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Implementing EU Sanctions Through Criminal Law: Serious Negligence as a New Form of Culpability in the Slovak Republic

Libor Klimek

Department of Criminal Law, Criminology, Criminalistics, and Forensic Disciplines, Faculty of Law, Matej Bel University, 97401 Banská Bystrica, Slovakia; libor.klimek@umb.sk

Abstract

The enforcement of European Union restrictive measures increasingly relies on criminal law at national level, particularly in response to serious and systematic violations that cannot be effectively addressed through administrative sanctions alone. Directive (EU) 2024/1226 requires Member States to ensure effective, proportionate, and dissuasive criminal penalties for breaches of EU sanctions, including, in defined cases, conduct committed with serious negligence. This article examines the introduction of serious negligence as a new statutory form of culpability in the Slovak Republic, adopted through Act No. 157/2025 Coll. as part of the transposition of Union law. The analysis is based on a doctrinal examination of Slovak criminal law, legislative materials, and relevant EU legal instruments, complemented by a comparative overview of selected Member States. The article demonstrates that the Slovak legislator introduced serious negligence (Slovak: *hrubá nedbanlivosť*) as a qualified form of negligence in a cautious and narrowly circumscribed manner, limiting its application to a specific offence relating to the breach of a restrictive measure. While this approach strengthens the effectiveness of EU sanction enforcement, it also raises interpretative and practical challenges, particularly in distinguishing serious negligence from ordinary negligence and indirect intent. The article concludes that the Slovak model reflects a balanced attempt to comply with Union obligations while preserving the internal coherence and fundamental principles of national criminal law, with its long-term impact depending on consistent judicial interpretation and restrained application in practice.

Keywords: European Union sanctions; restrictive measures; criminal liability; serious negligence; culpability in criminal law; Slovak criminal law; EU law transposition

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1. Introduction

The European Union increasingly relies on restrictive measures as a central instrument of its external action, aimed at safeguarding international peace and security, protecting the values of the Union, and preserving the integrity of the internal market. The effectiveness of these measures, however, depends not only on their adoption at Union level, but also on their credible and uniform enforcement within the Member States. In this context, criminal law has gradually assumed a more prominent role, particularly where administrative or civil sanctions have proven insufficient to address serious and systematic violations.

The *Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures* represents a significant step towards the harmonisation of criminal liability in this field. By requiring Member States to criminalise certain breaches of restrictive measures and to ensure that sanctions are effective, proportionate, and dissuasive, the Directive imposes concrete obligations on national criminal-law systems. Of

particular importance is the Directive's approach to the subjective element of criminal liability, as it extends criminal responsibility beyond intentional conduct to include certain particularly serious forms of negligent behaviour.

The transposition of these requirements has posed notable challenges for Member States whose criminal-law doctrines are traditionally built upon a binary distinction between intent and negligence. The Slovak Republic provides a particularly illustrative example of this process. Since the adoption of the Criminal Code in 2005, Slovak criminal law had maintained a stable and conceptually coherent model of culpability, recognising only *intent* and *negligence*, with no differentiation according to the degree of negligence. This long-standing doctrinal framework was altered only in 2025, when *serious negligence* (Slovak: *hrubá nedbanlivosť*) was introduced as a distinct statutory form of culpability through Act No. 157/2025 Coll., explicitly in response to obligations arising from European Union law.

The aim of this article is to analyse *serious negligence* as a new form of culpability in Slovak criminal law, situating it within the broader context of EU sanctions enforcement. The article examines the traditional understanding of the subjective element in Slovak criminal law, the requirements stemming from Directive (EU) 2024/1226, and the legislative choices made by the Slovak legislator in the process of transposition. Particular attention is devoted to the doctrinal implications of introducing serious negligence and to its practical application in the offence of breach of a restrictive measure. In addition to its doctrinal focus, the article also addresses the practical consequences of this legislative reform. It examines the potential challenges associated with the application of serious negligence in criminal proceedings, particularly in evidentiary assessment and judicial qualification of the subjective element in complex regulatory cases. By doing so, the article seeks to bridge the gap between normative innovation and legal practice, highlighting the implications of the new concept for courts, prosecutors, and defence counsel.

2. Methods

From a methodological perspective, this article is based on standard research methods used in legal science. The analysis is conducted exclusively from a legal and doctrinal standpoint and focuses on criminal law, with particular attention to the concept of culpability and its recent development under the influence of European Union law. The combination of applied research methods is intended to ensure a comprehensive examination of the normative, doctrinal, and practical aspects of the introduction of serious negligence into Slovak criminal law.

The core of the research consists of the method of analysis, which was applied primarily to the examination of the relevant provisions of Slovak criminal law, in particular Act No. 300/2005 Coll., the Criminal Code, as amended by Act No. 157/2025 Coll. This method was used to identify and interpret the essential elements of the subjective side of criminal offences, to examine the statutory definition of serious negligence, and to assess its relationship to existing forms of culpability. Analytical methods were also employed in the examination of Directive (EU) 2024/1226 and related legislative materials, including explanatory memoranda, in order to clarify the objectives and scope of the European Union requirements.

In addition, the method of comparison was applied in order to place the Slovak legislative response within a broader European context. Selected Member States, namely the Czech Republic, Austria, Germany, Lithuania and Italy, were briefly examined as comparative examples illustrating different approaches to the criminalisation of non-intentional breaches of Union restrictive measures. The comparative method made it possible to identify common features and differences in national solutions and to highlight the diversity

of doctrinal models through which Member States have implemented the Directive. This is expressly reflected in Article 3(3) of the Directive, which requires Member States to ensure that specific infringements of Union restrictive measures constitute criminal offences also where committed with *serious negligence*, as further contextualised by Recital 4 of the Preamble.

The research further draws on the method of induction, which was used to formulate general conclusions based on the evaluation of analysed legal norms, doctrinal positions, and comparative findings. This method was applied particularly in the assessment of the practical implications of introducing serious negligence and in the formulation of conclusions concerning its impact on Slovak criminal law and legal practice.

The materials used in the preparation of the article include legislative sources of both national and European origin, and domestic and foreign legal literature, textbooks, and articles published in legal journals. It should be noted, however, that given the novelty of the introduction of serious negligence in Slovak criminal law, the availability of domestic scholarly literature on this issue was limited at the time of writing. For this reason, greater emphasis was placed on the analysis of legislative materials and European Union sources. No empirical data were generated or analysed, as the article is based on normative and doctrinal legal research.

3. The Traditional Concept of the Subjective Element and Intent in Slovak Criminal Law

From the adoption of the Criminal Code of the Slovak Republic—the Act No. 300/2005 Coll.[1], the concept of the subjective element of the criminal offence (Slovak: *subjektívna stránka trestného činu*) has constituted an indispensable and structurally autonomous component of each criminal offence committed by a natural person. Slovak criminal law has, from the outset of the recodification, been firmly grounded in the principle of culpability, which excludes any form of objective criminal liability detached from the mental attitude of the offender. The subjective element has consistently been understood as the internal, psychological relationship of the offender to the conduct and to the consequence forming the statutory elements of a criminal offence (Ivor et al. 2025; Klátik et al. 2025; Mencerová et al. 2021). This relationship is not directly observable and must be reconstructed through an assessment of external circumstances, behaviour, and the broader factual context of the case.

Since 2005, the Criminal Code has maintained a stable and systematic approach to culpability (Slovak: *zavinenie*) as the core attribute of the subjective element. Culpability has been exhaustively defined through two basic forms: *intent* (Slovak: *úmysel*) and *negligence* (Slovak: *nedbanlivosť*). This dichotomy has represented a foundational pillar of Slovak criminal-law doctrine and has remained unchanged for almost two decades (Ivor et al. 2025; Klátik et al. 2025; Mencerová et al. 2021). The legislator deliberately refrained from introducing intermediate or hybrid categories of culpability, thereby ensuring conceptual clarity and predictability in the application of criminal liability.

As regards *intent*, it has traditionally occupied a dominant position within this framework. Pursuant to Article 15 of the Criminal Code, intent is characterised by both a cognitive component, consisting in the awareness of relevant circumstances and possible consequences, and a volitional component, reflecting the offender's will to cause such consequences or at least their acceptance. Slovak criminal law distinguishes between direct intent (Slovak: *priamy úmysel*), where the offender seeks to bring about the prohibited

[1] *Zákon Národnej rady Slovenskej republiky č. 300/2005 Z. z., Trestný zákon v znení neskorších predpisov* [online; Act of the National Council of the Slovak Republic No. 300/2005 Coll., as amended]. Available at https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2005/300/20251227 (accessed on 11 January 2026).

consequence, and indirect intent (Slovak: *nepriamy úmysel*), where the offender foresees the consequence as possible and is reconciled with its occurrence. This dual structure has allowed for a nuanced assessment of the offender's mental state while preserving the qualitative distinction between intent and negligence. The primacy of intent has been particularly evident in the Special Part of the Criminal Code, which defines all criminal offences in the Slovak Republic (Ivor et al. 2021; Mencerová et al. 2025; Čentéš et al. 2020). As a general rule, criminal offences have been conceived as intentional unless the statutory wording expressly allows for negligent commission. This legislative technique reflects a long-standing doctrinal assumption that criminal repression should primarily target conduct exhibiting a deliberate or at least consciously accepted violation of legally protected interests. Negligence, by contrast, has traditionally functioned as an exception, justified only where the legislator explicitly deemed the protection of a given legal interest to require the extension of criminal liability to less intensive forms of culpability.

As regards *negligence*, as defined in Article 16 of the Criminal Code, it has been limited to two classical forms: conscious (Slovak: *vedomá nedbanlivosť*) and unconscious negligence (Slovak: *nevedomá nedbanlivosť*), which is a new type of negligence (see below). Conscious negligence presupposes awareness of the possibility of causing a prohibited consequence, combined with an unjustified reliance on its non-occurrence, whereas unconscious negligence rests on a failure to foresee such a consequence despite an objective and subjective duty to do so (Ivor et al. 2025; Klátik et al. 2025; Mencerová et al. 2021). Until the recent amendment, Slovak criminal law did not differentiate negligence according to its degree of seriousness beyond this binary distinction. The prevailing doctrinal view considered negligence a qualitatively homogeneous category, clearly separated from intent by the absence of volitional acceptance of the harmful outcome.

On the one hand, traditional construction of the subjective element and culpability has provided a coherent and internally consistent framework since the entry into force of the Criminal Code in 2006 (Ivor et al. 2006); such a concept of culpability in Slovak criminal law was also well established under the previous Criminal Code in force prior to the current Criminal Code (Čič 1982; Čič et al. 1984). Its stability has contributed to legal certainty and doctrinal continuity, while at the same time delimiting the boundaries of criminal liability in accordance with classical continental criminal-law theory. On the other hand, the introduction of a new, qualified form of negligence in 2025 therefore represents a significant contemporary conceptual development of Slovak criminal law—in theory and practice.

4. European Union Requirements Concerning Criminal Liability for the Breach of Restrictive Measures

From a historical and comparative perspective, the concept of *serious negligence* must be understood against the broader development of negligence within European criminal law. In continental legal systems, the differentiation between *intent* and *negligence* emerged as part of the systematic construction of culpability, with aggravated forms of negligence gradually recognised in doctrine and case-law as reflecting a particularly grave breach of a duty of care. The idea of a heightened degree of negligence therefore developed internally within the theory of culpability, even where not expressly codified as a separate statutory category (Ivor et al. 2025). By contrast, in *common law* jurisdictions the structure of criminal liability traditionally revolves around the notion of *mens rea*, and the categorisation of mental states does not always mirror the continental dichotomy. While forms of *serious negligence* are recognised—most notably in offences such as serious negligence manslaughter—they are typically offence-specific and judicially elaborated rather than embedded in a general part of the criminal code (Ormerod and Laird 2018; Horder 2022). The comparative perspective thus reveals that, although aggravated negligence is not unknown in *common law* systems,

its doctrinal positioning differs significantly from the systematic role it plays in continental criminal law theory.

The European Union's approach to restrictive measures has undergone a significant evolution in recent years, particularly in response to growing geopolitical tensions and the increased use of sanctions as an instrument of the Union's external action. Restrictive measures adopted under Article 29 of the Treaty on European Union[2] and Article 215 of the Treaty on the Functioning of the European Union[3] are intended to safeguard international peace and security, protect the values and fundamental interests of the Union, and ensure the effective functioning and integrity of the internal market. Despite their binding nature, the enforcement of these measures has traditionally remained within the competence of the Member States, resulting in fragmented approaches to criminal liability and sanctioning practices.

Prior to the adoption of the *Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures*[4], the criminal-law response to breaches of EU restrictive measures varied considerably across Member States. Differences concerned not only the classification of conduct as criminal or administrative, but also the scope of punishable behaviour, the severity of sanctions, and the required mental element. This lack of harmonisation created enforcement gaps, undermined the deterrent effect of sanctions, and risked distorting competition within the internal market by allowing economic operators to exploit divergent national standards (Šinkūnas and Isokaitė-Valužė 2026; Ouwerkerk et al. 2026). From the perspective of Union law, such disparities were increasingly perceived as incompatible with the objective of ensuring the uniform and effective application of restrictive measures.

The Directive (EU) 2024/1226 constitutes a decisive step towards the harmonisation of criminal liability in this field. Its primary objective is to establish minimum rules concerning the definition of criminal offences and sanctions for the violation of Union restrictive measures. The Directive is expressly grounded in the need to enhance the effectiveness, proportionality, and dissuasiveness of enforcement mechanisms, while at the same time respecting the fundamental principles of national criminal-law systems. In doing so, the Union legislator acknowledged that purely administrative or civil sanctions may be insufficient to address particularly serious forms of non-compliance, especially in cases involving significant economic value, organised structures, or systemic circumvention of sanctions regimes.

The adoption of Directive (EU) 2024/1226 requires careful attention to the terminology deliberately chosen by the Union legislator. The Directive consistently employs the expression *serious negligence*, and this contribution therefore adheres to that wording. The terminological choice is not incidental. It reflects a normative decision at Union level and must guide both the interpretation of the Directive and its transposition into national criminal law. In particular, Article 3(3) of Directive obliges Member States to ensure that

[2] Treaty on European Union. Official Journal of the European Union, C 326 of 26.10.2012, pp. 13–390. Available online at https://eur-lex.europa.eu/eli/treaty/teu_2012/oj/eng (accessed on 11 January 2026).

[3] Treaty on the Functioning of the European Union. Official Journal of the European Union, C 326 of 26.10.2012, pp. 47–390. Available online at https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj/eng (accessed on 11 January 2026).

[4] 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. Official Journal of the European Union, L 2024/1226 of 29.4.2024; available online at https://eur-lex.europa.eu/eli/dir/2024/1226/oj/eng (accessed on 11 January 2026). See also: Criminal offences and penalties for the violation of EU restrictive measures: Summary of Directive (EU) 2024/1226 defining criminal offences and penalties for the violation of EU restrictive measures [online]; available at https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32024L1226 (accessed on 11 January 2026). See also: Proposal for a directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures—COM/2022/684 final; available online at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0684 (accessed on 11 January 2026).

certain infringements of Union restrictive measures constitute criminal offences not only where committed *intentionally*, but also where committed with *serious negligence*. This obligation is not formulated in abstract or general terms; it is linked to defined categories of conduct, notably in relation to items included in the Common Military List of the European Union and dual-use items. The Directive does not seek to harmonise a general theory of negligence in criminal law. Rather, it requires Member States to extend criminal liability to situations in which a particularly grave breach of the duty of care undermines the effectiveness of Union restrictive measures. Moreover, Recital No. 4 of the Preamble of the Directive refers to the case-law of the Court of Justice of the European Union as an interpretative background for the instrument. However, it does so in general terms and without identifying specific judgments. This legislative technique suggests that the Union legislator intended to anchor the Directive within the broader jurisprudential framework developed by the Court of Justice. Consequently, the interpretation of *serious negligence* cannot be undertaken in isolation. It must be situated within the systemic context of Union law and read in light of the Court's established approach to the enforcement of Union obligations.

A key aspect of the Directive lies in its approach to the subjective element of criminal liability. While intent remains the primary form of culpability envisaged for most sanction-related offences, the Directive explicitly requires Member States to extend criminal liability to certain forms of particularly serious negligent conduct. In this context, the Directive introduces the concept of *serious negligence* as a sufficient mental element for criminal responsibility in defined situations, notably in relation to the trade in military goods, dual-use items, and other strategically sensitive products subject to restrictive measures. The inclusion of *serious negligence* reflects the Union legislator's assessment that certain forms of conduct, although not intentional, demonstrate such a serious disregard for legally imposed duties of care that they merit criminal sanction.

From a continental criminal-law perspective, this requirement represents a significant normative signal. The Directive does not seek to equate *serious negligence* with intent, nor does it mandate a general expansion of negligent criminal liability. Rather, it operates on the assumption that *serious negligence* constitutes a qualitatively aggravated form of negligence, situated between ordinary negligence and intent. By requiring Member States to criminalise such conduct, the Union implicitly recognises differentiated degrees of culpability within negligence itself, even if national legal traditions have not previously drawn such distinctions in statutory form.

At the same time, the Directive leaves a measure of discretion to Member States regarding the concrete doctrinal implementation of *serious negligence* within their domestic legal systems. It does not prescribe a uniform definition, but instead obliges Member States to ensure that their criminal-law frameworks are capable of capturing conduct characterised by a manifest and serious breach of duties arising from restrictive measures. This approach respects the diversity of continental criminal-law doctrines while imposing a clear functional requirement: the effective criminalisation of particularly harmful negligent violations of Union sanctions.

In this sense, the Directive operates as a catalyst for doctrinal change at the national level—in the Member States of the EU, including the Slovak Republic. For legal systems such as that of the Slovak Republic, which had long adhered to a binary model of culpability, the transposition of Directive (EU) 2024/1226 necessitated a reconsideration of the traditional boundaries of negligence. The Union requirements thus form the normative and conceptual backdrop against which the Slovak legislator introduced *serious negligence* as a distinct statutory category, marking a departure from the previously unchanged structure of the subjective element in Slovak criminal law.

5. The Legislative Response of the Slovak Republic

The adoption of the Directive (EU) 2024/1226 placed a clear and binding obligation on the Slovak Republic to adapt its criminal-law framework so as to ensure the effective criminalisation of breaches of Union restrictive measures. Given the constitutional position of criminal law as an instrument of last resort (*ultima ratio*), the Slovak legislator faced the task of reconciling the Directive's requirements with the established doctrinal foundations of domestic criminal law, particularly in relation to the concept of culpability. The legislative response therefore involved not merely a technical transposition exercise, but a substantive assessment of how Union law could be integrated into a system that had remained largely unchanged since the adoption of the Criminal Code in 2005.

The Slovak Republic opted to fulfil its transposition obligation primarily through the Act No. 157/2025 Coll.[5], which amended the Criminal Code No. 300/2005 Coll., as well as related legislation (Zábrenszki 2025; Šamko 2024). The explanatory memorandum accompanying the draft legislation[6] identified Directive (EU) 2024/1226 as the principal impetus for the amendment. It emphasised the need to ensure that violations of restrictive measures of the European Union are subject to effective, proportionate, and dissuasive criminal sanctions, in line with Union law and the commitments arising from Slovakia's membership in the European Union.

From a legislative-policy perspective, the Slovak legislator was confronted with several possible approaches. One option would have been to expand the scope of intent by broadening the interpretation of indirect intent or by introducing specific presumptions of intent in sanction-related offences. Such a solution, however, would have risked undermining the doctrinal coherence of the concept of intent and blurring the established distinction between intentional and negligent conduct. Another option would have been to rely exclusively on existing forms of negligence, thereby extending criminal liability to all negligent breaches of restrictive measures. This approach, however, was considered incompatible with the principle of proportionality and with the traditional reluctance of Slovak criminal law to criminalise ordinary negligence in economically and administratively regulated fields (Zábrenszki 2025; Kiko and Richter 2025).

Against this background, the Slovak legislator chose a more differentiated solution. Rather than reshaping the concept of intent or generally expanding negligent criminal liability, the amendment introduced a new statutory category of culpability in the General Part of the Criminal Code, namely *serious negligence*. This concept was incorporated into Article 16 as a distinct form of negligence, thereby preserving the classical structure of culpability while allowing for a targeted extension of criminal liability in cases characterised by an exceptionally serious breach of duties of care.

The legislative materials make clear that the introduction of *serious negligence* was conceived as a direct response to the requirements of Union law. The explanatory memorandum explicitly refers to the need to cover conduct that, although not intentional, demonstrates a manifest disregard for obligations arising from restrictive measures and poses a serious threat to the interests protected by the European Union. At the same time, the legislator stressed that *serious negligence* should not become a generally applicable

[5] Zákon Národnej rady Slovenskej republiky č. 157/2025 Z. z., ktorým sa mení a dopĺňa zákon č. 300/2005 Z. z. Trestný zákon v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony [online; Act of the National Council of the Slovak Republic No. 157/2025 Coll., amending and supplementing Act No. 300/2005 Coll., the Criminal Code, as amended, and amending and supplementing certain other Acts]. Available at https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2025/157/20250801.html (accessed on 11 January 2026).

[6] *Legislatívny proces LP/2025/157—Sprievodná dokumentácia* [online; transl.: Legislative Process LP/2025/157—Accompanying Documentation]. Available at https://www.slov-lex.sk/elegislativa/legislativne-procesy/SK/LP/2025/157/sprievodne-dokumenty?stadiumUuid=68c803d0-8bcd-48f8-842e-6c986792edf3 (accessed on 11 January 2026).

substitute for intent, nor should it erode the traditional boundaries of negligent liability in Slovak criminal law.

The placement of the new provision within the General Part of the Criminal Code is of particular systemic significance. By embedding *serious negligence* in the general definition of culpability, the legislator ensured that the concept would be applicable only where expressly required by the Special Part (Zábrenszki 2025). This legislative technique reflects an intention to maintain a high degree of control over the expansion of criminal liability and to prevent an unintended spill-over of the new concept into areas of criminal law for which it was not designed. In this respect, the Slovak response can be characterised as cautious and structurally conservative, despite the undeniable novelty of the introduced concept.

Overall, the legislative response of the Slovak Republic represents an attempt to strike a balance between compliance with European Union obligations and fidelity to established domestic criminal-law doctrine. The introduction of *serious negligence* constitutes a significant doctrinal innovation, yet one that is carefully circumscribed and explicitly linked to the specific regulatory context of Union restrictive measures. This approach sets the stage for the subsequent analysis of the current wording of the Criminal Code and its application to concrete criminal offences.

6. Serious Negligence in Slovak Criminal Law as of 2025

With effect from 1st August 2025, Slovak criminal law formally recognises *serious negligence* (Slovak: *hrubá nedbanlivosť*) as a distinct statutory form of culpability. This development marks the first explicit differentiation within negligence since the adoption of the Criminal Code in 2005 and represents a notable shift in the conceptual architecture of the subjective element (Strémy et al. 2025; Turay et al. 2025). *Serious negligence* was introduced into Article 16(2) of the Criminal Code as a separate paragraph, thereby supplementing, rather than replacing, the existing categories of conscious and unconscious negligence. Under Article 16(2) of the Criminal Code "*A criminal offence is committed with serious negligence where the offender, in a particularly indifferent manner or in a seriously careless way, breaches the usual standard of caution, diligence, or a duty arising from generally binding legal regulations, and such a breach results in the endangerment or violation of an interest protected by this Act.*" (Slovak: "*Trestný čin je spáchaný z hrubej nedbanlivosti, ak páchateľ obzvlášť ľahostajne alebo hrubo poruší obvyklú opatrnosť, starostlivosť alebo povinnosť vyplývajúcu zo všeobecne záväzných právnych predpisov, a toto porušenie viedlo k ohrozeniu alebo porušeniu záujmu chráneného týmto zákonom*").

The statutory formulation of *serious negligence* is deliberately abstract and value-oriented. Rather than defining it through a closed list of criteria, the provision characterises *serious negligence* as a particularly serious breach of duties of care, arising from a manifest disregard of obligations imposed by law or by the nature of the regulated activity. The emphasis lies on the intensity of the deviation from the required standard of conduct. *Serious negligence* therefore presupposes more than a mere lapse of attention or an ordinary error of judgement; it requires conduct that clearly and significantly falls short of what can reasonably be expected from the offender in the given circumstances.

A central element of the concept is the individualisation of the standard of care. In assessing *serious negligence*, due regard must be had to the personal characteristics of the offender, including their professional qualifications, experience, position, and the specific duties associated with their role. This approach is consistent with the established doctrine of negligence in Slovak criminal law, yet it places considerably greater weight on the offender's expertise and responsibility. Conduct that might qualify as ordinary negligence when committed by a layperson may therefore amount to *serious negligence* when committed

by an individual acting in a professional or regulatory capacity, particularly where the relevant obligations are clear and foreseeable.

From a doctrinal perspective, *serious negligence* remains firmly situated within the category of negligence and must be distinguished from intent. Unlike indirect intent, *serious negligence* does not entail acceptance or reconciliation with the prohibited consequence. The offender does not will the outcome, nor do they consciously consent to its occurrence. Nevertheless, the degree of carelessness or indifference to legal duties is such that the resulting harm can no longer be regarded as a marginal or accidental by-product of otherwise lawful conduct. In this sense, *serious negligence* occupies an intermediate position in terms of blameworthiness, without collapsing the conceptual boundary between negligence and intent (Turay et al. 2025).

The practical significance of *serious negligence* becomes apparent in its application within the Special Part of the Criminal Code. The provisions concerning breaches of restrictive measures of the European Union explicitly allow for criminal liability not only in cases of intentional conduct, but also where such breaches are committed with *serious negligence*. This applies, in particular, to offences involving the provision, transfer, or facilitation of access to goods and services subject to restrictive measures, where the legislator considered the potential harm to Union interests to be sufficiently serious to justify an expanded scope of criminal liability.

In this context, *serious negligence* serves a clearly delineated function. It enables the criminal-law response to capture conduct that, while lacking intent, nevertheless demonstrates a profound failure to comply with legally imposed duties of diligence. Typical examples may include situations in which economic operators, financial intermediaries, or other regulated entities disregard obvious warning signs, fail to implement mandatory compliance mechanisms, or systematically neglect their obligations under sanctions regimes. The criminal relevance of such conduct does not stem from mere inadvertence, but from a sustained or manifestly irresponsible approach to legally binding obligations.

At the same time, the legislator sought to limit the reach of *serious negligence* by linking its application strictly to those offences for which it is expressly mentioned. The introduction of *serious negligence* into the General Part does not, in itself, expand criminal liability across the entire Criminal Code. Its applicability remains contingent upon an explicit reference in the Special Part—a new criminal offence entitled *Breach of a Restrictive Measure* (Slovak: *Porušenie reštriktívneho opatrenia*) defined by Article 417b of the Criminal Code—"*Whoever, even through serious negligence, breaches a restrictive measure in an amount of at least EUR 10,000 relating to trading, import, export, sale, purchase, transfer, transit, or transport, as well as the provision of intermediary services, technical assistance, or other services connected with items listed in the European Union Common Military List or with dual-use items referred to in a special regulation, shall be punished by imprisonment for up to five years.*" (Slovak: "*Kto, čo aj z hrubej nedbanlivosti, poruší reštriktívne opatrenie v rozsahu najmenej 10 000 eur týkajúce sa obchodovania, dovozu, vývozu, predaja, nákupu, prevodu, tranzitu, prepravy, ako aj poskytovania sprostredkovateľských služieb, technickej pomoci alebo iných služieb súvisiacich s položkami uvedenými v Spoločnom zozname vojenského materiálu Európskej únie alebo s položkami dvojakého použitia uvedenými v osobitnom predpise) potrestá sa odňatím slobody až na päť rokov*").

It should be noted that although the Criminal Code contains several statutory offences relating to the breach of a restrictive measure—Articles 417a, 417b, 417c and 417d only one of them—Article 417b—explicitly recognises *serious negligence* as a constitutive element of the subjective side of the offence.

A comparative overview of selected Member States demonstrates the varied ways in which national legislators have responded to the requirements of Directive (EU) 2024/1226, particularly as regards criminal liability for non-intentional breaches of Union restrictive

measures. The *Czech Republic*, governing a similar approach to intent and negligence as Slovakia (Šámal et al. 2023), has adopted a continuity-based approach, refraining from introducing a new form of culpability and relying instead on a restrictive application of the existing concept of negligence, thereby preserving the traditional binary structure of the subjective element. In the Czech Republic, the structure of culpability is expressly regulated in Sections 15 and 16 of Act No. 40/2009 Coll., the Criminal Code.[7] Article 15 defines intent, distinguishing between direct intent and indirect intent based on awareness and acceptance of the prohibited consequence. Article 16(1) defines negligence and differentiates between conscious and unconscious negligence. Importantly, Article 16(2) expressly recognises *serious negligence* as a specific form of negligence, characterised by a manifest disregard for the required standard of due care and an evident indifference towards legally protected interests. Austria represents a contrasting model, as its criminal-law system has long recognised *serious negligence* as a differentiated and established category (Baumann et al. 2021), which enabled a smooth and technically uncomplicated transposition of the Directive. In Austria, the general structure of culpability is regulated in Article 5–7 of the *Strafgesetzbuch* (StGB).[8] Article 5 defines intent, Article 6 defines negligence, and Article 7 establishes the principle that negligent conduct is punishable only where expressly provided by statute. The general part of the Criminal Code does not recognise *serious negligence* as a separate autonomous category of culpability. However, the concept appears in several specific provisions of the special part of the Criminal Code as a qualifying element that increases criminal liability or the applicable penalty. *Germany* has followed a similarly doctrine-preserving path, maintaining a uniform statutory notion of negligence and addressing particularly serious negligent conduct through tailored offence definitions and judicial interpretation rather than formal differentiation of culpability (Kaspar and Reinbacher 2026). In Germany, culpability is structured in Articles 15 and 16 of the *Strafgesetzbuch* (StGB).[9] Article 15 establishes the fundamental principle that only intentional conduct is punishable unless the law expressly provides for negligence, while Article 16 addresses mistake of fact and its implications for intent. Negligence is not comprehensively defined in a single autonomous provision of the general part but is recognised as a basis of liability where explicitly provided in specific offences. The German Criminal Code does not codify *serious negligence* as a separate general category of culpability. Instead, the concept may appear in particular offences within the special part as an aggravating threshold or as a qualifying element affecting the level of liability or sentencing. *Lithuania* adheres to the traditional continental model of culpability, distinguishing between intent and negligence within the general part of its Criminal Code (Švedas et al. 2017) and not recognising *serious negligence* as a separate statutory category. At the same time, in implementing Directive (EU) 2024/1226, it introduced criminal liability for negligent infringements of Union restrictive measures in the relevant provisions of its criminal legislation, thereby ensuring compliance with the Directive without altering the systematic structure of culpability in its general part. *Italy* occupies an intermediate position, as its criminal law does not codify *serious negligence* as a separate statutory category but allows courts to identify exceptionally serious breaches of duties of care through established doctrinal interpretation and case-law (Fiandaca and Musco 2025). In Italy, culpability is regulated in Articles 42 and 43 of the Criminal Code.[10]

[7] *Zákon č. 40/2009 Sb. Trestní zákoník* [online; Act No. 40/2009 Coll., Criminal Code]. Available at https://www.e-sbirka.cz/sb/2009/40?zalozka=text (accessed on 11 January 2026).

[8] *Strafgesetzbuch* [online; Criminal Code]. Available at https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296 (accessed on 11 January 2026).

[9] *Strafgesetzbuch* [online; Criminal Code]. Available at https://www.gesetze-im-internet.de/stgb/BJNR001270871.html (accessed on 11 January 2026).

[10] *Codice Penale* [online; Criminal Code]. Available at https://www.brocardi.it/codice-penale/ (accessed on 11 January 2026).

Article 42 establishes the principle that criminal liability requires intent or negligence, unless otherwise provided by law, while Article 43 defines the psychological element of the offence and distinguishes between intentional and negligent conduct. The notion of *serious negligence* operates either as a qualifying element in specific offences or through doctrinal and judicial interpretation, which identifies particularly serious breaches of duties of care on a case-by-case basis. In comparative perspective, these approaches reveal that Member States have pursued compliance with Union requirements either through explicit legislative reform or through adaptive use of existing culpability concepts. This diversity underscores that the Directive does not impose a single doctrinal model, but rather permits national legal systems to integrate its requirements in a manner consistent with their established structures and traditions of criminal law.

7. Implications for Legal Practice

The introduction of *serious negligence* as a distinct statutory form of culpability is likely to have a significant impact on the application of criminal law in practice, particularly in cases concerning the breach of restrictive measures of the European Union. Although the scope of the new concept is formally limited to those offences in which it is expressly mentioned, its interpretative consequences extend beyond the immediate normative context. Legal practitioners, courts, and law-enforcement authorities will be required to reassess established approaches to determining the subjective element, especially in complex economic and regulatory cases.

One of the primary practical challenges lies in the evidentiary assessment of *serious negligence*. As with all forms of culpability, the mental element cannot be directly observed and must be inferred from objective circumstances. However, *serious negligence* demands a more nuanced evaluation than ordinary negligence, focusing on the intensity of the breach of duties of care. Courts will need to determine whether the offender's conduct merely reflects a lack of due attention, or whether it constitutes a manifest and serious deviation from the standard of care that can reasonably be expected. This assessment will inevitably involve a detailed analysis of the offender's professional background, expertise, organisational role, and awareness of regulatory obligations.

A further difficulty arises in distinguishing *serious negligence* from indirect intent. In practice, the boundary between a particularly serious form of negligence and a mental state characterised by acceptance of the harmful consequence may be difficult to draw. There is a risk that *serious negligence* could be applied in cases where the factual circumstances might also support a finding of indirect intent, or conversely, that courts may hesitate to apply *serious negligence* for fear of encroaching upon the conceptual domain of intent. The development of consistent judicial criteria will therefore be essential to preserving doctrinal clarity and legal certainty.

From the perspective of prosecutorial practice, the availability of *serious negligence* as a basis for criminal liability may facilitate the enforcement of restrictive measures in cases where proof of intent would be particularly onerous. Complex sanction regimes often involve multilayered corporate structures, delegated decision-making, and automated processes, all of which may obscure individual intent. *Serious negligence* allows for the attribution of criminal liability in situations where offenders demonstrably failed to implement or respect fundamental compliance obligations, even in the absence of clear evidence of intentional wrongdoing.

At the same time, the new concept places increased demands on defence practice. Defence counsel will be required to engage more deeply with questions of professional standards, internal compliance systems, and the reasonableness of the offender's conduct in the given regulatory environment. Arguments are likely to focus on the foreseeability

of the prohibited outcome, the clarity of the relevant legal duties, and the adequacy of organisational safeguards. In this respect, *serious negligence* may become a focal point of adversarial debate, particularly in economically and technically complex cases.

In a broader perspective, the introduction of *serious negligence* may contribute to a gradual recalibration of the role of negligence in Slovak criminal law. While the legislator has sought to confine the concept to a narrowly defined set of offences, its practical application will inevitably influence judicial reasoning and doctrinal discourse. Much will depend on how cautiously courts approach the new category and whether they succeed in maintaining a clear distinction between ordinary negligence, *serious negligence*, and intent. The long-term impact of this development will therefore be shaped less by the statutory wording itself than by the interpretative practices that emerge in its application.

In practical terms, the introduction of *serious negligence* is likely to give rise to several interpretative and systemic difficulties. One of the most significant risks concerns the uncertainty surrounding the threshold separating ordinary negligence from *serious negligence*. Given the abstract wording of the statutory definition, courts will be required to develop evaluative criteria capable of distinguishing between mere regulatory non-compliance and conduct that reaches the level of a particularly serious breach of duties of care. In the absence of established case law, this may initially lead to inconsistent judicial approaches and reduced predictability of outcomes, especially in economically complex cases.

Another potential problem lies in the relationship between *serious negligence* and indirect intent. In borderline situations, where the offender was aware of the risk of violating restrictive measures but failed to act accordingly, the qualification of the mental element may become contested. There is a danger that *serious negligence* could be applied as a substitute for intent in evidentially difficult cases, thereby weakening the conceptual boundary between these forms of culpability. Such a development would raise concerns from the perspective of the principle of culpability and could undermine the internal coherence of the culpability structure in Slovak criminal law.

Further challenges may arise in cases involving corporate and organisational settings. The assessment of *serious negligence* will often require courts to examine internal compliance systems, delegation of responsibilities, and decision-making processes within legal entities. Determining whether failures at an organisational level amount to *serious negligence* on the part of a specific individual may prove particularly demanding and could complicate the attribution of criminal responsibility. This is especially relevant in the context of EU restrictive measures, where obligations are frequently technical, dynamic, and subject to frequent amendments.

Finally, the practical application of *serious negligence* will depend heavily on judicial restraint and methodological consistency. If interpreted expansively, the new concept may lead to an unintended broadening of criminal liability beyond the limited scope envisaged by the legislator. Conversely, an overly restrictive interpretation could deprive the provision of its intended effectiveness in enforcing Union restrictive measures. The long-term impact of *serious negligence* on legal practice will therefore be shaped by the ability of courts to balance effectiveness with legal certainty, while preserving the traditional hierarchy of culpability within Slovak criminal law.

8. Conclusions

The introduction of *serious negligence* as a distinct statutory form of culpability represents one of the most significant recent developments in Slovak criminal law. For the first time since the adoption of the Criminal Code in 2005, the traditional binary structure of culpability has been supplemented by a differentiated category of negligence, reflecting an increased sensitivity to the degree of blameworthiness associated with non-intentional

conduct. This development did not arise from internal doctrinal evolution, but rather from the need to comply with binding obligations imposed by European Union law, in particular Directive (EU) 2024/1226 on the criminal enforcement of restrictive measures.

The Slovak legislator responded to these obligations in a cautious and structurally conservative manner. Instead of expanding the scope of intent or broadly extending criminal liability for negligent conduct, *serious negligence* was introduced as a narrowly circumscribed concept, applicable only where expressly provided for in the Special Part of the Criminal Code. Its application is currently limited to a single offence relating to the breach of a restrictive measure, thereby preserving the exceptional nature of negligent criminal liability and safeguarding the principle of legality.

From a doctrinal perspective, *serious negligence* occupies an intermediate position between ordinary negligence and intent. While it does not involve acceptance of the prohibited consequence, it reflects a manifest and serious breach of duties of care that justifies criminal sanction in light of the protected interests at stake. The Slovak approach demonstrates an effort to balance effectiveness in enforcing EU restrictive measures with fidelity to established principles of criminal culpability.

At the same time, the practical implications of this reform should not be underestimated. The abstract nature of the statutory definition and the absence of established case law raise challenges for legal certainty, evidentiary assessment, and the delineation between *serious negligence* and indirect intent. Much will therefore depend on judicial interpretation and the development of consistent criteria in legal practice.

In comparative perspective, the Slovak experience illustrates one of several possible models for implementing EU requirements in national criminal law. While some Member States rely on pre-existing differentiated concepts of negligence and others adapt traditional notions through interpretation, the Slovak Republic opted for explicit legislative innovation. This confirms that Directive (EU) 2024/1226 allows for doctrinal diversity, provided that its functional objectives are met. Ultimately, the long-term success of the Slovak model will depend on whether *serious negligence* enhances the effectiveness of EU sanctions enforcement without undermining the coherence and restraint that characterise criminal law as an instrument of last resort.

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