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VAGYON BEFAGYASZTÁS-BLOKKOLT SZÁMLÁK

ASSET FREEZE-BLOCKED ACCOUNTS

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INTRODUCTION

When picking a thesis topic, many things go through a person's mind. It is not effortless to find a topic that is current, viable, and at the same time, unique. In such cases, one can do nothing but keep one's ears open and read articles on various topics that arouse interest and leave a gap in the researcher. A sense of lack that encourages the acquisition of further knowledge. My search for a topic ended with encountering the asset freeze sanction.

Let me start with its topicality to support the legitimacy of the topic. In February 2022 in Toronto, there were demonstrations because of the coronavirus vaccines, where truck drivers barricaded the streets with their vehicles. These actions paralyzed downtown Ottawa for three weeks. "The cross-border vaccine mandate imposed by the Canadian government" (National Review, 2022a) sparked the protest. In response, the Canadian government froze the accounts of the protesters and utilized "The Emergencies Act" (National Review, 2022a). It provides the governing administration a "special authority for 30 days to restrict movement, freeze financial accounts (including personal bank accounts and cryptocurrency transactions), and direct citizens to certain actions, such as the forced towing of the trucks" (National Review, 2022a). The Canadian Parliament Finance Committee was informed by Assistant Deputy Minister of Finance Isabelle Jacques that up to 206 bank accounts worth around \$7.8 million were frozen related to protest organizers. Most accounts were unfrozen, but even small-dollar donors could suffer account freeze during the account blocking (National Review, 2022b). Such unheard actions caught my attention instantly.

The other case that makes the topic recent is based on the tragic events of Ukraine and Russia's military conflict. During this war, Western countries and NATO supported Ukrainians with weapons and tried to financially destabilize Russia's economy with sanctions in the hope that Russia would abandon the campaign. Among the sanctions, the asset freeze, also affected many Russian business people and politicians. What is surprising is that even family members could be subject to an asset freeze. During the war, high officials' close family members were targeted in the belief that these family members served as hideouts for their private wealth, such as the two adult daughters of president Vladimir Putin and foreign minister Sergei Lavrov's family. Of course, not solely individuals' assets were frozen in sanction-initiating countries, like the US and UK, but also the assets of financial institutions such as the Russian National Bank, Sberbank, and Alfa Bank (The Guardian, 2022). These news grounded my determination to write a research paper on the subject.

In the study, my primary goal is to look for an explanation of what authorizes the usage of the asset freeze. Furthermore, what is the purpose of asset freeze and blocking an account, and what do they genuinely represent? After all, everyone has ideas about the probable meaning of a given concept but less about the circumstances and objectives that make it achievable.

It soon becomes apparent that the use of the sanction has limits and conditions. We have to look for these conditions in the legal system. I presume it is better to seek the conditions around international organizations, such as the EU or the UN. Thus, one of my goals is to explore the legal background of the asset freeze. I am narrowing down the exploration to the UN, EU, and US because I assume that merely the basics are the same, the development of broader frameworks differs from country to country. These thoughts guide me to the determination to find out the history of the sanction and exactly when it was first used. Furthermore, I want to reach the present day from its past to introduce the evolution of its history. It is more of an organizational issue, but I am concerned about who will manage the seized property. One of the big questions about asset freeze is whether this asset will be returned to its original owner. In addition, I do not consider it insignificant how the sanctioned entity is affected by the sanction, whether it can appeal against it and what rights it has. Finally, in my primary research, I would like to find out in the form of a questionnaire how much understanding my fellow BGE students have about asset freeze.

I. UN PRINCIPLES OF ASSET FREEZE

To understand the asset freeze sanction, it is necessary to position it among other sanctions and the international treaties summarizing them. In this chapter, the fundamentals will be presented, to which the legislation of sanctions constantly returns.

The investigation begins around the most significant international organization, the United Nations. The UN is an intergovernmental organization whose declared goals are to uphold world peace and security, foster goodwill among states, promote global cooperation, and serve as a hub for harmonizing national policies (UN.org D). It succeeded the League of Nations, which proved inadequate in preventing World War 2 (Nationalww2museum.org, 2021). The main bodies are the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice, and Secretariat (UN.org E).

The most fundamental international law is the Charter of the United Nations, in which the common values were accepted by the signatory nations and were laid down to which the members must adhere. The Charter of the United Nations was signed on June 26, 1945, in San Francisco, and it went into effect on October 24, 1945 (Web.archive.org). Regarding the sanctions part, Charter VII. contains the legal options for a response and the types of response against threats to peace and stability. Article 39 stipulates that the Security Council determines whether or not there is a threat to the peace or aggression that took place. Choosing how to respond to all this is his task, which can be found in Articles 41 and 42 (UN.org A).

The hierarchy and decision order will be reinforced between Article 39 and Article 41 through the following question: „The question whether the Security Council could take action under Article 41 without first making a determination under Article 39” (Legal.un.org, 1945-1954, p. 384)? This question first occurred on April 17, 1946, during the consideration of a resolution proposal put out by Poland on Franco-led Spain. According to Poland, „...the Franco regime in Spain have led to international friction and endangered international peace and security” (Legal.un.org, 1945-1954, p. 384) therefore, calls on all UN members who have diplomatic relations with the Franco government to break them off in line with the power granted to it by Articles 39 and 41 of the Charter. Nevertheless, „The Sub-Committee on the Spanish Question... stated that before direct action under Article 41 or 42 can be ordered, the Charter requires that the Security Council must determine, under Article 39, the existence of a threat to the peace or a breach of the peace, or an act of aggression” (Legal.un.org, 1945-1954,

p. 384). It was essential to emphasize the connection between the two Articles because to act by Article 41, it is primarily necessary to determine whether the actions are vital. This process ensures that the sanction is genuinely within the legal framework and as unbiased as possible (Legal.un.org, 1945-1954).

When the Security Council determines a breach of peace, then calls upon Article 41 first. Taking asset freeze into consideration, Article 41 is the most crucial one. It reads as follows: „The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations” (UN.org A). From the quoted text can be understood that Article 41 deals with response measures that do not require military or armed action, i.e., economic and communication difficulties for the sanctioned country. So, the legitimacy of the asset freeze is indirectly based on this document. In addition, the first quoted sentence also requires attention because the manuscript must state that what is described here must be kept by Members. It is backed by Chapter V Article 25, which stipulates that „The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter” (UN.org B). So, the Charter also allows the UNSC to compel States to apply the sanctions. However, regarding Article 42, it can be applied only if the measures under Article 41 proved ineffective. Consequently, this Article authorizes the Security Council to use air, sea, and land forces for demonstrations and blockades to preserve stability (UN.org A).

The UN Charters are jointly approved and accepted by the UN members. Each member country refers to this document in its legal system and merges it with its regulations. All other international documents on the subject take it into account and build on this document in their system of rules. For this reason, it can be confidently stated that the sanctions policy can be traced back here and serves as a legal basis.

II. EU POLICIES ON ASSET FREEZE

After seeing what countries and international organizations lean onto, it is time to analyze the European Union, a smaller organization than the UN. Though the European Union is also a massive institution, including 27 European countries. The Union has an advanced legal system, which serves as one of the pillars of the Western developed world. Among its objectives can be mentioned the promotion of peace, security, and equality. In addition, the EU supports economic, social, and geographic cohesion among Member States at the time, respecting its cultural and linguistic diversity (European-Union.europa.eu). In this chapter, the EU's governing rules and legal documents, which contain the asset freeze sanction, will be examined.

II.1. COMMON FOREIGN AND SECURITY POLICY (CFSP)

The European Union has gone a long way until now when it can be said that it has an organized and well-developed policy working with foreign and security issues. Many critics have noted in the past that the EU lacks a „comprehensive and cohesive foreign policy” (Elizabeth Duquette, 2001, p.170). The EU developed its Common Foreign and Security Policy, which intends to unite the Member States and the Union to handle emerging security problems better and to show unity in front of potential partners. However, „The CFSP touches on the heart of national sovereignty because its goal is the unification of European foreign policy” (Elizabeth Duquette, 2001, p.170) which is why it is always challenging to further its influence and better its efficiency (Elizabeth Duquette, 2001).

History of CFSP

First, European Political Cooperation was established. „...Member States agreed to cooperate in the field of foreign policy by consulting each other regularly and, when possible, harmonizing their views and instituting joint actions” (Elizabeth Duquette, 2001, p.171) because they believed „they could be more influential if viewed as a bloc” (Elizabeth Duquette, 2001, p.171). Thanks to the promising developments, the members attempted to further their collaboration.

That is how the Single European Act (SEA) was born. „The SEA imposed new obligations on the Member States to inform and consult each other on foreign policy matters, in practice the commitments were weak” (Elizabeth Duquette, 2001, p.172) In conclusion, the SEA synchronized Community and EPC procedures without giving Community institutions

much authority over Member States' foreign policy decisions. Therefore, it can be stated that it only offered more structure to an already existing weak management revealing signs of rejecting community control over national security. The international partners still witnessed an ununited Union (Elizabeth Duquette, 2001).

On the November 1st, 1993, in Maastricht, parallel with the European Union, the CFSP was created, replacing the SEA. Still, the success of the Common Foreign and Security Policy relied on the Member States, who declined to grant the CFSP supranational status beyond national authority. So, CFSP is unchanged compared to the European Political Cooperation but can be considered advancement. Because 1, reaches a broader scope of issues; 2, lays down the establishment for autonomous Union action; 3, Member States align their foreign policies more closely. But most notably, with CFSP, Member States have a common voice on foreign and security issues. Nevertheless, the Member States cannot be harshly criticized for declining to give up their authority over national security because it is one of the most crucial characteristics of national sovereignty (Elizabeth Duquette, 2001).

Status of CFSP

The CFSP that we know today was finally created in 2009 by the Lisbon Treaty. This document includes all dimensions of the foreign and security policy of the EU (EUR-Lex.europa.eu, A). This policy has three main objectives that are 1, to „preserve peace,” 2, to „reinforce international security,” and 3, to „promote international cooperation, democracy, the rule of law and the respect for human rights and fundamental freedoms” around the world (EUR-Lex.europa.eu, B). Among other many necessary instruments like Civilian and Military Capabilities, European Peace Facility also utilizes sanctions „to influence policies violating international law or human rights, or policies disrespectful of the rule of law or democratic principles, the EU has designed sanctions of a diplomatic or economic nature” (EEAS.europa.eu, 2021).

Decision-making of CFSP

Considering CFSP, the European Council has the power to define the EU's strategic objectives and scope of Union interests. The European Council is a conference that includes EU heads of state and government and assembles at least four times a year. These Council Members vote and decide on the EU's position in international affairs in harmony with CFSP. Decisions usually require unanimity, but there are also decisions demanding merely a qualified majority (EUR-Lex.europa.eu, A), „which means 55 % of EU country votes, representing at least 65 %

of the EU's population” (EUR-Lex.europa.eu, A). However, it is the Council of the European Union (the Council) that operates the CFSP issues on a daily basis, affecting the Member States. The Member States must guarantee that their national policies will not contradict joint decisions. Furthermore, they must represent these decisions in the international political arena (Elizabeth Duquette, 2001).

European External Action Service

Regarding the performance of CFSP, it depends massively on the Management. This responsibility lies on the High Representative for Foreign and Security Policy (EUR-Lex.europa.eu, A), who is Josep Borrell currently (EEAS.europa.eu, 2021). He is in charge of executing the EU's CFSP and the Security and Defense Policy during his 5-year term. His duties are ensuring the Policy's effectiveness, submitting development proposals, implementing the existing policies, keeping in touch with the EU Parliament, Officials of the EU, and Member countries, and most significantly, representing the EU in foreign affairs (EUR-Lex.europa.eu, C). Behind the High Representative stands the European External Action Service (EEAS), which assists him in organizing and coordinating CFSP (EUR-Lex.europa.eu, A). EEAS is the EU's diplomatic service and carries out the CFSP of the European Union under the authority of the High Representative (EEAS.europa.eu, 2021). „A strong asset of the EEAS is...to work closely with the foreign and defence ministries of the member states of the European Union (EU)...with the EU institutions such as the European Commission, the European Council and the European Parliament....with the United Nations and other international and multilateral Organisations” (EEAS.europa.eu, 2021). Due to its strong collaboration with the listed partners, it is undisputedly the engine of the CFSP. It also handles the Common Security and Defense Policy (CSDP). However, the main reason for its existence is that the EU desired „to ensure the consistency of EU external action” (EUR-Lex.europa.eu, D) to further its reputation of trustworthiness. It is obvious now that the EEAS is the body that handles and oversees the CFSP and proposes sanctions, and evaluates their viability.

The body which supervises the management and implementation of CFSP is the Court of Justice of the European Union. It can be debatable, but this supervision does not mean complete jurisdiction over CFSP-related matters. Except „when reviewing the legality of restrictive measures (e.g. sanctions) taken by the EU against individuals and legal persons (EUR-Lex.europa.eu, A)” and „when monitoring the implementation of the CFSP by the EU institutions” (EUR-Lex.europa.eu, A). Because of this lack of jurisdiction over CFSP matters, the Union cannot be held responsible for its lack of effort or surpassing the scope of CFSP.

Nonetheless, it is also valid for the Member States, who cannot be penalized for omitting to assist CFSP objectives. Even so, the Union can make the Member States support common policies. The utilized tool is a forcing one: „the basic method of enforcement is political pressure” (Elizabeth Duquette, 2001, p.184). They reinforce it with Article 11, „the Member States are obliged to support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity” (Elizabeth Duquette, 2001, p.184).

Funding of CFSP

This subtopic is about financing the CFSP and its objectives. The funding comes from the EU Countries for operations related to military or defense. The EU’s general budget backs every other kind of operational expense (EUR-Lex.europa.eu, A). The EU finances most of the operational expenses from the general budget because „Member States often failed to adequately finance joint actions from their national budgets” (Elizabeth Duquette, 2001, p. 187). Which understandably does not look well internationally. Hence, Article 28 of the Treaty of Amsterdam declared that operational expenses are supported by the general budget and overseen by the EU parliament, Council, and Commission (Elizabeth Duquette, 2001,). This budget needs flexible administration to respond quickly to unanticipated occurrences and changes to be effective. „The Common Foreign and Security Policy Budget finances civilian missions, EU Special Representatives, stabilisation actions as well as multilateral and bilateral non-proliferation and disarmament projects” (FPI.EC.europa.eu). It is challenging to understand after such a concise overview and it needs some tangible examples: „the missions aim to improve security,...the fight against terrorism, people smuggling and organized crime, strengthening police and judicial authorities and monitoring compliance with international agreements” (FPI.EC.europa.eu).

The institution of Service for Foreign Policy Instruments also emerges regarding the EU general budget. This establishment is accountable for implementing the budget in cooperation with the European External Action Service. They participate in parleys with several stakeholders, like the Member States, and decide which activities need to be addressed first or require more backup to attain the goals (FPI.EC.europa.eu).

Sanctions

One of the tools CFSP can utilize to bring down violence and strive toward peace and stability is restrictive measures. Among these measures, the sanctions can be found, which have, despite their expression, not a repressive function but a persuading role to bring the punished party to

a sounder understanding. European Union may target governments of non-EU countries, companies, groups, organizations, or individuals with sanctions, from which the EU has 40 of its disposal, such as arms embargos, travel bans, and asset freezes. These sanctions target exclusively those responsible for disrupting international peace and security, avoiding unintended damage (Finance.ec.europa.eu). To comprehend the capacity of the sanction, it needs to specify the fields where they take effect. The measures are only foreign policy tools, so they only apply to entities within the borders of the EU. More precisely, „the obligations they impose are binding on EU nationals or persons located in the EU or doing business here” (Finance.ec.europa.eu). The Member States’ national agencies are liable for investigating suspected incidents of non-compliance. When EU sanctions are violated, Member States must have in place penalties to implement them. When the Member State is keen on implementing the determined sanctions and penalties. In that case, the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) aids with its support by answering questions from national authorities, operators, and anybody else. Furthermore, DG FISMA monitors the Member States’ efforts assigned by the European Commission (Finance.ec.europa.eu).

Issues around CFSP

The issues around CFSP start with the wide range of areas that CFSP includes and desires to address. The originators of CFSP wanted to form a more united Union by establishing only one voice in their foreign affairs. Naturally, that would take away the Member States’ ability to speak up individually. Consequently, it is a delicate topic within the EU and politically problematic because the CFSP must honor and not contradict the Member States’ obligations towards NATO under any circumstance. Thus, the EU’s ambitions to develop such a document often encounter barriers in and out of its borders, causing slow development (Elizabeth Duquette, 2001). Despite internal and outside hindrances, the EU was ambitious to create the CFSP because „essentially, Europe wanted to exercise more influence, power and control within NATO” (Elizabeth Duquette, 2001, p. 178). In other words, Europe had to develop its security and foreign affairs policy, otherwise, it would only exist in the shadow of NATO. In addition, by formulating CFSP, the EU presents itself as a severe and trustworthy international entity (Elizabeth Duquette, 2001).

The existence of the CFSP is already an outstanding deed. This chapter presented the appearance of CFSP on the international stage in the past and in the present and its current structure. Among other things, how finances are managed and which organizations manage

them. In the following, another important additional manuscript within the CFSP will be explained.

II.2. COMMON DEFENSE AND SECURITY POLICY

The Common Defense and Security Policy concentrate on defense and military missions. „It creates a framework for the military and defence aspects of EU policy” (EUR-Lex.europa.eu, E). Nevertheless, it is an indispensable component of the EU's CFSP. The Treaty of Lisbon created the Common Defense and Security Policy in 2009, superseding the European Security and Defense Policy (ESDP) (EUR-Lex.europa.eu, E).

History of CDSP

Although, its origins reach way back than 2009. The first necessity for a Common Defense Policy materialized in 1948 at The Treaty of Brussels, signed by the UK, France, and Benelux countries. This Treaty „had a mutual defence clause that paved the way for the Western European Union (WEU)” (EUR-Lex.europa.eu, E). The mutual defense clause still serves as a backbone for European Security. It „provides that if an EU country is the victim of armed aggression on its territory, the other EU countries have an obligation to aid and assist it by all the means in their power” (EUR-Lex.europa.eu, F). Over time, Europe's defense policy has significantly altered from WEU and was shaped by many Treaties and international organizations like NATO (EUR-Lex.europa.eu, E).

After the 40s and 50s uneventful decades, the Common Defense Policy developed during the Hague Summit in the late 60s. At the time of the Summit, the European leaders wished to explore opportunities for closer integration in the political area. Consequently, the European Political Cooperation (EPC) was born in October 1970. „The report defined the objectives of EPC, including the harmonisation of positions, consultation and, when appropriate, common actions. It also listed specific processes, such as biannual meetings of the Foreign Affairs Ministers, as well quarterly meetings for the Political Directors forming the Political Committee” (Jochen Rehl, 2021, p. 16). Thanks to the discussion, the Member States aligned the values and goals quoted above (Jochen Rehl, 2021).

Nothing groundbreaking occurred thereafter, and the cooperating countries waited for the birth of the European Union in 1993 to establish new policies for their defense. The Maastricht Treaty meant the foundation of CFSP, which covered more in extent than EPC and contained every matter regarding the security of the Union. In the late 90s, there were multiple

international discussions, namely the informal European Council in Pörtschach and bilateral UK-France meeting in Saint-Malo, which initiated in the shadow or aftermath of the Balkan conflict the European Security and Defense Policy, the predecessor of CDSP (Jochen Rehl, 2021).

The Member States' will was ultimately visible in practice but only in 2003 when the first ESDP missions and operations began. „Since 2003, the EU has initiated over thirty-five crisis-management missions and operations. In addition, the EU presented its first ever European Security Strategy in December 2003, outlining key threats and challenges facing Europe” (Jochen Rehl, 2021, p.17). The EU did not change course until the new EU Global Strategy in June 2016 (Jochen Rehl, 2021).

Structure of CDSP

It ought to be highlighted that the EU policies heavily lean on the UN Charter and derive their rights, obligations, and principles from there to legitimize its actions. „It includes the progressive framing of a common EU defence policy, aims at allowing the EU to enhance its military capacities and deploying missions outside the EU for peace-keeping, conflict prevention and strengthening international security...” (EUR-Lex.europa.eu, G).

It is critical to keep in mind that CSDP should also be compatible with NATO just as CFSP and should not contradict Member States' obligations towards NATO (EUR-Lex.europa.eu, G). Already the existence of a Defense Policy besides NATO raises concerns, especially for NATO leaders and the US. Because the CDSP „can be successful only to the extent that it is reinforced by a solid military capability” (Elizabeth Duquette, 2001, p.192), and at the same time, this military undermines NATO's absolute leading place. It can be cautiously comprehended that NATO is a prominent supporter of European Defense Policies. Nonetheless, it keeps a watchful eye on how much independence Europe gains from its development (Elizabeth Duquette, 2001). But it's not the main topic of this thesis, although it would deserve one on its own.

Viewing its structure, the High Representative can come into mind, as he is also in charge of proposing and implementing decisions regarding CDSP. Like CFSP, the Council of the European Union makes decisions relating to the CSDP unanimously (EUR-Lex.europa.eu, G). „However, there are some exceptions like for instance when the Council adopts some decisions implementing an EU decision or for some decisions relating to the European Defence Agency (EDA) and permanent structured cooperation (PESCO), where decisions are taken by qualified majority voting” (EUR-Lex.europa.eu, G).

It cannot be assumed through these lines that the Union, namely the Council of the European Union and High Representative and other international actors, solely have a say in the Common Defense Policy. The Member States also get an opportunity to contribute to the common interests. For this reason, the Strategic Compass is where the Member States can express their belief and vision of the CDSP for the next 5-10 years. In addition, from 2017, an opportunity exists by the Council for the (Federal Foreign Office) „...Member States to jointly plan, develop and invest in shared capability projects, and enhance the operational readiness and contribution of their armed forces” (Federal Foreign Office). It is called Permanent Structured Cooperation (PESCO), in which 25 Member States joined out of the 27 Members except for Denmark and Malta. This Cooperation covers (EUR-Lex.europa.eu, H) „areas such as training, capability development and operational readiness” (EUR-Lex.europa.eu, H). The European Defense Agency supports the cooperating States in meeting their objectives and enhancing their capabilities. Member States can turn to these organizations for guidance and expertise to bring their defense capabilities to the next level. It is „an intergovernmental expert platform where their collaborative projects are supported, facilitated, and implemented” (EDA.europa.eu). Participants can decide whether they wish to partake in the following project and how intensely they want to be involved (EDA.europa.eu).

As it became apparent, there are two crucial documents in the field of European foreign policies: the Common Foreign and Security Policy and the Common Defense and Security Policy. These are the EU's extensive summary documents for managing foreign affairs. In both cases, the development, the reasons for its establishment, and the goals were covered. The new subtopic will demonstrate the US's handling of foreign affairs, starting with discovering the oldest asset freeze roots.

III. US RULES ON ASSET FREEZE

This new chapter will be about the US's sanctions capability and policy. It is essential to explore, after international organizations, how the US legal order is structured and how the US handles sanctions. The chapter will demonstrate that the United Nations Charters which are decisive worldwide and serve as a guide for countries and international organizations now. However, before its existence, governments tried to determine such regulating laws on sanctions for themselves. In the following another vital primary document will be presented: The Trading With The Enemy Act.

III.1. TRADING WITH THE ENEMY ACT 1917 (TWEA)

In pursuing the origins of asset freeze and blocking accounts, The Trading With The Enemy Act in the US is something that cannot be bypassed. It came into force on October 6th, 1917, with the President's approval (Hand, C. H., 1919). In the Act, the following objective was set to achieve: „Eventually the rule emerged as an economic weapon to be used in aid of the military, aimed, by preventing the accrual of any economic benefit to persons within enemy territory, to weaken the enemy country economically, if possible, and at least to prevent any improvement of its position” (Hand, C. H., 1919, p.112). It is used to strangle the enemy's economy by separating the enemy from its financial resources. The TWEA's legitimacy can be easily doubted for the origins issue because, in the history of humanity, it had always existed that enemies took away each other's property, purposely weakening the opponent. Yet, the following lines will attempt to give grounds for that.

The other most relevant claimant got ahead of the Americans by merely three years. Because of Great Britain's early involvement in the First World War, they worked out the first Trading With The Enemy Act in 1914. To support the statement regarding the time-space, here is a quote from the US's Trading With The Enemy Act: „An “enemy” is defined in the British Trading with the Enemy Proclamation No. 1, dated the 9th of September, 1914...” (Hand, C. H., 1919, p. 119). Not many sources could be found compared to the former US Act due to a lack of reliable dates in sources. The statement only wished to express that on the 9th of September 1914, the Act or Proclamation (sometimes referred to as Proclamation by the British) had to exist. This Act served as a benchmark for such future endeavors, but it has not endured time. It was repealed by the Trading With The Enemy Act of 1939.

After presenting the other potential claimant, the main argument for the US's TWEA is that this Act is still in force. It endured time and conflicts, but new concepts and practices were supplemented, for example, by the United Nations Chapters (Gerhard P. and John T. W.). Although it was prepared in great haste, it was the first to list, together with its English version, the previously undescribed ideals of the law, and more notably, its rules were described more extensively than before in history (Hand, C. H., 1919). It can also be said that the emergence of modern warfare resulted not solely in more refined battlefield weapons but also more advanced economic and legal weapons. Hence, it represents a new era that we cannot overlook.

Details of the Act, 1917

Examining the title of the Act, different parts can be distinguished with two keywords: enemy and trading. But here, mainly the "who" will be studied as who would count as an enemy.

- a) „Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.
- b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent or agency thereof.
- c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy".” (Hand, C. H., 1919, p.115-116)

The last line of the “a” section should also draw the reader’s attention: „or incorporated within any country other than the United States and doing business within such territory” (Hand, C. H., 1919, p.115-116). The text even details there the relationship not just with the enemy but with the ally of an enemy. In a nutshell, it is strictly illegal to do business with somebody who has business relations in hostile territory towards the US (Hand, C. H., 1919). The detailed description of the enemy helps to prevent any misinterpretation. However, it is challenging to cover everybody and every circumstance.

Controversies

The first controversy is if we apply this law strictly, any business, „especially banks, in the neutral countries adjacent to Germany...,” (Hand, C. H., 1919, p.117) should be considered an enemy. This trouble was evaded „by a liberal licensing policy provided guaranties were obtained from the neutral firms against trade with Germany in commodities, credits, securities, etc., originating in the United States, and against trade with the United States where the origin was in Germany” (Hand, C. H., 1919, p.117-118). Licenses often came from the highest level, from the President as well, considering the sincerity of a wartime situation (Hand, C. H., 1919).

The second controversy is the US’s prisoners of war in Germany because they are also in enemy territory. Therefore, trade would be undesirable, but with sentiment and the fact that they are there against their will, it can be solved by a judicial exercise of licensing power (Hand, C. H., 1919). For the decision-makers, this resolution worked perfectly, but it might have been upsetting to understand for the citizens and prisoners of war.

The third controversy reveals the most crucial part because it includes the US’s handling of such corporations operating in the US and being held by “enemy” stockholders. The issue is that the company is functioning for the financial benefit of its shareholders. Consequently, the earned assets can directly finance the enemy. To preserve US assets, the Alien Property Custodian legally claimed and took over enemy-held stocks in such companies (Hand, C. H., 1919). The argument begins with the issue that countries are allowed to confiscate enemy property from their territory at the outbreak of the war (A. H. M., 1926). In the intellect of US legislators, there is no doubt that a country can do that. According to the US Constitution’s 5th Amendment, „which normally gives protection to every person, must yield to the undoubted national power to confiscate the property of enemies” (A. H. M., 1926, p.128). Even at the time of the Civil war, the US Congress passed acts about asset seizure of the enemy and sale of these commodities (A. H. M., 1926). It undoubtedly demonstrates through its early and absolute acceptance that nations, here the US, consider the assets of the enemy as a vital threat that needs to be taken away. At a level, it is understandable that nations took their country’s defense and security in the first place. Still, this sanction might induce severe violations of individual rights. Through its severeness, it is clear that The Trading With The Enemy Act is a wartime sanction and enables „captures on land and water” (A. H. M., 1926, p.128). Unfortunately, there is a massive misunderstanding, which many courts have overlooked and permitted fraudulent actions. „Captures on land and water” (A. H. M., 1926, p.128.) simply means the seizure of these assets, and after the conflict is over, these preserved goods are returned to their rightful

owner. In these cases, it was confiscated by the Alien Property Custodian (E. M. B., 1926). „In a broad sense, the United States is a trustee to hold enemy property taken under the Act, until such time as the United States in orderly course, shall determine the disposition thereof” (E. M. B., 1926, p.345). The international law also stipulates that after the conflict’s end, the taken private property should find its way back to its rightful owner (A. H. M., 1926). In conclusion, the seizure or freeze only means to deprive a hostile nation of its possessions, and after the close of hostilities, these properties should be returned (E. M. B., 1926).

First implementation

Although it was expressed that the frozen property should be returned after a given time, it did not happen after World War I. The Allied powers maintained a loophole to retain all frozen German assets. „Treaty of Versailles, article 297, empowered the Allied and Associated Powers....to liquidate the alien property, and that the German national in that Treaty was required to abandon all his claims” (E. M. B., 1926, p.349). The Allies liquidated these assets to use them in many ways, most likely to compensate for the war damages in their territory or settle debts. The Virginia Law review evaluates the situation as follows „it is respectfully submitted that in view of the steady growth of American investments abroad, the policy of retaining enemy property without compensation is short-sighted and dangerous” (A. H. M., 1926, p.129). The explanation can be pretty straightforward because there would be no country that would enhance global trade when during a war, another country can effortlessly confiscate their assets.

It is safe to say that this type of sanction proved remarkably lethal to the enemy’s economy. Countries with more significance and strength in global trade can make this sanction more painful to their foe, but a massive engagement in global trade can mean, at the same time, more exposure to an asset freeze. For example, during its colonial and economic expansion in South America and other foreign countries, generally backed by State subsidies from 1878, Germany slowly became more economically vulnerable (Hand, C. H., 1919).

In the previous pages, it became apparent that there were already manuscripts before the UN that sought to provide states with a legal basis for implementing economic sanctions. These legal grounds were unjust in some places, and profiting from the enemy became a practice, but soon enough, the sustainability of this was questioned. Compared to the UN Charter, TWEA was a much more initial phase document, which is absolutely in need of further development.

United Nations Charters influence on TWEA

The connection between the US's policies and the UN Chapter VII Article 41 should be covered first regarding the development of The Trading with the Enemy Act. The US had its foreign policy document from 1917, but naturally, only after the UN's born could the two affect each other. The UN Charters began their operation on 24th October 1945 (UN.org C). Right after started affecting the US's foreign policy, by The United Nations Participation Act (UNPA) of 1945. It implemented sanctions mandated under Article 41 (GAO, 2020a). This Act „Authorizes the President to apply economic sanctions, including freezing of assets, called for by United Nations Security Council Resolution (22 U.S.C. § 287c)” (GAO, 2004, p.39). The next conflict, the Korean war, inspired President Truman to consider the content of the Charter and cite it in his Proclamation 2914, proclaiming the Existence of a National Emergency according to United Nations values: „Whereas recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict...we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made through the United Nations and otherwise to bring about lasting peace” (Gerhard P. and John T. W.). The two separate sentences are from different parts of the Proclamation but symbolize the same determination toward the UN's values. These lines may be a modest illustration that the United States sincerely acknowledged and shared the values designated in the Charters and considered a strong justification for its national actions as a starting point.

The cause of development

One of the causes of development was the president's power within the Trading With The Enemy Act. It was mentioned that the US president could approve or disapprove of trading relations, in fact, any connections between domestic and enemy partners (Hand, C. H., 1919). From this power emerged a trend among presidents to use their special authority and broaden their influence. „It was Section 5(b) of TWEA, however, that would form one of the central bases of presidential emergency economic power in the twentieth century” (Christopher A. Casey et al., 2020, p.3). It did not change after the war because Congress did not terminate TWEA in 1921, like many other war powers, thanks to a tremendous amount of enemy property in US custody (Christopher A. Casey et al., 2020). Consequently, The Trading With The Enemy Act remained and served with its presidential loophole as a popular tool in the future to come.

In the 1930s, Congress extended the authority of the President by allowing them to „declare a national emergency in times of peace and assume sweeping powers over both domestic and international transactions” (Christopher A. Casey et al., 2020, summary).

Between the 1940s and 1977, the role of TWEA became more and more influential and favored during the Cold war because of obvious reasons: it was only about economic sanctions and not full-out war. „Presidents used TWEA to block international financial transactions, seize U.S.-based assets held by foreign nationals, restrict exports, modify regulations to deter the hoarding of gold, limit foreign direct investment in US companies, and impose tariffs on all imports into the United States” (Christopher A. Casey et al., 2020, summary). A few examples when the TWEA was cited or called upon, and a national emergency was declared: President Truman on North Korea and China; Subsequent Presidents on Vietnam, Cuba, and Cambodia; President Nixon inhibited the convertibility of the US dollar to gold in 1971. The many uses of TWEA also indicated a heavy reliance on special presidential authority over economic sanctions. Without these „emergencies,” US foreign policy could not have operated so effectively (Christopher A. Casey et al., 2020).

On the one hand, the state of emergency created an effective way of handling the Cold War and eliminating any threats. However, on the other hand, the Presidents became increasingly fond of these measures, and it was hard to tell if they exploited the convenient position. That is why the Senate decided to form a committee to evaluate the emergency authority. „The special committee issued a report surveying the President’s emergency powers in which it asserted that the United States had technically been in a state of national emergency since March 9, 1933, and that there were four distinct declarations of national emergency in effect” (Christopher A. Casey et al., 2020, p.7). Without diving into the matter more deeply, some could have held the situation controversial and disputable.

The reform of TWEA

The reform came in two waves. Firstly, the National Emergencies Act (NEA) in 1976 terminated all ongoing emergencies, except those citing TWEA Section 5b, and installed new barriers on declaring and on the duration of new state emergencies. From this on, the President could not avoid Congress during the declaration process or the question of duration. There was an intention of retaining the practices of TWEA but under supervision by Congress as a measure of control (Christopher A. Casey et al., 2020). A few things still changed: „First, Congress amended TWEA so that it was, as originally intended, only applicable during a time of war. Second, Congress expanded the Export Administration Act to include powers that previously were authorized by reference to Section 5(b) of TWEA. Finally, Congress wrote the International Emergency Economic Powers Act (IEEPA) to confer upon the President a new set of authorities for use in time of national emergency which are both more limited in scope

than those of section 5(b) and subject to procedural limitations, including those of the [NEA]” (Christopher A. Casey et al., 2020, p.9).

III.2. INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

The second wave of the reform was the International Emergency Economic Powers Act (IEEPA). It was also the renewal of TWEA. „The International Emergency Economic Powers Act, also known as IEEPA, codified presidential national emergency powers to investigate and impose controls on transactions as well as freeze foreign assets under the jurisdiction of the United States” (Congress.gov, 2007-2008). After the creation of this act, the US Presidents utilized it frequently, just like their predecessors did with the TWEA. According to IEEPA, the President is only permitted to call for a national emergency when „an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat” (Cornell Law School-1701). Nevertheless, as a control measure, it can only be used for this purpose, and any additional threat must be first met with a new declaration of the national emergency process (Cornell Law School-1701). The President can take the following actions at the end of the procedure of declaring a national emergency:

„(A)investigate, regulate, or prohibit

(i)any transactions in foreign exchange,

(ii)transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii)the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B)investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and.

(C)when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines

has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes” (Cornell Law School-1702).

Thanks to the reforms, the President has also now obligations toward Congress. In the case of IEEPA, the President must consult with Congress in every possible instance until the sanctions are in effect. The President must answer the following questions:

- „(1) the circumstances which necessitate such exercise of authority;
- (2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;
- (3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;
- (4) why the President believes such actions are necessary to deal with those circumstances; and
- (5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries” (Cornell Law School-1703).

From then on, precautions prevented the IEEPA from becoming like the TWEA, and partially it succeeded because of the safeguard measures, but sometimes the resemblance was apparent. IEEPA became an essential economic-based sanctions tool, which Presidents often used to restrict international transactions. The scope and duration of IEEPA emergencies extended over the decades, just like in the case of TWEA. The first NEA and IEEPA state of emergency was established in reaction to Iran’s 1979 hostage-taking of US embassy staff and may shortly approach its fifth decade (July 1st, 2020). However, it also had other effects because only foreign states and governments became targets originally. Over time, non-state individuals, such as terrorists and criminals associated with the International Criminal Court were targeted as well (Christopher A. Casey et al., 2020).

From this point, there is the possibility to go two different directions, both of them root in the few sentences above. Firstly, the issue of new targets, such as individuals, contrasts with the previous practice of punishing only governments. Secondly, the new amendments to IEEPA triggered by terrorist attacks.

New targets of sanctions

Concerning this sanction, the target word applied in most invoked national emergency cases on geographical locations because they targeted a specific country with its particular government, for instance, North-Korea, and Belarus. The new tendency of aiming the sanctions toward non-geographic targets began in 1990 against individuals or groups, for instance, participating in weapon proliferation and terrorism. The first non-geographic emergency had been invoked against the threat of the proliferation of chemical and biological weapons (Christopher A. Casey et al., 2020). Other examples are Barack Obama's emergency against „transnational criminal organizations, persons engaging in malicious cyber-enabled activities,” or Trump's „foreign adversaries, who were creating and exploiting vulnerabilities in information and communications technologies and services” (Christopher A. Casey et al., 2020, p.20). There was an exciting refinement in targeting individuals since we exclusively have read sanctions against foreign individuals regardless of their criminal activity. However, the situation changed with George W. Bush's Executive Order 13219: „to target persons who threaten international stabilization efforts in the Western Balkans” (Christopher A. Casey et al., 2020, p.23) because the word foreign was omitted. So, even US citizens could be targeted. While at first, the presidential emergency use of the IEEPA was focused on foreign governments influenced or picked by their location. It evolved into a broadened scope, where organizations and individuals, regardless of origin, became targets of IEEPA sanctions (Christopher A. Casey et al., 2020). It could also raise some concerns about whether it is easier or more convenient to declare emergencies against hardly graspable negative occurrences appearing on the global stage than against countries that can be defeated more explicitly. It might affect the lengthiness of emergencies. But to state, anything solid regarding this matter would require additional reading and examination.

Amendments of IEEPA

As the first IEEPA emergency was linked to a terrorist attack, as was one of its significant amendments, the USA PATRIOT Act. Before this Act, IEEPA was amended seven times, but there were insignificant changes. Due to the brutal attacks on September 11th, 2001, the IEEPA's scope expanded. The President under IEEPA did not have the power to vest assets thanks to the TWEA incidents earlier. So, the USA PATRIOT Act returned at the disposal of the President the ability to vest frozen assets, but solely under extraordinary situations (Christopher A. Casey et al., 2020). Such as: „when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any

property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that [the President] determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes” (Christopher A. Casey et al., 2020, p.10). Under the shock, the nation was triggered a massive reaction to any threat that emerged against the United States. In addition, if we imagine the political situation, there would not have been a person who opposed such a retort to terrorism. Attorney General John Ashcroft dissected how crucial it is not just to freeze or block assets but seize them, and the President must have the authority to suppress terrorism. However, with this deed, one of the main pillars of otherness from TWEA almost ceased to exist. Ironically, the only use of this Act arose on March 20th, 2003 (Christopher A. Casey et al., 2020). Where „President George W. Bush ordered the blocked property of the Government of Iraq and its agencies, instrumentalities, or controlled entities to be vested in the Department of the Treasury [to] be used to assist the Iraqi people and to assist in the reconstruction of Iraq” (Christopher A. Casey et al., 2020, p.14).

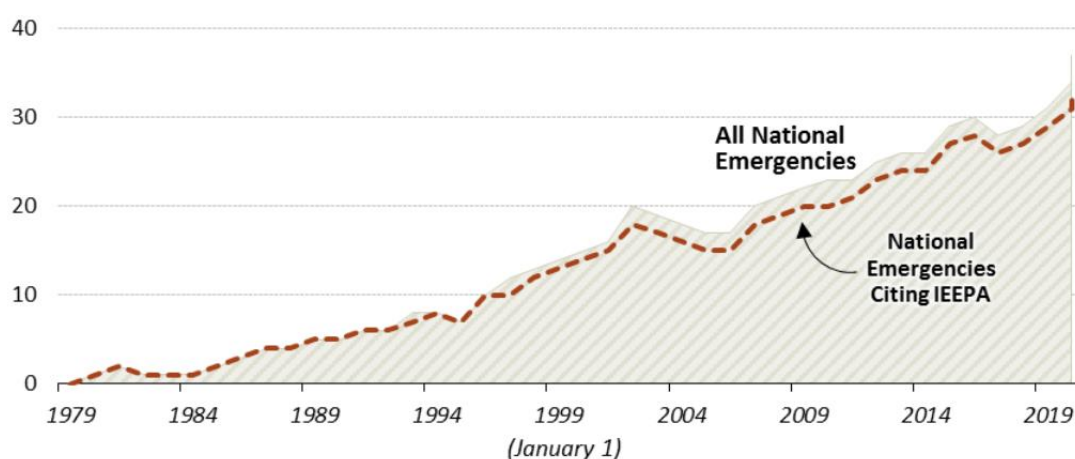
Additional, notable amendments from 1988 and 1994 may surprise most readers. Unlike the TWEA, IEEPA protected from the start the rights of US citizens to engage with foreign persons subjected to sanctions, for example, in any postal or other personal communication, which excludes any transfer of value. The additional amendments increased the possibilities of contact by allowing the exchange of published information (Christopher A. Casey et al., 2020). Thanks to the modifications, there are other essential exemptions to presidential authority. Firstly, donations, like food and medicine, are intended to ease human hardship. Although if the President determines these donations to be undermining his efforts or, for example, would endanger the forces in combat, he can also sanction these items. Secondly, importation or exportation from or to any country of information and informational materials like films, posters, or taps. Plus, the goods must not be sanctioned by another act (Cornell Law School-1702).

The final noteworthy amendment, the International Emergency Economic Powers Enhancement Act, was created on October 16th, 2007, to augment civil and criminal penalties. The new civil penalties include a \$250 000 fine or twice the amount with which the law was

violated. By the criminal penalties, the fines are maximized at \$1 000 000, plus may be followed by imprisonment of up to 20 years (Christopher A. Casey et al., 2020). The harsh numbers are meant to discourage wrongful investment and to fill up the pockets of the Department of the Treasury by holding violators accountable. Before this act in 1977, initially, the penalty was determined at \$10 000, and until the renewal of the USA PATRIOT Act 2005, there were no further increases. Of the vast difference, it is clear why the regulators felt that the original numbers were not enough to deter private actors from wrongdoing. If anyone is caught transferring value to those subject to sanctions, even for merely ones, they can face a \$50 000 fine. By the way, the penalties are determined to reflect the severity of the violation, making the act more flexible. The increase of the penalties allows more effective functioning considering that the violators are primarily big firms, banks, or financial institutions to whom the originally set \$10 000, and even the \$50 000 was no real retribution when the transaction was \$1.4 million worth (Congress.gov, 2007-2008).

IEEPA in practice

Here is figure 1 to demonstrate how essential IEEPA became in practice and how the national emergencies were distributed under the different options. From the figure, it is apparent that mostly all national emergencies were in connection with IEEPA. The figure stunningly shows that IEEPA completely acquired the place of TWEA.



(1. figure: Cumulative Number of Ongoing National Emergencies by Year, Source: Christopher A. Casey et al., 2020, p.20.)

Ultimately the sanctions under IEEPA provide a powerful economic weapon for the US to revise its foreign partners' decisions (Christopher A. Casey et al., 2020). The following quote will indeed demonstrate for what the asset freeze is used: „Presidents have used frozen assets

as a bargaining tool during foreign policy crises and to bring a resolution to such crises, at times by unfreezing the assets, returning them to the sanctioned entity, or channeling them to a follow-on government” (Christopher A. Casey et al., 2020, p.28). The quote does not underline enough its serious nature, but it was visible in the case of first world war Germany how destructive it is to lose financial resources. Moreover, it can be used not only to bargain with the existing government, but Presidents could also pressure the sanctioned government by supporting its domestic opposition and recognizing their right to the frozen assets. It was perfectly displayed in our modern time during the Obama and Trump administrations when in 2015 Barck Obama blocked and froze the assets of the Venezuelan government, which only escalated in 2019 by recognizing the leader of the Venezuelan opposition, who could access the restrained assets held at the FED (Christopher A. Casey et al., 2020).

Looking back on the IEEPA, we can see a much-developed version of TWEA. The last pages provided insight into the IEEPA becoming more transparent and in which areas it had progressed. It was an answer to the unsupervised era of TWEA, but in many cases, neither the IEEPA could avoid the pitfalls of TWEA.

III.3. OFFICE of FOREIGN ASSETS CONTROL (OFAC)

In the previous pages, the structure of the legislations, acts and how they build on one another were presented. The sanctions clearly and strictly with their subject are meant to prevent any usage of assets. Still, it is only achievable with the people operating the vast system.

The Office of Foreign Assets Control (OFAC) at the Department of Treasury has the primary role of administering and enforcing the sanctions regarding foreign assets (OFAClawyer.net). Besides, OFAC has to keep a watchful eye on the President’s reports, in which he consults with Congress about the intended sanctions. Reasonably the enforcer and implementer of sanctions ought to listen to potential new sanctions regarding, for instance, the Islamic Republic of Iran and the Republic of Sudan (Congress.gov, 2007-2008).

The administration function happens via publishing a list of Specially Designated Nationals (SDNs) and Blocked Persons. The rules are that any value transmission is prohibited to such listed individuals. If anyone did not abide by the rules, it could be followed by asset freezes and penalties. A US citizen or anyone within the US jurisdiction is expected to block these assets even if the individuals on the list have not been convicted and had no time to oppose their listing. Plus, when a US person engages in a transaction, that intention is entirely sinless and has nothing to do with the reasons the SDN was singled out. Most importantly, it is not

enough to avoid partaking in transactions with persons subject to sanctions, but to report such intended to blocked property, that they currently hold (OFAClawyer.net). However, the US agencies can initiate procedures just as the offended parties are entitled to such counteractions if OFAC does not follow the IEEPA requirements. To avoid potential lawsuits, the targeted names are displayed on its SDN list, on its public website, and in the Federal Register. OFAC provides electronic notifications, and the Federal Reserve also sends updates to US financial institutions. If the circumstances allow, OFAC gives specific guidance to concerned financial institutions, even contacting some of them individually (GAO, 2004).

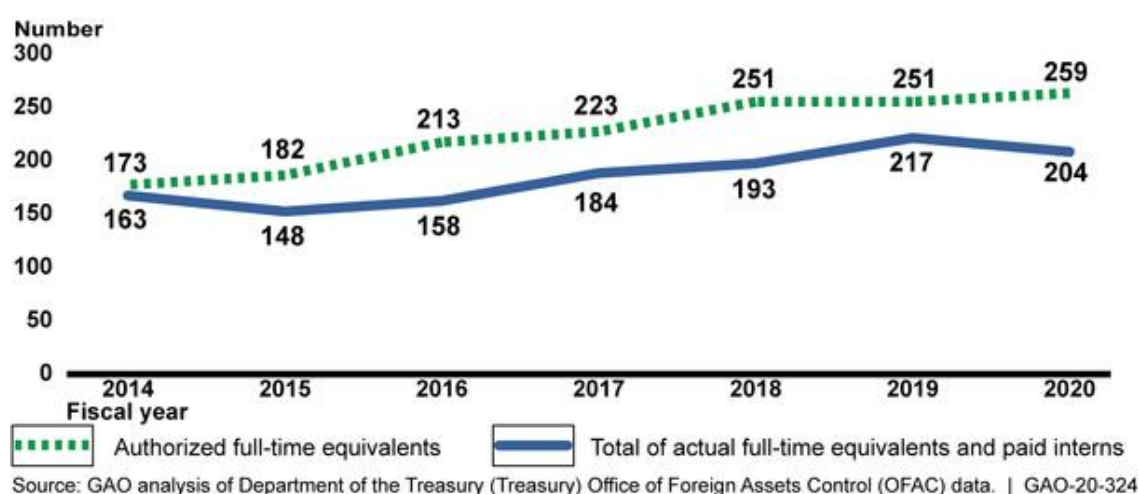
As always, there are some exceptions. Individuals can apply by OFAC for a license for authorization to engage in an otherwise prohibited transaction. Two types can be differentiated: general and specific licenses (OFAClawyer.net). „A general license authorizes a particular type of transaction for a class of persons without the need to apply for a license. A specific license is a written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written license application” (OFAClawyer.net). Everyone must consider whether or not a transaction is illegal before engaging in any trade, commerce, or humanitarian effort with targeted entities. The next step is deciding if they require a specific license and assessing if a general license applies to the intended activity. Recently OFAC sanctions apply countries like Angola, Russia, Cuba, North Korea, and more (OFAClawyer.net).

To succeed, OFAC coordinates with agencies at the Department of State, Homeland Security, and Justice. Still, one of the essential contributors is not State related. Private firms are critical in the implementation and maintenance of economic sanctions. If the private sector, where the majority of business is concluded, does not abide by the sanctions, it is nearly impossible to sustain pressure on the sanctioned entity. So, it is necessary to supervise and deter the private sector from illegal transactions (Congress.gov, 2007-2008).

There are two groups within the penalties: criminal and civil penalties. The Federal Courts handle the criminal penalties, and the revenues will land in the Crime Victims Fund. OFAC deals with civil penalties, and the collected money goes to the Treasury’s pocket into the General Fund (Congress.gov, 2007-2008). The case of Credit Suisse provides a perfect example for demonstrating the things discussed concerning the private sector and the penalties. Credit Suisse, a bank headquartered in Switzerland, agreed with OFAC to remedy its civil violations of IEEPA. The bank was linked to illegal transactions in the name of its customers from Iran, Sudan, and other sanctioned countries. The forfeited money reaches \$536 million, the highest ever levied against an entity. Credit Suisse falsified documents in the 90s and 2000s by

removing essential details such as customer names, bank names, and addresses to avoid US filters. Hence, the messages went through the US financial system undetected, successfully moving hundreds of millions of dollars. Explicit instructions on remaining hidden in the US financial system were one of the bank's services. Consequently, they actively participated in illegal money transfers. In the ever-evolving and complex financial world, it is crucial to have a team that tracks these unlawful movements. The complicated investigations and violations understandably require a firm office in the background, which consumes many resources (Justice.gov, 2017).

Till the recent crises, the US responded increasingly with sanctions against foreign threats. The agencies benefited from the substantial and growing funding. However, it is still challenging to fill the ranks of the Offices. According to Treasury, the hiring difficulties root in general competition for financial professionals and the length of required mandatory security checks. The second figure shows the OFAC's workforce from 2014 and 2020.



(2. figure: Treasury Department Office of Foreign Assets Control authorized and actual employees, fiscal years 2014-2019, Source: GAO, 2020b).

From the year 2014, the OFAC struggled to keep up its workforce, and until 2020, it repeatedly occurred that nearly 50 job vacancies existed. However, the number of employees slowly increased (GAO, 2020b).

This section demonstrated that it is one thing to impose sanctions on a foreign country and another to implement and coordinate them. A firm office is a requirement for a successful sanction, but the administration, operation, and supervision demand massive financial support. Undoubtedly the employees of OFAC and other related institutions have tremendous tasks considering the frequency of sanctions and shortage in the workforce.

Challenges during sanctions

The new topic can be related to the case of Credit Suisse because falsified documents can lead to difficulties for the authorities. Firstly, the issues concerning the obtained data can be listed among the main challenges the US government agencies face. Sometimes the authorities cannot get adequate and complete information about the subject of the sanction, such as the correct spelling of names and dates of birth. Even companies in the private sector can experience such a challenge. Hence, they might fail to implement the sanctions or decide to protect customer data, just like Credit Suisse. The situation improved with the USA PATRIOT Act because financial institutions initially were not obligated to accumulate so much information about their clients. The incomplete pieces of information are dangerous because they open a possibility for a „false positive”. It means that the wrong person became the victim of sanctions, whose name, for instance, had a similar spelling to those on the Specially Designated Nationals (SDN) list, and the software mistook its target (GAO, 2004).

Secondly, the sanctions can collide with partner countries’ domestic regulations, putting an obstacle before US agencies. The best solution is to negotiate a beneficial agreement for both parties, then the asset freeze or other sanction may be allowed (GAO, 2004).

Thirdly, financial regulators do not effectively supervise financial institutions through the OFAC compliance program for various reasons. That means that although financial institutions must comply with OFAC regulations, OFAC’s ability to monitor them is limited because of their lack of authority to supervise them. Ultimately, financial institutions’ regulators have the responsibility to examine their compliance. Evidently, OFAC relies on financial regulators, whose mandatory reports are the primary source of violations (GAO, 2004).

When a transaction is determined to be illegal because of the SDN list, then the transaction is considered a “true hit”, which needs to be blocked. The news of the blocked account must reach OFAC within ten business days in a report (GAO, 2004).

IV. LEGAL CRITERIA OF ASSET FREEZE

Concerning the definition of the asset freeze, the Cambridge and Oxford dictionaries will help to develop a proper term. The Cambridge dictionary defines asset freeze as „to officially and legally prevent money or property from being used or moved” (Cambridge Dictionary). Oxford characterizes it as „to prevent money, a bank account, etc. from being used by getting a court order which bans it” (Oxford Dictionary). Oxford’s term may be confusing with the words “a court order” because until now, The Security Council of the UN, The CFSD determines in the EU’s case, and The US President for the US could order an asset freeze.

International Criminal Court (ICC)

Not so shockingly, even the International Criminal Court (ICC) can request States for asset freezes as the UN Security Council has. States cooperating with the ICC must follow the ICC’s decisions and execute them. In addition, the ICC can send requests for asset freezes to non-party States. Although for them, it is not mandatory to execute unless the United Nations Security Council (UNSC) issues that sanction as well. Moreover, such a request still requires legislative action by the receiving State’s legal bodies. There is a difference between the Court’s and the UNSC’s capabilities to order an asset freeze. „The former being part of a criminal process and the latter consisting of administrative measures” (Daley J Birkett, 2020, p.503). Plus, the ICC’s authority to freeze assets is related to the accused’s criminal responsibility, which is subject to the checks and balances that apply to criminal proceedings, even fair trial considerations. In summary, the ICC requests the application of an asset freeze the UNSC orders one (Daley J Birkett, 2020).

EU’s definition and entitlements

The EU official website extensively describes asset freeze as „the blocking of bank accounts and other financial assets of persons listed in EU legal acts” (EDPS.europa.eu). The listed individuals are associates of terror organizations, violators of human rights, and the rule of law, which undermines the values of democracy. It also states that an asset freeze is a targeted sanction against individuals, governments, and countries (EDPS.europa.eu).

As it is a targeted type of sanction, certain rights must go along to ensure the accused’s fair treatment. In the following, the indicted entitled rights will be covered.

1, *Data quality*: Having correct data about the sanctioned person is crucial because it also gives some ground for listing them. Logically they should have been given a chance to defend

their innocence by informing and allowing them to change inaccurate data about them (EDPS.europa.eu).

2, *Right of Information*: As a subject to an asset freeze, it is also good to know how and why their data will be put under proceedings. Naturally, it is problematic to locate particular people, especially those who are associates of a crime organization and do not desire to reveal their availability. In such cases, everyone can learn about a newly listed person in the Official Journal of the EU. However, this notification might be delayed until the initial listing to keep the surprise factor (EDPS.europa.eu).

3, *Right of access*: Indices have a right to access the examined personal data about them and to be notified about how they can reach that. This bulleted list intends to allow the opportunity to challenge the listing (EDPS.europa.eu).

4, *Right to rectify*: Those whose assets are frozen can rectify incorrect or incomplete information on the site. In this given opportunity, they can present their opinion. Nevertheless, this does not mean their name will get off the list because all the rights provide the opportunity to gain their delisting, but nothing guarantees that (EDPS.europa.eu).

Human rights issue

An asset freeze can firmly collide with two vital human rights. The issue is that in multiple cases, people have suffered from judicial scrutiny and therefore challenged the State authorities' implementation of the asset freeze. Naturally, other rights matter in this issue, for instance, the presumption of innocence, in other words, a fair trial in any case. Nonetheless, the two concerning rights are 1, the right to the peaceful enjoyment of one's possessions and 2, the right to respect one's private and family life, home, and correspondence.

In connection with the right to the peaceful enjoyment of one's possessions, nobody should be deprived of his collected fortune unless it is in the public interest or corresponds with the provided conditions of domestic law and international law. Asset freeze requested by the ICC and UNSC prevent subjects of sanction from the peaceful enjoyment of their possessions. Thus, this sanction has to be justified. However, one could argue that an asset freeze does not equally mean confiscation as it solely prevents access to possessions. This argument is entirely valid but still has to suit four categories: time, legality, legitimate aim, and proportionality. For example, without a time limit, an asset freeze could mean a confiscation, but nobody could use those assets.

Time limit: the ICC and UNSC have rarely ordered an asset freeze without a time limit or at least a date when they reconsider the sanctioning. If the judicial authorities believe that the

imposed sanctions no longer satisfy the objectives, they can decide to lift the measures taken. Although this does not mean the automatic release of those assets, it gives the State time to reassess the situation under the law. However, these temporary restrictions can last a decade. Thus, the long-term application of asset freeze raises concerns about whether it is genuinely a temporary measure because ten years or more are significant in the scale of a human lifetime (Daley J Birkett, 2020).

Legality: regarding this point is the most essential that „the legality of asset freezing measures requested by the ICC and UNSC, both require the requested States to give domestic effect thereto” (Daley J Birkett, 2020, p.514). States must establish an environment where the internationally requested measures are fully adopted and have a common ground with domestic laws (Daley J Birkett, 2020).

Legitimate aim: refers to the general interest in the Rome Statue system. Stakeholders such as Prosecutor, accused, and third parties with rights and interests participate in the pre-trial protective measures process. Ultimately, this process’ aim should be, above all else, the benefit of the victims (Daley J Birkett, 2020).

Proportionality: covers the matters regarding the applicant’s ability to manage his assets and minimize the damage consequence of the lack of management with procedural safeguards. The damages relatable to the sanction must be kept at the lowest level possible. Nevertheless, the frozen value should correspond to or be equal to the value of future fines, such as restitution for the victims (Daley J Birkett, 2020).

Some other practices have relevance to the fairness of trials too, for example, judicial supervision. This principle suggests if the cause of the intention that a precautionary measure is needed, such as an asset freeze sanction is terminated, the court must reassess if the maintaining of measures are still lawful, necessary and correct even before the proceeding is finished. Otherwise, they would risk the peaceful enjoyment of the possession right (Daley J Birkett, 2020).

The second additional practice is the management fees and the presumption of innocence when an acquittal emerges. After that, the accused cannot be billed for costs during the asset freeze. However, the guilty must pay these expenditures (Daley J Birkett, 2020).

The third practice, prompt release, is about the permitted time between the termination of the proceedings and the release of frozen assets. The argument for prompt release is that if the assets were under close attention and the proceeding was profound, there is no justification for why it should be held back further (Daley J Birkett, 2020).

The second human right was the right to respect private and family life. No disturbance is allowed towards this right unless it „...is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others” (Daley J Birkett, 2020, p.519). Understandably here lies a significant challenge to successfully separate the actual violations from unreliable cases. Clear reasoning from judges and an awareness of the connection between human rights and compliance with ICC and UNSC orders are required to avoid unfairness altogether (Daley J Birkett, 2020).

The last few chapters examined and presented the court’s ability regarding restrictive measures. In summary, the ICC can ask cooperating States to implement sanctions and harmonize new laws and orders with their domestic laws. Furthermore, the accused can seek court justice and fight against possible violations. However, this topic has many other aspects of human rights connections with asset freeze undescribed. This little part merely wanted to provide a small portion of this topic, giving a brief insight because of its significance.

V. SURVEY

The questions and answers you can find in the appendix. My primary research consisted of preparing a representative questionnaire, which was filled out by newly graduated BGE students or currently studying BGE students. The survey consists of 13 questions, for which 107 replies were received. Of these, 49.5% of the respondents had not heard about the asset freeze, but almost equally, 50.5% had already heard about this sanction. In general, the students felt the correct solutions. In the case of one or two questions, how well they answered exceeded even my expectations. They recognized in the 2nd question very nicely that the asset freeze wants to prevent the movement and access of assets. Furthermore, although with a more negligible percentage difference by the 3rd question, they also knew that staying in touch with the sanctioned person is possible if there is no transfer of value. In questions 4th and 5th, the state's obligations were also assumed correctly. The comprehensive agreement was in question 6, where 94 people thought rightly that the financial institution must notify the owner of the frozen account in any way possible. The only deviation from the proper solution can be found in question 8, where the EU Charter prevailed instead of the UN Charter. After that, the correct answers, the EU, the UN, and the International Criminal Court, in question 9 confidently succeeded. The identity of the operative administration of the European Union's Common Foreign and Security Policy was quite close concerning the 11th question. Ultimately, the Council of the European Union was correctly chosen by the majority, with one vote more than the second-placed European Parliament. Regarding question 12, I was stunned by how many people picked China. The Trading With The Enemy Act is in force in the USA, which confidently triumphed, but no Anglo-Saxon country follows in second place, for example, not England but China. I intended the last question to be a trickery question, but the respondents did not let themselves be deceived and dared to risk "the more than 40 years" answer because the USA has been under a national emergency indeed for more than 40 years. Furthermore, the solution of 10 years came in second place, meaning that the respondents could entirely picture such high numbers concerning the US.

Overall, the students filled out the questionnaire quite correctly, even though half of them had never heard of it before. Of course, it can be assumed that those who have already heard about it filled out the form most correctly, but unfortunately, I cannot confirm this. The survey also shows that the current war brought this sanction to the people's attention, and they could obtain relatively accurate information about the subject. Of course, they have heard about asset freezes in connection with other events as well, but their number is minimal compared to all the

respondents. So, it is questionable whether general knowledge of this kind of sanction only occurs in times of emergency or whether students are also informed about this topic in easier times. After all, even in peacetime, it is a significant sanction type, which can also affect private individuals. However, further research would be required to uncover this.

CONCLUSION

In conclusion, this work wishes to illustrate the circumstances surrounding the asset freeze, which allows using the sanction and sets limitations for it. Furthermore, through this reflection, I aimed to introduce the objectives and method of use of the asset freeze. We managed to go through the UN, EU, and USA rules and their handling of the asset freeze sanction. As displayed in the research paper, the Charter of the United Nations forms the basis from which every country traces the correctness of its sanctions policy. During this investigation, the possible roots of asset freeze were presented. The sanctions' history, background, and limitations were defined through the cases of the EU and the USA. In addition, the offices that coordinate the success of the asset freeze were discussed. Before the end of the paper, we delicately touched on the relationship of the sanction with the court and what rights and possibilities the subject of an asset freeze has. This is how we came close to the true nature of the asset freeze. Finally, a representative questionnaire served as an illustration of the knowledge of recent young economists. The questions did not completely cover the topic, but my questionnaire wanted to be an initial survey of who has any understanding of the issue.

The most challenging thing during the research was staying on the subject. Many side lines and side branches accompanied the way of presentation. For this reason, it is problematic to summarize in such a concise research paper. The topic is not finished, so I have set myself the goal of completing this topic for the following presenting opportunities. My research paper can certainly be supplemented in the direction of the following issues: the broader compatibility of the asset freeze with human rights, the analysis of the ethics of the asset freeze or the role of the asset freeze in preventing crime, including corruption, and finally the management of the challenge posed by cryptocurrencies.

REFERENCES

Articles:

1. National Review (2022a): Trudeau Invokes Emergency Powers against Truckers, Will Freeze Bank Accounts, February 14; Downloadable: [Trudeau Invokes Emergency Powers against Truckers, Will Freeze Bank Accounts | National Review](#) Downloaded: 2022.02.16.
2. National Review (2022b): Canada Unlocks ‘Vast Majority’ of Bank Accounts Frozen over Support for Trucker Convoy, February 23; Downloadable: [Truck Convoy Protest: Canada Unlocks 'Vast Majority' of Bank Accounts Frozen for Supporting Convoy | National Review](#) Downloaded: 2022.02.24.
3. The Guardian (2022): Putin’s daughters targeted in US sanctions against Russia, April 6; Downloadable: <https://www.theguardian.com/world/2022/apr/06/eu-sanction-russia-reports-putin-daughters-ukraine> Downloaded: 2022.06.12.

Websites:

- 1) A. H. M. (1926): War. Confiscation of Private Property of Enemy under Trading with the Enemy Act. *Virginia Law Review*, vol. 13, no. 2, pp. 127–29. *JSTOR*, Downloadable: <https://doi.org/10.2307/1064880>; Downloaded: 2022.10.03.
- 2) Cambridge Dictionary: Meaning of freeze in English; Downloadable: [FREEZE | meaning, definition in Cambridge English Dictionary](#); Downloaded: 2022.10.01.
- 3) Christopher A. Casey, Ian F. Fergusson, Dianne E. Rennack, Jennifer K. Elsea (July 14, 2020) The International Emergency Economic Powers Act: Origins, Evolution, and Use, Congressional Research Service; Downloadable: [The International Emergency Economic Powers Act: Origins, Evolution, and Use \(fas.org\)](#); Downloaded: 2022.10.10.
- 4) Congress.gov (2007-2008), Committee Reports, 110th Congress, S. Rept. 110-82- International Emergency Economic Powers Act; Downloadable: [S. Rept. 110-82 - INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT | Congress.gov | Library of Congress](#) Downloaded: 2022.10.20
- 5) Cornell Law School-1701, LII, U.S. Code, Title 50, Chapter 35, § 1701; 50 U.S. Code § 1701 - Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities; Downloadable: [50 U.S. Code § 1701 - Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#); Downloaded: 2022.09.09.
- 6) Cornell Law School-1702, LII, U.S. Code, Title 50, Chapter 35, § 1702; 50 U.S. Code § 1702 - Presidential authorities; Downloadable: [50 U.S. Code § 1702 - Presidential authorities | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#); Downloaded: 2022.09.10.
- 7) Cornell Law School-1703, LII, U.S. Code, Title 50, Chapter 35, § 1703; 50 U.S. Code § 1703 - Consultation and reports; Downloadable: [50 U.S. Code § 1703 - Consultation and reports | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#); Downloaded: 2022.09.08.
- 8) Daley J Birkett, (September 11, 2020): Asset Freezing at the European and Inter-American Courts of Human Rights: Lessons for the International Criminal Court, The United Nations Security Council and States. *Human Rights Law Review*, Volume 20, Issue 3, Pages 502-525, Published by Oxford University Press. Downloadable: <https://doi.org/10.1093/hrlr/ngaa022>; Downloaded: 2022.09.01.

- 9) EDA.europa.eu: European Defence Agency: What we do, Downloadable: [What we do \(europa.eu\)](#); Downloaded: 2022.09.15.
- 10) EDPS.europa.eu: Asset freezing; Downloadable: [Asset freezing | European Data Protection Supervisor \(Europa.eu\)](#); Downloaded: 2022.09.07.
- 11) EEAS.europa.eu (2021): About the European External Action Service; Downloadable: [About the European External Action Service | EEAS Website \(europa.eu\)](#); Downloaded: 2022.09.03.
- 12) Elizabeth Duquette (2001): The European Union's Common Foreign and Security Policy: Emerging from the U.S. Shadow. University of Chicago Law School, Chicago Unbound. Downloadable: [The European Union's Common Foreign and Security Policy: Emerging from the U.S. Shadow \(core.ac.uk\)](#) ; Downloaded: 2022.09.02.
- 13) E. M. B. (1926): The Trading with the Enemy Act. *The Yale Law Journal*, vol. 35, no. 3, pp. 345–57. *JSTOR*, Downloadable: <https://doi.org/10.2307/789090>; Downloaded: 2022.10.30.
- 14) EUR-Lex.europa.eu (2015 December), A: Foreign & security policy at EU level; Downloadable: [EUR-Lex - ai0025 - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.10.01.
- 15) EUR-Lex.europa.eu, B: Common foreign and security policy (CFSP); Downloadable: [EUR-Lex - foreign_security_policy - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.09.12.
- 16) EUR-Lex.europa.eu (2020 January), C: The High Representative of the Union for Foreign Affairs & Security Policy; Downloadable: [EUR-Lex - ai0009 - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.08.29.
- 17) EUR-Lex.europa.eu (2020 November), D: European External Action Service; Downloadable: [EUR-Lex - rx0013 - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.09.05.
- 18) EUR-Lex.europa.eu (2015 September), E: The EU's Common Security and Defense Policy; Downloadable: [EUR-Lex - ai0026 - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.10.10.
- 19) EUR-Lex.europa.eu, F: Mutual defence clause; Downloadable: [EUR-Lex - mutual_defence - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.10.02.
- 20) EUR-Lex.europa.eu, G: Common Security and Defence Policy (CSDP); Downloadable: [EUR-Lex - european_security_defence_policy - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.10.05.
- 21) EUR-Lex.europa.eu (2022 January), H: Permanent structured cooperation on defence and security (PESCO); Downloadable: [EUR-Lex - 4335528 - EN - EUR-Lex \(europa.eu\)](#); Downloaded: 2022.10.14.
- 22) European-Union.europa.eu: Aims and Values; Downloadable: https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en; Downloaded: 2022.10.11.
- 23) Federal Foreign Office: Common Security and Defence Policy (CSDP); Downloadable: [Common Security and Defence Policy \(CSDP\) - Federal Foreign Office \(auswaertiges-amt.de\)](#); Downloaded: 2022.10.06.
- 24) Finance.ec.europa.eu: Finance, European Commission: Overview of sanctions and related tools; Downloadable: [Overview of sanctions and related tools \(europa.eu\)](#); Downloaded: 2022.08.28.

- 25) FPI.EC.europa.eu, Service for Foreign Policy Instruments, European Commission: Common foreign and security policy; Downloadable: [Common foreign and security policy \(europa.eu\)](#); Downloaded: 2022.08.29.
- 26) GAO United States Government Accountability Office (2004 September): Foreign Regimes' Assets. The United States faces challenges in recovering assets, but has mechanisms that could guide future efforts. GAO-04-1006 Report to Congressional Requesters. Downloadable: [GAO-04-1006 Foreign Regimes' Assets: The United States Faces Challenges in Recovering Assets, but Has Mechanisms That Could Guide Future Efforts](#); Downloaded: 2022.08.18.
- 27) GAO United States Government Accountability Office (March 2020a); Economic Sanctions: Treasury and State have received increased resources for Sanctions implementation but face hiring challenges (Full report); GAO-20-324 Report to the Committee on Foreign Affairs, House of Representatives; Downloadable: [GAO-20-324, ECONOMIC SANCTIONS: Treasury and State Have Received Increased Resources for Sanctions Implementation but Facing Hiring Challenges](#); Downloaded: 2022.08.27.
- 28) GAO United States Government Accountability Office (March 11, 2020b); Economic Sanctions: Treasury and State have received increased resources for Sanctions implementation but face hiring challenges; GAO-20-324 Report to the Committee on Foreign Affairs, House of Representatives; Downloadable: [Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges | U.S. GAO](#); Downloaded: 2022.08.27.
- 29) Gerhard Peters and John T. Woolley: The American Presidency Project: Harry S. Truman, Proclamation 2914—Proclaiming the Existence of a National Emergency; Downloadable: <https://www.presidency.ucsb.edu/node/230541>; Downloaded: 2022.09.26.
- 30) Hand, C. H. (1919): The Trading with the Enemy Act. *Columbia Law Review*, vol. 19, no. 2, pp. 112–39. *JSTOR*, Downloadable: <https://doi.org/10.2307/1111955>; Downloaded: 2022.10.01.
- 31) Jochen Rehl (2021); Handbook on CSDP, The Common Security and Defense Policy of the European Union; 4th edition, Volume I, Vienna/Austria, Published by: Directorate for Security Policy of the Federal Ministry of Defence of the Republic of Austria; Downloadable: [CSDP-HANDBOO-4th-edition.pdf \(egmontinstitute.be\)](#); Downloaded: 2022.09.25.
- 32) Justice.gov (2017): Credit Suisse Agrees to Forfeit \$536 Million in Connection with Violations of the International Emergency Economic Powers Act and New York State Law; Downloadable: [Credit Suisse Agrees to Forfeit \\$536 Million in Connection with Violations of the International Emergency Economic Powers Act and New York State Law | OPA | Department of Justice](#); Downloaded: 2022.09.16.
- 33) Legal.un.org (1945-1954): Repertory of Practice, volume 2, p. 384; Downloadable: [Chapter VII: Article 41 — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications](#); Downloaded: 2022.09.14.
- 34) Legislation.gov.uk: Trading with the Enemy Act 1939; Downloadable: <https://www.legislation.gov.uk/ukpga/Geo6/2-3/89/enacted>; Downloaded: 2022.10.28.
- 35) Nationalww2museum.org (2021): The League is Dead. Long Live the United Nations; Downloadable: <https://www.nationalww2museum.org/war/articles/league-of-nations>; Downloaded: 2022.10.27.

- 36) OFAClawyer.net, Price Benowitz LLP: OFAC Blocked Assets. Downloadable: [OFAC Blocked Assets | Enforcement Powers \(ofaclawyer.net\)](#); Downloaded: 2022.10.31.
- 37) Oxford Advanced Learner's Dictionary: Definition of freeze verb; Downloadable: [freeze_1 verb - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com](#); Downloaded: 2022.10.01.
- 38) UN.org A, United Nations Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression; Articles 39, 41, 42; Downloadable: [Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression \(Articles 39-51\) | United Nations](#); Downloaded: 2022.10.02.
- 39) UN.org B, United Nations Charter, Chapter V: The Security Council; Article 25; Downloadable: [Chapter V: The Security Council \(Articles 23-32\) | United Nations](#); Downloaded: 2022.10.02.
- 40) UN.org C: History of the United Nations; Downloadable: <https://www.un.org/en/about-us/history-of-the-un>; Downloaded: 2022.08.25.
- 41) UN.org D, United Nations Charter, Chapter I: Purposes and Principles; Articles 1-2; Downloadable: <https://www.un.org/en/about-us/un-charter/chapter-1>; Downloaded: 2022.10.27.
- 42) UN.org E: United Nations, Main Bodies; Downloadable: <https://www.un.org/en/about-us/main-bodies>; Downloaded: 2022.10.22.
- 43) Web.archive.org: Charter of the United Nations, Preamble; Downloadable: <https://web.archive.org/web/20050509082013/http://www.un.org/aboutun/charter/>; Downloaded: 2022.10.20.

Figures:

1. Christopher A. Casey, Ian F. Fergusson, Dianne E. Rennack, Jennifer K. Elsea (July 14, 2020) The International Emergency Economic Powers Act: Origins, Evolution, and Use, Congressional Research Service, p.20; Downloadable: [The International Emergency Economic Powers Act: Origins, Evolution, and Use \(fas.org\)](#); Downloaded: 2022.10.10.
2. United States Government Accountability Office (March 11, 2020); Economic Sanctions: Treasury and State have received increased resources for Sanctions implementation but face hiring challenges; GAO-20-324 Report to the Committee on Foreign Affairs, House of Representatives; Downloadable: [Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges | U.S. GAO](#); Downloaded: 2022.08.27.

APPENDIX

Survey questions-answers:

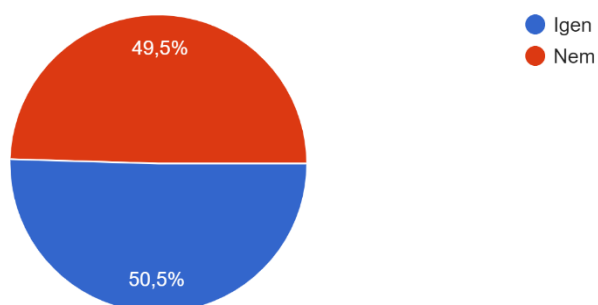
1. Have you ever heard of the sanctioning tool of blocked accounts, asset freeze? One answer

Yes (blue)

No (red)

Hallottál-e már a számla zárolás, vagyon befagyasztás (blocked accounts-asset freeze) szankciós eszközéről? 1 válasz

107 válasz



2. In your opinion, what is one of the main purposes of an asset freeze? Multiple answers allowed

Preventing the movement of assets (79,4%)

Assessment of frozen assets, followed by confiscation (29%)

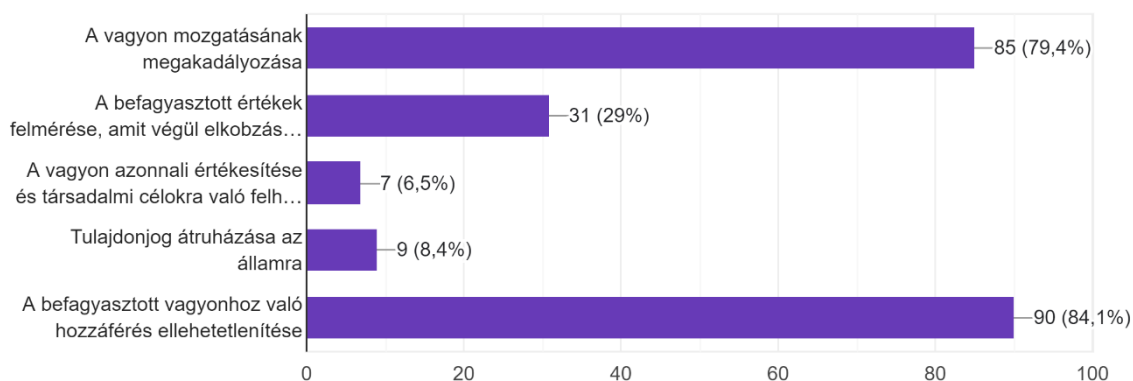
Immediate sale of assets and use for social purposes (6,5%)

Transfer of ownership to the state (8,4%)

Disable access to frozen assets (84,1%)

Véleményed szerint mi a vagyon befagyasztás egyik fő célja? Több válasz is jó!

107 válasz



3. In your opinion, as a third party, is it possible to remain in correspondence or in any personal contact with a sanctioned entity? One answer

Yes, only by post and informing the authorities (blue)

Yes, you can stay in personal contact, but care must be taken not to provide value to the sanctioned person (red)

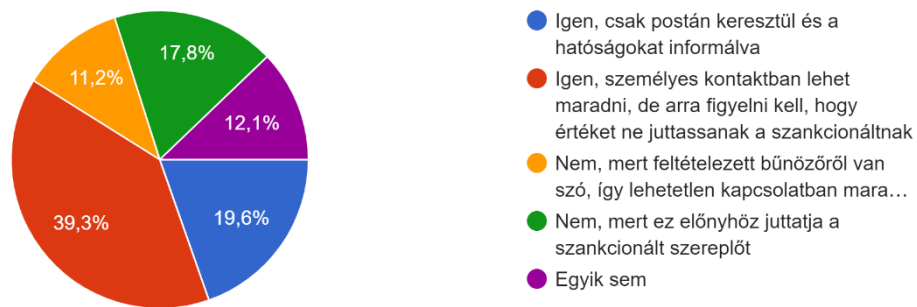
No, because it is about a suspected criminal, so it is impossible to stay in contact with such a person (yellow)

No, because this gives the sanctioned party an advantage (green)

None of them (purple)

Véleményed szerint harmadik félként, lehet-e levelezésben vagy bármilyen személyes kontaktusban maradni szankcionált szereplővel? 1 válasz

107 válasz



4. In your opinion, only state institutions search for entities who violate sanctions or should be sanctioned? One answer

Yes, because this is only the task of the state (red)

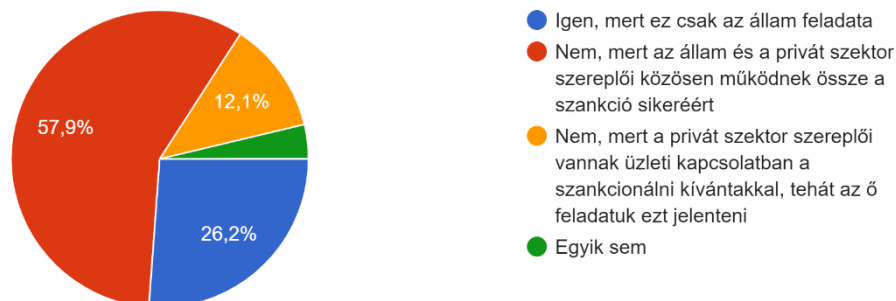
No, because the participants of the state and the private sector work together for the success of the sanction (blue)

No, because entities of the private sector have business relationships with those they want to sanction, so it is their job to report this (yellow)

None of them (green)

Véleményed szerint, csak állami szervek kutatják fel a szankciókat megszegő vagy szankcionálni kívánt szereplőket? 1 válasz

107 válasz



5. In your opinion, is it the state's duty to uphold the seized property's value? One answer

Yes, because assets cannot be damaged during the freeze (blue)

No, because this process would be too costly for the state (red)

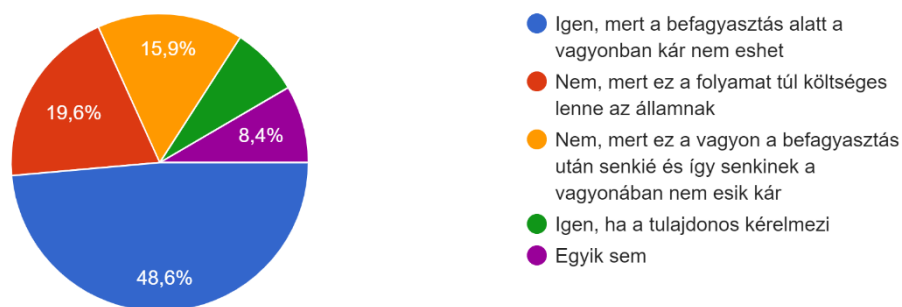
No, because this property does not belong to anyone after the freeze, and thus no one's property is harmed (yellow)

Yes, if requested by the owner (green)

None of them (purple)

Véleményed szerint kötelessége-e az államnak a lefoglalt vagyon értékállóságát biztosítani? 1 válasz

107 válasz



6. In your opinion, is the financial institution obliged to notify the owner of the blocked account or asset of the fact of the freeze? One answer

Yes, by any means, it must notify the owner of the frozen assets (blue)

No, because he/she will learn from the press about it anyway (red)

No, because he/she could already find out about the fact of sanctioning on the official websites of the state (yellow)

No, because the goal is to freeze assets, then why share information about it (green)

None of them (purple)

Véleményed szerint a pénzügyi intézet köteles-e értesíteni a zárolt számla vagy vagyon tulajdonosát a befagyasztás tényéről? 1 válasz

107 válasz



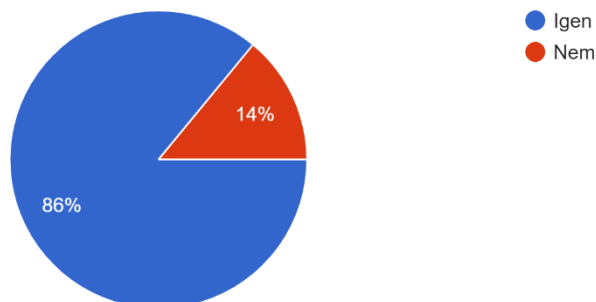
7. In your opinion, is there a document that countries refer to when applying a sanction and thereby legitimizing it? One answer

Yes (blue)

No (red)

Véleményed szerint létezik-e olyan dokumentum, amelyre az országok a szankciók alkalmazásakor hivatkoznak, és ezzel azt legitimálják?

107 válasz



8. If you answered yes, which document do you think it might be? One answer

United Nations Charter (blue)

United States legal order (red)

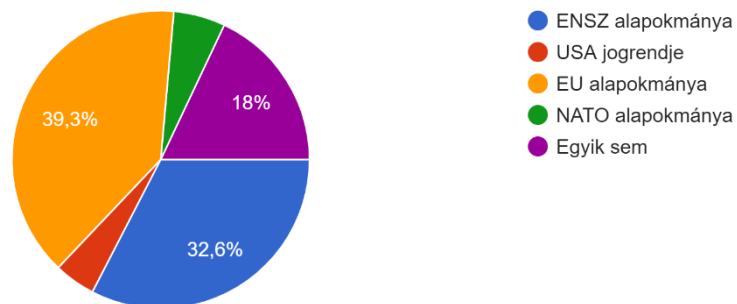
European Union Charter (yellow)

NATO Charter (green)

None of them (purple)

Ha igennel válaszoltál, véleményed szerint mely dokumentumról lehet szó? 1 válasz

89 válasz



9. In your opinion, which international institution can make it mandatory for its members to sanction a third country (e.g. asset freeze)? Multiple answers allowed

European Union (70,1%)

G20 countries (7,5%)

United Nations (43,9%)

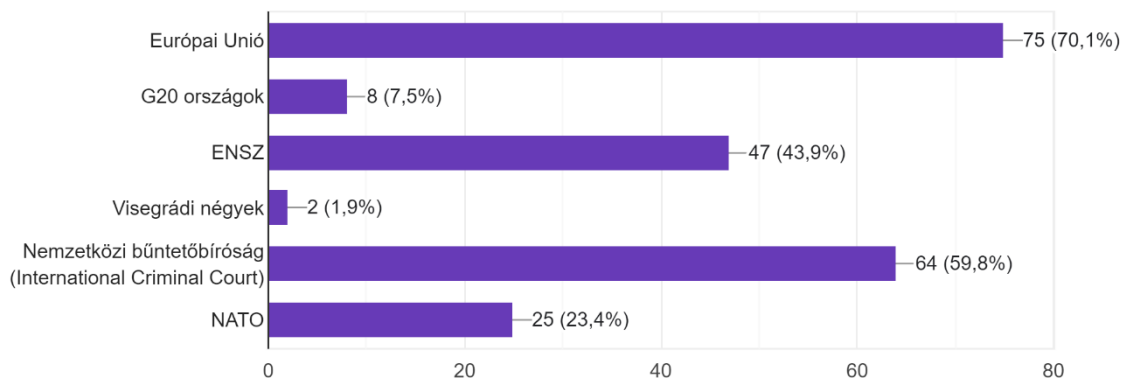
The Visegrád Four (1,9%)

International Criminal Court (59,8%)

NATO (23,4%)

Véleményed szerint, mely nemzetközi intézmény teheti tagjai számára kötelezővé egy harmadik ország szankcionálását (pl: vagyonának befagyasztását)? Több válasz is jó

107 válasz



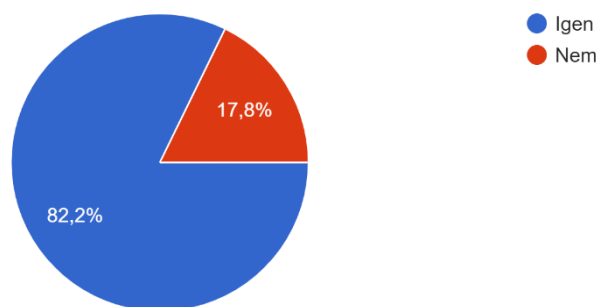
10. In your opinion, is there an institution within the European Union that operatively manages the Common Foreign and Security Policy? One answer

Yes (blue)

No (red)

Véleményed szerint van-e olyan szervezet az Európai Unióban, amely operatíván irányítja a közös kül és biztonságpolitikát?

107 válasz



11. If you answered yes, which of the listed answer would you choose? One answer

European Parliament (blue)

European Council (red)

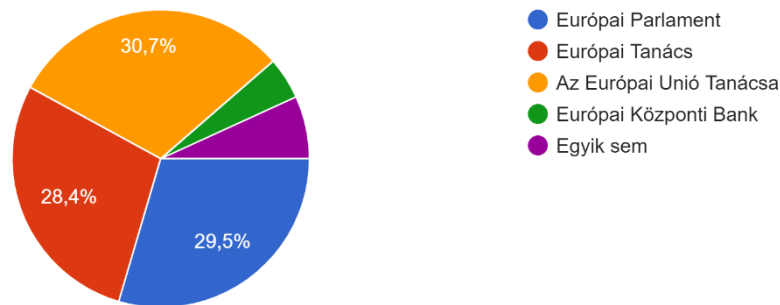
Council of the European Union (yellow)

European Central Bank (green)

None of them (purple)

Ha igennel válaszoltál melyiket választanád a felsoroltak közül? 1 válasz

88 válasz



12. Which country do you think is the Trading With The Enemy Act in force? One answer

Canada (navy blue, mazarine)

China (red)

United Kingdom (yellow)

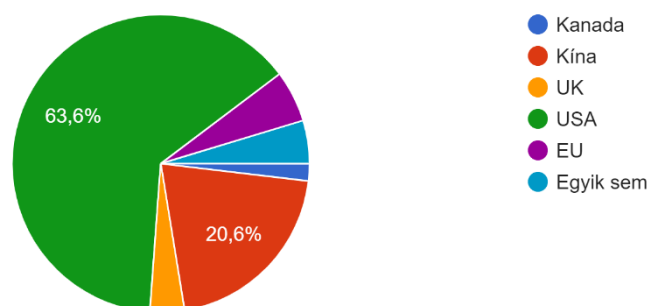
United States (green)

European Union (purple)

None of them (light blue)

Véleményed szerint melyik országban van érvényben a Trading With The Enemy Act (törvény, az ellenséggel való kereskedésről)? 1 válasz

107 válasz



13. In your opinion, how many years have the NEA (National Emergencies Act) and IEEPA (International Emergency Economic Powers Act) been in force in the US? One answer

more than 40 years (blue)

10 years (red)

5 years (yellow)

1 year (green)

None of them (purple)

Véleményed szerint hány éve van hatályban az USA-ban a nemzeti vészhelyzetet fenntartó NEA (National Emergencies Act) és IEEPA (International Emergency Economic Powers Act)? 1 válasz
107 válasz

