



EU aims to "protect" EU companies in the wake of Russia's response to sanctions

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Background

On 24 June 2024, the EU adopted its 14th package of restrictive measures against Russia. Part of the sanctions package was adopted through [EU Regulation No. 2024/1745 \(Regulation\)](#), which introduces new prohibitions and restrictions affecting various sectors of the Russian economy, including aviation, maritime transport, energy (particularly LNG), trade, financial services, and intellectual property.

Importantly, the Regulation (amending [EU Regulation No. 833/2014](#)) also adopts measures to "protect" EU operators¹ (namely, any nationals of a Member State and any legal persons, entities or bodies incorporated/constituted under the law of a Member State) in the wake of actions taken by Russian entities and the Russian state in retaliation to Russian sanctions.

The introduction of these measures is timely. In recent months, several entities have seen their Russian assets placed under temporary management by the Russian state. Moreover, companies that terminate, revise or otherwise adapt their contracts and transactions to ensure compliance with sanctions against Russia are now frequently finding themselves being sued in Russia by their counterparties. As we have explained in a previous [article](#), Russia introduced the new Article 248 of the Arbitration Procedure Code of the Russian Federation (**Russian Arbitration Code**) in 2020, the effect of which is, among other things, to confer exclusive jurisdiction on the Russian courts over disputes arising from foreign sanctions or involving sanctioned persons and to treat an arbitration agreement providing for arbitration outside of Russia as inoperable. There has been a flurry of recent cases in which Russian entities have sought recourse in the Russian courts, relying on this provision in an attempt to circumvent their contractual arrangements (including their arbitration agreement) with foreign parties. The Russian courts have regularly issued anti-suit injunctions and/or imposed fines on foreign entities pursuing arbitration proceedings elsewhere.² Effective remedies for EU operators have been scarce. However, the two newly introduced measures are intended to change this.

In this article we provide an overview of these measures and highlight key considerations for clients operating in the EU who find themselves and their transactions stuck between sanctions against Russia and Russian countermeasures.

Compensation claims in EU Member State courts

The Regulation establishes a legal basis for EU operators to seek compensation if: (i) they incur damages (including legal costs) as a result of claims lodged against them by their Russian counterparty for actions they have taken in respect of a contract or transaction to ensure compliance with Russian sanctions; and/or (ii) their Russian assets are placed under temporary management by the Russian state.

Specifically, Article 11a stipulates that "[any nationals of a Member State and any legal persons, entities or bodies incorporated/constituted under the law of a Member State] *shall be entitled to recover, in judicial proceedings before the competent courts of the Member State, any damages, including legal costs, incurred by that person as a consequence of claims lodged with courts in third countries by [any person, entity or body named in Annex III to EU Regulation No. 2014/833; any other Russian person, entity or body; or any person, entity or body acting through or on behalf of them], in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under [EU Regulation No. 2014/833]*".³ Article 11b stipulates that "[any nationals of a Member State and any legal persons, entities or bodies incorporated/constituted under the law of a Member State] *shall be entitled to recover, in judicial proceedings before the competent courts of the Member State, any damages, including legal costs, caused to that person by [any person, entity or body named in Annex III to EU Regulation No. 2014/833; any other Russian person, entity or body; or any person, entity or body acting through or on behalf of them], that benefited from a decision pursuant to the Decree of the President of the Russian Federation No. 302 of 25 April 2023 as subsequently amended, or Russian legislation related or equivalent to it*".⁴

Claims must be pursued before a competent Member State domestic court and the entitlement to bring claims is subject to the proviso that the entity concerned "*does not have effective access to the remedies under the relevant jurisdiction*".⁵ Moreover, in respect of any claim concerning the imposition of temporary management of foreign-owned assets in Russia, compensation can be obtained only where the decision in question "*is illegal under international customary law or under a bilateral investment treaty entered between a Member State and Russia*".⁶ Regarding enforcement, the European Commission explained that this mechanism "*will enable EU companies to recover such damages from the Russian counterpart's possible assets in the EU*".⁷

As such, Article 11b potentially supplements the remedies available under bilateral investment treaties (BITs) entered into between European states and Russia. Whereas these BITs provide EU operators with standing to bring claims against the Russian state before an international tribunal and make it possible to enforce damages granted against Russian state assets, the mechanism included in Article 11b allows EU operators to bring claims against a wider sphere of entities (i.e. entities who have benefitted from Russian state action) in domestic courts and provides access to enforce against assets held by these entities. The interplay between the two mechanisms is, however, still unsettled. Under Article 11b, damages cannot be granted unless the Russian state action which an entity is said to have benefitted from is found to be in violation of international law. It is, however, as of yet unclear how (and the extent to which) Member State domestic courts will assess whether another sovereign state, i.e. Russia, committed violations of international law.

This could be an important new path for EU operators who are already affected by the Russian countermeasures to claim compensation for damages suffered. Whether the threat of such compensation

claims will also discourage adverse actions in the future remains to be seen. Accordingly, parties will need to remain alive to the threat of Russian proceedings and/or the freezing of their assets in Russia. They will also need to carefully assess whether the conditions to obtain compensation are met. This includes considerations of complex public international law issues, as well as applicable investor-state dispute settlement processes.

Transaction ban to "protect arbitration"

In an attempt by the EU to "*protect arbitration*", the Regulation also introduces a 'transaction ban' on Russian parties that use local laws such as Article 248 of the Russian Arbitration Code to "*meddle with arbitration and court competence rules*".⁸

Specifically, Article 5ab(1) stipulates that "[i]t shall be prohibited to directly or indirectly engage in any transaction with [any person, entity or body named in Annex III to EU Regulation No. 2014/833; any other Russian person, entity or body; or any person, entity or body acting through or on behalf of them] that lodged a claim before a Russian court against [any nationals of a Member State and any legal persons, entities or bodies incorporated/constituted under the law of a Member State] to obtain an injunction, order, relief, judgment or other Court decision pursuant to Article 248 of the Arbitration Procedure Code of the Russian Federation or equivalent Russian legislation, in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under [EU Regulation No. 2014/833] or under Regulation (EU) No 269/2014, as listed in Annex XLIII."⁹

This measure is seemingly an attempt by the EU to reinforce the effectiveness of its sanctions regime against Russia. However, it is uncertain whether it will deter Russian entities from relying on Article 248, especially those already the subject of EU sanctions such that the transaction ban will have little to no impact on their operations.

Accordingly, impacted parties will need to continue to remain alert to the risk that Russian counterparties will seek to utilise Article 248 of the Russian Arbitration Code to circumvent their arbitration agreement (or other dispute resolution provision) in pursuit of a "home advantage" in the Russian courts.

What does this mean in practice?

While these most recent steps taken by the EU to protect EU operators from negative impacts of the ongoing sanctions regime against Russia are welcomed, it remains to be seen how the newly introduced measures will work in practice.

It is therefore important that EU companies with operations that have been or may be impacted by EU sanctions against Russia engage with their legal counsel to ensure that risks are mitigated as far as possible and all available remedies to protect their interests are used. In particular, where a dispute has already arisen, it is vital that they seek legal advice as early as possible such that an effective strategy can be put in place.

Want to know more?

For further details on the 14th package of sanctions against Russia, as well as other measures imposed by the EU, visit our [Russian Sanctions Tracker \(EU\)](#).

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1. Q&A 14th package of restrictive measures against Russia, [europa.eu](#).
2. See e.g., the Russian Commercial Court's recent judgment, upholding an earlier judgment and confirming that a failure to comply with its anti-arbitration injunction would result in a fine of over EUR 14.3 billion for the claimants, [iareporter.com](#).
3. EU Regulation No. 2024/1745, Article 1(24) inserting Article 11a into EU Regulation No. 2014/833.
4. EU Regulation No. 2024/1745, Article 1(24) inserting Article 11b into EU Regulation No. 2014/833.
5. EU Regulation No. 2024/1745, Recital 25 and Article 1(24).
6. EU Regulation No. 2024/1745, Article 1(24) inserting Article 11b into EU Regulation No. 2014/833.
7. Q&A 14th package of restrictive measures against Russia, [europa.eu](#).
8. Ibid.
9. EU Regulation No. 2024/1745, Article 1(14) inserting Article 5ab into EU Regulation No. 2014/833. It should be noted that the Regulation provides for a number of exceptions to the ban for transactions that are "*necessary for the purchase, import or transport of pharmaceutical, medical or agricultural and food products*" allowed under EU Regulation No. 2014/833 and "*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*".