



Using Frozen Russian Assets to Rebuild Ukraine: Possibilities for the EU

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The EU wants to finance the reconstruction of Ukraine, using for this purpose frozen Russian assets, among others. The European Commission proposes to improve the system of confiscation of private assets of sanctioned persons in case of criminal activity and to obtain income from the active management of immobilised Russian public assets. These solutions may yield limited results. To be more effective, the EU would have to reach an international agreement to confiscate the reserves of the Central Bank of the Russian Federation.

In the scope of the financial sanctions against Russia, the EU froze assets—funds and economic resources (for instance, real estate)—belonging to 1,473 people and 206 entities. This applies to, for example, dozens of Russian oligarchs, the largest Russian banks Sberbank and VTB, and many private and state-owned companies, mainly from the defence and technology sectors. EU Member States also immobilised the assets of the Central Bank of the Russian Federation (CBR), prohibiting any EU operators from financial transactions with this entity.

EU Actions. Due to the adoption of unprecedented sanctions, the EU's priority has become to ensure their effective implementation, including the detection and freezing of Russian assets. To improve the exchange of information and coordination of activities in this field, in March 2022, the European Commission (EC) created a special task force ("Freeze and Seize"), which cooperates with the G7 group. Member States froze private assets mainly owned by oligarchs and worth €21.5 billion. In most EU countries, private property can be confiscated if it is linked to a crime, such as participation in a criminal organisation, money laundering, terrorism, corruption, or war crimes. Therefore, in April 2022, Europol launched *Operation OSCAR*, under which Member States keep each other informed about criminal investigations related to EU sanctions. The operation identified criminal links of 71 individuals and three companies with 82 pending criminal

cases. So far, no private assets have been confiscated, as legal proceedings are usually lengthy.

The EC did not inform about the amount of frozen Russian public assets in the EU, including those of CBR and its affiliates, due to Member States' problems in identifying them, among others. Only France has publicly announced that it has frozen €22 billion of CBR reserves, and Belgium €58 billion of public and private assets. For this reason, as part of the tenth package of sanctions, the EU introduced on 25 February this year specific reporting obligations in this field. For example, financial institutions in the EU are obliged to inform the EC and the Member States about the assets of CBR and its affiliates (e.g., their holders and terms of agreement; the type and amount or market value of the assets) they hold, control or whose counterparties they are. They are also required to update these data every three months. According to the deadlines specified in the adopted regulations, the EC should receive the required information no later than mid-May this year. According to the 2021 CBR report, a total of around €180 billion of CBR reserves (excluding affiliates) were held in the EU, mainly in France, Germany, and Austria.

With the growing war damage in Ukraine, the European Council, in its summit conclusions of 20-21 October 2022, called on the EC to prepare possible options, in line with EU and international law, to use frozen Russian assets to support the reconstruction of Ukraine. At the same time,

talks on this subject are being held at the G7 forum, as the reserves of national central banks are protected by, among others, customary international law, so their confiscation would require unprecedented solutions at the international level. So far, countries with such reserves on their territory, including Germany and France, have been ambiguous about seizing them. Taking the decision to confiscate Russian assets would mean, among other things, the risk that reserves on their territory would be removed primarily by some other authoritarian states as a precaution.

EC Proposals. In November 2022, the EC, indicating that “Russia must pay for the destruction of Ukraine”, presented possible options for using Russian assets. In February this year, it established a working group headed by Anders Ahnlid, previously the director of the Swedish National Board of Trade, that is working out detailed legal solutions.

With regard to private assets related to criminal activity, the EC proposes to improve the existing confiscation system. In 2022, it offered two directives, which are currently being negotiated by the Council and the European Parliament. A directive on asset recovery and confiscation strengthens the powers of national authorities in the field of confiscation and extends the scope of its application to new categories of offences. The second directive on the definition of offenses and penalties for breaching EU sanctions qualifies violations of sanctions as a criminal offence, which will allow confiscation of assets in such cases. The EC also suggests considering confiscation by recognising some Russian entities as criminal or terrorist organisations.

As regards public assets, mainly CBR reserves, the EC proposed that the lifting of these sanctions should be related to the conclusion of a peace agreement between Russia and Ukraine, which would resolve the issue of war reparations and transfer of these funds to Ukraine. For the time being, the reconstruction of Ukraine can be financed with interest from investing frozen public assets in securities. Such a solution would be in line with EU and international law, although it would require changes to existing sanctions provisions. The EC estimates that it is possible to obtain income in the amount of 2.6% of the value of invested funds per year, or at least several billion euros (depending on the final data from the Member States on, among others, the amount and structure of the assets). This revenue, as well as others from the confiscation of private assets, could be

transferred by states, through voluntary transfers based on an intergovernmental agreement or through mandatory transfers through the creation of new own resources in the EU budget, to a special fund for Ukraine’s reconstruction.

Prospects. It is doubtful whether the EU could obtain large sums of money for Ukraine reconstruction from the confiscation of private property. So far, the amount of private assets from criminal activities frozen and confiscated in the EU has been low. In 2019, Member States froze €3 billion in such assets and only a third of that was confiscated. The reason lies in the insufficient operational capacity of most EU countries to detect, investigate, and punish financial crime, including staff shortages of specialists and the insufficient implementation of EU anti-money laundering regulations. Moreover, EU company registers are often opaque despite the mandatory ownership description, a situation that makes it difficult to trace assets and document accurately whether they belong to sanctioned persons and entities. Although the directives presented by the EC will improve the institutional system of confiscation in criminal cases and increase possibilities for seizure, they do not solve the larger problems.

Funds obtained from the management of frozen public assets could cover part of Ukraine’s current needs after 2023 related to war damage in light of the exhaustion of funds from the EU budget, however only to a small extent, as [it is currently estimated at around \\$410 billion](#). The realisation of the EC proposal to make Russia pay Ukraine frozen CBR reserves as war reparations based on a peace agreement (if one were to take place) is politically unlikely, considering that [the goal of Russian policy is to completely subjugate Ukraine](#), as well as the experience of Russia’s non-compliance with the Minsk agreements.

Therefore, to obtain a sufficient amount of money for reconstruction, the EU (without waiting for a peace agreement) would have to lead the adoption of an international agreement assuming the confiscation of CBR reserves by changing the international custom in this respect. Poland, together with the Baltic States, may demand that the EC prepare a legal analysis on this subject. The EC should also make public detailed information about frozen Russian public assets. This would enable Ukraine to exert diplomatic pressure on individual states to confiscate them.