



WAYS

**RUSSIAN MONEY
CAN SERVE TO
→ COMPENSATE FOR THE DAMAGE
CAUSED BY THE WAR**

BRIEF REVIEW

4 WAYS RUSSIAN MONEY CAN SERVE TO COMPENSATE FOR THE DAMAGE CAUSED BY THE WAR

The study examines four ways in which sovereign Russian assets frozen in foreign financial institutions can be used to compensate for the damage caused by Russia's aggressive war against Ukraine. These ways are: first, the direct transfer of the assets to Ukraine; second, transfer of the proceeds from the assets to Ukraine; third, transfer of taxes charged on the proceeds; and fourth, using the assets as collateral to ensure that Russia fulfills its obligations to compensate for the damage. Benefits and disadvantages of each of the four methods are outlined.

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Introduction

With every day of Russia's full-scale invasion, Ukraine suffers growing damage and losses, which have already exceeded [\\$411 billion](#). Allied countries have already imposed a wide range of sanctions on Russia and its accomplices. Recently, the Council of the EU [approved](#) the eleventh package of sanctions.

At the same time, Russia remains one of the richest countries in the world. Countries in Europe and around the world have frozen numerous Russian assets, including the funds of the Central Bank of the Russian Federation. The total [amount](#) of these assets, according to various estimates, ranges from 300 to 500 billion US dollars.

Euroclear, an international clearinghouse headquartered in Brussels, has [announced](#) that it holds assets of the Russian Central Bank worth about \$180 billion. A significant portion of the assets may also be held in Clearstream (another depository), but there is no exact data. At the same time, some countries are still in the process of identifying and freezing Russian assets within their jurisdiction (for more information, see our Confiscation Tracker [website](#)), thus the total amount of Russian funds is dynamic and currently unknown.

The freezing of assets should not be the ultimate goal - it is only a temporary measure before they are used to compensate for the damage caused by Russian aggression. What needs to be done is to ensure that Russian money serves Ukraine's benefit and is used to compensate for the damage caused. The axiom that the right of the aggressor should not prevail over the right of the victim must be respected. This means that Russia's right to inviolability of assets should not outweigh Ukraine's right to receive compensation for the damage caused by Russia.

Currently, there are four ways to achieve this goal.

1 Confiscation and outright transfer of assets to Ukraine

First way is to transfer the frozen sovereign assets of the Russian Central Bank, which are kept in accounts in foreign financial institutions, to compensate Ukraine for the damage caused by the war. From a practical point of view, it is the most straightforward and intuitive option: it is, in fact, the outright application of the rule "damage must be compensated by the one who caused it."

Therefore, it seems quite fair to turn the frozen sovereign Russian assets to the benefit of Ukraine's reconstruction needs. Yet, this option is the one that causes the greatest [concern](#) in the international community. Immunity of state property militates against it, as well as fears that it will set a precedent for other countries to avail of similar measures ([for example](#), for states that still have financial claims against Germany in connection with the events of World War II), and will give Russia an excuse to take mirror measures against foreign companies. In addition, there are also concerns that it will affect the financial systems of countries where capital is traditionally stored, leading to an outflow of investment and weakening of currencies in the global market.

As of today, no country where the Russian Central Bank's money is kept has yet followed this path. Canada has adopted the relevant legislation but has not yet applied it in practice, while the UK and the US have already introduced respective bills.

In the United Kingdom, it is the Seizure of Russian State Assets and Support for Ukraine Bill (hereinafter referred to as [Bill 245](#)). This Bill provides for the confiscation of assets of the Central Bank, the National Welfare Fund, the Ministry of Finance and any persons owned or controlled by these Russian institutions. The confiscated assets are to be transferred to the Trustee for Russian state assets, which will use the funds to support Ukraine. Bill 245 is currently being prepared for the second reading, which is scheduled for November 24, 2023.

In the United States, a similar idea is represented in the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act ([REPO for Ukrainians Act](#)), which was [introduced](#) on June 15, 2023, in the United States by a group of senators from both parties.

According to the REPO Act, the President can confiscate any Russian sovereign asset that is under the jurisdiction of the United States. In this case, the term "Russian sovereign asset" includes funds and other property of the Central Bank of the Russian Federation, the Russian Direct Investment Fund; the Ministry of Finance of the Russian Federation, as well as any other funds or other property wholly owned or controlled by the Government of the Russian Federation, including any department, agency or instrumentality of that Government. The confiscated assets are to be accumulated in a special Ukraine Support Fund. The Fund should be used for reconstruction and recovery efforts in Ukraine, humanitarian assistance to the people of Ukraine, and other purposes that the Secretary of State determines directly and effectively contribute to the recovery of Ukraine and the well-being of the people of Ukraine.

The direct transfer of Russian sovereign assets to Ukraine is the way that can provide the largest immediate receipts for Ukraine. At the same time, it is also the most drastic option in terms of interference with property rights. But doesn't the extreme perfidy with which Russia violates international law justify taking countermeasures of equal severity?

Furthermore, [some argue](#) that jurisdictional immunity pertains only to judicial proceedings, and therefore it does not preclude out-of-court countermeasures against the aggressor state ([implemented](#), for example, by presidential decree in presidential republics such as the United States, or by government or parliamentary resolution in parliamentary republics such as Canada, the United Kingdom, or Belgium).

2 Transfer of proceeds from Russian assets

The second way is to keep Russian sovereign assets intact, and instead transfer to Ukraine the income generated by these assets while they are frozen.

It is known that most Russian assets have been frozen for more than a year. But this does not mean that nothing is happening to them. For example, the [report](#) of the international depository Euroclear indicates 734 million euros received in the first quarter of 2023 from frozen assets of the Russian Federation.

For the whole of 2022, 821 million euros were generated. Thus, it can be concluded that income from assets is growing. The transfer of these proceeds will not affect the amount and status of the frozen assets themselves - they will remain untouched. Meanwhile, the (excess) proceeds will help Ukraine already now.

This option is obviously less drastic than the first one. After all, deprivation of the right to future income is naturally regarded as a less "invasive" measure than deprivation of existing property.

Nevertheless, the contractually guaranteed right to receive income is also an asset that is subject to protection by all standards. Therefore, the second way does not fully eliminate all the legal and political risks that the international community is concerned about.

Clearly, compared to the first, this way will bring much less financial gain for Ukraine and will require some time for Russian funds to be reinvested and generate income. And the amount of this return will proportionally depend on the time during which the Russian funds remain under the management of the relevant European institutions.

3

Transfer of taxes charged on proceeds from Russian assets

The third way is not to touch the Russian assets themselves, or even the proceeds from their reinvestment, but to transfer to Ukraine the taxes collected on the proceeds from the reinvestment of Russian assets. Belgium has already taken this route. In May 2023, the Belgian government [announced](#) the transfer to Ukraine of 92 million euros, which were received from tax revenues from Russian financial assets frozen in the accounts of the international depository Euroclear, headquartered in Brussels. The government collected taxes worth EUR 625 million. However, neither the claimed 92 million nor the potential 625 million euros have yet been transferred to Ukraine.

This option may be used in the future, as it does not directly affect Russian assets, does not require a consensus decision of all EU countries, and does not raise issues related to the legitimacy of interference with property rights. Therefore, from a legal and political point of view, this path is the most waterproof: countries that opt for it may not worry about possible violations of international law and the risks of retaliation from Russia. However, simple arithmetic shows that this path (despite the unusually high tax rates) will bring even less money for Ukraine's recovery than the second path, and let alone the first.

In addition, it should be borne in mind that this option would essentially mean that the financial burden of compensation for the damage caused by the war would be borne by Ukraine's partner states, as they would be contributing funds that would otherwise go to their own budgets. In this case, the principle of "Russia must pay" is not realized. Since it is imperative that no one else but Russia pays, it follows that in the future, the question of collecting compensation from Russia for the costs incurred by allies in helping Ukraine will have to be raised. Thus, the third way, despite its attractiveness in terms of evading legal and political risks, only postpones the thorny issue of confiscation for later.

The third way is related to the broader idea of so called [windfall tax](#). Amid the global economic crisis caused by the war, the market capitalization of some companies (primarily in the energy sector) has increased significantly.

This means that these companies are making excessive profits due to the situation on the market caused by the war. There are proposals in the EU to introduce a special tax for such companies in order to redistribute the economic consequences of the war more evenly. Ursula von der Leyen emphasized the need for such measures in her annual [State of the Union](#) speech in September 2022. 'Major oil, gas and coal companies are also making huge profits. So they have to pay a fair share – they have to give a crisis contribution,' said the President of the European Commission.

However, it should be noted that the majority of the companies that receive these excessive profits are not affiliated with the aggressor state, and their funds, respectively, do not belong to Russia. For this reason, the idea of transferring proposed windfall tax (from funds not related to the aggressor) to Ukraine has not yet gained wide popularity.

Recently, Romanian Energy Minister Virgil-Daniel Popescu [announced](#) that Romania is willing to consider this idea (transferring excess profits of energy companies to Ukraine) in response to an address by his Ukrainian counterpart, Herman Galushchenko.

4 Use of Russian funds as a means of securing Russia's fulfillment of its obligations to compensate for damage (collateral)

The point of this option is that the frozen Russian funds are not to be confiscated, but rather used as a collateral to ensure that Russia fulfills its obligations to compensate for the damage. In other words, the frozen Russian funds are suggested to serve as a kind of pledge. This means that they cannot be unfrozen until Russia fully compensates for the damage caused.

This way has only recently been actively discussed due to the slow progress of the issue of confiscation of Russian assets. The difficulty of surmounting sovereign immunity and the risks associated with such a challenge to the entire system of international law and financial stability have led to the search for an alternative use of the frozen funds.

However, the point of the pledge is that in case of default on the obligation secured by it, the creditor may foreclose on the pledged assets. Thus, if the Russian Federation refuses to pay, the frozen funds will eventually be confiscated and transferred to Ukraine to cover the damage.

On the one hand, at first, the assets of the Russian Federation will not be confiscated and, accordingly, the question of the permissibility of interference with property rights is postponed. However, it may take quite a long time until the war ends and international treaties are concluded imposing the relevant obligations on Russia. Therefore, this path can be considered in parallel with the use of paths #2 or #3, as the frozen funds will generate income, and this amount will most likely grow.

Conclusions

Russia must pay for the damage caused to Ukraine. The ways to accomplish this goal may vary, but in any case, it must ensure that justice is done and as quickly as possible. After all, reconstruction is starting now and funds are needed today.

Undoubtedly, the best alternative for Ukraine is to confiscate Russian funds. However, we should take into account the realities of the political situation and the positions of our partners.

Therefore, we now prioritize the use of the third way, namely the taxation of windfall profits generated by the Russian frozen funds and their transfer to Ukraine (deducting, of course, the administrative costs of the countries that will collect these funds). This will allow Ukraine to meet its reconstruction needs in a short time.

At the same time, it is necessary to keep working on the implementation of other ways, to look for appropriate levers of influence on political leaders, and to propose effective legal mechanisms to compensate for all the damage caused. After all, the right of the aggressor should not prevail over the right of its victim.



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