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Time for the EU to Decide on the Future of Frozen Russian Assets

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The debate on the future of frozen Russian assets in the EU has entered a decisive phase. In principle, the European Commission's proposal, published on 3 December, to grant a loan to Ukraine using these funds is an appropriate solution. However, it would be advisable to make changes in anticipation of any possible rulings by international courts ordering the return of funds transferred to Russia. In order to overcome the current negotiating impasse, which is mainly due to Belgium's resistance, it would be advisable to address Belgian calls for irrevocable guarantees of reimbursement of the value of the assets for an indefinite period by EU countries.

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Following Russia's full-scale invasion of Ukraine at the end of February 2022, the G7 (including the European Union) took decisive action to punish the aggressor. One of these measures was freezing the Central Bank of Russia's (CBR) foreign currency reserves at the end of February and the beginning of March 2022.¹ These reserves were primarily held in foreign currencies and securities within Western financial institutions. As a result of the sanctions, a pool of unused, frozen Russian state assets estimated at around \$280 billion emerged, including approximately \$227 billion (€210 billion) within

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the European Union alone.² Relatively quickly, decision-makers in individual countries and the EU began to consider ways to use these funds, e.g., to support Ukraine's war effort or for basic expenditure given its tense budgetary situation. In 2023, the US proposed that the G7 seize these assets to achieve these goals, but only managed to establish working groups with Japan, Canada and the UK in December 2023 to analyse

the legal aspects of a permanent seizure, risk mitigation, including economic risks, and the most effective way to provide Ukraine with assistance using these assets.³ Ultimately, during the G7 negotiations, agreement was reached only on the transfer to Ukraine of "extraordinary revenues" from these assets, including interest accruing on them in the relevant accounts. This was achieved through the ERA mechanism, announced in June 2024, whereby all G7 members grant Ukraine loans totalling approximately \$50 billion.⁴ Adopting this solution temporarily limited discussions on the future of Russian assets.

Revival of the Debate in the EU and the Impasse

However, awareness of the need for action gradually grew, particularly within the European Union. This was related to several factors, including the problems of ensuring stable US aid to Ukraine, Ukraine's growing financial needs, scepticism in some EU countries about the constant financial burden of supporting Ukraine being placed on their taxpayers, and the desire to persuade Russia to enter into peace negotiations, particularly with the involvement of the EU.⁵ Nevertheless, in August 2025, EU countries decided to entrust the European Commission with conducting a legal analysis of possible steps and presenting potential proposals.⁶ Support for the use of Russian assets to help Ukraine emerged in March 2025 from the French parliament,⁷ and then from German Chancellor Friedrich Merz at the end of September 2025.⁸ This led to a change in the existing informal division within the EU between the eastern states, which generally supported the use of CBR funds, and the

¹ A detailed analysis of the actions of the G7 and the EU can be found in: S. Kolarz, S. Zaręba, "Actions Taken So Far by the G7 and the EU Countries," in: S. Zaręba (ed.), *Prospects for the Use of Frozen Assets of the Central Bank of Russia*, Warsaw 2025, pp. 28–38. It should be noted that Australia and Switzerland, individual democratic countries opposed to the aggression against Ukraine, which do not belong to the G7 or the EU, also froze Russian assets.

² At the same time, measures were also taken against the assets of private individuals associated with the Russian authorities or supporting the aggression, but these are not covered by this analysis.

³ P. Tamma, J. Politi, "Washington puts forward G7 plan to confiscate \$300bn in Russian assets," *Financial Times*, 28 December 2023, www.ft.com.

⁴ "G7 Leaders' Statement," *US Embassy and Consulates in Moscow*, 6 December 2023, www.ru.usembassy.gov. ERA stands for "Extraordinary Revenue Acceleration Loans for Ukraine".

⁵ R. Jozwiak, "EU Autumn Challenges: Russian Assets, Ukraine, Moldova Paths, And Georgia's Backsliding," *Radio Free Europe*, 11 August 2025, www.rferl.org; "Germany's Merz pushes for use of frozen Russian assets for Ukraine," *Reuters*, 25 September 2025, *op. cit.*

⁶ A. Brzozowski, "Why the EU wrestles with what to do with Russia's frozen assets," *Euractiv*, 31 August 2025, www.euractiv.com.

⁷ G. Leali, "French parliament calls for seizing frozen Russian assets," *Politico*, 13 March 2025, www.politico.eu.

⁸ A-S. Chassany, "Germany's Merz backs using frozen Russian assets for Ukraine," *Financial Times*, 25 September 2025, www.ft.com; see also "Germany's Merz pushes for use of frozen Russian assets for Ukraine," *Reuters*, 25 September 2025, *op. cit.*

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western states, which were generally sceptical.⁹ By September 2025, France and Germany, the two countries with the largest number of votes in the EU Council, were already in favour of using the assets, although German support was much more decisive. It was also under their jurisdiction that part of the Russian assets located in the Union were held, although Belgium was central in this regard.¹⁰ France and Germany joined countries such as Poland, the Nordic countries, and the Baltic states,¹¹ which had been promoting the idea of using these funds for some time. In October, Italy also moved to support the use of CBR assets, viewing it as an opportunity to support the European defence industry,¹² and the Netherlands also expressed its support.¹³

Support for the use of Russian assets to help Ukraine from the French parliament, and then from German Chancellor Friedrich Merz at the end of September 2025, led to a change in the existing informal division within the EU between the eastern states, which generally supported the use of CBR funds, and the western states, which were generally sceptical.

From the outset, Hungary was one of the countries most reluctant to support the idea, as it was generally unwilling to provide assistance to Ukraine.¹⁴ Slovakia sometimes shared this hesitance.¹⁵ Belgium was also largely reluctant, fearing serious economic consequences if Russia were to take legal action against Euroclear, the financial institution¹⁶ which, according to estimates, holds about 85% of the CBR's EU-based assets. Belgium emphasised that this would be an unprecedented step and demanded the full solidarity of EU members. It expected all EU countries holding CBR assets to participate in the loan,¹⁷ and for all EU countries to give clear guarantees, not subject to time limits, that they would help repay any amount awarded, e.g. after any future court proceedings.¹⁸ The country also insisted on the introduction of appropriate safeguards to ensure that CBR assets would not be unexpectedly unfrozen if sanctions against Russia were lifted.

Belgium emphasised that this would be an unprecedented step and demanded the full solidarity of EU members.

⁹ R. Jozwiak, "EU Autumn Challenges: Russian Assets, Ukraine, Moldova Paths, And Georgia's Backsliding," *Radio Free Europe*, 11 August 2025, www.rferl.org; "Germany's Merz pushes for use of frozen Russian assets for Ukraine," Reuters, 25 September 2025, *op. cit.*

¹⁰ See G. Kozłowski, S. Zaręba, "Foreign Reserves of the Central Bank of Russia and Their Significance," in: S. Zaręba (ed.), *Prospects for the Use of Frozen Assets of the Central Bank of Russia*, Warsaw 2025, pp. 15–17: the estimates were as follows: Belgium—from €180 to €191 billion, Luxembourg—from several billion euros to around €20 billion, France—€18 to €22 billion, Germany around €210 million. Recently, however, there have been reports that some of the assets may be located in Sweden and Cyprus, see B. Smith-Meyer, G. Sorgi, Z. Sheftalovitch, "Russian assets proposal: 5 main takeaways," *Politico*, 3 December 2025, www.politico.eu.

¹¹ D. Sabbagh, J. Rankin, H. Stewart, "European leaders near deal to use frozen Russian assets for Ukraine," *The Guardian*, 20 October 2025, www.theguardian.com and J. Rankin, S. Walker, "European Commission plans 'reparations loan' to Ukraine using frozen Russian assets," *The Guardian*, 4 December 2025, www.theguardian.com.

¹² G. Sorgi, J. Barigazzi, "EU split over whether to let Ukraine use €140B loan to buy US weapons," *Politico*, 22 October 2025, www.politico.eu.

¹³ "Netherlands supports using frozen Russian assets to provide loan to Ukraine – FM," *Ukrinform*, 28 October 2025, www.ukrinform.net.

¹⁴ A. Brzozowski, *op. cit.*

¹⁵ B. Smith-Meyer, G. Sorgi, N. Vinocur, G. Gavin, "EU plays hardball: If you won't seize Russia's cash, open your wallets," *Politico*, 28 October 2025, www.politico.eu.

¹⁶ J. Strupczewski, "EU executive floats idea of reparations loan for Ukraine, based on frozen Russian assets," *Reuters*, 10 September 2025, *op. cit.*

¹⁷ R. Birchard, "EU stalls on €140B Ukraine loan backed by Russian assets," *Deutsche Welle*, 24 October 2025, www.dw.com and B. Smith-Meyer, "Russian assets dispute triggers crisis meeting between EU Commission, Belgium," *Politico*, 4 November 2025, www.politico.eu. The Belgian Prime Minister had previously called on other G7 countries to take similar action, see "Belgian Prime Minister sets 3 conditions for backing EU 'reparations loan' to Ukraine," *EU Today*, 23 October 2025, www.eutoday.net.

¹⁸ G. Sorgi, "EU countries reject 'blank check' guarantee to Belgium over Russian assets loan," *Politico*, 1 December 2025, www.politico.eu.

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Furthermore, it called for the final amount of the guarantees to exceed the base amount of the loan to allow legal costs to be covered.¹⁹

This change in approach by a growing number of EU countries was followed by action from the EU itself. In September, EC President Ursula von der Leyen proposed the use of assets to secure a loan to Ukraine, initially on an unofficial basis, and suggested that the Russian state assets could be used without confiscating them.²⁰ According to media reports at the end of September 2025, the aim was to grant a loan of up to

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€140 billion, to be paid in instalments.²¹ However, resistance, primarily from Belgium, prevented a decision from being taken at the Brussels summit at the end of October²² and forced the discussion to be postponed until December. On 17 November, von der Leyen sent a letter to EU leaders discussing the loan concept in more detail and suggesting the possibility of incurring joint EU debt to support Ukraine.²³ However, this option seemed and still seems unlikely, as a unanimous decision is required, and a group of EU countries, including the so-called frugal countries (such as the Netherlands, Germany, some Nordic states), the Baltic states²⁴ and also Hungary,²⁵ are very unlikely to accept it. In the meantime, the discussion was further complicated by the 28-point peace plan for Ukraine which was announced by the US on 20 November. Point 14 of this plan provided for the unfreezing of CBR assets, with €100 billion to be used for US-led efforts to rebuild and invest in Ukraine. The US would

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receive 50% of the profits from this, and the remaining assets would be invested in a separate “US-Russian investment vehicle that will implement joint projects in specific areas.”²⁶ Some, including in Belgium, argued that implementing the loan plan would make it impossible to reach a peace deal.

Finally, on 3 December, the EC presented proposals for three legal acts to form the basis for granting a loan to Ukraine, also announcing two further confidential documents.²⁷ The European Council is expected to decide on their adoption on 18–19 December.²⁸

¹⁹ T. Ross, G. Sorgi, H. von der Burchard, N. Vinocur, “How Belgium became Russia's most valuable asset,” *Politico*, 4 December 2025, www.politico.eu.

²⁰ A. Langford, “EU Plans Reparation Loan to Ukraine Using Frozen Russian Assets, Skirting Hungary Veto,” *Kyiv Post*, 18 September 2025, www.kyivpost.com.

²¹ O. Fisk, “Internal EU memo proposes €140 billion loan to Ukraine backed by frozen Russian assets,” *Novaya Gazeta*, 26 September 2025, www.novayagazeta.eu. It is worth noting that, at the same time, the United Kingdom has taken similar action concerning approximately £25 billion of CBR assets located in that country (approximately €28.6 billion).

²² A. Tidey, J. Liboreiro, “EU leaders kick can down the road on €140bn reparation loan for Ukraine,” *Euronews*, 22 October 2025, www.euronews.com; “EU Fails To Reach Deal To Use Frozen Russian Assets For Ukraine As Belgium Balks,” *Radio Free Europe*, 24 October 2025, www.rferl.org; R. Birchard, *op. cit.*

²³ “Letter from President von der Leyen to EU leaders,” *Politico*, 17 December 2025, www.politico.eu.

²⁴ B. Smith-Meyer, G. Sorgi, N. Vinocur, G. Gavin, *op. cit.* The Baltic states strongly advocated using CBR assets instead of taking on joint debt.

²⁵ B. Smith-Meyer, “Hungary shoots down eurobonds as alternative to EU’s Russian asset plan,” *Politico*, 5 December 2025, www.politico.eu.

²⁶ T. Ross, G. Sorgi, H. von der Burchard, N. Vinocur, *op. cit.* and B. Ravid, D. Lawler, “Trump’s full 28-point Ukraine-Russia peace plan,” *Axios*, 20 November 2025, www.axios.com.

²⁷ European Commission, “Commission unveils two solutions to support Ukraine's financing needs in 2026–2027,” 3 December 2025, www.ec.europa.eu. The analysis below only takes into account the publicly available documents.

²⁸ G. Sorgi, H. von der Burchard, “EU allies turn screws on Belgium over its tax income from Russia’s frozen assets,” *Politico*, 28 November 2025, www.politico.eu.

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The Commission's Proposal

The most significant element of the EC package that has been publicly announced is the new regulation establishing a “reparations loan” for Ukraine. It provides for a loan of up to €210 billion for Ukraine,²⁹ in line with its financial needs. €95 billion is to be allocated to macro-financial assistance, e.g. to help meet current budgetary needs. However, of this €95 billion, up to €45 billion is earmarked for repaying ERA loans to G7 members, with these repayments taking priority. The remaining €115 billion is intended to bolster Ukraine’s defence capabilities.³⁰ By the end of December, up to €90 billion of the whole €210 billion sum is to be paid out, unless Ukraine’s expenditure decreases significantly, for example, if Russia grants Ukraine war reparations.³¹

The most significant element of the EC package that has been publicly announced is the new regulation establishing a “reparations loan” for Ukraine. It provides for a loan of up to €210 billion for Ukraine.

The detailed rules for the reparations loan will be set out in an agreement between the EU and Ukraine.³² However, Ukraine must fulfil several conditions before it can benefit from it. These include respecting democratic mechanisms, such as the rule of law (including the fight against corruption) and human rights, as well as having a multi-party system in place. All these conditions are to be monitored by the EC. Ukraine must also submit an annual Ukrainian Financing Strategy setting out its financing needs and sources. A positive assessment by the Commission and subsequent approval by a Council’s decision will be necessary to enable financing.³³ The loan will be granted in exchange for Ukraine’s claim on Russia for war reparations as security.³⁴ This means that Ukraine will be obliged to repay it within 30 days if it receives financial reparations from Russia and within 90 days if the reparations are

The loan will be granted in exchange for Ukraine’s claim on Russia for war reparations as security. This means that Ukraine will be obliged to repay if it receives financial reparations from Russia.

non-monetary assets other than territory. Additionally, it will have to repay the entire loan within 30 days on its own if the EC notes serious violations of democratic principles or infringements such as fraud and corruption in managing the loan funds that harm the EU’s interests, up to the value of the funds involved in the illegal activity.³⁵

Furthermore, any breach of the provisions of the reparations loan agreement will constitute grounds for the Commission to cancel loan payments, either partially or fully.³⁶

An important issue is the concept underlying the use of assets. The Commission plans to borrow “cash balances” from the financial institutions that manage them.³⁷ This approach is linked to the idea that financial institutions in the Union do not hold Russian state property, but are only obliged to repay a certain amount to the Central Bank of Russia, which is currently impossible due to the sanctions

²⁹ In the context of clear EU documents, it is not entirely clear why there are references to the loan to Ukraine amounting to €165 billion, cf. B. Smith-Meyer, G. Sorgi, “Commission unveils €165B loan to Ukraine using Russian frozen assets,” *Politico*, 3 December 2025, www.politico.eu—unless €45 billion is deducted, which is to be used to repay loans granted to Ukraine to date under the ERA programme (see below).

³⁰ According to Articles 12-13, the priority for spending these funds is to support the Ukrainian defence industry and its integration into the European defence industry, although under certain conditions it is possible to spend part of the funds on armaments from third countries, in practice mainly the US. See also the rest of Part IV of the Regulation.

³¹ Articles 5(1) and (2), 4(1), (3) and (4) and Article 7(3)(c) of the *Proposal for a regulation of the European Parliament and of the Council establishing the Reparations Loan to Ukraine and amending Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility*, COM(2025) 3502 final, 3 December 2025, www.commission.europa.eu.

³² Article 20(1), *ibidem*.

³³ Articles 6 and 8, *ibidem*.

³⁴ Article 20(2)(b), *ibidem*.

³⁵ Article 20(2)(k) and (l), *ibidem*.

³⁶ Article 20(3), *ibidem*.

³⁷ Article 23, *ibidem*.

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imposed following Russia's full-scale invasion of Ukraine, which banned transactions involving these funds. Therefore, Russia's asset is a claim for payment of a specific amount corresponding to the liability of individual financial institutions to repay. This concept is intended to avoid accusations by Russia of violating its immunity under international law³⁸ and to prevent negative reactions to the planned actions by third countries, many of which also place part of their reserves in the EU and its financial markets. According to the EC, granting a loan from cash held in CBR accounts—intentionally and consistently referred to as “cash balances” or once as “cash” in the draft—does not interfere with the Russian central bank's right of ownership, and is not protected by state immunity.³⁹

The Commission plans to borrow “cash balances” from the financial institutions that manage them. This concept is intended to avoid accusations by Russia of violating its immunity under international law.

In response to Belgium's concerns, the EC proposed three protective measures in the event that Russia successfully challenged the loan on legal grounds and then demanded the immediate return of the assets. This could occur, for example, if Russia obtained a favourable ruling from an arbitration tribunal stating that the EU had violated its immunity and unlawfully confiscated the CBR's assets. Firstly, Member States will provide the EU with irrevocable, unconditional and on-demand guarantees for repayment of specific parts of the loan. The wording of the relevant provisions suggests that there will be no compulsion in this regard and that Member States are being asked to act in a spirit of solidarity.

In response to Belgium's concerns, the EC proposed three protective measures in the event that Russia successfully challenged the loan on legal grounds and then demanded the immediate return of the assets.

This solution is probably intended to protect the proposed mechanism from being undermined by countries that are sceptical about supporting Ukraine, particularly Hungary, but possibly also Slovakia. The regulation stipulates that the guarantees should be linked to the gross national income of individual EU members.⁴⁰ This means that Germany, for example, is

expected to commit to covering around 25% (approximately €53 billion), while France is expected to cover around 17% (approximately €36 billion), with Poland and the Netherlands expected to contribute around 6% (approximately €13 billion) each.⁴¹ In addition, guarantees may also be provided by third countries outside the EU as a gesture of solidarity with Ukraine.⁴² The current version of the draft assumes that the guarantees would only apply for 16.5 years from the regulation's entry into force – rather than indefinitely⁴³ – but the motivation behind the EC's proposal of this time limit has not been presented. Secondly, the regulation provides for the creation of an EU liquidity mechanism that will enable the EU to borrow the necessary funds on the capital markets to support the repayment of guarantees if individual countries are unable to do so.⁴⁴ A third solution is the possibility of the EU as a whole incurring debt,⁴⁵ though this has not been regulated in more detail in the draft. According to the EC, these three “lines of defence” will enable the repayment of CBR assets should the need arise.

The payment will be made in tranches, in principle six times per year,⁴⁶ and the EC will decide on a case-by-case basis whether to transfer the funds.⁴⁷ Whether a tranche can be paid will also depend on

³⁸ T. Moller-Nielsen, “Why the EU's ‘reparation loan’ for Ukraine faces default,” *Euractiv*, 30 September 2025, www.euractiv.com.

³⁹ Explanatory Memorandum, pp. 3–4 to the *Proposal for a regulation...*, COM(2025) 3502 final, *op. cit.*

⁴⁰ Articles 24, 25 and 26 and Explanatory Memorandum, pp. 4–5, *ibidem*.

⁴¹ See the calculations by B. Smith-Meyer, H. Cokelaere, “Here's how EU capitals would divvy up Ukraine loan backstop under €210B frozen assets plan,” *Politico*, 7 December 2025, www.politico.eu.

⁴² Article 27 of the *Proposal for a regulation...*, COM(2025) 3502 final, *op. cit.*

⁴³ Article 24(2), *ibidem*.

⁴⁴ Article 23(8), *ibidem*.

⁴⁵ Explanatory Memorandum, p. 5 to the *Proposal for a regulation...*, COM(2025) 3502 final, *op. cit.*

⁴⁶ Article 21(1), *ibidem*.

⁴⁷ Article 21(2), *ibidem*.

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Member States effectively submitting repayment guarantees of at least 50% of each tranche's value, as determined by the EC. Alternatively, the draft considers the possibility of the EU as a whole providing such guarantees, should the relevant laws be amended.⁴⁸

The second proposed EC act is an amendment to Regulation 2020/2093, intended to enable the Union to honour its commitment to disbursing funds if the EU does not receive a payment from a Member State in time (this relates to guarantees provided under the regulation granting a loan to Ukraine).⁴⁹ The necessary funds would then be paid from the "headroom." This is the difference between the maximum amount that Member States are obliged to pay to the EU in a given year (including customs duties, VAT, and membership contributions) and the funds that the EC actually needs to cover expenditure provided for in the budget. These somewhat free funds are, by default, allocated to specific instruments, such as the European Solidarity Reserve or the Emergency Aid Reserve.⁵⁰

The third act is a regulation setting out extraordinary measures to address the serious economic difficulties in the EU caused by the war in Ukraine. The key provision is a guarantee of the permanent freezing of CBR assets, which provides a legal basis that is independent of the sanctions imposed on Russia. The regulation will remain in force until the Council decides otherwise at the Commission's request, taking into account whether Russia has ceased its aggression against Ukraine and paid the necessary reparations for reconstruction without economic and financial consequences for the EU.⁵¹

The key provision is a guarantee of the permanent freezing of CBR assets, which provides a legal basis that is independent of the sanctions imposed on Russia.

Furthermore, the regulation stipulates that no claims, including those for compensation made by Russia or entities associated with it in relation to frozen Russian assets, may be satisfied. No judicial, arbitral or administrative decisions obtained by these parties may be recognised or enforced in the EU while the regulation is in force. Financial institutions holding such assets also have the right to seek compensation in the courts of Member States for damage caused by Russia or associated entities in relation to assets located outside the Union.⁵² These are also additional measures introduced to address Belgium's concerns about the use of CBR funds. Finally, all institutions holding frozen Russian assets will be required to report on their status every three months.⁵³ This legal act is the only one from the EC package that has already been adopted, on 12 December.

Analysis of Key Elements of the Package

Using Russian assets to make a loan was one of several solutions that the EC could have chosen. The way this mechanism is structured seems generally appropriate.

Using Russian assets to make a loan was one of several solutions that the EC could have chosen.⁵⁴ The way this mechanism is structured seems generally appropriate. Relying on the concept of using cash balances as not covered by state immunity reduces the risk of Russia achieving success when taking legal

action against the countries where the assets are located (e.g. Belgium) or the financial institutions

⁴⁸ Article 4(1)(b), (2) and (5), *ibidem*.

⁴⁹ *Proposal for a Council regulation amending Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027*, COM(2025) 3500 final, 3 December 2025, www.commission.europa.eu.

⁵⁰ See, in particular, "EU budget flexibility," *Special Report 18/2025*, www.eca.europa.eu, p. 5.

⁵¹ Articles 2 and 6 of the Council Regulation (EU) 2025/2600 of 12 December 2025 on emergency measures addressing the serious economic difficulties caused by Russia's actions in the context of the war of aggression against Ukraine, *Official Journal of the EU* 2025/2600, 13 December 2025, eur-lex.europa.eu.

⁵² Article 4, *ibidem*.

⁵³ Article 3, *ibidem*.

⁵⁴ S. Zaręba, "Potential Ways of Expropriating Russian Assets," in: S. Zaręba (ed.), *Prospects for the Use of Frozen Assets of the Central Bank of Russia*, Warsaw 2025, pp. 55–65.

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where they are deposited (e.g. Euroclear). However, it cannot be guaranteed that this solution will provide the EU, its members, and the financial institutions located within them with full legal certainty. This is because, in many jurisdictions, bank accounts themselves are treated as being covered by jurisdictional immunity, i.e. they are not subject to seizure by way of administrative enforcement by other countries, nor can funds be transferred from them.⁵⁵ This applies specifically to situations where the funds held in the accounts were used for non-commercial purposes, and the CBR assets could probably be considered as such.

Therefore, it seems advisable to provide a more robust justification for the loan from the perspective of international law. The current argumentation in the draft regulation establishing a reparations loan for Ukraine is limited to listing the norms of international law that Russia has violated and the legal basis for payment of reparations.⁵⁶ If Russia were to initiate legal proceedings in the future, for example, on the basis of a bilateral investment treaty (BIT) with Belgium,⁵⁷ the justification could be of significant importance, as it would further reduce the risk of Russia's potential success. First and foremost, it would be advisable to refer to Articles 42 and 48 of the 2001 Articles on the Responsibility of States for Internationally Wrongful Acts⁵⁸ of the International Law Commission. This document is widely regarded as generally expressing the norms of customary international law.⁵⁹ It permits injured states to invoke the concept of countermeasures in response to another state's breach of its obligations (in this case, Russia), provided that the breach "specially affects" the injured state. Such means are traditionally used to compel a state to return to compliance with international law, and are always considered to be legally permissible.

In this case, reference should be made to Russia's violations relating to its aggression against Ukraine, in violation of a number of its obligations to the entire international community (*erga omnes* norms), including the peaceful resolution of disputes and the prohibition of aggression. At the same time, the EC's solution – which includes dividing the loan into tranches – seems to meet the customary requirement for the applied measure to be proportionate to the observed violation. Consequently, subsequent transfers will be made gradually rather than as a single payment. Until the war in Ukraine ends, these transfers can be seen as a means of pressuring Russia to cease military operations and make peace. Provided that Russia does not cease hostilities, regular transfers to Ukraine from the CBR funds, proportional to the expenses incurred for armaments and the maintenance of basic state functions, can be considered both justified and legal. However, it should be noted that Articles 49(3) and 53 imply that countermeasures should be temporary and "as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question" (according to some experts, this means that the effects of these measures should be

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⁵⁵ See, for example, D. Gaukrodger, "Foreign State Immunity and Foreign Government Controlled Investors," *OECD Working Papers on International Investment* 2010/02, 1 August 2010, www.oecd.org or T.C. Baxter, R.B. Toomey, "Legal Issues Incident to Holding Central Bank Assets Abroad," in: *International Monetary Fund, Current Developments in Monetary and Financial Law*, Vol. 2, Washington 2003, pp. 452–455.

⁵⁶ Explanatory Memorandum, pp. 1–3 to the *Proposal for a regulation...*, COM(2025) 3502 final, *op. cit.*

⁵⁷ The EC calls on Belgium to terminate the agreement with Russia (cf. Explanatory Memorandum, p. 5 of *Proposal for a Regulation...*, COM(2025) 3502 final). However, as with all such agreements, the transitional (sunset) clauses contained therein would not allow for an immediate change in the legal situation to happen that would be beneficial from the EU's perspective.

⁵⁸ *Articles on the Responsibility of States for Internationally Wrongful Acts*, Annex to UN General Assembly Resolution 56/83 of 12 December 2001, as amended.

⁵⁹ See e.g. F.I. Paddeu, C.J. Tams, "Encoding the law of State responsibility with courage and resolution: James Crawford and the 2001 Articles on State Responsibility," *Cambridge International Law Journal*, Vol. 11, No. 1, 2022, pp. 21, 23; F.L. Bordin, "Reflections of Customary International Law: The Authority of Codification Conventions and ILC Draft Articles in International Law," *International and Comparative Law Quarterly*, Vol. 63, No. 3, 2014, p. 538. As for the position of the ICJ and national courts, see e.g. C.M.J. Ryngaert, D.W.H. Siccama, "Ascertaining Customary International Law: An Inquiry into the Methods Used by Domestic Courts," *Netherlands International Law Review*, Vol. 65, No. 1, 2018, pp. 10–11. Some of its provisions still raise doubts among some states.

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Provided that Russia does not cease hostilities, regular transfers to Ukraine from the CBR funds, proportional to the expenses incurred for armaments and the maintenance of basic state functions, can be considered both justified and legal.

reversible). A response to that would be that the nature of the loan regulation clearly indicates its “temporary” status, and the second condition appears to be fully met by making subsequent loan tranches conditional on Russia’s behaviour. If Russia ends its military actions and pays reparations to Ukraine, it will be advisable to stop further transfers of CBR assets to Ukraine. And, if the proposed justification is accepted,

the payment of funds would not have to be fully reversible, namely, it would not be necessary to return sums already paid.⁶⁰ At the same time, the explanatory memorandum to the regulation could indicate that repayment of funds already disbursed would not be possible. Otherwise, the entire instrument, including the assurance that it would recover the entire amount, may not provide a sufficient incentive to stop Russia’s unlawful actions. The requirement for countermeasures to be reversible “as far as possible” would still be met in such a case.

The adopted solution, whereby Ukraine’s repayment of the loan is conditional upon the receipt of war reparations up to their value, is also appropriate. However, the regulation should include a requirement for Ukraine to negotiate such reparations in good faith. Otherwise, Ukraine could potentially agree to solutions that are less favourable for repaying the reparations loan, knowing that the rest of the amount would be covered by EU state guarantees. It would also be desirable for Ukraine to provide additional financial guarantees. These could take the form of partial collateral from assets still in its possession, such as Black Sea ports or nuclear power plants. Alternatively, some kind of repayment could be provided, even if spread over many years (for example, part of customs duties).

Establishing a new legal basis for freezing Russian assets is certainly justified. This is because, in many instances where sanctions were extended, concerns were raised about the possibility of a veto by Hungary, resulting in the sudden unfreezing of funds captured by these measures.⁶¹ Such a move, if it occurred during the war, would deprive the EU of an important tool for pressuring Russia to end its aggression, and would also send out the negative message that the EU is politically divided, even on the most fundamental issues. At the same time, the idea to link the unfreezing of funds directly to the end of hostilities and Russia paying reparations is absolutely justified. This eliminates the risk of CBR assets being transferred out of the Union without any guarantee that Ukraine will receive the funds needed to repay the loan, at least in part.

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It is also appropriate to introduce measures designed to block Russia’s enforcement of judicial, arbitral or administrative decisions relating to CBR assets against countries and entities located in the EU, as well as measures to recover damages inflicted by such actions taken by Russia in third countries. Thanks to the primacy of EU law over national law, the safeguards proposed by the EC will effectively protect financial institutions from Russian legal actions for as long as the regulation remains in force. The adoption of these measures, alongside a package of other retaliatory measures, is almost certain,

⁶⁰ The Commission expressly emphasised that all payments will be reversible, see Explanatory Memorandum, p. 4 of *Proposal for a Regulation...*, COM(2025) 3502 final).

⁶¹ See, for example, “EU extends Russia sanctions again despite Hungary concerns,” *Le Monde*, 27 June 2025, www.lemonde.fr and A. Moiseienko, Y. Ziskina, “The Impending Collapse of Russia Sanctions: The Cost of Inaction,” 20 March 2025, www.rusi.org.

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as it has been announced several times by officials at various levels, including Russian Foreign Ministry spokeswoman Maria Zakharova.⁶²

However, it should be noted that the EC could specify in the regulation that these solutions would remain in force indefinitely. For example, it is conceivable that Russia could obtain a decision from an arbitration

tribunal outside the EU for a given amount before the end of the war and the payment of war reparations, which it would then attempt to enforce after the war. Similarly, it is understandable why Belgium is so insistent on the indefinite validity of guarantees for repayment of part of the loan made by states. If the war ends without reparations being paid, it is possible that individual court proceedings initiated by Russia to recover assets could last longer than the indicated 16.5 years. For example, if Russia were to succeed against Belgium after 20 years of legal disputes,⁶³ that country could face insolvency. As its foreign minister recently pointed out, the amount of assets at stake would be close to the country's entire annual budget.⁶⁴ However, such a risk is very low, not least because the prospects of any action Russia might take against Belgium under the bilateral agreement on mutual support and protection of investments look slim. This is because central bank funds are generally not considered "investments" under such agreements, as they are used to perform state functions rather than for commercial purposes, which are protected by the BITs.⁶⁵

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Conclusions and Recommendations

Granting Ukraine a reparations loan using CBR's assets seems to be a good solution that would guarantee the country's budgetary stability, enable Ukraine to continue resisting Russian aggression

Granting Ukraine a reparations loan using CBR's assets seems to be a good solution that would guarantee the country's budgetary stability, enable Ukraine to continue resisting Russian aggression and, at least temporarily, relieve European countries of the financial burden of supporting it.

and, at least temporarily, relieve European countries of the financial burden of supporting it. From a political point of view, there is currently no feasible alternative that could be quickly implemented; the likelihood of the EU taking on joint debt for this purpose is low. Therefore, it would be advisable for EU countries, including Poland, to adopt legal acts enabling the loan in question during the December European Council.

Moreover, the attempts to include the question of assets located in the European Union in peace talks on Ukraine between Russia and the US without consulting the EU should not be taken seriously. Such

⁶² "EU Fails To Reach...", *op. cit.*, and K. Hairsine, R. Connor, F. Tamsut, "Ukraine updates: Kyiv hails new EU, US sanctions on Russia," *Deutsche Welle*, 22 October 2025, www.dw.com.

⁶³ It should be noted that, for example, one of Russia's leading bankers, Andrei Kostin, recently announced 50 years of litigation if the loan is granted. There is no doubt that these statements were intended to harden Belgium's position and complicate negotiations within the EU, and their likelihood is low, but Belgium's concerns should be taken into account in this case. See N. Beake, "Belgium urges Europe to drop plan for frozen Russian assets to aid Ukraine," *BBC*, 3 December 2025, www.bbc.com. At the same time, provocative statements by people such as former Russian President Dmitry Medvedev that the use of assets will be treated as an act of war should be disregarded. See "If the crazy EU tries to steal frozen Russian assets, they may have to return these funds not through the courts, but in kind – Medvedev," *Kommersant*, 5 December 2025, www.kommersant.ge.

⁶⁴ N. Beake, *op. cit.*

⁶⁵ See S. Kolarz, "Legal Restrictions on the Disposal of CBR Assets," in: S. Zaręba (ed.), *Prospects for the Use of Frozen Assets of the Central Bank of Russia*, PISM Report, Warsaw 2025, pp. 25–26.

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attempts should be regarded as an attempt by the Russian side to influence and paralyse the EU internal negotiation process.

On the face of it, the arithmetic suggests that it would be possible to take this step by outvoting Belgium,⁶⁶ even if it opposes it. However, given the amount of assets located there, and the potential for Belgian authorities to take action contrary to EU law to prevent what, without appropriate safeguards, they perceive to be a serious risk, it would be desirable to respond more strongly to their expectations in the spirit of solidarity. While one has to agree with Ursula von der Leyen's statement that the EU has taken "almost all of Belgium's concerns" into account,⁶⁷ it would still be appropriate to introduce solutions regarding the duration of the respective measures. It is essential to address Belgium's calls for an indefinite nature of the guarantees provided by Member States for the repayment of any claims relating to assets because its consent is crucial to the agreement, and its concerns are justified, all the

It is essential to address Belgium's calls for an indefinite nature of the guarantees provided by Member States for the repayment of any claims relating to assets because its consent is crucial to the agreement, and its concerns are justified.

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more so because, as the EC emphasises, the risk is very low, if not non-existent. Another form of partial loan collateral could be some of Ukraine's assets, such as Black Sea ports or nuclear power plants. Moreover, the justification for the measures taken

could be improved from an international law perspective, by linking them to the concept of countermeasures in response to Russia's aggression. This would also be relevant in terms of how third countries perceive the EU's actions.

The EU countries must convince their citizens that the situation is very serious, particularly given Russia's increasingly frequent hybrid attacks on EU countries. Withdrawing support for Ukraine would have disastrous political, military, and strategic consequences for the EU. Consequently, aid to Ukraine should continue, as this is in the interest of all EU members. Therefore, granting a reparation loan, duly secured, may also be seen as a long-term investment in Europe's security.

⁶⁶ J. Rankin, S. Walker, *op. cit.*

⁶⁷ J. Rankin, S. Walker, *op. cit.*