UKRAINE REPARATIONS LOAN: EUROPE AND UK LITIGATION RISK ANALYSIS *

1. KEY CONCLUSIONS

On 3 December 2025, the EU Commission unveiled its most ambitious proposal to date to address Ukraine's long-term funding needs: a two-part plan to immobilise the Central Bank of Russia's (CBR) assets and reserves (until Russia ends its war of aggression and pays reparations to Ukraine) coupled with a "Reparations Loan" of up to EUR 210 billion to be disbursed in tranches over four years. The Reparations Loan proposes to use cash balances which accumulated at EU financial institutions—most notably Belgium-based Euroclear—following the immobilisation of CBR assets in 2022.

The first part of the plan, the indefinite immobilization of CBR reserves was enacted three days ago, on 12 December 2025 as Council Regulation 2025/2600 (the "*Immobilisation Regulation*"). The Reparations Loan proposal is to be voted on this week on 18-19 December 2025.

The United Kingdom has announced plans to enact a similar approach for approximately £8 billion in immobilised Russian state money held in the UK.

Opponents question the proposal's legality, citing the risk of legal claims by Russia or the CBR alleging asset "expropriation." The Commission's view is that the proposal is lawful and does not amount to confiscation. This has been affirmed by a number of distinguished academics and practitioners.[1]

This paper addresses (i) the litigation risks of the Immobilisation Regulation and (ii) the possible additional litigation risks arising out of enacting the Reparations Loan proposal. Its conclusion is that while certain theoretical litigation risks may have been created on 12 December 2025 under the Immobilisation Regulation, **enacting the Reparations Loan part of the proposal will add little additional litigation risk as no further loss would be suffered by the CBR**.

Any alleged loss stemming from CBR's inability to use its assets had already arisen under the initial and all subsequent decisions blocking transactions with its assets culminating in the Immobilisation Regulation, which effectively froze CBR assets until such time as Russia ends its war and repays Ukraine. The remainder of the Reparations Loan programme is essentially an internal matter of EU banking and finance. Any additional litigation risk that may be created by enacting the Reparations Loan proposal will be negligible.

In summary, possible litigation risks have arisen out of existing sanctions and the approval of the Immobilisation Regulation. These risks are low and enacting the rest of the EU package that constitutes the Reparations Loan does not appear to add much, if any, additional risk for the following reasons:

[1] See the opinion by Francis Biesmans (economist and statistician, professor emeritus, University of Lorraine); Samuel Cogolati (doctor of international law, KU Leuven); Paul De Grauwe (professor, John Paulson Chair in European Political Economy, London School of Economics); Pierre Klein (professor, Centre for International Law, ULB); André Lange (member of the Board of Directors of the association For Ukraine, for their freedom and ours); Gerard Roland (former E. Morris Cox Professor of Economics and Professor of Political Science at UC Berkeley and ULB).

1. ***Russian courts.*** Any judgement of a Russian court would not be recognised or enforced in the EU or the UK on public policy grounds, alternatively, for lack of jurisdiction, provided the relevant respondents do not voluntarily consent to Russian court's jurisdiction (including by defending any claim on the merits, as opposed to merely disputing jurisdiction).

2. ***National courts.*** Russia or the CBR are unlikely to bring claims in the EU or UK national courts, as doing so will risk waiving sovereign immunity.

3. ***Court of Justice of the European Union (CJEU)***. Any damages claim by Russia or the CBR, as non-Member States, would face an exceptionally high bar, requiring proof of a "sufficiently serious breach" of EU law. That threshold is unlikely to be met by the Immobilisation Regulation, let alone the remainder of the Reparations Loan package given that it does not entail the confiscation of CBR assets. In any event, any claim would be against the EU and not any individual member state. Any challenge to the UK's parallel scheme would face comparable obstacles. UK courts afford the government broad discretion in sanctions and foreign policy, and the scheme's non-confiscatory design makes it difficult to show unlawfulness or compensable loss.

4. ***International courts.*** No international court has jurisdiction to hear such claims by Russia or the CBR, as Russia does not accept the jurisdiction of either the European Court of Human Rights (*ECtHR*) or the International Court of Justice (*ICJ*).

5. ***Investor-state arbitration.*** Claims under bilateral investment treaties (BITs) between Russia and EU Member States / UK would likely fall outside tribunal's jurisdiction, as BITs do not protect sovereign assets. In any case, such claims would be weak on the merits (especially on proof of loss) given the Reparations Loan's design, and enforcement of any award in states supporting the asset immobilisation would likely be refused on public policy grounds.

6. ***State-to-state arbitration.*** Such proceedings are likely confined to disputes over BIT interpretation rather than substantive compensation claims. In any event, any compensation claim would face strong jurisdictional and merits-based defences based on absence of actionable loss.

In addition to not creating any additional legal risk, the Reparations Loan mechanism does not appear to create significant financial risks and this is supported by Standard & Poor and Fitch, the world's top credit-rating agencies providing independent assessments of the creditworthiness of countries, companies and financial instruments. Ahead of the 3 December 2025 Reparations Loan publication, Fitch stated that Euroclear's premium "AA/Stable" debt rating and Belgium's sovereign (A+/Stable) ratings would remain unaffected by the Reparations Loan proposal, provided legal and liquidity risks were shared among EU Member States (as is confirmed in the Commission's draft legislation).

2. REPARATIONS LOAN: BACKGROUND

Approximately €176 billion in cash is managed by Euroclear, out of roughly €193 billion in immobilised CBR assets held by it. These assets were originally sovereign bonds—a debt owed

by the bond-issuer state to the CBR—but by 2025 the majority had matured and converted into cash deposits, i.e. liabilities owed by Euroclear to the CBR. The deposits are denominated in multiple currencies, including euros, pounds sterling, U.S. dollars, Canadian dollars, and Japanese yen and held in their respective national banks. Although sanctions block the transfer of cash deposits from banks to Euroclear, the amounts remain recorded on Euroclear's balance sheet as assets and corresponding liabilities to the CBR.

Euroclear has been accumulating unprecedented profits from interest on immobilised cash deposits, exceeding €14 billion by the first half of 2025. In February 2024, Council Decision (CFSP) 2024/577 required these extraordinary revenues to be segregated. Fitch subsequently reported that Euroclear's financial ratings remained unaffected by this move which was reported by Fitch as a precursor to using the profits to fund loans to Ukraine.

In June 2024, the G7 leaders agreed to provide $50 billion in Extraordinary Revenue Acceleration (ERA) loans to Ukraine, to be repaid using profits from the immobilised Russian sovereign assets held in Euroclear. The EU implemented this arrangement through Regulation (EU) 2024/2773 (the "ERA Loans Regulation"), which created the Ukraine Loan Cooperation Mechanism to channel non-repayable EU support toward servicing the G7 ERA loans.

In September 2025, a more extensive proposal emerged to lend the full value of the frozen assets to Ukraine as a "Reparations Loan." The concept involved investing Euroclear's cash balances in a AAA-rated, zero-coupon European Commission debt instrument to finance approximately €140 billion EU loan to Ukraine, repayable only if Russia compensates Ukraine for war damages. On 25 October 2025, Fitch again confirmed that Euroclear's debt rating and Belgium's sovereign rating would remain unaffected, provided the legal and liquidity risks were shared across EU member states—a principle reflected in the EU Commission's draft proposals.

The UK government has stated that approximately £8 billion in CBR cash is currently immobilised in the UK financial institutions and has announced plans to adopt an approach broadly analogous to the EU model. Under this proposal, the UK would borrow the frozen CBR cash interest-free, back the borrowing with UK sovereign debt, and on-lend the funds to Ukraine on an interest free basis, repayable only if and when Russia pays reparations.

3. EU REPARATIONS LOAN PROPOSAL

The proposal is structured as a tightly-integrated package of EU regulations:

Part I (enacted on 12 December 2025)

- Council Regulation 2025/2600 enacted on 12 December 2025 under Article 122(1) TFEU (emergency economic measures) prohibits any transfers of immobilised assets or reserves of the CBR and the Russian National Wealth Fund (Article 2) until Russian ends its war of aggression and pays reparations to Ukraine (Article 4) (the "*Immobilisation Regulation*").

Part II (to be agreed on 18-19 December 2025)

- Regulation 3502 of the European Parliament and of the Council under Article 212 TFEU (assistance to third countries) establishes the Reparation Loan to Ukraine (the "*Reparations Loan Regulation*").

- Council Regulation 3501 under Article 122(1) TFEU requires that EU financial institutions invest their cash balances resulting from immobilised CBR assets into AAA-rated EU Commission debt instruments, which "*shall be treated as equivalent to cash under applicable accounting rules*" (Article 4) (the "*Investment of Cash Balances Regulation*").

- Council Regulation 3500 under Article 312 TFEU extends EU budgetary guarantees to cover the Reparations Loan (the "*EU Budgetary Guarantee Regulation*").

Together, this package provides for:

1. *Recognition of reparations claims.* A statutory recognition of Russia's international law obligation (under the Articles on the Responsibility of States for Internationally Wrongful Acts (*ARSIWA*) and customary international law) to pay reparations to Ukraine to compensate for damage caused by its illegal war of aggression (Recital (11) of the Reparations Loan Regulation) and the use of such claims as collateral for the Reparations Loan (Article 20(2)(b) of the Reparations Loan Regulation).

2. *Lock-in of asset immobilisation now in force.* A legal basis for the G7 commitment not to release Russian sovereign assets until Russia pays reparations to Ukraine (Article 2 of the Immobilisation Regulation Regulation), reducing reliance on the current six-month, unanimity-based sanctions renewals that risk a full unfreeze.

3. *Large-scale financial support.* Creation of a loan facility of up to €210 billion to Ukraine, usable for macro-financial assistance and defence procurement, including compensation to individuals harmed by Russia's aggression, such as through the Council of Europe-backed Claims Commission for Ukraine (Recital 24 of the Reparations Loan Regulation).

4. *Contingent repayment.* Ukraine is required to repay the loan only in limited circumstances: if Russia pays reparations (up to the amount received), or if Ukraine breaches specified political and rule-of-law conditions.

5. *Risk sharing and guarantees.* A three-tier system of financial protection for Belgium, Euroclear, and other holders of CBR assets, consisting of:
    a. Voluntary Member State guarantees (Article 25 of the Reparations Loan Regulation);
    b. EU liquidity mechanism (or EU budget guarantees) under the EU Budgetary Guarantee Regulation (which is dependent on that regulation being passed unanimously); and
    c. Union debt securities as a backstop of last resort.

Crucially, the proposal **does not amount to confiscation** of CBR assets. It temporarily borrows cash generated by immobilised CBR reserves in various European banks without affecting CBR's balances held at those banks including Euroclear or impairing the CBR's balance sheet. The accumulated cash is replaced with AAA-rated European Commission bonds which, under Article 4 of the Investment of Cash Balances Regulation, are treated as "*equivalent to cash*" for accounting purposes. In substance, this is effectively a cash for bonds swap that releases liquidity for Ukraine while restoring Euroclear and other institutions to holding debt securities rather than cash deposits, as was the case when the assets were first immobilised in 2022. Claims that this amounts to a seizure are untenable absent an assertion that EU bonds are worthless.

Given the proposal's design, the only conceivable scenario in which the CBR could incur a loss is the highly improbable event of a default on the EU Commission's AAA-rated bonds. Multiple layers of guarantees are specifically intended to guard against this risk. Once the CBR meets the conditions for the return of the blocked assets in Article 6 of the Immobilisation Regulation, namely (i) end of the war of aggression, (ii) reparations to Ukraine, and (iii) no threat to the economy of the EU, repayments would be made by the EU and, where applicable, by Member States or third-party states providing guarantees, up to the amount of frozen funds lent to Ukraine. Accordingly, **the Reparations Loan entails no financial loss for Russia or the CBR.**

What if the Reparations Loan lacks unanimous support?

Unanimity is not required for the core elements of the proposal. The Immobilisation Regulation has already been passed, while both the Reparations Loan Regulation and the Investment of Cash Balances Regulation are subject to Qualified Majority Voting, requiring approval by 55% of Member States representing at least 65% of the EU population. As a result, the Reparations Loan proposal can proceed even if Belgium or Hungary withhold consent.

By contrast, the EU Budgetary Guarantee Regulation is subject to "*a special legislative procedure,*" requiring unanimity among all 27 Member States, in addition to the consent of European Parliament.

Failure to pass the EU Budgetary Guarantee Regulation would not invalidate the Reparations Loan. It would simply remove the EU-budget backed liquidity cushion, thus eliminating the second layer of guarantees.

The practical effect of this would be to limit the loan's size because the Commission can borrow only amounts fully covered by voluntary Member States guarantees under Article 25 of the Reparations Loan Regulation. Because those guarantees are discretionary, the total guarantee envelope—and therefore the total funds that could be borrowed from Euroclear and others and on-lent to Ukraine—would remain uncertain.

4. ANALYSIS OF POTENTIAL RUSSIAN LITIGATION RISKS (none of which are increased by adopting the Reparations Loan proposal)

The European Commission considers the Reparation Loan proposal to be fully lawful and to carry minimal legal and economic risk. This assessment is supported by an opinion from EU,

UK, and US academics,[2] which concludes that "[*m]any legal experts have long since dismissed the argument that [the use of CBR assets to fund Ukraine] is illegal under international law,*" as reflected in the International Law Commission's Articles on State Responsibility, including the right to take countermeasures in response to an internationally wrongful act. This is undoubtedly correct. Whilst even outright seizure and transfer of Russian assets to Ukraine would be permissible under international law;[3] the EU proposal is in any event deliberately structured to avoid confiscation both in law and in fact.

Critics—most notably Belgium, which hosts Euroclear and the largest share of immobilised CBR assets—argue that Belgium or Euroclear could be left bearing repayment risk if a court or arbitral tribunal were to order the return of funds to CBR. However, **this risk has already arisen with the passing of the Immobilisation Regulation** which Russia may argue amounts to a de facto confiscation of its reserves by freezing them indefinitely. Enacting the remainder of the Reparations Loan proposal will not affect the length of time CBR assets will remain immobilised and thus cannot be said to cause any additional loss to Russia or the CBR. Accordingly, given it will not cause any additional loss, the enactment of the Reparations Loan proposal cannot give rise to any additional cause of action by Russia or the CBR which does not already exist under the Immobilisation Regulation.

The analysis below demonstrates that the risk of any enforceable adverse court judgment or arbitral award arising from the enacted Immobilisation Regulation is very low and adopting the Reparations Loan program changes little. This conclusion is reinforced by two factors:

1. Despite (i) the immobilisation of CBR assets for almost 4 years; and (ii) the explicit declaration in EU law that any profits on the immobilised assets do not belong to Russia or the CBR and can be used to finance the ERA loans to Ukraine, the only claim to date was filed by the CBR on 12 December 2025 – in the Moscow City Arbitrazh Court (a first-tier commercial court in Russia); and

2. Credit-rating agencies have confirmed that the Reparations Loan would have no impact on either Belgium's sovereign credit rating or Euroclear's credit rating.

A. Risk of adverse judgment by Russian courts

This is the sole venue where a claim has been filed illustrating CBR's reluctance to contest the Reparations Loan in any independent and neutral forum. The press reports (citing Economic Commissioner Valdis Dombrovskis) indicate that Brussels anticipated such a retaliatory claim.

[2] See fn. 1 above.

[3] See "On proposed countermeasures against Russia to compensate injured states for losses caused by Russia's war of aggression against Ukraine" by Professor Dapo Akande (Chichele Professor of Public International Law Oxford University Essex Court Chambers, London), Professor Olivier Corten (Center for International Law Université libre de Bruxelles), Professor Shotaro Hamamoto (School of Government/Graduate School of Law, Kyoto University) Professor Pierre Klein (Center for International Law, Université libre de Bruxelles), Harold Hongju Koh (Sterling Professor of International Law, Yale Law School), Paul Reichler (Public International Law Practitioner, 11 King's Bench Walk Chambers, London), Professor Hélène Ruiz Fabri (Sorbonne Law School, Université Paris), Professor Philippe Sands (University College London, 11 King's Bench Walk Chambers, London), Professor Emeritus Nico Schrijver (Grotius Centre for International Legal Studies, Leiden University, the Netherlands), Professor Christian J. Tams (University of Glasgow, 11 King's Bench Walk Chambers, London), Philip Zelikow (Senior Fellow, Hoover Institution Stanford University)

In its press release, the CBR states that the claim concerns the "*unlawful activities of the Euroclear depository that cause damage to the Bank of Russia and the fact that the European Commission officially considers proposals for direct or indirect use of Bank of Russia assets without authorisation*." However, the sole "*asset*" held by CBR with Euroclear is CBR's claim to repayment of amounts standing to its credit on Euroclear's balance sheet. This claim remains intact whether or not the cash balances accumulated at Euroclear would be invested in the EU bonds under the Investment of Cash Balances Regulation or in any other securities. It is difficult to see what further loss to the CBR, beyond that already caused by the decision to immobilise CBR's funds, could arise from implementing the remainder of the Reparations Loan proposal.

Given the Russian courts' well documented[4] susceptibility to pressure from the state, particularly in cases involving Russian state interests, CBR's claims in Russian courts are nevertheless extremely likely to succeed.

However, any such adverse Russian judgment will not be recognised or enforced in the EU or the UK due to (i) the EU ban on enforcement; (ii) the lack of Russian court's jurisdiction (provided Euroclear limits its response to a jurisdictional challenge); and (iii) public policy grounds (including lack of fair trial in breach of Article 6 of the European Convention on Human Rights (*ECHR)*).

(i) EU ban on enforcement

Article 11 of the Regulation 833/2014 (adopted in the 15th sanctions package) bars EU courts from enforcing Russian courts' judgments made under Article 248 of the Russian Arbitrazh Procedural Code, a domestic procedural rule that provides Russian courts with exclusive jurisdiction where sanctioned parties are involved regardless of the parties' contractual dispute resolution arrangements.

Article 4 of the Immobilisation Regulation specifically prohibits enforcement of any judgment or award arising out of the immobilisation of CBR funds in any EU court.

Thus CBR's reported claim against Euroclear in the Moscow City Arbitrazh Court would be unenforceable in any EU courts under Article 11 of the Regulation 833/2014 or Article 4 of the Immobilisation Regulation.

(ii) Challenging Russian courts' jurisdiction / anti-suit and anti-enforcement injunctions

Any Euroclear-CBR contract would contain standard dispute resolution clauses in favour of Belgian courts or arbitration (not Russian courts). The CBR's reported filing in Moscow therefore breaches its contractual commitments with Euroclear. Any proceedings brought in a Russian court in violation of the parties' agreement to resolve their disputes in other forums

[4] The evidence of Russian courts' lack of impartiality and independence from the Russian state was accepted by the English courts on a number of occasions. See, for instance, *Russian Aircraft Operator Policy Claims (Jurisdiction Applications)* [2024] EWHC 734 (Comm) where the English court found that foreign companies were unlikely to receive a fair trial in Russia (relying on agreed expert evidence from both parties that at least "in cases which are of sufficient interest to the Russian State, it is capable of affecting the outcome of judicial decisions" (at [259]-[263])).

may be restrained by an anti-suit or an anti-enforcement injunction,[5] and any Russian court judgment obtained in defiance of such an injunction would not be recognised or enforced.

Even absent an injunction, EU and UK courts would refuse recognition and enforcement of any Russian judgment where the Russian court lacked jurisdiction under EU or UK rules (that protect the parties' agreed-upon contractual dispute resolution choice). Thus Euroclear must ensure that it does not voluntarily submit to the Russian court's jurisdiction by taking part in the Russian proceedings (other than to contest jurisdiction).

(iii) Public policy grounds including lack of fair trial

Any Russian court judgment would not be recognised or enforced in the UK or EU where doing so would be contrary to public policy.[6] UK and EU public policy encompasses both the decision to immobilise the CBR funds and the fair trial guarantees enshrined in Article 6 ECHR. Given the significant evidence that foreign companies cannot obtain a fair trial in the Russian courts where Russian state interests are involved,[7] an adverse judgement against Euroclear would be refused recognition or enforcement. The UK or the EU courts are under a duty not to give effect to any foreign judgment that violates fair trial standards[8] or is otherwise contrary to public policy.

B. Risk of adverse judgment by third party national courts

Any claim by Russia against Euroclear or Belgium in any national court (including Belgian courts) is highly unlikely. Russia or the CBR would waive sovereign immunity by suing in a third party national court, thereby exposing themselves to counterclaims for any seizure of assets in Russia and potentially war-related losses caused by Russia's aggression in Ukraine.

In July 2025, the European Court of Human Rights found Russia responsible for losses in Ukraine arising from conduct between 2014 and autumn of 2022. Those losses alone exceed $300 billion, roughly the total amount of immobilised Russian sovereign assets. It is implausible that Russia would invite further exposure in European domestic courts by litigating amounts disbursed under a Reparations Loan that is explicitly tied to Russia's obligation to make reparations.

Even if Russia or the CBR brought a claim against Euroclear in third party national courts, it would likely fail on the merits:

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[5] See *Google LLC v NAO Tsargrad Meda* [2025] EWHC 94 (Comm) where the English Commercial court granted Google an anti-enforcement injunction to prevent Russian companies from enforcing Russian court orders—specifically, compounding fines of extraordinary value—outside Russia, as these orders stemmed from proceedings brought in breach of exclusive jurisdiction and arbitration agreements in favour of England and Wales or London arbitration. The court also granted an anti-anti-suit injunction to pre-empt the Russian court's anti-suit injunction. The court found it just and convenient to grant such injunctions, noting that the Russian proceedings relied on Article 248 of the Russian Arbitrazh Procedural Code, which undermined the parties' contractual choice of dispute resolution venue.

[6] See *Dicey, Morris & Collins on The Conflict of Laws, 16th edn* : "RULE 5 - English courts will not enforce or recognise a right … or legal relationship arising under the law of a foreign country, if the enforcement or recognition of such right … or legal relationship would be inconsistent with the fundamental public policy of English law."

[7] See fn 4 above.

[8] See, for instance, *OJSC Bank of Moscow v Chernyakov* [2016] EWHC 2583 (Comm) at [10].

- *No loss*: Any EU or UK court is unlikely to find in favour of the CBR because the cash-for-bonds structure does not cause any loss. The CBR's balance at Euroclear and its legal claim to the funds remain unchanged and can be enforced once conditions in Article 6 of the Immobilisation Regulation are satisfied. The substitute only affects Euroclear: its claim to cash held at national banks is replaced by a claim against the European Commission under EU bonds. In practical terms, cash is exchanged for instruments equivalent to cash, making it difficult for the CBR or Russia to identify any loss. Any residual non-repayment risk lies with Euroclear, which is addressed through robust and layered guarantees.

- *Force majeure (potentially).* Euroclear may also invoke force-majeure protections, depending on its contractual wording with the CBR, where performance of a contract is prevented by supervening legal requirements[9] (which could include legislation mandating investment of cash balances into EU bonds).

C. Risk of adverse judgment by the EU Courts (General Court of the European Union and Court of Justice of the European Union (CJEU)).

A non-contractual damages claim may be brought under Article 340 TFEU for harm caused by EU institutions in the performance of their duties. In principle, this means that a claim could be available if an EU legislative act, such as the Reparations Loan package, causes damage. In practice, successful cases for so-called "public torts" are extremely rare.

Any such claim would be against the EU (not Belgium or any Member State), and the Commission appears to have assessed the risk as close to nil. The prospect of success is remote because:

- *Russia/CBR unlikely to have any standing*. Article 340 TFEU is designed for claims by individuals or corporate entities; it is doubtful that a non-EU sovereign state or its organ (Russia/CBR) has standing to bring such a claim.

- *Merits threshold is extremely high.* The claimant must show a "sufficiently serious breach" of EU law and a direct causal link to actual loss. The Reparations Loan package is structured to avoid confiscation and, as designed, does not deprive the CBR of its legal claim against Euroclear. Absent loss and an identifiable serious breach, liability is unlikely.

Russia could also theoretically bring a claim under Article 263 TFEU challenging the legality of any Reparations Loan legislation.[10] However, any such judicial review challenge will not be against Belgium or Euroclear and likely to fail for the same reasons as Venezuela's challenge to EU restrictive measures in *Venezuela v Council of the European Union* (T-65/18 RENV).[11]

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[9] See Lewison, "The Interpretation of Contracts" 8th Ed. at [13.06]; *RTI v MUR Shipping BV* [2024] UKSC 18 at [2] under UK law; Reichsgericht, judgement of 7 April 1927 – IV 745/26 –, RGZ 117, 12 (13); Bundesgerichtshof, judgment of 16 May 2017 – X ZR 142/15 –, BGHZ 215, 81 margin no. 8 under German law: Cour de cassation, Arrêt du 14 avril 2006, Pourvoi n°02-11.168 under French law.

[10] See *Venezuela v Council of the European Union* (C-872/19 P) where it was found that Venezuela had standing to bring such a challenge.

[11] In summary, the court found that the state's right to be heard prior to the imposition of sanctions does not exist (§§36-45); the obligation to state reasons will have been fulfilled (§§36-45); there will have been no manifest

D. Risk of adverse judgment by international courts

No international court has jurisdiction to hear any potential claims by Russia or the CBR for alleged losses.

European Court of Human Rights (ECtHR)

The Court's jurisdiction extends only to Council of Europe member states that have ratified the ECHR and its Protocols. Russia ceased to be a member of the Council of Europe in March 2022 and automatically withdrew from the ECHR in September 2022 and therefore cannot bring new applications, including through its state organs (such as the CBR), to the ECtHR.

Even if jurisdiction existed, Article 1 of Protocol No. 1 to the ECHR protects *private property rights*, not sovereign assets, and would not apply to claims concerning central bank reserves.

Moreover, any application by Russia risks being joined with the pending cases brought by Ukraine and Netherlands against Russia for human rights violations arising from its illegal invasion of, and aggression against, Ukraine since 2014 and the downing of MH-17. In light of the adverse findings made against Russia in July 2025, it is highly unlikely that Russia would invite such a joinder by initiating new proceedings before the ECtHR.

International Court of Justice (ICJ)

The ICJ can exercise jurisdiction only in limited circumstances, none of which would apply in the Reparations Loan scenario:

1. *Compulsory jurisdiction by consent.* Russia has not accepted the ICJ's compulsory jurisdiction and is highly unlikely to do so, given its ongoing breaches of international law.

2. *Special agreement via written consent.* Jurisdiction may arise from written consent by both parties to a dispute, but the EU, Belgium, the UK, or any other participating state in the Reparations Loan would not provide such consent.

3. *Jurisdiction under a treaty.* The only conceivable treaty Russia could invoke is the 2004 United Nations Convention on Jurisdictional Immunities of States and their Property. But this convention applies only to judicial, as opposed to legislative or executive actions (Article 1).[12] In any event, that avenue is foreclosed because the Convention is not yet in force and has not been ratified by Russia.

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error in the assessment of the facts (§§36-45); and whether or not sanctions constitute lawful countermeasures is irrelevant (§§36-45).

[12] In *Alleged Violations of State Immunities (Islamic Republic of Iran v. Canada)*, a claim by Iran, which accepted the ICJ's jurisdiction only on a narrow basis limited to disputes concerning jurisdictional immunity and immunity from enforcement, was accepted by the ICJ. Such a move, however, will not assist Russia, whose complaint of expropriation would arise as a result of EU legislation rather than any court decisions (as in Iran v Canada case) and therefore falls outside state immunity rules altogether. As the ICJ confirmed that the rules of state immunity are "*confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State*" (see *Jurisdictional Immunities (Germany v Italy),* 3 February 2012 at [93]).

E. Risk of an adverse award under investor-state dispute settlement (ISDS)

Arbitration claims under bilateral investment treaties (*BITs*) between Russia and EU Member States also pose a potential litigation risk, including under the Belgium/Luxembourg – Soviet Union Russian Federation Bilateral Investment Treaty 1989 (the "BL-RF BIT"), which is the most plausible treaty route for a claim implicating Belgium. The analysis below generally applies to other Russia-EU Member State BITs with similar clauses.

For completeness, the 1994 Partnership and Cooperation Agreement between the EU and Russian Federation is unlikely to generate awards: it contains no investor-state arbitration clause, and its state-to-state settlement process contemplates consultations and diplomacy rather than arbitration.

Overall ISDS risk remains low due to:

(1) The likely lack of tribunal jurisdiction over a Russia/CBR claim;

(2) An extremely low likelihood of liability on the merits; and

(3) Limited enforceability in jurisdictions supporting immobilisation, on public policy grounds.

(1) Lack of jurisdiction

The BL-RF BIT was not designed to cover central bank investments, so it is unlikely to apply to the CBR assets. That said, it cannot be entirely ruled out that a tribunal (depending on its composition) might nevertheless assert jurisdiction to consider such a claim.

Strong jurisdictional objections include:

(i) *Investment and territorial nexus*. The BIT only covers assets invested "in accordance with" host-State legislation and "in the territory" of the host State (Art. 1.1.1 of the BL-RF BIT). Cash balances accumulated at Euroclear as a result of immobilisation do not cleanly satisfy those requirements: the underlying cash is held at national banks in the currencies' issuing jurisdictions, and Euroclear's role as a securities depository (record-keeping and settlement) hardly constitutes "investment" under the BIT.

(ii) *Narrow consent to arbitration*. The consent clause (Article 10(1)) is arguably limited to the amount and method of compensation payable under Article 5, not disputes over whether expropriation occurred or concerning the legality of immobilisation, swaps, or transfers as envisaged under the Reparations Loan proposal. This reading is supported by Russia's own arguments in ***Berschader v Russian Federation***, where a tribunal concluded that the parties to the BL-RF BIT intended such disputes "*to be submitted to dispute resolution procedures provided for under the applicable contract or alternatively to the domestic courts of the Contracting Party in which the investment is made*."[13] This means that the CBR would first need a Belgian court judgment

[13] *Berschader v Russian Federation*, SCC Case No. 080/2004, Award (21 April 2006) at §153 which reflected Russia's arguments that: "*the Soviet Union proceeded on the basis that the question of the presence or absence of an act of expropriation must in every particular case be decided by the national court of the state in the territory*

establishing an expropriation before arbitration over compensation could proceed. Notably the decision of the Russian court will not suffice since the judgment must be of the court of the country where the investment is made, ie Belgium, or any other contractually designated forum (which is not a Russian court).

(iii) *CBR will not qualify as an "investor."* Although the definition appears broad, BITs operate to protect private investors within a three-party structure (host state–investor–home state). An exception may apply if a state-controlled institution acts in a commercial, rather than a governmental capacity.[14] The CBR is manifestly not a private investor as it performs sovereign functions and would ordinarily invoke sovereign immunity to protect its assets. It would be internally contradictory for the CBR to claim sovereign status for immunity purposes while claiming private-investor status for BIT protection. In other words, a claim by the CBR would amount to a dispute between two states acting as equals, not a dispute between a state and a protected investor, and therefore falls outside the scope of BIT protection.[15]

(2) No liability on the merits

Even if jurisdiction were found, liability is unlikely:

(i) *Public order carve-out*. Investments are protected subject to measures necessary to maintain public order[16] (Art. 4.2 of the BL-RF BIT). EU legislation aligned with the UN General Assembly resolutions recognising Ukraine's right to reparations from Russia provides a strong public order justification for any actions by Belgium under the Reparations Loan proposal.

(ii) *Public international law context*. A tribunal would apply public international law, including decisions of the ICJ on protection against expropriation under BITs. In *Certain Iranian Assets*,[17] the ICJ indicated that not every seizure of a state bank's assets constitutes a compensable expropriation; liability only arises where the expropriatory measure is itself tainted by a specific illegality, such as a denial of justice or the application of executive measures that themselves breach international law. The Reparations Loan is designed to avoid confiscation and is a proportionate response to Russia's grave breaches of international law, including Article 2(4) of the UN Charter. The CBR is inseparable from the Russian state and is one of the key instrumental actors

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of which the expropriation was alleged to have taken place. The Respondent [Russia] maintains that this was a point of principle of the Soviet Union and relies upon the dispute settlement provisions of all the treaties concluded by the Soviet Union in support of this contention." (see § 63) This argument would therefore apply to all historic BITs inherited by Russia from the Soviet Union.

[14] Rudolf Dolzer, Ursula Kriebaum and Christoph Schreuer, *Principles of International Investment Law* (3rd edn, Oxford University Press 2022) 172.

[15] See Dr Patrick Heinemann's paper "Make Russia Pay: on the confiscation of assets of the Russian Central Bank in Germany".

[16] Art. 4.2 of the BL-RF BIT: "*sous réserve des mesures nécessaires au maintien de l'ordre public*"

[17] *Islamic Rep. of Iran v. United States*, Judgment, 2023 I.C.J. Rep. Mar. 30, 2023 at § 184: "*A specific element of illegality related to that decision is required to turn it into a compensable expropriation. Such an element of illegality is present, in certain situations, when a deprivation of property results from a denial of justice, or when a judicial organ applies legislative or executive measures that infringe international law and thereby causes a deprivation of property*."

in Russia's ongoing breaches of international law in occupied territories in Ukraine.[18] Council Regulation EU 2025/1494 (implementing the EU's 18th sanctions package) also recognised that "the Russian banking and financial sector is key to Russia's war effort," making any compensation claim arising from the Reparations Loan unlikely to succeed.

(iii) *Clean hands*. Investment tribunals have applied a clean-hands doctrine to deny relief where the claimant's unlawful conduct contributed materially to the situation. *Al Warraq v. Republic of Indonesia* illustrates this approach: the tribunal held that a claimant's violations of the host state's laws were "prejudicial to the public interest" and therefore stripped him of BIT protection, barring his claim despite findings of unfair treatment. Russia's aggression similarly materially contributes to the circumstances giving rise to the measures at issue.

(iv) *No loss*. Russia's/CBR's claim to its funds remains intact and Russia's assets will one day be unfrozen provided Russia complies with the conditions in Article 4 of the Immobilisation Regulation (end of its war of aggression and payment of reparations to Ukraine).

(3) No enforcement on public policy grounds

Even if Russia/the CBR succeeded in obtaining an award against Belgium, enforcement in the EU, UK, U.S., Canada, Japan, and any other states supporting immobilisation would likely be refused as contrary to the public policy of those states—specifically, the policy that Russian sovereign assets should not be released until Russia pays reparations to Ukraine.

The 18th EU sanctions package (implemented in Council Regulation EU 2025/1494) introduces protections against sanctions-related BIT proceedings, including a non-recognition/non-enforcement approach. Recital (22) and the operative provisions specify that Member States should not recognise or enforce injunctions, orders, judgments, or arbitral decisions arising from ISDS proceedings connected to sanctions measures, and treat effective implementation of the "no-claims" clause as EU and Member State public policy.

The Reparation Loan Regulation contains analogous language (Recital (57)), urging Member States to contest ISDS proceedings and resist enforcement on public policy grounds. Similarly, Article 4(1) of the Immobilisation Regulation provides that no arbitral award (or court judgment) obtained by Russia or CBR arising out of the immobilisation of CBR assets will be recognised, given effect to or enforced in the EU.

Existing EU burden-sharing (limited relevance)

EU Regulation No 912/2014 provides a framework for allocating financial responsibility where Member State action required by EU law triggers investment-treaty liability. However, it will not apply to BITs to which the EU is not a party, including the BL-RF BIT. This supports the policy case for terminating legacy Member State BITs in favour of an EU-level approach (as per Recital (59) of the Reparations Loan Regulation).

[18] See, for instance, a brief filed by a group of NGOs with the International Criminal Court (ICC) on CBR's role in war crimes and crimes against humanity on temporary occupied territories of Ukraine.

Distinguishing sanctions-related BIT claims by private individuals

Any hypothetical CBR claim should be distinguished from pending claims by sanctioned private individuals (none of which have succeeded to date). The widely reported $16 billion arbitration claim by the sanctioned Mikhail Fridman against Luxembourg under the BL-RF BIT illustrates the difference from any possible claim by the CBR under the Reparations Loan proposal:

(i) Fridman can readily establish "investor" status (unlike the CBR).

(ii) His claim follows the Judgment of the General Court of the EU (First Chamber)[19] annulling earlier sanctions listings for evidentiary reasons (notably, he remains sanctioned on the basis of new evidence obtained). Fridman can therefore rely on that annulment in his BIT claim. By contrast, it is extremely unlikely that the EU courts would annul the Reparations Loan legislation, as the CJEU has never allowed a merits challenge to Common Foreign and Security Policy measures, treating them as exceptional instruments largely insulated from challenge.

(iii) His alleged loss relates to the loss of value of his Alfa Group, which assets are held by a company registered in Luxembourg (ultimately a question of expert company valuation); a CBR claim with respect to the Reparations Loan (if conceivable at all) would be capped in practical terms by the value of immobilised assets.

F. Risk of adverse award in the inter-state arbitration

Article 9 of the BL-RF BIT provides a three-stage state-to-state dispute resolution mechanism: (1) diplomatic efforts; (2) referral to a joint commission; and (3) if unresolved within six months, ad hoc arbitration.

There is a debate whether such inter-state dispute resolution clauses cover the full range of treaty disputes or are limited to questions of treaty interpretation. The prevailing view is that BITs deliberately bifurcate: interpretation disputes go to state-to-state arbitration, while alleged breaches of substantive investor protections go through investor-state arbitration route (Article 10).[20]

Even if a tribunal admitted any substantive (as opposed to interpretative) claims by Russia under Article 9, they would likely fail on:

(1) *Jurisdiction*: CBR's custodial relationship with Euroclear does not constitute an "investment" made "in the territory" of Belgium; Euroclear's depository role is primarily record-keeping and settlement facilitation.

[19] This judgment has been appealed to the Court of Justice of the European Union (CJEU) but CJEU is likely to uphold it based on early indication of the Advocate General's opinion.

[20] The view that, in the two-track (investor-state and inter-state) regime, inter-state disputes should not infringe on investor-state disputes is expressed in the Expert Opinion with Respect to Jurisdiction, Prof. W. Michael Reisman (English) (Republic of Ecuador v. United States of America (PCA Case No. 2012-5)

(2) *Merits*: generally recognised principles of international law, especially countermeasures, would provide strong defences and preclude liability. Critically, Article 9(6) requires the tribunal to decide on the basis of the Treaty and "generally recognized norms and principles of international law," effectively inviting countermeasures or essential-security-interest defences where the measures respond to gross breaches of international law and are anchored in EU legislation and UN General Assembly-level recognition of Ukraine's reparation claim.

REPUTATIONAL RISKS

It has been argued that even unsuccessful litigation challenging the Reparations Loan could generate reputational harm to Belgium or Euroclear. That argument is weak. As explained by a number of prominent Belgian and international jurists in their opinion: "[i]nvoking reputational risk in this context would be tantamount to arguing that one should refrain from seizing the bank accounts of drug traffickers or the proceeds of corruption, on the grounds that this might worry other clients about the security of their funds. It is precisely the opposite: what builds the reputation of a financial system is its ability to distinguish between legitimate and illicit assets and to handle the latter in accordance with the law."

Moreover, the proposal is designed as a non-confiscatory mechanism that repurposes an aggressor's immobilised liquidity to mitigate the damage it inflicts on Ukraine and its neighbours.

CONCLUSION

The EU Reparations Loan proposal provides a non-confiscatory financing mechanism for Ukraine that is consistent with EU and international law. To address legal and financial concerns from Belgium and others, it embeds a robust two- to three-layer guarantee (depending on whether the EU budgetary guarantee layer is adopted by unanimity) to ensure that any amounts ultimately payable to the CBR are satisfied.

The proposal also provides that any residual BIT-award risk should be shared among Member States through guarantee agreements (Recital 58), with Germany alone calculated to bear approximately 25 percent of the risk.

Euroclear has already reported holding approximately €5 billion as a "buffer" for sanctions-related legal risk and may also indefinitely retain 0.3 percent of proceeds from immobilised assets for administrative fees and an additional 10 per cent. as a temporary legal buffer.

In short, any possible risks faced by Belgium—described in Prime Minister De Wever's 27 November 2025 letter to President von der Leyen as the only country with "skin in the game"—have already been created by sanctions and on 12 December 2025 by the adoption of the Immobilisation Regulation. No material new risks will be created by adopting the full Reparations Loan plan and any such negligible risks are materially outweighed by the proposal's benefits for European peace, security, stability, and the long-term viability of Ukraine.

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