

Confiscation of russian assets and their allocation to support Ukraine during the war

Ukraine is actively fighting against russian aggression not only in the political and military stages but also in the justice and economic fields. One aspect of this fight is the confiscation and allocation of assets belonging to Russian oligarchs who use their businesses to support the Kremlin's aggressive policy. This process not only evidences Ukraine's determination to adhere to the principles of law and order but also proves international pressure on russia by the G7 countries.

Measures related to the confiscation of russian assets and their allocation to support Ukraine during the war: analysis of the decisions taken in the USA, Canada, and the European Union

Given the recent events and decisions, certain countries, namely, the USA, Canada, and the European Union, are actively considering and taking measures to confiscate russian assets to punish the aggressor and support Ukraine during the war.

At the end of April 2022, the House of Representatives of the US Congress approved a draft law making provisions to confiscate frozen assets of russian legal entities and individuals that are sanctioned. It is proposed to use the funds withdrawn to provide additional military and humanitarian aid to Ukraine.

On June 24, 2022, the Senate of Canada approved a draft law providing for the possibility of russian assets confiscation.

According to an internal European Commission document, on November 18, 2022, the European Union froze russian assets for EUR 68 billion. The European Union is considering the possibility of allocating some of the frozen assets of the Bank of Russia to recover Ukraine.

On November 30, 2023, Denys Shmyhal, the Prime Minister of Ukraine, reported that a draft law on the seizure of russian frozen assets to recover Ukraine was registered with the US Congress.

In July 2023, it was reported that the European Union leaders supported plans to

impose a windfall tax on frozen assets of the Central Bank of the Russian Federation worth more than EUR 200 billion to help recover Ukraine.

In October 2023, the Estonian authorities approved and registered with the parliament an amendment to the law on international sanctions, which, among others, prescribes the use of frozen Russian assets to indemnify losses caused to Ukraine by the war¹.

On October 2023, Ursula von der Leyen, President of the European Commission, claimed that Brussels was working on a proposal to allocate some of the proceeds from frozen Russian sovereign assets to aid Ukraine and its post-war recovery. According to her, frozen Russian sovereign assets are worth about EUR 211 billion. The EU decided that Russia should pay for the recovery of Ukraine. In October, EU leaders approved a plan to allocate proceeds from frozen Russian assets worth billions of euros to help Ukraine.

Euroclear, the world's largest securities depository with headquarters in Brussels, holds frozen Russian assets worth EUR 180 billion of a total of EUR 300 billion. Since the beginning of the year, Euroclear earned EUR 3 billion on these.

The EU was considering the possibility that financial institutions, holding blocked Russian assets, allocate some of the related profits to the recovery of Ukraine. However, Brussels so far sees no "reliable legal path" allowing for the confiscation of the assets only because they are subject to sanctions.

The Ministry of Justice of Ukraine stated it wouldn't be enough just to allocate the interest earned on frozen Russian assets to Ukraine to compensate for the damage caused by the war, and that the country hoped to get these assets in full. Rostyslav Shurma, the Deputy Head of the Office of the President of Ukraine, claimed that the first task was to get not the assets but profit from frozen Russian assets, which could amount up to USD 15 billion annually given the current interest rates in the world².

Potential scenarios of allocating frozen Russian assets to support Ukraine during the war and their impact on global policy

Firstly, it should be emphasized that the issue of comprehensive confiscation and allocation of USD 300 billion of frozen Russian assets to Ukraine has not yet been discussed. When speaking in Austin, Texas, Antony Blinken used the word "use" and not "confiscate" (seize or confiscate), the same possibility was discussed in Marrakesh and mentioned in the draft law of the Estonian government. This means that the strategic view of our allies on this issue remains unchanged – the assets of the Russian Federation will be frozen until it pays compensation to Ukraine in full. The

1 Confiscation of Russian assets requires a related decision to be taken by all countries, which is not a quick process <https://suspilne.media/662110-konfiskacia-rosijskih-aktiviv-vimaga-time-risenna-vsih-krain-i-vono-ne-bude-svidkim-specpredstavnica-ssa/>

2 The G7 countries intensified negotiations on the confiscation of Russian assets in favor of Ukraine <https://forbes.ua/news/kraini-g7-aktivizovali-peregovori-shchodo-konfiskatsii-rosijski-kh-aktiviv-na-korist-ukraini-financial-times-16122023-17948>

said view was once again confirmed last year in a statement following the G7 meeting in Marrakesh, and Margus Tsahkna, Minister of Foreign Affairs of Estonia, also stated the same.

However, even alternative scenarios for these assets' usage can be a quantum leap for Ukraine to get indemnification. The announced proposals may result in two potential scenarios.

The first is when USD 1.74 billion, which the Prime Minister of Belgium mentioned and which is kept by Euroclear as the profit from Russian assets for 2022-2023, will be allocated to help Ukraine. However, there have already been versions that even this profit confiscation can be recognized as illegal. Therefore, another legally safer scenario was discussed in Marrakesh – taxing this profit as “excess”.

This profit is unexpected or excessive (windfall), as its amount is related to the change in interest rates of the European Central Bank, which increased deposit profitability up to 4% per annum. Therefore, it is proposed to introduce a special “windfall tax” on its amount. In the future, however, annual revenues may fluctuate depending on the ECB rate.

Eventually, the views and decisions of the European Union are the crucial ones, and they are still to be made. The leaders of Estonia, which controls only about USD 40 million of frozen assets of the Russian Federation, admit that their draft law aims to motivate Brussels to adopt pan-European decisions: “We should set an example and encourage other European countries to introduce similar regulations. We wish the European Union to finalize the process of mobilizing frozen Russian assets and develop practical solutions as soon as possible,” said Kaja Kallas, Prime Minister.

However, Euroclear refrains from commenting, and ECB representatives warned the European Commission about the potential negative impact on the euro and the macroeconomic situation in the EU back in June 2023. Still, current political circumstances urge on making appropriate decisions.

A day before Antony Blinken's statement, the US Congress successfully voted for the resignation of Kevin McCarthy, the Speaker. The reduction or cancellation of funding to Ukraine became one of the main public messages shared by the Trump supporters of the Republican faction that opposed McCarthy.

The war started in Israel, which the USA historically supports in such situations, makes the situation with Ukraine even more difficult for the White House, especially on the eve of the most dramatic presidential elections in the United States in the last hundred years.

The statements by Antony Blinken and Janet Yellen – two prominent representatives of Joe Biden's administration – are not only a positive sign for Ukraine but also an alarm that we should seek alternative sources of financial support in the medium term already. Thus, the frozen reserves of the Central Bank of the Russian Federation are considered as such a source just because of these facts.

De Croo already spoke about “financing the supply of military equipment, humanitarian aid, and recovery of the most affected regions.”

The presented wide range of options proves that our allies may allow the financing of Ukraine's current needs at the expense of the assets of the Russian Federation shortly, which in the long term can reduce the resources required to indemnify losses and recover Ukraine³.

Experts offer Ukraine to use one unusual financial instrument as an alternative to the confiscation of USD 300 billion from the Russian Central Bank blocked in Western countries. They mean the issue of the so-called reparation bonds. And while this option is definitely worse than the direct funding from the USA, the EU, and other allies, as well as the direct confiscation of Russian funds, it can help Ukraine cope with financing its expenses during the war.

It is assumed that Ukraine could get financing by selling bonds secured by future indemnity claims to the Russian Federation. If this is the case, in theory, it would make possible to collect money from Russia at the expense of its frozen assets⁴.

However, the process of confiscating Russian assets requires a collective decision of all countries holding frozen funds of the Russian Federation in their financial institutions, which will take time. Penny Pritzker, U.S. Special Representative for Ukraine's Economic Recovery, stated this⁵.

On the other hand, Russia has already warned about future "painful" countermeasures in case of confiscation of Russian assets by Western countries. Maria Zakharova, spokeswoman of the Ministry of Foreign Affairs of the aggressor country, claimed. "We will take countermeasures, and these will be noticed, felt, and painful for those unleashing another round of trade, economic, and financial war," threatened Zakharova⁶.

Legislative initiatives and international actions

Solving the issue of Russian assets confiscation becomes a real challenge requiring careful planning and readiness for possible consequences that may arise following future diplomatic actions and interactions between the countries.

Most of the Russian assets frozen abroad, approximately USD 280 billion, are held in the G7 countries. In October, G7 ministers undertook to keep Russian assets frozen until Russia compensates Ukraine for war losses.

The G7 countries also stated they will consider all possible ways of providing aid to

3 Two approaches to indemnify losses caused to Ukraine: the future of frozen Russian assets <https://www.euointegration.com.ua/articles/2023/10/16/7171471/>

4 Breakingviews: Reparation bonds could unlock \$300 billion for Ukraine <https://www.reuters.com/breakingviews/reparation-bonds-could-unlock-300-bln-ukraine-2024-01-15/>

5 Confiscation of Russian assets requires a related decision to be taken by all countries, which is not a quick process <https://suspilne.media/662110-konfiskacia-rosijskih-aktiviv-vimagatime-risenna-vsih-krain-i-vono-ne-bude-svidkim-specpredstavnica-ssa/>

6 Russia Prepares Legal Battle to Stall Seizure of Frozen Reserves <https://www.bloomberg.com/news/articles/2024-01-12/russia-prepares-legal-battle-to-stall-seizure-of-frozen-reserves>

Ukraine under the legal systems and international law, including allocating frozen russian sovereign assets.

Recently, Antony Blinken, US Secretary of State, also confirmed that the United States and Europe are considering the legal basis for using russian assets to recover Ukraine. “I believe, if you break anything, you should pay. And if the russians broke, they should pay for it. And one of the ways to do this is using their assets. We have to make sure there is a legal basis for this” said Blinken, adding that it would be a “signal” to aggressor countries.

The USA itself transferred USD 5.4 million of confiscated assets belonging to Kostiantyn Malofeev, the sanctioned oligarch, to Ukraine. The Cabinet of Ministers announced that these funds will be spent on the Ukrainian veterans’ rehabilitation.

Moreover, in summer, a draft Rebuilding Economic Prosperity and Opportunity for Ukrainians Act providing a mechanism to confiscate assets belonging to the russian government and the central bank was registered with the US Congress.

The draft act proposes to authorize the US President to confiscate russian sovereign assets frozen within the country and transfer them to recover Ukraine. It also prohibits to transfer funds to russian sanctioned organizations until russia withdraws its troops from Ukraine and indemnifies for losses⁷.

On January 24, 2024, the United States Senate Committee on Foreign Affairs and the House of Representatives approved a draft act to ensure the confiscation of russian assets and their transfer to Ukraine. The committee supported the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act by 20 votes. If the draft act gets votes in the Senate and House of Representatives and is signed by US President Joe Biden, it would allow for the first-ever confiscation of assets of a country the USA is not at war. Following the approval, lawmakers claimed the Biden administration supported the draft act. The USA holds assets of the russian central bank worth USD 5 – 6 billion, which they froze in February 2022, right after the russian attack on Ukraine. These actions were synchronized with partners in Europe, Canada, and Japan⁸.

Belgium transferred to Ukraine EUR 92 million of tax revenues on russian assets frozen in the country. Half of this amount was intended for military aid. Belgium also created a fund to support Ukraine amounting to EUR 1.7 billion of proceeds from frozen russian assets. The fund will be used for military and humanitarian aid, as well as for the European Peace Facility projects.

The European Union also wishes to use profits from frozen russian assets to support Ukraine: the related plan was approved a few days ago. russia has already threatened with symmetrical countermeasures.

7 Confiscation of russian assets in favor of Ukraine: countries making progress <https://www.slovoidilo.ua/2023/10/31/infografika/finansy/konfiskacziya-rosijskyx-aktyviv-koryst-ukrayiny-yakyyx-krayinax-ye-prohres>

8 US Senate panel backs big “hammer” plan to seize Russian assets to help Ukraine <https://www.reuters.com/world/us-senate-panel-steps-toward-seizing-russian-assets-help-ukraine-2024-01-24/>

Canada has introduced the legal possibility to use confiscated assets of sanctioned persons to support Ukraine. Moreover, they consider a draft law on the confiscation of sovereign assets of transgressing states, including Russia.

The British Parliament is also considering a draft law on the confiscation of assets of the Russian Federation, and the Parliament of Estonia – on the confiscation of assets of sanctioned persons⁹.

The strategy to confiscate property of Russian businessmen in Ukraine through court action and its impact on indemnification of the losses caused by Russian aggression

In Ukraine, there are more than 900 commercial facilities owned by the Russian government and Russian state companies. This refers to corporate rights to 79 enterprises and movable property: eight airplanes; 11 sea vessels; 552 units of Russian Railways rolling stock (open railcars, railcars, platforms, locomotors, etc.); 58 passenger vehicles; 18 buses and trucks; components for airplanes, vehicles, trailers, and gas production installations.

On August 25, 2023, ARMA opened the Unified State Register of Assets Seized in Criminal Proceedings. It contains 130,000 records, and the amount of actually seized property is even greater. This refers to thousands of real estate units, hundreds of luxury items, tens of thousands of vehicles. 36,000 seizure records (each containing dozens or even hundreds of assets) related to property under ARMA's management. To open the agency's registry was one of the first promises of Olena Duma, the new agency head. Developing a public register of seized assets is an obligation set in the law on ARMA.

Russian assets worth tens of billions of hryvnias have been transferred to the Asset Recovery and Management Agency, but the worth of currently estimated assets is UAH 11.5 billion.

According to the State Bureau of Investigation, in 2023, the High Anti-Corruption Court sustained claims filed by the Ministry of Justice on sanctions against several Russian oligarchs: Arkadiy and Ihor Rotenberg, Oleh Derypaska, Yevhen Giner, Oleksandr Ponomarenko, and Oleksandr Skorobogotko.

Title to the assets of Glukhiv Quartzite Quarry LLC and Mykolaiv Alumina Refinery Company Limited, Ocean Plaza Shopping Center with an estimated value of over USD 350 million, and 88.89% of the shares of First Investment Bank JSC was transferred to the state.

The courts seized and the High Anti-Corruption Court considered the nationalization of the following assets: Rivneoblenergo PrJSC (93.2%), Khersonoblenergo JSC (99.9%), Chernivtsioblenergo JSC (96.8%), Zhytomyroblenergo JSC (95.5%), Kirovo-

⁹ Confiscation of Russian assets in favor of Ukraine: countries making progress <https://www.slovoidilo.ua/2023/10/31/infografika/finansy/konfiskacziya-rosijskyx-aktyviv-koryst-ukrayiny-yakyy-krayinax-ye-prohres>

gradoblenergo PrJSC (72.9%), as well as seven hotels and two shopping malls with a total value of UAH 2 billion (Giner).

Various shares of the equity capital and property owned by russians in other important strategic sectors of the Ukrainian economy were also nationalized. In particular, this refers to 100% of Avanhard-Vilarti LLC, which, as well as Ocean Plaza Project (Cyprus) LTD, is owned by Ethoder Investments Limited, and 66.65% of Lybid Investment Union LLC. Organizations controlled by Oleh Derypaska also participated in the expansion and reconstruction of the Dnieper-Bug Sea Commercial Port.

Land plots and real estate in different regions of Ukraine, as well as hundreds of units of special-purpose and cargo machinery, were returned to the government revenue. Hundreds of production premises, equipment, and warehouses used by the russians in Ukraine for enrichment, were nationalized. The said included 13 sea vessels, 1,547 railway cars, 299 vehicles, 12,300 tons of iron ore products, 87,014 tons of fertilizers, 1,500 tons of liquefied gas, 1,100 tons of chemical products, 1,400 tons of construction materials, 65 tons of alcohol products, and 600 tons of food products¹⁰.

The process of confiscation and transfer of assets owned by russian oligarchs in Ukraine: reality and prospects

Let's consider the issue in more detail. In September 2023, the High Anti-Corruption Court confiscated the assets and business of Volodymyr Yevtushenko, the russian oligarch. Yevtushenko ranks 51st among the 200 richest businessmen in the russian federation according to Forbes magazine. In 2018, he was included in the United States Treasury Department's "Kremlin Report" – a list of people close to the russian leadership. In Ukraine, Yevtushenko's real estate was confiscated: 5 buildings, an engineering building, an apartment, an unfinished dormitory block, a transportation department building, several non-residential premises, and box-type garage premises. All real estate is located in Zaporizhzhia and the region. Yevtushenko's shares in the following companies were also confiscated: Smart Digital Solutions LLC (59.2%), ITM-Ukraine LLC (59.2%), ZTZ-Service LLC (42.09%), Elektroavod-Vit LLC (42.09%), and Ukrainian Research Design and Technological Transformer Institute JSC (34.21%).

In January–February 2023, the property and assets of Mykhailo Shelkov (59th in the Forbes ranking), the ex-head of the Rostec investment division, which controlled military contractors in the russian federation, were confiscated. UAH 14 million and a significant amount of vehicles and equipment owned by Shelkov were confiscated: four Mitsubishi Pajero Sport, a Lexus, a Belarus tractor, two Kraz vehicles, a Zil vehicle, a PAZ vehicle, two tractors, an excavator, and loaders. The court also seized a warehouse, two apartments, a parking space, a house, and two buildings owned by the russian oligarch. His shares in the following companies were confiscated: VSMPO

¹⁰ Part of Russian assets worth UAH 11.5 billion were transferred to ARMA, their total amount may be hundreds of billions <https://forbes.ua/news/do-arma-peredali-chastinu-rosiyskikh-aktiv-na-115-mlrd-grn-ikh-zagalna-suma-mozhe-syagati-sotni-milyardiv-dbr-28122023-18216>

Titan Ukraine LLC, Demuryr Mining and Processing Plant LLC, Ty-Minerals LLC, and Investagro LLC – 100% in all the mentioned organizations.

On February 16, 2023, the Anti-Corruption Court decided to confiscate the assets owned by Oleh Derypaska (50th in the Forbes ranking): 29.53% of the total value of the shares in Zaporizhzhia Production Aluminum Combine JSC, as well as 100% of the shares in Glukhiv Quartzite Quarry LLC, Mykolaiv Alumina Refinery Company Limited, Aluminum of Ukraine Company LLC, Guardon Ukraine LLC, Metalurg Service Center LLC, CHAS IT LLC, Ohorona MDZ LLC, Mykolaiv Accounting Center LLC, Mykolaiv Charitable Foundation Center of Social Programs, Zaporizhalumintorh LLC, Khust Quarry PrJSC, and Zhezheliv Quarry PrJSC.

On March 20, 2023, the High Anti-Corruption Court confiscated the assets of Arkadiy Rotenberg (53rd on the Forbes list) and his son Ihor. It should be recalled that Arkadiy Rotenberg is believed to be Putin's close friend. The court seized Avanhard-Vilartii LLC and 66.65% of Lybid Investment Union LLC (the company that owns the Kyiv Ocean Plaza shopping center) owned by the Rotenbergs¹¹.

These examples prove Ukraine's intentions to take legal measures to respond to russian aggression and to indemnify the losses. Such a step within the framework of legal procedures shows Ukraine's determination to adhere to the principles of law and order and use legal options to protect its interests.

Difficulties and prospects of russian assets confiscation: international aspect and internal challenges

Apart from the political decision on assets confiscation, there is also the next crucial stage: to implement the decision on confiscation. It will not be automatic and quick, even where a decision is taken. And this can be evidenced by the example of already announced assets to be transferred to Ukraine.

For example, last year, Justin Trudeau, Canadian Prime Minister, promised to transfer an A-124 plane owned by the Volga-Dnepr russian airline and kept in the Toronto Pearson airport to Ukraine. However, the plane has not yet been confiscated, and the formal reason is that Melanie Joly, the Minister of Foreign Affairs of Canada, has not applied to the Supreme Court of the Province of Ontario to transfer title to the plane to the government.

Instead, Volga-Dnepr recently challenged the Canadian government's sanctions in the Federal Court of Canada. And one of the reasons was the government's failure to respond to the airline's letter demanding to lift sanctions.

Another more successful example is the transfer to Ukraine of USD 5.4 million the USA confiscated from russian oligarch Konstantyn Malofeev. As of today, it is the only test case, and the various stages of the transfer of these millions are regularly reported by the Ukrainian media as different decisions of the US government, although these are actions within the framework of one lasting procedure.

11 Property of russian businessmen confiscated in Ukraine through court action <https://www.slovoidilo.ua/2023/03/27/infografika/finansy/yake-majno-rosijskyyx-biznesmeniv-konfiskuvaty-ukrayini-cherez-sud>

One should be extremely optimistic to believe that the formal procedures related to confiscation and transfer of assets of the Central Bank of the Russian Federation will be more simple. At that, the chances that russian assets will be confiscated are quite high, but so should be our awareness that this is a medium-term prospect at best, and their transfer to Ukraine or use for our benefit may take even more time .

The freezing of russian assets abroad, in particular in the G7 countries, has become an important instrument of international pressure on russia in response to its aggression in Ukraine. The G7 initiatives, such as the obligation to keep assets frozen until indemnification of losses caused to Ukraine and considering ways to use these assets for aid, evidence the determination of the world community to punish and hold russia accountable.

Russian assets confiscation is not only a financial operation, but also a political signal and an important stage to resolve an international conflict. International efforts to use these assets to recover Ukraine require systematic, cooperative, and balanced diplomatic activity to achieve profound and fair results.

International cooperation and efficiency of Russian assets confiscation

Ukraine remains determined in its fight against aggression and defending its rights using the rule of law instruments. Confiscation of property and assets owned by russian oligarchs within the country not only reflects this determination but is also a symbol of Ukraine's intentions to indemnify the losses caused by the aggressor. Despite the difficulties with enforcing court decisions and international political pressure, Ukraine still adheres to the principles of the rule of law and justice. This process is an important element of the country's strategy to respond to russian aggression and strengthen its position in the international community.

International cooperation and efficiency of Russian assets confiscation presumes:

1. *International support and diplomatic influence.* Freezing russian assets in international jurisdictions to help the Ukrainian government attract international support and implement the related activity.
2. *International pressure and solidarity.* The initiatives by the G7 and other countries to freeze russian assets in their jurisdictions prove international pressure and solidarity with Ukraine following russian aggression.
3. *Successful process implementation.* Such examples as the transfer of USD 5.4 million of confiscated assets to the Ukrainian government by the USA, confirm the success of certain confiscation stages.
4. *Efficiency of court decisions.* Ukraine successfully enforces court decisions on property confiscation, which indicates its judicial system efficiency.
5. *Active property confiscation policy.* Ukraine pursues an active confiscation policy related to the property and assets of russian oligarchs within its strategy to counter russian aggression.
6. *Determination in court decisions enforcement.* Despite the difficulties

and international political pressure, Ukraine continues enforcing court decisions to confiscate property owned by russian oligarchs.

7. *Restoration of justice and indemnification of losses.* Confiscating property owned by russian oligarchs contributes to the restoration of justice and indemnification of losses caused to Ukraine by russian aggression.

Therefore, international support and pressure are extremely important when implementing the process of russian assets confiscation. Attracting international cooperation and support becomes a key to this process's successful implementation given the challenges and difficulties Ukraine is facing. Despite the circumstances and difficulties when enforcing decisions, Ukraine continues to adhere to the principles of the rule of law and justice, thus showing its determination to fight against russia. Using confiscated russian assets to indemnify for losses and recover Ukraine is an important next step in this process, as it contributes to the country's economic recovery and improvement of its social and economic state.

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