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On the Legal Stakes of the EU's Proposed Reparations Loan for Ukraine

The potential use of immobilised Russian state assets to finance Ukraine's needs has become the subject of a heated debate within the European Union. The European Commission and [several Member States](#) (most notably the Baltic and Nordic countries, Poland and Germany) strongly advocate for a [Reparations Loan](#), i.e. a legal instrument allowing the Union to borrow the cash balances linked to Russia's assets from the financial institutions holding them (mainly Euroclear, located in Belgium). These funds would then be transferred to Ukraine as a zero-interest loan. That loan would be repaid by Ukraine once it receives reparations from Russia as compensation for the damage caused by its war of aggression. Under such conditions, the Union would repay the borrowed money to the financial institutions, which could then reimburse the Russian Central Bank. It is, therefore, presented as a reversible mechanism that is to be distinguished from an outright confiscation of Russian assets. The property rights of the Russian Central Bank are not touched, but remain immobilised until Russia ceases its war of aggression and compensates Ukraine for the damage caused.

Critics, with Belgian Prime Minister [Bart De Wever](#) as their most outspoken voice, regard this proposal as “a confiscation in disguise”. The use of immobilised assets as a pre-emptive reparations measure is unprecedented and fraught with legal and financial uncertainties. In particular, the risk of Russian countermeasures against Euroclear and other European companies, potential damages claims under the Belgian-Russian Bilateral Investment Treaty (BIT), and reduced trust in the European financial market and the euro as a world reserve currency are the most prominent concerns. In addition, there is the geopolitical argument that the immobilised Russian assets would be better used as a [bargaining chip](#) in peace negotiations with Russia.

The discussion about the Reparations Loan sparks strong emotions. The Belgian Prime Minister has been called the new ‘[bad boy](#)’ of Europe and Belgium ‘[Russia’s most valuable asset](#)’. The mounting external [pressure](#) to allow frozen Russian assets to be used for Ukraine stands in stark contrast to the remarkable political consensus within Belgium. All political parties, from extreme left to extreme right, expressed their [support](#) for the government’s position. There is a general sentiment that the country is put with its back against the wall. A few weeks before the 18 December European Council, where the EU’s commitment to address Ukraine’s future budgetary and defence needs will be high on the agenda, a new crisis is looming around the corner. Can the Belgian concerns be overcome or is the Reparations Loan just a bad idea? It is argued that the Commission’s proposal may be defensible under international and European law, though it remains on precarious legal ground.

Conformity with International Law

Taking into account that central bank assets are covered by a specific regime of state immunity, the question of compliance between the Reparations Loan proposal and the requirements of international law is crucial. Under normal circumstances, using foreign states’ property would definitely not be permitted. However, Russia’s war of aggression against Ukraine is a very specific situation, in the sense that it amounts to a breach of a peremptory norm of international law (*jus cogens*). Considering the gravity of the violations and the *erga omnes* nature of the prohibition of aggression, it is argued that third parties (such as the EU) may take countermeasures against the violating state (Russia) to foster the termination of the internationally recognised wrongful act and secure reparations in the interest of the injured state (Ukraine) (see e.g. [Veber](#), [Rosas](#), [Moiseienko](#) etc.).

It follows from Article 49 of the [Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#) that countermeasures can only be legally adopted under specific conditions. They have to be temporary and non-punitive, designed solely “to induce” the responsible state to comply with international obligations. This implies a condition of reversibility when the underlying reason for the adoption of the countermeasures no longer exists. As found in a recent [study](#) presented to the European Parliament’s Foreign Affairs Committee, the proposed Reparations Loan takes those

conditions into account. It is designed to be temporary and reversible, in the sense that the financial institutions will be able to honour their contractual commitments in relation to Russia's state assets once Russia ceases its aggression and pays reparations.

The key challenge, of course, is that this interpretation is not necessarily shared by the outside world. In the words of the [Belgian Prime Minister](#): "We may wish to believe that the proposed scheme is set up to be in line with international law and, in particular, does not amount to an illegal confiscation. The uneasy fact of the matter is, however, that others will see things differently, and act accordingly." It is not to be taken for granted that foreign jurisdictions or arbitration tribunals will follow the doctrine of third-party countermeasures as a justification for the EU's measures (as also acknowledged in the aforementioned [study](#), p. 43).

Legal Basis under EU law

To minimise the financial and legal risks as far as possible, the [European Commission](#) proposes a rather complex package of five interconnected legal instruments. First, a "[Regulation](#) establishing the Reparations Loan to Ukraine and amending Regulation 2024/792 establishing the Ukraine Facility" defines the precise scope and conditions of the available assistance (up to a maximum amount of EUR 210 000 000 000). It is legally based on [Article 212 TFEU](#) and includes provisions about guarantees by Member States and third countries (Arts 24-27). To avoid the immobilised assets being returned to Russia before the end of the war and the payment of reparations, the Commission proposes a second [Regulation](#) to be adopted under Article 122 (1) TFEU. This involves a prohibition on transferring assets and reserves for the benefit of the Central Bank of Russia or related entities. It also lays down requirements for the management of the cash balances corresponding to those assets and reserves, and establishes safeguards preventing the enforcement of judicial, arbitral or administrative decisions obtained by Russia. Those obligations are presented as "emergency measures needed to address the serious economic difficulties within the Union caused by Russia's actions in the context of the war in Ukraine". Accordingly, the Commission argues that this falls within the scope of [Article 122 \(1\) TFEU](#).

Arguably, the recourse to Article 122 (1) TFEU is essentially a strategic legal move allowing for the continued immobilisation of Russian state assets on the basis of qualified majority voting. So far, the prohibition of transactions related to the management of reserves and assets of the Russian Central Bank has been subject to restrictive measures adopted under the Common Foreign and Security Policy, notably (the consolidated versions of) [Council Decision 2014/512/CFSP](#) and [Regulation 833/2014](#). Those restrictive measures (commonly known as "sanctions") are subject to a six-monthly renewal on the basis of unanimity within the Council. This always involves the risk that Member States such as Hungary or Slovakia will exercise their veto and prevent the renewal of the sanctions. In the case of a Reparations Loan, this would have far-reaching consequences since the borrowed money should then be immediately available. Extending the asset freezes on the basis of QMV helps to avoid such a scenario. It would

also put the bar for ending these measures very high, i.e. until the Council decides that “Russia’s actions in Ukraine and in the Member States have objectively ceased to pose substantial risks for the stability of the economy of the Union”, implying that Russia terminated its war of aggression against Ukraine and paid reparations “to allow for reconstruction without economic and financial consequences for the Union” (Art. 7).

This pragmatic solution conforms to [the rise of Article 122 TFEU](#) as a frequently-used legal basis in crisis situations. This evolution is not uncontested, with, *inter alia*, a [pending case](#) regarding its use for the establishment of the Security Action for Europe (SAFE). In the context of the Reparations Loan proposal, the [Commission](#) argues that its new emergency regulation will complement the CFSP-based restrictive measures since it has a different scope and pursues “*objectives that are specific to the area of the economic stability of the Union*”. It is noteworthy that, in this respect, “*Ukraine is considered as an integral part of Europe’s defence and security architecture and this latter is intrinsically connected with the economic situation in the Union*”. Moreover, it is argued that the economic stability of the Union is also affected by Russian hybrid threats against the EU Member States. Accordingly, the Commission brings a measure that both in content (prohibiting the transfer of Russian assets) and objectives (countering Russia’s war of aggression) traditionally falls within the scope of the CFSP under a legal basis that is part of the EU economic policy chapter in the TFEU. This broad interpretation of Article 122 (1) TFEU raises significant constitutional questions regarding the choice of legal basis within the EU legal order, not least in view of Article [40 \(2\) TEU](#).

In addition to the two core Regulations, additional proposals designed to protect EU Member States and financial institutions from possible retaliation measures are in the pipeline but have not yet been released. Finally, the Commission has already issued a [proposal](#) for an amendment of the current multiannual financial framework (MFF) to extend the budgetary guarantee to loans to Ukraine. This should ensure that the necessary resources are available in time so that the Union can meet its financial obligations towards its creditors. This regulation is to be adopted under [Article 312 TFEU](#), requiring unanimity in the Council. It is part of the Reparations Loan solution, in which the EU budget serves as a financial guarantee, and could potentially be used more broadly as part of the alternative solution to rely entirely on the EU budget to finance Ukraine’s financial needs. The latter is Belgium’s preferred option, since it would avoid the legal and financial risks of the Reparations Loan. However, [Hungary](#) has already announced its veto against this plan, which further complicates a solution to address Ukraine’s financial and defence needs.

Addressing Belgian concerns

In case the Reparations Loan scheme is to be established, Belgium has [three main concerns](#) that need to be addressed.

First, there is the question of liquidity: “Member States would have to provide legally-binding, unconditional, irrevocable, on-demand, joint and several guarantees [...] to ensure that the Union is always able to repay the funds without receiving countervailing

payments from Ukraine”. Article 25 of the proposed Reparations Loan aims to address this issue on the basis of ‘guarantee agreements’ between the Commission and each Member State. The option to involve the [European Central Bank](#) (ECB) as a backstop has been rejected, since this would be incompatible with [Article 123 TFEU](#).

Second, Belgium requests that any financial responsibility arising from dispute settlement proceedings will be borne by the Union and not by Belgium alone. This is partly guaranteed under Article 24 of the proposed Reparations Loan Regulation and partly under Article 5 of the Emergency Regulation. Accordingly, potential arbitration awards would be unenforceable in the EU, and damages can be reimbursed for the maximum amount of the granted loan and for a maximum period of 16,5 years (taking into account a sunset clause of 15 years following the termination of the Belgian-Russian BIT). Belgium insists on a longer period and a higher amount, since the expected damages claims will also include the legal costs of the procedure, interests, investment opportunity costs and a quantification of the financial impact to the Central Bank of Russia.

Third, Belgium wants all Member States holding Russian sovereign assets to be part of the scheme, and not only Euroclear as initially suggested. This was the main message of Bart De Wever’s “[KFC speech](#)” before the October Copenhagen European Council meeting. The [latest proposals](#) of the Commission go in this direction, including also €25 billion of immobilized Russian state assets held in private bank accounts in France, Germany, Belgium, Sweden, and Cyprus, in addition to €140 billion held at Euroclear.

When presenting the Reparation Loan scheme on 3 December 2025, Commission President [Von der Leyen](#) claimed that “we have listened very carefully to Belgium’s concerns, and we have taken almost all of them into account in our proposal that is on the table.” Belgian Foreign Minister [Maxime Prévot](#) quickly denounced those claims and repeated Belgium’s official position that the envisaged scheme entails too many risks and is, therefore, “[fundamentally wrong](#)”. Whereas certain risks may be covered in legal texts, others, such as the long-term impact on the trustworthiness of Euroclear and the European financial markets as a whole, are almost impossible to address in legal terms.

What now?

The European Council has committed to addressing Ukraine’s pressing financial needs at its next meeting on 18 December 2025. Formally, the European Commission presented [two potential solutions](#): EU borrowing at the capital markets or the Reparations Loan scheme. In practice, there is a clear pressure to proceed with the latter option. The idea of using Russian state assets is attractive since it makes Russia pay for its blatant violation of international law. Moreover, it does not have any immediate negative effects on the Member States’ debt or on the EU budget, and – not unimportantly – the Commission designed a scheme that can be adopted by qualified majority voting in the Council. However, its legal foundations are not uncontested and involve long-term financial risks. Whether the Belgian concerns are inflated, as some [colleagues](#) argue, or justified, the fact remains that the proposal touches upon vital national and European interests.

The Commission's proposed alternative, the issuing of Eurobonds, is procedurally more difficult (subject to the unanimity requirement) and involves (interest) costs. Hence, the current conundrum reflects a classical trilemma in the sense that it is simply impossible for the Union to (i) finance Ukraine (ii) without making any additional costs or risks and (iii) on the basis of an uncontested legal basis. Under the given circumstances, though political decisions are to be made at the forthcoming European Council meeting, where the Member States' solidarity with Ukraine and with each other will – once again – be tested.

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