ANALYSIS 43/2023 / 20 December 2023

The European Union should do better than confiscate Russia's reserve money

The EU can use interest income made on immobilised Russian reserve assets to support Ukraine, but confiscating the assets now would be a mistake

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What to do with Russia's foreign reserves, immobilised since Russia's full-scale invasion of Ukraine, is primarily a matter of decision for the European Union, where most of these reserves are held. The EU should keep giving Ukraine the financial support it needs for its defence and other government expenditures but, in the present circumstances, should not confiscate Russia's reserve assets to finance its support to Ukraine, given the EU's commitment to a rules-based international financial order. It could, however, offset some of the financial burden by appropriating the extraordinary income made on Russia's cash balances by central securities depositories such as Euroclear. The EU has a robust enough case that such income does not belong to Russia.

At least €206 billion of Russian reserve assets is held in the EU[1], representing more than three-quarters of a total estimated by the G7 Finance Ministers at $280 billion (about €265 billion), which was immobilised in late February 2022[2]. Of this, €180 billion is held at Brussels-based Euroclear, plus possibly a few billion at Clearstream, its Luxembourg-based competitor[3].

By contrast, Russian reserves immobilised in the United States, the amount of which has not been disclosed, are unlikely to exceed single-digit billion dollars, and those in Australia (which is included in the G7 tally) and Canada are probably even less. That would leave the remainder, perhaps €40 billion to €50 billion, in Japan, the United Kingdom and EU countries other than Belgium. Other countries including Switzerland

and Singapore have immobilised Russian reserves, but these are not counted in the G7 total.

A European decision

The collective decision to go ahead with immobilisation, taken shortly after the war started, was reportedly catalysed by Italy's then-prime minister Mario Draghi[4]. Similarly, the decisions on possible next steps, including the option to confiscate the immobilised reserves, will be made primarily by Europeans, because Europe is where the money is, even if decisions are coordinated within the G7.

The debate about such next steps is plainly about resources for Ukraine, not those of Russia. This is because the immobilisation was successful, with no leakage back to Russia (and also a powerful deterrent for other jurisdictions that have reserve assets abroad and may be tempted to invade their neighbours). The G7 declaration states, credibly, that *"Russia's sovereign assets in our jurisdictions will remain immobilized until Russia pays for the damage it has caused to Ukraine."* Russia has ostensibly written off the immobilised assets, as illustrated by its cynical suggestion that the reserves should be contributed to the loss-and-damage fund discussed at the COP28 in Dubai[5]. Moving from immobilisation to confiscation would not change the Putin regime's financial equation, nor would it have any short-term impact on Russia's economy. From that standpoint, there is no damage in prolonging the *status quo*. There is even value in keeping long-term options open.

As for the Ukrainian government, its need for external finance has been covered in 2023, largely thanks to predictable and timely payments from the EU (in contrast to 2022, when the EU was shamefully late to deliver on its commitments). With Ukrainian GDP at about €200 billion in 2021 before Russia's full-scale invasion, it is improbable that such external financing needs should ever exceed annual amounts in the tens of billions, including capital expenditure for emergency repair of destroyed critical infrastructure[6]. Given the invaluable contribution of Ukrainian defence to European security, for the EU to spend on it a few tens of percentage points of its own GDP (€16 trillion in 2022) is the ultimate policy no-brainer. Indeed, it is expected that the EU will confirm a large-scale support package early in 2024[7].

Against these realities, the reported eagerness of the US government to move from immobilisation to confiscation[8] appears to principally reflect the Biden

Administration's difficulty in securing congressional approval for US financial support to Ukraine. Facing US domestic deadlock, and given that its own vital interests at stake, the EU might usefully consider further increasing its own financial contribution to Ukraine's defence. But that by no means implies that confiscation of the immobilised reserves has suddenly become a good idea.

No good argument

The argument against confiscation has not changed (eg Kirschenbaum and Véron, 2022). As the EU is not at war with Russia, confiscation would be widely viewed as unlawful, or theft, in much of the world outside the G7, undermining the hitherto credible European claim to stand for the international rules-based order. Only a broad-based international court would have uncontested authority to deprive Russia of ownership of its reserves, and no corresponding judicial mechanism is available for that at present. Even though there are dissenting opinions among legal scholars (for example, Moiseienko, 2023; Summers *et al*, 2023; Tribe *et al*, 2023), and grey zones abound in international law, chances are that confiscation would breach international and EU principles on sovereign immunity and on the proportionate and reversible nature of countermeasures (of course, analysis on whether confiscation would be legal under US law, such as that by Tribe *et al* (2023), is mostly irrelevant to EU decision).

Confiscation now would set a problematic precedent and incentivise global financial fragmentation. Trust in international monetary arrangements would be undermined to a considerably greater extent by confiscation than by the inherently reversible immobilisation, for which precedents exist[9]. That would disincentivise several central banks from holding their reserve assets in euros. It would also deprive the EU of potential future leverage in some scenarios of negotiations to come, even though no such scenario is probable as long as Vladimir Putin remains in power. Furthermore, it could expose EU countries that perpetrated misdeeds in the past to more pressure from their own claimants. In short, the EU would lose stature and damage global public goods it otherwise cherishes, for the sake of gaining an amount of money that it can do without.

Windfall income

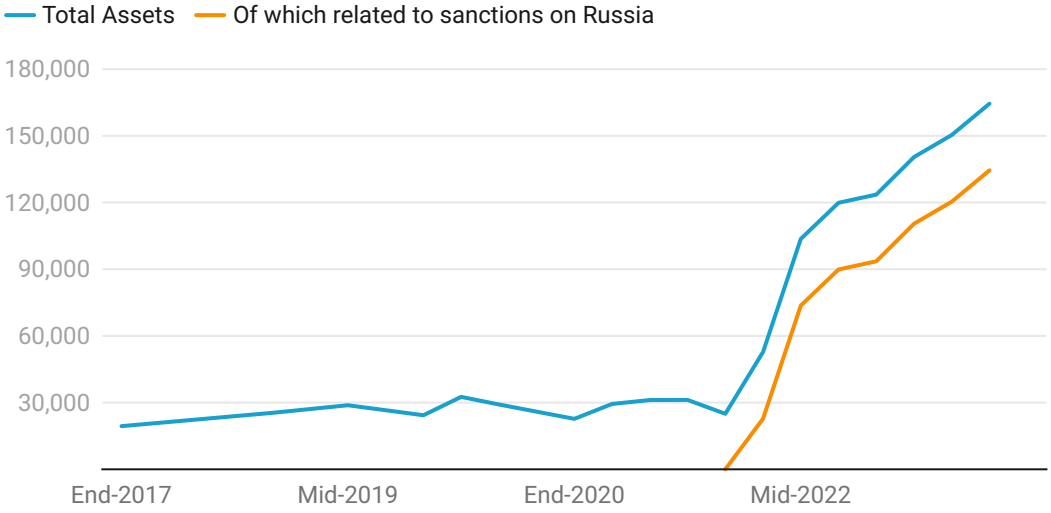
By contrast, the EU's idea of using the windfall income made by central securities depositories (CSDs) on Russian cash blocked on their balance sheet[10] does not entail

similar downsides, because of specific contractual arrangements between European CSDs and their account holders, including the Bank of Russia. It is unclear if similar arrangements exist in other jurisdictions where Russian reserves are immobilised.

These conditions make it explicit that the CSD does not remunerate cash balances, and therefore that the interest income it makes on them (eg by depositing them at a euro-area central bank) does not belong to the account holder. Normal account holders are incentivised not to keep any unremunerated cash balances at CSDs but, because the EU sanctions prevent the Bank of Russia from taking its money out, cash has accumulated as its securities held at Euroclear have come to maturity (Figure 1).

The proposition that Russia has no claim on the CSDs' income appears solid enough for action that does not violate international and EU law to be taken in the near term, even though it is likely to be tested in court, including outside the G7. Appropriating the CSDs' windfall income and making it available to Ukraine, would multiply the impact of the announcement already made by Belgium that it would earmark the corporate tax revenue it collects on Euroclear's windfall income for support to Ukraine[11]. The amount of several billion euro of annual income (at current rates) is not enough to meet all of Ukraine's needs, but it is not negligible either. Its future size will of course depend on rates decisions made by the European Central Bank, and therefore cannot be predicted with certainty.

Figure 1: Assets of Euroclear Bank (€ millions)



Source: Bruegel based on Euroclear disclosures of total assets. Note: the estimate of Russia-related amounts is made crudely by subtracting €30 billion, until 2022 the observed upper limit on Euroclear Bank's total assets, from the figures reported by Euroclear from end-March 2022 onwards (N.B. the only date for which Euroclear specifically published the discrepancy between total and Russia-related assets was at end-2022, when it was €30.19 billion).

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In sum, the EU must keep giving Ukraine the money it needs to defend itself. Confiscating Russia's reserves to do so would be a show of weakness in the present contest of willpower. The EU can afford to resist the temptation and keep to its current high ground.

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Endnotes

1 According to a non-paper of the Council of the EU Ad Hoc Working Party on Frozen Assets, which was obtained by Politico in March 2023; see Paola Tamma, 'EU looks at investing frozen Russian state assets to raise cash for Ukraine', Politico, 24 March 2023, https://www.politico.eu/article/eu-looks-at-investing-vladimir-putin-ru….

2 G7 press release of 12 October 2023, published by the Council of the EU, 'G7 Finance Ministers and Central Bank Governors' Statement', https://www.consilium.europa.eu/en/press/press-releases/2023/10/12/g7-f….

3 The March EU non-paper refers to €180 billion of Russian reserve assets held at Euroclear (not named but unambiguously referred to), €5 billion in additional Russian reserve assets held at other Belgian entities, and a total €191 billion apparently also including €6 billion of income made by Euroclear on the Bank of Russia's cash balance, which does not belong to the Bank of Russia. The total of €206 billion is obtained by adding the Bank of Russia's €185 billion held in Belgium to the €21 billion mentioned in the same document as held in another (unnamed) EU country. The estimate of a few billion held at Clearstream is inferred by the author from Clearstream's financial disclosures. The EU non-paper is available at https://api.politico.eu/editorial_documents/14760385-743f-45a8-aeb4-be8….

4 Quote from former US Deputy National Security Advisor Daleep Singh in Erin Banco, Garrett M. Graff, Lara Seligman, Nahal Toosi and Alexander Ward, '"Something Was Badly Wrong": When Washington Realized Russia Was Actually Invading Ukraine', Politico, 24 February 2023, https://www.politico.com/news/magazine/2023/02/24/russia-ukraine-war-or….

5 Radio Free Europe/Radio Liberty, 'Russia Seeks To Unfreeze Gold Reserves As It Woos Global South', 9 December 2023, https://www.rferl.org/a/russia-climate-gold-reserves/32723564.html.

6 Estimates of the cost of post war Ukrainian reconstruction, made for example by the Kyiv School of Economics (2023), run into the hundreds of billions of dollars or euros. The present debate, however, must realistically be focused on the inherently more limited scope of wartime expenditure.

7 Gregorio Sorgi, Barbara Moens and Jacopo Barigazzi, 'EU vows Ukraine will get its money — with or without Orbán's support', Politico, 15 December 2023, https://www.politico.eu/article/eu-leaders-pledge-deliver-aid-flagging-….

8 Laura Dubois, James Politi and Lucy Fisher, 'G7 moves closer to seizing Russian assets for Ukraine', Financial Times, 15 December 2023, https://www.ft.com/content/918645f8-e0b6-4cab-92fa-4f965569c2a6.

9 See National Bank of Serbia, 'Succession of the Former SFRY', undated, https://nbs.rs/en/ciljevi-i-funkcije/medjunarodna-saradnja/sukcesija/.

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11 Julia Payne, 'Belgium expects to use $2.4 billion in tax on frozen Russian assets to fund Ukraine', Reuters, 11 October 2023, https://www.reuters.com/world/europe/belgium-expects-use-24-bln-tax-fro….

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