

STUDY

Requested by the AFET committee



EU sanctions and Russia's frozen assets



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ABSTRACT

In response to Russia's war of aggression against Ukraine, the European Union (EU) has adopted 19 sanctions packages against Russia in close coordination with its Group of Seven partners. As part of these measures, the EU has immobilised around EUR 210 billion of Russia's sovereign assets and froze around EUR 28 billion of private assets within its jurisdiction, while actively addressing possible utilisation of these funds as reparations owed to Ukraine by Russia under international law. Although significant steps have been taken in terms of private assets and windfall profits, many legal issues concerning the confiscation or management of state assets remain unaddressed. Hence, this paper aims to map current arguments and developments, in order to propose viable options for the use of these three asset types as reparations under EU and international law. At the EU level, proposals under the Common Foreign and Security Policy, especially those relating to the assets of the Central Bank of Russia (CBR), are hindered by unanimity decision-making processes and the possible use of veto powers by Member States. At the international level, CBR assets are protected by the laws of state immunity. It therefore remains questionable under what circumstances such assets could lawfully be utilised for reparations. This paper argues that currently the most viable legal option, which addresses internal and international challenges, is the establishment of an EU Instrument (reparations loan). This could be achieved through carefully designated steps, allowing a qualified majority vote to prolong restrictive measures concerning immobilisation of CBR assets, ensuring temporality and reversibility while connecting this instrument to existing reparations and compensation mechanisms that adjudicate upon Russia's violations and its obligation to pay reparations or compensation. At an international level, this paper argues that an EU Instrument can be justified in terms of central bank assets' immunity by offering a new interpretation of the relationship between procedural rules on immunities and secondary rules on countermeasures. Such argumentation does, however, involve important legal risks highlighted throughout the paper.

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List of abbreviations

ACI	Anti-Coercion Instrument
ARIO	Articles on the Responsibility of International Organisations
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts
CBR	Central Bank of Russia
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CSDs	Central Securities Depositories
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPF	European Peace Facility
ESM	European Stability Mechanism
EU	European Union
G7	Group of Seven
ICJ	International Court of Justice
ILC	International Law Commission
PCIJ	Permanent Court of International Justice
QMV	Qualified Majority Voting
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
ULCM	Ukraine Loan Cooperation Mechanism
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
USA	United States of America
USSR	Union of Soviet Socialist Republics

Executive summary

While Russia's international obligation to provide reparations for its unlawful aggression is clear, the main difficulty faced by the international community, generally and the European Union (EU) specifically, is establishing legal access to the required funds. In the current situation, it is unlikely that Russia will voluntarily pay reparations or give consent to an inter-state procedure before, for instance, a ruling from the International Court of Justice on reparations. Russia will also probably block any United Nations Security Council action to secure reparations. Hence, attention is now focused on other possibilities, such as the possible adoption of countermeasures by the EU to manage immobilised assets, through the existing international reparations mechanism.

In response to Russia's war of aggression against Ukraine, the EU has so far adopted 19 sanctions packages against Russia, which are closely coordinated with its Group of Seven partners. As part of these measures, the EU has immobilised around EUR 210 billion of Russia's sovereign assets and froze around EUR 28 billion of private assets within its jurisdiction, while actively addressing the possible confiscation and management of these funds. Those measures are aimed at securing reparations owed to Ukraine by Russia under international law. Although important steps have been taken in terms of possible confiscation of frozen private assets and windfall profits, many legal issues concerning the confiscation or management of state assets remain unaddressed.

Hence, this paper aims to map current arguments and developments, in order to propose viable options for the use of three types of assets as reparations by the EU:

- Private assets;
- Windfall profits and;
- State assets.

In relation to **private assets**, it remains to be seen whether and to what extent new legislation concerning asset recovery and confiscation under European criminal law will be effective in the area of asset confiscation and its subsequent transfer to Ukraine. This depends on the practice of Member States and national courts. It can reasonably be expected that the amount of funds confiscated within these processes will not be sufficient to finance the reconstruction of Ukraine or provide for reparations. Moreover, new rules on confiscations may be subject to challenges from the point of view of criminal and human rights law.

Within the EU, there has been agreement, for now at least, on the adoption of measures concerning **unexpected and extraordinary profits from central securities depositories**, which were adopted in accordance with internal EU law provisions concerning restrictive measures. However, windfall profits associated with the Central Bank of Russia's (CBR) matured assets in Euroclear currently do not meet the estimated amount of funds needed to support Ukraine. Utilising immobilised CBR principal assets and cash balances as part of the EU's restrictive measures for rebuilding Ukraine and securing reparations owed to it by Russia has been met with two key challenges:

- At the EU level, proposals under the Common Foreign and Security Policy, especially relating to CBR assets, are hindered by unanimity decision-making processes and the possible use of veto powers by Member States;

- At the international level, CBR assets are protected by the laws of state immunity and it remains questionable under what circumstances such assets could lawfully be utilised for the purposes of securing reparations.

In response, the following alternative possibilities are outlined in this paper to address the above-mentioned challenges under EU law:

- **Policy options on Qualified Majority Voting (QMV) in the area of sanctions under the existing provisions of EU Treaties** (passerelle clauses; simple and constructive abstentions);
- **Policy option under Article 31(2) of the Treaty on EU (TEU) to use QMV** for the prolongation of sanctions concerning asset freezes;
- Policy option to **separate Article 29 TEU and 215 of the Treaty on the Functioning of the EU (TFEU) decision-making processes;**
- **Policy option on QMV in the area of sanctions requiring change of Treaties** (changed provisions of Article 29 TEU on voting procedures in the adoption of sanctions);
- **Ukraine Loan Cooperation Mechanism** (for windfall profits);
- **Policy options under the Anti-Coercion Instrument;**
- **Policy options under Article 7 TEU procedure** on the suspension of voting rights;
- **Policy options relating to unilateral actions of Member States** in the context of confiscating CBR assets;
- **Policy option related to the establishment of a European Instrument (reparations loan)** (for matured principal cash balances).

Under international law, key options and policy recommendations analysed in this paper are as follows:

- The **collective self-defence argument** may include justification for the adoption of non-forcible measures; however, these would have to be incidental to the actual exercise of self-defence by the EU and/or its Member States or would have to amount to the indirect use of force, to trigger the self-defence law's applicability. In any case, confiscation of State assets to secure reparations for Ukraine would generally not fall under the scope of lawful self-defence. Rather than self-defence, the law of countermeasures is a more appropriate argument justifying the possible peacetime confiscation of property with the aim of securing reparations.
- **Exceptions to immunities before national courts**, including for the enforcement of international judgements and arbitral awards ordering damages, have been used in practice but these procedures take time and are unlikely to result in significant damages awards that could be transferred to Ukraine. Mostly, these judicial procedures result in awarding compensation to specific investors. The possibility of EU Member States adopting **specific legislation allowing for the confiscation of CBR** assets, by way of executive or judicial action relying on the law of countermeasures, is unlikely to be in line with the criteria for the lawful taking of countermeasures. Due to these legal risks, Member States in which the majority of sovereign assets are held are less likely to adopt such an exception to immunities

and/or adopt relevant national legislation allowing for confiscation of Russian assets and their transfer to Ukraine.

- **Enforcing Compensation Judgements from the European Court of Human Rights (ECtHR)** at the national level is coupled with challenges concerning the national enforceability of ECtHR judgments and the fact that only some national laws provide an exception to immunities in cases where international judgements are enforced. Moreover, ECtHR case law relating to Russia's aggression in Ukraine and subsequent awards for compensation will necessarily be limited, as the Court no longer has jurisdiction to hear such cases, since Russia ceased to be a Council of Europe (CoE) member on 16 March 2022. It is also unclear to what extent the enforcement of judgements against the CBR assets would create a precedent for the execution of ECtHR judgements in other cases.
- The EU can rely on the **countermeasures** rationale under international law to justify violations of CBR immunities, under the novel understanding between procedural and secondary rules of international law, provided that the reversibility condition is met. The proposed management of the CBR assets under the EU instrument would be a temporary and reversible executive action, possibly connected with the international reparations mechanism. It is therefore more likely that the criteria of inducement, reversibility and temporality are met. Such argumentation does, however, involve important legal risks highlighted throughout the paper.
- **The International Claims Commission for Ukraine**, established within the CoE, will be a legitimate international body for examining reparations claims and taking decisions on the amounts owed by Russia in terms of war reparations due to Ukraine. The Trust Fund of this mechanism has yet to be established. Because it is highly unlikely that Russia will join this initiative and contribute to the Fund, it is proposed here that the EU Instrument should be directly connected to this Trust Fund, thereby facilitating the payment of reparation claims which have been adjudicated upon by the Claims Commission.
- **The Work of the Special Tribunal for the Crime of Aggression against Ukraine**, whereby its decisions may include reparations to those affected by the crime of aggression. This paper proposes two options that should be further explored: the possibility of using immobilised Russian assets through the EU Instrument to affect the tribunal's reparation decisions; the adoption of confiscatory measures in the course of the Tribunal's proceedings and possible transfer of confiscated assets to the EU Instrument itself (or the CoE Trust Fund).
- **Peace negotiations**, whereby frozen and immobilised assets should be used as leverage in peace talks. Negotiations, also facilitated by the EU, should be pursued in carefully planned stages that could possibly include the lifting of certain sanctions, conclusion of interim agreement(s) and ultimately the **final peace agreement**. This would include specific provision on reparations owed by Russia to Ukraine, which would be directly linked to the measures in place at the EU level concerning CBR assets (the EU Instrument), whereby the amount already paid through the EU Instrument would be reduced from the final amount of reparations owed by Russia to Ukraine.

Based on the challenges and options analysed here, the most viable proposal for the EU centres on utilising immobilised assets for the purpose of securing reparations for Ukraine. This could be pursued in the following steps:

- **Prolongation of restrictive measures** concerning immobilisation of CBR assets on the basis of Article 31(2) TEU, whereby a QMV decision can also be taken 'when adopting any decision implementing a decision defining a Union action or position'. A political agreement at the EU level has already been made in this regard, that 'Subject to EU law, Russia's assets should remain immobilised until Russia ceases its war of aggression against Ukraine and compensates it for the damage caused by this war';
- **Establishment of the EU Instrument (reparations loan) under Article 212 TFEU**, which would enter into a tailored debt contract with CSDs at 0 % interest, allowing transfer of matured cash balances from CSDs to the instrument;
- **A decision under Article 215 TFEU**, to oblige Euroclear to make the proposed investment in the EU Instrument and allowing for a derogation by CSDs from their applicable rules on management and investment of central bank assets;
- The EU Instrument would use those assets (cash) for a reparations loan: a loan to Ukraine, which will be repaid by Ukraine once it receives war reparations owed to it by Russia;
- In essence, this mechanism **is temporary and aims to ensure reversibility** as it is limited to a moment, when EU sanctions concerning the immobilisation of CBR assets are lifted – when Russia ceases its aggression and pays reparations. It gives Euroclear legal entitlement to a claim in the amount of cash balances transferred to the Instrument, serving as a guarantee that it will have the necessary resources (cash) to honour the claim that CBR will have against it at that time. The proposed European Instrument thus ensures a shared, mutual responsibility of the EU and its Member States (not only Belgium and Euroclear), to ensure that repayment to Euroclear is made when/if necessary;
- **The EU Instrument should be connected to the existing reparations and compensation mechanisms** already in place, which are adjudicating upon Russia's violations and its obligation to pay reparations or compensation: International Claims Commission for Ukraine; Special Tribunal for the Crime of Aggression against Ukraine; as well as ECtHR inter-state and individual decisions on compensation. The underlying international legal justification for this is the law of **countermeasures**. This paper proposes a novel understanding of the relationship between procedural rules on immunities and secondary rules on countermeasures. In turn, it allows for a conclusion that such temporary and reversible executive measures may be adopted to justify a violation of CBR assets' immunities. As such, these measures taken through the EU Instrument and connected to the international reparations mechanism would be considered as compliant with conditions for the lawful taking of countermeasures (temporality, reversibility) and would be in line with the purpose of countermeasures. Such argumentation does, however, involve important legal risks highlighted throughout the paper.

Note on terminology

Assets: a broad financial term for resources with economic value, including cash, investments, property and financial instruments such as government bonds (including those held by central banks at central securities depositories (CSDs)).

Freezing of assets: a temporary measure that prohibits the transfer, destruction, conversion, disposal or movement of property, or that places property under temporary custody or control¹. It is typically adopted as a sanction (for example, by the European Union) that provisionally limits the peaceful enjoyment of property rights to achieve a specified objective. It may also be ordered by a court or other competent authority in the course of criminal proceedings².

Confiscation of assets: typically refers to the permanent and final deprivation of property. Permanent deprivation occurs when legal title to the asset concerned is conclusively transferred to a third party³, without the owner's consent and without due compensation for any damages incurred⁴. It is typically ordered by a court in relation to a criminal offence⁵.

Seizure of assets: a specific terminology typically used in criminal law relating to the compulsory taking of possession, control or title of property by a competent authority as a result of legal process. Seizure may be permanent or preliminary and is carried out to enforce judgments, satisfy debts, secure evidence in criminal investigations, recover proceeds of crime, or execute forfeiture orders. Assets seized may be detained, immobilised, or transferred to state custody pending legal resolution and may result in forfeiture, sale, or restitution in accordance with applicable law.

Immobilised assets: assets that have been made temporarily unavailable for transfer, sale or other disposal by administrative or judicial measure or by operational restriction. Immobilisation preserves the asset in place—preventing movement or settlement—while ownership remains unchanged. This term is typically used to describe central bank assets that are prevented from being transferred or settled and designates operational prevention of movement.

Property: means property of any description, whether corporeal or incorporeal, movable or immovable, including, for instance, crypto-assets and legal documents or instruments in any form, evidencing title or interest in such property⁶.

State Sovereign Property: movable and immovable assets owned, possessed or controlled by a State. It is not entirely settled in international law, though, whether property in which a State has a

¹ Art 3(5), European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

² Art 1(1)(g), Council of Europe, [Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism](#), *Treaty Series No 198*, 16 May 2005.

³ ECtHR, [Case of Andonoski v The Former Yugoslav Republic of Macedonia](#), Application no 16225/08, 17 September 2015.

⁴ B. A. Wortley, [Expropriation in Public International Law](#), Cambridge University Press, Cambridge, UK, 1959, p. 39.

⁵ Art 3(6), European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

⁶ Art 3(2), European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), 02 May 2024.

legally protected interest (beneficial or equitable) is also considered as State sovereign property⁷. State sovereign property is typically protected by sovereign immunity.

Matured cash balances: when bonds mature, which central banks have with CSDs, they are turned into cash balances. When this happens, the issuer pays principal (and final interest) to the bondholder, in this case, the central bank. This means that the bond is removed from the central bank's securities holdings and its cash/bank balance increases. Under specific circumstances, CSDs may reinvest, place funds in short-term instruments, or use such cash for their operation until they are repaid to the bondholder, the central bank (depending on the circumstances and the specific contractual agreement).

⁷ Art 19(c), UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004; J.-M. Thouvenin and V. Grandaubert, '[The Material Scope of State Immunity from Execution](#)', T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 254.

1 Introduction

Russia's war of aggression against Ukraine, which initially broke out in 2014⁸ with Russia's occupation of Crimea and further escalated with the Russian invasion in February 2022⁹, raises a number of pertinent legal issues¹⁰. Of key significance is the question of Russia's responsibility for the payment of reparations to Ukraine.

The European Union (EU) has a long history of adopting sanctions, so-called restrictive measures, in response to violations of international law against third states (non-Member States)¹¹. In the case of Russia, the EU has to date adopted 19 sanctions packages, which are closely coordinated with its Group of Seven (G7) partners¹². As part of these measures, the EU has immobilised around EUR 210 billion of Russia's sovereign assets and froze around EUR 28 billion of private assets within its jurisdiction¹³. Consequently, the Central Bank of Russia (CBR) is unable to access its assets held in central and commercial banks located in the G7 states¹⁴, mostly in Belgium-based Euroclear, a leading global provider of financial market infrastructure services for domestic as well as cross-border securities transactions and funds. Since the conflict began, the EU has been actively addressing the possible confiscation and management of immobilised funds to secure reparations owed to Ukraine by Russia under international law. While important steps have been taken in terms of possible confiscation of private assets in criminal proceedings and utilisation of windfall profits of CBR in the form of military (*inter alia* the European Peace Facility [EPF]¹⁵) and macro-financial assistance¹⁶, many legal issues remain unaddressed.

The EU has initiated a three-tiered approach to address these issues, distinguishing between private assets¹⁷, state assets, and windfall profits¹⁸. This approach is examined in what follows by

⁸ UNSC, [Security Council Briefed on Fast-Breaking Developments in Ukraine, as Political Official Warns Failure to Secure Russian-Ukrainian Border Obstructing Peace](#), 7311th Meeting, SC/11645, 12 November 2014.

⁹ United Nations General Assembly, [Resolution on Aggression against Ukraine](#), A/RES/ES-11/1, 18 March 2022.

¹⁰ See e.g., Y. Kryvoi, [Russia's Invasion of Ukraine and International Law: Questions and Answers](#), BIICL Blog, *British Institute of International and Comparative Law*, 17 March 2022.

¹¹ Generally, on these sanctions see: European Commission, ['Overview of sanctions and related tools'](#), webpage, nd.

¹² Council, ['Timeline - Packages of sanctions against Russia since February 2022'](#), Explaners, webpage, nd.

¹³ A. Caprile, [Immobilised Russian Central Bank Assets](#), At a Glance, *European Parliamentary Research Service*, PE 769.514, 06 March 2025.

¹⁴ M. Bernstam, ['Central Bank Sanctions Strike at the Foundations of Russia's Economy'](#), *Financial Times*, 03 March 2022.

¹⁵ Council, ['EU military support for Ukraine'](#), Explaners, webpage, nd.

¹⁶ A. Dobрева and A. Vozovych, [The Ukraine Loan Cooperation Mechanism and exceptional macro-financial assistance](#), Briefing, *European Parliamentary Research Service*, PE 767.160, December 2024.

¹⁷ European Parliament and Council, [Directive \(EU\) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures](#), *Official Journal of the EU*, L Series, 29 April 2024; European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

¹⁸ Council, ['Immobilised Russian assets: Council decides to set aside extraordinary revenues'](#), Press release, 12 February 2024; Council, ['Extraordinary revenues generated by immobilised Russian assets: Council greenlights the use of net windfall profits to support Ukraine's self-defence and reconstruction'](#), Press release, 21 May 2024; G7, [Apulia G7 Leaders' Communiqué](#), 10 September 2024.

way of a mapping of legal arguments¹⁹ proposed to justify confiscation of the three asset types so as to secure reparations for Ukraine.²⁰

The utilisation of assets frozen or immobilised in the course of the EU's restrictive measures for the purpose of rebuilding Ukraine and securing reparations owed to it by Russia has been met with two key challenges:

- Under EU law, proposals under the Common Foreign and Security Policy (CFSP), especially relating to the CBR assets, are hindered by unanimity decision-making processes and the possible use of veto powers by Member States;
- At the international level, CBR assets are protected by the laws of state immunity and hence it remains questionable under what circumstances such assets could lawfully be confiscated.

Proposals relating to the confiscation of CBR assets thus have to be grounded at the same time in both feasible policies under EU law as well as international law.

Based on the mapping presented in the annexed table, this paper proposes the most viable legal options for the best use of these three types of immobilised assets, both under internal EU institutional rules and international rules, with a specific focus on CBR assets.

This paper outlines the following possibilities under EU law for adopting measures against Russia in the form of confiscation and management of assets, exposing simultaneously possible challenges to such solutions:

- Policy options on Qualified Majority Voting (QMV) in the area of sanctions under existing EU Treaty provisions (passerelle clauses; simple and constructive abstentions);
- Policy option under Article 31(2) of the Treaty on the EU (TEU) to use QMV for the prolongation of sanctions concerning asset freezes;
- Policy option to separate Article 29 TEU and 215 of the Treaty on the Functioning of the EU (TFEU) decision-making processes;
- Policy option on QMV in the area of sanctions requiring change of Treaties (changed provisions of Article 29 TEU on voting procedures in the adoption of sanctions);
- Ukraine Loan Cooperation Mechanism (ULCM) (for windfall profits);
- Policy options under the Anti-Coercion Instrument (ACI);
- Policy options under Article 7 TEU procedure on the suspension of voting rights;
- Policy options relating to unilateral actions of Member States in the context of confiscating CBR assets;
- Policy option related to the establishment of a European Instrument (reparations loan) (for matured principal cash balances).

Under international law, key options and policy recommendations proposed in this paper refer to linking the EU's initiatives concerning the use of assets for the purposes of reparations with:

¹⁹ See, e.g., P. Webb, [Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine](#), Study, *European Parliamentary Research Service*, PE 759.602, February 2024.

²⁰ See Annex 1.

- The **collective self-defence argument**, which may include justification for the adoption of non-forcible measures; however, these would have to be incidental to the actual exercise of self-defence by the EU and/or its Member States or would have to amount to the indirect use of force, to trigger the applicability of the law of self-defence. In any case, confiscation of State assets to secure reparations for Ukraine would generally not fall under the scope of lawful self-defence. Rather than self-defence, the law of countermeasures is a more appropriate argument, justifying the possible peacetime confiscation of property with the aim of securing reparations.
- **Exceptions to immunities before national courts**, including those in the form of enforcing international judgements and arbitral awards ordering damages, which have been used in practice but these procedures take time and are unlikely to result in significant damages awards that could be transferred to Ukraine. Mostly, these judicial procedures result in awarding compensation to specific investors. The possibility of EU Member States adopting specific legislation which would allow for the confiscation of CBR assets by way of executive or judicial action relying on the law of countermeasures is unlikely to be in line with the criteria for the lawful taking of countermeasures, unless these processes are specifically connected with the international reparations mechanism and enforcement of its concrete reparations decisions. Due to these legal risks, Member States in which the majority of sovereign assets are held are less likely to adopt such an exception to immunities and/or adopt relevant national legislation allowing for the confiscation of Russian assets and their transfer to Ukraine.
- **Enforcement of compensation judgements from the European Court of Human Rights (ECtHR)** at the national level. This is coupled with challenges concerning the national enforceability of ECtHR judgments and the fact that only some national laws provide an exception to immunities in cases of international judgments' enforcement. Moreover, ECtHR case law relating to Russian aggression in Ukraine and subsequent awards for compensation will necessarily be limited, as the Court no longer has jurisdiction to hear cases against Russia, since Russia ceased to be a member of the Council of Europe (CoE) on 16 March 2022.
- The EU can rely on the **countermeasures** rationale under international law to justify violations of CBR immunities, under the novel understanding between procedural and secondary rules of international law, provided that the reversibility condition is met. As such, these measures would be considered as compliant with conditions for the lawful taking of action (such as reversibility) in a situation where, for instance, countermeasures are adopted in connection with the international reparations mechanisms through which the specific amount of reparations owed by Russia to Ukraine would be determined.
- **The International Claims Commission for Ukraine**, established within the CoE, will be a legitimate international body examining reparations claims and taking decisions on the value owed by Russia in terms of war reparations due to Ukraine. The Trust Fund for this mechanism has yet to be established. Because it is very unlikely that Russia will join this initiative and contribute to the Fund, it is proposed here that the EU Instrument should be

directly connected to this Trust Fund, allowing for the payment of reparation claims as adjudicated upon by the Claims Commission.

- **The Work of the Special Tribunal for the Crime of Aggression against Ukraine**, whereby its decisions may include reparations to those affected by the crime of aggression. This paper proposes two options that should be further explored: the possibility of using immobilised Russian assets through the EU Instrument to affect the tribunal's reparation decisions; the adoption of confiscatory measures in the course of the Tribunal's proceedings and possible transfer of confiscated assets to the EU Instrument itself (or the CoE Trust Fund).
- **Peace negotiations**, whereby frozen and immobilised assets should be used as leverage in peace talks. Negotiations, also facilitated by the EU, should be pursued in carefully planned stages that could possibly include the lifting of certain sanctions, conclusion of interim agreement(s) and ultimately the **final peace agreement** which would include specific provision on reparations owed by Russia to Ukraine direct connected to measures in place at EU level concerning CBR assets (the EU Instrument), whereby the amount already paid through the EU Instrument would be reduced from the final amount of reparations owed by Russia to Ukraine.

Based on the challenges and options analysed, the most viable proposal for the EU concerns the utilisation of frozen and immobilised assets for the purpose of securing reparations for Ukraine. This could be pursued in the following steps:

- **Prolongation of restrictive measures** concerning immobilisation of CBR assets on the basis of Article 31(2) TEU, whereby a QMV decision can also be taken 'when adopting any decision implementing a decision defining a Union action or position'. A political agreement at the EU level has already been made, namely that 'Subject to EU law, Russia's assets should remain immobilised until Russia ceases its war of aggression against Ukraine and compensates it for the damage caused by this war'²¹.
- **Establishment of the EU Instrument (reparations loan) under Article 212 of the TFEU**, which would enter into a tailored debt contract with CSDs at 0 % interest, allowing transfer of matured cash balances from Central Securities Depositories (CSDs) to the instrument.
- **A decision under Article 215 TFEU**, obliging Euroclear to make the proposed investment in the EU Instrument and allowing for a derogation by CSDs from their applicable rules on management and investment of central bank assets.
- The EU Instrument would use those assets (cash) for a reparations loan: a loan to Ukraine, which will be repaid by Ukraine once it receives war reparations owed to it by Russia.
- In essence, this mechanism **is temporary and aims to ensure reversibility** as it is limited to a moment, when EU sanctions concerning the immobilisation of CBR assets are lifted, that is, when Russia ceases its aggression and pays reparations. It gives Euroclear legal entitlement to a claim in the amount of cash balances transferred to the Instrument, serving as a guarantee that it will have sufficient cash to honour the claim that CBR will have against it at that time. The proposed European Instrument thus ensures a shared, mutual

²¹ Para 4, European Council, [Meeting conclusions](#), EUCO 15/24, 27 June 2024.

responsibility for the EU and its Member States (not just Belgium and Euroclear), to ensure that repayment to Euroclear is made when/if necessary.

- **The EU Instrument should be connected to the existing reparations and compensation mechanisms** already in place, which are adjudicating upon Russia's violations and its obligation to pay reparations or compensation: International Claims Commission for Ukraine; Special Tribunal for the Crime of Aggression against Ukraine, together with ECtHR inter-state and individual decisions on compensation.
- The underlying international legal justification for this is the law of **countermeasures**. This paper proposes a novel understanding of the relationship between procedural rules on immunities and secondary rules on countermeasures. In turn, it allows for a conclusion that such measures may be adopted to justify a violation of CBR assets' immunity. As such, these measures taken through the EU Instrument and connected to the international reparations mechanism would be considered as compliant with conditions for the lawful taking of countermeasures (temporality, reversibility) and would be in line with the purpose of countermeasures. Such argumentation does, however, involve important legal risks highlighted throughout the paper.

Following a brief introduction, this paper first provides an overview of the EU's restrictive measures as a CFSP tool, explaining EU primary law that governs the adoption of sanctions, especially procedural distinctions involving the required voting majority for the acceptance of decisions on the adoption of sanctions. This includes the possible abuse of veto powers by certain Member States to prevent the adoption of sanctions and essential aid from being granted to Ukraine²². The paper then turns to an overview of existing legal arguments concerning the possible confiscation and management of windfall profits, immobilised state assets and private assets. It then proposes viable legal options for the utilisation of Russian sovereign assets, focusing on the proposal to establish an EU instrument (reparations loan) in connection with Russia's obligation to pay reparations, the law of countermeasures and the establishment of international reparations mechanisms.

1.1 Methodological approach

This paper is based on three methodological phases.

Firstly, an analytical approach is adopted to provide a comprehensive overview of existing literature²³ and map legal arguments to support the possible confiscation of immobilised assets aimed at securing reparations for Ukraine. This has focused on existing studies prepared at the EU or national level, as well as the work of established scholars.

Secondly, the paper turns to qualitative research by conducting interviews with relevant stakeholders. Based on an overview of the first phase, the author prepared a questionnaire for each

²² European Parliament, [Resolution on the need for the EU's continuous support for Ukraine](#), 2024/2721(RSP), P10_TA(2024)0003, 17 July 2024.

²³ See for instance, P. Webb, [Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine](#), Study, *European Parliamentary Research Service*, PE 759.602, February 2024.

of the stakeholders to test possible legal arguments systematically from a policy perspective. Results were then narratively analysed against the background of these possible legal arguments.

Thirdly, the paper adopts a more evaluative style, proceeding with proposals based on legal analysis and qualitative research, examining possible avenues for the confiscation of immobilised assets. Emphasis is placed on the possible establishment of international reparations mechanisms, with analysis focusing on laws on immunities and countermeasures. Concrete proposals for the EU and the European Parliament, in particular, are suggested, including *inter alia* connecting EU initiatives (such as the international trust fund) with ongoing reparations activities at the CoE.

Research for this paper thus combines analytical and qualitative methods, looking at the question of confiscating and managing assets with the aim of proposing recommendations to the European Parliament, which are not only the most viable, but also legally sound and acceptable in terms of policy. Throughout this research, relevant risks were carefully considered. In particular, due consideration has been given to the possible lack of consensus and political disagreements in the context of sanctions against Russia. Hence, analysis throughout the paper includes proposals for bypassing unanimity decision-making.

2 Russia's obligation to pay reparations under international law

Proposals to confiscate immobilised assets are grounded in Russia's legal obligation under international law to pay reparations arising from its aggression against Ukraine²⁴.

The obligation to pay reparations in response to a prior violation under international law is clear. In accordance with Article 31 of The Draft Articles on the responsibility of States for internationally wrongful acts (ARSIWA)²⁵, '[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act', whereby injury includes both material and moral damage caused by the internationally wrongful act²⁶. This obligation to pay reparations is part of customary international law and has been confirmed in the judicial practice of the International Court of Justice (ICJ)²⁷. Furthermore, this obligation is also part of customary international humanitarian law, whereby 'A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused'²⁸. The Permanent Court of

²⁴ O. A. Hathaway, et al., '[War Reparations: The Case for Countermeasures](#)', *Stanford Law Review*, Vol 76, 2024, pp. 971–1050.

²⁵ It has to be acknowledged that the ARSIWA is not a binding treaty. This is a document, prepared by the International Law Commission of a non-binding character. However, the majority of provisions in ARSIWA are part of customary international law and are thus binding on states and international organisations.

²⁶ Art 31, UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

²⁷ Para 100, ICJ, [Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v Uganda\)](#), Judgment, 09 February 2022; PCIJ, [Case Concerning the Factory at Chorzów, The Government of Germany v the Government of the Polish Republic](#), 08 February 1927, p. 21; Arts 35 and 36, UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

²⁸ International Committee of the Red Cross, '[Customary International Humanitarian Law, Rule 150: Reparation](#)', webpage, nd; See also UNGA, [Resolution 60/147 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), A/RES/60/147, 16 December 2005.

International Justice (PCIJ) (the predecessor of the ICJ) acknowledged in the *Case Concerning the Factory at Chorzów* 'that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed'²⁹.

Additionally, such reparations have, as far as possible, to be intended for those suffering from the internationally wrongful act³⁰. In accordance with Article 34 ARSIWA, reparations can be made in the form of restitution (that is, to re-establish the situation which existed before the wrongful act was committed), compensation and satisfaction, either singly or in combination. In the context of war reparations, where re-establishment of the situation which existed before the wrongful act was committed is typically materially impossible, compensation is the most suitable form of reparation³¹.

The obligation of Russia to pay reparations was reiterated in the United Nations General Assembly (UNGA) Resolution L.6/2022, adopted with 94 votes in favour, 13 against and 74 abstaining³². The resolution recognised that Russia 'must be held to account for any violations of international law in or against Ukraine... and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts'³³. The obligation to pay reparations is thus part of customary international law and has been confirmed in the ICJ's judicial practice³⁴.

In its February 2025 report, the World Bank estimated that EUR 506 billion will be required over the next decade for Ukraine's recovery and reconstruction³⁵ and this figure continues to grow as the aggressive war continues. Furthermore, the actual amount of reparations owed by Russia to Ukraine is expected to be higher, as it may include not only material but also moral damages³⁶. The obligation of Russia to pay reparations was also reiterated by the EU, as specifically stated in its Regulation (EU) 2024/792:

Russia must be held fully accountable and pay for the massive damage caused by its war of aggression against Ukraine, which constitutes a blatant violation of the Charter of the United Nations (UN). The Union and its Member States should, in close cooperation with other international partners, continue to work towards this goal, in accordance with Union and international law, taking into

²⁹ PCIJ, [Case Concerning the Factory at Chorzów, The Government of Germany v the Government of the Polish Republic](#), 08 February 1927, p. 47.

³⁰ Para 57, ICJ, [Case Concerning Ahmadou Sadio Diallo \(Republic of Guinea v Democratic Republic of the Congo\)](#), 19 June 2012.

³¹ Art 35, UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

³² UNGA, [Furtherance of remedy and reparation for aggression against Ukraine](#), A/ES-11/L.6, 07 November 2022.

³³ Para 2, UNGA, [Resolution on Furtherance of remedy and reparation for aggression against Ukraine](#), A/RES/ES-11/5, 15 November 2022.

³⁴ Para 100, ICJ, [Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v Uganda\)](#), Judgment, 09 February 2002; PCIJ, [Case Concerning the Factory at Chorzów, The Government of Germany v the Government of the Polish Republic](#), 08 February 1927, p. 21.

³⁵ World Bank Group, ['Updated Ukraine Recovery and Reconstruction Needs Assessment Released'](#), Press release, 25 February 2025.

³⁶ Art 31(2), UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

account Russia's serious breach of the prohibition on the use of force enshrined in Article 2(4) of the Charter of the UN and the principle of State responsibility for internationally wrongful acts, including the obligation to compensate for the financially assessable damage caused³⁷.

The European Parliament has consistently called for confiscating principal immobilised Russian assets for Ukraine's long-term reconstruction and immediate funding needs³⁸. A political agreement was reached at the EU level that CBR assets will remain immobilised until Russia ceases its aggression and pays compensation for damages to Ukraine:

'Subject to EU law, Russia's assets should remain immobilised until Russia ceases its war of aggression against Ukraine and compensates it for the damage caused by this war'³⁹.

In the past, reparations have been a matter of post-conflict treaties⁴⁰, negotiations and agreements, *inter alia*: Iran–United States of America (USA) Claims Tribunal (1981); Eritrea–Ethiopia Claims Commission (2000)⁴¹; UN Security Council (UNSC) mechanisms⁴²; or international court proceedings⁴³. In the case of Iraq, the UNSC decided to establish the respective Development Fund, in collaboration with the country's interim administration, which was held by the Central Bank of Iraq⁴⁴ and used 'to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq'⁴⁵. The UNSC also established a specific fund and the UN Compensation Commission to adjudicate claims in the aftermath of Iraq's aggression against Kuwait (1991)⁴⁶. These mechanisms involved either the UNSC or consent of the concerned and did not, therefore, include conflicts or questions concerning state immunity. Belgian and French courts have contended in this respect that, as a result of restrictions on the sovereignty of Iraq arising from international sanctions, in particular UNSC

³⁷ Para 47, European Parliament and Council, [Regulation \(EU\) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility](#), *Official Journal of the European Union*, Series L, 29 February 2024.

³⁸ European Parliament, [Resolution on continuing the unwavering EU support for Ukraine, after three years of Russia's war of aggression](#), 2025/2528(RSP), P10_TA(2025)0033, 12 March 2025; European Parliament, [Resolution on the implementation of the common foreign and security policy – annual report 2024](#), 2024/2080(INI), P9_TA(2024)0104, 02 April 2025.

³⁹ Para 4, European Council, [Meeting conclusions](#), EUCO 15/24, 27 June 2024.

⁴⁰ Her Majesty's Stationery Office, [The Treaty of Peace between the Allied Powers and Germany](#), 28 June 1919; O. C. Sommerich, 'A brief Against Confiscation', Vol 11, *Law and Contemporary Problems*, 1945, p. 153.

⁴¹ Iran–USA Claims Tribunal, [website](#), nd; Permanent Court of Arbitration, 'Eritrea–Ethiopia Claims Commission' webpage, nd; UNGA, [Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia](#), A/55/686–O/2000/1183, 12 December 2000.

⁴² For example, UN Compensation Commission to adjudicate claims in the aftermath of the Iraq's aggression of Kuwait (1991) see Paras 16–19, UNSC, [Resolution 687 \(1991\) on restoration of the sovereignty, independence and territorial integrity of Kuwait](#), S/RES/687(1991), 1991.

⁴³ ICJ, [Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v Uganda\)](#), Judgment, 09 February 2022.

⁴⁴ Para 12, UNSC, [Resolution 1483 \(2003\) Adopted by the Security Council at its 4761st meeting](#), S/RES/1483, 22 May 2003.

⁴⁵ Paras 14 and 12, UNSC, [Resolution 1483 \(2003\) Adopted by the Security Council at its 4761st meeting](#), S/RES/1483, 22 May 2003. This measure was lifted in 2018.

⁴⁶ Para 16–19, UNSC, [Resolution 687 \(1991\) Adopted by the Security Council at its 2981st meeting](#), S/RES/687, 03 April 1991.

Resolution 687, the country could no longer rely on its immunity from execution⁴⁷. Other mechanisms established in times of war or in its aftermath were limited to the investigation and prosecution of serious crimes, such as the International, Impartial and Independent Mechanism for Syria, established with a UNGA Resolution⁴⁸.

Access to funds

While Russia's international obligation to pay reparations is clear, the main difficulty that the international community and the EU are trying to address is access to the required funds. In the current situation, it is unlikely that Russia will voluntarily pay the reparations or give consent to an inter-state procedure before, for instance, an ICJ ruling on reparations. Russia will also block any UNSC action to secure reparations. Hence, attention is now focused on other possibilities, joining the possible adoption of countermeasures by the EU to confiscate and manage immobilised assets, with the existing international reparations mechanism.

3 EU sanctions and the frozen and immobilised Russian assets

EU restrictive measures (sanctions), as a key CFSP instrument, have already been used in the context of confiscating property in relation to windfall profits⁴⁹ and private assets. However, no decision has yet been taken in relation to the possible usage or confiscation of principal CBR assets. This section examines EU primary law governing the adoption of restrictive measures, pinpointing steps and decisions that have been or could be taken in relation to the confiscation and management of assets. The analysis includes important procedural distinctions involving the required voting majority for the adoption of decisions on these matters⁵⁰. It also takes into account respective European Parliament resolutions, including the possible abuse of veto powers by some Member States to prevent the adoption of sanctions against Russia⁵¹.

⁴⁷ Court de Cassation, [Dumez GTM v Iraq](#), Civil Chamber 1, No 97-19.742 15 July 1999. In the ruling of the French court, Iraq was required to honour all its obligations in respect of the servicing and repayment of its external debt, as stipulated in UNSC, [Resolution 687 \(1991\) Adopted by the Security Council at its 2981st meeting](#), S/RES/687, 03 April 1991.

⁴⁸ The International, Impartial and Independent Mechanism is mandated with collection, consolidation and preservation of information and *evidence of violations of international humanitarian law and human rights violations and abuses*, analysis of collected evidence and prepare *files in order to facilitate and expedite fair and independent criminal proceedings* and sharing information and evidence collected and analytical work produced with national, regional and international courts. See UNGA, [Resolution on International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011](#), A/RES/71/248, 21 December 2016.

⁴⁹ Council, ['Immobilised Russian assets: Council decides to set aside extraordinary revenues'](#), Press release, 12 February 2024; Council, ['Extraordinary revenues generated by immobilised Russian assets: Council greenlights the use of net windfall profits to support Ukraine's self-defence and reconstruction'](#), Press release, 21 May 2024.

⁵⁰ See for instance, Art 215, EU, [Consolidated Version of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, C 326/47, 26 October 2012.

⁵¹ European Parliament, [Resolution on the need for the EU's continuous support for Ukraine](#), 2024/2721(RSP), P10_TA(2024)0003, 17 July 2024.

EU sanctions against Russia were initially adopted in 2014 in response not only to Russia's illegal annexation of Crimea and Sevastopol but also the deliberate destabilisation of Ukraine⁵². However, the EU significantly expanded the scope of sanctions against Russia following its invasion of Ukraine in 2022⁵³. Unprecedented measures were adopted to curtail Russia's ability to wage war and pressure the country into reversing its aggression against Ukraine. At the time of writing, the EU had adopted 19 sanctions packages against Russia⁵⁴. As part of these measures, transactions with the CBR have been banned and subsequently, around EUR 210 billion of Russia's sovereign assets have been immobilised within the EU's jurisdiction based on the following decision:

Transactions related to the management of reserves as well as of assets of the Central Bank of Russia, including transactions with any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, are prohibited⁵⁵.

The EU has also adopted targeted sanctions against more than 2 500 individuals and entities, including the Russian leadership, high-ranking officials, as well as prominent business people and oligarchs, thereby freezing more than EUR 28 billion of private assets on EU territory⁵⁶.

As an 'additional, exceptional measure' in May 2024, the EU made a decision that unexpected and extraordinary revenues of the CBR's frozen assets should be directed to supporting Ukraine's self-defence against Russia's war of aggression, together with its subsequent recovery and

⁵² Council, [Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine](#), *Official Journal of the EU*, L 78/16, 17 March 2014; Council, [Regulation \(EU\) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine](#), *Official Journal of the EU*, L 78/6, 17 March 2014; Council, [Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L 229/13, 31 July 2014; Council, [Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L 229/1, 31 July 2014.

⁵³ Council, '[European Council conclusions on Russia's unprovoked and unjustified military aggression against Ukraine](#)', Press release, 24 February 2022.

⁵⁴ European Commission, '[Sanctions adopted following Russia's military aggression against Ukraine](#)', webpage, nd.

⁵⁵ Decision 2022/335, prohibiting any transactions related to the 'management of reserves, as well as of assets of the Central Bank of Russia, including transactions with any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia' see Council, [Decision \(CFSP\) 2022/335 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L 57/4, 28 February 2022, p.4; Art 1a(4), Council, [Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine](#), *Official Journal of the EU*, L 78/16, 17 March 2014; Arts 1(5) and 5a(4), Council, [Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L 229/1, 31 July 2014; A. Caprile, [Immobilised Russian Central Bank Assets](#), At a Glance, *European Parliamentary Research Service*, PE 769.514, 06 March 2025; M. Bernstam, '[Central Bank Sanctions Strike at the Foundations of Russia's Economy](#)', *Financial Times*, 03 March 2022.

⁵⁶ European Commission, '[Sanctions against individuals, companies and organisations](#)', webpage, nd; Art 2 Council, [Regulation \(EU\) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine](#), *Official Journal of the EU*, L 78/6, 17 March 2014; Art 1 Council, [Regulation \(EU\) 2022/330 amending Regulation \(EU\) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine](#), *Official Journal of the EU*, L 51/1, 25 February 2022.

reconstruction⁵⁷. Hence, the EU's sanctioning mechanism was utilised to sequester assets and transfer them to a third country. Realisation of these decisions in practice, though, was met with challenges due to a lack of consensus (unanimity challenge) (see section 4.3, below).

Apart from these measures related to extraordinary revenues, there have also been proposals to use or confiscate CBR's principal assets as part of the EU's sanctioning policy. However, these proposals have not yet materialised, primarily for the following reasons:

- The unanimity challenge: lack of consensus among Member States on the adoption of such sanctions⁵⁸;
- The appropriateness of restrictive measures under CFSP as a policy tool for the confiscation and management of CBR assets;
- International legal questions arising from such sanctions relating to State immunities and countermeasures (below, section 5.4).

Unanimity challenge

EU restrictive measures are adopted in a two-step procedure, as they typically combine both the area of CFSP and the EU's substantive competence⁵⁹, which is also reflected in decision-making rules⁶⁰. Unanimity being the default voting rule in the CFSP decision-making process⁶¹, in the first step, an intergovernmental decision under Article 29 TEU is taken, necessitating a unanimous decision of the Council of the EU⁶² and, as will be explained below, only exceptionally can this decision be taken by a specific qualified majority⁶³. In the second step, a decision of the Council

⁵⁷ Council, [Decision \(CFSP\) 2024/577 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, Series L, 14 February 2024; Council, [Regulation \(EU\) 2024/576 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, Series L, 14 February 2024; Council, [Decision \(CFSP\) 2024/1470 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L Series, 22 May 2024; Para 25, Council, [Regulation \(EU\) 2024/1469 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 22 May 2024.

⁵⁸ While the Baltic countries are supportive of the confiscation of CBR's assets, Germany, Italy and Belgium are opposing this possibility. See G. Sorgi and N. Vinocur, ['EU moves closer to using Russian assets to rebuild Ukraine'](#), *Politico*, 29 August 2025.

⁵⁹ R. A. Wessel and V. Szep, [The implementation of Article 31 of the Treaty on European Union and the use of Qualified Majority Voting: Towards a more effective Common Foreign and Security Policy?](#), *European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs*, PE 739.139, November 2022.

⁶⁰ For a broader discussion on EU decision-making and especially the role of the Parliament, see e.g., O. Costa, [Perspectives for EU governance: between Community method, new-intergovernmentalism and parliamentarisation](#), *European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs*, PE 733.51, June 2022.

⁶¹ Arts 24(1) and 31(1), EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

⁶² Art 22, EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

⁶³ Art 31(2), EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012; The so called 'double majority rule' is in place for the CFSP QMV decisions, composed of two conditions that have to be met simultaneously: 55 % of the Member States vote in favour and the proposal is supported by Member States representing at least 65 % of the total EU population, see: Art 16, EU, [Consolidated Version of the Treaty on the](#)

under Article 215 TFEU is made with a QMV procedure to ensure uniform application of restrictive measures in all Member States. Article 215 thereby serves to establish a link (bridge) between the EU's political and substantive decisions⁶⁴. Actual implementation of measures is in the hands of Member States, which have to take all necessary measures in this respect⁶⁵.

Immediately after Russia's aggression in 2022, the EU managed to adopt nine sanctions packages and launched other initiatives such as the Strategic Compass, the EU Military Assistance Mission in support of Ukraine and provided support to Ukraine through the EPF (see below section 4.3). However, due to certain states' objections, it was later more difficult to adopt unanimous decisions on sanctions (in 2023 and 2024, six sanctions packages were adopted)⁶⁶.

A unanimous decision from the Council of the EU is also required for renewing and lifting sanctions. EU restrictive measures are renewed every six months and in cases where the objectives pursued are not met (change in the policy or conduct of those targeted, preservation of peace, promotion of democracy, rule of law, human rights and international law), they are often extended to include additional measures, as was the case with EU sanctions against Russia. This means that opposition to these decisions by certain Member States may endanger the adoption of a decision to extend sanctions, resulting in the unfreezing of CBR assets. In the past, this was the case with sanctions against Russia, as Hungary had repeatedly blocked the adoption⁶⁷. Moreover, Slovakia and Malta blocked the adoption of the 18th sanctions package against Russia on numerous occasions as they did not agree about specific measures (proposed lowering of the price cap on Russian oil and phasing out Russian gas) and demanded concessions or exemptions in return if such measures were adopted⁶⁸. This brings uncertainty to the EU sanctions policies against Russia. The possibility of utilising a veto by one (or more) Member States is especially likely concerning decisions concerning the possible management or confiscation of assets, as Member States' consensus does not yet seem to exist.

[European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012; Art 238 EU, [Consolidated Version of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, C 326/47, 26 October 2012; Council, '[Qualified majority](#)', webpage, nd.

⁶⁴ Art 215 of the TFEU constitutes 'a bridge ... constructed between the actions of the Community involving economic measures under Articles 60 EC and 301 EC and the objectives of the EU Treaty in the sphere of external relations, including the CFSP' see: Para 197, CJEU, [Joined cases C-402/05 P and C-415/05 P: Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities](#), ECLI:EU:C:2008:461, 03 September 2008; See also Para 71, CJEU, [Case C-548/09 P: Bank Melli v Council of the European Union](#), ECLI:EU:C:2011:735, 16 November 2011; M. E. Bartoloni, '[Simple Abstention and Constructive Abstention in the Context of International Economic Sanctions: Two Too Similar Sides of the Same Coin?](#)', *European Papers*, Vol 7, No 3, 2022, pp. 1121-1131.

⁶⁵ See e.g. Art 8, Council, [Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L 229/1, 31 July 2014.

⁶⁶ D. Genini, '[How the war in Ukraine has transformed the EU's Common Foreign and Security Policy](#)', *Yearbook of European Law*, 2025, p. 24.

⁶⁷ N. Koenig, [Qualified Majority Voting in EU Foreign Policy: Mapping Preferences](#), Policy Brief, *Jacques Delors Centre*, Hertie School, 10 February 2020; P. E. Ngendakumana, '[Putin in first pictured handshake with EU leader since start of Ukraine invasion](#)', *Politico*, 17 October 2023.

⁶⁸ M. Pisklová, [QMV in CFSP: Impending Necessity or Resurfacing Utopia?](#), Policy Paper, *EUROPEUM*, 2023, p. 9.

Under EU law, the following possibilities exist for addressing uncertainty concerning the possible lack of consensus for the renewal or adoption of additional measures against Russia in the form of confiscating property:

- Policy options on QMV in the area of sanctions (including possible measures relating to the assets) under the existing provisions of EU Treaties (passerelle clauses; simple and constructive abstentions);
- Policy option to separate Article 29 TEU and 215 TFEU decision-making processes;
- Policy option under Article 31(2) TEU to use QMV for prolonging sanctions;
- Policy option on QMV in sanctions requiring changes to Treaties (changed provisions of Article 29 TEU concerning voting procedures in the adoption of sanctions);
- Policy options under the ACI;
- Policy options under Article 7 TEU procedure on the suspension of voting rights;
- Policy options on unilateral actions of Member States in the context of confiscating CBR assets;
- Policy options related to the possible signing of an international agreement by the EU.

To ensure some flexibility in the adoption of CFSP decisions, TEU provides for mechanisms enabling derogation from the unanimity rule in the form of QMV in the following contexts: passerelle clauses⁶⁹; simple abstention; constructive abstention of one (or more) Member States or specific exceptions⁷⁰.

Passerelle clauses under Article 31(3) TEU enable the European Council to adopt a decision, stipulating that the Council shall act by QMV in cases other than those referred to in the TEU. To date, no passerelle clause has been used, but both the European Parliament and the European Commission are advocating for activation. However, according to the European Parliament, the reason why no passerelle clause has yet been used lies in the contradictory formulation⁷¹, which necessitates unanimity for its activation⁷².

However, both simple and constructive abstentions have been used in relation to the adoption of sanctions under CFSP. In relation to the eight sanctions package against Russia, Belgium abstained under Article 238(4) TFEU in relation to the CFSP decision (and dissented on adoption of the subsequent regulation based on Article 215 TFEU)⁷³. Such simple abstention under Article 238(4) TFEU has to be distinguished from the institute of 'constructive abstention' under Article 31(3) TEU.

⁶⁹ Art 31(3), EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012

⁷⁰ Art 31(2), EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012; For more on this see: C. Navarra, et al., [Qualified majority voting in EU common foreign and security policy: A cost of non-Europe report](#), *European Parliamentary Research Service*, PE 740.243, August 2023; Generally on the implementation of Article 31 of the TEU and the use of QMV see: R. A. Wessel, V. Szep, [The implementation of Article 31 of the Treaty on European Union and the use of Qualified Majority Voting: Towards a more effective Common Foreign and Security Policy?](#), *European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs*, PE 739.139, November 2022.

⁷¹ European Parliament, [Report on the implementation of the passerelle clauses in the EU Treaties](#), 2022/2142(INI), P9_TA(2023)0269, *Committee on Constitutional Affairs*, 01 June 2023.

⁷² European Parliament, [Report on the implementation of the passerelle clauses in the EU Treaties](#), 01 June 2023.

⁷³ V. Georis, ['La Belgique s'est abstenue de voter les sanctions contre la Russie'](#), *L'Echo*, 06 October 2022.

Simple abstentions do not 'prevent the adoption of acts of the Council for which unanimity is required', and were interpreted in the past in a way that the act in question, if adopted, binds the concerned abstaining Member State⁷⁴. Conversely, constructive abstention by a Member State does not prevent the CFSP decision from being adopted, albeit there is no obligation to implement it. Such constructive abstentions have already been used in relation to the situation in Ukraine, where Ireland, Malta and Austria have abstained on the question of providing lethal weapons to Ukraine under the EPF, due to legal barriers in their constitutions⁷⁵. Hungary also abstained in relation to the establishment of an EU military assistance mission in support of Ukraine⁷⁶, as well as the opening of EU accession talks with Ukraine and funding designated to support Ukraine's defence through the EPF. In March 2024, Hungary exercised constructive abstention when the Council adopted a decision to allocate EUR 5 billion to EPF in military aid to Ukraine. As a response, Hungary was exempted from involvement in financing arms deliveries to Ukraine⁷⁷, thereby not providing military support to Ukraine nor allowing the transit of military weapons to Ukraine through its territory⁷⁸. As already acknowledged by various authors and experts⁷⁹, though, it is not entirely clear whether the abstaining Member States are bound by a subsequent regulation adopted under Article 215 TFEU⁸⁰. The application of constructive abstentions is limited in Article 31 TEU with a duty of loyal cooperation, whereby 'in a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision'⁸¹. This brings about different rights and obligations for the abstaining Member States, whereby they have the right not to apply the decision at the state level, while at the same time having a duty not to prevent its effective implementation. This may be relevant in the context of possible Article 7 TEU procedures adopted against the abstaining Member State (see below section 5.1.4).

⁷⁴ M. E. Bartoloni, '[Simple Abstention and Constructive Abstention in the Context of International Economic Sanctions: Two Too Similar Sides of the Same Coin?](#)', *European Papers*, Vol 7, No 3, 2022, pp. 1121-1131.

⁷⁵ Council, [Decision \(CFSP\) 2022/338 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force](#), *Official Journal of the EU*, L 60/1, 28 February 2022; A. Fotiadis and N. Schmidt, [The European Peace Facility, an Unsecured Gun on EU's Table](#), *Investigate Europe*, 29 March 2022.

⁷⁶ Council, [Decision \(CFSP\) 2022/1968 on a European Union Military Assistance Mission in support of Ukraine \(EUMAM Ukraine\)](#), *Official Journal of the EU*, L 270/85, 18 October 2022; A. Tidey, '[EU Countries Agree to Train Ukrainian Soldiers as Part of New Mission](#)', *Euronews*, 17 October 2022; See also: M. E. Bartoloni, '[Simple Abstention and Constructive Abstention in the Context of International Economic Sanctions: Two Too Similar Sides of the Same Coin?](#)', *European Papers*, Vol 7, No 3, 2022, pp. 1121-1131.

⁷⁷ About Hungary, '[Hungary abstains from EU funding vote for Ukraine](#)', 19 March 2024.

⁷⁸ Budapest Business Journal, '[Ukraine Crisis: Hungary Bans Weapons Deliveries across Its Territory](#)', 28 February 2022.

⁷⁹ Interview with Council official, 26 September 2025 (in person).

⁸⁰ In some cases the Court of Justice of the EU stressed that the two acts adopted in a two-step procedure (CFSP decision and regulation) are considered as autonomous and are adopted according to their own procedures, which seems to imply that the abstaining Member States are nevertheless bound by a subsequent regulation adopted under Article 215 TFEU. See: Para 197, CJEU, [Joined cases C-402/05 P and C-415/05 P: Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities](#), ECLI:EU:C:2008:461, 03 September 2008; Para 71, CJEU, [Case C-548/09 P: Bank Melli v Council of the European Union](#), ECLI:EU:C:2011:735, 16 November 2011. However, in other cases the Court stressed the importance of the 'coherence' of the system whereby CFSP decisions and regulations under Article 215 TFEU are interdependent from each other. See: Para 39, CJEU, [Case C-134/19 P: Bank Refah Kargaran v Council of the European Union](#), ECLI:EU:C:2020:793, 06 October 2020.

⁸¹ M. E. Bartoloni, '[Simple Abstention and Constructive Abstention in the Context of International Economic Sanctions: Two Too Similar Sides of the Same Coin?](#)', *European Papers*, Vol 7, No 3, 2022, pp. 1121-1131.

While the use of constructive abstentions allows for a 'flexible solution in the face of disagreements in the adoption of CFSP decisions, in that the diverging positions of Member States can be maintained without the need to halt the entire process'⁸², it also introduces drawbacks in terms of sanctions' effectiveness. This is especially true regarding the freezing of assets and management or confiscation of property, where the effect of EU sanctions would be limited, as this could result in a situation where property located on the territory of abstaining states would not be frozen and could not be confiscated.

For these reasons, in practice, rather than resorting to constructive abstentions, states tend to use the simple abstention (as was the case with Belgium) or veto, resulting either in negotiations and a 'watered-down compromise' rejecting certain types of sanctions⁸³, or postponing the adoption of sanctions until a specific guarantee has been agreed with the concerned state. The latter scenario was realised in the case of Slovakia, which vetoed the 18th sanctions package against Russia six times. However, it then withdrew its veto after reaching an agreement on a series of energy supply guarantees for Slovakia, including emergency mechanisms to protect its domestic market from sudden fluctuations in methane prices and supply shortages⁸⁴.

Against this background, it is mainly in the context of adopting sanctions that political discussions on the need to move away from unanimity in CFSP matters have intensified⁸⁵. The European Parliament has been conducting discussions on QMV since 2013⁸⁶. Especially apposite is its resolution of 11 July 2023 on implementing passerelle clauses in the EU treaties⁸⁷. This resolution called 'on the European Council to adopt a decision under Article 31(3) TEU establishing that restrictive measures (Article 29 TEU), such as those established under the EU Global Human Rights Sanctions Regime or those imposed in response to Russia's war of aggression against Ukraine, are

⁸² Supra note 5, M. E. Bartoloni, '[Simple Abstention and Constructive Abstention in the Context of International Economic Sanctions: Two Too Similar Sides of the Same Coin?](#)', *European Papers*, Vol 7, No 3, 2022, pp. 1121-1131.

⁸³ As is well known, the sixth sanctions package against Russia was the subject of intense negotiations that significantly reduced the initial proposal of a total ban on the import of all Russian oil into Europe. Some Member States, and in particular Hungary, in addition to the ban on the purchase, import and transfer of crude oil and derivatives without a step-by-step approach of between six (for crude oil) and eight months (for refined products), had, inter alia, advocated a temporary exception for pipeline imports into Member States which, due to their geographical situation, suffer from a specific dependency on Russian supplies and have no viable alternative options. See, e.g., K. Than and A. Komuves, '[Hungary Cannot Support New EU Sanctions against Russia in Present Form, Orban Says](#)', *Reuters*, 6 May 2022.

⁸⁴ F. Bortoletto, '[Slovakia backs down; EU adopts 18th sanctions package against Russia](#)', *Eunews*, 18 July 2025.

⁸⁵ V. Szép and R. Wessel, '[Assessing Current CFSP Structures and Processes and Formulating Recommendations](#)', Working Paper Series No 23, *Engage*, 2023, p. 6.

⁸⁶ European Parliament; [Recommendation on the 2013 review of the organisation and the functioning of the EEAS](#), 2012/2253(INI), P7_TA(2013)0278, 13 June 2013; T. Laţici, '[Qualified Majority voting in foreign and security policy: Pros and Cons](#)', *European Parliamentary Research Service*, PE 659.451, January 2021, 7; See resolutions: European Parliament, [Resolution on the implementation of the common foreign and security policy – annual report](#), 2019/2136(INI), P9_TA(2020)0008 15 January 2020; European Parliament, [Resolution of on the implementation of the Common Foreign and Security Policy – annual report 2020](#), 2020/2206(INI), P9_TA(2022)0039, 20 January 2021; European Parliament, [Resolution on the implementation of the common foreign and security policy - annual report 2021](#), 2021/2182(INI), P9_TA(2022)0039, 17 February 2022.

⁸⁷ European Parliament, [Resolution on the implementation of the passerelle clauses in the EU Treaties](#), 2022/2142(INI), P9_TA(2023)0269, 11 July 2023.

to be taken by QMV⁸⁸. The Parliament also encouraged the use of constructive abstentions in line with Article 31(1) TEU⁸⁹. The European Commission likewise supports the transition to QMV⁹⁰ in the area of sanctions.

Two currently most viable policy options tackling the unanimity challenge are the following:

- One relevant and viable possibility in the context of asset freezes and immobilisation of CBR assets is to rely for their prolongation on Article 31(2) TEU, whereby a QMV decision can also be taken 'when adopting any decision implementing a decision defining a Union action or position'. A political agreement at the EU level has already been made, that 'Subject to EU law, Russia's assets should remain immobilised until Russia ceases its war of aggression against Ukraine and compensates it for the damage caused by this war'⁹¹. A case is currently pending before the EU Court between the Parliament and the Council of the EU⁹², whereby the Parliament submits that an implementing decision operationalising restrictive measures in question in respect of specific natural and legal persons, entities and bodies, should be adopted by QMV and not unanimity (as is currently the case). The outcome of this case will be important for the argument that the prolongation of asset freezes may be adopted by a QMV decision.
- Another option involves separating the adoption process under Article 29 TEU (decision) from that under Article 215 TFEU (regulation). In practice, these two steps are currently inextricably linked, as both are adopted in the same session and are very similar in substance and detail. One possible solution would be to limit Council decisions adopted under Article 29 TEU by unanimity to essential elements such as overall objectives, listing criteria and targeted areas for trade-related sanctions, while leaving substantial implementation to the Article 215 TFEU regulation, which is passed by QMV.⁹³

Solutions, other than those under Article 31 TEU for utilising QMV in the case of sanctions, would have to be introduced by a change of Treaties. In the past, the European Parliament suggested Treaty changes relating, for example, to the adoption of sanctions, including decision-making under Article 29 TEU: 'Where a decision provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council shall act by a

⁸⁸ Para 26, European Parliament, [Resolution on the implementation of the passerelle clauses in the EU Treaties](#), 2022/2142(INI), 11 July 2023.

⁸⁹ Para 14(d), European Parliament, [Resolution on the implementation of the common foreign and security policy – annual report 2022](#), 2022/2048(INI), P9_TA(2023)0009, 18 January 2023.

⁹⁰ European Commission, [Communication A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#), COM(2018) 647 final 2018, 12 September 2018, p. 13.

⁹¹ Para 4, European Council, [Meeting conclusions](#), EUCO 15/24, 27 June 2024.

⁹² CJEU, [Action brought on 19 December 2024 – European Parliament v Council of the European Union](#), Case C-883/24, *Official Journal of the EU*, C series, 17 February 2025.

⁹³ Interview with Council official, 26 September 2025 (in person); J. Schäffer, [EU Sanctions and the Mirage of Unanimity: Overcoming the Hungarian Veto One Step After Another Under the Letter of EU Law](#), *Verfassungsblog*, 08 October 2025.

qualified majority'⁹⁴. The Committee on Foreign Affairs also called in the past for the use of QMV in all CFSP decisions on sanctions, either through a passerelle clause or treaty change⁹⁵.

However, it is unlikely that early progress will be made on the proposed reform to introduce QMV, replacing the unanimity requirement in the Council in CFSP, including its decisions on the adoption of sanctions (and generally in the CFSP area)⁹⁶. Hence, to bypass possible vetoes by Member States in relation to sanctions against Russia, section 5.1 presents alternatives to consider.

Appropriateness of restrictive measures under CFSP as a policy tool for the confiscation or management of CBR assets

Restrictive measures are one of the EU's tools to uphold respect for human rights, democracy, the rule of law, good governance, international law, as well as the preservation of peace, prevention of conflicts and strengthening of international security in the wider world⁹⁷. They aim to bring about a change in the activities or policies of targeted states⁹⁸, and are therefore temporary and reversible in nature.

It is doubtful whether **confiscation** of private and/or CBR assets *per se* in the course of restrictive measures would fulfil these criteria. As already acknowledged by the Court of Justice of the EU (CJEU), restrictive measures are not of a criminal nature⁹⁹ but rather of a precautionary and temporary nature¹⁰⁰. While indeed restrictive measures may, for example, interfere in fundamental rights of sanctioned individuals, to comply with EU law, such interference 'must be provided for by law, respect the essence of those rights, refer to an objective of general interest recognised as such by the European Union and not be disproportionate'¹⁰¹. In particular, confiscating private assets in the course of its restrictive measures (without compensation and outside criminal proceedings) would in principle be in breach of the right to property as recognised in the EU Charter of Fundamental Rights:

Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for

⁹⁴ Para 6, European Parliament, [Resolution on the call for a Convention for the revision of the Treaties](#), 2022/2705(RSP), P9_TA(2022)0244, 09 June 2022.

⁹⁵ European Parliament, [Opinion of the Committee on Foreign Affairs for the Committee on Constitutional Affairs on proposals of the European Parliament for the amendment of the Treaties](#), 2022/2051(INL), PE735.826v02-00, 02 December 2022.

⁹⁶ Ursula Von der Leyen, for example stated in her speech 'When Member States say Europe is too slow, I say to them be courageous and finally move to qualified majority voting – at least on human rights and sanctions implementation' see European Commission, '[State of the Union Address by President von der Leyen at the European Parliament Plenary](#)', 16 September 2020.

⁹⁷ Council, [Basic Principles on the Use of Restrictive Measures \(Sanctions\)](#), 10198/1/04, REV 1, 07 June 2004, p. 2; Council, '[Why the EU adopts sanctions](#)', Explainers, webpage, nd.

⁹⁸ European Commission, [Sanctions or restrictive measures](#), 2008; See e.g., CJEU, [Case C-330/15 P: Johannes Tomana and Others v Council of the European Union and European Commission](#), ECLI:EU:C:2016:601, 28 July 2016.

⁹⁹ Para 91, CJEU, [Case T-644/22: Gennady Nikolayevich Timchenko and Elena Petrovna Timchenko v Council of the European Union](#), ECLI:EU:T:2024:621, 11 September 2024.

¹⁰⁰ Para 104, CJEU, [Case T-644/22](#), ECLI:EU:T:2024:621, 11 September 2024.

¹⁰¹ Para 69, CJEU, [Case T-635/22: Mikhail Fridman and others v Council of the European Union](#), ECLI:EU:T:2024:620, 11 September 2024.

their loss. The use of property may be regulated by law in so far as is necessary for the general interest'¹⁰².

In the Kadi case, the CJEU noted the distinction between freezing and confiscating assets: the former is a temporary and precautionary measure that, unlike confiscation, does not affect the right of persons concerned to property in their financial assets¹⁰³. Conversely, the latter is understood as the final deprivation of property¹⁰⁴, typically requiring a court order¹⁰⁵.

The decision of the confiscation of assets resulting in the permanent deprivation of property has to be, however, differentiated from the management of assets.¹⁰⁶ It seems that the current proposals of the EU on the establishment of the EU instrument and subsequent reparations loan go in the direction of the **management** of the CBR assets (rather than confiscation *per se*). In particular, the CFSP decision, and in particular Article 215 TFEU, could be used to operationalise the newly established EU instrument to oblige CSDs to make the proposed investment of matured cash balances in the EU Instrument, allowing for a derogation by CSDs from their applicable rules on management and investment of central bank assets. As will be explained below, this would be a temporary and reversible measure, it would be lifted once Russia ceases its aggression and pays reparations to Ukraine and is thus not considered as a confiscatory measure. (see Section 5.1.4. below).

Main challenges in reaching a decision

While restrictive measures are one of the strongest foreign policy actions of the EU, suitable for the freezing of assets, unanimity, as well as their underlying aim to bring about a change in activities or policies of targeted states, as well as their temporary and reversible nature seem to be the main challenges for adopting a decision regarding immobilised CBR assets. These two challenges could be overcome by relying on Article 31(2) TEU for asset freeze prolongation or by separating the decision-making processes under Article 29 TEU and 215 TFEU for the adoption of sanctions and by adopting a decision not on the confiscation of assets, but rather on the operationalisation or management of assets through the newly established EU instrument. Such a decision would oblige CSDs to make the proposed investment of matured cash balances in the EU Instrument, say, which would be a temporary and reversible measure, it would be lifted once Russia ceases its aggression and pays reparations to Ukraine.

¹⁰² Art 17, EU, [Charter of Fundamental Rights of the European Union](#), *Official Journal of the European Communities*, C 364/1, 18 December 2000; See also Art 1, Protocol 1, CoE, [European Convention on Human Rights](#), 01 August 2021.

¹⁰³ 'Call into question the finding . . . according to which the freezing of funds is a temporary precautionary measure that, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets', see: Para 150, CJEU, [Case T-85/09: Yassin Abdullah Kadi v European Commission](#), ECLI:EU:T:2010:418, 30 September 2010.

¹⁰⁴ Para 22, European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

¹⁰⁵ Art 3, European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

¹⁰⁶ See also K. Nakatani, '[Freezing, Confiscation and Management of the Assets of the Russian Central Bank and the Oligarchs: Legality and Possibility under International Law](#)', *International Community Law Review*, Vol 26, No 1-2, 2024, pp. 99-120.

4 Overview of existing policies, measures and legal arguments under EU law

This section examines existing policy measures and literature analytically, with the aim not only of providing a comprehensive overview¹⁰⁷ but also of mapping legal arguments proposed for confiscation and management of assets, *vis-à-vis* securing reparations for Ukraine.

4.1 Frozen private assets

The EU has adopted targeted sanctions against more than 2 500 individuals and entities, including the Russian leadership, high-ranking officials, as well as prominent businesspeople and oligarchs, thereby freezing more than EUR 28 billion of private assets on EU territory¹⁰⁸. The European Commission also established a 'Freeze and Seize Task Force', whose mandate includes analysing viable legal options regarding confiscation of those assets for use in the post-war rebuilding of Ukraine. Since then, the EU has adopted important legislative changes to enable the confiscation of private assets.

However, it has to be stressed that in the case of confiscating private assets, EU sanctions regimes serve as the underlying mechanism solely for asset freezing. As already acknowledged by the CJEU, restrictive measures are not of criminal¹⁰⁹ but rather of a precautionary and temporary nature¹¹⁰, and thus could not justify confiscation of private assets. Broadening the possibility of confiscating frozen private assets in the course of criminal proceedings has been established through another venue: recently adopted legislative changes relating to harmonising violations of restrictive measures and asset recovery, together with confiscation rules under European criminal law.

In May 2022, the Commission already proposed harmonising violations of the EU's restrictive measures as an EU crime across Member States, revising and strengthening existing EU rules on confiscation and asset recovery. This proposal resulted in the adoption of Directive (EU) 2024/1226 of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures¹¹¹, along with Directive (EU) 2024/1260 of 24 April 2024 on asset recovery and confiscation¹¹².

¹⁰⁷ See for instance P. Webb, [Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine](#), Study, *European Parliamentary Research Service*, PE 759.602, February 2024.

¹⁰⁸ European Commission, '[Sanctions against individuals, companies and organisations](#)', webpage, nd.

¹⁰⁹ Para 91, CJEU, [Case T-644/22: Gennady Nikolayevich Timchenko and Elena Petrovna Timchenko v Council of the European Union](#), ECLI:EU:T:2024:621, 11 September 2024.

¹¹⁰ Para 104, CJEU, [Case T-644/22](#), ECLI:EU:T:2024:621, 11 September 2024.

¹¹¹ European Parliament and Council, [Directive \(EU\) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures](#), *Official Journal of the EU*, L Series, 29 April 2024.

¹¹² European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

The most significant changes stemming from the revised asset recovery rules and confiscation are the following:

- An extended mandate of Asset Recovery Offices to trace and identify assets of individuals and entities quickly, subject to EU restrictive measures;
- Expanded possibilities to confiscate assets owned by sanctioned individuals;
- Establishment of the Asset Management Office in all EU Member States to ensure that frozen property does not lose value and enable the sale of frozen assets that could easily depreciate or are costly to maintain¹¹³.

The legal basis for such a decision was Article 83 TFEU, approximating the substantive criminal law of Member States by establishing minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension. Until recently, this provision harmonised areas of crimes which included terrorism, trafficking in human beings, together with sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting means of payment, computer crime and organised crime¹¹⁴.

With Council Decision 2022/2332 of 28 November 2022, the Council assessed that developments in crime witnessed following Russia's war of aggression against Ukraine constitute exceptional circumstances that require extending the areas of crime to include violations of restrictive measures:

Violation of Union restrictive measures is a particularly serious area of crime, which, in terms of gravity, is of a similar degree of seriousness to the areas of crime listed in Article 83(1) TFEU, since it can perpetuate threats to international peace and security, undermine the consolidation of and support for democracy, the rule of law and human rights and result in significant economic, social, societal and environmental damage¹¹⁵.

This was followed by the adoption of Directive (EU) 2024/1226 of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures¹¹⁶ and Directive (EU) 2024/1260 of 24 April 2024 on asset recovery and confiscation¹¹⁷. Both are already in force and were due to be implemented by Member States. However, the majority of Member States failed to transpose Directive 2024/1226 into national legislation by the foreseen deadline (20 May 2025)¹¹⁸.

¹¹³ European Commission, '[Ukraine: The Commission proposes rules on freezing and confiscating assets of oligarchs violating restrictive measures and of criminals](#)', Press release, 25 May 2022.

¹¹⁴ Art 83(1), EU, [Consolidated Version of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, C 326/47, 26 October 2012.

¹¹⁵ Para 10, Council, [Decision \(EU\) 2022/2332 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83\(1\) of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, L 308/18, 28 November 2022.

¹¹⁶ European Parliament and Council, [Directive \(EU\) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures](#), *Official Journal of the EU*, L Series, 29 April 2024.

¹¹⁷ European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

¹¹⁸ European Commission, '[Commission takes action to ensure complete and timely transposition of EU directives](#)', 24 July 2025.

These are new rules on the definition of criminal offences and sanctions for violations of EU restrictive measures, which will ensure that violations of restrictive measures can be criminally investigated and prosecuted in all Member States, thereby enabling cooperation in the confiscation of private assets, which may also be used for the reconstruction of Ukraine.

Member States have so far been able to impose civil, administrative, or criminal sanctions in accordance with their national legislation for violations of restrictive measures. However, with the proliferation of sanctions at the EU level, particularly in the context of Ukraine, the lack of uniformity between Member States has led to an increase in various ways of circumventing restrictive measures¹¹⁹.

EU Directive 2024/1226 addresses the definition of criminal offences and penalties for violating Union restrictive measures and establishes minimum rules for such violations¹²⁰. However, Directive 2024/1260 on asset recovery and confiscation includes detailed provisions whereby Article 12 stipulates:

Member States shall take the necessary measures to enable the confiscation, either wholly or in part, of instrumentalities and proceeds stemming from a criminal offence subject to a final conviction, which may also result from proceedings in absentia¹²¹.

Furthermore, this Directive allows for the confiscation of property transferred to third parties¹²², extended confiscation¹²³, non-conviction-based confiscation¹²⁴, as well as the confiscation of unexplained wealth linked to criminal conduct¹²⁵. With regard to the further use of confiscated property, Article 19(2) expressly foresees the possibility of its transfer to Ukraine:

Without prejudice to applicable international law, Member States may use the instrumentalities, proceeds or property confiscated in relation to the offences referred to in Directive (EU) 2024/1226 to contribute to mechanisms to support third countries affected by situations in response to which Union restrictive measures have been adopted, in particular in cases of war of aggression. The Commission may provide guidance on the arrangements for such contributions¹²⁶.

¹¹⁹ Para 73, CJEU, [Case T-635/22: Mikhail Fridman and others v Council of the European Union](#), ECLI:EU:T:2024:620, 11 September 2024.

¹²⁰ Art 1, European Parliament and Council, [Directive \(EU\) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures](#), *Official Journal of the EU*, L Series, 29 April 2024; L. Bernardini, 'Criminalising the Violation of EU Restrictive Measures: Towards (Dis)Proportionate Punishments vis-à-vis Natural Persons?', *European Criminal Law Review*, Vol 14, No 1, 2024, pp. 4–26.

¹²¹ Art 12, European Parliament and Council, [Directive \(EU\) 2024/1260 on asset recovery and confiscation](#), *Official Journal of the EU*, L Series, 02 May 2024.

¹²² Art 13, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹²³ Art 14, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹²⁴ Non-conviction based confiscation is, for example, possible under the following circumstances: illness, absconding, or death of the suspect. Such confiscation is permitted if, without these circumstances, a conviction would have been possible for offences generating substantial economic benefit and if the court is satisfied that the assets are directly or indirectly linked to the offence. Art 15, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹²⁵ Art 16, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹²⁶ Art 19(2), European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

Under this new regulation, Member States are also required to set up asset recovery offices¹²⁷, as well as asset management offices¹²⁸, ensuring cross-border cooperation¹²⁹ and establishing efficient tools for managing frozen or confiscated property, such as a central register or other registers of property frozen and confiscated pursuant to this Directive¹³⁰. Under certain circumstances, for instance, when property subject to freezing is perishable or rapidly depreciating, or when storage or maintenance costs of the property are disproportionate to its market value, interlocutory sales of the frozen property are possible¹³¹.

Assets confiscated in proceedings relating to the violation or circumvention of EU restrictive measures could form part of the assets transferred to Ukraine through already established EU mechanisms, such as the EPF. It has to be acknowledged, though, that confiscating property under this new legislation is part of long-term legislative measures that are expected to be applicable in practice not only in relation to the situation in Ukraine but also in the context of EU sanctions adopted in relation to other situations. Whether and to what extent the new legislation will also be effective in the area of asset confiscation and its transfer to Ukraine remains to be seen; this depends on the practice of Member States and national courts¹³². However, the amount of confiscated assets in criminal proceedings will most likely account for only a small portion of the assets necessary for reconstructing Ukraine. Similar solutions were also introduced outside the EU. In the USA, for example, the first transfer of forfeited funds from Russian oligarchs, which were seized in the course of the sanctions-evasion criminal procedure, has already been transferred to Ukraine.¹³³

The new EU regulation has been subject to criticism by some scholars. Bernardini, for example, questioned the proportionality of new rules relating to the criminalisation and confiscation of property¹³⁴ as well as the appropriateness of utilising criminal law approaches with the aim of achieving the EU's political goals, such as securing reparations for Ukraine.

New EU legislation

The EU introduced new legislation on the definition of criminal offences and sanctions for violations of EU restrictive measures, which will ensure that violations of restrictive measures can be criminally investigated and prosecuted in all Member States, thereby enabling cooperation in the confiscation of private assets, which may also be used for the reconstruction of Ukraine. Whether and to what extent the new legislation will be effective in the area of asset confiscation

¹²⁷ Art 5, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹²⁸ Art 22, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹²⁹ Art 30, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹³⁰ Art 27, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹³¹ Art 21, European Parliament and Council, [Directive \(EU\) 2024/1260](#), *Official Journal of the EU*, 02 May 2024.

¹³² For a critical view on this see: L. Bernardini, '[Criminalising the Violation of EU Restrictive Measures: Towards \(Dis\)Proportionate Punishments vis-à-vis Natural Persons?](#)', *European Criminal Law Review*, Vol 14, No 1, 2024, pp. 4–26; L. Bernardini and L. Romanò, '[Enforcing Restrictive Measures Against Russia Through Criminal Law: A Truly Effectiveness-enhancing Choice?](#)', *Edinburgh Student Law Review*, Vol 5, No 2, 2025.

¹³³ P. Grant, '[U.S. attorney general OKs transfer of forfeited funds from Russia oligarch for use in Ukraine](#)', *Reuters*, 10 May 2023.

¹³⁴ L. Bernardini, '[Criminalising the Violation of EU Restrictive Measures: Towards \(Dis\)Proportionate Punishments vis-à-vis Natural Persons?](#)', *European Criminal Law Review*, Vol 14, No 1, 2024, pp. 4–26.

and its transfer to Ukraine remains to be seen; this depends on the practice of Member States and national courts. It can reasonably be expected that the amount of funds confiscated within these processes will not be sufficient to finance the reconstruction of Ukraine or provide for reparations, but can nevertheless make a significant contribution to the overall costs. Moreover, new rules on confiscations may be subject to challenges from the point of view of criminal law and human rights law.

4.2 Windfall profits – Profits stemming from extraordinary revenues generated by the immobilised assets

This section outlines current developments at the EU level concerning the windfall profits, including repaying loans, the integration of profits into the EPF¹³⁵, the Ukraine Facility¹³⁶ and the ULCM¹³⁷. It focuses on legal arguments concerning the use of profits from extraordinary revenues generated by immobilised CBR assets for the reparations and reconstruction of Ukraine.

With the EU's restrictive measures in place, CBR is unable to access its assets held in central and commercial banks, mostly in Belgium-based Euroclear, a leading global provider of financial market infrastructure services for domestic as well as cross-border securities transactions and funds. Sovereign assets are also held in France, Luxembourg and Germany¹³⁸. CSDs, such as Euroclear, are specialised financial institutions that hold and invest securities for the assets' owners¹³⁹, including central banks. Due to the EU's restrictive measures, Euroclear had to stop all payments to Russia, including those relating to profits generated by principal CBR assets. Assets that CSDs manage generate gains but also necessitate management costs. Specific rules apply to the management of such profits, which are determined by national laws and the underlying treaty between CSDs and the respective Central Bank. For example, Euroclear has to invest assets with the Belgian Central Bank, offering the lowest risk-free rate of return available¹⁴⁰.

Based on a distinction between principal assets and profits, steps targeting the latter have already been taken at two levels:

- At the national level, Belgium introduced taxes on profits generated by CBR assets in accordance with its national legislation and created a designated fund for Ukraine;

¹³⁵ T. Peters and J. Krome, [Ukraine Facility: State of Play](#), At a Glance, *European Parliamentary Research Service*, PE 762.362, July 2024.

¹³⁶ Council, ['Immobilised Russian assets: Council decides to set aside extraordinary revenues'](#), Press release, 12 February 2024; Council, ['Extraordinary revenues generated by immobilised Russian assets: Council greenlights the use of net windfall profits to support Ukraine's self-defence and reconstruction'](#), Press release, 21 May 2024.

¹³⁷ A. Dobrova and A. Vozovych, [The Ukraine Loan Cooperation Mechanism and exceptional macro-financial assistance](#), Briefing, *European Parliamentary Research Service*, PE 767.160, December 2024.

¹³⁸ A. Caprile, et al., [Confiscation of immobilised Russian sovereign assets: State of play, arguments and scenarios](#), *European Parliamentary Research Service*, PE 775.908, September 2025. It is difficult to determine the exact value of assets in jurisdictions of different Member States. See Y. M. Ziskina, A. Moiseienko and J. Firestone, [Resolving Accountability Over Russian State Assets: New Understandings of Jurisdiction and Policy Opportunities](#), *New Lines Institute*, January 2025.

¹³⁹ P. Webb, [Reparations for Ukraine: Three Proposals from Europe](#), *Just Security*, 26 February 2024.

¹⁴⁰ G. Sorgi and N. Vinocur, [EU moves closer to using Russian assets to rebuild Ukraine](#), *Politico*, 29 August 2025.

- At the EU level, the profits generated by CBR's assets were legally and technically separated from the principal assets, centralised and transferred to Ukraine through its existing or newly established mechanisms: EPF, the Ukraine Facility and the ULCM.

It has to be acknowledged that a distinction between principal assets and windfall profits seems to be diminishing at the EU level, as most immobilised assets mature into cash balances. The European Commission adopted a general view that the act of immobilising central bank assets should be differentiated from asset freeze, as the concept of immobilisation is narrower than the concept of freezing. While freezing is a comprehensive prohibition on using, transferring and benefiting from those assets *vis-à-vis* the owner of the assets, the immobilisation is directed to the EU financial institutions not to give the assets back to the central bank for the duration of immobilisation. Any decision on immobilising assets, thus, according to the EU, allows for the transfer of matured cash balances to the EU Instrument and also does not interfere with the CBR's sovereign immunity and hence needs no justification in international law¹⁴¹ (see section 5.1.4 below).

From an international law perspective, though, both principal assets and profits are commonly considered as sovereign assets covered by laws on state immunity (see section 4.3.4 below). As will be explained below, an argument could be made that the transfer and use of those matured assets, which are now in the form of cash balances (and not in the form of government bonds) for the purposes of reparation, could be justified under the law of countermeasures (see section 5.1.4 below). For these cash balances, an obligation of Euroclear does exist to transfer them back to CBR, but because of EU restrictive measures in place, this obligation will materialise only when these measures are lifted. Until then, EU actions could be justified as countermeasures.

4.2.1 Measures taken at the national level

When measures are taken at the national level in accordance with national legislation, it is up to Member States to decide how to allocate the taxes collected. For example, Belgium has imposed a 25 % tax on income generated by the CBR's frozen assets. As a result, EUR 1.7 billion of taxes charged on profits generated from frozen CBR's assets were transferred to Belgium, which used those taxes to support Ukraine through, for instance, military support, humanitarian aid and reconstruction aid¹⁴².

4.2.2 Measures taken at the EU level

Measures taken at the EU level are based on a distinction between principal CBR assets and profits generated by those assets, which have already turned into cash balances (because it is not the government bonds, but cash balances that are transferred to a third party)¹⁴³. Against this background, according to the EU, profits are not covered by sovereign immunity:

Unexpected and extraordinary revenues do not have to be made available to the Central Bank of Russia under applicable rules, even after the discontinuation of the transaction prohibition. Thus, they do not

¹⁴¹ Interview with European Commission official, 25 September 2025 (in person); See also F. Hoffmeister, '[Strategic Autonomy in the European Union's External Relations Law](#)', *Common Market Law Review*, Vol 60, No 3, pp. 667-700.

¹⁴² Kingdom of Belgium, '[Belgium supports Ukraine](#)', webpage, nd.

¹⁴³ Interview with European Commission official, 25 September 2025 (in person).

constitute sovereign assets. Therefore, the rules protecting sovereign assets are not applicable to these revenues¹⁴⁴.

To centralise these interests and transfer them to Ukraine, the EU adopted a sequence of decisions. Firstly, as part of its sanctions against Russia in May 2024, the EU adopted a decision that the unexpected and extraordinary profits of CSDs arising from the CBR's frozen assets should be separated from the principal assets for the benefit of Ukraine¹⁴⁵. Particularly, since 15 February 2024, CSDs holding reserves and assets of the CBR with a total value of more than EUR 1 million (i.e. Euroclear and Clearstream) must account for and manage such extraordinary cash balances (accumulating due to the immobilisation of assets and reserves of the CBR separately from their other activities) and keep separate the unexpected and extraordinary revenues generated¹⁴⁶. Hungary abstained from the adoption of the May 2024 Council Decision allocating windfall profits to Ukraine.

Secondly, in view of the situation's gravity and as long as the illegal actions by Russia continue to violate fundamental rules of international law, the EU has introduced additional measures. Specifically, it has introduced rules on how the net profits ensuing from unexpected and extraordinary revenues accruing to CSDs as a result of the restrictive measures should be directed to support Ukraine with its recovery and reconstruction, as well as its self-defence against Russia's war of aggression¹⁴⁷. In sum, with this decision, the EU has sought to ensure that any profits generated from CBR's assets since February 2024 are transferred to Ukraine.

This decision has a twofold financial purpose¹⁴⁸:

- 90 % of net profits allocated to the EPF finance lethal weapons for Ukraine to enable the fulfilment of its right to self-defence¹⁴⁹ (outside EU budget);
- 10 % will be used for recovery, reconstruction and modernisation of the Ukrainian defence industry by conveying funds to the Ukraine Facility and the Ukraine Support Instrument under the European Defence Industrial Programme¹⁵⁰ (Ukraine Facility being within the EU budget).

¹⁴⁴ Para 18, Council, [Regulation \(EU\) 2024/1469 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 22 May 2024.

¹⁴⁵ Council, [Decision \(CFSP\) 2024/577 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, Series L, 14 February 2024; Council, [Regulation \(EU\) 2024/576 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, Series L, 14 February 2024.

¹⁴⁶ Para 20, Council, [Regulation \(EU\) 2024/1469 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 22 May 2024.

¹⁴⁷ Para 25, Council, [Regulation \(EU\) 2024/1469 amending Regulation \(EU\) No 833/2014](#), *OJEU*, L series, 22 May 2024.

¹⁴⁸ Art 1(2), Para 11(a), Council, [Decision \(CFSP\) 2024/1470 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L Series, 22 May 2024.

¹⁴⁹ Council, [Regulation \(EU\) 2024/1469 amending Regulation \(EU\) No 833/2014](#), *OJEU*, L series, 22 May 2024.

¹⁵⁰ European Commission, [Proposal for a Regulation establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products \(EDIP\)](#), COM(2024) 150 final, 05 March 2024 .

The EPF is an existing CFSP instrument approved by the Council in March 2021¹⁵¹, as a novel off-budget EU instrument¹⁵² to finance the EU's actions under CFSP, made up of yearly contributions from Member States, proportional to their gross national income¹⁵³. It rests on two pillars: (1) EU military operations and missions; and (2) assistance to countries to strengthen security, by providing, for instance, military equipment, including lethal components¹⁵⁴.

Even though the EPF was conceived to cover worldwide situations, Africa in particular¹⁵⁵, it has played an important role in enabling the EU to provide substantial military support to Ukraine¹⁵⁶.

The EPF is managed under the authority and direction of the Facility Committee, comprising one representative per Member State, adopting decisions by unanimity (except for procedural matters where a simple majority suffices)¹⁵⁷. Rules on constructive abstentions in CFSP on the basis of Article 31(1) apply to the EPF. Hungary thus abstained from all EPF decisions on the supply of lethal weapons to Ukraine and did not support a top-up of the initial EPF budget through a dedicated Ukraine Assistance Fund¹⁵⁸.

With Hungary opposing disbursements to Ukraine under EPF since 2023¹⁵⁹, as well as the EU's measures concerning the CBR's windfall profits, the EPF has, in practice, served as a legal intermediary to circumvent Hungary's veto, allowing for the transfer of Russian windfall profits to Ukraine¹⁶⁰. Because Hungary abstained from the adoption of the May 2024 Council Decision allocating windfall profits to Ukraine, it arguably does not have any legal claim over the distribution of these funds. Moreover, because these funds originate from an extraordinary source (CBR assets) and not from a typical EPF source (EU budget or Member States' budgets, say), decisions concerning them deviate from other EPF decisions. In particular, they are exempt from authorisation by the EPF Facility Committee and do not require prior acceptance by the Political and Security Committee. This interpretation was offered by Belgium at the EU Council and Hungary

¹⁵¹ Council, [Decision \(CFSP\) 2021/509, establishing a European Peace Facility, and repealing Decision \(CFSP\) 2015/528](#), *Official Journal of the EU*, L 102/14, ST/5212/2021/INIT, 24 March 2021.

¹⁵² EPF does not finance capabilities which are funded under the EU budget.

¹⁵³ Art 1, Council, [Decision \(CFSP\) 2021/509, establishing a European Peace Facility, and repealing Decision \(CFSP\) 2015/528](#), *Official Journal of the EU*, L 102/14, ST/5212/2021/INIT, 24 March 2021.

¹⁵⁴ B. Bilquin, [European Peace Facility: State of play on 30 November 2023](#), Briefing, *European Parliamentary Research Service*, PE 757.560, December 2023.

¹⁵⁵ EPF succeeded the African Peace Facility and the Athena Mechanism.

¹⁵⁶ D. Genini, ['How the war in Ukraine has transformed the EU's Common Foreign and Security Policy'](#), *Yearbook of European Law*, 2025, p. 6.

¹⁵⁷ Arts 10 and 11(14), Council, [Decision \(CFSP\) 2021/509, establishing a European Peace Facility, and repealing Decision \(CFSP\) 2015/528](#), *Official Journal of the EU*, L 102/14, ST/5212/2021/INIT, 24 March 2021.

¹⁵⁸ D. Genini, ['How the war in Ukraine has transformed the EU's Common Foreign and Security Policy'](#), *Yearbook of European Law*, 2025, p. 9.

¹⁵⁹ B. Bilquin, [European Peace Facility: State of play on 30 November 2023](#), Briefing, *European Parliamentary Research Service*, PE 757.560, December 2023, p. 3.

¹⁶⁰ The transfer of Russian windfall profits to Ukraine deviates from Article 5(3) second sentence of the EPF Council Decision: see Council, [Decision \(CFSP\) 2021/509, establishing a European Peace Facility, and repealing Decision \(CFSP\) 2015/528](#), *Official Journal of the EU*, L 102/14, ST/5212/2021/INIT, 24 March 2021; D. Genini, ['How the war in Ukraine has transformed the EU's Common Foreign and Security Policy'](#), *Yearbook of European Law*, 2025, p. 19-20.

did not object to it¹⁶¹. As noted by Genini, the decision to allocate windfall profits to Ukraine has already been permanently decided by the Council decision in which Hungary abstained. Consequently, Hungary's vote is no longer needed to authorise each separate assistance measure for Ukraine under EPF¹⁶².

Nevertheless, due to uncertainties related to the veto, the EPF was then replaced as the main channel for these revenues to Ukraine by an EU macro-financial assistance loan¹⁶³.

ULCM and macro-financial assistance

With Hungary threatening to veto renewal of sanctions against Russia every six months, the EU coordinated the G7-led initiative on Extraordinary Revenue Acceleration Loans for Ukraine¹⁶⁴. This initiative aimed at collectively disbursing EUR 45 billion in additional funding to Ukraine by December 2027, leveraging the extraordinary revenues accrued from immobilised Russian assets. The EU committed to channelling EUR 18.1 billion to Ukraine in loans guaranteed by future flows of confiscated Russian windfall profits. It established the ULCM under the ordinary legislative procedure, allowing for continual financial support to Ukraine even if sanctions against Russia were blocked or lifted¹⁶⁵. As part of ULCM, a macro-financial assistance loan to Ukraine from its budget was secured by the EU as part of a broader collective G7 loan¹⁶⁶. The ULCM thus provides Ukraine with non-repayable financial support to assist it in repaying loans from G7 partners¹⁶⁷. In January 2025, the first EUR 3 billion exceptional macro-financial assistance loan to Ukraine was disbursed by the EU¹⁶⁸, while the EU's EUR 18 billion share of the loan will be entirely paid out by the end of 2025. This means that the financial purpose of windfall profits has been changed, whereby 95 % of extraordinary proceeds are currently directly allocated to reconstruction programmes financed by the EU's regular budget, while only 5 % will go to the EPF¹⁶⁹. Thus, the EU has shifted from financing of lethal weapons to prioritising reconstruction and macro-financial stability.

¹⁶¹ B. Bilquin, [European Peace Facility – For Ukraine, but not only](#), Briefing, *European Parliamentary Research Service*, PE 772.833, April 2025, p. 2.

¹⁶² According to Genini, 'abstaining Member States are not even obliged to balance the books of the EPF by making equivalent contributions to other EPF assistance measures'. D. Genini, ['How the war in Ukraine has transformed the EU's Common Foreign and Security Policy'](#), *Yearbook of European Law*, 2025, p. 19-20.

¹⁶³ B. Bilquin, [European Peace Facility – For Ukraine, but not only](#), Briefing, *European Parliamentary Research Service*, PE 772.833, April 2025.

¹⁶⁴ The White House, [G7 Leaders' Statement on Extraordinary Revenue Acceleration \(ERA\) Loans](#), 25 October 2024.

¹⁶⁵ B. Bilquin, [European Peace Facility – For Ukraine, but not only](#), Briefing, *EPRS*, PE 772.833, April 2025

¹⁶⁶ European Parliament and Council, [Regulation \(EU\) 2024/2773 establishing the Ukraine Loan Cooperation Mechanism and providing exceptional macro-financial assistance to Ukraine](#), *Official Journal of the EU*, L series, 28 October 2024.

¹⁶⁷ A. Dobrova and A. Vozovych, [The Ukraine Loan Cooperation Mechanism and exceptional macro-financial assistance](#), Briefing, *European Parliamentary Research Service*, PE 767.160, December 2024.

¹⁶⁸ European External Action Service, ['Commission disburses first €3 billion to Ukraine of its part of the G7 loan, to be repaid with proceeds from immobilised Russian assets'](#), Press release, 13 January 2025.

¹⁶⁹ Art 1, Council, [Implementing Decision \(CFSP\) 2024/2760 implementing Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 28 October 2024; Council, [Implementing Regulation \(EU\) 2024/2761 implementing Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 28 October 2024.

Proposals for a European Instrument

Within the EU, there is (for now) agreement on the adoption of measures concerning the unexpected and extraordinary profits of CSDs, which were adopted in accordance with internal EU law provisions concerning restrictive measures. It is expected that the EU will continue to support Ukraine through the ULCM. However, with windfall profits falling short of the sufficient amount of funds needed for the support of Ukraine, proposals were made for the creation of a European Instrument which would include the transfer of matured cash balances of principal assets (below section 5.1.4).

4.3 Immobilised state assets

The G7 leaders have reiterated Russia's obligation to pay reparations and have pledged to 'continue to take measures available within our domestic frameworks to find, restrain, freeze, seize, and, where appropriate, confiscate or forfeit the assets of those individuals and entities that have been sanctioned in connection with Russia's aggression.'¹⁷⁰ At EU level, however, a specific measure or policy has not yet been adopted concerning the principal CBR assets and their possible confiscation or management, mainly due to international legal issues arising from such confiscation. Discussions concerning principal CBR's assets have been divided into the following arguments:

- Confiscation of CBR assets would be in breach of state immunities from execution, which protect CBR's assets;
- Sanctions are an executive measure rather than a judicial process; hence, state immunity does not apply and confiscation would be possible under international law;
- Confiscation of CBR principal assets is in breach of state immunity but could be justified under the regime of third-party countermeasures;
- Confiscation of CBR principal assets is in breach of state immunity, but could be justified on collective self-defence;
- Confiscation of CBR principal assets based on an exception to immunity before national courts;
- Adoption of national legislation allowing for the confiscation of CBR assets;
- Confiscating CBR assets as part of enforcing the ECtHR's judgments;
- Confiscation of CBR assets taken as part of a peace agreement, or used as collateral for reparation payments under the agreement¹⁷¹.

¹⁷⁰ Para 8, G7, [G7 Leaders' Statement on Ukraine](#), 19 May 2023.

¹⁷¹ P. Webb, [Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine](#), Study, *European Parliamentary Research Service*, PE 759.602, February 2024; P. Butchard, [Sanctions, International Law and Seizing Russian Assets](#), Research Briefing, *UK House of Commons Library*, 07 November 2024; Dutch Advisory Committee on Public International Law, [Confiscation of foreign state property: Advisory Opinion no. 48](#), at the request of the Dutch Ministry of Foreign Affairs, 20 December 2024; P. Zelikow, [A Fresh Look at the Russian Assets: A Proposal for International Resolution of Sanctioned Accounts](#), *Hoover Institution*, 09 January 2025; A. Moiseienko, [Legal: The Freezing of the Russian Central Bank's Assets](#), *European Journal of International Law*, Vol 34, No 4, 2023, pp. 1007-1019; O. A. Hathaway, et al., [War Reparations: The Case for Countermeasures](#), *Stanford Law Review*, Vol 76, 2024, pp. 971-1050.

This section presents the main legal arguments relating to immunities and countermeasures, adopting a nuanced approach to this question based on the analysis of primary, secondary and procedural rules of international law.

Adoption of sanctions concerning state assets is not uncommon in international law. For example, in 2011, the UNSC froze assets of the Bank of Libya¹⁷², while the EU adopted sanctions freezing the assets of the Syrian¹⁷³ and Iranian¹⁷⁴ central banks. Similar sanctions were also adopted by the USA¹⁷⁵, Australia¹⁷⁶ and Canada¹⁷⁷, along with other international organisations, such as the Arab League, in relation to Syria¹⁷⁸, as well as the Economic Community of West African States in relation to Mali¹⁷⁹ and Niger¹⁸⁰. Regarding Iran's nuclear programme, the USA adopted sanctions against the Central Bank of Iran¹⁸¹ and even went one step further by allowing the confiscation of Iranian assets, including those of the Central Bank of Iran, to satisfy American court judgements awarded to private plaintiffs in lawsuits against Iran¹⁸².

¹⁷² Para 20, Annex II, UNSC, [Resolution 1973 Adopted by the Security Council at its 6498th meeting](#), S/RES/1973, 17 March 2011.

¹⁷³ Council, [Regulation \(EU\) No 168/2012 amending Regulation \(EU\) No 36/2012 concerning restrictive measures in view of the situation in Syria](#), *Official Journal of the EU*, L 54/1, 28 February 2012; Council, [Decision 2012/122/CFSP amending Decision 2011/782/CFSP concerning restrictive measures against Syria](#), *Official Journal of the European Union*, L 54/14, 28 February 2012.

¹⁷⁴ See e.g., Council, [Regulation \(EU\) No 168/2012 amending Regulation \(EU\) No 36/2012 concerning restrictive measures in view of the situation in Syria](#), *Official Journal of the EU*, L 54/1, 28 February 2012; Council, [Decision 2012/35/CFSP amending Decision 2010/413/CFSP concerning restrictive measures against Iran](#), *Official Journal of the EU*, L 19/22, 24 January 2012.

¹⁷⁵ In relation to the central banks of Iran, Libya, Panama and Iraq, Syria, North Korea, Venezuela and Afghanistan: Office of Foreign Assets Control, [Executive Order No 12170 Blocking Iranian Government Property](#), 44 FR 65729 14 November 1979; Office of the Federal Register, [Executive Order No 12544 Blocking Libyan Government property in the United States or held by US persons](#), 51 FR 1235, 8 January 1986; Office of the Federal Register, [Executive Order No 12635 Prohibiting certain transactions with respect to Panama](#), 53 FR 12134, 12 April 1988; The American Presidency Project, [Executive Order No 12724 Blocking Iraqi Government Property and Prohibiting Transactions with Iraq](#), 55 FR 33089, 9 August 1990; US Department of the Treasury, ['Treasury Sanctions Banks and Representatives Linked to North Korean Financial Networks'](#), Press release, 26 September 2017. US Department of the Treasury, ['Treasury Sanctions Central Bank of Venezuela and Director of the Central Bank of Venezuela'](#), 17 April 2019. The list is available at Office of Foreign Assets Control Sanctions List Service, [Data Center – SDN List](#), webpage, nd. Entries that have featured on the list in recent years, or that continue to feature on the list include e.g., Syrian President Bashar al-Assad, Belarusian President Aleksandr Lukashenka, Zimbabwean President Robert Mugabe (who stepped down in 2017), North Korean leader Kim Jong-Un, and the Central Bank of Iran.

¹⁷⁶ List available at Australian Government, ['Australia and sanctions'](#), webpage, nd.

¹⁷⁷ See the Schedules to the Regulations adopted on the basis of the Special Economic Measures Act, available at Canada Justice Laws Website, ['Special Economic Measures Act'](#), webpage, nd.

¹⁷⁸ Al Jazeera, ['Arab League Approves Syria Sanctions'](#), 28 November 2011.

¹⁷⁹ The Economic Community Of West African States, [Final Communiqué: 4th Extraordinary Summit of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali](#), 09 January 2022.

¹⁸⁰ Nigeria State House, ['ECOWAS Imposes Sanctions on Niger Junta, Calls for Immediate Release, Reinstatement of President Bazoum'](#), Press release, 30 July 2023.

¹⁸¹ Office of the Federal Register, [Executive Order No 13599 Blocking Property of the Government of Iran and Iranian Financial Institutions](#), 77 FR 6115, 5 February 2012.

¹⁸² 126 Stat. 1214 and 126 Stat. 1258–1259, United States Congress, [Public Law No 112-158: Iran Threat Reduction and Syria Human Rights Act of 2012](#), 10 August 2012; see also D. Franchini, ['When finance becomes a weapon: the challenge of central bank sanctions under International Law'](#), *Journal of International Trade Law and Policy*, Vol 24, No 1, 2025, p. 33.

International legal analysis of the possible confiscation of state property by way of adopting sanctions gained impetus with Russia's aggression against Ukraine in 2022¹⁸³ and subsequent immobilisation of CBR assets¹⁸⁴. The latter is unable to access its assets held in central and commercial banks located in the G7 States¹⁸⁵, most notably, in the Belgium-based Euroclear. The remaining funds are deposited in France, Switzerland, Luxembourg, the United Kingdom (UK), Canada, Japan, the USA and other countries¹⁸⁶.

4.3.1 Immunities and the assets of the Central Bank of Russia (CBR)

The state immunity regime¹⁸⁷ is a corollary to the principle of sovereign equality of states¹⁸⁸, encapsulated in the maxim *par in parem non habet imperium*¹⁸⁹, which is one of the fundamental principles of international law. According to the rules on jurisdictional immunity, a state cannot be subjected to the jurisdiction of foreign national courts or international courts and tribunals without its express consent¹⁹⁰. Moreover, sovereign immunity from execution (enforcement immunity) precludes authorities of one state or an international organisation (such as the EU) from taking measures of constraint against the property of another state based on court decisions, arbitral awards or similar instruments without consent of the state concerned¹⁹¹ to satisfy debts of that state to third parties. Rules on immunities are encapsulated in the UN Convention on Jurisdictional Immunities of States and Their Property (2004)¹⁹², which is based on a preceding work from the International Law Commission (ILC) 'Draft Articles on Jurisdictional Immunities of States and Their

¹⁸³ UNGA, [Resolution on Aggression against Ukraine](#), A/RES/ES-11/1, 18 March 2022.

¹⁸⁴ Decision 2022/335, prohibiting any transactions related to the 'management of reserves, as well as of assets of the Central Bank of Russia, including transactions with any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia' see Council, [Decision \(CFSP\) 2022/335 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L 57/4, 28 February 2022, p. 4.

¹⁸⁵ M. Bernstam, '[Central Bank Sanctions Strike at the Foundations of Russia's Economy](#)', *Financial Times*, 03 March 2022; R. van der Horst, '[Illegal, Unless: Freezing the Assets of Russia's Central Bank](#)', *European Journal of International Law*, 2023, p. 1022.

¹⁸⁶ I. Wiśniewska, '[The EU's decision to use the profits generated by frozen Russian assets](#)', *Centre for Eastern Studies*, 24 May 2024.

¹⁸⁷ It has to be acknowledged that regimes of state immunity and diplomatic law are two separate regimes, which however, may apply simultaneously on certain occasions. This means, for example, that diplomatic property, including banks accounts are protected by both state immunities and diplomatic law, which in practice means that diplomatic property enjoys quasi absolute protection against measures of constrains as virtually all activities of the mission fall under the sovereign, 'diplomatic' purpose covered by sovereign immunity. For the purposes of our discussion, the focus is, however, on the questions of immunities. See C. Ryngaert, '[Immunity from Execution: Diplomatic Property](#)' in T. Ruys, N. Angelet and L. Ferro (eds), *Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 289.

¹⁸⁸ S. Besson, '[Sovereignty](#)', *The Max Planck Encyclopedia of Public International Law*, 2011.

¹⁸⁹ J. D.M., Lew et al., [Comparative International Commercial Arbitration](#), Kluwer International Law, Alphen aan den Rijn, The Netherlands, 2003, p. 744.

¹⁹⁰ H. Fox and P. Webb, [The Law of State Immunity](#), Oxford University Press, Oxford, UK, 2013.

¹⁹¹ A. Ugale and N. Kondrashov, '[Sovereign Immunity from Execution \(in Enforcement\)](#)', *Jus Mundi*, n.d.

¹⁹² UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004; Supra note 117, H. Fox and P. Webb, [The Law of State Immunity](#), Oxford University Press, Oxford, UK, 2013, pp. 291-292; R. Pavoni, '[The Myth of the Customary Nature of the United Nations Convention on State Immunity: Does the End Justify the Means?](#)', in A. van Aaken and I. Motoc (eds), *The European Convention on Human Rights and General International Law*, Oxford University Press, Oxford, UK, 2018, pp. 264-284.

Property¹⁹³ from 1991. The convention is not yet in force¹⁹⁴, although it does reflect customary international law¹⁹⁵. The law on immunities of states, therefore, forms part of customary international law, which applies to international organisations, such as the EU, in their external relations¹⁹⁶. The law on immunities is, though, constantly being developed in case law, through ICJ judgments¹⁹⁷, domestic legislation and domestic court judgments¹⁹⁸.

The law on state immunity is generally based on a distinction between acts performed in the exercise of sovereign authority (*actae iure imperii*) and acts performed in the course of commercial or private dealings (*actae iure gestionis*), whereby assets of a foreign state used for official purposes are covered by immunity against execution or measures of constraint¹⁹⁹. It is generally acknowledged that immunity from execution covers central bank accounts²⁰⁰.

Despite the commercial activity exception, the predominant approach in international practice is to grant central bank assets the immunity from execution in all circumstances, without the need to inquire into how they are being used²⁰¹.

In other words, there exists robust immunity protection for central bank assets under customary international law²⁰². The scope of this immunity may vary depending on the relationship between

¹⁹³ UN, [Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

¹⁹⁴ UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004.

¹⁹⁵ Para 66, ICJ, [Jurisdictional Immunities of the State \(Germany v. Italy: Greece intervening\)](#), 03 February 2012.

¹⁹⁶ Paras 54-58, ICJ, [Jurisdictional Immunities of the State \(Germany v. Italy: Greece intervening\)](#), 03 February 2012; Para 94, ICJ, [Immunities and Criminal Proceedings \(Equatorial Guinea v France\)](#), 06 June 2018.

¹⁹⁷ ICJ cases: immunity issues have of course been raised in a number of recent and pending cases before the ICJ (See e.g., ICJ, [Immunities and Criminal Proceedings \(Equatorial Guinea v France\)](#), 06 June 2018 (pending); ICJ, [Jurisdictional Immunities of the State \(Germany v. Italy: Greece intervening\)](#), 03 February 2012 (concluded in 2012); ICJ, [Certain Iranian Assets case \(Islamic Republic of Iran v United States of America\)](#), 30 March 2023; ICJ, [Questions relating to the Seizure and Detention of Certain Documents and Data \(Timor-Leste v Australia\)](#), 11 June 2015; yet none of these cases relate(d) directly to the imposition of targeted (financial) sanctions by the executive organs of a State against foreign natural or legal persons. See: T. Ruys, N. Angelet and L. Ferro (eds), [The Cambridge Handbook of Immunities and International Law](#), Cambridge University Press, Cambridge, UK, 2019, p. 5.

¹⁹⁸ H. Fox and P. Webb, [The Law of State Immunity](#), Oxford University Press, Oxford, UK, 2013.

¹⁹⁹ S. Besson, 'Sovereignty', [The Max Planck Encyclopedia of Public International Law](#), 2011.

²⁰⁰ Art 21(1)(c), UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December; M. Waibel, [Sovereign Defaults Before International Courts and Tribunals](#), Oxford University Press, Oxford, UK, 2011, pp. 123–129. A. Moiseienko, [Seizing Foreign Central Bank Assets: A Lawful Response to Aggression?](#), *Social Science Research Network*, 2024, p. 3; I. Brunk, 'Central Bank Immunity, Sanctions, and Sovereign Wealth Funds', *The George Washington Law Review*, Vol 91, No 6, 2023, pp. 1647–1648; See also D. Gaukrodger, [Foreign State Immunity and Foreign Government Controlled Investors](#), *OECD Working Papers on International Investment*, 2010, pp. 24–27.

²⁰¹ 'Customary international law is best understood as also requiring an additional level of protection from measures of execution: foreign currency reserves held by a foreign central bank are entitled to absolute protection, absent waiver' see I. Wuerth, 'Immunity from Execution of Central Bank Assets' in T. Ruys, N. Angelet and L. Ferro (eds), [The Cambridge Handbook of Immunities and International Law](#), Cambridge University Press, Cambridge, UK, 2019, pp. 266–284; See also Art 21(1)(c), UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004.

²⁰² I. Wuerth, 'Immunity from Execution of Central Bank Assets' in T. Ruys, N. Angelet and L. Ferro (eds), [The Cambridge Handbook of Immunities and International Law](#), Cambridge University Press, Cambridge, UK, 2019, pp. 266–284; Para 67, P.-T. Stoll, [State Immunity](#), *Max Planck Encyclopedia of Public International Law*, 2011; Article 21(1)(c) specifically reiterates that property of the Central Bank or other monetary authority of the State falls in the category of State property that shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes. See: Art 21(1)(c), UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004.

the state and the Central Bank²⁰³, but it is generally perceived as the exercise of any state's sovereign authority for a non-commercial purpose²⁰⁴. On the other hand, sovereign wealth funds, which are portfolio investments intended to manage and invest revenues, are not protected by immunities in cases where they engage in commercial activities.²⁰⁵

4.3.2 Application of immunities to executive actions, such as sanctions

Central bank assets are generally covered by the specific regime of state immunity. However, whether a regime is confined to judicial processes or if it also covers non-judicial, administrative and executive actions, such as sanctions, is not entirely settled in doctrine and practice. For example, the UN Convention seems to cover only the law of immunities to judicial proceedings²⁰⁶, whilst the European Convention on State Immunity consistently refers to 'immunity from the jurisdiction of a court of another Contracting State'²⁰⁷. The UN Convention, though, also includes 'measures of constraint' against the property of a state in the pre-judgement and post-judgement processes²⁰⁸. However, in its commentary to Article 2 of the Draft Articles on Jurisdictional Immunities of States and Their Property, the ILC stipulated that the '[s]cope of judicial functions...should be understood to cover such functions whether exercised by courts or by administrative organs'²⁰⁹ as well as 'quasi-judicial' enforcement measures adopted by administrative organs of a particular State²¹⁰. Indeed, in some countries, the executive branch

²⁰³ I. Wuerth, '[Immunity from Execution of Central Bank Assets](#)' in T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 279.

²⁰⁴ J.-M. Thouvenin and V. Grandaubert, '[The Material Scope of State Immunity from Execution](#)', T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 253.

²⁰⁵ Art 15, UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004.

²⁰⁶ According to Article 1, the convention 'applies to the immunity of a State and its property from the jurisdiction of the courts of another State' see Art 1, UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004; 'A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention', Art 5, UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004.

²⁰⁷ See e.g., Arts 1-15, CoE, [European Convention on State Immunity](#), *European Treaty Series No 74*, 1972; T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 7.

²⁰⁸ Arts 18 and 19, UN, [Convention on Jurisdictional Immunities of States and Their Property](#), 16 December 2004.

²⁰⁹ 'The scope of judicial functions, however, should be understood to cover such functions whether exercised by courts or by administrative organs. Judicial functions may be exercised in connection with a legal proceeding at different stages, prior to the institution or during the development of a legal proceeding, or at the final stage of enforcement of judgements. Such judicial functions may include adjudication of litigation or dispute settlement, determination of questions of law and of fact, order of interim and enforcement measures at all stages of legal proceedings and such other administrative and executive functions as are normally exercised by, or under, the judicial authorities of a State in connection with, in the course of, or pursuant to, a legal proceeding', see: Commentary to Art 2, Para 3, UN, '[Draft Articles on Jurisdictional Immunities of States and Their Property](#)' in *The Yearbook of the International Law Commission*, Vol 2, Part 2, A/46/10, 1991, p. 14.

²¹⁰ 'It should be noted also that this definition may, under different constitutional and legal systems, cover the exercise of the power to order or adopt enforcement measures (sometimes called "quasi-judicial functions") by specific administrative organs of the State' see: Commentary to Art 2, Para 4, UN, '[Draft Articles on Jurisdictional Immunities of States and Their Property](#)' in *The Yearbook of the International Law Commission*, Vol 2, Part 2, A/46/10, 1991, p. 14.

retains a significant role in overseeing or even authorising measures of constraint against foreign states²¹¹.

The Commentary to the ILC's 1991 Draft articles on Jurisdictional Immunities of States and their Property, which paved the way for the UN Convention, clarifies that the term 'measures of constraint' was chosen deliberately as a 'generic' term, rather than 'a technical one in use in any particular law': 'Since measures of constraint vary considerably in the practice of States, it would be difficult, if not impossible, to find a term which covers each and every possible method or measure of constraint in all legal systems. Suffice it, therefore, to mention by way of example the more notable and readily understood measures, such as attachment, arrest and execution'²¹². Of key significance is the measure's 'constraining' nature. It seems undisputed that the constraining nature is indeed the *raison d'être* of financial sanctions, even though they are in principle meant to be *temporary*²¹³. This, *a fortiori*, also confirms the constraining nature of sanctions in the form of asset confiscation.

However, in doctrine, two strands of arguments relating to this question can be discerned:

- Some are of the view that sovereign immunity should be limited to judicial measures and does not extend to administrative or executive measures such as sanctions. For this group of scholars, the UN convention's purpose is to codify the rules of foreign sovereign immunity applicable in national courts and not to interfere with state property in the international legal order²¹⁴. The requirement of a nexus with a 'judicial proceeding' or 'court' has led scholars such as Tom Ruys and Ingrid Wuerth to conclude that sanctions fall outside the state immunity law's scope²¹⁵. Ruys, for example, acknowledges that freezing assets amounts to 'measures of constraint' but does not amount at the same time to judicial measures, given that sanctions are not connected with judicial proceedings. Similarly, Wuerth concludes that '[f]oreign sovereign immunity simply does not apply' because it neither involves a court nor any form of enforcement or execution of a judgment²¹⁶. This view seems to suggest that, while actions of executive organs may fall under the UN Convention's scope, there must still be a nexus with a 'judicial proceeding', which is not the case with sanctions;
- Others have pointed to a paradox whereby, under the previously mentioned reasoning, the central bank assets would be protected from judicial measures but would be at the mercy of administrative or executive measures. These scholars contend that if exercising

²¹¹ Yang mentions Greece and Italy see X. Yang, [State Immunity in International Law](#), Cambridge University Press, Cambridge, UK, 2012, p. 404.

²¹² Commentary to Art 17, Para 2, UN, '[Draft Articles on Jurisdictional Immunities of States and Their Property](#)' in *The Yearbook of the International Law Commission*, Vol 2, Part 2, A/46/10, 1991, pp. 55-56.

²¹³ T. Ruys, '[Immunity, Inviolability and Countermeasures – A Closer Look at Non-UN Targeted Sanctions](#)' in T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 676.

²¹⁴ P. Tzeng, '[The State's Right to Property Under International Law](#)', *The Yale Law Journal*, Vol 125, No 6, 2016, p. 1809.

²¹⁵ T. Ruys, '[Immunity, Inviolability and Countermeasures – A Closer Look at Non-UN Targeted Sanctions](#)' in T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 672, *supra* note 15; I. Wuerth, '[Does Foreign Sovereign Immunity Apply to Sanctions on Central Banks?](#)', *Lawfare Blog*, 07 March 2022.

²¹⁶ I. Wuerth, '[Does Foreign Sovereign Immunity Apply to Sanctions on Central Banks?](#)', *Lawfare Blog*, 07 March 2022.

enforcement jurisdiction over another state's property is unlawful, it should not matter whether the courts ratify such an exercise of jurisdiction or it is brought about by the executive²¹⁷. 'Judicial-like' category of measures has constraining power and would seem to encroach on the foreign State's sovereignty.²¹⁸ Thouvenin and Grandaubert argue that immunities in non-judicial processes are not governed by the UN Convention (which, in any case, is not yet in force), but rather by customary international law²¹⁹. Such a broad understanding of states' immunities has traditionally been confirmed by French doctrine²²⁰.

Judicial-like measures

Confiscation of property through executive sanctions would seem to fall under the 'judicial-like' category of measures, which definitely have constraining power and would seem to encroach on the foreign State's sovereignty. Indeed, because judicial-like measures such as confiscation hinder the foreign State's management of its property, this should thus be covered by immunities under customary international law. In this respect, just as immunities preclude the continuation of judicial procedures, they also preclude other administrative and executive 'judicial-like' procedures against Central bank assets.

4.3.3 Third-party countermeasures

The most discussed argument enabling the confiscation of principal CBR assets is based on the *erga omnes* nature of prohibiting aggression in international law, which gives the non-directly injured subjects (such as the EU), entitlement under law to adopt countermeasures against the violating state (Russia) to achieve cessation of the internationally recognised wrongful act and secure reparations in the interest of the injured state (Ukraine)²²¹ (so-called third-party countermeasures). There remains, though, an unresolved controversy as to whether:

- Third-party countermeasures are legal under international law;
- The law of countermeasures, as a circumstance precluding wrongfulness, can be applied to justify the violation of immunities, with which the assets of central banks are protected.

²¹⁷ J.-M. Thouvenin and V. Grandaubert, '[The Material Scope of State Immunity from Execution](#)', T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, pp. 245-265.

²¹⁸ J.-M. Thouvenin and V. Grandaubert, '[The Material Scope of State Immunity from Execution](#)', T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 247; Supra note 76, at Para 5.41, ICJ, [Memorial of Timor-Leste](#), Written pleading 18698, 28 April 2014.

²¹⁹ J.-M. Thouvenin and V. Grandaubert, '[The Material Scope of State Immunity from Execution](#)', 2019, p. 250.

²²⁰ See e.g., D. Alland, *Manuel de Droit International Public*, Presses Universitaires de France, Paris, France, 2014, p. 51; F. Poirat, '[Les Immunités des Sujets du Droit International](#)' In: J. Verhoeven (ed), *Droit International des Immunités: Contestation ou Consolidation*, 2004, p. 16, note 30. For more references see: J.-M. Thouvenin and V. Grandaubert, '[The Material Scope of State Immunity from Execution](#)', T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 251, note 39.

²²¹ Art 48 and 54, UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

Countermeasures are governed by ARSIWA²²², the Draft Articles on Responsibility of International Organisations²²³ and customary international law²²⁴. This is one circumstance which precludes wrongfulness, thereby giving a state or an international organisation injured by a wrongful act of the responsible state a right to take measures that would otherwise be contrary to international law. Apart from these 'classical' countermeasures, the law of responsibility also allows for countermeasures by not-directly affected states or international organisations (such as the EU)²²⁵ where there are breaches of *erga omnes* obligations²²⁶, which are relevant for this paper. According to the ICJ, these are obligations 'owed towards the international community as a whole' and due to their fundamental character, they are 'the concern of all States', hence 'all States can be held to have a legal interest in their protection'²²⁷. This means that in cases of violations of *erga omnes* obligations (such as the prohibition of aggression²²⁸), not only the injured state (Ukraine) but also other actors (such as the EU) are entitled to adopt countermeasures against the wrongdoing state (in our case, Russia). The ILC left the legality of adopting such measures to be determined through the further development of international law²²⁹; however, some authors remain sceptical about the legality of such measures. As argued by Paddeu, it is questionable whether the criteria for the emergence of a customary international law rule on third-party countermeasures are met²³⁰, particularly the subjective element of *opinio juris*²³¹. However, the view that third-party

²²² UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), 2001.

²²³ UN, [Articles on the Responsibility of International Organisations \(ARIO\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2011.

²²⁴ UN, [Responsabilité de l'Allemagne à raison des dommages causés dans les colonies portugaises du sud de l'Afrique](#), *Reports of International Arbitral Awards*, 1928, p. 1012; ICJ, [Case Concerning the Gabčíkovo-Nagymaros Project \(Hungary v Slovakia\)](#), 25 September 1997, p. 7; UN, [Air Services Agreement of 27 March 1946 between the United States of America and France](#), *Reports of International Arbitral Awards*, Vol 18, 1978, pp. 417-493.

²²⁵ Art 54, UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

²²⁶ Para 33, ICJ, [Case Concerning the Barcelona Traction, Light and Power Company, Limited \(Belgium v Spain\)](#), 05 February 1970; ICJ, [Case concerning East Timor \(Portugal v Australia\)](#), 30 June 1995, p. 102; UN, [Report of the International Law Commission on the work of its fifty-third session](#), A/56/10, 2001.

²²⁷ Paras 33-34, ICJ, [Case Concerning the Barcelona Traction, Light and Power Company, Limited \(Belgium v Spain\)](#), 05 February 1970.

²²⁸ Other examples include genocide, and principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination, self-determination of peoples and some obligations of international humanitarian law.

²²⁹ Commentary to Chapter 2(139), UN, [Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

²³⁰ Chapter B. Collaboration in the Taking of Countermeasures in M. Jackson and F. I. Paddeu, ['The Countermeasures of Others: When Can States Collaborate in the Taking of Countermeasures?'](#), *American Journal of International Law*, Vol 118, No 2, 2024, pp. 231-274; F. I. Paddeu, [Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures](#), *Just Security*, 01 March 2024; See also A. Hofer, ['Third-Party Countermeasures: Making Custom Out of Ambiguous Practice?'](#), *International & Comparative Law Quarterly*, Vol 74, No 2, 2025, pp. 287-317. See also position of France and Canada on the legality of third-party countermeasures in cyberspace: Cyber Law Toolkit, ['Countermeasures'](#), webpage, nd.

²³¹ According to Article 38(1)(b) of the Statute of the ICJ, customary international law is constituted by 'international custom, as evidence of a general practice accepted as law' see Art 38(1)(b), ICJ, [Statute of the International Court of Justice](#), 26 June 1945. This formulation establishes the two classical elements of custom: state practice (*usus*), the objective element, and *opinio juris*, the subjective element. State practice requires that the conduct of States be

countermeasures can be lawfully taken has gained traction in modern international law. This is due to increased practice in this regard, which is supported by the literature²³² and important international institutions, such as the *Institut de droit international*²³³.

The EU, in its capacity as a reactor to breaches of international law²³⁴, is under this understanding entitled to adopt countermeasures against third states in response to violations of obligations *erga omnes*²³⁵, including aggression. A typical example of such countermeasures (also according to the ILC²³⁶) is sanctions in the form of asset freezing and immobilisation of central bank assets, whereby the EU can justify its violation of immunity laws, despite their protecting the central bank's assets.

The notion of *erga omnes* obligations under international law is central to the secondary international rules on countermeasures. Even though the EU, as explained above, enjoys well-established internal competence for the adoption of policy tools, such as restrictive measures (sanctions) (see above section 2)²³⁷ that affect third states, on the basis of the principle of *pacta tertiis nec nocent nec prosunt*, whereby 'a treaty does not create either obligations or rights for a third State without its consent'²³⁸, non-Member States are not internationally bound by the internal rules of the organisation. In contractual terms, organisation rules are therefore binding on Member States but cannot create obligations for third states (often referred to in law as *res inter alios acta*). While the relevant provisions of EU primary law in this case provide the legal basis for the justification of the adoption of measures under internal EU law, this does not mean that the EU can justify such measures in the international sphere on its internal (primary) law. Rather, such actions

sufficiently widespread, representative, and consistent, while *opinio juris* refers to the conviction that such practice is carried out of a sense of legal obligation, rather than mere courtesy, habit, or political expediency. See Para 77, ICJ, [North Sea Continental Shelf Cases](#), Report of Judgement, 1969, p. 44.

²³² M. Dawidowicz, [Third-Party Countermeasures in International Law](#), Cambridge University Press, Cambridge, UK, 2017; M. Dawidowicz, '[Third-party countermeasures: A progressive development of international law?](#)', *Questions of International Law*, Vol 29, 2016, pp. 3-15; C. J. Tams, [Enforcing Obligations Erga Omnes in International Law](#), Cambridge University Press, Cambridge, UK, 2005; F. Dopagne, [Les contre-mesures des organisations internationales](#), Anthemis, Brussels, Belgium, 2010; F. Dopagne, 'Sanctions and Countermeasures by international organisations' in R. Collins and N. D. White (eds), [International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order](#), Routledge, New York, USA, 2011; J. d'Aspremont, 'The Multifaceted Concept of the Autonomy of International Organizations and International Legal Discourse' R. Collins and N. D. White (eds), [International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order](#), Routledge, New York, USA, 2011; E. Kastelli Proukaki, [The Problem of Enforcement in International Law: Countermeasures, the Non-Injured State and the Idea of International Community](#), Routledge, New York, USA, 2010. For the contrary view see J. Crawford, [State Responsibility: The General Part](#), Cambridge University Press, Cambridge, UK, 2013.

²³³ Institut de droit international, '[Krakow Resolution 2005](#)', webpage, nd.

²³⁴ ICJ, [Reparation for injuries suffered in the service of the United Nations](#), Advisory Opinion, 1949, pp. 184-185.

²³⁵ See Art 49 and 57, UN, [Articles on the Responsibility of International Organisations \(ARIO\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2011; Art 48 and 54 UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

²³⁶ Para 81, State responsibility: 2645th meeting, UN, *Yearbook of the International Law Commission*, Vol 1, 2000, p. 266.

²³⁷ Art 29, EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012; Art 215, EU, [Consolidated Version of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, C 326/47, 26 October 2012.

²³⁸ Art 34, UN, [Vienna Convention on the Law of Treaties](#), done on 23 May 1969, entered into force on 27 January 1980, UN Treaty Series Vol 1155, 2005.

will have to be justified internationally²³⁹, in particular under the secondary rules on countermeasures²⁴⁰. This approach was adopted in the *RE France v Council* case, whereby the CJEU clarified that by adopting sanctions against Russia, the EU responded to 'a violation of obligations imposed *erga omnes* by international law to counter, using all the measures at its disposal that did not involve the use of force, the military aggression against Ukraine by the Russian Federation'²⁴¹.

In relation to the EU's sanctioning practice, the CJEU in the *Rosneft* case likewise confirmed that sanctions adopted by the EU in its external relations have to be grounded in international law²⁴². Quite controversially, the EU General Court, though, in the *Venezuela v Council* case, when confronted with the legality of EU sanctions against Venezuela under international law, seemed to denounce the application of the 'countermeasures' rationale to its restrictive measures²⁴³. Rather, the Court perceived restrictive measures adopted against Venezuela²⁴⁴ as 'independent' from international law and based on Articles 3(5) and 21 TEU. It thereby supported the EU's 'autonomous external sanctioning power'²⁴⁵ and dismissed the action of annulment brought by Venezuela, which argued that the EU's sanctions against this country amounted to unlawful countermeasures. However, upon careful reading of the judgment, one may note that the Court, at the same time, nevertheless implicitly confirmed the embeddedness of restrictive measures in international law by stating that these measures are intended to ensure the fulfilment of *erga omnes (partes)*

²³⁹ M. T. Veber and A. Medževac, '[R. \(on the application of PJSC Rosneft Oil Company \(formerly OJSC Rosneft Oil Company\)\) v Her Majesty's Treasury and ors, Judgment, reference for a preliminary ruling](#)', OXIO 784, 2024.

²⁴⁰ M. T. Veber, 'The Notion of Regionalism in the Context of Sanctions Adopted by Regional International Organizations in the Defence of the General Interest' in E. Kassoti, et al. (eds), *The European Union and Regionalism*, Brill 2025 (forthcoming); E. Kassoti, '[Beyond Collective Countermeasures and Towards an Autonomous External Sanctioning Power? The General Court's Judgment in Case T-65/18 RENV, Venezuela v Council](#)', European Papers, Vol 9, No 1, 2024, p. 249. See, however, M. Gestri, '[Sanctions, Collective Countermeasures and the EU](#)', *The Italian Yearbook of International Law Online*, Vol 32, No 1, 2023, pp. 67-92, expressing doubt as to the legal basis of 'collective countermeasures' to justify the adoption of sanctions by the EU against third states.

²⁴¹ Para 86, CJEU, [Case T-125/22: RT France v Council of the European Union](#), ECLI:EU:T:2022:483, 27 July 2022.

²⁴² CJEU, [Case C-72/15: PJSC Rosneft Oil Company v Her Majesty's Treasury and Others](#), ECLI:EU:C:2017:236, 2017; in this case, the Court confirmed that sanctions of the EU against Russian entities were justified on the basis of Article 99(1)(d) of the EU-Russia Partnership and Cooperation Agreement. For more on this, see M. T. Veber and A. Medževac, '[R. \(on the application of PJSC Rosneft Oil Company \(formerly OJSC Rosneft Oil Company\)\) v Her Majesty's Treasury and ors, Judgment, reference for a preliminary ruling](#)', OXIO 784, 2024.

²⁴³ Quite controversially, it stipulated that conditions for the adoption of countermeasures were not met. Para 83-92, CJEU, [Case T-65/18: République bolivarienne du Venezuela v Council of the European Union](#), ECLI:EU:T:2023:529, 13 September 2023. For a critical analysis see E. Kassoti, '[Beyond Collective Countermeasures and Towards an Autonomous External Sanctioning Power? The General Court's Judgment in Case T-65/18 RENV, Venezuela v Council](#)', European Papers, Vol 9, No 1, 2024, p. 247 and pp. 253-259.

²⁴⁴ Arts 2, 3, 6 and 7, Council, [Regulation \(EU\) 2017/2063 of concerning restrictive measures in view of the situation in Venezuela](#), *Official Journal of the EU*, L 295/21, 14 November 2017; Council, [Implementing Regulation \(EU\) 2018/1653 implementing Regulation \(EU\) 2017/2063 concerning restrictive measures in view of the situation in Venezuela](#), *Official Journal of the EU*, L 276/1, 07 November 2018; Council, [Decision \(CFSP\) 2018/1656 amending Decision \(CFSP\) 2017/2074 concerning restrictive measures in view of the situation in Venezuela](#), *Official Journal of the EU*, L 276/10, 07 November 2018.

²⁴⁵ E. Kassoti, '[Beyond Collective Countermeasures and Towards an Autonomous External Sanctioning Power? The General Court's Judgment in Case T-65/18 RENV, Venezuela v Council](#)', European Papers, Vol 9, No 1, 2024, pp. 247-259.

obligations²⁴⁶. Indeed, according to the General Court, citing relevant case law of the ICJ, these obligations serve the common legal interest of the international community²⁴⁷.

However, in relation to countermeasures and the confiscation of property, there remain controversies as to: (1) the lack of clarity on what is the relationship between the law of immunities (as procedural rules) and law of countermeasures (as secondary rules of international law); and (2) whether confiscating or management of property can be justified as a lawful third-party countermeasure (in particular, whether all criteria for the adoption on countermeasures are met including the inducement purpose and reversibility).

4.3.4 Relationship between countermeasures and immunities

The relationship between countermeasures and immunities, in essence, pertains to the interaction between secondary (countermeasures) and procedural (immunities) rules of international law. In particular, can countermeasures, as secondary rules of international law, justify the violation of procedural rules on immunities?

Discussions on the applicability of procedural rules on immunities are mostly based on the famous ICJ pronouncement in the *Jurisdictional Immunities of Germany* cases, whereby a distinction between primary rules (*jus cogens*) and procedural rules (immunities) was made and a subsequent conclusion reached that these two types of rules do not interact with each other²⁴⁸. Against this background, some scholars claim that the relationship between countermeasures as secondary rules and immunities as procedural rules should be perceived in a similar way. It is contended that because even though the *jus cogens* nature of the underlying primary rule (prohibition of aggression, torture and so on²⁴⁹) does not affect the application of immunities in cases concerning, for example, reparations for damages, neither can the rules on countermeasures override the rules on immunities²⁵⁰.

²⁴⁶ Para 113, CJEU, [Case T-65/18: République bolivarienne du Venezuela v Council of the European Union](#), ECLI:EU:T:2023:529, 13 September 2023.

²⁴⁷ Para 113, CJEU, [Case T-65/18: République bolivarienne du Venezuela v Council of the European Union](#), 13 September 2023.

²⁴⁸ There is no conflict between [*jus cogens*] rules and the rules on State immunity' because the latter 'are procedural in character and are confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State', not 'whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful'. See Para 93, ICJ, [Jurisdictional Immunities of the State \(Germany. v. Italy: Greece intervening\)](#), 03 February 2012.

²⁴⁹ Paras 61, 62 and 67, ECtHR, [Al-Adsani v the United Kingdom](#), Application no 35763/97, 21 November 2001; Para 40, P.-T. Stoll, [State Immunity](#), Max Planck Encyclopedia of Public International Law, 2011; G. Hafner and U. Köhler, '[The United Nations Convention on Jurisdictional Immunities of States and their Property](#)', *Netherlands Yearbook of International Law*, Vol 35, 2004, p. 32.

²⁵⁰ Ruys, for example, argues: the idea that immunities can be set aside by way of countermeasure in response to a prior unlawful act sits uneasily with the very essence of immunities as a procedural hurdle preventing domestic courts from evaluating the legality of the conduct of a foreign State (or its officials) in the first place. At the very least, this makes it extremely difficult to conceive of the lifting of immunity from *jurisdiction* as a form of countermeasure. It seems counter-intuitive that the court would, on the one hand, hold that State immunity must be maintained vis-à-vis a State that has committed gross human rights violations and even breaches of *jus cogens*, while simultaneously accepting that *any* internationally wrongful conduct can justify proportionate countermeasures in the form of a denial of immunity. See: T.

However, it could be argued that a distinction between primary, secondary and procedural rules is warranted, whereby the above-mentioned conclusion of the ICJ concerning the primary (*jus cogens*) and procedural (immunities) rules does not affect the relationship between secondary rules on countermeasures and the procedural rules on immunities.

There were expectations that the ICJ would clarify the question of immunities of central bank assets and, more generally, the legality of confiscation of such assets under international law in the *Certain Iranian Assets* case. The case concerned the USA's legislative, executive and judicial measures²⁵¹ enabling victims of Iran-sponsored terrorist attacks to obtain compensation from Iran before American courts and enabling successful litigants to enforce favourable awards against assets from Iran's central bank and other Iranian entities, including the Central Bank of the Islamic Republic of Iran (Bank Markazi). While in essence this dispute revolved around compatibility with international law of the 'terrorism exception' to state immunity and the question of Bank Markazi assets, the Court avoided giving answers to these questions. It confirmed that it had jurisdiction to decide on the possible violation of the 1955 Treaty of Amity, whereas the rules of immunity were part of customary international law and thus fell outside its jurisdiction. The Court thereby solely pronounced on the measures taken against Iranian entities that could be qualified as a 'company' under the 1955 Treaty (explicitly stating that the Bank Markazi could not be considered a company for the purposes of this treaty). The Court eventually ruled that a number of the USA's measures amounted to expropriation without compensation and were thus in violation of the bilateral Treaty of Amity. Hence, compensation was awarded to Iran.

In its case law, the ICJ confirmed that various types of procedural rules exist in international law. In particular, in its environmental law cases, the Court confirmed that states may be held responsible for failing to observe their procedural obligations under international law, such as the procedural obligation to carry out an environmental impact assessment²⁵². This triggers, in turn, the possibility to preclude the wrongfulness of such violations by relying on the secondary rules of international law. The ICJ confirmed this in the *Construction of a Road in Costa Rica along the San Juan River* case, whereby Costa Rica was held responsible for failing to fulfil its procedural obligations under the principle of preventing significant transboundary harm. In this case, Costa Rica pleaded to be exempt from such a violation under the national emergency exemption, which was not accepted by

Ruys, '[Immunity, Inviolability and Countermeasures - A Closer Look at Non-UN Targeted Sanctions](#)' in T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019.

²⁵¹ In 1996, the US adopted an amendment 10 to the Foreign Sovereign Immunities Act, commonly referred to as the 'terrorism exception' see United States Code, [28 U.S. Code § 1605 - General exceptions to the jurisdictional immunity of a foreign state](#), Section 1605A, 1996; Office of the Federal Register, [Executive Order No 13599 Blocking Property of the Government of Iran and Iranian Financial Institutions](#), 77 FR 6115, 5 February 2012; US Congress, [Iran Threat Reduction and Syria Human Rights Act of 2012](#), H.R.1905, Public Law 112-158, 10 August 2012.

²⁵² Paras 145, 158, 267 and 282, ICJ, [Case Concerning Pulp Mills on the River Uruguay \(Argentina v Uruguay\)](#), 20 April 2010; ICJ, [Certain Activities Carried Out by Nicaragua in the Border Area \(Costa Rica v Nicaragua and Construction of a Road in Costa Rica Along the San Juan River \(Nicaragua v Costa Rica\)\)](#), 16 December 2015, p. 705, 719 and 741.

the court. Moreover, whilst the Court pointed to the possibility of such an exemption under the (secondary rules) of international law²⁵³, it was not substantively addressed.

Some parallels can be drawn here with the laws on immunities, whereby state immunity is 'a procedural expression of a substantive principle of sovereignty'. As argued by Moser, 'there is no provision stating that countermeasures can only affect substantive norms'²⁵⁴. Against this background, countermeasures, as a circumstance precluding wrongfulness, would seem to justify the violation of substantive rule on sovereignty as well as procedural aspects of this rule.

The relationship between secondary rules and immunities was addressed to some extent by the ICJ in the *Tehran hostages* case, whereby diplomatic law was (controversially) considered as a self-contained regime, thereby, in terms of responsibility, providing for its own exhaustive set of reactions to illicit activities by members of diplomatic and consular missions, for instance by declaring such persons as *persona non grata*²⁵⁵. The Court in this case adopted a view that rules of diplomatic law are a self-contained regime, which does not allow for the adoption of countermeasures to justify the violation of a diplomatic law norm of the same kind²⁵⁶. Rather, diplomatic law provides its own measures, for example, by declaring a diplomat or consular officer to be *persona non grata*. According to the Court, infringement of diplomatic immunities, therefore, could not be remedied by infringement of the same rules²⁵⁷. This is to some extent reflected in Article 50 ARSIWA, which limits the adoption of countermeasures with those obligations under diplomatic and consular law, 'which are designed to guarantee the physical safety and inviolability (including the jurisdictional immunity) of diplomatic agents, archives and documents in all circumstances, including armed conflict'²⁵⁸. In other words, violations of these rules cannot be justified by way of countermeasures.

While some authors have adhered to this view²⁵⁹, this reasoning is, however, not accepted in doctrine, which supports the view that states may resort to unilateral enforcement mechanisms in response to violations of diplomatic law outside this regime, as long as they respect the inviolability

²⁵³ Para 158, ICJ, [Certain Activities Carried Out by Nicaragua in the Border Area \(Costa Rica v Nicaragua and Construction of a Road in Costa Rica Along the San Juan River \(Nicaragua v Costa Rica\)](#), 16 December 2015.

²⁵⁴ P.T. Moser, '[Non-Recognition of State Immunity as a Judicial Countermeasure to Jus Cogens Violations: The Human Rights Answer to the ICJ Decision on the Ferrini Case](#)', *Goettingen Journal of International Law*, Vol 4, No 3, 2012, pp. 831-832.

²⁵⁵ Para 83, ICJ, [Case Concerning the United States Diplomatic and Consular Staff in Tehran \(United States of America v Iran\)](#), 24 May 1980, p. 38; J. Pauwelyn, [Conflict of Norms in Public International Law](#), Cambridge University Press, Cambridge, UK, 2003, p. 36.

²⁵⁶ See ICJ, [Case Concerning the United States Diplomatic and Consular Staff in Tehran \(United States of America v Iran\)](#), 24 May 1980, p. 40.

²⁵⁷ For critical view on this see: B. Simma, '[Self-contained Regimes](#)', *Netherlands Yearbook of International Law*, Vol 16, 1985, pp. 120-121; K. Zemanek, '[The Unilateral Enforcement of International Obligations](#)', Vol 47, *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht*, 1987, p. 40.

²⁵⁸ Arts 22, 29, 44 and 45, UN, [Vienna Convention on Diplomatic Relations](#), done on 18 April 1961, entered into force on 25 April 1964, UN Treaty Series, Vol 500, 2005.

²⁵⁹ Ruys, for example, argues that there exists *opinio juris* on the part of States that perceived immunity rules as a closed system which did not lead to recourse to countermeasures. See: T. Ruys, '[Immunity, Inviolability and Countermeasures – A Closer Look at Non-UN Targeted Sanctions](#)' in T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, pp. 670, 707.

of diplomatic or consular agents, premises, archives and documents²⁶⁰. Moreover, the regime of diplomatic and consular immunities and privileges is typically differentiated from the regime of states' immunities. The latter is governed by a separate legal regime²⁶¹ to which the abovementioned limitations from ARSIWA do not apply and which generally does not include its own exhaustive set of reactions to illicit activities (as is the case with diplomatic law). The reasoning of the Court in the *Tehran hostages* case, therefore, is of limited relevance for this discussion.

Inducement Purpose, Temporality and Reversibility

A novel understanding of the relationship between procedural rules on immunities and secondary rules on countermeasures allows for a decision that countermeasures may be adopted to justify a violation of the immunities of the central bank assets. However, further criteria would have to be met for such justification.

Firstly, as has already been recognised by some scholars, it is questionable whether adopting countermeasures aimed at unilaterally securing reparations for previous wrongful acts is in line with the underlying rationale of countermeasures.²⁶² The aim and object of countermeasures is not to punish but rather 'induce' the responsible state to comply with its international obligations, including cessation of an international wrongful act and securing of reparations²⁶³. In this respect, countermeasures can be adopted to induce²⁶⁴ payment of reparations by the wrongdoing state, but it is less evident whether they can be adopted to secure those reparations unilaterally, namely by adopting 'measures that directly secure the fulfilment of its rights, even without the cooperation of the responsible State'²⁶⁵. As will be explained below, this consideration may be overcome: instead of confiscating the CBR assets, the EU is now proposing their management through a newly established EU Instrument and connecting this instrument with the international reparations mechanism, during which the specific value of reparations owed by Russia to Ukraine would be determined. In this case, this would be an executive action in which sanctions (countermeasures) would not unilaterally determine the scope of reparations but would merely secure the value as previously established by an international mechanism. The adoption of countermeasures to enforce

²⁶⁰ Art 50, UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), Yearbook of the International Law Commission, Vol 2, Part 2, 2001; B. Simma and D. Pulkowski, 'Of Planets and the Universe: Self-contained Regimes in International Law', *The European Journal of International Law*, Vol 17, No 3, 2006, pp. 512- 516; B. Simma and D. Pulkowski, 'Leges Speciales and Self-Contained Regimes' in J. Crawford, A. Pellet, D. Olleson and K. Parlett (eds) *The Law of International Responsibility*, Oxford Commentaries on International Law, Oxford Academic, Oxford, UK, 2010, pp. 150-151.

²⁶¹ See also T. Ruys, 'Immunity, Inviolability and Countermeasures - A Closer Look at Non-UN Targeted Sanctions' in T. Ruys, N. Angelet and L. Ferro (eds), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge, UK, 2019, p. 705.

²⁶² See e.g. O. A. Hathaway, et al., 'War Reparations: The Case for Countermeasures', *Stanford Law Review*, Vol 76, 2024, p. 1007; I. Wuerth, [Countermeasures and the Confiscation of Russian Central Bank Assets](#), *Lawfare*, 03 May 2023.

²⁶³ Art 49(1), UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), Yearbook of the International Law Commission, Vol 2, Part 2, 2001.

²⁶⁴ Para 87, ICJ, [Case Concerning the Gabčíkovo-Nagymaros Project \(Hungary v Slovakia\)](#), 25 September 1997.

²⁶⁵ F. I. Paddeu, [Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures](#), *Just Security*, 01 March 2024.

an award of compensation issued by an international court or tribunal or by an international reparations mechanism is considered lawful by some scholars (section 5.2.1).²⁶⁶

Secondly, the compatibility of confiscation with the criteria of temporality, reversibility²⁶⁷ and proportionality²⁶⁸ of countermeasures is questioned by some scholars²⁶⁹. According to ARSIWA, countermeasures are 'temporary in character and must be as far as possible reversible in their effects in terms of future legal relations between the two States'²⁷⁰. In this sense, a countermeasure adopted in the form of confiscating property would have to be reversed once the underlying reason for its adoption ceases (for instance, aggression). Here, the opinions of scholars are diverse and include arguments that confiscation of property may be considered a justified and reversible countermeasure because confiscated property may be returned²⁷¹ or arguments that such measures could be justified in cases of violations of the prohibition of aggression, which is of a *jus cogens* nature²⁷². Conversely, ILC Special Rapporteur Crawford noted that other scholars maintain that the confiscation of assets would amount to an irreversible measure²⁷³.

The establishment of a specific mechanism dedicated to the management and utilisation of the CBR assets for the purposes of reparations could mitigate some of these risks.

In essence, the proposed EU instrument (reparations loan) is temporary, being limited to a moment when EU sanctions concerning the immobilisation of CBR assets are lifted, namely, Russia ceases its aggression and pays reparations. In terms of reversibility, it gives Euroclear legal entitlement to a claim in the amount of cash balances transferred to the Instrument, serving as a guarantee that it

²⁶⁶ L.-A. Sicilianos, *Les réactions décentralisées à l'illicite : des contre-mesures à la légitime défense*, Librairie générale de droit et de jurisprudence, Paris, France, 1990, pp. 268-271.

²⁶⁷ Art 49(3) UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001.

²⁶⁸ Art 51, UN, [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001; Art 54, UN, [Articles on the Responsibility of International Organisations \(ARIO\)](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2011; UN, [Responsabilité de l'Allemagne à raison des dommages causés dans les colonies portugaises du sud de l'Afrique](#), *Reports of International Arbitral Awards*, 1928, p. 1028; Para 83, UN, [Air Services Agreement of 27 March 1946 between the United States of America and France](#), *Reports of International Arbitral Awards*, Vol 18, 1978; Paras 85 and 87, ICJ, [Case Concerning the Gabčíkovo-Nagymaros Project \(Hungary v Slovakia\)](#), 25 September 1997.

²⁶⁹ D. Franchini, ['When finance becomes a weapon: the challenge of central bank sanctions under International Law'](#), *Journal of International Trade Law and Policy*, Vol 24, No 1, 2025, p. 44; P. B. Stephan, ['Seizing Russian Assets'](#), *Capital Markets Law Journal*, Vol 17, 2022; S. R. Anderson and C. Keitner, [The Legal Challenges Presented by Seizing Frozen Russian Assets](#), *Lawfare*, 2022; I. Brunk, ['Central Bank Immunity, Sanctions, and Sovereign Wealth Funds'](#), *The George Washington Law Review*, Vol 91, No 6, 2023, pp. 1647-1648; M. Mills, et al., [How to Make Russia Pay to Rebuild Ukraine](#), *Just Security*, 20 February 2024; F. I. Paddeu, [Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures](#), *Just Security*, 01 March 2024; Intervention by Mr James Crawford (Special Rapporteur), 2646th meeting, UN [Yearbook of the International Law Commission](#), Vol 1, 2000, p. 267.

²⁷⁰ Commentary to Chapter 2(6), UN, [Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries](#), *Yearbook of the International Law Commission*, Vol 2, Part 2, 2001, p. 129.

²⁷¹ If compensation is provided through international mechanism see: Para 82, N. Gould-Davies, [On Proposed Countermeasures Against Russia to Compensate Injured States for Losses Caused by Russia's War of Aggression Against Ukraine](#), Research Paper, *International Institute for Strategic Studies*, 24 May 2024.

²⁷² A. Moiseienko, [Seizing Foreign Central Bank Assets: A Lawful Response to Aggression?](#), *Social Science Research Network*, 2024.

²⁷³ UN [Yearbook of the International Law Commission](#), Vol 1, 2000, p. 267.

will have the necessary cash to honour the claim that CBR will have against it at that time. Because this would be a temporary executive action allowing for reversibility, these criteria are more likely to be met.

It has to be stressed, however, that justifying the management of CBR assets on the countermeasure's rationale does entail the following risk:

- States and scholars have different views on the legality of countermeasures, whereby several views were expressed undermining the adoption of countermeasures in the context of CBR: (1) a view that third-party countermeasures are not legal under international law; (2) a view that the doctrine of countermeasures cannot be relied upon to justify breaches of immunity law;
- If a legal process were to be initiated to assess the legality of the countermeasures, it would not be clear whether the relevant judicial or arbitration body would consider the countermeasures to be temporary, reversible and in line with their inducement purpose;
- The adoption of countermeasures to justify the violation of sovereign immunity touches upon the fundamental principle of sovereign equality of states and could create a precedent for other cases;
- Even though central bank assets are not usually placed on a reciprocal basis (central banks of major currencies tend to hold larger amounts of money as foreign reserves) and are generally considered a legal regime separate from diplomatic and consular law, it must be acknowledged that laws on diplomatic and consular immunities (e.g. embassy assets) are traditionally reciprocal. Consequently, Russia and other states may be inclined to take similar executive measures against the EU and its Member States' diplomatic and consular premises and staff, or against their sovereign assets. This may undermine support of EU Member States for the measures taken against CBR assets.

These risks cannot be completely eliminated. It is likely that Russia will apply similar reciprocal measures against the EU and its Member States and could also start legal processes in which the legality of the EU's and Member States' actions and their potential responsibility would be determined (see section 6).

Justification for violations of CBR immunities

The EU could rely on the countermeasures rationale under international law to justify violations of CBR immunities, under the novel understanding between procedural and secondary rules of international law. The proposed management of the CBR assets under the EU instrument would be a temporary and reversible executive action connected with the international reparations mechanism. It is therefore more likely that the criteria of inducement, reversibility and temporality are met. Such argumentation does, however, involve important legal risks.

4.3.5 Self-defence

It has been argued by some scholars that the confiscation of state property protected by immunities could alternatively be justified under the rules on self-defence under international

law²⁷⁴. It has been pointed out that the EU could rely on collective self-defence, which allows third actors to adopt necessary and proportionate defensive measures²⁷⁵ against the aggressor state, if they are requested to do so by the victim of the armed attack. In this case, Ukraine did indeed call the EU for assistance, including by way of confiscating sovereign assets. However, the EU seems to refrain from relying on this 'war narrative' argument²⁷⁶ when adopting measures against Russia.

In addition, whether and to what extent the adoption of non-forcible measures can be justified under the realm of (collective) self-defence is an issue that has been subject to extensive discussions²⁷⁷. It is imperative to understand the twofold nature of self-defence as both primary and secondary rules of international law. This distinction, as introduced by Crawford and further elaborated in doctrine, establishes self-defence as a justification for the lawful use of force as a primary rule under Article 51 of the UN Charter and customary international law. In addition, as a secondary rule of international law, under Article 21 ARSIWA, self-defence is also a circumstance excluding wrongfulness, thereby acting as an excuse for possible ancillary (non-forcible) violations of international law that occur as a result of defensive measures taken under Article 51 of the UN Charter. In this respect, the application of Article 21 ARSIWA as a secondary rule is limited to exigencies of the specific state of affairs created by self-defence²⁷⁸.

Reliance by the EU on collective self-defence to justify the confiscation of Russian assets to secure reparation and rebuilding of Ukraine is unlikely to be justified as a (collective) self-defence for the following reasons:

- Only prior lawful exercise of self-defence under Article 51 of the UN Charter could trigger the application of the secondary law aspect of self-defence. Some confiscatory measures adopted by Ukraine, as the victim of the armed attack, who is also clearly engaged in the use of forcible measures against Russia under Article 51 of the UN Charter, could be seen as falling under the secondary aspect of self-defence. However, the EU is currently not engaged in a lawful use of forcible measures against Russia as part of the collective self-defence under Article 51 of the UN Charter.

²⁷⁴ R. Buchan, [Self-Defence as an Exception to the Principle of Non-Use of Force: Debunking the Myth](#), *Blog of the European Journal of International Law*, 29 November 2023.

²⁷⁵ Art 51, UN, [United Nations Charter](#), 1945.

²⁷⁶ A. Ripenko, [Should Third States Follow Ukraine's Lead and Confiscate Russian State Assets?](#), *Völkerrechtsblog*, 19 June 2023.

²⁷⁷ R. Buchan, [Self-Defence as an Exception to the Principle of Non-Use of Force: Debunking the Myth](#), *Blog of the European Journal of International Law*, 29 November 2023; R. Buchan, ['Non-Forcible Measures and the Law of Self-Defence'](#), *International & Comparative Law Quarterly*, Vol 72, No 1, 2023, pp. 01-33; C. J. Tams, [Enforcing Obligations Erga Omnes in International Law](#), Cambridge University Press, Cambridge, UK, 2005, p. 261; For the view that it is doubtful whether non-forcible measures (such as e.g., the building of a wall) fall within the self-defence see Para 35, ICJ, [Legal Consequence of the Construction of a Wall In the Occupied Palestinian Territory](#), Advisory Opinion, 09 July 2004.

²⁷⁸ N. Tsagourias, 'Self-Defence against Non-state Actors: The Interaction between Self-Defence as a Primary Rule and Self-Defence as a Secondary Rule', *Leiden Journal of International Law*, Vol 29, 2016, p. 820.

- An argument could be made that the EU is engaged in the indirect use of force²⁷⁹ against Russia through the provision of weapons to Ukraine²⁸⁰. An 'indirect use of force' has been defined as 'aid or assistance to another state's use of force, or to an armed group's actions that would qualify as such a use if engaged in by states'²⁸¹. Even though the provision of weapons may be considered as an indirect use of force, it is questionable whether the delivery of lethal weapons could be attributable to the EU. According to scholars, the EU indeed plays a financial and coordinating role, but it is the Member States that deliver the weapons.²⁸² Moreover, the law of self-defence limits the nature of non-forcible measures that can be employed under its realm. Unlike countermeasures, self-defence is not a law enforcement mechanism but is rather aimed at enabling States to protect themselves from armed attacks. In other words, countermeasures are responses to illegality (and thus law enforcement mechanisms), whereas self-defence is a response to grave violence (and thus an act of self-preservation)²⁸³. Self-defence is generally exercised to halt and repulse an armed attack, and subsequently measures that can be taken in the course of self-defence are limited to those necessary to achieve this goal. To justify the confiscation of Russian assets protected by immunities, these assets would have to be employed in a way that directly contributes to repulsing the Russian aggression to be regarded as an act in the exercise of self-defence by way of, say, providing weapons to Ukraine²⁸⁴. Conversely, confiscatory measures adopted with the aim of securing reparation for Ukraine fall outside the scope of the law of self-defence.

If Ukraine were to become a member of the EU, its Member States would have an enhanced obligation under EU law to provide aid and assistance to Ukraine, by all the means in their power under the mutual defence clause under Article 42(7) TEU and the solidarity clause under Article 222 TFEU. It is possible that under these circumstances, the EU and its Member States would engage the collective self-defence argument to adopt forcible and non-forcible measures against Russia²⁸⁵. However, to justify confiscatory measures against Russia, international legal analysis under the law of self-defence would essentially remain the same, whereby these assets would have to be employed in a way that directly contributes to repulsing Russian aggression.

²⁷⁹ Para 209, ICJ, [Case Concerning Military and Paramilitary Activities in and against Nicaragua \(Nicaragua v United States of America\)](#), 1984.

²⁸⁰ A. Hofer, '[The EU and its Member States at War in Ukraine? Collective self-defence, neutrality and party status in the Russo-Ukraine war](#)', *European Papers*, Vol 8, No 3, 2023, p. 1719.

²⁸¹ M. N. Schmitt and W. C. Biggerstaff, '[Aid and Assistance as a "Use of Force" Under the Jus Ad Bellum](#)', *International Law Studies*, Vol 100, 2023, p. 197.

²⁸² A. Hofer, '[The EU and its Member States at War in Ukraine? Collective self-defence, neutrality and party status in the Russo-Ukraine war](#)', *European Papers*, Vol 8, No 3, 2023, pp. 1697-1740.

²⁸³ R. Buchan, '[Non-Forcible Measures and the Law of Self-Defence](#)', *International & Comparative Law Quarterly*, Vol 72, No 1, 2023, p. 26.

²⁸⁴ A. Rasi, '[Providing Weapons to Ukraine: The First Exercise of Collective Selfdefence by the European Union?](#)' *European Papers*, Vol 9, No 1, 2024, pp. 397-422.

²⁸⁵ Internal competences of the EU, under EU primary law, to adopt forcible measures in the course of self-defence, are, however, limited. See Art 43, EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

Lawful self-defence

The collective self-defence argument may include justification for adopting non-forcible measures; however, these would have to be incidental to the actual exercise of self-defence by the EU and/or its Member States or would have to amount to the indirect use of force, to trigger the applicability of the law of self-defence. In any case, confiscation of State assets to secure reparations for Ukraine would generally not fall under the scope of the lawful self-defence. Rather than self-defence, the law of countermeasures is a more appropriate argument for justifying the possible peacetime confiscation of property with the aim of securing reparations.

4.3.6 Exceptions to immunities before national courts and national legislation allowing for the confiscation of Russian assets

It has been argued that national procedures seeking to enforce a decision of an international tribunal or arbitration award could be one option that makes it possible to confiscate Russian property.

To date, some states have already adopted national legislation allowing for such confiscation or have allowed the pursuance of cases resulting in the confiscation of property:

- Under the US Rebuilding Prosperity and Opportunity for Ukrainians Act, 'Russia could be sued in the United States by a private party seeking to enforce an arbitration award, whether or not the underlying dispute has any connection to the United States'²⁸⁶. However, these procedures are limited by the fact that property subject to confiscation must be located on their territory and used for commercial purposes (thus excluding the central bank assets, which are typically used for governmental purposes and protected by immunities)²⁸⁷;
- Under the Russian Federation-Ukraine Bilateral Investment Treaty (1998)²⁸⁸, which requires Russia to compensate businesses that have suffered expropriations, including war-related expropriations, Ukrainian companies have successfully obtained arbitration awards against Russia arising out of its 2014 annexation of Crimea in Ukraine²⁸⁹;
- The Ukrainian Supreme Court has held that Russia does not enjoy sovereign immunity from suit for war-related damages²⁹⁰. However, there are no CBR assets located in Ukraine and generally, it does not hold sufficient Russian assets against which to enforce current and forthcoming Ukrainian judgments against Russia. The main justification for confiscating

²⁸⁶ Part 4, Chapter 97, Sec 1605 (a)(6), United States Code, [Title 28: Judiciary and Judicial Procedure](#), 2009; R. Shaw and S. Starosvit, [Making Russia Pay: Obtaining Compensation for Russia's Invasion of Ukraine in American Courts](#), *Just Security*, 15 May 2025.

²⁸⁷ See Part 4, Chapter 97, Sec 1605 (a)(3), United States Code, [Title 28: Judiciary and Judicial Procedure](#), 2009; R. Shaw and S. Starosvit, [Making Russia Pay: Obtaining Compensation for Russia's Invasion of Ukraine in American Courts](#), *Just Security*, 15 May 2025.

²⁸⁸ UN Trade and Development, [Agreement Between The Government of the Russian Federation and the Cabinet of Ministers of the Ukraine on the Encouragement and Mutual Protection of Investments](#), 27 November 1998.

²⁸⁹ M. Antonovych, [2022 in Review: Investment Arbitration Amidst War in Ukraine](#), *Kluwer Arbitration Blog*, 17 February 2023.

²⁹⁰ O. Kuchmiienko and V. Pasichnyk, [How Can Ukrainian Judgments Recovering War-Related Damages From Russia Be Enforced Abroad?](#), *American Review of International Arbitration*, Blog, 27 January 2023.

Russian assets and withdrawal of immunities in Ukraine is military necessity²⁹¹ and self-defence²⁹²;

- There might be a possibility of enforcing Ukrainian judgments in other EU Member States. In the past, Swedish national courts have already denied immunity to assets of central banks. In particular, in *Stati v Kazakhstan*²⁹³, an investor enforced an arbitral award against the shares of Swedish companies owned by the Kazakhstani sovereign wealth fund, which was managed by the central bank of Kazakhstan²⁹⁴. Because there was no connection with the bank's mission and activities in the area of monetary policy, the court applied a restrictive theory of immunity to enforcement against central bank assets;
- In 2024, Estonia's parliament approved a proposal to use Russian assets frozen in Estonia due to sanctions to pay compensation to Ukraine for damages caused by the war. This new legislation allows private and state assets frozen under the sanctions regime to be used to pay for war damages to Ukraine²⁹⁵;
- In 2025, the French parliament passed a nonbinding resolution urging the EU to use immobilised assets to support Ukraine²⁹⁶;
- In Canada, the Special Economic Measures Act was amended to allow for the confiscation of Russian-owned property, including CBR assets²⁹⁷, by way of executive action and for such funds to be channelled to Ukraine²⁹⁸;
- Similarly, in the USA, Congress passed the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act (REPO Act)²⁹⁹, which allows for the confiscation of CBR assets held in the USA. This law requires that all Russian sovereign assets blocked or immobilised remain frozen until the end of hostilities between Russia and Ukraine and until Russia pays reparations to Ukraine³⁰⁰. This provides some limitations to the ability of American presidents to lift sanctions imposed against Russia³⁰¹. Under section 104, the REPO Act provides that 'the President may seize, confiscate, transfer, or vest any Russian aggressor state sovereign assets, in whole or in part, and including any interest or interests in such assets, subject to the jurisdiction of the United States for the purpose of transferring those

²⁹¹ ICJ, [Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v Uganda\)](#), Judgment, 09 February 2022.

²⁹² ICJ, [Democratic Republic of the Congo v Uganda](#), Judgment, 09 February 2022.

²⁹³ Stockholm Chamber of Commerce, [SCC Case No 116/2010: Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Trading Ltd v Republic of Kazakhstan \(I\)](#), Decision of the Supreme Court of Sweden, 18 November 2021.

²⁹⁴ O. Kuchmiienko and V. Pasichnyk, '[How Can Ukrainian Judgments Recovering War-Related Damages From Russia Be Enforced Abroad?](#)', *American Review of International Arbitration*, Blog, 27 January 2023.

²⁹⁵ Parliament of Estonia, '[The Riigikogu passed the Act enabling the use of Russia's frozen assets](#)', Press release, 15 May 2024.

²⁹⁶ Assemblée Nationale, '[Proposition de résolution européenne appelant au renforcement du soutien à l'Ukraine](#)', 19 février 2025.

²⁹⁷ Section 4(1)(b), Canada Justice Laws Website, '[Special Economic Measures Act](#)', webpage, nd.

²⁹⁸ Government of Canada, '[Canadian sanctions legislation](#)', webpage, nd.

²⁹⁹ US Congress, '[Making emergency supplemental appropriations for the fiscal year ending September 30, 2024, and for other purposes](#)', H.R.815, 24 April 2024.

³⁰⁰ Sec 103, US Congress, '[Making emergency supplemental appropriations for the fiscal year ending September 30, 2024, and for other purposes](#)', H.R.815, 24 April 2024.

³⁰¹ I. Wuerth, '[The Controversial REPO Act Is Now Law](#)', *Lawfare*, 25 April 2024.

funds to the Ukraine Support Fund established under subsection'³⁰². In Section 101, the Act further explicitly stipulates that 'the United States is legally entitled to take countermeasures that are proportionate and aimed at inducing the Russian Federation to comply with its international obligations'³⁰³.

These last two examples from Canada and the USA allude to the possibility of national laws being adopted, which would allow for executive or judicial actions taken in the form of CBR assets' confiscation and transfer to Ukraine, based on the law of countermeasures. However, three problems may arise from such action:

- 1) The legality of such legislation is likely to be questioned from the point of view of national constitutions and laws of respective states,³⁰⁴
- 2) For such actions to be considered as a lawful countermeasure justified under international law, they would have to fulfil the criteria for the lawful taking of countermeasures, including reversibility, as these decisions are final;;
- 3) Due to these legal risks, Member States, in which the majority of sovereign assets are held, are less likely to adopt such an exception to immunities and/or adopt relevant national legislation allowing for Russian assets' confiscation and transfer to Ukraine.

Hence, these possibilities have not yet been used in practice.

Exception to immunities

Exception to immunities before national courts, including in the form of the enforcement of international judgements ordering damages, has been used in practice but these procedures take time and are unlikely to result in significant damages awards that could be transferred to Ukraine. Mostly, these judicial procedures result in awarding compensation to specific investors. The possibility of EU Member States adopting specific legislation allowing for the confiscation of CBR assets by way of executive or judicial action relying on the law of countermeasures is unlikely to be in line with the criteria for the lawful taking of countermeasures, including reversibility, as these decisions are final. Due to these legal risks, Member States, in which the majority of sovereign assets are held, are less likely to adopt such an exception to immunities and/or adopt relevant national legislation allowing for Russian assets' confiscation and transfer to Ukraine.

4.3.7 Enforcement of Judgements of the European Court of Human Rights

Another viable option relates to the possible enforcement of international judgements on reparations before national courts. Of particular relevance here are the ECtHR judgements in inter-state disputes between Ukraine and Russia, for example, regarding the latter's conduct in Crimea from 2014 onwards³⁰⁵. There are currently three inter-state cases and 9 264 individual applications

³⁰² Sec 104, US Congress, [Making emergency supplemental appropriations for the fiscal year ending September 30, 2024, and for other purposes](#), H.R.815, 24 April 2024.

³⁰³ Sec 101, US Congress, [REPO for Ukrainians Act](#), 30 January 2024.

³⁰⁴ The new Estonian law was, for example, considered by some as unconstitutional see H. Wright, '[President proclaims Russian frozen asset law](#)', *ERR News*, 20 May 2024.

³⁰⁵ ECtHR, [Ukraine v Russia \(re Crimea\)](#), Application no 20958/14 and 38334/18, June 2024.

against Russia pending before the Court³⁰⁶ in 2025 relating to the war in Ukraine. It has to be acknowledged, however, that most of the individual applicants are from Crimea, eastern Ukraine and the Sea of Azov, whereas only a minority of cases will be directly linked to the Russian aggression against Ukraine in 2022.³⁰⁷ Moreover, ECtHR case law relating to Russia's aggression in Ukraine and subsequent awards for compensation will necessarily be limited, as the Court no longer has jurisdiction to hear cases against Russia. Russia was expelled from the CoE on 16 March 2022³⁰⁸ and, as a result, was no longer a party to the European Convention on Human Rights from 16 September 2022 (six months following its expulsion)³⁰⁹. Article 58(2) of the Convention stipulates that expelled parties remain liable for violations of the Convention they committed prior to their removal. The ECtHR has no jurisdiction over human rights violations that happened thereafter.

Moreover, while the Court will adjudicate on these individual and inter-state cases, victims are unlikely to receive awarded damages from Russia, due to the fact that Russia has continuously refused to pay compensation arising from ECtHR judgements and ceased to cooperate with the Court after its exclusion from the CoE. By January 2025 Russia, for example, owed approximately EUR 2.85 billion to applicants in cases already decided.³¹⁰

Most of the cases relating to the Russian aggression in Ukraine are yet to be decided.³¹¹ While these future individual cases are expected to result in relatively small amounts of compensation, compensation awards in inter-state cases are typically higher (Cyprus v Turkey (EUR 90 million)³¹² and Georgia v Russia (EUR 253 million)³¹³).

Compensation awards of the ECtHR are generally executed in the concerned Member States, with more than 90 % of compensations being paid within the 5 years of the judgement.³¹⁴ However, when states refuse to make payments, international law lacks a legal framework that governs the execution of orders in ECtHR judgments against the will of the respondent state. There has been

³⁰⁶ Open Society Justice Initiative, [Legal Possibilities of Using Russian Central Bank Assets to Enforce European Court of Human Rights Judgments](#), April 2025.

³⁰⁷ ECtHR, '[Applications concerning the conflicts and war in Ukraine](#)', Press release, 17 February 2025; V. Fikfak, [Expert Remarks: Debate on Compensation under International Law with a Focus on Options for Enforcement of Payments Awarded by International Human Rights Courts](#), *Committee of Legal Advisers on Public International Law*, 11 April 2024, p. 2.

³⁰⁸ Committee of Ministers, [Cessation of the Membership of the Russian Federation to the Council of Europe](#), CM/Res(2022)2, 16 March 2022.

³⁰⁹ K. Dzehtsiarou, [The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between 'Business as Usual' and 'Denial of Justice'](#), *ECtHR Blog*, 16 August 2022.

³¹⁰ These already decided cases mostly relate to individuals living in Russia (and not to Ukrainian nationals). Department for the Execution of Judgments of the ECtHR, '[Register of just satisfaction concerning the Russian Federation](#)', webpage, nd.

³¹¹ V. Fikfak, [Expert Remarks: Debate on Compensation under International Law with a Focus on Options for Enforcement of Payments Awarded by International Human Rights Courts](#), *Committee of Legal Advisers on Public International Law*, 11 April 2024.

³¹² ECtHR, [Case of Cyprus v Turkey](#), Application no 25781/94, 12 May 2014.

³¹³ ECtHR, [Case of Georgia v Russia \(IV\)](#), Application no 29611/18, 14 October 2025.

³¹⁴ V. Fikfak, [Expert Remarks: Debate on Compensation under International Law with a Focus on Options for Enforcement of Payments Awarded by International Human Rights Courts](#), *Committee of Legal Advisers on Public International Law*, 11 April 2024.

an ongoing debate as to whether compensation awards could be enforced through domestic courts of third states (and not the responsible state – in our case, Russia).

One suggested possibility refers to the possible enforcement of these judgements in states which have immobilised CBR assets, such as Belgium, France and the UK³¹⁵. However, this is coupled with the following challenges:

- ECtHR judgements concerning Russia are not directly enforceable without being recognised by domestic courts, which requires a separate recognition process dependent on national legislation. This process would trigger the question of the jurisdictional immunities of Russia before these national courts. There is some practice in this regard. The National court in Cyprus, for example, held that a decision of the ECtHR against Turkey is directly enforceable in Cyprus³¹⁶. A recent study has shown that in France for instance chances for such recognition are low, while in Belgium and the UK, these judgments are more likely to be enforced³¹⁷;
- As with other cases, Russia is generally immune from the jurisdiction of foreign courts and CBR assets located in these countries (Belgium, France and the UK, say) are protected by immunity from execution. Some national laws provide exceptions to immunities in cases of the enforcement of international judgements. In Belgium, for example, national law explicitly stipulates that state immunity is 'subject to the application of mandatory supranational and international provisions'³¹⁸. However, this provision's exact implications remain unclear and Belgian courts have not yet ruled on the question of whether the enforcement of ECtHR judgments could fall under this caveat³¹⁹. By contrast, French law specifically bans confiscation of foreign central bank assets, thereby making a case for the possible confiscation of CBR assets in France very challenging³²⁰. Alternatively, national courts could rely on the law of countermeasures to excuse their violation of immunities when enforcing these judgements, however, it remains questionable whether the criteria of reversibility would be met in this case, as these decisions are final);
- The enforcement of ECtHR decisions through national courts, the lifting of the immunity from execution, and the utilisation of CBR assets for the payment of compensation could establish a precedent for other cases. States are unlikely to support the idea that ECtHR judgements are enforceable outside of their jurisdiction, in third states, as well as the

³¹⁵ Open Society Justice Initiative, [Legal Possibilities of Using Russian Central Bank Assets to Enforce European Court of Human Rights Judgments](#), April 2025.

³¹⁶ V. Fikfak, [Expert Remarks: Debate on Compensation under International Law with a Focus on Options for Enforcement of Payments Awarded by International Human Rights Courts](#), *Committee of Legal Advisers on Public International Law*, 11 April 2024.

³¹⁷ Open Society Justice Initiative, [Legal Possibilities of Using Russian Central Bank Assets](#), April 2025, p. 9.

³¹⁸ Open Society Justice Initiative, [Legal Possibilities of Using Russian Central Bank Assets](#), April 2025.

³¹⁹ A. de Spiegeleir and B. Ye, [A New Look at Confiscating Russian Assets: Using Russian Central Bank Assets to Pay for Compensation Ordered by the European Court of Human Rights?](#), *Verfassungsblog*, 06 June 2025.

³²⁰ Open Society Justice Initiative, [Legal Possibilities of Using Russian Central Bank Assets to Enforce European Court of Human Rights Judgments](#), April 2025, p. 12.

possibility of securing compensation through the confiscation of their sovereign assets located in these third states.

Enforcement of ECtHR judgements

While enforcement of ECtHR judgements in Member States which have immobilised CBR assets is one of the legal options, it does entail important challenges, such as the limited jurisdiction of ECtHR to adjudicate upon events related to the Russian aggression in Ukraine and enforcement challenges in national jurisdictions. It is also unclear to what extent would enforcement of judgements against the CBR assets would create a precedent for the execution of ECtHR judgements in other cases.

5 The most viable policy proposals and legal options for the confiscation of Russian State assets

Having mapped and considered existing policies and legal arguments regarding the confiscation of private assets, windfall profits and state assets, this paper now analyses viable policy solutions and legal options.

5.1 Policy proposals and legal options under EU law

5.1.1 Anti-Coercion Instrument

Some authors have proposed the utilisation of the ACI³²¹ introduced in 2023, which allows the EU to defend its interests against any economic coercion from third states and may be relevant in the context of confiscation. This is intended to be a trade defence instrument³²² and not a sanctions regime. It means, therefore, that it falls outside the EU foreign policy regime (where decisions are taken by unanimity) but rather pertains to the trade policy falling under the exclusive competence of the EU (in which decisions are adopted by a qualified majority vote³²³). To activate the ACI, a decision has to be made by the European Council on the existence of economic coercion imposed by a third country upon the EU. Thereafter, the Commission can propose countermeasures necessitating a qualified majority vote by the Council. Measures that can be taken under this instrument are not comprehensively listed and therefore leave some room for the possible adoption of measures in the form of property confiscation:

What is unique about the ACI compared with other trade defence measures is that it allows for an extraordinarily wide set of possible measures. It is not just limited to tariffs, but extends to services, simple prohibition of trade and even suspension of normal international obligations such as protection of intellectual property rights and access to insurance, finance or foreign investment. Moreover, the list of measures enumerated in the ACI is not comprehensive – the ACI also contains provisions for

³²¹ European Parliament and Council, [Regulation \(EU\) 2023/2675 on the protection of the Union and its Member States from economic coercion by third countries](#), *Official Journal of the EU*, Series L, 07 December 2023.

³²² The legal basis of this instrument is Article 207(2) TFEU, defining the scope of the common commercial policy. See: Art 207(2), EU, [Consolidated Version of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, C 326/47, 26 October 2012.

³²³ A. Berg, [The case for using the Anti-Coercion Instrument against Russia](#), *Centre for European Reform*, 05 June 2025.

expanding the list of possible measures where necessary, though this would require an enabling act to be passed by the European Council and Parliament³²⁴.

Moreover, measures adopted under ACI may target a country as a whole or companies and individuals connected to its government. In the first step, this instrument presupposes the adoption of non-interventionist measures. However, ACI also allows for the adoption of countermeasures, which, as explained below, is an international legal instrument, most commonly put forward in relation to the possible justification of confiscating state-owned property in the form of central bank assets.

Indeed, ACI is primarily an economic coercion tool and cannot be utilised to pursue the CFSP's foreign policy objectives, as is the case with sanctions, which were adopted in response to Russia's aggression in Ukraine. Any decision on the adoption of countermeasures under ACI has to be grounded on existing economic evidence of economic coercion on the side of Russia. In this respect, evidence of economic coercion against the EU could be found in Russia's restriction of natural gas exports to the EU³²⁵, the blocking of Russian airspace for European aviation³²⁶ and the confiscation of property owned by European companies. The ACI also uses language that seems to employ the rationale of reparations, whereby the EU could demand reparations for the cost of Russian economic coercion³²⁷. However, a decision to trigger this mechanism would fall under the Directorate-General for Trade, which develops and carries out the Commission's policies on trade and economic security; at present, it has to be acknowledged that representatives of the Commission³²⁸ consider such a decision to be unlikely.

5.1.2 Article 7 TEU procedures

Procedure under Article 7 TEU has also been proposed as an internal EU tool to counter the obstruction of CFSP decisions relating to sanctions against Russia and the situation in Ukraine. Under this mechanism, a Member State systematically ignoring European values may be subject to sanctions, including the suspension of voting rights. Hungary's persistent opposition and blocking of key EU instruments, such as restrictive measures, accession agreements, EPF, Ukraine Assistance Fund and its subsequent actions, which impede the effective implementation of EU policies and are against the spirit of mutual solidarity³²⁹, could be seen as a violation of Article 2 TEU in undermining EU law and its fundamental principles³³⁰.

This procedure can be initiated if there is a 'clear risk' of European values being seriously breached, as confirmed by a majority vote in the European Parliament. Thereafter, Article 7(2) allows for the

³²⁴ A. Berg, [The case for using the Anti-Coercion Instrument against Russia](#), 05 June 2025.

³²⁵ N. Wadhams and A. Hordern, [Russia's Gas Limits Pose Increasing Concern, U.S. Envoy Says](#), *Bloomberg*, 20 September 2021.

³²⁶ D. Ennen and F. Wonzy, [Airspace closures following the war of aggression in Ukraine: The impact on Europe-Asia airfares](#), *Transportation Research Procedia*, Vol 78, 2024, pp. 103-110.

³²⁷ A. Berg, [The case for using the Anti-Coercion Instrument against Russia](#), *Centre for European Reform*, 05 June 2025.

³²⁸ Interview with European Commission official, 25 September 2025 (in person).

³²⁹ Art 31(2), EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

³³⁰ See also D. Genini, '

European Council, acting by unanimity, to find the accused Member State in breach of European values, which may be followed by the adoption of sanctions, for example, by voting rights being suspended under Article 7(3). In the past, these procedures have already been triggered against Hungary by the European Parliament³³¹. However, this did not result in the adoption of sanctions, as any decision requires the collective consent of all Member States, excepting the accused³³². Outside Article 7 TEU, the EU did, however, freeze and suspend EU funds for Hungary under the rule of law conditionality mechanism.³³³

To tackle the CFSP unanimity challenge under Article 29 TEU, it has been argued by some scholars, that Article 7 TEU should be (re)interpreted in a way as to separate procedures under Article 7(2) and 7(3) whereby, Article 7(3) TEU could be applied even without prior unanimous determination by the Council of a clear risk of a serious breach of EU values, and applied in a targeted manner, that is, to suspend State's participation in individual decisions for the purpose of neutralising its veto power with the suspended Member State nevertheless remaining bound by its EU obligations.³³⁴

Article 7 TEU

The Article 7 TEU procedure could potentially be used to mitigate the obstruction of CFSP decisions relating to sanctions against Russia. However, it could not be used for the adoption of confiscatory measures against Russian assets by the EU or its Member States.

5.1.3 Unilateral sanctions of Member States

In cases where there is insufficient majority for adopting sanctions at the EU level, recourse could also be made to the possible adoption of unilateral measures by Member States outside the realm of EU law. Under Article 346 TFEU, Member States are entitled to adopt such measures as they consider necessary for protecting the essential interests of their security³³⁵. While unilateral sanctions have yet to be adopted under these provisions, Member States and especially those that are affected by the war, could in certain limited instances be entitled to adopt measures in the form of asset freezes and possibly subsequent property confiscation by way of countermeasures.

Regarding EU law, the European Commission has already provided a legal assessment of possible national asset freezes by Member States. It reiterated that sanctions in the form of asset freezes have an effect on the movement of capital and payments, in particular exports, imports, transfer of funds, investment and access to the EU's capital markets. In the *Kadi I* case, the CJEU stated that

³³¹ European Parliament, [Resolution on a proposal calling on the Council to determine, pursuant to Article 7\(1\) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded](#), 2017/2131(INL), P8_TA(2018)0340, 23 December 2019.

³³² G. Landsbergis, [Suspend Hungary's Voting Rights to Save the EU's Credibility](#), *Carnegie Endowment Europe*, 11 February 2025.

³³³ Z. Csaky, [Freezing EU funds: An effective tool to enforce the rule of law?](#), *Centre for European Reform*, February 2025.

³³⁴ L. S. Rossi, [A Legal Scalpel Instead of an Axe: How a Reinterpretation of Article 7 TEU Could Neutralise Hungary's CFSP Veto Strategy](#), *Verfassungsblog*, 09 July 2025.

³³⁵ Para 78. CJEU, [Case C-187/16: European Commission v Republic of Austria](#), ECLI:EU:C:2018:194, 20 March 2018; Para 34, CJEU, [Case C-474/12: Schiebel Aircraft GmbH v Bundesminister für Wirtschaft, Familie und Jugend](#), ECLI:EU:C:2014:2139, 04 September 2014.

economic and financial measures are linked to the Union's internal market operation and thus cannot be imposed unilaterally by a Member State³³⁶. The European Commission thus concluded that 'unilateral adoption of national asset freeze measures for reasons related to the achievement of the CFSP objectives as set out in Article 215 TFEU would have a clear impact on the functioning of the internal market and would undermine the purpose and effectiveness of the above-mentioned provision of the TFEU. Therefore, they would not be compatible with EU law'³³⁷.

Member States' unilateral actions would undermine the EU's capacity to speak with one voice and act as a global player in security matters, which is a core CFSP objective³³⁸. As noted by Kallas, 'the EU's success as a foreign policy actor is entirely dependent on [its] capacity to speak with one voice'³³⁹.

Even if freezing of assets could be justified under EU law, Belgium has continually voiced concerns that any blocking or unilateral confiscation of Russian sovereign assets could be perceived as an act of war against Russia under international law³⁴⁰.

5.1.4 Establishment of a European Instrument (reparations loan)

Apart from windfall profits, focus has now turned to the principal assets, which have matured into cash balances. This was announced by the President of the Commission von der Leyen in September 2025, as follows:

This is Russia's war. And it is Russia that should pay. This is why we need to work urgently on a new solution to finance Ukraine's war effort on the basis of the immobilised Russian assets. With the cash balances associated with these Russian assets, we can provide Ukraine with a reparations loan. The assets themselves will not be touched. And the risk will have to be carried collectively. Ukraine will only pay back the loan once Russia pays for the reparations. The money will help Ukraine already today³⁴¹.

Since 2022, when CBR assets were immobilised, government bonds held by CSDs matured and were turned into cash balances. When this stage is reached, the CSDs generally repay the principal (and any interests) to a bondholder (a central bank, say). In the case of CBR, though, because of the restrictive measures in place, Euroclear is unable to do so. In such situations, the holder (Euroclear) may, depending on the concrete contractual arrangement with the central bank, reinvest such cash balances. It is estimated that at the time of writing, the total accumulated cash

³³⁶ Para 230, CJEU, [Joined cases C-402/05 P and C-415/05 P: Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities](#), ECLI:EU:C:2008:461, 03 September 2008.

³³⁷ European Commission, [Opinion on the compatibility of national asset freezes imposed by Member States with Union law](#), C(2019) 8007 final, 08 November 2019.

³³⁸ D. Genini, 'How the war in Ukraine has transformed the EU's Common Foreign and Security Policy', *Yearbook of European Law*, 2025, p. 2; Council, ['A Strategic Compass for Security and Defence—For a European Union that protects its citizens, values and interests and contributes to international peace and security'](#), No 7371/22, 21 March 2022.

³³⁹ European Commission, [Questionnaire to the Commissioner-Designate Kaja Kallas, High Representative for Foreign and Security Policy](#), 22 October 2024, p. 13.

³⁴⁰ C. Clapson, ['Kyiv asks Belgium to deposit 200 billion euros of Russia's assets frozen in Brussels into fund for Ukraine'](#) Strategic Compass for Security, *VRT News*, 08 April 2025

³⁴¹ European Commission, [2025 State of the Union Address by President von der Leyen](#), 10 September 2025.

balance associated with CBR assets in Euroclear amounts to EUR 176 billion³⁴². Until EU restrictive measures are in place, they effectively frustrate any claims on those cash balances of CBR against Euroclear. However, when (if) restrictive measures are lifted, the obligation to repay those cash balances to the CBR revives and Russia will have a claim against Euroclear in this respect.

The European Commission is looking into the option of transferring the cash balances held by Euroclear to a European Instrument and subsequently creating a reparations loan to Ukraine. This proposal was endorsed by the EP in its resolution, in which it reiterated 'its call on the Member States, together with their G7 partners, to immediately endorse the Commission proposal to use all frozen Russian assets as a foundation for a substantial grant and loan to Ukraine, with reimbursement contingent on the future payment of war reparations by Russia, as a legally sound and financially significant way to maintain and increase EU support for Ukraine's military needs, including counter-drone defence'³⁴³.

The idea behind the Commission's proposal at the time of writing is that:

- An EU Instrument would enter into a tailored debt contract with Euroclear at 0 % interest, on the basis of which Euroclear will have a claim against the Instrument when/in case it has to return those assets to CBR;
- An EU Instrument would use those assets (cash) for a reparations loan: a loan to Ukraine, which will be repaid by Ukraine once it receives war reparations owed to it by Russia;
- This reparations loan would be treated by the International Monetary Fund as a contingent liability and would not be counted as part of Ukraine's debt stock³⁴⁴.

In essence, this mechanism is temporary and aims to ensure reversibility as it is limited to a moment, when EU sanctions concerning the immobilisation of CBR assets are lifted, when Russia ceases its aggression and pays reparations. It gives Euroclear legal entitlement to a claim in the amount of cash balances transferred to the Instrument, serving as a guarantee that it will have the necessary cash to honour the claim that CBR will have against it at that time. How these payments will be made ultimately depends on whether there will be a peace treaty ending the war in Ukraine and whether reparations will form part thereof (see below).

The proposed European Instrument ensures a shared, mutual responsibility of the EU and its Member States (not just Belgium and Euroclear), to ensure that repayment to Euroclear is made when/if necessary. The EU and Member States would act as guarantor for payment when/if the repayment obligation towards Euroclear arises without being covered by payment by Ukraine under the reparations loan, this situation is likely only if the EU lifts the asset freeze before Russia pays reparations.

To ensure that sanctions are not lifted before Russia pays reparations, it is essential to make sure that the asset freeze (immobilisation of CBR assets) is continuously applied. One option for this

³⁴² Interview with European Commission official, 25 September 2025 (in person).

³⁴³ European Parliament, [Resolution on a united response to recent Russian violations of the EU Member States' airspace and critical infrastructure](#), 2025/2901(RSP, P10_TA(2025)0230, 09 October 2025.

³⁴⁴ Interview with European Commission official, 25 September 2025 (in person).

would be a decision confirming that a QMV can be used for prolonging sanctions under Article 31(2) TEU (section 3).

For this proposal to be realised, the following steps would have to be taken at the EU level:

- A decision under Article 215 TFEU to oblige Euroclear to make the proposed investment in the EU Instrument and allowing for derogation by CSDs from their applicable rules on management and investment of central bank assets.
- Establishing an EU Instrument could be possible under Article 212 TFEU and this Instrument³⁴⁵ could also be modelled upon the European Stability Mechanism (ESM)³⁴⁶. In essence, the ESM, based in Luxembourg, was established by an intergovernmental treaty in 2012 by euro-area countries and is therefore an intergovernmental organisation governed by public international law. The ESM issues debt instruments to finance loans and other forms of financial assistance to euro-area countries. Close and regular cooperation between ESM and the European Commission is secured and possible on the basis of a memorandum of understanding signed between both institutions³⁴⁷.
- A decision will have to be made as to how the reparations loan to Ukraine would be used. It is proposed in this paper, that it should be directly connected to the reparations initiatives at CoE (level), namely to the Trust Fund (once it is established) for the payment of reparation claims as well as for compensation decision of the Ad Hoc Tribunal for the Crime of Aggression and possibly also for enforcement of the ECtHR compensation decision relating to Russia's aggression in Ukraine.

According to the Commission, matured cash balances can be reinvested and transferred by Euroclear to the EU instrument, without encroaching upon CBR immunities, because this does not amount to a transfer of property to a third person and in financial terms these cash balances can in principle be returned to Russia at any time (upon its compliance with its international obligation to pay reparations and lifting of the sanctions).

From an international law perspective, though, this may be contested as transferring assets to a European Instrument without CBR consent could affect immunities for execution and underlying treaty obligations that Euroclear has towards CBR and would therefore necessitate additional justification under international law. Transfer of cash balances to the EU instrument (and further to Ukraine) could be justified under the law of countermeasures, especially if the EU instrument, as it is currently foreseen, is temporary and reversible. Cash balances are, in this case, used as collateral; they are blocked to ensure that Russia complies with its obligations. It is proposed by this paper

³⁴⁵ Y. M. Ziskina, A. Moiseienko and J. Firestone, [Resolving Accountability Over Russian State Assets: New Understandings of Jurisdiction and Policy Opportunities](#), *New Lines Institute*, January 2025; A. Conner and D. Wessel, [What is the Status of Russia's Frozen Sovereign Assets?](#), *Brookings Institution*, 16 April 2025; P. Butchard, [Sanctions, International Law and Seizing Russian Assets](#), *Research Briefing, UK House of Commons Library*, 07 November 2024; L. Buchheit, [Europe at a Crossroads – Seizing Russian Assets to Secure Ukraine's Future](#), *Friends of Europe*, 02 August 2024.

³⁴⁶ EU, 'European Stability Mechanism', webpage, nd.

³⁴⁷ ESM, [Memorandum of Understanding on the working relations between the European Commission and the European Stability Mechanism](#), 27 April 2018.

that a crucial aspect of the EU Instrument is how this money would be used. From an international law perspective, the most viable solution would be to connect it to the existing reparations initiatives at the CoE level, whereas the current proposal seems to allocate these funds for the delivery of arms.

The main challenges related to this proposal relate to the possible incurrence of participating states' responsibility under international law in case of possible losses resulting from the EU Instrument. Belgium has opposed using CBR assets to fund Ukraine³⁴⁸ and Euroclear representatives have warned that the European taxpayers may end up bearing the brunt of possible losses resulting from such riskier investments³⁴⁹. Euroclear also emphasises its neutrality, stating it is not its 'role as a neutral financial institution to decide what to do with those (CBR) assets'³⁵⁰.

The European Central Bank (ECB) has likewise continually warned against measures taken against central bank assets, including windfall taxes³⁵¹ and the transfer of profits to Ukraine. Such measures could affect the euro as a global currency and damage financial stability, however, these arguments have been refuted lately by states like Germany, which seems to support the European Instrument and the reparations loan initiative.³⁵² Some studies have found that the immobilisation of assets did not trigger a shift away from euro (and more broadly G7) currency³⁵³ and according to the ECB, the euro continued to hold its position as the second most important currency globally, since the Russia's aggression³⁵⁴.

Internal obstacles

The newly proposed EU Instrument is a viable option, which would, in its current proposed form, guarantee mutual responsibility of the EU and its Member States, allowing for the temporary nature and reversibility. However, this proposal may face obstacles internally as it presupposes the continuous application of the asset freeze for which an agreement among EU Member States would be necessary. From an international law perspective, the EU Instrument could be justified under the law of countermeasures. It will be essential to determine how the reparations loan to Ukraine would be used. It is proposed in this paper that it should be directly connected to the reparations initiatives at the CoE level.

³⁴⁸ S. Mammadli, '[Belgium rules out using frozen Russian assets to fund Ukraine](#)', *Caliber*, 06 September 2025.

³⁴⁹ L. Dubois and P. Tamma, '[Plan to boost returns from Russian assets "expropriation", warns Euroclear](#)', *Financial Times*, 14 July 2025.

³⁵⁰ J. Rankin, '[Calls for Russia's frozen assets held in Belgium to be used in rebuilding Ukraine](#)', *The Guardian*, 14 May 2025.

³⁵¹ S. Fleming et al., '[ECB warns Brussels against windfall levy on frozen Russian assets](#)', *Financial Times*, 16 June 2023.

³⁵² G. Sorgi and A. Zimmermann, '[Germany backs EU's 'creative' plan to send frozen Russian cash to Ukraine](#)', *Politico*, 25 September 2025; Handelsblatt, '[Merz plädiert für Verwendung russischer Vermögen für die Ukraine](#)' [Merz advocates using Russian assets for Ukraine], 25 September 2025.

³⁵³ B. Hilgenstock, et al., '[Implications of the Confiscation of Russian Sovereign Assets](#)', *Kyiv School of Economics*, April 2025.

³⁵⁴ ECB, '[International Role of the Euro](#)', webpage, nd.

5.2 Viable legal options under international law

5.2.1 International reparations mechanism and enforcement of international reparations and compensation decisions through the European Instrument

This section provides an analysis of the potential connection between initiatives for the use of windfall profits as well as the confiscation of state and private assets, on the one hand and the establishment of an international reparations mechanism, on the other hand. It is imperative to establish a distinction between international mechanisms³⁵⁵ that can be established with and without Russia's cooperation. Concerning the former, immobilised assets as a possible lever in peace talks will be discussed below³⁵⁶.

The UNGA Resolution L.6/2022 recognised 'the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine'³⁵⁷. This Resolution also recommended 'the creation by Member States, in cooperation with Ukraine, of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, as well as to promote and coordinate evidence-gathering'³⁵⁸.

It is proposed that an EU Instrument should be connected to existing reparations and compensation mechanisms already in place, which are adjudicating upon Russia's violations and its obligation to pay reparations or compensation. This EU Instrument could provide funds for the enforcement of these decisions:

- International Claims Commission for Ukraine;
- Special Tribunal for the Crime of Aggression against Ukraine;
- ECtHR inter-state and individual decisions on compensation (see Section 4.3.7).

The initiative to establish an international reparations mechanism was taken by the CoE, which is to be materialised in three steps:

- **Register of Damage:** Register of Damage for Ukraine was established within the CoE³⁵⁹ 'as a first step towards establishing a comprehensive system of accountability of the Russian

³⁵⁵ N. Gould-Davies, [On Proposed Countermeasures Against Russia to Compensate Injured States for Losses Caused by Russia's War of Aggression Against Ukraine](#), Research Paper, *International Institute for Strategic Studies*, 24 May 2024.

³⁵⁶ W. Adeyemo and D. Shimer, '[Make Moscow Pay: The Case for Seizing Russian Assets to Fund Ukraine's Defense](#)', *Foreign Affairs*, 21 May 2025; B. Hilgenstock, et al., '[Implications of the Confiscation of Russian Sovereign Assets](#)', *Kyiv School of Economics*, April 2025.

³⁵⁷ Para 3 UNGA, '[Furtherance of remedy and reparation for aggression against Ukraine](#)', A/ES-11/L.6, 07 November 2022.

³⁵⁸ Para 4, UNGA, '[Furtherance of remedy and reparation for aggression against Ukraine](#)', 07 November 2022.

³⁵⁹ CoE, '[Register of Damage for Ukraine](#)', webpage, nd.

Federation for its wrongful acts', undertaking 'the laborious process of recording Ukrainian losses'³⁶⁰;

- **International Claims Commission for Ukraine:** A draft Convention on the establishment of an international claims commission for Ukraine has already been adopted³⁶¹ and is expected to be officially signed off by the end of 2025. This will be a legitimate international body examining reparations claims and making decisions on how much is owed by Russia by way of war reparations due to Ukraine³⁶². It will complement the existing register of damage covering 'a range of losses, including but not limited to infrastructure damage, environmental effects, economic losses incurred by companies and investors, and the costs associated with hosting and supporting those who have been displaced by the aggression, in Ukraine and outside of the country'³⁶³. The document was negotiated between 40 states and will be adopted in the form of an open convention, to which Russia could join;
- **Trust Fund:** this has yet to be established. Because it is highly unlikely that Russia will join this initiative and contribute to the Fund, it is proposed in this paper that any EU Instrument should be directly connected to this Trust Fund, allowing for the payment of reparation claims adjudicated upon by the Claims Commission.

The EU is also part of an international coalition, led by the CoE, which recently agreed to the establishment of the Special Tribunal for the Crime of Aggression against Ukraine (the 'Tribunal')³⁶⁴, an important accountability and reparations mechanism. The Tribunal 'is intended to create an internationally supported forum to prosecute the crime of aggression against Ukraine, widely recognised as the foundational illegality underpinning Russia's full-scale invasion of Ukraine'³⁶⁵.

Two options should be further explored in relation to the EU Instrument:

- The possibility of using immobilised Russian assets through the EU Instrument to affect the tribunal's reparation decisions;
- The adoption of confiscatory measures during the Tribunal's proceedings and possible transfer of confiscated assets to the EU Instrument itself (or the CoE Trust Fund).

Even though this tribunal is primarily focused on individual responsibility, the crime of aggression is essentially a 'State crime'³⁶⁶, which could justify the utilisation of immobilised assets.

³⁶⁰ Para 11, Parliamentary Assembly of the CoE, [Resolution 2539 \(2024\) on Support for the reconstruction of Ukraine](#), 16 April 2024.

³⁶¹ Parliamentary Assembly of the CoE, [Draft convention establishing an international claims commission for Ukraine](#), 01 October 2025.

³⁶² Interview with European Commission official, 25 September 2025 (in person).

³⁶³ Para 9, Parliamentary Assembly of the CoE, [Resolution 2539 \(2024\) on Support for the reconstruction of Ukraine](#), 16 April 2024.

³⁶⁴ European Commission, '[International coalition agrees on the establishment of the Special Tribunal for the Crime of Aggression against Ukraine](#)', Press release, 09 May 2025; Committee of Ministers, [Consequences of the aggression of the Russian Federation against Ukraine - Agreement between the Council of Europe and Ukraine on the Establishment of the Special Tribunal for the Crime of Aggression against Ukraine](#), CM(2025)104-final, 24 June 2025.

³⁶⁵ H. Lobel and N. Milaninia, [Building a Special Tribunal for the Crime of Aggression against Ukraine](#), *Blog of the European Journal of International Law*, 25 July 2025.

³⁶⁶ See also F. I. Paddeu, [Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures](#), *Just Security*, 01 March 2024.

According to Article 36 of the Statute, the Trial Chamber of the Special Tribunal may, in addition to imprisonment, order 'the confiscation of instrumentalities, proceeds, property and assets derived directly or indirectly from the crime of aggression, without prejudice to the rights of bona fide third parties'³⁶⁷. Moreover, the Statute also includes Article 37 on the Transfer of funds, whereby 'The Special Tribunal shall order funds collected through fines or confiscation measures to be transferred to an international mechanism, giving priority to a compensation mechanism established in accordance with UNGA Resolution A/RES/ES-11/5 of 14 November 2022 for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine'. This international mechanism could be an EU Instrument or the CoE Trust Fund.

The Special Tribunal may also enter into cooperation agreements with members and associate members of the Management Committee for the crime of aggression against Ukraine. This may cover matters such as 'the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties'³⁶⁸. The establishment of this Tribunal was formally endorsed by the Commission and the High Representative Kaja Kallas³⁶⁹. Moreover, the EU was part of a coalition of partner States known as the 'Core Group'. It is expected that the EU will support the Tribunal through participation in an Enlarged Partial Agreement³⁷⁰.

Cooperation and the legal basis for possible confiscation of Russian assets located in EU jurisdiction Member States could be secured through their status as Members or associate Members of the Tribunal or through separate cooperation agreements and thus may not involve separate national enforcement court procedures. The main challenge here relates to this option presupposing that restrictive measures will remain in place and continue to be renewed every six months.

Transferring funds to an international reparations mechanism would also have to be grounded under the law of countermeasures³⁷¹. In this respect, the CoE foresaw in its April 2024 Resolution concerning 'support for the reconstruction of Ukraine' a compensation depository in which funds would be secured 'by confiscating and otherwise using the Russian Federation's assets to pay for damage caused by the war in Ukraine'³⁷². The CoE specifically referred to CBR assets and stated that the law of countermeasures, the key legal regime governing the adoption of peace-time

³⁶⁷ Art 36(2)(b) Committee of Ministers, [Consequences of the aggression of the Russian Federation against Ukraine - Agreement between the Council of Europe and Ukraine on the Establishment of the Special Tribunal for the Crime of Aggression against Ukraine](#), CM(2025)104-final, 24 June 2025.

³⁶⁸ Art 48(4)(l), Committee of Ministers, [Consequences of the aggression of the Russian Federation against Ukraine](#), CM(2025)104-final, 24 June 2025.

³⁶⁹ European Commission, '[International coalition agrees on the establishment of the Special Tribunal for the Crime of Aggression against Ukraine](#)', Press release, 09 May 2025; Government of Ukraine, [Joint Statement of the Foreign Ministers Meeting on the conclusion of the work of the Core Group on the Establishment of a Special Tribunal for the Crime of Aggression against Ukraine](#), 06 May 2025.

³⁷⁰ CoE, '[About Partial Agreements](#)', webpage, nd.

³⁷¹ O. A. Hathaway, et al., '[War Reparations: The Case for Countermeasures](#)', *Stanford Law Review*, Vol 76, 2024, pp. 971-1050.

³⁷² Para 3, Parliamentary Assembly of the CoE, [Resolution 2539 \(2024\) on Support for the reconstruction of Ukraine](#), 16 April 2024.

sanctions as described above, provides the relevant legal framework for confiscating Russian assets to secure reparations:

The Assembly notes that several countries holding Russian State assets have frozen a total of approximately USD 300 billion in Russian State assets. The frozen Russian State financial assets must be made available for the reconstruction of Ukraine. States holding these assets should cooperate and transfer them to an international compensation mechanism. Under international law, States possess the authority to enact countermeasures against a State that has seriously breached international law. Now is the time for CoE Member States to move from sanctions to countermeasures. The Assembly further notes that countermeasures are intended to induce the offending State to cease its unlawful behaviour or to comply with its obligations arising from that conduct, such as paying compensation for damage caused. The Assembly emphasises that the legitimacy of the recommended countermeasures remains unassailable within the framework of sovereign immunity³⁷³.

It explicitly referred to countermeasures as well as breaches of *erga omnes* obligations to ensure reparations 'for affected natural and legal persons, as well as the State of Ukraine'³⁷⁴.

It is important to note that countermeasures in the form of taking property for the purposes of enforcing a damage award issued by such a competent international mechanism³⁷⁵ are considered as lawful in terms of their purpose. In practice, states do not prevent the enforcement of international judgments (for example, by the ICJ or PCIJ) against their property through the invocation of state immunity³⁷⁶. Here, the aim is not to punish the wrongdoing state but to ensure full implementation of international responsibility³⁷⁷. Because the EU Instrument itself allows for the temporality and reversibility criteria (see section 5.4.1), conditions for the lawful taking of countermeasures would seem to be met in this case.

Other possibilities include the establishment of an international reparations mechanism by the UNGA³⁷⁸ or UNSC, in which case the issue of legality is less pertinent. However, those options are less likely to be established in the current situation.

EU instrument

A key policy recommendation refers to the possibility of connecting the EU Instrument to existing reparations and compensation mechanisms, before adjudicating upon Russia's violations and its obligation to pay reparations or compensation. This EU Instrument could provide funds for the enforcement of decisions of: International Claims Commission for Ukraine and the Special Tribunal for the Crime of Aggression against Ukraine. International legal justification for such action would be the law of countermeasures.

³⁷³ Parliamentary Assembly of the CoE, [Resolution 2539 \(2024\)](#), 16 April 2024.

³⁷⁴ Para 12.8, Parliamentary Assembly of the CoE, [Resolution 2539 \(2024\)](#), 16 April 2024.

³⁷⁵ D. Franchini, '[When finance becomes a weapon: the challenge of central bank sanctions under International Law](#)', *Journal of International Trade Law and Policy*, Vol 24, No 1, 2025, p. 44; O. A. Hathaway, et al., '[War Reparations: The Case for Countermeasures](#)', *Stanford Law Review*, Vol 76, 2024, pp. 971-1050.

³⁷⁶ Open Society Justice Initiative, [Legal Possibilities of Using Russian Central Bank Assets to Enforce European Court of Human Rights Judgments](#), April 2025.

³⁷⁷ D. Franchini, '[When finance becomes a weapon](#)', *Journal of International Trade Law and Policy*, 2025, p. 44.

³⁷⁸ M. Mills, et al., '[How to Make Russia Pay to Rebuild Ukraine](#)', *Just Security*, 20 February 2024.

5.2.2 Possible utilisation of assets as part of a peace agreement or as collateral for the payment of reparations

5.2.2.1 The role of immobilised assets in the context of peace negotiations

Immobilised assets should be used as possible leverage in peace talks, including G7 partners and like-minded allies across the globe³⁷⁹.

The EU should use its position (namely, holding frozen assets) in peace talks, at the time of writing, led by the USA, and should take an active role in peace negotiations, using the immobilised assets as leverage in negotiations to end the war³⁸⁰. The European Parliament supports the European-led enforcement of an eventual peace agreement³⁸¹, which proposed the creation of a 'coalition of the willing' for this purpose. One such initiative includes the Global Compact, whereby 32 partners (hence, not all EU Members³⁸²) committed to supporting Ukraine's defence and security needs, including the continued provision of security assistance and military equipment³⁸³. Compensation is one of the conditions for ending hostilities, as outlined in the 10-point Peace Formula proposed by Volodymyr Zelensky in November 2022³⁸⁴. A political agreement was reached at the EU level that CBR assets will remain immobilised until Russia ceases its aggression and pays compensation for damages to Ukraine:

Subject to EU law, Russia's assets should remain immobilised until Russia ceases its war of aggression against Ukraine and compensates it for the damage caused by this war³⁸⁵.

It is important that the EU and G7 countries (Canada, France, Germany, Italy, Japan, the UK and the USA) and like-minded allies across the globe³⁸⁶ coordinate their role in the peace process and decisions on the CBR's frozen assets. However, there is some uncertainty due to changes in the USA's policy and its commitment to Ukraine. It has to be stressed, though, that while the USA may for instance reduce its military support to Ukraine and consider lifting of certain sanctions, the REPO Act mentioned earlier limits the possibility of a current president unfreezing Russian sovereign assets as the law itself requires that all Russian sovereign assets blocked or immobilised remain frozen until the end of hostilities between Russia and Ukraine and until Russia pays reparations to Ukraine³⁸⁷.

³⁷⁹ W. Adeyemo and D. Shimer, '[Make Moscow Pay: The Case for Seizing Russian Assets to Fund Ukraine's Defense](#)', *Foreign Affairs*, 21 May 2025.

³⁸⁰ G. Sorgi, '[EU eyes €200B secret weapon as Trump dominates Ukraine peace talks](#)', *Politico*, 25 February 2025.

³⁸¹ Para 11, European Parliament, '[Resolution on continuing the unwavering EU support for Ukraine, after three years of Russia's war of aggression](#)', 2025/2528(RSP), P10_TA(2025)0033, 12 March 2025.

³⁸² Bulgaria, Hungary, Slovakia and Croatia did not sign the Ukraine Compact.

³⁸³ European Commission, '[Ukraine Compact](#)', News article, 12 July 2024.

³⁸⁴ Official Website of the President of Ukraine, '[Ukraine has always been a leader in peacemaking efforts; if Russia wants to end this war, let it prove it with actions - speech by the President of Ukraine at the G20 Summit](#)', 15 November 2022.

³⁸⁵ Council, '[Joint press release following the 10th meeting of the EU-Ukraine Association Council](#)', 09 April 2025.

³⁸⁶ W. Adeyemo and D. Shimer, '[Make Moscow Pay: The Case for Seizing Russian Assets to Fund Ukraine's Defense](#)', *Foreign Affairs*, 21 May 2025.

³⁸⁷ Sec 103, US Congress, '[Making emergency supplemental appropriations for the fiscal year ending September 30, 2024, and for other purposes](#)', H.R.815, 24 April 2024.

Regarding internal EU law, for the CBR assets to play a meaningful role in peace negotiations, it is essential that the EU prolongs the freeze until Russia has ceased hostilities and paid reparations to Ukraine, thereby removing uncertainties regarding its possible lifting every 6 months.

The EU should also consider how the possible relief of its other existing sanctions against Russia could facilitate political peace negotiations. As acknowledged in the literature, sanctions relief can contribute to overcoming different obstacles in the negotiation process³⁸⁸:

- **High threshold to start negotiations due to certain legal obstacles:** a relevant obstacle here is the International Criminal Court arrest warrants in place against two senior Russian state representatives³⁸⁹, which currently present a physical obstacle for peace talks. In terms of EU sanctions, Russian political leaders are subject to an asset freeze, but not a travel ban, and the competent authorities of Member States may authorise exceptions for landing, take-off or overflights, provided they are consistent with the purposes of the sanctions regime. Nevertheless, the EU should consider whether its sanctions constitute an obstacle and how this obstacle may be overcome systematically.
- **Lack of trust between conflict parties and lack of momentum:** sanctions relief allows parties to negotiations to signal that they are serious and that they can be trusted. Partial sanctions relief of sanctions against Iran, for example, contributed to the comprehensive nuclear agreement signed in July 2015. In ongoing negotiations, parties are sometimes unable to conclude a settlement because some contentious issues remain unresolved. In such situations, the promise of partial sanctions relief may act as an incentive for parties to conclude an agreement. The EU should consider whether partial sanctions relief could contribute to successfully realising different stages of peace negotiations.
- **Lack of compliance:** negotiated agreements often include insufficient guarantees to secure the effective implementation of the agreement. It is essential that the possible lifting of sanctions is well calibrated and conditional upon the continued compliance of parties to the agreement, possibly also including the option of triggering a dispute settlement procedure as well as re-imposition of sanctions in cases of non-compliance³⁹⁰.

Peace negotiations, also being facilitated by the EU, should be pursued in carefully planned stages that could possibly include lifting certain sanctions and concluding interim agreement(s). This could then lead to the final peace agreement, which would include specific provisions on reparations owed by Russia to Ukraine, which directly links to the measures in place at the EU level concerning the CBR assets.

³⁸⁸ T. J. Biersteker and D. Lanz, [Negotiated Settlement through Sanctions Relief: Options for the Korean Peninsula](#), Policy Brief No 75, *Asia-Pacific Leadership Network*, 24 December 2020.

³⁸⁹ International Criminal Court, '[Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova](#)', Press release, 17 March 2023.

³⁹⁰ T. J. Biersteker and D. Lanz, [Negotiated Settlement through Sanctions Relief: Options for the Korean Peninsula](#), Policy Brief No 75, *Asia-Pacific Leadership Network*, 24 December 2020, p. 4.

5.2.2.2. International peace agreement

The most viable international legal solution to the conflict in Ukraine would be the conclusion of a peace agreement, a formal, legally binding international treaty, which would include legally binding security guarantees and specific provisions on reparations owed by Russia to Ukraine in direct connection to the measures in place at the EU level concerning CBR assets.

Such an agreement could include:

- Lifting of the asset freeze, which would revive CSDs obligation to return immobilised assets and matured cash balances to CBR. The actual amount owed by CSDs would be offset against war reparations³⁹¹ specifically determined in the agreement, the amount already paid through an EU Instrument would be reduced from the final amount of reparations owed by Russia to Ukraine. Alternatively, Russia could pay reparations to Ukraine and these funds would be used to repay the reparations loan (under the EU Instrument) and then the EU Instrument would repay Euroclear. Finally, Euroclear would repay the claim of the CBR. In an unlikely situation, where reparations are lower than the amount of cash balances transferred to the EU instrument by Euroclear, the EU would have to (through Euroclear) return such amount to Russia.
- If the agreement included only Russia's obligation to pay reparations, without a concrete value for such reparations being calculated beforehand, this agreement would have to include a procedure for determining the value of those reparations and a deadline for Russia to pay them³⁹². In this case, lifting the sanctions concerning CBR assets would need to be conditioned upon the actual determination of reparations and payment to Ukraine.
- If the agreement does not include a provision on the reparations, a provision could perhaps be negotiated that, should Russia breach the terms of the peace agreement, the EU will then be entitled to confiscate CBR assets and transfer them to Ukraine³⁹³.

From the point of view of internal EU law, for the CBR assets to play a meaningful role in peace negotiations and the possible peace agreement, it is essential for the EU to prolong the asset freeze until Russia has settled its payment of reparations to Ukraine, thereby removing uncertainties regarding possible lifting every 6 months (see above Sections 3 and 5.1.4).

By virtue of Article 47 TEU, the EU could, as a subject of international law, be part of a possible international peace agreement or could sign a separate agreement with Ukraine as a guarantee on the fulfilment of the underlying peace agreement between Ukraine and Russia. In this case, the EU would act as guarantor for the fulfilment of obligations in the agreement, which Ukraine would be unable to realise independently. As stated in Article 216 TFEU, the EU may conclude an agreement with one or more third countries either when there is an explicit legal basis for in its primary law

³⁹¹ European Commission, ['Ukraine: Commission presents options to make sure that Russia pays for its crimes'](#), Press release, 30 November 2022.

³⁹² See also A. Caprile, et al., [Confiscation of immobilised Russian sovereign assets: State of play, arguments and scenarios](#), *European Parliamentary Research Service*, PE 775.908, September 2025.

³⁹³ B. Siman, [The Ukraine Liberty Bond: Unlocking Frozen Assets Without Breaking the Rules](#), *Egmont Institute*, 20 March 2025.

or—in the absence thereof, 'where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope'.³⁹⁴

If the EU is to conclude an international agreement with Ukraine formally or be part of an international peace agreement, its internal process would have to be followed, which, especially in CFSP matters, is conditioned on stringent conditions.

International agreements are an integral component of the EU's external action³⁹⁵, through which the Union may seek to achieve its objectives under Articles 3(5) and 21(2) of the TEU, which are binding both for the EU and its Member States³⁹⁶. Adoption of agreements based on the CFSP is in the Council's hands, but they are negotiated by the High Representative³⁹⁷. In other areas, the Commission has legal authority to represent the EU in external relations. The conclusion of binding international agreements, mixed agreements or agreements in exclusive competence of the EU falls under the scope of Article 218 TFEU.³⁹⁸

As already confirmed by CJEU case-law through the so-called 'gravity test' and the '*lex specialis*' principle, the fact that there is a CFSP dimension to the agreement does not necessitate inclusion of a CFSP legal basis, especially where the CFSP dimension is seen as incidental to other components such as common commercial policy and development cooperation³⁹⁹. However, in practice, it has been difficult to separate CFSP clearly from other external action competences and often such agreements include a combined legal basis. Consequently, reference to both Articles 31 and 37 TEU were required, thereby bringing in the unanimity requirement⁴⁰⁰ for the adoption of such agreements signed by the EU and third countries⁴⁰¹. Moreover, agreements falling under the

³⁹⁴ Art 216, EU, [Consolidated Version of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, C 326/47, 26 October 2012.

³⁹⁵ D. Genini, '[Breaking a Tradition: How Signing of Agreements Is No Longer a Matter for the Council](#)', *European Papers*, Vol 9, No 1, 2024, pp. 145-152.

³⁹⁶ Art 37, EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

³⁹⁷ Art 17(1) and 27(2), EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

³⁹⁸ CJEU, [Case C-233/02: French Republic v Commission of the European Communities](#), ECLI:EU:C:2004:173, 23 March 2004; Art 218 EU, [Consolidated Version of the Treaty on the Functioning of the European Union](#), *Official Journal of the EU*, C 326/47, 26 October 2012.

³⁹⁹ CJEU, [Case C-658/11: European Parliament v Council of the European Union](#), ECLI:EU:C:2014:2025, 24 June 2014; R. A. Wessel, '[Legality in EU Common Foreign and Security Policy: The Choice of the Appropriate Legal Basis](#)', in C. Kilpatrick and J. Scott (eds), *Contemporary Challenges to EU Legality*, Oxford University Press, Oxford, UK, 2021; See also Paras 53 and 57, CJEU, [Opinion of Advocate General Kokott delivered in Case-263/14: European Parliament v Council of the European Union](#), EU:C:2015:729, 28 October 2015; Art. 40, EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

⁴⁰⁰ See also Art 24, EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012

⁴⁰¹ Council, [Decision \(EU\) 2016/342 on the conclusion, on behalf of the Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part](#), *Official Journal of the EU*, L 71/1, 16 March 2016 (referring to Art 37 in conjunction with Art 31(1) TEU) See also P. van Elsuwege, '[Legal Creativity in EU External Relations: The Stabilization and Association Agreement Between the EU and Kosovo](#)', *European Foreign Affairs Review*, Vol 22, No 3, 2017, pp. 393-409.

area of security and defence necessitate unanimous consent within the Council, where Member States with a neutral status⁴⁰² may hold different positions⁴⁰³.

Negotiations

Peace negotiations, including those facilitated by the EU, should be pursued in carefully planned stages that could possibly include lifting certain sanctions, concluding interim agreement(s) and leading to the final peace agreement, which would include specific provision on reparations owed by Russia to Ukraine being directly linked with measures in place at EU level concerning the CBR assets. The EU's specific role in this agreement (either as a party or a guarantor for Ukraine's obligations) is to be determined in accordance with relevant internal EU law provisions.

6 Possible legal actions against CSDs, States and the EU

This section outlines arguments and constraints presented by Euroclear⁴⁰⁴ about the confiscation of assets. Possible legal actions are outlined that Euroclear, Clearstream and Member States may face should seized assets be transferred to an international reparations mechanism or a trust fund.

In terms of freezing and possible confiscation of private property, investment arbitration procedures are the most likely avenue that Russian investors will pursue, with some cases against Luxembourg and Belgium due to EU sanctions already pending. An argument of (indirect) expropriation without compensation is likely to arise in these proceedings; however, it is difficult to estimate the outcome of these processes. Some bilateral investment treaties have specific provisions relativising the obligation to pay compensation for (indirect) expropriations in relation to war and armed conflict. Germany-Russia Bilateral Investment Treaty, in this respect in Article 4(5) stipulates, for example:

Investors of one Contracting Party whose investments have suffered losses in the territory of the other Contracting Party as a result of war, armed conflict or other extraordinary circumstances shall not be discriminated against and shall be accorded most-favoured-nation treatment in respect of the payment of compensation or other forms of restitution for the loss suffered. The payments and restitution must be effectively realisable and freely transferable.⁴⁰⁵

To address the risk of legal processes launched by listed persons in the course of investment arbitrations related to EU sanctions, the EU introduced protective restrictions concerning investor-to-state dispute settlement in its 18th sanctions package. These measures protect Member States

⁴⁰² Art 42(2), EU, [Consolidated Version of the Treaty on the European Union](#), *Official Journal of the EU*, C 326/15, 26 October 2012.

⁴⁰³ D. Genini, '[How the war in Ukraine has transformed the EU's Common Foreign and Security Policy](#)', *Yearbook of European Law*, 2025, p. 22.

⁴⁰⁴ V. Urbain, '[Confisquer les avoirs russes, c'est ouvrir la boîte de Pandore](#)', *L'Echo*, nd.

⁴⁰⁵ Electronic Database of Investment Treaties, [Agreement between the Federal Republic of Germany and the Union of Soviet Socialist Republics concerning the promotion and reciprocal protection of investments](#), 1989. The Germany-Russia Bilateral Investment Treaty was originally signed with the Union of Soviet Socialist Republics (USSR). Following the dissolution of the USSR, Russia assumed the obligations of the treaty as a successor state. This agreement therefore governs the protection and promotion of investments between Germany and Russia, ensuring legal safeguards for investors from both countries. See UN, [Vienna Convention on Succession of States in respect of Treaties](#), done on 23 August 1978, entered into force on 6 November 1996, UN Treaty Series, Vol 1946, 2005.

from sanctions-related claims under their bilateral investment treaties⁴⁰⁶ and include the possibility for Member States to recover any damages incurred as a consequence of investor-to-state dispute settlement proceedings brought against them⁴⁰⁷.

Where Member States are confronted with arbitral awards rendered against them in investor-State dispute settlement proceedings in connection with measures imposed under Regulation (EU) No 833/2014 or Regulation (EU) No 269/2014, they should invoke any objection available to them in domestic or foreign proceedings for the recognition and enforcement of such awards. This includes raising the objection that the recognition or enforcement of the award would be contrary to the public policy of the country where recognition and enforcement is sought, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958⁴⁰⁸.

It is questionable, however, whether prohibiting Russian parties from pursuing or enforcing Investor-State Dispute Settlement arbitral awards related to EU sanctions (relating to asset freezes, expropriations, or other measures) is in line with international investment law, e.g. the Convention on the Recognition and Enforcement of Foreign Arbitral Awards⁴⁰⁹ and Convention on the Settlement of Investment Disputes between States and Nationals of Other States.⁴¹⁰

While cases are pending before international investment arbitrations against Luxembourg and Belgium concerning the freezing of private property, rules protecting foreign property under international investment law are unlikely to apply to CBR assets. Freezing of assets and especially their confiscation could be qualified as unlawful expropriation (primarily due to the lack of adequate and prompt compensation). Typically, bilateral investment treaties' protections are applied to government-controlled entities only when they act in a commercial (and not governmental) capacity⁴¹¹. Such procedures are unlikely and depend upon the concrete provisions relating to the definition of 'investment' and 'investor' in relevant bilateral treaties. For example, in recent ICJ case law, central banks did not qualify as 'investors' and hence their assets did not fall under the 'investment' criteria⁴¹².

It also has to be acknowledged that immobilised CBR assets, for instance in Belgium, may be subject to competition of claimants to access Russia's state assets. This includes not only Ukraine and its citizens that suffered damages due to the aggressive war but also private companies and investors (for example, Western investors suffering confiscation of assets in Russia) are

⁴⁰⁶ Arts 11 (2)a and (2)b, Council, [Regulation \(EU\) 2025/1494 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 19 July 2025.

⁴⁰⁷ Article 11e, Council, [Regulation \(EU\) 2025/1494 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 19 July 2025; European Commission, '[EU adopts 18th package of sanctions against Russia](#)', Press release, 18 July 2025

⁴⁰⁸ Para 24 and Arts 11(2a) and 11(2b), Council, [Regulation \(EU\) 2025/1494 amending Regulation \(EU\) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine](#), *Official Journal of the EU*, L series, 19 July 2025.

⁴⁰⁹ UN, [Convention on the Recognition and Enforcement of Foreign Arbitral Awards \(the 'New York Convention'\)](#), 1958.

⁴¹⁰ T. Hanna, [Targeting Russia and Belarus Through Investment Arbitration: The EU's 18th Sanctions Package](#), *OpinioJuris*, 27 August 2025.

⁴¹¹ Paras 16-27, International Centre for Settlement of Investment Disputes, [Ceskoslovenska Obchodni Banka, AS v The Slovak Republic](#), Decision on Jurisdiction, ICSID Reports, Vol 5, 1999, p. 335.

⁴¹² ICJ, [Certain Iranian Assets case \(Islamic Republic of Iran v United States of America\)](#), 30 March 2023.

increasingly pursuing different avenues for enforcement of their investment arbitration decisions before national courts. Hence, it can reasonably be expected that CBR assets held in Euroclear will be targeted for this purpose. There is currently no clear hierarchy between private and public claims against CBR assets in terms of their priority.

Russia perceives the freezing of assets as well as their possible confiscation as contrary to international law and has threatened to contest any confiscation of assets before international courts. Moreover, Russia threatens to confiscate the capital of Western private investors that has been accumulated in Russia⁴¹³. In fact, Russia has already adopted a number of measures that severely curtail the rights of Western investors. For instance, the assets they hold can only be sold at 50 % of their value. Some banks, such as Raiffeisen Bank International, have also been subject to legal proceedings in Russia, resulting in high damages awards⁴¹⁴. Should the EU decide to adopt confiscatory measures or establish an EU instrument, Russia is likely to adopt further retaliatory measures.

In reaction to confiscation or management of CBR assets, it is more likely that Russia will start inter-state dispute resolution mechanisms than investment arbitration procedures. One avenue Russia could pursue is the ICJ. A legal basis for the jurisdiction from which the consent of the concerned states to the procedure derives would have to be established in this case. A number of EU Member States, including Austria, Belgium, Germany, and Luxembourg⁴¹⁵, have deposited facultative clauses under Article 36(2) of the Statute of the ICJ⁴¹⁶, thereby recognising the ICJ's compulsory jurisdiction in legal disputes with other states that have made similar declarations. While Russia did not submit such a declaration to the Court, it could consider doing so in the future.

In addition, the EU's decisions on CBR assets have also been challenged internally, within the EU, by Hungary, which brought two actions⁴¹⁷ before the CJEU against the Council and EPF over channelling billions of the windfall profits for military aid to Ukraine⁴¹⁸. In essence, Hungary challenges the decision to transfer profits from managing immobilised CBR assets to the EPF, which it views as invalid. For example, Hungary asked the Court to annul the decision adopted on 26 February 2025 by the Committee of the EPF regarding the allocation of amounts to assistance measures for the supply of military support to the Ukrainian Armed Forces, in accordance with the conditions laid down in Council Decision (CFSP) 2024/1471 of 21 May 2024. It argues that the EPF Committee's decision violated Article 31(1) TEU, curtailing Hungary's right to vote. Hungary could not participate in the vote 'on the grounds that it was allegedly not a 'contributing Member State'. As a result, Hungary claims that the principles of equality between Member States and the EU's democratic functioning were infringed because Hungary, as a Member State, was deprived,

⁴¹³ I. Wiśniewska, [The EU's decision to use the profits generated by frozen Russian assets](#), *Centre for Eastern Studies*, 24 May 2024.

⁴¹⁴ J. Liboreiro, '[Austrian bank takes centre stage as EU pushes new sanctions on Russia](#)', *Euronews*, 13 October 2025.

⁴¹⁵ ICJ, '[Declarations recognizing the jurisdiction of the Court as compulsory](#)', webpage, nd.

⁴¹⁶ International Court of Justice, [Statute of the International Court of Justice](#), 26 June 1945.

⁴¹⁷ CJEU, [Case T-452/25: Action brought on 6 May 2025 – Hungary v Council and European Peace Facility](#), *Official Journal of the EU*, C Series, 25 August 2025.

⁴¹⁸ CJEU, [Case T-452/25](#), *Official Journal of the EU*, C Series, 25 August 2025.

unjustifiably and without a legal basis, of its right to vote'⁴¹⁹. It remains to be seen the CJEU will confirm its jurisdiction in this case.⁴²⁰ Should the court choose to accept jurisdiction, its decision on this significant procedural matter will have far-reaching consequences for the voting procedures in CFSP matters, particularly with regard to constructive abstentions.

7 Conclusions and recommendations

While Russia's international obligation to pay reparations for its unlawful aggression is clear, the main difficulty that the international community and the EU face is access to the required funds. In the current situation, it is unlikely that Russia will voluntarily pay the reparations or give consent to an inter-state procedure before, for instance, an ICJ ruling on reparations. Russia will also block any UNSC action to secure reparations⁴²¹. Hence, attention is now focused on other possibilities.

In relation to the **private assets**, it remains to be seen whether and to what extent the new legislation concerning asset recovery and confiscation under European criminal law will be effective in the area of asset confiscation and its transfer to Ukraine. This depends on the practice of Member States and national courts. It can reasonably be expected that the amount of funds confiscated within these processes will not be sufficient to finance the reconstruction of Ukraine or provide for reparations. Moreover, new rules on confiscations may be subject to challenges from the point of view of criminal and human rights law.

Within the EU, there has (for now, at least) been agreement on the adoption of measures concerning the **unexpected and extraordinary profits of CSDs**, which were adopted in accordance with internal EU law provisions concerning restrictive measures. With windfall profits falling short of the sufficient amount of funds needed to support Ukraine, the main focus currently is on the principal assets maturing to cash balances. It is estimated that at the time of writing, the total accumulated cash balance associated with CBR assets in Euroclear amounts to EUR 176 billion⁴²². Utilisation of immobilised assets and cash balances in the course of the EU's restrictive measures for the purpose of rebuilding Ukraine and securing reparations owed to it by Russia has been met with two challenges:

- At the EU level, proposals under the CFSP, especially relating to CBR assets, are hindered by the unanimity decision-making processes and the possible use of veto powers by certain Member States, with the prolongation of the asset freezes being challenged every 6 months;
- At the international level, CBR assets are protected by the laws of state immunity and it remains questionable under what circumstances such assets could lawfully be used for the purpose of securing reparations.

⁴¹⁹ CJEU, [Case T-452/25](#), *Official Journal of the EU*, C Series, 25 August 2025.

⁴²⁰ CFSP measures are generally excluded from Court's jurisdiction pursuant to Article 24(1) TEU and Article 275(1) TFEU.

⁴²¹ F. I. Paddeu, [Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures](#), *Just Security*, 01 March 2024.

⁴²² Interview with European Commission official, 25 September 2025 (in person).

The following alternative possibilities are outlined in the paper to address the abovementioned challenges under EU law:

- **Policy options on QMV in the area of sanctions under the existing provisions of EU Treaties** (passerelle clauses; simple and constructive abstentions);
- **Policy option under Article 31(2) TEU to use QMV** for prolonging sanctions concerning asset freezes;
- **Policy option to separate Article 29 TEU and 215 TFEU decision-making processes;**
- **Policy option on QMV in the area of sanctions requiring change of Treaties** (changed provisions of Article 29 of the TEU on voting procedures in the adoption of sanctions);
- **The ULCM** (for windfall profits);
- **Policy options under the ACI;**
- **Policy options under Article 7 TEU procedure** on the suspension of voting rights;
- **Policy options relating to unilateral actions of Member States** regarding confiscation of CBR assets;
- **Policy option related to the establishment of a European Instrument (reparations loan)** (for matured principal cash balances).

Under international law, key options and policy recommendations analysed in this paper are as follows:

- The **collective self-defence argument** may include justification for the adoption of non-forcible measures; however, these would have to be incidental to the actual exercise of self-defence by the EU and/or its Member States or would have to amount to the indirect use of force, to trigger the self-defence law's applicability. In any case, confiscation of State assets to secure reparations for Ukraine would generally not fall under the scope of lawful self-defence. The law of countermeasures is a more appropriate argument justifying the possible peacetime confiscation of property with the aim of securing reparations.
- **Exceptions to immunities before national courts**, including enforcement of international judgements and arbitral awards ordering damages, have been used in practice but these procedures take time and are unlikely to result in significant damages awards that could be transferred to Ukraine. These judicial procedures largely result in awarding compensation to specific investors. The possibility of EU Member States adopting **specific legislation allowing for the confiscation of CBR** assets by way of executive or judicial action relying on the law of countermeasures is unlikely to be in line with the criteria for the lawful taking of countermeasures, unless these processes are specifically connected with the international reparation mechanism and the enforcement of its concrete reparations decisions. Due to these legal risks, Member States in which the majority of sovereign assets are held are less likely to adopt such an exception to immunities and/or adopt relevant national legislation allowing for confiscation of Russian assets and their transfer to Ukraine.
- **Enforcement of compensation judgements of the ECtHR** at the national level is coupled with challenges concerning the national enforceability of ECtHR judgments and the fact that only some national laws provide an exception to immunities in cases of international judgements being enforced. Moreover, ECtHR case law relating to Russian aggression in

Ukraine and subsequent awards for compensation will necessarily be limited, as the Court no longer has jurisdiction to hear cases against Russia, following its cessation as a CoE member on 16 March 2022. It is also unclear to what extent would enforcement of judgements against the CBR assets would create a precedent for the execution of ECtHR judgements in other cases.

- The EU can rely on the **countermeasures** rationale under international law to justify violations of CBR immunities, under the novel understanding between procedural and secondary rules in international law, provided that the reversibility condition is met. The proposed management of the CBR assets under the EU instrument would be a temporary and reversible executive action, possibly connected with the international reparations mechanism. It is therefore more likely that the criteria of inducement, reversibility and temporality are met. Such argumentation does, however, involve important legal risks.
- **The International Claims Commission for Ukraine**, established within the CoE, will be a legitimate international body for examining reparations claims and taking decisions on the value of war reparations owed by Russia to Ukraine. The Trust Fund for this mechanism has not yet been established. Because it is extremely unlikely that Russia will join this initiative and contribute to the Fund, it is proposed in this paper that the EU Instrument should be directly connected to this Trust Fund, allowing for the payment of reparation claims adjudicated upon by the Claims Commission.
- **Decisions by the Special Tribunal for the Crime of Aggression against Ukraine** may include reparations to those affected by the crime of aggression. This paper proposes two options that should be further explored: using immobilised Russian assets through the EU Instrument to affect the tribunal's reparation decisions; adopting confiscatory measures during the Tribunal's proceedings, and possibly transferring confiscated assets to the EU Instrument itself (or the CoE Trust Fund).
- **Peace negotiations**, whereby frozen and immobilised assets should be used as leverage in peace talks. Negotiations, facilitated also by the EU, should be pursued in carefully planned stages that could possibly include lifting of certain sanctions, conclusion of interim agreement(s) and leading to the **final peace agreement** which would include specific provision on reparations owed by Russia to Ukraine in direct connection to the measures in place at the EU level concerning the CBR assets (the EU Instrument), whereby the amount already paid through the EU Instrument would be reduced from the final value of reparations owed by Russia to Ukraine.

Most viable proposal

Based on the challenges and options analysed, the most viable proposal for the EU is utilising frozen and immobilised assets for the purpose of securing reparations for Ukraine. This could be pursued in the following steps:

- **Prolongation of restrictive measures** concerning immobilisation of CBR assets on the basis of Article 31(2) TEU, whereby a QMV decision can also be taken 'when adopting any decision implementing a decision defining a Union action or position'. A political agreement at the EU level has already been established, that 'Subject to EU law, Russia's assets should remain

immobilised until Russia ceases its war of aggression against Ukraine and compensates it for the damage caused by this war⁴²³;

- **Establishment of an EU Instrument (reparations loan)** under Article 212 TFEU, which would enter into a tailored debt contract with CSDs at 0 % interest, allowing transfer of matured cash balances from CSDs to the instrument;
- **A decision under Article 215 TFEU**, to oblige Euroclear to make the proposed investment in the EU Instrument and allowing for a derogation by CSDs from their applicable rules on management and investment of central bank assets;
- The EU Instrument would use those assets (cash) for a **reparations loan** to Ukraine, which will be repaid by Ukraine once it receives war reparations owed to it by Russia;
- This mechanism **is temporary and aims to ensure reversibility** as it is limited to a moment, when EU sanctions concerning the immobilisation of CBR assets are lifted, when Russia ceases its aggression and pays reparations. It gives Euroclear legal entitlement to a claim in the amount of cash balances transferred to the Instrument serving as a guarantee that it will have the necessary cash to honour the claim that CBR will have against it at that time. The proposed European Instrument thus ensures a shared, mutual responsibility of the EU and its Member States (not just Belgium and Euroclear), to ensure that repayment to Euroclear is made when/if necessary.
- **The EU Instrument should be connected to existing reparations and compensation mechanisms** already in place, which are adjudicating upon Russia's violations and its obligation to pay reparations or compensation, namely: the International Claims Commission for Ukraine; the Special Tribunal for the Crime of Aggression against Ukraine, together with ECtHR inter-state and individual decisions on compensation;
- The underlying international legal justification for this is the law of **countermeasures**. This paper proposes a novel understanding of the relationship between procedural rules on immunities and secondary rules on countermeasures. It allows, in turn, for a conclusion that such measures may be adopted to justify a violation of the CBR assets' immunities. As such, these measures taken through the EU Instrument and connected to the international reparations mechanism would be considered as compliant with conditions for the lawful taking of countermeasures (temporality, reversibility) and would be in line with the purpose of countermeasures. Such argumentation does, however, involve important legal risks highlighted throughout the paper.

⁴²³ Council, '[Joint press release following the 10th meeting of the EU-Ukraine Association Council](#)', 09 April 2025.

Annex 1: Overview of Arguments

Table 1: Private Assets

OPTION	LEGAL BASIS	Comment
Confiscation of private assets in the course of criminal proceedings	Directive (EU) 2024/1226; Directive (EU) 2024/1260	Challenge: The implementation and effect of the new legislation in Member States is yet to be seen; it can be expected that in practice the amount of funds confiscated within these processes will not be sufficient to finance the reconstruction of Ukraine; confiscations may be subject to challenges from the point of view of criminal law and human rights law; confiscation is only possible until EU restrictive measures are in place.
Confiscation without just compensation outside judicial processes, e.g. in the course of restrictive measures (CFSP)	Article 29 TEU; Article 215 TFEU	Challenge: such confiscation would not be in line with the aim and non-punitive character of restrictive measures; the legality of such measures is likely to be challenged from the point of view of due process, and the right to property under EU law.

Table 2: Windfall Profits of RCB Assets

OPTION	LEGAL BASIS	Comment
Measures are taken at the national level in accordance with national legislation	National tax legislation	Challenge: allows for gathering of smaller amounts of funds, not sufficient to finance the reconstruction of Ukraine; it depends on the national legislation and policies, whether these funds are to be transferred to Ukraine.
Measures taken at the EU level: CSDs must account for and manage extraordinary	Council, Decision (CFSP) 2024/577;	Challenge: from the international law perspective, such measures could be challenged as violating immunities of

cash balances and keep separate the unexpected and extraordinary revenues generated; profits generated from CBR's assets since February 2024 are transferred to Ukraine through ULCM	Council, Regulation (EU) 2024/576	RCB; windfall profits falling short of the sufficient amount of funds needed for the support of Ukraine.
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Table 3: Principal Assets of RCB

OPTION	EU LEGAL BASIS	INTERNATIONAL LEGAL BASIS	COMMENT
ACI	Regulation (EU) 2023/2675.	Customary international law on third-party countermeasures; Articles 22 ARSIWA; Article 48 ARSIWA; Article 54 ARSIWA; Article 22 ARIO; Article 49 ARIO; Article 57 ARIO.	Challenge: ACI is primarily an economic anti-coercion tool and cannot be utilised to pursue the CFSP's foreign policy objectives; a decision for triggering this mechanism would fall under the Directorate-General for Trade, which develops and carries out the Commission's policies on trade and economic security; important legal risks exist connected to the application of the law of countermeasures.
Article 7 TEU procedures	Article 2 TEU; Article 7 TEU	N/A	The Article 7 TEU procedure could potentially be used to mitigate the obstruction of CFSP decisions relating to sanctions against Russia. However, it could not be used for the adoption of confiscatory measures against Russian assets by the EU or its Member States. Challenges: unanimity challenge.

<p>Unilateral sanctions of Member States</p>	<p>Article 346 TFEU</p>	<p>Customary international law on third-party countermeasures; Articles 22 ARSIWA; Article 48 ARSIWA; Article 54 ARSIWA; Article 22 ARIO; Article 49 ARIO; Article 57 ARIO.</p>	<p>Challenge: Member States' unilateral actions would undermine the EU's capacity to speak with one voice and act as a global player in security matters, which is a core CFSP objective; important legal risks exist connected to the application of the law of countermeasures.</p>
<p>Enforcement of Judgements of the European Court of Human Rights</p>	<p>N/A</p>	<p>European Convention on Human Rights</p>	<p>Challenge: enforcement is dependent on the national legislation of states and their reliance on the exceptions to immunities and the law of countermeasures; ECtHR to adjudicate upon events related to the Russian aggression in Ukraine; It is also unclear to what extent would enforcement of judgements against the CBR assets would create a precedent for the execution of ECtHR judgements in other cases.</p>
<p>Confiscation of RCB principal assets by way of a collective self-defence</p>	<p>CFSP decision</p>	<p>Customary international law of self-defence; Article 51 of the UN Charter; Article 21 ARSIWA</p>	<p>The collective self-defence argument may include justification for adopting non-forcible measures. Challenge: implies 'war time' narrative; measures adopted would have to be incidental to the actual exercise of self-defence by the EU and/or its Member States or would have to amount to the</p>

			indirect use of force, to trigger the applicability of the law of self-defence; confiscation of State assets to secure reparations for Ukraine would generally not fall under the scope of the lawful self-defence.
Exceptions to immunities before national courts and national legislation allowing for the confiscation of Russian assets	N/A	<p>Customary international law on State immunities;</p> <p>Customary international law on third-party countermeasures;</p> <p>Articles 22 ARSIWA;</p> <p>Article 48 ARSIWA;</p> <p>Article 54 ARSIWA;</p> <p>Article 22 ARIO;</p> <p>Article 49 ARIO;</p> <p>Article 57 ARIO.</p>	<p>Challenge: The legality of such legislation is likely to be questioned from the point of view of national constitutions and laws of respective states; for such actions to be considered as a lawful countermeasure justified under international law, they would have to fulfil the criteria for the lawful taking of countermeasures, including reversibility; these procedures take time and are unlikely to result in significant damages awards that could be transferred to Ukraine as they mostly result in awarding compensation to specific investors; important legal risks exist connected to the application of the law of countermeasures.</p>
European Instrument (reparations loan) as connected with the existing international reparations mechanisms	<p>Article 31(2) TEU;</p> <p>Article 215 TFEU;</p> <p>Article 212 TFEU;</p>	<p>Customary international law on third-party countermeasures;</p> <p>Articles 22 ARSIWA;</p> <p>Article 48 ARSIWA;</p> <p>Article 54 ARSIWA;</p> <p>Article 22 ARIO;</p>	<p>Challenge: proposal may face obstacles internally as it presupposes continuous application of the asset freeze for which an agreement among EU Member States would be necessary; unanimity challenge could be addressed through Article</p>

		<p>Article 49 ARIQ; Article 57 ARIQ.</p>	<p>31(2) TEU, QMV decision for the prolongation of sanctions; important legal risks exist connected to the application of the law of countermeasures, these could be mitigated by connecting the reparations loan with the existing international reparations mechanisms.</p>
<p>Possible utilisation of assets as part of a peace agreement or as collateral for the payment of reparations</p>	<p>Articles 3(5) TEU; Article 21(2) TEU; Article 47 TEU; Article 216 TFEU.</p>	<p>International Law of Treaties</p>	<p>Peace negotiations, including those facilitated by the EU, should be pursued in carefully planned stages that could possibly include lifting certain sanctions, concluding interim agreement(s) and leading to the final peace agreement, which would include specific provisions on reparations owed by Russia to Ukraine being directly linked with measures in place at the EU level concerning the CBR assets. The EU's specific role in this agreement (either as a party or a guarantor for Ukraine's obligations) is to be determined in accordance with relevant internal EU law provisions.</p>

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