

International Investment Law and the EU's Economic Sanctions on Russia

Exploring Possibilities and Limits

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In this second edition of BLOMSTEIN's International Investment Law (IIL) briefing series, we look at how the EU's sanctions against Russia are affecting existing investments in Russia and investment arbitrations against the Russian state. Meanwhile, our next briefing will look at the impact of Russia's countersanctions on investors and their prospects for redress under IIL.

Following Russia's invasion of Ukraine, the EU adopted comprehensive sanctions targeting the Russian state, its economy and financial sector, as well as a wide range of individuals and companies. These sanctions include trade restrictions on certain goods and services, investment bans in certain sectors, and financial sanctions leading to a broad prohibition on dealing with listed persons. The sanctions have also led to the freezing of billions of dollars of Russian assets, in particular in the EU. They therefore impact Russian investors in the EU as well as EU operators who have been active in the Russian economy. At the same time, however, investors seeking redress against the Russian state for violation of their rights under the IIL may still seek an arbitral award largely without running into restrictions under EU sanctions. We consider these issues in turn.

Impact on existing and future investments

EU sanctions, which are primarily aimed at curbing Russia's aggression against Ukraine and promoting international peace and security, primarily affect economic operators from the targeted economy, i.e. Russian businessmen, companies, and banks. Indeed, Russian businessman Mikhail Fridman reportedly filed a multi-billion dollar investment arbitration case against Luxembourg in August 2024 over his inclusion in the EU sanctions list and Luxembourg's freezing of his assets.

However, EU sanctions can also have a profound impact on European investments. Various measures of the EU sanctions regime restrict not only Russian business activities in the EU, but also European foreign direct investment (*FDI*) in Russia. European investors must navigate a complex web of regulations that restrict trade, financial transactions, and other economic activities. Failure to comply with these restrictions can result in severe penalties.

Existing investment positions in Russia are therefore severely affected, since they can be effectively cut off from support of the European investor, whether in the form of

additional capital or technical assistance. For example, no new financing may be provided to sanctioned entities, and existing investments in sanctioned entities may not be expanded. In certain sectors, namely the Russian energy sector and the mining and quarrying sector in Russia, investment is generally prohibited. In addition, restrictions on the transfer of intellectual property and trade secrets related to sanctioned items are also prohibited, as is the general provision of business services essential to any business operation. Investment in Russia is therefore largely dependent on the local, increasingly hostile, business environment, and the EU has created opportunities to obtain exemptions from these restrictions, in particular for the purpose of divesting from Russia.

Possibility to initiate arbitral proceedings

As highlighted in our [introductory briefing](#), IIL provides investors with protection against violations of their rights under investment treaties by the host state of the investment. Conversely, if the investor's home state or state of origin acts in a way that adversely affects the investor's foreign investment, in particular by imposing sanctions that prevent transactions or other dealings related to the foreign investment, IIL does not apply. There would therefore be no grounds for seeking redress through investor-state dispute settlement (*ISDS*). Instead, investors would have to rely on their domestic legal system or, in the EU, the European courts. Indeed, individual EU companies have already sought, albeit unsuccessfully, the annulment of certain trade restrictions (see the General Court's judgment of 17 April 2024 in *Cogebi and Cogebi v Council*, upholding import restrictions on Russian mica, [case T-782/22](#)).

On the other hand, arbitration proceedings may still be initiated against Russia, as EU sanctions do not generally restrict the possibility to engage in such proceedings with the Russian government. Russia is a party to several investment treaties with many of the now "unfriendly" states, including Germany. To the extent that these treaties provide for investor-state arbitration against Russia, the Russian government could decide not to participate in such proceedings. However, this would not prevent an arbitral tribunal from rendering an award. Therefore, investors seeking redress against the Russian state for violations of their rights under an investment treaty may still be able to turn to ISDS to pursue their claims. Indeed, following the unlawful annexation of Crimea in 2014, several Ukrainian companies successfully initiated such proceedings under the bilateral investment treaty between Russia and Ukraine and obtained awards in their favour. The possibility of such claims for investors from "unfriendly" states is therefore discussed in more detail in a separate briefing.

Impact of EU sanctions on the enforcement of arbitral awards

The sanctions regime may also complicate the subsequent enforcement of arbitral awards. Russia has a [poor track record](#) of complying with adverse arbitral awards, routinely challenging awards in local courts and resisting seizure of assets in enforcement proceedings. Investors are therefore likely to have to seek enforcement of their awards

outside Russia. In the EU, in particular, the assets of the Central Bank of Russia remain frozen under the EU sanctions regime but are generally protected from seizure by the international rules on state immunity. Investors would therefore have to look elsewhere for assets held by the Russian state which do not profit from sovereign immunity.

As far as state assets are held by persons or state-owned companies listed in Annex I to Regulation (EU) No 269/2014, further problems arise. Those assets are frozen and, therefore, not accessible for enforcement measures. The Regulation allows the competent authorities of the Member States to permit the release of certain frozen assets for the enforcement of an arbitral award if the relevant award was rendered prior to the listing of the entity against which the assets are to be enforced. The listing of the person or entity in question thus acts as a cut-off date, precluding the release of its frozen assets for any arbitral award rendered after that date. Newly rendered arbitral awards might therefore be enforced only against such assets that are neither protected by state immunity nor held by sanctioned persons.

BLOMSTEIN is highly experienced in advising on EU sanctions and monitors developments in international investment protection closely. We are at your disposal to assist you with any matter in these areas. If you have any questions or would like us to cover a specific topic, please do not hesitate to contact [Roland Stein](#), [Pia Hesse](#), [Tobias Ackermann](#), and [Sarah Beischau](#).
