

EU Sanctions Update 2024: Dispute Resolution and Compensation

Council Regulation (EU) 2024/1745 of 24 June 2024, amending Regulation (EU) No 833/2014, brought significant changes to the EU sanctions regime vis-à-vis dispute resolution and the Russian freezing of foreign investors' assets. It also imposed and amended other sanctions measures, but they are not the subject of this note.

There are two main rules specified in the Regulation:

- a. **Measures combating the transfer of cases related to the sanctions regime to Russia;**
- b. **Compensation for damage caused by Russian parties due to the imposition of the EU sanctions regime.**

1. MEASURES COMBATING THE TRANSFER OF CASES RELATED TO THE SANCTIONS REGIME TO RUSSIA

Under Recital 15 of the Regulation, the EU decided to react to the amendment of the Russian Arbitration Procedure Code, which provided the exclusive competence of Russian courts in disputes with the sanctioned entities or relating to sanctions.

The Russian legislation aims to override existing jurisdiction and arbitration agreements concluded by Russian entities with foreign parties and to transfer all claims related to sanctions to Russian courts.

Russian companies are allowed (and make use of that possibility) to obtain a Russian court "order" prohibiting Member State companies from pursuing arbitrations or proceedings outside Russia against Russian entities under the threat of seizure of their assets in Russia. The Russian courts apply the provisions that create procedural uncertainty as to the applicable forum for resolving a given dispute.

Article 5ab of the Regulation introduces a well-known measure already introduced in EU law, i.e.

EU law prohibition to directly or indirectly engage in any transaction. The prohibition applies to sanctioned entities that rely on the abovementioned possibility given by Russian law to circumvent existing jurisdiction and arbitration agreements.

The prohibition contains several exceptions, e.g. transactions related to pharmaceutical, medical or agricultural and food products. Notably, transactions that are strictly necessary to ensure access to judicial, administrative, or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State, are also excluded from the prohibition.

The Regulation introduced an annex that will list entities sanctioned under Article 5ab.

2. COMPENSATION FOR DAMAGE CAUSED BY RUSSIAN PARTIES DUE TO IMPOSITION OF THE EU SANCTIONS REGIME

Member State entities that were forced to end business relations with Russia often suffer from hostile measures applied in Russia by Russian courts. In particular, their assets are seized.

Recital 25 of the new Regulation clarifies that Member State nationals and companies should be able to obtain compensation from Russian individuals and entities that caused damage to them or to the companies they own or control in connection with a contract or a transaction the performance of which was affected by the EU sanctions regime and with the illegitimate temporary management of foreign assets in Russia.

From a procedural perspective, the Regulation suggests that the compensation could be claimed before Member State courts in accordance with the relevant provisions of EU and Member State law regarding jurisdiction and court procedures in civil and commercial matters, including those concerning possible interim relief procedures.

Article 11b introduces both substantive remedies for EU entities and procedural rules for obtaining it:

- a. EU parties are now entitled to recover "any damages, including legal costs" inflicted by Russian parties that relied upon the Russian measures that aim to target the property of foreign investors in Russia,
- b. The damages are due if the measures are "illegal under international customary law or a bilateral investment treaty entered between a Member State and Russia, and that the person concerned does not have effective access to the remedies under the relevant jurisdiction",
- c. The claim for damages may be brought before competent courts of the Member State.

3. OTHER DISPUTE-RESOLUTION RELATED MEASURES

Previously, Council Regulation (EU) No 833/2014 (as amended) contained limited provisions regarding arbitration. They pertained to securing the possibility to conduct arbitral proceedings by excluding from the sanctions regime:

- a. transactions which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State (art. 5aa(3)(g))
- b. provision of services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State (art. 5n(6)).

Council Regulation (EU) No 2024/1745 imposed similar exceptions with respect to:

- c. prohibition to connecting to the System for Transfer of Financial Messages (SPFS) of the Central Bank of Russia and other similar financial services (art. 5ac(1) and art. 5ac(6)(b));
- d. prohibition to engaging in transactions facilitating transferring to Russia certain goods and technology (art. 5ad(1) and art. 5ad(2)(b)).

COMMENT

Conducting disputes with Russian and other sanctioned entities raises a number of problems, both legal and practical. The measures introduced by Council Regulation (EU) 2024/1745 are intended to limit one of them - the possibility of Russian courts unilaterally undermining international law by transferring all

cases involving sanctioned entities and the sanctions themselves to Russia. For obvious reasons, it is significantly limited, if possible, for EU entities to conduct proceedings in the Russian forum. One can also have reasonable doubts about the impartiality of the courts. For such disputes, the natural forum is arbitration; however, Russian law allows Russian entities to "escape" arbitration and "take refuge" in Russian courts that are safe from their perspective. Time will tell how effective this measure will be.

A much more important instrument is the second of the measures introduced, i.e. the legal basis for claiming - and that before the courts of EU countries - compensation related to the application of sanctions. This applies, in particular, to the assets of EU entities seized by Russian entities. It is difficult to determine the size of these assets, but in May 2024, Reuters reported that, according to Russian sources, they are expected to be comparable to Russian assets seized abroad and to oscillate around \$300 billion. Polish entities have also been affected by the termination of business in Russia. The new law gives them the opportunity to consider claiming compensation for the damage suffered in this regard. Meeting the prerequisites for asserting a claim (in particular, the illegality of Russian retaliation) will require analysis. Interpretation of the new solutions will also require careful observation of the development of the case law of the European courts in this regard.

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