

FROZEN ASSETS, HOT CLAIMS: HOW RUSSIAN OLIGARCHS & OTHER INVESTORS SUE OVER SANCTIONS

IN THE NEWS

As the EU seeks to use immobilised Russian assets held by the Brussels-based depository Euroclear to support Ukraine, Belgium opposes the move over fears of multi-billion-dollar investor-state arbitration claims. The dispute highlights a deeper problem: Europe's investment treaties still give (Russian) ultra-wealthy and corporate investors legal tools to challenge sanctions and undermine support for Ukraine.

These treaties have already been used extensively against Ukraine, draining resources and constraining its policy space in wartime. They are now also undermining the EU's own sanctions regime and plan to aid Ukraine.

WHAT'S ISDS

The Investor-State Dispute Settlement (ISDS) system lets foreign investors (often large corporations or ultra-rich individuals) sue governments outside of the national legal system over democratically-agreed policies or laws, that they think will affect their profits. Cases are heard in **secretive tribunals** and often involve **hundreds of millions or billions of dollars**- far higher than would be the case in national courts.

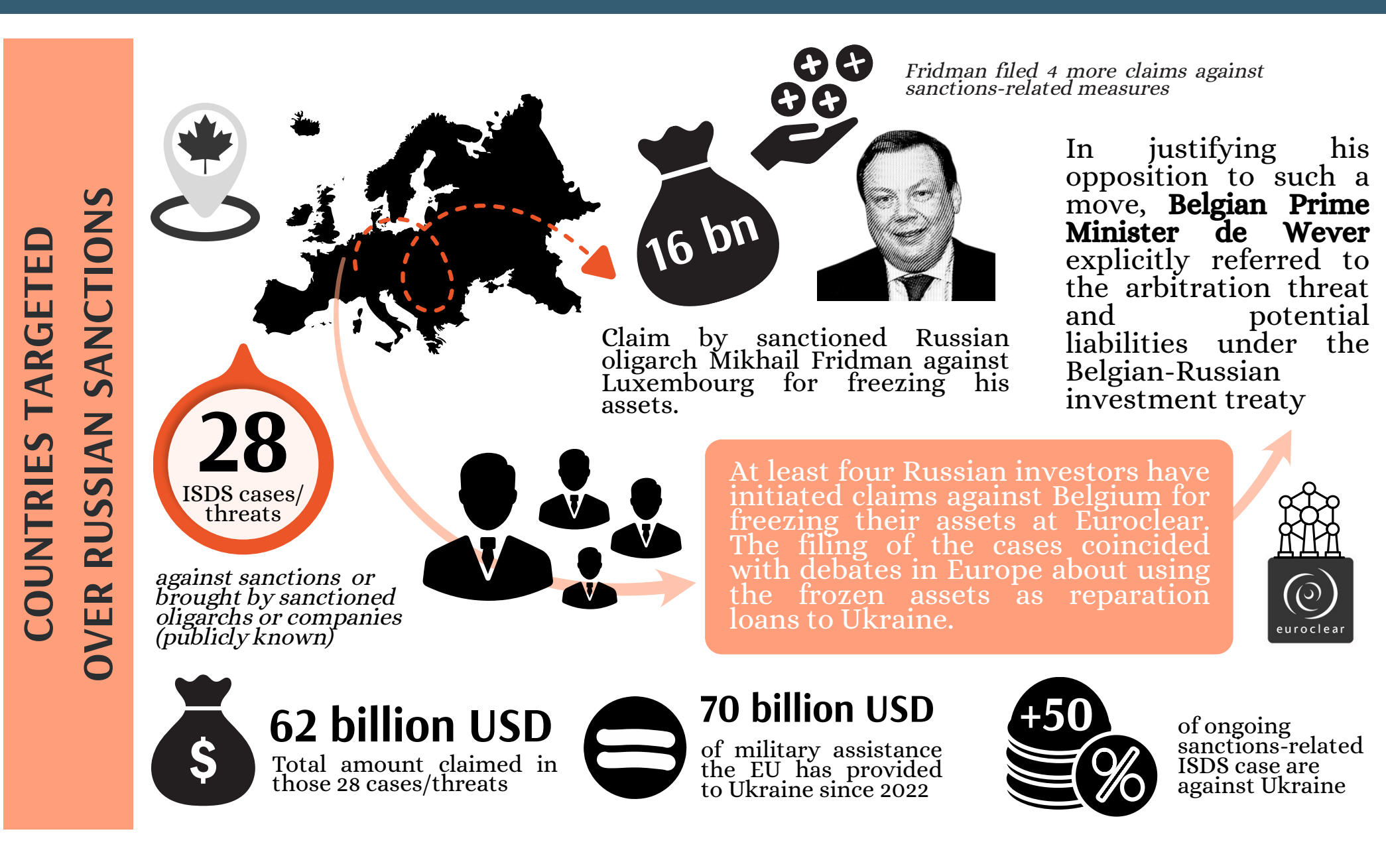
The ISDS system is a **highly controversial** arbitration mechanism included in trade or investment treaties between countries. **Several countries have moved away** from this system including Europe.

TIES THAT BIND

Despite the war in Ukraine, many EU countries kept their **bilateral investment treaties** with Russia and other third countries - though the Court of Justice of the EU rules back in 2009 that **these treaties conflict with EU sanction policies**.

Ukraine also has many investment treaties with other countries in Europe, used by Russian oligarchs to challenge international sanctions. **Cancelling these would discourage new claims** - without cutting ties with Europe. And Ukraine will need to terminate them anyway **to join the EU**, since such treaties are illegal inside the Union.

After Russia's invasion of Ukraine, the EU, Ukraine itself and almost 20 other countries introduced sanctions against the Russian state as well as companies and individuals closely linked to the regime and the war effort. These sanctions are now being challenged by Russian oligarchs and companies in private investment arbitration tribunals using so-called "ISDS" mechanisms contained in bilateral investment treaties.



CASES AGAINST UKRAINE

More and more cases targeting sanctions and national security measures undertaken by Ukraine following the 2014 and 2022 invasions.



- ✓ All countries should cancel their investment treaties with Russia to phase out Russian investors' claims.
- ✓ EU member states and Ukraine must urgently cancel the investment treaties between them.
- ✓ A single joint termination treaty between the EU and Ukraine could simultaneously end all the investment treaties between them at once.
- ✓ In the longer term countries should remove ISDS from all existing treaties and stop signing new treaties with any form of ISDS.

