Van Bael & Bellis

EU greenlights the use of extraordinary net profits generated by frozen assets of the Central Bank of Russia to support Ukraine

| 24 May 2024

VAN BAEL & BELLIS

On 21 May 2024, the Council of the EU adopted Council Regulation (EU) 2024/1469 (“***Regulation 2024/1469***”) setting out measures to allow the use of net profits generated by assets of the Central Bank of Russia frozen in EU Central Security Depositories (“***CSDs***”) to support Ukraine. Regulation 2024/1496 amends Article 5a of Council Regulation (EU) 833/2014 (“***Regulation 833/2014***”) and adds a new annex XLI.

BACKGROUND

Due to EU sanctions, EU CSDs, in particular Euroclear (Brussels) and Clearstream (Luxembourg), have frozen more than EUR 200 billion worth of assets belonging to the Central Bank of Russia (or any legal person, entity or body acting on behalf of or at the direction of the Central Bank of Russia). The EU sanctions prohibit payments of principal, interests, coupons and dividends accruing under these assets to the Central Bank of Russia. As a result, EU CSDs have accumulated significant cash proceeds on their balance sheets. Re-investments of these cash proceeds have generated more than EUR 5 billion in profits for the CSDs to date. From 15 February 2024, CSDs holding more than EUR 1 million of Central Bank of Russia reserves and assets (“***covered CSDs***”) have been required to segregate the profits generated by the (re-invested) cash proceeds on their balance sheets and are prohibited from disposing of them (including through dividends) (see Council Regulation (EU) 2024/576).

WHICH “NET PROFITS” ARE CSDS REQUIRED TO TRANSFER TO THE EU BUDGET?

Regulation 2024/1496 now takes a step further by requiring covered CSDs to make a financial contribution to the EU budget equivalent to 99.7% of the net profits generated by the (re-invested) cash proceeds accumulated under the frozen assets of the Central Bank of Russia since 15 February 2024. The “net profits” are established after deduction of all costs linked to the (risk) management of the frozen Russian assets and any corporate tax due in the EU Member State concerned. To comply with statutory capital and risk management requirements, CSDs are permitted to provisionally retain up to 10% of the financial contributions owed to the European Union. This percentage can be increased if approved by the national supervisory authorities and the European Commission and only to the extent strictly necessary. Covered CSDs are only allowed to use the provisionally retained amounts to cover the expenses, risks and losses they incur with regard to the frozen Russian assets they hold.

Covered CSDs must pay the financial contribution in bi-annual instalments as long as the EU sanctions restricting transactions with assets of the Central Bank of Russia remain in place.

HOW WILL THE PROFITS BE USED TO SUPPORT UKRAINE?

The financial contributions transferred by the CSDs to the EU budget will be allocated to EU spending instruments supporting Ukraine, according to the allocation key set out in Annex XLI to Regulation 833/2014.

As of now, Annex XLI provides that 100% of the financial contributions will be allocated to the Ukraine Facility established in February 2024. The Ukraine Facility is the EU’s financial assistance programme to support Ukraine in its recovery, reconstruction and modernisation efforts. Up to 10% of the contribution can be re-directed to EU programmes that support common procurement for the recovery, reconstruction and modernisation of the Ukraine Defence Technological and Industrial Base. The allocation will be reviewed yearly, and for the first time before 1 January 2025.

Lawyers to contact

Isabelle Van Damme
Partner
ivadamme@vbb.com

Antigoni Matthaiou
Associate
amatthaiou@vbb.com

Emily Greenaway
Associate
egreenaway@vbb.com