

19<sup>TH</sup> SEPTEMBER 2024

## SIDE NOTE

A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised

## RESTRICTIVE MEASURES AGAINST RUSSIA: THE CONFISCATION OF THE ENTIRE PROCEEDS OF A BROKERING TRANSACTION COVERED BY THE PROHIBITION ON PROVIDING BROKERING SERVICES FOR MILITARY EQUIPMENT IS PERMITTED

The Romanian aerospace business Neves 77 Solutions SRL (Neves) served as a middleman in a deal involving the sale of 32 radio sets, 20 of which were made in Russia, between SFTE Spetstechnoexport, a Ukrainian company, and an Indian company. Neves was notified by the Romanian authorities in 2019 that the brokering activities pertaining to those goods were subject to the ban on brokering services related to military equipment to an operator in Russia.

Nevertheless, Neves soon collected about 3 million euro for providing its brokering services to SFTE Spetstechnoexport. As a result, Neves was fined circa 6,000 euro, by the Romanian government, and the brokerage fee was confiscated.

A Romanian court asked the Court of Justice to rule on two issues: first, whether the sanctions imposed for violating the prohibition are compatible with the undertaking's right to property, and second, whether the prohibition applies in cases where the military equipment in question was never imported into the European Union.





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***The prohibition on providing brokering services for military equipment to an operator in Russia applies even if those goods were never imported into a Member State. EU law permits the confiscation of the full amounts received in relation to the provision of such services.***

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The Court is of the opinion that it is nevertheless illegal to offer brokering services for military equipment to a Russian operator, even if the commodities were never brought into a Member State. Indeed, if it were enough for such equipment to be routed without going through EU territory, then this rule would be easily circumvented.

The Court further notes that EU law allows for the automatic seizure of the entire sums received in connection with the provision of military equipment brokerage services to a Russian operator. This does, of course, restrict the provider's ownership rights over those sums. However, given the legitimate goals the European Union pursues—namely, the defense of Ukraine's territorial integrity, sovereignty, and independence—such a limitation is necessary to guarantee that the prohibition in question is effective and, consequently, proportionate in principle.

*All sanctions issued by the European Union and the United Nations Security Council are directly applicable under the National Interest (Enabling Powers) Act, Cap 365 under the Laws of Malta. Any legal or natural person in Malta is obliged to adhere to applicable sanctions and carry out the necessary check to ensure that sanctions are always complied with. Should any situation be encountered which gives rise to a violation of sanctions or a potential thereof, whether directly or indirectly, economic operators are encouraged to inform the SMB by sending an email to [reporting.smb@gov.mt](mailto:reporting.smb@gov.mt) using the template found on <https://smb.gov.mt/wp-content/uploads/2024/01/Reporting-to-the-Sanctions-Monitoring-Board.pdf>.*