


# CONFISCATION OF FROZEN RUSSIAN ASSETS IN FAVOUR OF UKRAINE

**WHAT IT TAKES**



The analytical brief was prepared by the think tank “Institute of Legislative Ideas” for “The International Centre for Ukrainian Victory” (ICUV).

The brief outlines the state of play with regard to freezing and confiscation of Russian assets in response to the full-scale invasion of Ukraine, and addresses the steps that could facilitate the compensation of damages caused by the aggressive war waged by the Russian Federation.

# DAMAGE FROM THE WAR AND SOURCES OF COMPENSATION<sup>1</sup>

As of June 2023, the total amount of direct documented damage to residential and commercial property and other infrastructure amounted to more than \$150.5 billion. According to World Bank estimates, the overall damage caused by the war has already exceeded \$411 billion and is constantly growing. Even with the extensive support from partners (from 24 January 2022 to 31 May 2023, assistance worth about €165 billion was provided), no country is able to cover these losses<sup>2</sup>.

Unprecedented sanctions were imposed on Russia in response to the invasion. One of the most important of these sanctions is freezing of Russian private and public assets around the world. According to various estimates, assets frozen worldwide total between \$300 billion and \$500 billion. This amount includes public assets of the Central Bank of the Russian Federation as well as private assets of those who contribute to the aggression (Russian oligarchs, politicians, propagandists, etc.).

The exact amount of Russian assets frozen is not known, but it is known that the largest amount has been frozen in the EU.

Russian assets worth **€196.6 billion** have been frozen on the accounts of the international depository Euroclear, headquartered in Brussels, of which 180 billion are assets of the Russian central bank and almost 20 billion are private assets of Kremlin associates.

Among the leaders in terms of the amount of frozen **private** assets there are also the United Kingdom - \$20.5 billion, Switzerland - \$8 billion, Germany - \$5.57 billion, and Luxembourg - \$5.54 billion. In total, more than \$100 billion worth of private assets have been frozen worldwide.

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1 - See more on how Russian money can serve to compensate for the damage caused by the war in the ILLI's study

2 - Ukraine Support Tracker, Kiel Institute

Some states have already committed themselves at the political level to maintaining the freeze until Russia compensates for the damage caused. However, from a practical point of view, this goal still seems unattainable, as after a year and a half of war, only about \$1 billion of Russian assets have actually been seized, which is less than 0.3% of the total amount of damage. And 99% of confiscated assets were confiscated by Ukraine itself.

Thus, at present, \$300 to \$500 billion of the aggressor's frozen assets can be used to support Ukraine's defence and compensate for the damage caused.

Currently, we see several ways that can bring us closer to utilising these assets to compensate for the damage caused by the aggression and help Ukraine.

# CONFISCATION OF RUSSIAN ASSETS

This path implies channeling the frozen sovereign assets of the Russian Central Bank as well as private assets of its accomplices (held in foreign financial institutions) for the purpose of compensating Ukraine for the damage caused. From a practical point of view, it is the most straightforward and direct way to apply the rule "damage shall be compensated by the one who caused it". From a legal point of view, such an obligation is enshrined in the UN General Assembly Resolution of 14 November 2022, which states that the Russian Federation must be held accountable for violations of international law and compensate for all damages caused.

It can be implemented at the [global level](#). Currently, Ukraine and partner states are actively working on the introduction of a unique [Compensation Mechanism](#) that would allow compensation for the damage caused by the aggression. It includes the establishment of the Register of Losses, the Fund and the Compensation Commission based on the multilateral international agreement. In our opinion, this compensation should commence even before the war ends and Russia is required to pay reparations, since much of the reconstruction, for example, of critical energy infrastructure, is vital to the country's survival and cannot wait.

Russian assets should become the main source of filling the Compensation Fund, from which payments will be made.

**The legal foundation for it would be the aforementioned international agreement, which, among other things, should contain rules for limiting sovereign immunity with respect to Russian state assets and would allow their seizure for compensation as an appropriate countermeasure against aggression and gross violation of international law (the concept of 'erga omnes' obligation).**

At the same time, along with efforts at the global international level (which naturally is not the quickest), each country should utilise its available domestic means to bring Russia to justice, as well as create new ones.

It is only natural that Ukraine, as a victim of aggression, became the first country to confiscate Russian assets and set an example for Western countries on how to confiscate assets of war collaborators in a manner that is legal and compliant with the requisite standards. After the full-scale invasion, legislative changes were made to allow for the confiscation of both state assets of the Russian Federation and the judicial confiscation of assets of war supporters<sup>3</sup>.

So far, over \$0.5 billion has been collected under the special mechanism for recovering the property of the aggressor state, through confiscation of assets of 2 Russian banks. However, that is not all of the Russian state assets found in Ukraine. The seizing of 903 objects belonging to the Russian Federation and its companies in Ukraine, announced in the summer of 2022, is still pending. These include the corporate shares in 79 companies, (among which there are 100% shares in TATNEFT-ASC-UKRAINE, 25% in Kryukiv Carriage Works, 100% in Brocard Ukraine) and movable property, including 8 aircraft; 11 ships; 552 units of Russian Railways railway rolling stock, etc.

Regarding the private assets of the aggression supporters, the High Anti-Corruption Court (HACC) has issued 28 rulings on the forfeiture of assets as of September 2023<sup>4</sup>. The following assets are already serving Ukraine or about to be sold: the assets of arms manufacturer Yevtushenkov; the assets of the owner of a plant involved in the

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3 - For more details on the legal nature of such a measure, see the ILLI's study

4 - See: HACCU RULINGS ON ASSET FORFEITURE

production of titanium for the Russian defence industry, Shelkov; the assets of Deripaska, whose Mykolaiv Alumina Plant was confiscated; and the assets of Rotenberg, whose shares in the authorised capital of the company that owns Ocean Plaza LLC in Kyiv were forfeited. The HACC ordered forfeiture of property from members of the State Duma and Russian propagandists<sup>5</sup>.

While Ukraine is confiscating Russian assets on its territory, most world leaders are making political declarations about the necessity of similar actions, yet no concrete decisions have been made.

So far, only [Canada](#) has passed a law that allows for the confiscation of both public and private Russian assets. However, there has not been a single case of its application, although it has been discussed for more than a year now that oligarch Abramovich's assets are being confiscated.

[The United States](#) and [the United Kingdom](#) have introduced bills that would initiate the process of seizing Russian assets.

In the UK, it is the Seizure of Russian State Assets and Support for Ukraine Bill (hereinafter referred to as Bill 245)<sup>6</sup>. The Bill aims to enable the confiscation of assets of the Central Bank, the National Welfare Fund, the Ministry of Finance and any person owned or controlled by the said Russian institutions. The confiscated assets are to be transferred to the Trustee for Russian state assets, which will use the money to aid Ukraine. Bill 245 is currently being prepared for a second reading scheduled for 24 November 2023.

In the United States, a similar idea is enshrined in the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act (REPO for Ukrainians Act)<sup>7</sup>, which was introduced on 15 June 2023 by a group of senators from both parties<sup>8</sup>. Given the current political situation and the approaching election process, it is unlikely that these bills will be passed in the near future.

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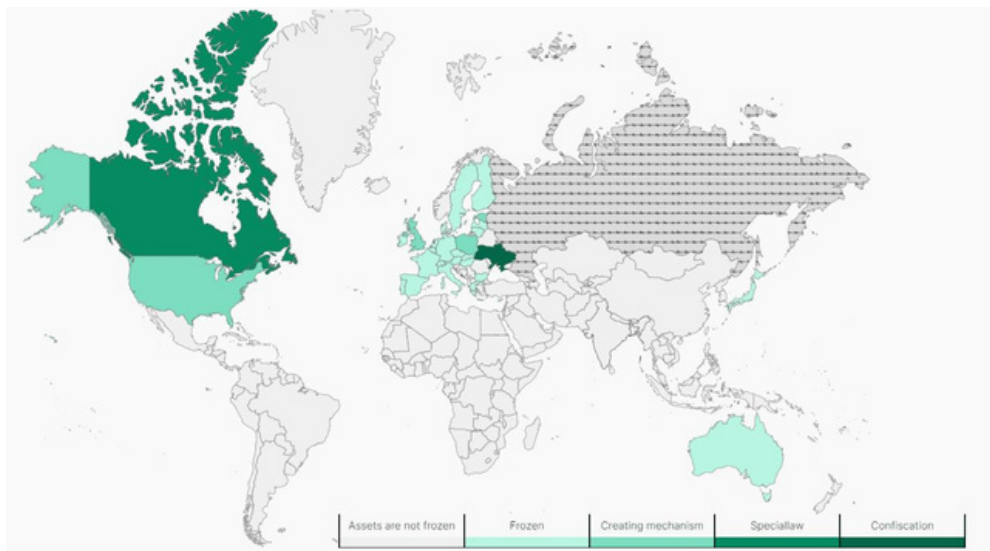
5 - Detailed legal analysis of the Court rulings on the forfeiture of assets of the aggression supporter, ILL

6 - Seizure of Russian State Assets and Support for Ukraine Bill

7 - REPO for Ukrainians Act

8 - McCaul, Risch, Kaptur, Whitehouse Reintroduce Legislation to Repurpose Sovereign Russian Assets for Ukraine

**Estonia** and **Poland** have announced the development of legal mechanisms for the recovery of private assets, but no official documents have been registered yet.



The current state of play with regard to the seizure of Russian assets indicates, first and foremost, the political hesitancy of states to take decisive action in relation to Russian assets. Major concerns include financial risks to the economies of the states and the currencies that dominate the global market as well as the risks of Russian countermoves, etc.

Nevertheless, only the confiscation of Russian assets and their direct transfer to Ukraine is the way that can provide the largest inflow of money at once. Therefore, the partner states should implement the necessary legislative changes that would allow the use of Russian assets to compensate and rebuild Ukraine.

The axiom that the right of the aggressor should not prevail over the right of the victim must be respected. It means that Russia's right to inviolability of property should not outweigh Ukraine's right to obtain compensation for the damage caused by Russia.

# COLLECTING PROCEEDS FROM FROZEN RUSSIAN ASSETS

Russian money frozen in bank accounts generates income. For example, the report of the international depository Euroclear indicates €1.74 billion received in the first half of 2023 from frozen Russian assets. For the whole of 2022, the figure was €821 million. Thus, one can infer that income from assets is increasing.

Yachts, planes, and estates owned by Russian oligarchs and other accomplices of aggression that are frozen around the world can also generate income if managed effectively.

All of these revenues were generated as a result of the war launched by Russia and the sanctions imposed in response to it. Thus, it is only fair that the proceeds from frozen Russian assets should be directed to Ukraine. This could cover at least the financial need for "rapid" recovery. According to the Prime Minister of Ukraine, Denys Shmyhal, such needs currently amount to \$6.5 billion<sup>9</sup>. According to the least optimistic estimates, the annual profit from the management of Russian assets could be \$3 billion. Optimists put the figure at \$10bn.

This option is currently being discussed as the most promising among partner countries, especially in the EU. The European Commission points out that this measure does not directly affect Russian assets and does not deprive the owners of the opportunity to retrieve them in the future. It is exclusively about the possibility of transferring the proceeds to Ukraine. The next round of negotiations is expected to be announced in the near future. In addition, the European Commission has noted that some countries support this initiative, while others still have concerns (including Germany). That is why it is necessary to convince sceptics of the feasibility and effectiveness of such a solution and to transfer the proceeds of Russian assets for compensation and recovery.

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<sup>9</sup> - See an article by Suspilne

Moreover, before the Compensation Mechanism is fully launched, it seems prudent to create a single escrow account to hold the frozen Russian funds. Such an account could be managed by a reputable organisation that enjoys a high level of trust from partner countries, such as the World Bank. It would ensure the safety of the frozen Russian assets and facilitate the implementation of uniform approaches to the efficient use of such assets to generate income with their transfer for compensation and reconstruction.

# WITHHOLDING TAX ON INCOME DERIVED FROM FROZEN RUSSIAN ASSETS

Even less legally “objectionable” may be the introduction of special taxation regimes (with the highest rates) for sanctioned assets. Clearly, this money would not be a game changer for the country's economic recovery, but it would help to keep it going.

It is suggested to transfer to Ukraine not the income itself, but the funds received as a result of taxation of that income. The above-mentioned Euroclear has its headquarters in Belgium. In May 2023, the Belgian authorities announced that, as a result of taxation of income received from frozen Russian funds in 2022, the budget collected 625 million euros in taxes (which is about 76% of the amount of income received). Following this, Belgian authorities announced the transfer of €92 million for the military and humanitarian needs of Ukraine. There is no information on the receipt of these funds yet, but we hope that they will be transferred in the near future.

Under this route, the funds are collected by the state through special taxation regimes with increased rates (which should be as close to 100% as possible and allow for administrative or other operating expenses).

Of course, under normal circumstances, tax revenues are spent by the recipient country at its own discretion. However, a large amount of taxes on income from frozen Russian assets are collected primarily as a result of the war, and therefore it is quite logical and fair to transfer them to Ukraine as the victim of this war.

# CONFISCATION WITHIN THE FRAMEWORK OF PROSECUTION FOR VIOLATION OF RESTRICTIVE MEASURES

It is an alternative way to obtain funds for compensation from those who disregard restrictive measures and attempt to keep financing the war.

Despite the fact that Russia is currently the country with the largest number of sanctions imposed on it, there are more and more cases when such restrictions are circumvented, either by directly violating the bans or finding loopholes in legal instruments and rules. Unfortunately, when it comes to the possibility of making excessive profits, individuals and companies prefer significant financial gains over respect for human rights and the international legal order.

Even before the full-scale invasion, in 2019, MEPs pointed out<sup>10</sup> that sanctions violations had become a systemic problem, and after 2022, the cost of this "problem" has escalated even higher.

A striking example is that about thirty foreign microchips, including chips from countries that imposed the sanctions, were found in Russian missiles manufactured after the technology embargo was imposed<sup>11</sup>. It became possible precisely because of the circumvention of sanctions, which not only figuratively but also actually leads to casualties in Ukraine.

The number of documented cases of sanctions circumvention is staggering, yet it is only the tip of the iceberg. For example, in Estonia<sup>12</sup> alone, which is relatively small in

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10 - See an article by POLITICO

11 - See <https://t.me/ermaka2022/3455>

12 - ACAMS Symposium held: comments of the Minister of Finance of Estonia

terms of territory, 1,500 cases of sanctions violations were detected, and the Swiss authorities<sup>13</sup> are already investigating 100 cases of possible sanctions violations against Russia, with another 300 cases pending.

In this regard, world leaders are now urging to focus on toughening the fight against violations of the sanctions already imposed. In particular, the European Union's chief diplomat, Joseph Borrell, said that the EU has almost exhausted sanctions against Russia and will focus on the issue of sanctions circumvention. This political statement was reflected in the 11th package<sup>14</sup> of EU sanctions.

**CRIMINAL LIABILITY FOR SUCH ACTIONS COUPLED WITH CONFISCATION AS PART OF CRIMINAL PROSECUTION COULD BE AN EFFECTIVE TOOL TO COMBAT SANCTIONS CIRCUMVENTION AS WELL AS A POSSIBLE SOURCE FOR FUTURE COMPENSATION.**<sup>15</sup>

Currently, there is no uniform approach to the criminalisation of sanctions evasion in the EU. In some countries, these acts are **criminalised** (Cyprus, Denmark, Finland, France, Croatia, Hungary, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Sweden, and Spain), while in Slovakia and Spain, it is considered an **administrative offence**.

At the same time, in Austria, Belgium, Bulgaria, the Czech Republic, Germany, Estonia, Greece, Ireland, Italy, Lithuania, Poland, Romania and Slovenia, such violations may be classified as **either criminal or administrative offences**, depending on their severity.

The Draft Directive<sup>16</sup> on the definition of criminal offences and penalties for the violation of Union restrictive measures, developed by the European Commission, is intended to remedy the situation. It is designed to harmonise existing legislation and establish uniform rules of prosecution and punishment.

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13 - See an article, III

14 - See: 11th package of sanctions against Russia

15 - Overview of the state of prosecution for sanctions evasion, III

16 - Document 52022PC0684, Proposal for a Directive

It also provides for the possibility of confiscation of the means of sanctions evasion (e.g., funds or real estate that were attempted to be concealed).

As of now, the European Parliament has to vote on a resolution supporting the Directive in the first reading. In its turn, the EU Council is discussing the document. The latest discussion took place in June 2023. The draft resolution<sup>17</sup> was prepared by one of the parliamentary committees. Notably, it is planned to set an unusually short period of six months for member states to implement the Directive.

In the UK, there are also legislative efforts underway to toughen liability for evasion. Lord Alton's amendment<sup>18</sup> to the Economic Crime and Corporate Transparency Bill requires self-declaration of assets by designated persons, with all undeclared assets found to be subject to confiscation.

So far, only the United States has managed to collect and transfer funds confiscated in criminal proceedings for sanctions circumvention. This was made possible thanks to the existing mechanism of civil forfeiture of criminal assets and legislative changes that allow for the transfer of recovered assets to Ukraine. Thus, a decision was made<sup>19</sup> to forfeit \$5.4 million from Russian oligarch Malofeyev, who is accused of violating the sanctions regime. So far, it is the only successful case, but Manhattan prosecutors have also filed a lawsuit<sup>20</sup> to confiscate six properties totalling about \$75 million in New York and Florida, owned by Russian oligarch Viktor Vekselberg. And the US District Court for the Eastern District of New York has authorised<sup>21</sup> the confiscation of a Boeing aircraft owned by the Russian oil company Rosneft, which is worth more than \$25 million. We hope that similar practices will be applied in these and other cases.

In Ukraine, sanctions evasion has not yet been criminalised, and the respective draft law has been under consideration by the Parliament for more than six months. It is essential to enact a law that is balanced and harmonised with partner countries, and to implement the practice of civil forfeiture as part of criminal prosecution for sanctions evasion. This will enable effective international cooperation and the transfer of confiscated assets to Ukraine.

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17 - See the Draft Resolution

18 - Economic Crime and Corporate Transparency, debated on 27 April 2023

19 - See an article, III

20 - See an article, III

21 - See an article, III

# CONCLUSION

Considering the overview of all the proposed ways to compensate for the damage, the following steps should be taken:

- I. Keeping frozen assets in a special escrow account until they are transferred to the Compensation Fund.**
- II. Introducing domestic legislation by partner states that allows for the confiscation and transfer of Russian assets to Ukraine.**
- III. Channelling the proceeds from Russian assets as well as taxes levied at special rates to compensation and reconstruction.**
- IV. Launching a Compensation Mechanism, with the possibility of replenishing the Fund with Russian assets confiscated in accordance with a multilateral international agreement.**
- V. Criminalising sanctions evasion and providing for financial penalties and civil confiscation of criminal assets.**

Implementation of the above steps and providing for the legal possibility of transferring the proceeds to Ukraine will demonstrate the inevitability of financial (at the very least) responsibility and clearly indicate to other potential aggressors in the world the possible consequences of gross violations of international law.

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