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**COMMISSION OPINION**

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**on the compatibility of national asset freezes imposed by Member States with Union law**

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### THE REQUEST FOR AN OPINION

In its role as the guardian of the treaties, the European Commission [hereinafter “the Commission”] monitors the implementation of Union law by the Member States under the control of the Court of Justice of the European Union (CJEU)<sup>1</sup>. In the context of restrictive measures adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union (TFEU), competent authorities of the Member States may request the Commission to provide its views on the application of specific provisions of the relevant legal acts or to provide guidance on their implementation. Member States may also ask the Commission to provide guidance on the interpretation of Article 215 TFEU itself.

The Commission has received a request for an opinion from a Member State national competent authority (NCA) on the compatibility of national asset freeze measures with Union law.

### BACKGROUND

The NCA asks the following question:

*(...)“We would appreciate Commission’s view and clarifications to what extent Member States are free to introduce national asset freeze [measures]”.*

### LEGAL ASSESSMENT

The NCA’s question is framed in broad terms. In the absence of further clarification, the request of the NCA is interpreted as to cover State measures able to freeze assets of both EU and third countries persons for the achievement of objectives potentially falling within the scope of, and overlapping with, the objectives of the EU Common Foreign and Security Policy (CFSP) as well as Article 215 TFEU.

Restrictive measures have a clear link with and an impact on the operation of the internal market. Sanctions providing for asset freeze measures have an effect particularly on the movement of capital and payments and on the exercise by economic operators of their right of establishment and to provide services. They may affect in particular exports, imports, transfers of funds, investment and access to the EU’s capital markets.

In its judgment in *Kadi I*<sup>2</sup> the CJEU stated that, given the link of economic and financial measures to the operation of the internal market, such measures cannot be imposed unilaterally by a Member State. The proliferation of such national measures might all the more affect the operation of the internal market, and could have a particular effect on trade between Member States. They could also create distortions of competition, given that any

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<sup>1</sup> Pursuant to the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations of Union law.

<sup>2</sup> CJEU, Joined Cases C-402/05 P and C-415/05 P, ECLI:EU:C:2008:461, paragraph 230. The changes brought by the Treaty of Lisbon do not affect the conclusions of the CJEU.

differences between the national measures unilaterally taken by the Member States could operate to the advantage or disadvantage of the competitive position of certain economic operators in the absence of any economic justification.

By further defining the purpose and the effects of restrictive measures, the above-mentioned case law confirmed that Article 215 TFEU is the only appropriate legal basis to ensure the implementation of sanctions regimes adopted under the CFSP within the competences covered by the TFEU with regard to economic and financial measures, and notably the internal market, in order to avoid potential distortions. This is done through the adoption of Council Regulations, which are immediately applicable in the Member States, and ensure a harmonised implementation of the regimes in an area without internal borders.

For the sake of completeness, with regard to the general framework on the free movement of capital as provided for in Articles 63 *et seq.* TFEU, these provisions and notably the overriding reasons of public interest referred to in Article 65 cannot be interpreted as being a legal basis to introduce restrictions to the free movement of capital for reasons related to the achievement of the objectives set out in Article 215 TFEU, as this would undermine the effectiveness and the purpose of this provision as interpreted by the CJEU.

## CONCLUSION

**The Commission takes the view that the unilateral adoption of national asset freeze measures for reasons related to the achievement of the CFSP objectives as set out in Article 215 TFEU would have a clear impact on the functioning of the internal market and would undermine the purpose and effectiveness of the above-mentioned provision of the TFEU. Therefore, they would not be compatible with EU law.**

Done at Brussels, 8.11.2019

*For the Commission*  
*Federica MOGHERINI*  
*Vice-President*