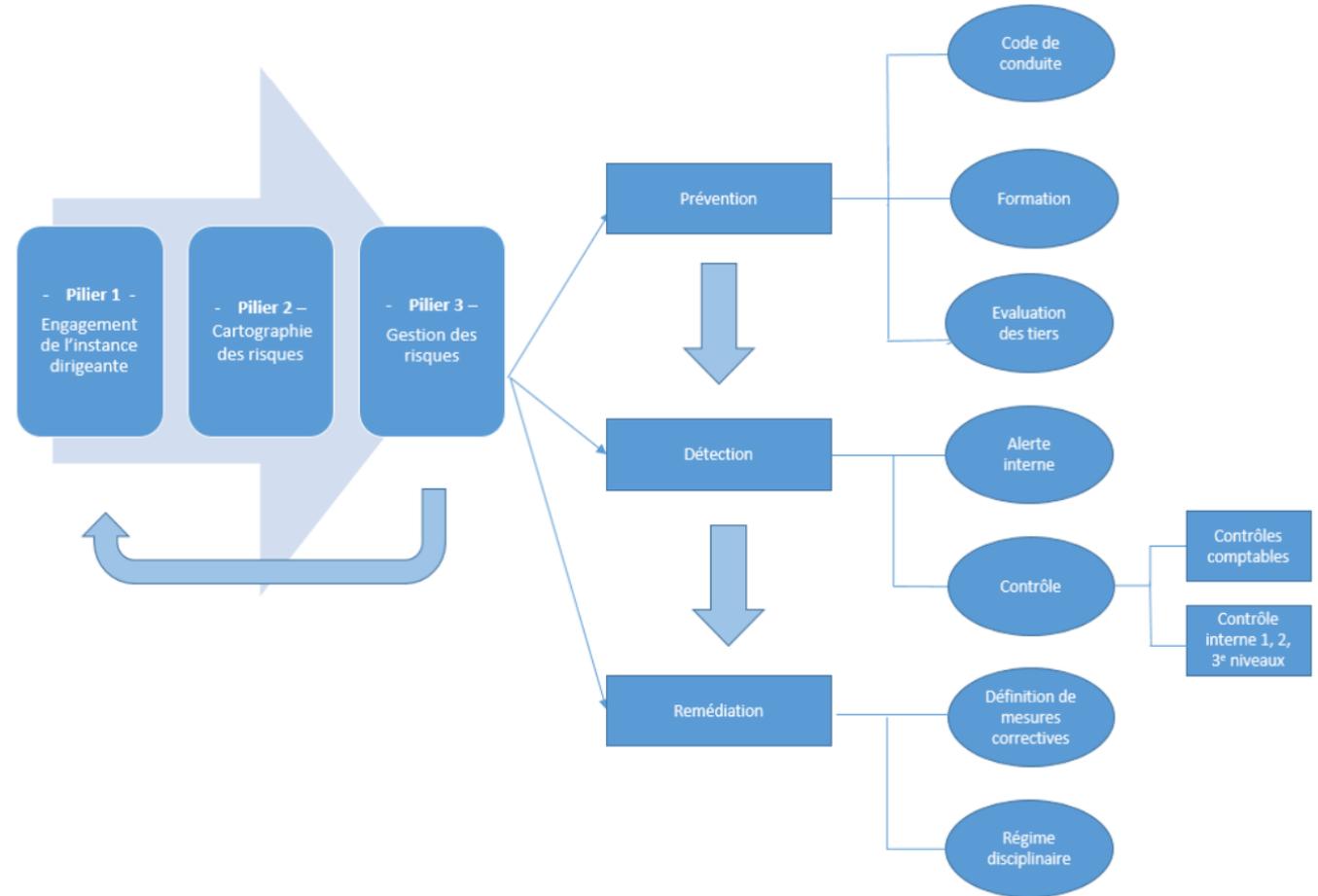
137. This Court is nevertheless simply a court of law and our duty is to give effect to the language of the duly enacted legislation. For the reasons that I have given, I consider that the first paragraph of Article 5 of the EU blocking statute has these far-reaching effects even if in the circumstances such legislative provisions may also be thought to override ordinary business freedoms in an unusual and intrusive manner. I would accordingly propose that the questions posed by the referring court be answered as follows:

- The first paragraph of Article 5 of Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, is to be interpreted as not applying only where an administrative or judicial authority of a country whose laws and regulations are listed in the annex to that regulation has addressed, directly or indirectly, some instructions to a person referred to in Article 11 of that regulation. The prohibition contained in this provision accordingly applies even in the event that an operator complies with such legislation without first having been compelled by a foreign administrative or judicial agency to do so.
- The first paragraph of Article 5 of Regulation No 2271/96 is to be interpreted as precluding an interpretation of national law under which a person referred to in Article 11 of that regulation may terminate a continuing contractual obligation with a contracting party named on the Specially Designated Nationals and Blocked Persons List held by the US Office of Foreign Assets Control, without ever having to justify its decision to terminate those contracts.
- The first paragraph of Article 5 of Regulation No 2271/96 is to be interpreted as meaning that, in the event of a failure to comply with the provisions of that article, the national court seised by a contracting party subject to primary sanctions is required to order a person referred to in Article 11 of that regulation to maintain that contractual relationship, even though, first, the second paragraph of Article 5 should be interpreted restrictively, secondly, such an injunction measure is liable to infringe Article 16 of the Charter of Fundamental Rights of the European Union and, thirdly, such a person is therefore liable to be severely penalised by the authorities responsible for applying one of the laws referred to in the annex to that regulation.”

Compliance



THE FRENCH ANTI-CORRUPTION AGENCY GUIDELINES



1st Pillar – Senior management’s commitment 2nd Pillar – Risk mapping 3rd Pillar – Risk management	Prevention	Code of conduct Training Third-party due diligence
	Detection	Whistleblowing Internal control → Accounting controls 1 st , 2 nd , 3 rd lines of defence
	Corrective action	Definition of corrective measures Disciplinary rules

Appendicies and extras

TFEU extract of relevant treaty provisions

Article 83

1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76.

3. [...]

Article 215

1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

3. The acts referred to in this Article shall include necessary provisions on legal safeguards.

Article 275

The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.

Article 325

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies.

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article

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- Hans Jakob heads Kromann Reumerts Corporate Criminal Law practice, which has a particular focus on financial and economic crime, AML, fraud and criminal corporate liability, including disputes and internal investigations.
 - Hans Jakob joined Kromann Reumert in 2013 after having served as deputy state prosecutor at the office of the State Prosecutor for Serious Economic and International Crime ("SØIK").
 - Hans Jakob aides and represents financial institutions and larger companies in complex matters involving international bribery, money-laundering, internal fraud, and sanctions compliance.
 - Hans Jakob is a very experienced litigator and has acted as prosecutor as well as defense attorney in a large number of court cases. He is the author of several books on economic and financial crime.