

The EU Restrictive Measures – What if the Court of Justice of European Union finds them not Being Legal: Cases in Croatia and Republic of Macedonia

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Abstract

The European Union's restrictive measures or sanctions may be provided against one or more countries, international organizations, natural or legal persons (such as terrorists and terrorist group).

In practice most used restrictive measures are the financial restrictions as asset freeze on of individuals or companies, assets bans and travel bans on individuals. But the ultimate objective of a sanction is determined in accordance with the individual situation or situation.

The restrictive measures (Article 215 of Treaty of the Functioning of the European Union (TFEU)) are part of Common Foreign and Security Policy (CFSP) and judicial review is available under Article 275 TFEU, which prescribes that the Court has jurisdiction in 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. This paper will analyse the legal aspects of restrictive measures and the legal nature of the Court of Justice of the European Union (CJEU) jurisdiction in this field. Second part of the paper will analyse how the European Union (EU) imposes sanctions and embargos among the member states (example Croatia) and how these measures impose to the non -State countries (example R. Macedonia).

Key words: *restrictive measures, legal instruments, law on international restrictive measures.*

1. Introduction

The EU restrictive measures are frequently imposed by the EU in the last decade. According to the EU policy and objectives by the Lisbon Treaty and the CFSP objectives, the restrictive measures are an instrument of a diplomatic or economic nature which see to bring a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles.¹ The restrictive measures aim to protect the international security, keep the international peace, and give legal security and safety to the natural and legal persons in their realization of the fundamental rights and freedoms.

Judicial review of the restrictive measures (Article 215 TFEU) is available under Article 275 TFEU, which prescribes that the Court has jurisdiction in 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 EU. This paper starts with the analyses the legal aspects of restrictive measures and the legal nature of the CJEU jurisdiction in this field. The second part of the paper analyses how the EU imposes sanctions and embargos and how sanctions are imposed by the Member states (example Croatia) and how these measures are imposed by the candidate state (example Republic of Macedonia). This paper aims to discuss, in accordance with the existing CJEU jurisprudence in the field of CFSP, what is the scope of the Court's jurisdiction. Furthermore, on the basis of the case study this paper aims to answer is there a difference in national legislation between Member States (MS) and candidate state regarding restrictive measures.

2. EU sanctions (definition, classification and targeted sanctions)

Sanctions are one of the most used tools in the EU foreign policy. It is important to notice that term "sanctions" refers the range of different policy instruments that makes their systematic study difficult. Therefore, we will begin this paper with the discussion of the EU legal framework relating to sanctions and classification of sanctions.

It is interesting that while word "sanction" is often used in public and in literature, in the Treaty the term "sanction" is only used in Chapter IV of the TFEU in the Article 83 TFEU. But these mechanism will not be a subject of

¹ European commission – restrictive measures ,text completed in spring 2008 pg.1

this paper.² This paper will address “restrictive measures” as a tool of the CFSP regulated by the Article 215 TFEU (ex-Article 301 TEC):

“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.”

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.

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

For the purpose of this paper, also, it is important to notice that sanctions (or “administrative measures”) can be imposed on the basis of the article 75 TFEU which is a part of Area of Freedom, Security and Justice and they are directed to “internal” terrorism, while Article 215 TFEU concentrates on sanctions against third states and individuals in the area of CFSP.⁴ But, in this paper we will focus only on the sanction or restrictive measures regulated by the Article 215.

The EU implements all sanctions imposed by the UN Security Council resolution under Chapter VII of the UN Charter. In addition, the EU may reinforce UN sanctions by applying stricter and additional measures. Finally, where the EU deems it necessary, EU may impose autonomous restrictive

² See more analysis of the changes that the Lisbon brought in connection to the sanctions in : Cremona, M. , EC Competence „Smart sanctions“ and the Kadi case; Yearbook of European law, 28(1), 2009; p 559-92 and Eckes C. ; EU Counter-Terrorism Policx and Fundamental Rights, Oxford University Press, Oxford, 2009 , 121-124

³ Article 215 TFEU ; See more on the sanction based on the A 301 TEC in the : 6Trybus, M., White, N., European security law, Oxford university press, Oxford, 2007. p 263-264

⁴ Article 75 TFEU

measures.⁵ In all the mentioned scenarios, the Council first adopts a Decision (previously named Common Positions) based on the Article 29 TEU (ex Article 15 TEU).⁶ The Council imposes EU restrictive measures through a CFSP Council decision adopted by unanimity. While this decision contains all measures imposed, additional legislation may be needed to give full legal effect to the sanctions. As prescribed in the Article 29 TEU it is a position that defines the approach of the Union to a particular matter of a geographical or thematic nature. Then, depending on the nature of sanctions this CFSP act is implemented by the Union and /or at nation level. The EU may apply several types of measures against natural or legal persons or non-EU states entities, the most common categorization is:

- Arms embargos
- Economic and Financial sanctions (import and export bans)
- Restrictions and admission (visa and travel embargos for individuals)⁷

Based on the EU division of competence the arms embargos are implemented by the MS's and on the contrary, economic and financial sanctions (asset freeze) at third states or individuals are implemented at the EU

⁵ For the systematic overview of the EU sanction policy : Poretela, Clara , European Union sanctions and Foreign Policy : when and why do the work, London : Routledge, 2010 ; Basic Principles on the Use of Restrictive Measures (Sanctions) 10198/1/04 REVI < <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010198%202004%20REV%201>> ; Restrictive measures (Sanctions) - Update of the EU Best Practices for the effective implementation of restrictive measures 8666/1/08 REVI < <http://www.statewatch.org/news/2015/apr/eu-council-eas-restrictive-measures-practices-7383-rev1-15.pdf>> and Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy - new elements < http://www.urmlt/uploads/default/documents/uzienio_politika/tarptautiniu_sankciju_igyvendinimas/st09068_en13.pdf>

⁶ Article 29 TEU „The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions.,,

⁷ See Council report on restrictive measures from 2014 : < http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135804.pdf>

level.⁸ Finally, in the case when it is necessary for EU to act and impose economic and financial sanctions, grounded on the CFSP decision (Common Position) the Council on the basis of Article 215 TFEU may adopt restrictive measures against natural or legal persons and groups or non-State entities. This type of sanctions: asset freeze or economic and financial sanction against natural or legal persons and groups or non-State entities will be the focus of the paper. Moreover, this type of sanctions aimed at individuals or companies are known as targeted, or smart sanctions because they are aimed at specific individuals or companies, rather than, for example putting an embargo on all trade with a particular country.

When we look at the legislation of Macedonia and Croatia we can see that they follow more or less this basic division of restrictive measures in their national legislation. The Macedonian Act on restrictive measures had enumerated or we may say specified a few more measures:

- Embargo on goods and services
- Arms embargos
- Embargos for admission in R. Macedonia
- Financial measures
- Other restrictive measures according to the international law.⁹

The meaning “other restrictive measure” refers to total or partial suspension of diplomatic, financial and economic relations, on the traffic, air and postal communications between two or more countries, as other measures according to the international law.¹⁰ This provision gives an open access to apply any kind of measure that is part of the bilateral and multilateral agreement that Macedonia has ratified.

⁸ PJ Kuijper, J Wouters, F Hoffmeister, G De Baere, T Ramopoulos ; *The Law of EU External Relations*

Cases, Materials, and Commentary on the EU as an International Legal Actor; New York : Oxford University press; 2013 ; p . 244

⁹ Article 4, Act on restrictive measures , Official gazette of the Republic of Macedonia no: 36/11; Under „other restrictive measures“ mean partial or complete cancellation of the diplomatic, economic, and financial relations of the traffic, air, electronic and other communications among 2 or more countries .

¹⁰ Article 5 (1), *ibid*;

The Croatian Act on international restrictive measures¹¹ is more precise in the types of the restrictive measures, so according to Article 2(2):

Restrictive measures may be as follows:

- Severance of diplomatic relations,
- total or partial termination of economic relations,
- total or partial restriction of import, export, transit, provision of services, and of transport, mail and other communications,
- the arms embargo,
- restriction upon entry into the country,
- restricted disposal of assets, and
- other measures in line with international law.

As explained previously, these sanctions (and all the other sanctions) can be based on the UN Security Council resolution under Chapter VII of the UN Charter. Where the UN has placed sanctions on individuals, the criteria for EU sanctions are the same, and the EU and its Member States are obliged by the UN Charter to place sanctions on those individuals sanctioned by the UN. On the other hand, EU can impose sanction autonomously on the legal base of the Common Position on the application of specific measures to combat terrorism 2001/931/CFSP. This sanction has to be based on precise information or material in the relevant file which indicates that a decision has been taken by a competent authority with respect of the persons, groups and entities concerned.¹²

3. Restrictive measures and CJEU

The restrictive measures (Article 215 of TFEU) are part of (CFSP) which is *de facto* specific and clearly separate from other EU policies. It is only policy regulated by the TEU¹³ it has specific instruments¹⁴, *sui generis* competence

¹¹ Act on International Restrictive measures, Official gazette of Republic of Croatia, 139/08

¹² Common Position on the application of specific measures to combat terrorism 2001/931/CFSP <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF>>

¹³ Article 21 – 46 TEU regulate the external actions and CFSP all the other EU's external policies (and other policies are regulated in TFEU

¹⁴ Article 25 TEU

and indeed represents a separate pillar. It should also be noted that CJEU does not have jurisdiction either with respect to the primary law provisions relating to the CFSP or with respect to acts adopted on the basis of those provisions (as it is prescribed in the Article 24(1) TEU and Article 275 TFEU). There are two exceptions: its jurisdiction to monitor compliance with Article 40 TEU and to review the legality of certain decisions as provided for by the second paragraph of Article 275 TFEU.¹⁵ Basically, the CJEU has jurisdiction of the monitoring of compliance with the ‘non-affected’ clause (Article 40 TEU) and, secondly, actions for annulment by individuals (natural or legal persons) (Article 263(4) TFEU) i.e. reviewing the legality of restrictive measures against natural or legal persons adopted by the Council in the context of the CFSP.

The Court’s jurisdiction in the field of CFSP has been analysed broadly in the literature,¹⁶ but still there is no specific answer what is the scope of the Court’s jurisdiction. There are other questions to be answered: what type of CFSP act can be challenged, what type of proceedings a person can bring before the Court and if the Court finds the EU act not being legal, can a person request compensation for damages.

According to Article 275 TFEU, the Court of Justice may review the legality of CFSP decisions providing for restrictive measures against natural or legal persons. This means that non-restrictive CFSP measures cannot, in

¹⁵ Article 24 (1) TEU

¹⁶ C. Hillion, ‘A Powerless Court? The European Court of Justice and the Common Foreign and Security Policy’, in M. Cremona and A. Thies (eds), *The ECJ and External Relations: Constitutional Challenges*, Oxford: Hart Publishing (2014); L. Saltinyté, ‘Jurisdiction of the European Court of Justice over issues relations to the Common Foreign and Security Policy under the Lisbon Treaty’, 119 *Jurisprudence* (2010), 261; R.A. Wessel, ‘Resisting Legal Facts: Are CFSP Norms as Soft as They Seem?’, *European Foreign Affairs Review*, 2015 (forthcoming); S. Griller, ‘The Court of Justice and the Common Foreign and Security Policy’, in A. Rosas, E. Levits and Y. Bot (Eds), *Court of Justice of the European Union - Cour de Justice de l’Union Européene, The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law - La Cour de Justice et la Construction de l’Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*, The Hague: T.M.C. Asser Press (2013) pp. 675-692; G. De Baere and P. Koutrakos, ‘The Interactions between the Legislature and the Judiciary in EU External Relations’ in P. Syrpis (Ed.), *The Judiciary, the Legislature and the EU Internal Market*, Cambridge: Cambridge University Press (2012), pp. 243-273;

principle, be challenged before the Court.¹⁷ Latest on this issue in the Opinion 2/13, the Commission gives the argumentation that acts that have legally binding effects are, in so far as they are capable of violating fundamental rights, 'restrictive measures' within the meaning of the second paragraph of Article 275 TFEU and could, therefore, be the subject of an action for annulment before the EU judiciary. By contrast, acts that do not produce such effects could not by their nature be the subject of an action for annulment.¹⁸

A further question that tangles the curiosity is the type of the proceedings. According to *Rosas and Armati*, legal base in the Article 263 (4) TFEU (Article 275(2)TFEU) means that only private parties are allowed to bring proceedings in front of CJEU and that other type of the procedures (e.g. preliminary ruling procedure) are excluded.¹⁹ On the other hand, the General Court does not reject preliminary ruling claims in principle (e.g. Case T-341/07 *Sison* [2011] ECR II-7915; Cases T-187/11 *Trabelsi and Others*). On this issue the Commission in the Opinion 2/13 firmly states that restrictive measures that have binding legal effect can be subject of an action for annulment or of a reference for a preliminary ruling.

Finally, if in fact the CJEU allows a challenge of the restrictive measure (when all the procedural and legal condition stated previously are fulfilled), the third question is what is with the possibility for action for damages if the restrictive measure in question is annulled and it is violating fundamental rights. On this issue the case *Sison III* is a landmark decision.²⁰ Mr. Sison, a Philippine national with a leadership role in the Communist Party and guerrilla movement and he was present in Netherlands for many years but was never granted a refugee status. He was put on an EU list of persons whose assets had to be frozen. The final stage was the Case T-341/07 where Sison's claimed for damages on the basis on non-contractual liability on the part of the Council (the EU institution that decided on the asset freeze). In this decision the Court elaborates on the civil consequences of the situation where a restrictive measure

¹⁷ C. Hillion, 'A Powerless Court? The European Court of Justice and the Common Foreign and Security Policy', in M. Cremona and A. Thies (eds), *The ECJ and External Relations: Constitutional Challenges*, Oxford: Hart Publishing (2014) p 51

¹⁸ Opinion 2/13 of the Court of 18 December 2014: Accession by the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms [2014] ECLI:EU:C:2014:2454. , par 98

¹⁹ A Rosas and L Armati, *EU Constitutional Law—An Introduction* (Oxford, Hart Publishing, 2012)264

²⁰ Case T-341/07 *Sison* [2011] ECR II-7915

is found illegal in terms of (non) compliance with human rights. The General Court gives that the conditions of EU liability for damages are (1) unlawful conduct alleged against the EU institutions, (2) actual damage and (3) the existence of a causal link between that conduct and the damage it also notes that the damage must be sufficiently serious breach of EU law.²¹ In the judgment is confirmed that awarding non-contractual liability of EU is difficult in general and especially in the CFSP situations. What is most problematic is to find that the breach of EU law is sufficiently serious.²² The Court in this judgment does not exclude the possibility for action for damages, but it makes it very difficult to achieve.

The Court had the opportunity to answer all the open questions in the Opinion 2/13, but the Court deliberately decided not to elaborate on the issue and stated that the Court had not yet had the opportunity to define the extent to which its jurisdiction is limited in CFSP matters.²³ In the procedure of delivering the Opinion 2/13 we find two completely opposite opinions about CJEU jurisdiction: one coming from the Commission and the other coming from the Advocate General Kokott.²⁴

One thing is clear, there is the possibility for the action for annulment of the restrictive measure against natural or legal person adopted by the Council in the context of the CFSP. The Commission in the Opinion 2/13 proceedings delivered the opinion that, where CFSP acts are performed by EU institutions, a distinction should be made between acts that have binding legal effects and those that do not. Acts that have binding legal effects are, in so far as they are capable of violating fundamental rights, 'restrictive measures' are within the meaning of the second paragraph of Article 275 TFEU and could, therefore, be the subject of an action for annulment or of a reference for preliminary ruling before the EU judicature. By contrast, acts that do not produce such effects could not by their nature be the subject of an action for annulment or of a reference for a preliminary ruling. The only remedy available within the EU against such acts would be an action for damages pursuant to Article 340 TFEU, since such an action is not, in the Commission's submission, excluded by the

²¹ Case T-341/07 Sison [2011] ECR II-7915 p 28 , 29 , 44

²² Svoboda , P; Sison II : EU non-contractual liability for damages and the so-called smart sanctions; The lawyer Quarterly 4/2012

²³ Opinion 2/13 of the Court of 18 December 2014: Accession by the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms [2014] ECLI:EU:C:2014:2454. , par 251

²⁴ <http://curia.europa.eu/juris/document/document.jsf?docid=160929&doclang=EN>

first paragraph of Article 275 TFEU.²⁵ Therefore the Commission concludes that that all acts and measures on the part of the EU and of the Member States in the area of the CFSP, in respect of which a person may claim to be a victim of a violation of human rights, produce the right to the person to have an effective remedy before the EU judicature or the courts of the Member States. It is in fact a visionary opinion, but not in accordance with the Courts practice thus far. On the contrary, the AG Kokott disagrees with the possibility of bringing a preliminary ruling reference before the Court in the context of legality of the restrictive measures. The Court declared that an action for damages was not possible in context of previous third pillar.²⁶ She stresses that one should have in mind, the in the CFSP, where the jurisdiction of the Courts of the EU has traditionally been even less extensive than in previous third pillar, it is not so easy to accept that Court's jurisdiction is as broad as the Commission suggests.²⁷

When we look at the latest jurisprudence of the Court, there is a case in which the General Court of the EU has awarded damages for the first time in a sanctions case (T-384/11 *Safa Nicu Sepahan v Council*). The judgment was delivered on 25 November 2014, just a few days before the Opinion 2/13. This case was brought by an Iranian company (Safu Nice Sepahan Co) that was listed in 2011 under EU sanctions targeting Iran's nuclear program. The restrictive measures were imposed on the company on the grounds that it is a "communications firm" that supplies equipment to a uranium enrichment facility. It is further argued that the Iranian government did not notify the International Atomic Energy Agency of the activities of this company. The Safu Nice Sepahan Co requested removal from the list of targeted entities, but instead was relisted in revised restrictive measures, adopted by the Council in 2012. In the application before the General Court, the applicant requested: an annulment of the adopted restrictive measures (so far as they concern the applicant) and compensation for material and nonmaterial damages caused by the restrictive measures. The General Court annulled the applicant's listing, it

²⁵ Opinion 2/13 of the Court of 18 December 2014: Accession by the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms [2014] ECLI:EU:C:2014:2454. , par 98

²⁶ C-354/04 P - Gestoras Pro Amnistía and Others v Council [2007] 115, par 46 to 48) and Case C-355/04 P Segi and Others v Council [2007] ECR 116, para 46 to 48

²⁷ Opinion 2/13 of the Court of 18 December 2014: Accession by the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms [2014] ECLI:EU:C:2014:2454, Opinion of AG Kokott, paras 83 – 100

found that the applicant's listing (and relisting) was "unlawful" and that the Council's conduct constituted a "sufficiently serious" breach of the EU law, building on that and on the ground of Article 340 TFEU the General Court ordered the Council of the European Union to pay Safa Nicu Sepahan compensation of 50 000 EUR in respect of the non-material damage.²⁸ There is an appeal case pending before the Court of Justice C-45/15 P in which this Court of Justice could confirm General Courts decision or decide differently.

Building on the CJEU jurisprudence, we can conclude that the answer to the question of what extent to which the CJEU jurisdiction is limited in CFSP matters will ultimately be given by the Court itself in one of its further decisions, but it must be noted that thusfar the Court has been reluctant to allow the possibility of the action for damages in context of actions for annulment of the restrictive measures. This brings us to the question asked by the Commission and AG Kokott in the Opinion 2/13: does the EU provides effective internal remedies in relation to the CFSP²⁹ and can the legal protection in the CFSP afforded by the EU legal order is regarded as effective legal protection? If not, and bearing in mind the deliberation in Opinion 2/13 where the Court judged against giving the ECHR jurisdiction over CFSP, how can human rights be protected in the CFSP filings. The existing Court's practice illustrates that the Court has no problem in admitting the violation of fundamental rights but it is reluctant to enable to compensation of damages that the violation has produced.

4. Regulation in Croatia and Macedonia

The procedure for introducing the restrictive measures and their nullification is regulated with the law for international restrictive measures and other legal acts (regulations, decisions of the regulatory authorities about conducting and observing the restrictive measures), and in the bought states the national procedure is similar, we may say this before Croatia enter in EU.

However, the European foreign policy concerning the International restrictive measures that are regulated with special laws in Republic of Macedonia and

²⁸ T-384/11 Safa Nicu Sepahan v Council, not yet published in ECR, See : < <http://www.law360.com/articles/602976/a-look-at-the-1st-damages-award-related-to-eu-sanctions>>; < <http://europeansanctions.com/2014/11/25/eu-court-awards-damages-for-1st-time-in-a-sanctions-case/>>

²⁹ Opinion 2/13 of the Court of 18 December 2014: Accession by the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms [2014] ECLI:EU:C:2014:2454, Opinion of AG Kokot, par 100

Croatia, and are part of the current national law framework may cause problems for these businesses in these countries. Sometimes EU restrictive measure may prohibit companies to enter into business with the companies which are in the target state, and that may cause difficulties or damages if the company is already doing business in that particular state. That is why, occasionally, the MS's or especially the states aspiring to EU membership, may show various forms of resistance to EU foreign policy sanctions. Clearly an EU member-states, must accept the decision of the Council. However, aspiring state, can choose whether or not to implement of the decision that has been made. Therefore, the analysis of the national procedures for introduction, implementation, recording and the nullification of the restrictive measure will be conducted in order to reach conclusion on this matter.

4.1 National procedure for implementing the EU restrictive measures

Croatia and Macedonia have similar procedures of concerning the implementation of EU restrictive measures. Below, we may see the procedure according to the Macedonian Act and some specific situations that this Act provides. We may define the procedure in a few steps:

- Government decision:
- Type and duration on the sanction
- Implementation
- Enforcement
- Monitoring

Following a proposition by the Ministry for Foreign Affairs of Republic of Macedonia, the government can reach a decision to introduce and nullify the restrictive measure. The decision defines the type of the restrictive measure, the authorities that conduct that measure and the time frame.³⁰ The decisions about the introduction and the nullification of the restrictive measures are published in the Gazette of Republic of Macedonia after which they become a legal obligation. But since the decision is not in Macedonian language, a translation must be made. So, this starts additional technique procedure that concerns the decision to get into force According to the Macedonian legislature, if it not stated otherwise, the legal act (*vacation legis*) will usually come into an effect

³⁰ See article 6, Law on restrictive measures on R. Macedonia, official Gazette No.36/11

in 8 days. Article 118 of the Constitution of the Republic of Macedonia stipulates that international agreements that are ratified and in accordance with the Constitution are an integral part of the domestic legal order and cannot be changed or derogated with laws.³¹ Given that ratification is needed for an international legal act to be transformed into the national legal system, the analysis shows that a large part of the accepted decisions of the Council are published with a delay of a few months and even a year after they were published in the Official Journal of the European Union,³² the timeframe that is needed for adjusting the *de jure* with *de facto* condition leaves room for acting on the subjects in the territory of Macedonia. Beside the fact that the Council has already made the restrictive measure, the question remains as to whether there is there is time to change the principle of retroactivity for the Government's decisions published in the Macedonian's Gazette.

Furthermore, in the Government's Decision to introducing restrictive measures it is obligatory to determine the legal authorities that will conduct the introduced restrictive measures, which are every natural and juridical person, every state and local authority. In principle, the same organs are obliged to conduct and monitor the restrictive measures. The authorities that conduct can be classified depending on the type of a restrictive measure. These include: Ministry of Foreign Affairs (MFA), Ministry of Defense and Ministry of Finance. For example, the decision with which a financial restrictive measure is being introduced, is into the domain of the Administration for the Prevention of Money Laundering and Terrorist Financing that informs the Real-estate register, the Central depository of stocks, the banks and the other financial institutions that may had made a contact or started a legal relation, or used the services of people that fall into that measure.

The institutions are obliged to freeze the property of those that fall into the financial restrictive measure, but by a request of a the natural person, the

³¹ <http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nsp>x

³² Example: The Decisions for implementing restrictive measures according to the Council decision 2011/357 CFSP of 20 June 2011 amending Decision 2010/639 CFSP concerning restrictive measures against certain officials of Belarus, L 161/25 from 21.06.2011; council Decision 2011/412 CFSP of 12 July 2011 amending decision 2010/656/CFSP renewing the restrictive measured against Cote D'Ivoire , L 183/27 from 17.07.2011, council decision 2010/656 of 29 October 2010 renewing the restrictive measures against Cote D'Ivoire, L285/28 from 30.10.2010, all published in the Official Gazette on R. Macedonia No. 155/11 from 7 November 2011.

authorized Court can issue an approval for a partial usage of the property that is essential for daily life and for paying taxes to the state.³³

With this the legislator has entrusted the decision making and the conditions in which the usage of the property will be approved in the national court, but it has not determined a single court that is obliged to conduct this procedure. Concerning the fact that it's about protecting public concern, the subject of the procedure is a defined administrative work which means that the qualified court would be the Administrative Court of Republic of Macedonia as a first instance court. The procedure for the submissions by the people that are encompassed with this financial restrictive measure will be conducted according to the Law on general administrative procedure and the Law of administrative disputes. The Court in charge informs the MFA for the legal decision during a period of eight days, and the MFA is obliged to inform the authorities that have introduced the restrictive measures. This means that the national court has a discretionary right to make decisions according to the request of a person that falls into the financial restrictive measure.

The discussion moves toward the question of who would compensate for the eventually caused damage due to the activities that were done to the legal persons that started a business relation with the legal persons that fall into the above mentioned measure, but that measure still hadn't been under Macedonian legislature. The legal decision that has been made can be of a vital importance for the subjects! The state uses its *ius imperium exempts* itself from the responsibility through the introduction of an act that says that the authorities that conduct the restrictive measure are not responsible, and also that a complaint cannot be issued to that state about the damages that were caused while conducting this law.³⁴ Does this mean that we should take measures for more efficient fulfillment of the obligations by the state authorities or that this maybe leaves space for a different tactic in the mentioned situations?

Republic of Macedonian does not have status as a member-state of EU, so the process of conducting the EU restrictive measures depends on Macedonian's foreign policy, but according the Stabilization and Association Agreement (SAA) it has agreed to follow the legal acts of the EU (based on the Treaty provisions) as well as the recommendations of EU.

³³ See Article 10, paragraph 1, Law on restrictive measures on R. Macedonia, official Gazette No.36/11.

³⁴ See article, 12 paragraph 1 и 2 o, Law on restrictive measures on R. Macedonia, official Gazette No.36/11.

According to the public Register of the EU's restrictive measures, the natural and legal persons and entities from Macedonia and Croatia have not been on the list for restrictive measures, but that cannot be said for the other Balkan countries Serbia, Kosovo, Montenegro³⁵ and Bosnia and Herzegovina³⁶.

After joining EU in 2013, Croatia as 28 Member State has had to follow the primacy the EU law and has adjusted its legal system to the overall *acquis*, consequently Croatia has made changes to Article 4 in the Law for International restrictive measures.³⁷ Article 4 determines that the Croatian Government can issue regulations for the implementation of the Council restrictive measures if this measure gives the competence to the Member State to decide on individual issues. Croatian Regulation on the restrictive measure may prescribe the type of restrictive measure, method of administration, duration, competence and exemptions. In the case when Council issues the restrictive measure from article 2(2) (d) and (e) of this law, this restrictive measure is in effect in Croatia from the date of entry into force of that decision.³⁸

5. Conclusion

Making and implementing the decisions for the introduction of restrictive measures are basically politic decisions that are made according to the economic and diplomatic priorities of the country that introduces them. However, respecting the international rules and norms in order to keep the peace and safety, and respecting the basic human rights is an obligation of each country that aims to be democratic. The coordination among the states, the international organizations and the other entities, according to the previously determined rights and principles as well as the signed bilateral and multilateral agreements concerning the restrictive measures, should be accepted. However, the international principles for free trade between the natural and juridical persons should not be neglected and it should be allowed to them to use their right for a legal protection in cases when they are under restrictive measures.

The restrictive measures are non-arm tool which aims to preserve peace. Nonetheless, they have to be justified, lawful and based on the firm evidence that the natural/legal person or a country is conducting actions that are against

³⁵ http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf last opened 09.2015

³⁶ http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf, last opened 09.2015

³⁷ Zakon o međunarodnim mjerama ograničavanja («Narodne novine», br. 78/11, 41/14)

³⁸ <http://www.zakon.hr/z/481/zakon-o-me%C4%91unarodnim-mjerama-ograni%C4%8Davanja>

the international rules. Article 275 TFEU introduces the possibility to challenge the legality of the restrictive measures. The answer to the question of the extent to which the CJEU jurisdiction is limited in CFSP matters must ultimately be given the Court itself in one of its future decisions. What is evident from the existing jurisprudence of the Court is that the Court had no problem in annulling the restrictive measures that it found to be unlawful, but it must be noted that insofar the Court has been reluctant to allow the possibility of the action for damages in context of actions for annulment of the restrictive measures.

The EU member states are legally binding to the Council decisions, but the non-EU countries may decide will they make full or partial acceptance of the decisions. The states foreign policies not always compliance with the EU general policy, that is why we may say that sometimes there is a “resistance“ to the European foreign policy concerning the international restrictive measures. This mean that the state authorities should take measures for more efficient fulfillment of the obligations that concerns to the international restrictive measures.

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