The EU's sanctions regime vis-à-vis Russia

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EPIS Policy Brief: "How to address the incoherence of the EU Sanctions Regime vis-à-vis Russia – A Blueprint for repurposing immobilised Russian state assets for Ukraine"

Since 2022, the Russian war of aggression against Ukraine has prompted the European Union (EU) to adopt numerous sanctions packages to weaken the Russian war economy. Among these sanctions, the immobilised Russian state assets (IRSAs) held in foreign exchange reserves repeatedly draw attention. Held in Western jurisdictions, these assets are estimated to be approximately $300 bin, with around €200 bn in the Belgian Central Secu-

rities Depository (CSD) of Euroclear. With the US scaling back its support for Ukraine, calls to confiscate these frozen assets or repurpose the windfall net profits (WNPs) matured from them have intensified. Furthermore, the erosion of public support for aid to Ukraine in EU Member States (MS) is prompting them to turn to other funding sources than their own. This is why the European Commission (EC) has proposed a €140 bn Reparation loan for Ukraine, funded by the revenue generated from the IRSAs and backed up by Eurobonds. Importantly, this loan would need to be paid back only if and when Ukraine receives reparations from Russia.

What is hindering these efforts is the consensus-based decision-making in the Foreign Affairs Council (FAC). The lack of unanimity in the FAC creates a political bottleneck, hindering the EU from developing a long-term sanctions strategy. This brief intends to answer the question of how the EU could overcome the politico-economic and legal impasses, particularly the unanimity requirement, to mobilise the assets for Ukraine's mid-and long-term benefit.

We argue that by implementing different legal and financial mechanisms, the FAC's deadlock can be bypassed and crucial aid can reach Ukraine timely. After examining the unanimity trap and possible ways to overcome it, this paper presents further legal and politico-economic hurdles and current initiatives. It concludes with general policy recommendations which enable the EU to enhance the policy coherence of its sanctions regime vis-à-vis Russia.

Since the creation of the EU, the Common Foreign and Security Policy (CFSP) has remained a particularly sensitive domain. MS have consistently resisted giving up sovereignty in this area of EU policy. This means that in matters of foreign policy, the FAC has to vote on every decision unanimously, giving all members political veto powers. Specifically, the prolonging of the asset's immobilisation requires biannual re-approval. Although the continuation of support for Ukraine is quasi-consensual, there are exceptions. Notably, Hungary and Slovakia have vetoed sanction packages and regulations targeting Russia because of their governments' close political and economic ties to the aggressor. This undermines the development of a long-term strategic sanctions regime, potentially leading to so-called "Sanctions Fatigue". The deadlock in the FAC has created a need to bypass the unanimous decision-making.

Legal scholars are calling for the use of Article 7 of the Treaty of the European Union (TEU) to circumvent the veto of Hungary and Slovakia by suspending their voting rights in the area of CFSP, or specifically, sanctions-related questions based on the violation of EU values, as laid down in Article 2 TEU.

An alternative approach could exploit the legal distinction between Article 29 TEU and Article 215 of the Treaty on the Functioning of the European Union (TFEU). This approach states that while unanimity is needed under Article 29 TEU for setting a broader EU strategy, the details about the

latter's implementation and its enforcement mechanisms can be adopted by Qualified Majority Voting (QMV) under Article 215 TFEU.

Lastly, an option already used by the EU Council: Since Hungary abstained from a Council decision that allocated WNPs to Ukraine in May 2024, it has no further right in the decisions about the fund's future. In response to this step, Hungary sued the EU for ignoring its veto on the matter. Nevertheless, it has to be noted that this solution would not be able to circumvent other MS's vetos.

As a last resort, the possibility of releasing €550 million of blocked EU funds for Hungary as a bargaining chip could enable reaching a consensus on future sanction packages. However, with the reemergence during the next sanction renewal cycle, this would merely postpone the challenge created by the unanimity requirement.

Altogether, the issue of unanimity in the FAC is far from solved. However, the ongoing legal discussions could ultimately alter the decision-making processes within CSFP. Until then, however, it is important to look at other mechanisms which would allow aid to reach Ukraine as fast as possible.

2.1 Navigating the legal and politico-economic minefield towards the WNPs' repurposing

Under customary international law, state sovereign immunity prevents the IRSAs' outright confiscation, offering heightened protection to central bank assets and functioning as a procedural bar to enforcement measures, such as their seizure within foreign jurisdictions. This immunity, however, is subject to challenge. Viewed through the International Law Commission's "Articles on the Responsibility of States for Internationally Wrongful Acts" (ARSIWA), one could argue that confiscation would be permissible under the doctrine of countermeasures*, which permits an action that would normally infringe international law if it is aimed at* inducing another state's (Russia's) compliance with its international legal obligations. Legal experts have explored justifications to override the principle of state sovereign immunity, e.g. by framing the IRSAs' seizure as a lawful countermeasure in response to Russia's breach of international law. However, no clear consensus regarding legal pathways of the WNPs' repurposing has emerged.

Direct confiscation remains legally contested because the established legal norm governing countermeasures mandates that they be temporary, reversible, and designed to induce compliance. This requisite is reflected in the stance of the Russian Elites, Proxies, and Oligarchs (REPO) Taskforce participatory States, which advocate for keeping the IRSAs frozen until Russia has provided reparations after the conclusion of the war.

Currently, a part of the WNPs is transferred to Ukraine for military purposes and serves as repayment for the country's loans; the assets themselves function as a deposit for future reparations. A solution that might satisfy the criteria above is the transfer of the WNPs to another legal entity, thereby

crediting the transferred amount against Russia's reparations debt toward Ukraine. According to Art. 36 of ARSIWA, Russia is "under an obligation to compensate for the damage caused thereby (...)". This could include various types of humanitarian expenditures. In the event of a peace accord, the IRSAs could be disbursed to Ukraine and other injured parties. Furthermore, the latent threat of future confiscation can be leveraged to ensure Russian compliance with a potential ceasefire agreement.

However, significant geoeconomic risks remain: an EU or "Coalition of the Willing" -led confiscation could establish a legal precedent, which could be exploited, e.g. by the PRC or India, to justify similar actions against EU interests or cause capital flight of EU-inbound Foreign Direct Investment (FDI). Viewed from the ECB's risk-adverse perspective, any action that might undermine the Eurozone's financial stability should be avoided, mirroring the initial viewpoints from MS with large economies and high amounts of inbound FDI, such as Germany and France.

With EU MS holding approximately 75% of all IRSAs amongst G7 countries, including Australia and Switzerland, this leads to the centrepiece of contention: Euroclear. The Belgian government is already collecting 25% of the WNPs as tax and transferring them to Ukraine. Furthermore, Euroclear is turning over the remaining revenue to the European Fund for Ukraine. With the creation of the new legal category of WNPs, as property of Euroclear, the process of repurposing has been highly facilitated. However, a decision within a "Coalition of the Willing" to repurpose the WNPs held at the CSD requires an equitable distribution of the associated liability risks. With the institutional gridlock within the FAC and Belgium remaining opposed to the WNPs' repurposing, novel instruments are needed.

2.2 Innovative pathways: Creative solutions forward

To provide Ukraine with longer-term financial support, the EC is developing plans to create a "Special Purpose Vehicle" (SPV), which would contain IRSAs from CSDs from the "Coalition of the Willing". Created outside the EU treaties, this model, administered by the ECB or the EC, could allow the WNPs to be reinvested with a higher yield and, once established, even be open to states outside of the EU (e.g. the G7). Whilst shielding the EU's financial system, this scheme would also rule out confiscation until the signature of a peace settlement between Kyiv and Moscow.

Getting back to the Belgian CSD, it would require an equal amount of EU Bonds to cover the liability. The main difference would be that Euroclear invests the WNPs in EC bonds rather than ECB deposits. However, this would require a clear ownership structure, mandate, the creation of a new legal entity, as well as oversight and reporting structures.

EC President U. von der Leyen's proposal of a €140 bn Reparations Loan for Ukraine during her State of the EU speech complements the SVP proposal: once transferred, the loan would allow Kyiv to spend the money

right away. However, in an opinion piece in the Financial Times, German Chancellor F. Merz argued that it should only be limited to military expenditure. Germany and France have been the harshest critics of the assets' outright confiscation and, for some time, the WNP's repurposing. However, the evolution of the Russian counter-sanctions regime, which as of late September 2025 allows previously expropriated Western assets to be sold, should be all the more reason for the "Coalition of the Willing" to seize the strategic initiative and address the policy incoherence of its own sanctions regime vis-à-vis Russia.

2.3 Forging policy coherence in the EU's sanctions regime

The lack of policy coherence in the EU's sanctions regime has long been criticised. The fact that measure's implementation is left to MS demonstrates the need for harmonisation. Only in 2023 did the EU, for the first time, adopt a law on criminalisation of sanction violation. However, national capabilities to enforce such laws still vary widely.

The decentralisation of the EU's Sanctions Regime is seen as an additional issue. According to a 2022 report from the Jaqcues Delors Institute, 160 authorities amongst all MS were responsible for enforcing sanctions. This fragmentation creates exploitable loopholes within the enforcement framework.

For instance, third-country circumvention could be tackled by a more centralised, harmonised EU sanction regime. Furthermore, coherence between EU MS is needed to create more effective global sanctions through cooperation with partners, such as the G7. To that end, the EU needs a more harmonised approach to its economic statecraft. European and Western technologies have not simply been substituted by alternatives from non-European sources, but significant efforts were made to ensure that these goods can continue to move by all possible means. In that sense, a so-called "Single Market for EU Sanctions" could offer a way forward. Such a framework would foster a coherent and coordinated approach to EU sanctions implementation, close the existing loopholes and cut Russia off from the European market.

To enable long-term support for Ukraine and improve policy coherence, the EU should elaborate on the development of financial mechanisms outside of the EU Treaties, which would only require support from a Coalition of the Willing MS. The presented SPV is only one example of how the EU can create legal certainty whilst repurposing the WNPs and at the same time ensuring that liability risks are evenly distributed. While details of the EC's legal and financial feasibility study on the SVP remain to be seen, the lasting economic ties between Russia and certain EU MS should alarm the European executive and make it consider using the Suspension clause enshrined in Art. 7 TEU. Furthermore, it should start trade consultations with the biggest importers of Russian Fossil Fuel, such as the PRC and

India, to find alternative sources of energy and ultimately disrupt the most important income source to the Russian war economy.

Furthermore, the EU must close loopholes. An astonishing number of EU corporations keep doing (in-) direct business in Russia. Enforcement is solely a MS competence, but there is a lack of oversight. The creation of an EU sanctions agency could ensure monitoring and investigating MS practices, with the ideal goal of harmonising MS practices and eventually even enforcing sanctions. This could involve other EU and MS institutions, as well as academia and civil society. Most importantly, this could strengthen the public's trust in the sanctions regime and turn the downward trend of public support for Ukraine around.

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