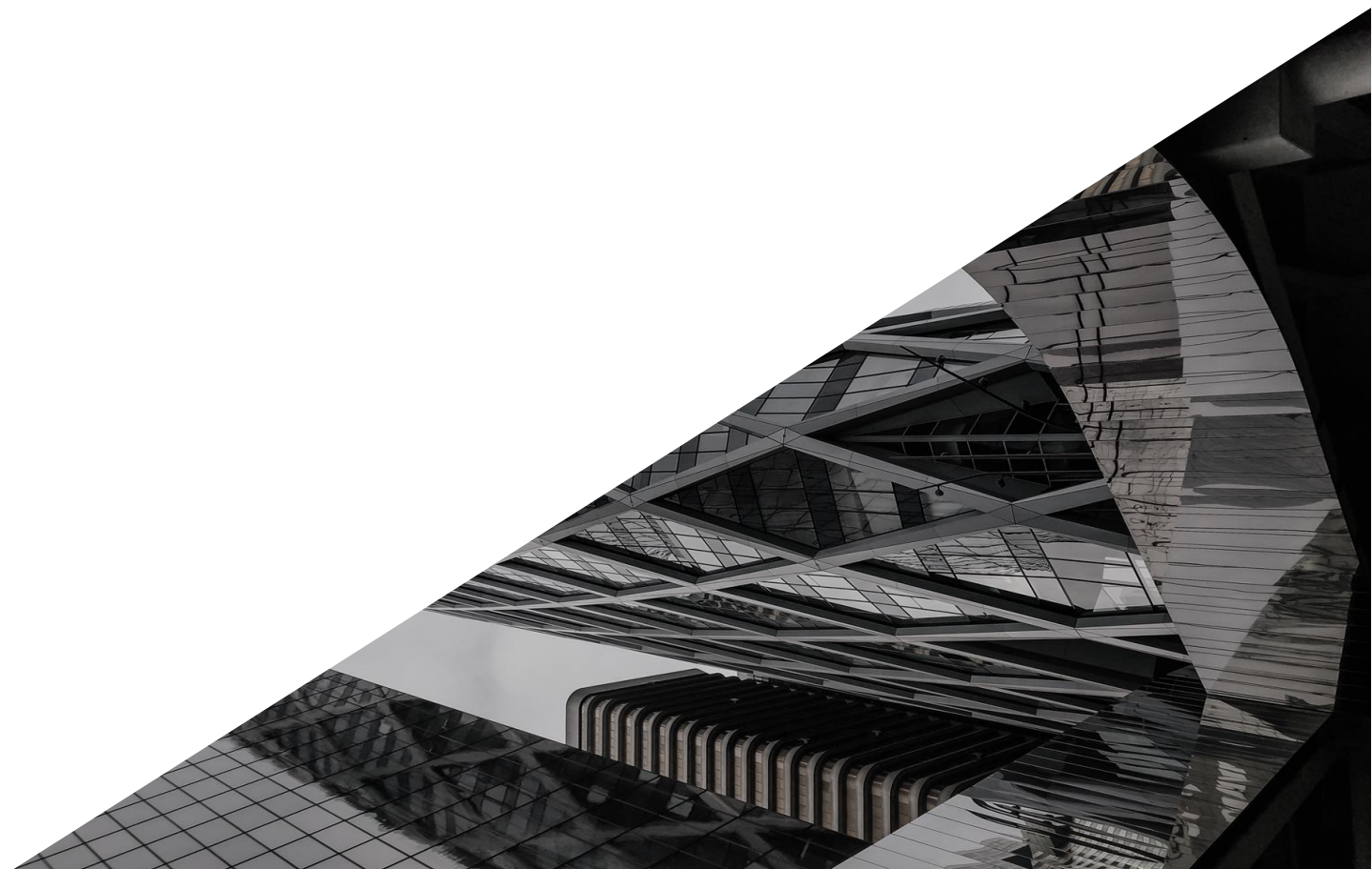


Analysis of the CJEU's Judgement in the NSD Case Between the Lines: Broad Interpretation for Those Planning Release in the Belgian Ministry of Finance

Relevant as of 17.09.2024



1. On 11 September 2024, the General Court of the European Union rejected the claim of the National Settlement Depository (hereinafter, the 'NSD') to lift the blocking restrictive measures against it in Case [No. T-494/22](#).
2. The NSD failed to prove that the sanctions imposed against it were inappropriate. Nevertheless, the CJEU's judgement gives hope to Russian private investors for an increase in the number of positive decisions from the Belgian Ministry of Finance to unblock assets frozen in Euroclear.
3. In its judgement, the CJEU reviewed in detail a number of legal provisions of one of the fundamental EU sanctions acts against Russia and interpreted them. It concerns Articles 6(1) and 6b(5) of Council Regulation (EU) No 269/2014 (hereinafter, '**Regulation No 269**'), on the basis of which private investors can apply for release of their assets.
4. Article 6(1) of the Regulation does not require (1) to provide a guarantor; (2) to comply with the deadline of 7 January 2023 for submitting an application for release; (3) to prove termination with the NSD. However, the Belgian Treasury did not authorise the transfer of securities on the basis of this provision, since it allows unblocking for the purposes of '**payments**'.
5. In clause 150 of the judgement, the CJEU emphasised that, under Article 6(1) of Regulation No 269, 'the competent authorities of Member States may authorise the release of certain frozen funds or economic resources for the benefit of a person, entity or body, provided that such funds or economic resources are to be used by such person, entity or body, and that, as it follows from Article 6(1)(b), the payment does not infringe Article 2(2) of the Regulation', which, in its turn, prohibits to directly or indirectly provide funds or economic resources to persons sanctioned under Regulation No 269.



7. However, the CJEU clarified that the concepts of **'funds'** and **'financial assets of every kind'** should be interpreted broadly. Considering that funds or economic resources may be released to enable a person or entity to make a **'payment'** under a contract concluded with a third party prior to inclusion in the sanctions list, the CJEU stressed that the concept of **'payment'** should also be interpreted broadly and cannot be confined solely to payments in the form of a transfer of funds:

*'It should be noted that the concept of **"funds"** is the subject of a broad definition in Article 1(g) of Regulation No 269/2014, in that it refers to all **"financial assets and benefits of every kind"**. The same may be said in so far as it concerns the concept of **"economic resources"**, which is defined in Article 1(d) of that regulation and covers **"assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services"**. Since funds or economic resources can be released in order to enable a person, entity or body to make a **"payment"** under the terms of a contract or agreement concluded with a third party before inclusion on the lists at issue, the concept of **"payment"** must necessarily be interpreted broadly and cannot be confined solely to payments in the form of a transfer of a sum of money. Indeed, as the Commission observed at the hearing, a restrictive interpretation of the concept of **"payment"** would run counter to the possibility of releasing funds or economic resources defined broadly in order to make a payment'.*

8. Moreover, in clause 152 the CJEU reiterated that Article 6(1) of Regulation No 269 allowed the competent authorities of the Member States to authorise the release of funds or economic resources of the NSD in order to make a '**payment**' taking the form of the return of its customers' securities which the NSD held in its frozen accounts with EU depositories:

'It follows that, when the initial acts were adopted, the derogation provided for in Article 2(5) of Decision 2014/145 and in Article 6(1) of Regulation No 269/2014 allowed national authorities to authorise the release of the applicant's funds or economic resources in order to enable the applicant to make a payment taking the form of the return of its customers' securities/bonds which it held in its frozen accounts with securities depositories established in the European Union'.

9. As stated above, the CJEU's judgement is binding and must be observed by all EU Member States (including the Ministries of Finance of Belgium and Luxembourg). In this regard, the CJEU allowed Russian private investors to withdraw their frozen assets (both securities and funds) under Article 6(1) of Regulation No 269.

10. It is noteworthy that the Belgian Ministry of Finance took the opposite position in its decisions and refused to transfer the applicants' securities, relying precisely on the narrow interpretation of the concept of '**payment**'. Accordingly, the interpretation of Article 6(1) of Regulation No 269 should dramatically change the approach of the Belgian Ministry of Finance and increase the number of positive judgements issued by the Regulator.

11. However, we cannot help but note that in practice, the Belgian Treasury has repeatedly emphasised in its judgements that Article 6b(5) is *lex specialis* in relation to Article 6(1) of Regulation No 269 as far as the NSD is concerned. Therefore, there is a risk that Russian private investors, whose assets are held in the chain with participation of the NSD, will still need to prove compliance with the deadline for filing an application before 7 January 2023 (today this can be done by referring to a collective application filed before 7 January 2023 by the investor's broker) and involve a European guarantor in order to have their assets successfully released.



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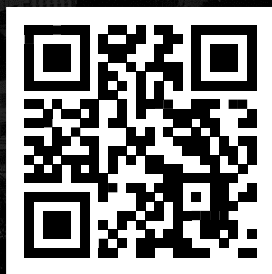
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