



29.1.2024

NOTICE TO MEMBERS

Subject: Petition No 0720/2023 by T. P. (German) on establishing a legal basis for using frozen funds for humanitarian purposes

1. Summary of petition

The petitioner calls for the funds of Russian officials that have been frozen in connection with the Ukraine conflict to be used for humanitarian purposes, for example to help war refugees or to help rebuild Ukraine. He calls on the German Bundestag to create the legal basis for this and for the government to advocate for similar laws at EU level.

2. Admissibility

Declared admissible on 8 November 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 29 January 2024

The Commission's observations

The EU is exploring different ways to finance, in line with EU and international law, the recovery and reconstruction of Ukraine, thereby focusing on Russian public as well as private assets.

With regards to public assets, the Commission, together with the European External Action Service, has been exploring options to support Ukraine with the extraordinary cash balances accumulating on the balance sheets of central securities depositories due to the immobilisation of assets and reserves of the Central Bank of Russia. The discussions took place in a Council ad hoc Working Party and focused on the so-called 'windfall contribution' model, which is now subject of the proposals tabled on 12 December 2023 by the Commission and the High

Representative of the Union for Foreign Affairs and Security Policy. The proposals are based on the provisions of the Treaties on the Common Foreign and Security Policy concerning restrictive measures and secure the possibility to direct these extraordinary revenues to support Ukraine's recovery and reconstruction. The windfall contribution model follows a stepwise approach, in which the first step confirms the legality and validity of the transactions undertaken by EU financial entities as custodians, whose sole purpose is to preserve the value of the assets and reserves and to minimise any risk to the financial position of the entity holding such assets or reserves. The next step ensures that the ensuing extraordinary revenues are accounted for and managed separately from the central securities depositories' other activities. Finally, the last step concerns the transfer of the net profits to the EU budget to support Ukraine and its recovery and reconstruction. The last step would be activated through a future Council decision, on a joint proposal by the High Representative and the Commission.

With regards to private assets, the effective implementation and enforcement of EU sanctions is a top priority for the Commission, including in the context of the Freeze and Seize Task Force. To strengthen the enforcement of EU sanctions, the Commission adopted a proposal for a Directive to harmonise the criminal definitions of, and penalties for, the violation of EU sanctions, on 2 December 2022. This Directive is linked to the Commission's proposal for a new Directive on asset recovery and confiscation¹, which aims *inter alia* at extending the list of criminal offences for which confiscation orders could be issued, including violations of EU sanctions. After completion of the negotiations, the new Directive on asset recovery and confiscation also includes a provision encouraging Member States to allow for the social reuse of confiscated property. The proposal for a Directive on the definition of criminal offences and penalties for the violation of EU sanctions includes Article 10 which enables the confiscation of frozen assets when the designated person is involved in sanctions violations. A preliminary political agreement on both directives was reached on 12 December 2023 and it is expected that they will be formally adopted in early 2024. They will then have to be transposed by the Member States into national law.

Conclusion

It is recommended to point out to the petitioner that, on EU level, different avenues are pursued (focusing on Russian public and private assets) to support Ukraine's recovery and reconstruction. To this end, on 12 December 2023, the High Representative and the Commission put forward proposals implementing the windfall contribution model seeking to preserve and, ultimately, transfer the windfall revenues to the EU budget for the benefit of Ukraine. In addition, on the same day, preliminary political agreements have been reached on the Directive on the definition of criminal offences and penalties for the violation of EU restrictive measures and on the new Directive on asset recovery and confiscation. The latter includes a reference on the social reuse of confiscated property. However, in line with the Treaties, it is Member States' obligation to implement and enforce EU sanctions, as well as to transpose into their national legal systems and apply the provisions enshrined in both Directives, once adopted. Hence, it is recommended that the petitioner should first and foremost contact the national competent authorities. The Commission will continue to closely follow the situation.

¹ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014.

