

NEW COMPENSATION MECHANISM IN EU STATE COURTS AGAINST RUSSIAN EXPROPRIATION MEASURES

On 24 June 2024, the European Commission introduced a new legal basis for EU nationals and companies to obtain compensation in EU Member State Courts in cases where Russia imposed measures to take control over Russian assets owned or managed by investors from EU Member States.

Key issue

EU companies can now bring compensation claims before the courts of Member States for compensation in relation to the Russian government's illegitimate take over of their assets in Russia.

EXAMINING THE NEW MEASURES

Temporary external management over Russian assets of foreign companies

On 25 April 2023, Russian Presidential Decree No 302 "On Temporary Management of Certain Property" established a legal framework to authorise the Russian government to take control of Russian assets owned or managed by investors associated with "unfriendly" countries. This included the Russian government to install a temporary external management in companies from "unfriendly" countries. The temporary management appears to be empowered to have full operational rights, except for selling or otherwise disposing of the assets.

This mechanism was used in establishing external management over majority stakes of the Russian subsidiaries of Uniper, Fortum, Danone and Carlsberg groups. Decree No 302 has a wide scope, as the temporary external management regime is not linked to any specific industries.

New remedy available before EU Member State Courts

On 24 June 2024, newly inserted Article 11b of Council Regulation (EU) 833/2014 enable EU nationals and companies to obtain compensation from Russian individuals and entities that benefited from Russian measures under Presidential Decree No 302.

Compensation may be claimed before EU courts in accordance with applicable national law regarding jurisdiction and court procedures in civil and commercial matters, by demonstrating that:

- The Russian measures are illegal under customary international law or under a bilateral investment treaty between an EU Member State and Russia; and

- the affected entity does not have effective access to remedies, for example, under the relevant bilateral investment treaty.

OUR EXPERIENCE

Clifford Chance has established a focus group monitoring international and Russian measures closely dealing with international sanctions and Russian measures on a regular basis. We also regularly advise and represent clients in commercial arbitrations against Russian entities, and investor-State arbitrations, with our global team having advised on more than 100 investor-State proceedings.

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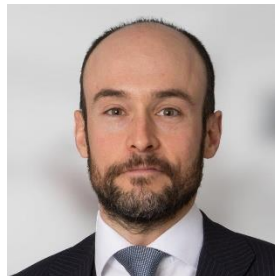
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