

U.S. Plans to Confiscate Russian Assets: Will the EU Follow?

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On 20 April 2024, the US Congress adopted a bipartisan bill “*Rebuilding Economic Prosperity and Opportunity for Ukrainians Act*” (REPO Act or “*the Act*”)¹, which proposes to transfer immobilized Russian sovereign assets to fund Ukraine’s reconstruction.

The purpose of the Act is granting the executive branch the necessary powers for confiscation of Russian assets. The Act does not automatically trigger confiscation in the US and stipulates that the US should move in coordination with G7 and other partners to implement the measure. Adoption of the REPO Act is, however, a significant step as it removes legal ambiguity as to how the confiscation can be effectuated at the national level, and it is the first piece of national legislation that explicitly articulates the position that confiscation of Russian sovereign assets represents countermeasures as a matter of international law.

Authorization of the President to take actions in order to confiscate Russian assets also resolves the issues pertaining to applicability of sovereign immunities. Should the treatment of Russian assets be resolved by judiciary, it would implicate immunities protection afforded to foreign states from being subjected to jurisdiction of the national courts. When confiscation is implemented as administrative measure by the executive branch based on doctrine of countermeasures, the immunities protections are avoided since principle of sovereign immunity is procedural in nature and can be invoked only in the context of adjudication or enforcement measures by national courts.

The Act also instructs the President to require US financial institutions to submit information on Russian sovereign assets to the Secretary of the Treasury. Similar measures were also adopted by the EU in February 2023, when the European Commission introduced a requirement for financial institutions and central securities depositories to report information on Russian assets to the regulatory authorities in their respective member states as well as to the Commission. Lack of transparency around the location and composition of Russian sovereign assets created significant hurdles in developing a proper strategy for dealing with such assets. In fact, the wording of the REPO Act indicates that US lawmakers do not have accurate information on Russian assets at their disposal. We believe that the new reporting requirement is a significant

¹US Congress Press Report, 20 April 2024, available at <https://hill.house.gov/news/documentsingle.aspx?DocumentID=9298#:~:text=4175%20%2D%20Rebuilding%20Economic%20Prosperity%20and%20assets%20within%20U.S.%20jurisdiction%20into>

development that will remove speculation on the structure of Russian assets from efforts to repurpose such funds for the benefit of Ukraine.

Another important aspect of the REPO Act is that it is not limited to CBR reserves, but covers any type of Russian state assets. Given the US practice and doctrine on instrumentalities of state, the Act potentially opens avenues for confiscating assets of Russian state-owned companies, that can be substantial.

Meanwhile, the EU is reportedly more inclined to utilize the proceeds accumulated from Russian reserves at European central securities depositories such as Euroclear, although there is no decision yet on how these earnings will be used. The funds could be transferred to Ukraine directly or to be used for raising capital, and, thus, maximize the amount of money available at the moment. Below we provide a brief overview of the most recent legislative development in the EU, namely Council Decision 2024/577 of 12 February 2024 as well as securitization proposals.

COMMENTARY TO US ACT ON CONFISCATION OF RUSSIAN SOVEREIGN ASSETS (REPO Act)

In this paper we analyze main parameters of the proposed framework and what the Act is intended to achieve.

The Repo Act articulates the following important points: (i) legislative branch authorizes the executive to act in order to make sovereign Russian assets available for Ukraine; (ii) it highlights the need for greater transparency with regard to location of Russian reserves; (iii) the Act emphasizes the role of international cooperation and instructs that confiscation of Russian assets should be implemented as multilateral effort; (iv) it adopts the approach that transfer of Russian sovereign assets represents countermeasures against Russia as a matter of public international law; (v) the Act maneuvers around sovereign immunity issues by making a transfer of funds an administrative procedure rather than judicial process and by precluding judicial review of the measure; (vi) the transfer concerns virtually all types of state assets (except for what is covered by diplomatic immunities), including Russian sovereign wealth fund and potentially assets of Russian state-owned companies; (vii) the Act stipulates safeguards to prevent development of policy precedent of confiscation foreign states' property; (viii) the act outlines how the US may use Russian assets for the benefit of Ukraine.

(i) Legislative Branch Authorizes Executive to Act in Order To Make Russian Sovereign Assets Available For Ukraine

The Act principally authorizes the President to confiscate Russian sovereign assets and the Secretary of State to provide additional assistance to Ukraine using assets confiscated from the Russian Federation.

Specifically, the Act states 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 State”. Therefore, the Act clarifies the position on the scope of presidential authority to deal with the Russian state assets. It is worth noting that reputable scholars have expressed that position that existing US law allows for disposition of foreign state assets by the executive branch², however such view was not supported unequivocally by a broader circle of experts. Consequently, it is important that the Act clearly articulates that the President enjoys an authority to confiscate Russian assets.

Statement that the President may confiscate any Russian sovereign assets subject to the jurisdiction of the United States is grounded in and expands International Emergency Economic Powers Act (“IEEPA”)³. The IEEPA stipulates presidential authority to take measures with respect to property of foreign states. Even though the IEEPA explicitly provides for the presidential authority to confiscate foreign state assets when the US is engaged in armed hostilities or has been attacked by a foreign country, it also authorizes the president to “direct and compel . . . any . . . transfer, . . . with respect to” that property irrespective of armed conflict.

Historically, measures against foreign states assets were most often taken in the US by presidential executive order, albeit the existing precedents did not involve transfer of funds to a third state. For example, President Bush’s Executive Order of 20 March 2004 authorized confiscation of Iraq sovereign assets, including central bank reserves, vesting such assets in the Department of the Treasury to be further transferred for the assistance of the Iraqi people and for the reconstruction of Iraq. Confiscation of assets in this particular case was possible because the US were in state of armed conflict with Iraq.

Another important example dealing with central bank assets in the US is the case of frozen funds of the Afghan Central Bank (Da Afghanistan Bank (“DAB”)). On 11 Feb 2022, President Biden issued an Executive Order on Protecting Certain Property of Da Afghanistan Bank for the Benefit of the People of Afghanistan whereby \$7 billion of frozen DAB funds would be used for humanitarian assistance in Afghanistan⁵. Some commentators interpret the order to mean that \$3.5 billion were allocated for compensation to the relatives of 9/11 victims and it was widely reported that the order made DAB funds available for attachment⁶.

² Tribe, L.H., R.P. Tolentino, K.M. Harris, J. Erpenbach and J. Lewin (2023) ‘The Legal, Practical, and Moral Case for Transferring Russian Sovereign Assets to Ukraine’, *Renew Democracy Initiative*, available at <https://rdi.org/articles/making-putin-pay/>

³ National Emergency related to Russia was declared by the President Biden’s Executive Order 14024 of 15 April 2021. Originally the emergency was declared based on Russia’s efforts to undermine the conduct of free and fair democratic elections and democratic institutions in the United States and its allies. The scope of national emergency was expended thereafter and prolonged several times. According to the most recent amendment the state of national emergency caused by harmful foreign activities of the Government of the Russian Federation shall be effective through 15 April 2024, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/07/notice-on-the-continuation-of-the-national-emergency-with-respect-to-specified-harmful-foreign-activities-of-the-government-of-the-russian-federation-2/>

⁴Executive Order: Confiscating and Vesting Certain Iraqi Property, available at <https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030320-10.html>

⁵ Executive Order on Protecting Certain Property of Da Afghanistan Bank for the Benefit of the People of Afghanistan, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/11/executive-order-on-protecting-certain-property-of-da-afghanistan-bank-for-the-benefit-of-the-people-of-afghanistan/>

⁶ Spurning Demand by the Taliban, Biden Moves to Split \$7 Billion in Frozen Afghan Funds, 11 February 2022, <https://www.nytimes.com/2022/02/11/us/politics/taliban-afghanistan-911-families-frozen-funds.html>

Therefore, the Act removes any ambiguity as to Presidential powers to confiscate and repurpose Russian sovereign assets as a matter of US law.

(ii) The Act Highlights the Need For Greater Transparency With Regard To Location Of Russian Reserves

Commentators who follow the issue of repurposing Russian assets for the benefit of Ukraine have raised the concern regarding lack of transparency and clarity when it comes to location and composition of reserves of Russian central bank. The European Union has made first steps to increase transparency around CBR reserves by mandating in February 2023 that financial institutions and central securities depositaries need to report information on Russian assets to the European Commission and to the regulatory authorities in their respective Member States⁷.

The REPO Act admits that there is no accurate information on the CBR reserves at the disposal of US lawmakers by stating that “[a]pproximately \$300,000,000,000 of Russian sovereign assets have been immobilized worldwide. Only a small fraction of those assets, 1 to 2 percent, or between \$4,000,000,000 and \$5,000,000,000, are reportedly subject to the jurisdiction of the United States”.

The Act instructs the President to require US financial institutions to submit information on Russian sovereign assets to the Secretary of the Treasury.

(iii) The Act Outlines That Assets Transfer Should Become an International Effort and Instructs US President to Work with Aligned States to Implement Assets Transfer In Other Jurisdictions

The Act emphasizes that “any effort by the United States to confiscate and repurpose Russian sovereign assets should be undertaken alongside international allies and partners as part of a coordinated, multilateral effort, including with G7 countries, the European Union, Australia, and other countries in which Russian sovereign assets are located. Further, the Act obligates US President to submit periodical reports to the Congress on multilateral and bilateral diplomatic efforts by the executive branch to engage US partners in confiscation initiative.

Considering this wording, we should not expect the US taking any significant steps unilaterally, however building consensus of other states around idea of confiscating Russian assets will help develop consistent state practice and legitimize confiscation in the context of international law.

(iv) US Adopts The Approach That Transfer Of Russian Assets Represents Countermeasures Against Russia As A Matter Public International Law

The justification of Russian Assets transfer or confiscation thereof under public international law is arguably more important than finding proper legal avenue under domestic law. The wording of

⁷Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20231001#:~:text=11.%C2%A0%C2%A0%20Natural.information%20on%20volumes.>

the Acts indicates that US will treat such transfer as invocation of countermeasures based on *erga omnes* obligations arising out of violation of peremptory norms of international law.

The Act reads: “The Russian Federation bears international legal responsibility for its aggression against Ukraine and, under international law, must cease its internationally wrongful acts. Because of this breach of the prohibition on aggression under international law, the United States is legally entitled to take counter measures that are proportionate and aimed at inducing the Russian Federation to comply with its international obligations.”

The Act does not use terms such as *jus cogens*⁸ norms and *erga omnes*⁹ obligations, however we believe these are the concepts that draftsmen had in mind to authorize the invocation of countermeasures against Russia. Given that the Act refers to the gravity of Russia’s violation of international law and specifically makes note of Russia’s violation on prohibition of aggression, we conclude that the drafters are inclined to adopt the third-party countermeasures based on violation of *erga omnes* obligations, rather than countermeasures of specifically affected states as was reported earlier¹⁰.

Enactment of REPO Act, especially if other jurisdictions follow suite of the US, represents a material development in the international law of countermeasures and would crystalize a consistent state practice of applying formal countermeasures by third states based on *erga omnes* obligations.

(v) The Act Maneuvers Around Sovereign Immunity Issues by Making A Transfer of Funds an Administrative Procedure Rather Than Judicial Process

The Act stipulates that the confiscation of Russian sovereign assets generally shall not be subject to judicial review, except for claims arising out of denial of rights under the Constitution of the United States.

In this part the US Act is markedly different from Canadian Special Economic Measures Act (“SEMA”) as amended in June 2022, which has been the only piece of legislation enacted thus far to facilitate transfer of Russian sovereign funds to Ukraine. According to SEMA amendments Canadian government is authorized to make an order “restraining or seizing property situated in Canada that is owned, held or controlled directly or indirectly by or on behalf of a foreign state, any company in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada”. However, such property can be disposed of only after a court ruling granting forfeiture.¹¹

⁸ According to the UN International Law Commission “Peremptory norms of general international law (*jus cogens*) reflect and protect fundamental values of the international community. They are universally applicable and are hierarchically superior to other rules of international law”, https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_14_2022.pdf

⁹ The international law contains obligations *erga omnes*, i.e., obligations of a state towards the international community as a whole. According to the International Court of Justice, *erga omnes* obligations include ‘the outlawing of acts of aggression, and of genocide.’

¹⁰ US explores options to seize Russian assets and funnel them to Ukraine, 12 January, 2024, available at <https://edition.cnn.com/2024/01/12/politics/us-proposal-russian-assets-ukraine/index.html>

¹¹ The Bill S-278 to amend the SEMA and to remove judicial review for confiscation of state property is under consideration in Canadian Parliament.

One of the arguments most often raised by the opponents of confiscation of Russian assets, especially CBR reserves, is that disposition of such assets is precluded under the doctrine of sovereign immunity¹². However, the rules on sovereign immunity have a narrow scope of application. The principle of sovereign immunity is procedural in nature and can be invoked only in the context of adjudication or enforcement measures by national courts. Sovereign immunity is, in fact, an exemption to the principle of territorial sovereignty and territorial jurisdiction of a forum state.¹³

(vi) The Act Concerns Virtually All Types Of State Assets (Except For What Is Covered By Diplomatic Immunities), Including Russian Sovereign Wealth Fund And Potentially Assets Of Russian State-owned Companies

The Act provides that the measure will cover the following assets: funds and other property of the Central Bank of the Russian Federation, the Russian Direct Investment Fund, assets of the Ministry of Finance of the Russian Federation, any sovereign funds of the Russian Federation held in a financial institution that is wholly owned or controlled by the Government of the Russian Federation, any other funds or other property wholly owned or controlled by the Government of the Russian Federation, including by any subdivision, agency, or instrumentality of that government.

Inclusion of the property of “instrumentality” of state is of particular interest as it potentially provides a means to seize assets of Russian state-owned companies. Following the PCA award in Yukos arbitration, Russia was implementing strategy of not owning substantial assets abroad directly as a state, except for those deemed essential or covered by diplomatic immunity. Rather, Russia opted for holding assets through state-owned companies to insulate such property from enforcement proceedings arising out of Yukos arbitration and other investment arbitration cases.

Piercing of corporate veil to recognize a separate business entity as an instrumentality of state is a complex process, however US might be one of the most favorable jurisdictions for this. According to Department of Justice position “term “instrumentality” is broad and can include state-owned or state-controlled entities”.¹⁴ The process of identifying state-owned enterprise as an instrumentality requires examination of various facts such as an entity’s ownership, control, status, and function.

Department of Justice also refers to the judgement in *United States v. Esquenazi*, a case related to state-owned and controlled telecommunications company of Haiti. The court in *Esquenazi* formulated a non-exhaustive list of parameters to consider in determining whether the entity is in fact instrumentality of state. Such factors include: the foreign government’s formal designation of that entity; whether the government has a majority shareholding in the entity; the government’s

¹² Paul Stephan, *Givin Russian Assets to Ukraine – Freezing Is Not Seizing*, 26 April 2022, available at <https://www.lawfaremedia.org/article/giving-russian-assets-ukraine-freezing-not-seizing>

¹³ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, 2012. para. 57.

¹⁴ Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. Second Edition, available at <https://www.justice.gov/criminal-fraud/file/1292051/download>

ability to hire and fire the entity's top executives; the extent to which the entity's profits go directly into the governmental fiscal accounts, and, the extent to which the government funds the entity; and the length of time these factors have existed.

It appears possible to qualify most of Russian state-owned companies as instrumentalities. There is ample evidence in public domain of Russia using major state corporations to pursue its geopolitical agenda. Further, there are strong purely legal indications of intertwining of government and state-owned business in Russia, such as governmental subsidies and distribution of dividends in state-owned companies based on the governmental decisions.

(vii) The Act Stipulates Safeguards To Prevent Development Of Policy Precedent Of Confiscation Foreign States' Property

The REPO act is carefully worded to preclude possibility of extending its application to any other state property except for Russian and under any other grounds except for response to act of aggression.

Specifically, the Act refers the UN General Assembly Resolution ES-11/1 of 2 March 2022, whereby the UN deplored "in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the [UN] Charter, as well as the UN General Assembly Resolution ES-11/5 of 14 November 2022, stating that "the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations (...) and that it must bear the legal consequences of all its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts". The REPO Act also references the provisional order issued by the ICJ March 2022 which requires Russia to "immediately suspend the military operations (...) in the territory of Ukraine."¹⁵

Therefore, the Act makes clear that the proposed confiscation of Russian assets stems from position of the internationally recognized institutions. Additionally, Russia is referred to throughout the text as an aggressor state.

The REPO Act highlights the exceptional nature of the proposed measures by stating: "[t]he extreme illegal actions taken by the Russian Federation, including an act of aggression, present a unique situation, justifying the establishment of a legal authority for the United States Government and other countries to confiscate Russian sovereign assets in their respective jurisdictions."

The Act further explicitly provides it cannot be construed to provide the President with the authority to seize, transfer, confiscate, or vest title to foreign sovereign assets that are not Russian aggressor state sovereign assets.

¹⁵ Allegations Of Genocide Under The Convention On The Prevention And Punishment Of The Crime Of Genocide (Ukraine V. Russian Federation), Provisional Order, 16 March 2020, p.19.

This is important feature of the REPO Act that signals to opponents of confiscation who are afraid unintended legal consequences of such policy, the US authorities are ready to invoke the measure only under exceptional circumstances, and with reliance on international instruments that justify such interventions.

(viii) The Act Outlines How the US May Use Russian Assets For The Benefit Of Ukraine

The Act stipulates that the Secretary of State will be responsible for disposal of assets in consultation with the USAID Administrator. Such funds can be used for the following: making contributions to an international body, fund, or mechanism that is charged with determining and administering compensation or providing assistance to Ukraine; Supporting reconstruction, rebuilding, and recovery efforts in Ukraine; Providing economic and humanitarian 7 assistance to the people of Ukraine.

EU CURRENT PROPOSAL

It is reported that the mainstream idea in the EU is to use proceeds generated by Russian assets in European central securities depositaries (“CSDs”). This proposal has been in development for several months now: on 23 June 2023 the European Commission announced¹⁶ its intent to work on a plan to utilize windfall profits generated from immobilized funds; it was reported on 6 September 2023 that European Union officials will begin meeting with member states to develop a plan on how to impose a windfall tax on profits generated by CBR reserves¹⁷. The most significant development in this direction is the adoption of Council Decision 2024/577 of 12 February 2024.

There is no definitive information on whether the EU will choose to funnel CBR reserves proceeds to Ukraine or opt for securitization of these funds.

The Council Decision 2024/577, which establishes grounds for any further appropriation of proceeds generated by CBR reserves stipulates the following important points: (i) exemption for balance sheet management transactions from the general ban on any transaction with CBR reserves (ii) clarification on legal title to the proceeds; (iii) obligation on CSDs to account cash balances linked to CBR reserves separately; (iv) only future proceeds are subject to further disposition for the benefit of Ukraine.

(i) Exemption For Balance Sheet Management Transactions From General Ban On Any Transaction With CBR Reserves

It is worth reminding that pursuant to Council Decision 2022/335 of 28 February 2022, any transactions related to the management of reserves or 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 are prohibited.

The Council Decision 2024/577 of 12 February 2024 highlights that cash balances, accumulating due to immobilized coupon or dividend and redemption payments and maturing deposits, need to be reinvested in line with regulatory requirements applicable to CSDs. Therefore, the Council effectively chooses to single out so-called balance sheet management transactions that inevitably would involve Russian assets accumulated on CSDs accounts.

As it was reported the CSDs have been reinvesting the Russian funds throughout 2023¹⁸ before the current Council Decision establishing this exemption was adopted. It is possible that the CSDs received individual authorizations as to treatment of cash balance linked to Russian reserves, however there is no publicly available information to that regard.

¹⁶ EU leaders push to fund Ukraine with proceeds from Russia's frozen assets, 29 June 2023, available at <https://www.reuters.com/world/europe/eu-leaders-push-fund-ukraine-with-proceeds-russias-frozen-assets-2023-06-29/>

¹⁷ EU Moves Forward on Plan to Tax Sanctioned Russian Assets, 6 September, 2023, available here. <https://www.bloomberg.com/news/articles/2023-09-06/eu-moves-forward-on-plan-to-tax-sanctioned-russian-assets>

¹⁸ Frozen Russian Assets Yielded € 4.4 bn in 2023, Says Euroclear, available at <https://www.ft.com/content/f4c21b08-5f89-4abb-b72c-6f4b110c790b>

The Council Decision 2024/577 makes clear that that balance sheet management transactions linked to CBR assets and reserves are not within the scope of the original prohibition of transactions which applies since 28 February 2022.

(ii) Clarification on Legal Title To The Proceeds

Council Decision 2024/577 further highlights the special nature of contractual relationships between CSDs and their clients, whereby cash balances of the customers are usually transferred out of the central securities depositories before the end of the day and do not yield any remuneration for the customers.

Therefore, the Decision stipulates that: '[u]nexpected and extraordinary revenues covered by this Decision do not have to be made available to the Central Bank of Russia under applicable rules, even after the discontinuation of the transaction prohibition.'¹⁹

(iii) Obligation On CSDs To Account Cash Balances Linked To CBR Reserves Separately

The Regulation stipulates CSDs, holding CBR reserves and assets with a total value of more than EUR 1 million are obligated to:

- Account such cash balances separately;
- Register revenues accruing from or generated by the cash balances linked to CBR reserves separately in the financial accounts.

(iv) Only Future Proceeds Are Subject To Further Disposition For The Benefit Of Ukraine

Council Decision 2024/577 cites the principle of legal certainty and stipulates that any further measures concerning unexpected and extraordinary revenues and net profits of CSDs should apply only from the date of entry into force of the present Decision (February 2024).

Therefore, the previously accumulated earnings, which in case of Euroclear reportedly amounted to EUR 4,4 billion in 2023 will not be available for Ukraine, at least until legislation making such transfer possible is adopted.

We find this position not consisted or reasoned enough. The Council outlines in the Decision that unexpected and extraordinary revenues of CSDs occurred only because of implementation of restrictive measures, or in other words economic sanctions adopted to restore international piece and security. Therefore, the CSDs cannot extract economic benefit of such measures.

It appears that the Decision creates a conflict between the prohibition on retroactive application of laws and regulations and objectives of the EU Common Foreign and Security Policy. At the same time the Decision contains norms of retroactive application, such as exemption of cash balance management transaction taking place in 2023 from the general ban on transactions involving Russian assets.

¹⁹ Council Decision 2024/577 of 12 February 2024 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400577

EU Securitization Proposals

The proposals to use extraordinary revenues accumulated at CSDs are still in development and no detailed plan has been publicly announced. According to the most recent reporting by FT, there EU is considering the possibility of issuing bonds and use such revenues to service the debt. FT cites unnamed EU officials who estimate: “a bond could deliver between €30bn and €40bn based on the estimated profits from the Russian funds in Euroclear over the next 10 years, and €50bn-€60bn in profits over the next 15-20 years. They cautioned, however, that this was heavily dependent on future interest rates.”²⁰

It can be concluded that there are three main proposals under consideration:

- **Ukrainian Reparation Loan, By Hugo Dixon, Lee Buchheit and Daleep Singh**²¹, whereby the G7 would provide Ukraine with a syndicated loan and Ukraine would pledge its claim against Russia for reparations as collateral security for that loan. Authors propose to structure a loan as a “limited recourse” obligation, with the collateral being the sole source for repayment. It is expected that when Ukraine’s claim for war damages is assessed by an internationally-recognized body, and Russia refuses to pay reparations, the syndicate would foreclose on the collateral and assume title to Ukraine’s reparation claim.
- **Using proceeds accumulated on Russian reserves to cover coupon and raise funding on capital markets, by Torbjörn Becker and Yuriy Gorodnichenko.**²² The authors propose financing a \$100 billion rainy-day fund through long-term borrowing and the fund’s size should be tied to the value of Russia’s frozen assets and the returns they generate.
- **Placing RCB assets into an escrow account as collateral.**²³ This proposal is focused on using the principal of Russian assets as collateral, rather than proceeds generated by such assets.

Notably, the rise of bond and securitization proposals occurs against background of over a decade long discussion about creating a eurozone sovereign bond market or a European safe asset.²⁴ As we have written before, there are strong arguments under international law to authorize and legitimize confiscation of Russian assets as a state countermeasure²⁵. This action would demonstrate international community readiness to give a formidable response to Russia’s military aggression and to enforce the UN Charter. Therefore, it is important not to allow discussion of various aspects of financial engineering to stifle the progress on confiscation of Russian reserves.

²⁰ US Proposes Debt to Fund Ukraine Using Profits From Frozen Russian Assets, available at <https://www.ft.com/content/6cb21054-ccfc-4cb9-ab58-516d80be94de>

²¹ Hugo Dixon, Lee Buchheit and Daleep Singh, Ukrainian Reparation Loan: How it Would Work, 20 February 2024, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4733340

²² Torbjörn Becker, Yuriy Gorodnichenko, Protecting Ukraine Aid from Western Political Dysfunction, January 19, 2024, available at <https://www.project-syndicate.org/commentary/western-domestic-political-infighting-endangers-ukraine-by-torbjorn-becker-and-yuriy-gorodnichenko-2024-01>

²³ U.S. and Europe Eye Russian Assets to Aid Ukraine as Funding Dries Up, 21 December 2023, available at <https://www.nytimes.com/2023/12/21/us/politics/russian-assets-ukraine.html>

²⁴ Vítor Constâncio, Karel Lannoo and Apostolos Thomadakis, A common euro-bond market in sight, June 2020, available at https://www.ecmi.eu/sites/default/files/a_common_euro-bond_market_in_sight_0.pdf

²⁵ A. Vlasjuk, Legal Report on Confiscation of Russian State Assets for The Reconstruction of Ukraine, KSE Institute, available at <https://kse.ua/about-the-school/news/kse-institute-report-provides-overview-of-legal-grounds-for-seizure-of-russian-assets-for-reconstruction-of-ukraine/>