Framing the Debate: Sanctions and International Investment Law at the Crossroads

1 INVESTMENT TREATIES AND SANCTIONS-RELATED CLAIMS

Russia's full-scale invasion of Ukraine has triggered an unprecedented wave of unilateral sanctions by several countries, including Ukraine and the Member States of the European Union (EU).[1] These measures target not only Russia and Belarus but also individuals and entities that support or benefit from the war. Sanctions include asset freezes, travel bans, trade and financial restrictions, limitations on technology transfers, and arms embargoes. In response, Russia has introduced a series of countersanctions targeting foreign investors from 'unfriendly countries', including mandatory contributions to the state budget on asset divestments, temporary government administration of foreign-owned property and one-off windfall taxes on profits.[2]

In the EU, sanctions are adopted under the EU's Common Foreign and Security Policy (CFSP) and implemented through targeted and sectoral measures, primarily under Council Regulation No. 833/2014 and Council Implementing Regulation No. 2022/336 implementing Regulation (EU) No. 269/2014.[3] Regulation 2022/336 targets individuals and entities, imposing asset freezes, travel bans, and fund restrictions, with over 2,500 listed persons. Regulation 833/2014 imposes sectoral sanctions on Russia and Belarus, including trade, financial, and investment restrictions directed at their governments and economies. EU sanctions are enforced

1 For a comprehensive and official source detailing EU sanctions, *see European Union Sanctions Map*, European External Action Service (EEAS), available at https://www.sanctionsmap.eu/#/main.

2 For a comprehensive list of Russian countersanctions, *see* Jennifer Younan, Thomas Donegan & Sandrina Antohi, *Russian Countersanctions: New Measures Targeting Foreign Investors in Russia* (A&O Shearman Insights 11 May 2023), available at https://www.aoshearman.com/en/insights/russian-countersanctions-new-measures-targeting-foreign-investors-in-russia; Jennifer Younan, *Russian Counter-Sanctions: New Measures Targeting 'Unfriendly' Foreign Investors in Russia (II)* (A&O Shearman Insights 16 Jul. 2024), available at https://www.aoshearman.com/en/insights/russian-counter-sanctions-new-measures-targeting-unfriendly-foreign-investors-in-russia-ii.

3 Council Regulation (EU) No. 2022/336 of 28 Feb. 2022 implementing Regulation (EU) No. 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine; Council Regulation (EU) No. 833/2014 of 31 Jul. 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine.

'Framing the Debate: Sanctions and International Investment Law at the Crossroads'. *Legal Issues of Economic Integration* 52, no. 4 (2025): 307–318.

by designated competent authorities of the Member States, including ministries of finance, economy, trade, customs, central banks, and financial intelligence units.

Beyond their macroeconomic impact, sanctions can disrupt the operations of businesses owned by investors that are either directly or indirectly affected by these measures, causing significant financial losses. When sanctions harm investments in Ukraine or EU Member States, investors may seek recourse under investment treaties. These instruments provide broad protections and access to investor-state dispute settlement (ISDS), allowing both individuals and corporations to claim compensation for losses resulting from the adoption of policy measures, including sanctions. The same holds with respect to Russian countersanctions. Investors with assets in Russia that are targeted or affected by these measures may also invoke the protections afforded under investment treaties to seek compensation against Russia.

1.1 Russia/Belarus BITs

Ukraine and EU Member States have undertaken obligations under investment treaties with Russia and Belarus that protect Russian or Belarusian investors that had made or hold investments in their territories. Russia currently has bilateral investment treaties (BITs) in force with eighteen EU Member States.[4] Although Ukraine terminated its BIT with Russia in 2023, ISDS claims can still be initiated for up to ten years after termination, pursuant to the treaty's sunset clause covering investments made before the termination date.[5] Belarus, for its part, maintains BITs with seventeen EU Member States and one BIT with Ukraine.[6]

Ukraine and EU Member States have faced, or been threatened with, sanctions-related claims under Russia/Belarus BITs in a growing number of cases.[7] One

[4] UNCTAD, *International Investment Agreements Navigator: Russian Federation*, available at https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation.

[5] Eric Leikin, Noah Rubins & Sofia Svinkovskaya, *Ukraine's Termination of its Bilateral Investment Treaty With Russia: What Happened and What It Means for Potential Future Claims* (Risk & Compliance – Freshfields 10 Aug. 2023), available at https://riskandcompliance.freshfields.com/post/102ip3m/ukraines-termination-of-its-bilateral-investment-treaty-with-russia-what-happen.

[6] UNCTAD, *International Investment Agreements Navigator: Belarus*, available at https://investmentpolicy.unctad.org/international-investment-agreements/countries/18/belarus.

[7] *Mikhail Fridman v. Luxembourg*, UNCITRAL, brought under the Belgium-Luxembourg Economic Union (BLEU)-Russia BIT (*see* Lisa Bohmer, *Russian Businessman Lodges First Known Treaty Arbitration Against Luxembourg, Alleging That EU Sanctions Amount to a 'Witch-Hunt' Against Wealthy Russian Individuals and Asking for Upwards of USD 16 Billion in Damages* (Investment Arbitration Reporter 13 Aug. 2024)); *OJSC Belaruskali v. The Republic of Lithuania*, PCA Case No. 2024-3, brought under the Lithuania-Belarus BIT (this dispute arose over the termination of a long-term fertilizer transport contract between Belarus' state-owned potash producer Belaruskali and Lithuanian Railways. Lithuania terminated the contract amid US sanctions and implemented restrictions on the import of Belarusian potash in compliance with the EU Sanctions Regulation 833/2014). Additionally, Russian investors reportedly filed a trigger letter against Belgium in Sep. 2025 under the BLEU-Russia BIT concerning their frozen Euroclear assets (*see* Jack Ballantyne, *Russian Investors Threaten Belgium Over Frozen Euroclear Assets*

prominent example is *Fridman v. Luxembourg*. In August 2024, Russian oligarch Mikhail Fridman filed a USD sixteen billion claim against Luxembourg following the state's decision to freeze his assets after he was placed on the EU sanctions list. These assets include shares or beneficial interests in the Luxembourg-based company Letterone. Fridman initiated the dispute under the BLEU-Russia BIT, alleging that the sanctions violated the treaty's fair and equitable treatment (FET) standard as well as protections relating to the free transfer of investments.[8]

EU companies have also used these BITs to file, or threaten, claims against Russia in response to countersanctions. One of these companies is the state-owned Finnish energy company Fortum. The dispute concerns Russia's Presidential Decree No. 302, which placed Fortum's indirect stakes in its Russian subsidiary under temporary state administration, citing the company's association with an 'unfriendly' foreign state. Fortum submitted two notices of dispute under Russia's BITs with the Netherlands and Sweden.[9]

1.2 Other BITs

Russia/Belarus BITs are not the only investment treaties that may give rise to claims related to sanctions. Ukraine and EU Member States have also concluded thousands of BITs with other states, protecting non-Russian and non-Belarusian investors with investments in their territories, including those partially or indirectly owned by Russian or Belarusian nationals.[10] Several of these BITs have been invoked in arbitration proceedings involving sanctions.[11]

(Global Arbitration Review 12 Sep. 2025)). At the time of writing, all these cases are ongoing. They represent only known claims, and additional arbitrations may exist that have not been publicly reported. Given the scale and scope of sanctions currently in place, the number of claims is likely to increase.

8 *See* Bohmer, *supra* n. 7.

9 Lisa Bohmer, *Finnish Energy Company Lodges Multi-Billion-Euro Treaty Arbitrations Against Russia* (Investment Arbitration Reporter 27 Feb. 2024). Two other EU companies have threatened Russia with investment treaty claims. The Danish brewing giant Carlsberg Group has reportedly put Russia on notice of a dispute under three separate treaties: the Denmark-Russia, Sweden-Russia, and Germany-Russia BITs, after its operations were placed under Russian state management (*see* Girish Deepak, *Carlsberg puts Russia on Notice of Dispute, Alleging That the State Illegally Expropriated Its Business in the Wake of the 2022 Invasion of Ukraine* (Investment Arbitration Reporter 8 Nov. 2023)). German state-owned energy group Uniper has also put Russia on notice of a potential investment treaty claim over a decree that placed its Russian assets under temporary state control (*see* Toby Fisher, *Uniper Prepares Treaty Claim Against Russia* (Global Arbitration Review 29 Feb. 2024)).

10 European Commission, *List of the Bilateral Investment Agreements Referred to in Article 4(1) of Regulation (EU) No 1219/2012 of the European Parliament and of the Council Establishing Transitional Arrangements for Bilateral Investment Agreements Between Member States and Third Countries*, Official Journal of the European Union C/2024/2263, available at http://data.europa.eu/eli/C/2024/2263/oj; UNCTAD, *International Investment Agreements Navigator: Ukraine*, available at https://investmentpolicy.unctad.org/international-investment-agreements/countries/219/ukraine.

11 *See ABH Holdings v. Ukraine*, ICSID Case No. ARB/24/1, brought under the BLEU-Ukraine BIT, which is discussed in the main text. *See also Hasenberg AG v. The Republic of Lithuania*, PCA Case No.

One of such proceedings concerns a claim brought by the Luxembourg-based company ABH Holdings against Ukraine under the BLEU-Ukraine BIT.[12] ABH Holdings, a holding company affiliated with Russia's Alfa Group, initiated arbitration over the nationalization of its Ukrainian subsidiary, Sense Bank. The bank was nationalized for a nominal sum under Ukrainian legislation targeting banks with owners listed on Ukrainian and Western sanctions lists. ABH Holdings is partly owned by sanctioned Russian nationals, including Fridman.[13]

These claims have struck a nerve in the EU. On 18 July 2025, the Council adopted its eighteenth and most comprehensive sanctions package, targeting ISDS for the first time.[14] Brussels is concerned that claims brought by listed Russian and Belarusian investors could undermine the effectiveness of sanctions. The new regulation prevents Member States from recognizing and enforcing any award or order issued in sanctions-related ISDS proceedings and allows them to recover any damages and legal costs incurred.

Originally designed to pressure Russia to end its aggression against Ukraine, sanctions have evolved into a policy instrument with direct implications for international investment law. While states regard sanctions as essential tools to enforce

2025-16, brought under the Lithuania-Switzerland BIT (Hasenberg, a Swiss-based company, reportedly owns 65% of Birių krovinių terminalas (BKT), a Lithuanian stevedoring company handling the transport of mineral fertilizers at the port of Klaipeda. BKT is co-owned by the Belarusian state-owned potash producer Belaruskali, which has already filed a separate claim against Lithuania: *see Belaruskali v. Lithuania, supra* n. 7. This suggests that Hasenberge's claim is based on Lithuania's decision to halt the transit of potash fertilizers); *AEROC Investment Deutschland GmbH v. Ukraine*, ICSID Case No. ARB/25/28, brought under the Germany-Ukraine BIT (the claimant, a German company, is fully owned by Russian SR Group and, until recently, fully owned its Ukrainian subsidiary Aeroc LLC. SR Group is affiliated with Russian oligarch Andrey Molchanov. The claimant was placed on Ukraine's sanctions list, and SR Group's indirect stake in Aeroc LLC was seized by Ukrainian courts due to alleged contributions to Russia's war against Ukraine); *CTF Holdings S.A. v. Ukraine*, ICSID Case No. ARB/24/35, brought under the BLEU-Ukraine BIT (Ukraine imposed sanctions on the Luxembourg-based claimant because of its links to Mikhail Fridman, who holds a 45% interest); *Smart Energy B.V. and PJSC Ukrgazvydobutok v. Ukraine*, ICSID Case No. ARB/25/38, brought under the Netherlands-Ukraine BIT (Smart Energy, a Dutch company, owns Ukrgazvydobutok. Smart Energy is part of the Smart Holding Group, founded by Russian-born Ukrainian billionaire Vadim Novinsky. Gas production permits for Ukrgazvydobutok were suspended following Ukraine's sanctions against Novynskyi); *Enwell Energy plc v. Ukraine*, ICSID Case No. ARB/25/41, brought under the United Kingdom-Ukraine BIT (Enwell Energy, a UK-based company, is an affiliate of the Smart Holding Group. Ukraine suspended its exploitation licenses due to its affiliation with Novynskyi).

12 *ABH Holdings v. Ukraine*, ICSID Case No. ARB/24/1, Request for Arbitration (29 Dec. 2023).

13 *Ibid.*, para. 10.

14 Council Regulation (EU) 2025/1472 of 18 Jul. 2025 amending Regulation (EC) No. 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine; Council Regulation (EU) 2025/1494 of 18 Jul. 2025 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *See also* Theodore Hanna, *Targeting Russia and Belarus Through Investment Arbitration: The EU's 18th Sanctions Package* (Opinio Juris 27 Aug. 2025), available at https://opiniojuris.org/2025/08/27/targeting-russia-and-belarus-through-investment-arbitration-the-eus-18th-sanctions-package/.

compliance with international law, investors perceive them as arbitrary disruptions of their investment treaty rights. This tension presents an unprecedented challenge for arbitral tribunals, which must balance the original policy objectives of sanctions with their duty to adjudicate ISDS claims arising from these measures.

Tribunals are likely to face a range of complex questions when resolving sanctions-related disputes, including whether they have jurisdiction over sanctioned investors and their investments. If jurisdiction is established, tribunals must then address substantive issues: was the challenged measure disproportionate, discriminatory, or implemented with due process? Can the respondent state invoke customary law defences, such as countermeasures or the police powers doctrine? How should compensation and damages be calculated in disputes involving sanctions? Even where the investor succeeds, additional challenges may arise at the post-award stage, as national courts in the place of enforcement may need to determine whether EU law or sovereign immunity protections prevent execution of the awards. These questions provide the framework for this Special Issue.

2 CONTRIBUTIONS TO THE SPECIAL ISSUE

This Special Issue builds on the conference held on 12 December 2024 at the Faculty of Law of the University of Luxembourg.[15] It features seven contributions by scholars and practitioners with extensive expertise in the field, exploring how sanctions intersect with international investment law. Each paper examines a different dimension of this intersection, and together they highlight how sanctions-related disputes reveal the tension between investment law's promise of protection and the geopolitical realities of international relations. The contributions follow the lifecycle of an investment dispute, from jurisdictional questions to substantive standards of protection, available defences, remedies, and ultimately, enforcement.

2.1 Jurisdictional issues: MFN and nationality

As mentioned, investors have initiated or threatened investment treaty claims against EU Member States under BITs concluded with Russia, most of which date back to the Union of Soviet Socialist Republics (USSR). A notable feature of these BITs is that they grant access to arbitration only for disputes concerning the amount of compensation payable in the event of expropriation. These cases have reignited debate over the jurisdiction of arbitral tribunals regarding expropriation claims under

15 University of Luxembourg, *The Clash of Sanctions and International Investment Agreements: Jurisdiction, Merits and Post-Award Issues* (12 Dec. 2024), programme available at https://www.uni.lu/fdef-en/events/the-clash-of-sanctions-and-international-investment-agreements-jurisdiction-merits-and-post-award-issues/.

such ISDS provisions. The first contribution in this collection examines this issue, which has given rise to inconsistent jurisprudence.

Paschalis Paschalidis and Arianna Rosato provide a comprehensive review of the case law and identify three main approaches. Some tribunals have interpreted the limiting ISDS provisions restrictively, finding jurisdiction only over the quantum of compensation and not over the legality of the expropriation itself. Others allowed investors to rely on the most favoured nation (MFN) clause to import more favourable ISDS provisions from other BITs. A smaller number of tribunals have taken the view that jurisdiction extends to claims of unlawful expropriation even without recourse to MFN clauses. The authors also show how this case law has influenced the interpretation of first-generation Chinese BITs, which, although worded differently, share important structural similarities with the Russian treaties.

Paschalidis and Rosato conclude that this jurisprudential incoherence raises the question of whether outcomes are driven more by treaty language or by arbitrators' broader conceptions of investment protection. In their view, the emerging wave of sanctions-related disputes may provide further opportunities to clarify these questions, yet the track record to date suggests such cases are more likely to deepen existing divisions.

The second paper turns to another jurisdictional issue: the nationality of the investor-claimant. Since investment treaties extend protection only to nationals of the home state, the nationality of the investor – whether a natural or legal person – becomes a decisive factor in establishing the tribunal's jurisdiction *ratione personae*. Determining nationality in sanctions-related disputes can be particularly complex: individual claimants may hold multiple nationalities, while corporate claimants may have ownership structures involving layers of control linked to sanctioned individuals or entities. This complexity is illustrated in *Fridman v. Luxembourg* and *ABH Holdings v. Ukraine*, which Javier García Olmedo uses as case studies to assess how current tribunals may address nationality issues, drawing on lessons from past decisions.

García Olmedo examines cases where tribunals had to decide whether formal nationality (e.g., possession of a passport or incorporation in the home state) suffices, or whether they should consider effective connections such as the 'dominant and effective nationality' test or the real seat of a company. He also considers instances in which respondent states have argued for an interpretation of the treaty that excludes corporate entities owned or controlled by nationals of a non-state party.

García Olmedo shows that tribunals have previously adopted expansive interpretations of nationality requirements, often disregarding an investor's dual nationality or the ownership structure of the investment when determining jurisdiction *ratione personae*. He questions whether current tribunals will take a different approach, given the politically sensitive nature of sanctions. He concludes that nationality, often treated as a technical matter, is likely to become a highly contested issue in sanctions-related disputes, and proposes reforms that states could incorporate into future investment treaties to address these challenges.

2.2 Substantive issues: FET, countermeasures and remedies

If the tribunal ultimately upholds jurisdiction, the proceedings will move to the merits phase. This phase will likely involve questions such as the application of the treaty's substantive standards of protection. One of the most frequently invoked protections in investment arbitration is the FET standard.

In the third paper of the collection, Ioana Knoll-Tudor examines the interaction between sanctions and the FET standard. She explains that sanctions, whether unilateral, multilateral, primary, or secondary, can disrupt the stability and predictability expected by investors, leading to FET breaches. Key issues include violations of due process, frustration of legitimate expectations, and discriminatory treatment. Using cases such *as Fridman v. Luxembourg, Kadi v. EU, Dayyani v. South Korea*, and *Stabil LLC v. Russia*, the paper illustrates how sanctions can interfere with investors' rights and highlights the challenges tribunals face in balancing investor protection with policy objectives.

With respect to EU sanctions, more particularly, Tudor notes that Regulation No. 269/2014 has been challenged for failing to meet evidentiary and proportionality standards, as illustrated by Fridman's litigation in which the EU General Court annulled his inclusion on the EU sanctions list, citing a failure by the Council to demonstrate a 'sufficiently solid factual basis' for his designation.[16] She underlines that tribunals, when assessing FET claims, may apply a similar or even stricter standard than EU courts, especially because most investment treaties do not include exceptions or carve-outs for measures adopted under the EU's CFSP.

Finally, Tudor briefly examines potential defences states may invoke to preclude liability in the event of an FET breach, such as non-precluded measures clauses (allowing actions to protect essential security interests or public order) and *force majeure* (where compliance is rendered impossible). She notes that, while these provide important avenues for states to respond to sanctions-related claims, tribunals generally apply them under strict conditions. She concludes that sanctions are not immune from investment treaty scrutiny and that the intersection of sanctions and investment arbitration will continue to evolve, requiring tribunals, investors,

[16] Judgments of the General Court of 10 Apr. 2024 in Cases T-301/22, *Aven v. Council* and T-304/22, *Fridman v. Council*. *See* Press Release No. 61/24 dated 10 Apr. 2024, available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/cp240061en.pdf.

and states to navigate complex geopolitical and legal challenges while shaping the application of the FET standard.

The fourth article in this Special Issue expands on state defences against investment treaty claims. Rémy Gerbay and John Adams examine whether sanctions may be invoked as lawful countermeasures under customary international law, potentially precluding liability under an investment treaty if taken in response to a prior wrongful act (e.g., Russia's invasion of Ukraine). The paper begins with an analysis of the law of countermeasures under the International Law Commission's Articles on State Responsibility (ARSIWA), outlining the conditions under which countermeasures are traditionally considered lawful, including substantive requirements such as being temporary, reversible, proportionate, and aimed at inducing compliance.

Gerbay and Adams then explore two contested issues: whether states, such as Ukraine and EU Member States, may lawfully adopt countermeasures when they are not directly injured, and whether countermeasures can shield states from claims brought by private investors. The authors explain that, while some scholarship supports third-party countermeasures in response to breaches of *erga omnes* obligations, ARSIWA deliberately leaves the question unresolved. Regarding the second issue, they note that the applicability of countermeasures in investment arbitration depends on whether investor rights are considered derivative of the home state or independent in nature. Whereas the tribunal in *ADM* allowed countermeasures, holding that investor rights belong to the home state, in *Corn Products* and *Cargill*, the tribunals recognized investors' rights as independent, meaning that countermeasures were not available to excuse the state's conduct.

Against this background, the authors conclude that, while states have the right to retaliate against serious breaches of international obligations, the extent to which countermeasures can preclude liability for violations of investment treaties remains uncertain.

Assuming state defences fail, the final question is what remedies the tribunal should grant for a breach of an investment treaty arising from sanctions implementation. The fifth paper of the collection, by Toni Marzal, addresses this issue. Marzal begins by noting that current ISDS practice prioritizes damages as the primary remedy, and that the way these are assessed has contributed to a certain 'inflation' of awards. Tribunals tend to calculate damages based on loss of value or expected future profits, using fair market value (FMV) or discounted cash flow (DCF) methods, which has resulted in excessively high compensation. In his view, this calculation approach may not be appropriate for sanctions disputes.

Marzal uses *Fridman v. Luxembourg* as a case study, where the investor is claiming USD sixteen billion for losses arising mainly from asset freezes. Unlike expropriations, Marzal argues, asset freezes are temporary restrictions that prevent the use or transfer of funds but do not destroy the underlying assets. He refers to comparative cases, such as *Achmea v. Slovakia* and *Bank Melli v. Bahrain*, to suggest that temporary measures generally do not justify FMV-based damages. Moreover, under the doctrine of mitigation, Marzal explains, tribunals have reduced awards where claimants failed to minimize losses, as in *EDF v. Argentina*, where compensation was limited to losses directly caused by the state's conduct.

The author then advocates for a more balanced approach, one that tempers reliance on large damages awards with considerations of proportionality and public interests, and prioritizes non-pecuniary remedies. He points to the *Starrett Housing* case before the Iran-US Claims Tribunal as an example where equity and public interest considerations were used to reduce excessive compensation. As to non-pecuniary remedies, Marzal claims that, in sanctions-related disputes, where harm is often moral, reputational, or otherwise non-quantifiable, remedies such as lifting an individual sanction (cessation) or recognizing its illegality (satisfaction), supplemented by modest compensation for costs actually incurred or moral harm, may better restore rights without undermining the broader sanctions regime.

In short, his paper emphasizes that tribunals should ensure that remedies in sanctions-related disputes remain proportionate and do not undermine the effectiveness of sanctions or the state's ability to regulate effectively.

2.3 Enforcement

Should a tribunal award damages, investors cannot reasonably expect voluntary compliance, as this would run counter to the debtor state's decision to impose sanctions. Consequently, investors would need to seek enforcement of the award in a jurisdiction where the debtor state holds assets. The last two papers of this Special Issue examine the obstacles investors may face when seeking to recognize and enforce arbitral awards arising from sanctions-related measures, focusing in particular on awards rendered against EU Member States and Russia. The papers show how geopolitical constraints can frustrate enforcement, raising doubts about the efficacy of the system as a whole.

Laura Fadlallah distinguishes between recognition (integration of an award into a national legal order) and enforcement (execution of measures to satisfy the award). She notes that recognition can be denied on jurisdictional grounds (e.g., disputes involving sanctions may be deemed non-arbitrable) or on public policy grounds (e.g., enforcing awards in favour of sanctioned parties would breach EU or national obligations). She examines how courts in France and Germany have treated EU sanctions as part of international public policy, while US courts have been more hesitant to do so.

Regarding enforcement, Fadlallah explains that sanctions can make it practically impossible, for example, through asset freezes or prohibitions on transferring resources to sanctioned parties. If the award creditor is sanctioned, any transfer of funds is prohibited; if the award debtor is sanctioned, asset freezes block enforcement unless derogations are obtained. Consequently, sanctions regimes can prevent enforcement for extended periods.

Fadlallah also discusses the eighteenth EU sanctions package, which explicitly prohibits the recognition and enforcement of ISDS awards that could lead to satisfying claims connected to EU sanctions. She argues that, by codifying that such recognition would violate EU public policy, the package takes a significant step in merging recognition and enforcement under a single prohibition. She highlights the tension this creates with ICSID awards, which under the ICSID Convention are supposed to be automatically recognized by signatory states. The package further clarifies that EU Member States must treat the 'no claims clause' as binding EU public policy, requiring them to oppose recognition of such awards wherever enforcement is sought. Fadlallah concludes that sanctions affect all levels of recognition and enforcement, creating uncertainty for both investors and states.

The last paper of the collection, by Michael De Boeck, focuses on the obstacles investors may face when enforcing arbitral awards against Russian assets frozen or immobilized in Euroclear and Clearstream, which together hold around EUR 300 billion of the state's assets. He explains that investors with awards against Russia or Russian entities increasingly look to these frozen assets as potential sources of recovery, but the overlapping frameworks of EU sanctions, sovereign immunity, and financial regulations create significant hurdles.

The paper distinguishes between 'frozen' assets and 'immobilized' assets. Frozen assets, typically belonging to designated individuals or state-owned enterprises, are subject to EU Regulation No. 269/2014, which prohibits making them available without authorization. Immobilized assets, by contrast, are primarily those of the Russian Central Bank, which cannot be transferred or transacted due to sectoral bans under EU Regulation No. 833/2014. This distinction matters, he observes, because frozen assets may, under certain conditions, be released for execution of awards with authorization from national authorities, while immobilized assets are subject to stricter prohibitions and foreign sovereign immunity protections.

With respect to sovereign immunity protections, De Boeck explains that even if creditors secure recognition of an award against Russia, execution against state assets requires demonstrating that the targeted assets serve a commercial rather than sovereign purpose. He adds that central bank assets enjoy heightened immunity, making execution against immobilized Central Bank of Russia reserves in Euroclear nearly impossible. De Boeck illustrates this with Belgian jurisprudence, where courts have sometimes allowed execution against sovereign wealth fund assets managed through central banks but not against the central banks' reserves themselves.

De Boeck closes by analysing the EU's broader public policy interests. He emphasizes that frozen and immobilized Russian assets are now politically linked to the EU's macro-financial assistance package for Ukraine, with revenues from these assets earmarked as collateral for reconstruction loans. In his view, execution of awards against these assets could undermine this policy by depleting the financial base of the assistance program. Thus, even if legal grounds for execution exist, courts may refuse enforcement based on overriding EU public policy. De Boeck concludes that creditors face a highly uncertain path: frozen assets may, with authorization, be available for execution, but immobilized state assets in Euroclear are effectively shielded both by sovereign immunity and by their strategic role in EU policy.

3 LOOKING FORWARD: SANCTIONS AND THE FUTURE OF INVESTMENT ARBITRATION

The contributions of this Special Issue show how sanctions intersect with international investment law. They examine a range of issues, from jurisdictional questions under Soviet-era and Chinese BITs, to investor nationality, the application of FET and countermeasures, and the challenges of calculating damages and enforcing awards. While these papers provide valuable insights, they represent only a glimpse of the issues that tribunals, states, and investors may encounter, leaving much room for further research and analysis. In this respect, this Special Issue highlights the urgency of scholarly engagement with sanctions disputes, which are likely to dominate the field of investment arbitration in the years ahead.

The intersection of sanctions and international investment law also reflects a broader trend: the clash between international law's stabilizing aims and the increasingly political and volatile nature of global economic relations. What emerges is a legal landscape marked by fragmentation, contestation and uncertainty. Sanctions disputes remind us that law cannot be divorced from politics, and that the legitimacy of international investment law depends on its ability to navigate this fraught terrain.

Moving forward, sanctions-related disputes will increasingly influence how investment arbitration balances investor protection with states' policy objectives. Tribunals will face the demanding task of applying investment treaties while taking broader international law concerns into account. States will need to design treaties and domestic measures that protect sovereignty while remaining consistent with international obligations. Investors, in turn, will have to structure their investments carefully, manage risks, and stay aware of geopolitical developments. While the Russia-Ukraine conflict has highlighted these challenges, similar issues could arise in other current or future conflicts, which underscores the importance of shaping the future of international investment law in the age of sanctions.

The editors of the Special Issue, Javier García Olmedo and André Prüm, are grateful to the contributing authors for their high-quality contributions.

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