

REPO for Ukrainians Act Provides for the ‘Repurposing’ of Seized Russian Sovereign Assets

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On April 24, 2024, President Joe Biden signed into law a high-profile package of national security legislation (Public Law 118-50). While most press reports focused on the spending elements of the package (appropriating funds to support U.S. allies such as Ukraine, Israel and Taiwan), one subchapter of the legislation contains important new measures that directly impact Russian state assets that are currently blocked (*i.e.*, frozen) pursuant to U.S. sanctions.

The “Rebuilding Economic Prosperity and Opportunity for Ukrainians Act” (the “REPO for Ukrainians Act” or the “Act”) is the latest U.S. measure in response to Russia’s invasion of Ukraine in February 2022. Since then, the U.S. government — through the Department of the Treasury’s Office of Foreign Assets Control (OFAC) and the Department of State — has imposed broad-ranging sanctions against the Russian government and a large number of Russian entities and individuals.

The European Union, United Kingdom and numerous other countries have adopted [similarly broad sanctions](#).¹

According to the congressional findings accompanying the REPO for Ukrainians Act, “\$300,000,000,000 of Russian sovereign assets have been immobilized worldwide” as a consequence of these various sanctions programs. Of this amount, “between \$4,000,000,000 and \$5,000,000,000, are reportedly subject to the jurisdiction of the United States.”

Potential Seizure and Diversion of Russian Sovereign Assets

The REPO for Ukrainians Act seeks to create a framework for the seizure of Russian sovereign assets and their “repurposing” for the benefit of Ukraine. Although initially a separate bill, it was folded into the general spending package that Speaker of the House Mike Johnson put to a House vote on April 20, 2024. President Biden signed the bill into law following the Senate vote a few days later.

The law begins with a general prohibition on the release of “blocked or effectively immobilized” Russian sovereign assets until the U.S. president certifies that “hostilities between the Russian Federation and Ukraine have ceased” and either:

- Russia has paid “full compensation ... to Ukraine for harms resulting from the invasion of Ukraine by the Russian Federation,” or
- the Russian government “is participating in a bona fide international mechanism that, by agreement, will discharge the obligations of the Russian Federation to compensate Ukraine for all amounts determined to be owed to Ukraine.”

If the president determines that Belarus has also “engaged in an act of war against Ukraine” related to Russia’s February 2022 invasion, Belarussian assets can be subject to similar treatment under the REPO for Ukrainians Act.

¹ This client alert is for informational purposes only and does not constitute legal advice. Complex assessments often have to be made as to which sanctions regime applies in any given instance, given the multinational touch points of many entities and individuals. In that regard, given the complex and dynamic nature of these sanctions regimes, there may be developments not captured in this summary. Moreover, while the summary was accurate when written, it may become inaccurate over time given developments. For all of these reasons, you should consult with a qualified attorney before making any judgments relating to sanctions, as there are potentially severe consequences of failing to adhere fully to sanctions restrictions.

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The Act then provides a framework for the president to authorize seizure of Russian sovereign assets subject to U.S. jurisdiction and their “repurposing” for the support of Ukraine.

Specifically, the president may certify that such action is appropriate, provided that such action “is in the national interests of the United States,” the president has “meaningfully coordinated with G7 leaders to take multilateral action” concerning such seizures and one of the following contingencies has arisen:

- a “properly constituted international mechanism” has been “established for the purpose of, or otherwise tasked with, compensating Ukraine for damages arising or resulting from [the invasion by] the repurposing of sovereign assets of the Russian Federation” and has officially requested U.S. participation,
- “the Russian Federation has not ceased its unlawful aggression against Ukraine,” or
- Russia has “ceased its unlawful aggression” but has “not provided full compensation to Ukraine for harms resulting from the internationally wrongful acts of the Russian Federation,” and is not participating in a “bona fide process” to provide such compensation.

The Act then provides that Russian sovereign assets seized under these provisions may be allocated to a “Ukraine Support Fund,” which may then be used for “providing assistance to Ukraine for the damage resulting from” the 2022 invasion.

The Act also calls upon the president to cooperate with other governments to establish “an international fund to be known as the ‘Ukraine Compensation Fund’, that may receive and use assets in the Ukraine Support Fund established under section 104(c) and contributions from foreign partners that have also frozen or seized Russian ... sovereign assets to assist Ukraine.”

The Act makes clear that its provisions will not alter the protection currently available to diplomatic or consular property of Russia, which is protected by international treaties. The Act also contains a “sunset” provision under which the authority to seize and repurpose Russian sovereign assets will expire upon the earlier of:

- five years after enactment of the legislation, or
- 120 days after the president certifies that Russia has both withdrawn from Ukraine and “full compensation has been made to Ukraine for harms resulting from the invasion of Ukraine by the Russian Federation.”

Implications

Importantly, the REPO for Ukrainians Act does not immediately alter the status of Russian sovereign assets currently blocked by U.S. sanctions or turn them over to Ukraine. These assets will remain frozen unless and until the executive branch exercises the statutory seizure powers available under the legislation.

It is also conceivable that the implementation of the Act may be delayed pending court challenges by the Russian government. Although the Act attempts to preclude judicial review generally, it also provides for expedited treatment of any constitutional challenge to its provisions.

Even at this early stage, however, the Act has a number of important implications.

Potential Retaliation by Russia

The Act makes explicit that Russian sovereign assets are subject to permanent seizure and represents an escalation in tensions between the U.S. and Russia. This, in turn, means that Russia may retaliate, *e.g.*, by confiscating U.S.-owned assets within Russia. Senior officials in Russia have already made public statements to that effect:

- Valentina Matviyenko, chairwoman of the Federation Council (the upper house of Parliament), said: “We also have a prepared answer. We have a draft law, which we are ready to consider immediately, on retaliatory measures. And the Europeans will lose more than we do.”
- Dmitry Medvedev, deputy chairman of Russia’s Security Council, stated that Russia’s response will be “asymmetrical” since “Russia does not hold significant U.S. state property” but referred to “the movable and immovable property of Americans on the territory of Russia, as well as investments, assets, and other savings of U.S. citizens.”

Russia has already started to implement measures to that effect. It has adopted and applied various regulations that establish regulatory framework and precedents to seize assets. These include regulations that:

- restrict multinationals from being able to extract cash out of Russia or sell their Russian assets, and
- allow actual or *de facto* expropriation of assets through the so-called “external management” by the Russian state-appointed parties and assertion of control through reorganization of Russian assets held by multinationals in Russia.

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In addition, a number of multinationals have already faced asset freezes or reorganizations ordered by Russian courts (including with respect to shares held in Russian companies, cash on accounts and trademarks). It is important to note that Russia is still a party to treaties on mutual recognition and enforcement of court judgments with a number of countries that can be used to pursue actions against multinationals in other countries.

Some of these regulations and related regulatory actions taken by Russia have been formulated or implemented in such a way as to allow Russia to preserve its leverage and be able to quickly use cash and securities currently held in “special regime” accounts if and when Russian assets are seized. Russia has also taken and will continue to take “look through” approaches to target companies within multinational ownership chains that are located in jurisdictions where it makes most sense for Russia to apply these regulations.

Foreign investors in Russia thus are at risk of being deprived not only of profits, control or even ownership of some wholly or partially owned local businesses still remaining in Russia, but also of cash and securities held in “special regime” or “frozen” accounts in Russia (including S-type and O-type accounts) that cannot currently be transferred outside of Russia without government permission.

It is unclear if Russia could also start targeting multinationals operating in industries that Russia kept relatively untouched in previous rounds of retaliatory or other counter-sanction actions (e.g., pharma companies).

Potential Corresponding Initiatives in Other Countries

As noted, the REPO for Ukrainians Act contemplates that the U.S. will seek to engage with G7, Australian and other governments to set up an international compensation fund for Ukraine.

This, in turn, may prompt similar legislative initiatives in other countries that have seized Russian sovereign assets, which in turn may lead to further retaliation by Russia.

Position of Other Creditors of Russia

The legislation potentially unlocks frozen Russian sovereign assets to further the interests of Ukraine, with the aim of aiding Ukraine’s ability to collect compensation for claims arising from Russia’s invasion.

In that sense, the legislation sets up a scheme to aid Ukraine’s rights as a potential “creditor” of Russia (including, presumably, the right to seek compensation for damages suffered by its own citizens).

At the same time, there are a host of other persons and entities that also possess legal claims against Russia, some of which have already been adjudicated. For example, several companies and individuals have won large arbitration awards against Russia, rendered under international treaties (e.g., the Energy Charter Treaty of 1994 and various bilateral investment treaties) and stemming from expropriation of investments within Russian or Russian-controlled territories.

Almost a dozen of these awards are presently the subject of pending petitions before the U.S. District Court for the District of Columbia, in which the creditors are seeking a final U.S. judgment against Russia. It is currently unclear what effect, if any, the REPO for Ukrainians Act will have on these claims.

In Sum

The REPO for Ukrainians Act represents an important development in U.S.-Russia economic relations. The “repurposing” allowed by the Act, and the creation of a support fund to receive seized assets are important legislative developments in their own right, and they may well have broader implications for other sanctioned countries and their creditors.

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