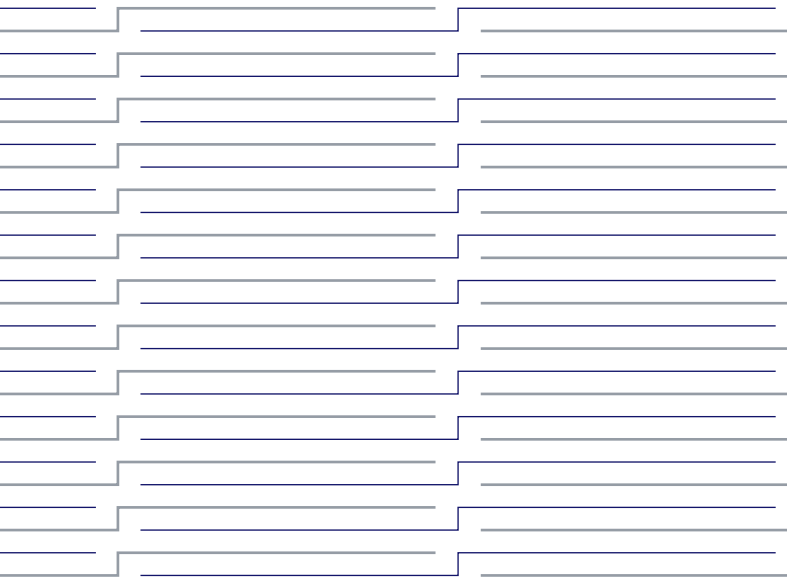




Tweede Kamer

DER STATEN-GENERAAL



Rondetafelgesprek

Inzet van bevroren Russische tegoeden ten behoeve van hulp aan Oekraïne

Donderdag 27 juni 2024 | 13.00 - 15.00 uur | Troelstraal

VASTE COMMISSIE VOOR BUITENLANDSE ZAKEN

UITSLUITEND BESTEMD VOOR INTERN GEBRUIK



Tweede Kamer

DER STATEN-GENERAAL

INTERN GEBRUIK

Aan de leden van de vaste commissie voor
Buitenlandse Zaken

25 juni 2024

Claire Poel

Informatiespecialist BuZa / BuHa-OS

Dienst Analyse en Onderzoek

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Geachte leden van de vaste commissie voor Buitenlandse Zaken,

Ter voorbereiding op het rondetafelgesprek over bevroren Russische tegoeden op donderdag 27 juni van 13.00 tot 15.00 uur heeft de commissiestaf een reader samengesteld.

In deze reader vindt u:

- De convocatie
- Een overzicht van de deelnemers en CV's
- Position papers van de deelnemers
- Andere relevante achtergrondartikelen

In de e-reader kunt u vanuit de inhoudsopgave doorklikken naar de bijgevoegde documenten. Via de button 'Terug' links bovenaan iedere pagina kunt u teruggaan naar de inhoudsopgave.

Met vriendelijke groet,

Claire Poel

Informatiespecialist Buitenlandse Zaken & Buitenlandse Handel en Ontwikkelingssamenwerking

Inhoudsopgave

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Tweede Kamer

DER STATEN-GENERAAL

Den Haag, 21 juni 2024

Noot: Herziene convocatie i.v.m. toevoeging deelnemerslijst.

Voortouwcommissie: **vaste commissie voor Buitenlandse Zaken**
Volgcommissie(s): vaste commissie voor Europese Zaken
vaste commissie voor Financiën
vaste commissie voor Buitenlandse Handel en Ontwikkelingssamenwerking

Activiteit: **Rondetafelgesprek**
Datum: donderdag 27 juni 2024
Tijd: 13.00 - 15.00 uur
Openbaar/besloten: openbaar

Onderwerp: Inzet van bevroren Russische tegoeden ten behoeve van hulp aan Oekraïne

Voertaal: Engels

Agendapunt: **Programma**
Noot: Blok I, 13.00-13.55 uur

- Dhr. Nicolas Véron, Bruegel Peterson Institute for International Economics (**digitaal**)
- Dhr. Marc Roovers, DNB

Blok II, 14.00-15.00 uur

- Dhr. Nico Schrijver, Universiteit Leiden
- Dhr. Bill Browder, Global Magnitsky Justice Campaign (**digitaal**)
- Dhr. Martin Sandbu, Financial Times (**digitaal**)

Griffier: A.W. Westerhoff

Activiteitsnummer: 2024A04406

CV's

Blok I – 13.00-13.55 uur



Nicolas Véron – Bruegel / Peterson Institute for International Economics

Nicolas Véron is senior fellow bij Bruegel en bij het Peterson Institute for International Economics in Washington DC. Zijn onderzoek gaat vooral over financiële systemen en financiële hervormingen. Hij onderzoekt ook wereldwijde initiatieven voor financiële regelgeving en de huidige ontwikkelingen in de Europese Unie.

Véron is auteur of medeauteur van talrijke beleidsnota's over onder meer banktoezicht en crisisbeheer, financiële verslaggeving, het beleidskader van de eurozone en economisch nationalisme.

Eerder werkte hij onder andere voor Saint-Gobain in Berlijn en Rothschilds in Parijs in de jaren 90. Hij was ook economisch adviseur van de prefect in Lille (1995-97), bedrijfsadviseur van de Franse minister van Arbeid (1997-2000) en financieel directeur van MultiMania / Lycos France, een beursgenoteerd online mediabedrijf (2000-2002). Van 2002 tot 2009 had hij ook een onafhankelijk financieel adviesbureau in Parijs.



Marc Roovers – De Nederlandsche Bank

Marc Roovers is sinds 2020 directeur Financiële Stabiliteit bij DNB. Hij is al sinds 1998 werkzaam bij DNB en bekleedde voorheen ook meerdere managementposities. Roovers was onder meer directeur Resolutie en afdelingshoofd voor Financiële Stabiliteit.

De divisie Financiële Stabiliteit van DNB kijkt naar potentiële risico's en kwetsbaarheden in of voor het Nederlandse financiële systeem. De divisie onderneemt actie om te voorkomen dat dergelijke risico's zich materialiseren, om de potentiële impact ervan te verkleinen en om ervoor te zorgen dat kwetsbaarheden zo klein mogelijk zijn.

Blok II – 14.00-15.00 uur



Prof. dr. Nico Schrijver – Universiteit Leiden

Nico Schrijver is emeritus hoogleraar Internationaal Publieksrecht aan de Universiteit Leiden. Hij is voormalig wetenschappelijk directeur van het Grotius Centre for International Legal Studies (verbonden aan de universiteit). Op 1 juli start Schrijver als interim-voorzitter bij het College voor de Rechten van de Mens.

Zijn onderzoekswerkzaamheden liggen op het terrein van het volkenrecht inzake vrede en veiligheid, rechten van de mens, duurzame ontwikkeling en vreedzame geschillenbeslechting.

Sinds 1 september 2017 is Schrijver Staatsraad in de Afdeling Wetgevingsadvisering van de Raad van State. Vanaf juni 2011 tot september 2017 was hij lid van de Eerste Kamer voor de PvdA en in die hoedanigheid voorzitter van de Commissie Buitenlandse Zaken, Defensie en Ontwikkelingssamenwerking en vice-voorzitter van de

Commissie Europese Zaken van deze Kamer. Hij was ook lid van de Parlementaire Assemblees van de Raad van Europa (delegatieleider) en de OVSE.

Schrijver heeft ruime ervaring als juridisch raadsman in internationale geschillenbeslechtsprocedures en verscheen voor het Internationaal Gerechtshof, het Internationale Tribunaal voor het Recht van de Zee en gespecialiseerde tribunalen op het terrein van internationaal investeringsrecht. Hij was voorzitter van de Internationale Commissie Internationaal Recht inzake Duurzame Ontwikkeling van de International Law Association. Hij is mede-oprichter en voormalig bestuurslid van de European Society of International Law. Tevens was hij bestuurslid en voorzitter van de Academic Council on the United Nations System.



Bill Browder – Global Magnitsky Justice Campaign

Bill Browder is CEO van Hermitage Capital Management en hoofd van de Global Magnitsky Justice Campaign.

Browder was een grote buitenlandse investeerder in Rusland tot 2005. Toen werd hem de toegang tot het land onttrokken en werd hij aangemerkt als "een bedreiging voor de nationale veiligheid" omdat hij corruptie in Russische staatsbedrijven aan het licht had gebracht.

In 2008 onthulde de advocaat van Browder, Sergei Magnitsky, enorme fraude door Russische overheidsfunctionarissen waarbij 230 miljoen dollar aan staatsbelastingen werd gestolen. Magnitsky getuigde tegen overheidsfunctionarissen die betrokken waren bij deze fraude en werd vervolgens gearresteerd, zonder proces gevangengezet en systematisch gemarteld. Hij bracht een jaar in de gevangenis door onder afschuwelijke omstandigheden en stierf daar op 16 november 2009.

Sindsdien heeft Browder gerechtigheid gezocht buiten Rusland en is hij een wereldwijde campagne gestart voor regeringen over de hele wereld om gerichte visumverboden en bevrozing van tegoeden op te leggen aan mensenrechtenschenders en corrupte functionarissen. De Verenigde Staten waren de eerste om deze gerichte sancties op te leggen met de aanneming van de Sergei Magnitsky Accountability Act in 2012, gevolgd door de Global Magnitsky Human Rights Accountability Act in 2016.

Sindsdien hebben Canada, het Verenigd Koninkrijk, de Baltische staten, de Europese Unie en Australië hun eigen versies van de Magnitsky Act aangenomen. Mr. Browder is momenteel bezig om soortgelijke wetgeving aangenomen te krijgen in andere landen over de hele wereld.



Martin Sandbu – Financial Times

Martin Sandbu schrijft sinds 2009 over economie voor de Financial Times. Hij kwam toen bij de krant als Economics Leader Writer. Hij is nu commentator Europese economie bij FT.

Voordat hij bij FT kwam, werkte Sandbu in de academische wereld en in beleidsadvies. Hij heeft lesgegeven en onderzoek gedaan aan Harvard, Columbia en de Wharton School en heeft regeringen en NGO's geadviseerd over natuurlijke hulpbronnen en economische ontwikkeling. Zijn laatste boek is 'The Economics of Belonging'.

Position papers

Russian Immobilized Reserves: Position Paper for the Round Table Discussion of the Committee on Foreign Affairs, House of Representatives of the Netherlands, 27 June 2024

Nicolas Véron, Senior Fellow, Bruegel and Peterson Institute for International Economics

1. The EU's interest in funding Ukraine

The EU has a unique interest in Ukraine's continued ability to defend itself, which in turn depends on the Ukrainian government's ability to keep delivering public services and ensure economic and financial stability. As such, the EU must view itself as the financier of last resort of Ukraine's continued fiscal capacity for as long as the war goes on. Contrary to initial hopes and for the foreseeable future, this means financing wartime expenditure rather than postwar reconstruction costs, the latter being a matter for a yet undetermined future.

In economic terms, Ukraine's defense represents a superlatively valuable investment in European security, and therefore worth funding by the EU at scale without time limit, assuming reasonable conditionality is observed.

To the extent practical, the EU should of course seek sharing the burden of that responsibility with other supporters of Ukraine. But it must also acknowledge that its security interest in Ukraine's defense surpasses that of all other significant partners. Thus, the EU should ultimately not view co-funding by others, including the United States, as a precondition for its own assistance to Ukraine.

The cost of such funding for the EU will remain modest and emphatically affordable under any assumption other than of massive escalation from the current levels of conflict intensity. In 2023 that cost has been around 0.1 percent of EU GDP, and it is set to remain around that level in 2024. It could increase significantly from that current level without becoming problematically burdensome for the EU, its member states, and their citizens.

2. Distinguishing the immobilized reserves from Euroclear's windfall profits made on them

Policymakers must sharply distinguish between the immobilized reserves,¹ which belong to the Bank of Russia, and the windfall profits that Euroclear makes on them,² which belong to Euroclear. This distinction is unequivocal, because the specific contractual conditions of Euroclear's relationship with all its account holders make it unambiguous that cash balances left at Euroclear Bank are not remunerated. As a consequence, the legal and other challenges associated with scenarios of appropriation of the immobilized reserves are fundamentally different from those related to appropriation of Euroclear's windfall profits. It is misleading and inaccurate to present the latter as a form of mild or watered-down version of the former, as has occasionally been the case in some of the media coverage and analysis.

3. Use of Euroclear's windfall profits

Council Regulation (EU) 2024/1469 of 21 May 2024, adopted by unanimity of all member states, has created a financial contribution due by EU-based central securities depositories, primarily Euroclear, which results in the transfer to the EU of 99.7 percent of their net windfall profits made on the cash portion of the Bank of Russia's immobilized reserves.

Since Euroclear is located in the EU, this forced transfer of property does not raise any issue in terms of compliance with international law, even though it may be viewed as innovative within

the confines of the EU legal order where taxation is generally the preserve of member states. There is no indication that Euroclear or its shareholders would challenge it, however.

The mid-June G7 Summit in Italy has announced an intent to execute a transaction by which G7 and EU countries would collectively lend around \$50 billion to Ukraine and expect to be reimbursed by future proceeds of the EU contribution from Euroclear's windfall profits. If properly structured, this transaction will further frontload financial resources for Ukraine and provide a signal of common purpose of the participating jurisdictions. Key features of the transaction, however, remain to be negotiated, making it impossible to pass firm judgment at this point on its benefits and costs to the EU and its member states.

4. Considerations about the Bank of Russia's immobilized reserves

The outright confiscation of the immobilized reserves would be unprecedented.³ The understanding that central banks can count on continued property of their reserves, even if placed abroad, is a foundational element of the global monetary order. It has not been broken by the immobilization actions taken in February 2022, because those actions have not modified the property status of any reserves. Confiscation would have structural consequences for the global monetary order, aside from any discussion of its compatibility with international law – and irrespective of any reaction to it by Russia itself, which no attempt is made here to predict.

The REPO Act of April 2024 gives the U.S. President authority, with expiry after five years (i.e. in 2029), to confiscate those immobilized Russian reserves held in the United States, which have been reported not to exceed single-digit billions of dollars. It appears unlikely (though not impossible) that a U.S. President would exercise that authority unilaterally or without the EU acting similarly and simultaneously. The choice of whether or not to confiscate the reserves thus belongs primarily to the EU.

Alternative designs such as issuing securities backed by the immobilized reserves, or by Ukraine's war damages claims on Russia which might be set off against immobilized reserves, raise similar problems as outright confiscation in terms of impact on the global monetary system and compliance with international law.

The EU must consider the related trade-offs in their global context. Most of the world's population lives in countries that have not been directly involved in the Russia-Ukraine conflict through either warfare or sanctions. Those that have not signed the June 2024 Ukraine peace summit declaration represent 37 percent of global GDP (53 percent at purchasing power parity).⁴ Policymakers in these countries tend to view confiscation as a dangerous option that would adversely impact their interest, irrespectively of diplomatic or strategic considerations.

5. Conclusions

The immobilization of the Bank of Russia's reserves held in the EU has successfully prevented Russia from using them as resources for its war effort. Moving from there to confiscation would not further decrease those resources. As for Ukraine's war effort, it can and should be properly financed by the EU itself, jointly with other countries to the extent practical.

EU actions so far, including the appropriation of Euroclear's windfall profits, have been unambiguously aligned with the EU's strategic interest in the preservation of the global rules-based order which Russia has disrupted through its aggression of Ukraine. The EU has the means to maintain that stance of strategic consistency, and should keep doing so.⁵

Notes

¹ The immobilization of the Bank of Russia's reserves held in their respective jurisdictions was announced by the EU near-simultaneously with Andorra, Australia, Canada, Iceland, Liechtenstein, Monaco, Japan, New Zealand, Norway, San Marino, Singapore, South Korea, Switzerland, Taiwan, the UK, the US, and a few other jurisdictions in the days following Russia's full-scale invasion of Ukraine on 24 February 2022. The level of public transparency on the location of foreign reserves is notoriously low. From various available disclosures, however, it can be estimated that the total reserves of the Bank of Russia immobilized in the G7 countries, rest of EU, Australia and Switzerland add up to around €270 billion, of which around €180 billion (two-thirds) are at Euroclear, and the last third (€90 billion) is distributed between three buckets: EU ex Euroclear; Japan; and all other jurisdictions (Australia, Canada, Switzerland, US, and UK). The €180 billion at Euroclear were initially held as securities, but nearly all of these have come to maturity after more than two years since immobilization and are thus held as cash. All these cumbers must be viewed as indications of orders of magnitude rather than precise quantities.

² Euroclear typically invest cash deposits on a highly liquid, low-risk basis, implying interest rates equal or close to the reserve remuneration rate of the relevant central bank(s). The corresponding revenue is a windfall profit because, as highlighted, Euroclear's ordinary business model does not foresee account holders keeping significant cash deposits at Euroclear Bank, as the Bank of Russia does as a consequence of the forced immobilization of its reserves. At 3.75 percent (ECB deposit facility rate as of mid-June 2024), €180 billion in cash would generate windfall pre-tax profits of €6.75 Billion on a full-year basis. The applicable Belgian corporate income tax rate is 25 percent.

³ The immobilization action of late February 2022 was unprecedented in its scale but not in its nature. By contrast, there appears to be no applicable precedent of confiscation of foreign reserves outside of a state of war and without a legitimizing decision from the UN Security Council.

⁴ Using the International Monetary Fund's World Economic Outlook dataset of GDP estimates for 2024, and the list of signatories of the joint communiqué of the Peace Conference in Switzerland as publicized by the Swiss authorities as of 17 June 2024.

⁵ The author is grateful to Olivier Blanchard, Rebecca Christie, Joseph Gagnon, Anna Gelper, Patrick Honohan, Ivo Maes, Jeffrey Schott, Armin Steinbach, and Angel Ubide for their comments on a draft of this statement.



The Magnitsky Justice Foundation

(Public US Charity ID No. 92-298002)

Testimony by Sir William Browder KCMG to the Standing Committee on Foreign Affairs of the House of Representatives of the Netherlands

21st June 2024

Dear Members of the Standing Committee on Foreign Affairs,

Thank you for inviting me to provide testimony on the critical issue of using frozen Russian assets to support Ukraine's defence and reconstruction. As the head of the Global Magnitsky Justice Campaign, I have long advocated for holding human rights abusers and corrupt officials accountable through targeted sanctions. The situation with Russia's frozen assets presents both an opportunity and a challenge in this regard.

Key points I would like to emphasize are as follows:

1. Moral and Legal Justification:

Russia's unprovoked war of aggression in Ukraine is a clear violation of international law. Using frozen Russian assets to support Ukraine's defence and reconstruction is morally justified as a form of reparations. There is precedent for such action, such as the UN Compensation Commission established after Iraq's invasion of Kuwait.

2. Current EU Approach:

The European Council's recent decision to use windfall profits from immobilized Russian assets is a positive step, but it does not go far enough. These profits, estimated at around €3 billion annually, are insufficient given the scale of destruction in Ukraine and the needs for defence of the country.

3. Full Asset Utilization:

I strongly advocate for the full confiscation of the approximately €300 billion in frozen Russian central bank assets, not just the profits. This would provide a substantial resource for Ukraine's defence and reconstruction needs.

4. Legal Challenges:

While there are legal hurdles to overcome, including issues of sovereign immunity, these are not insurmountable. The extraordinary nature of Russia's actions justifies extraordinary measures in response. Legal frameworks can and should be adapted to address this unprecedented situation.

5. Deterrence Effect:

Using these assets would send a powerful message to Russia and other potential aggressors that the cost of such actions will be severe and long-lasting.

6. Implementation Mechanisms:

An international claims mechanism, similar to the one used for Iraq, could be established to manage and distribute these funds effectively and transparently.

7. Urgency of Action:

Time is of the essence. Every day of delay in providing substantial defence and reconstruction funds to Ukraine prolongs the suffering of its people and delays economic recovery.

8. Coordination with Allies:

Any action taken should be coordinated with other Western allies, particularly the United States, to ensure a unified and effective approach.

9. Addressing Concerns:

Some argue that using these assets could undermine faith in the international financial system. I don't believe this is true. As long as allies act together, there is no risk to the system at all. In fact, failing to act decisively in the face of such blatant aggression poses a far greater risk to international norms and stability.

10. Long-term Strategy:

This action should be part of a broader strategy to hold Russia accountable and support Ukraine's sovereignty and territorial integrity.

In conclusion, I urge the Dutch Parliament and your European colleagues to move beyond the use of windfall profits and towards the full utilization of frozen Russian assets for Ukraine's reconstruction. This step is necessary, justified, and crucial for upholding international law and deterring future acts of aggression.

Thank you for your consideration of this critical matter.

Sincerely,

Sir William Browder KCMG
Head of the Global Magnitsky Justice Campaign

Overige achtergrondstukken

Cutting through the fog of the Russian assets debate

Ukraine needs the money Russia owes it, all of it and fast

Martin Sandbu

JUNE 13 2024

This week features two international events that matter — or should matter — for Ukraine’s and therefore the democratic world’s future. One was the third instalment of the annual Ukraine Recovery Conference, which had just wrapped up in Berlin. The other is the G7 summit in Puglia, Italy, where the leaders of the world’s largest advanced economies will discuss, among other things, whether and how to give Ukraine more funding based on blocked Russian central bank reserves.

There is a lot of confusion (even in expert gatherings, and I have attended many) about the many proposals that have been aired for “mobilising” Russian assets. So in the interest of piercing through any obfuscation that may come out of the G7 summit, it’s a good time to set out the basics and highlight the technical details that can make all the difference. Read on to know what I will be looking for in the communiqué — and what Estonia’s foreign minister told me about his country’s new asset confiscation law.

Leaders understand the need to prevent Ukraine from running out of money: that would mean certain defeat. They are much less conscious of how much good could come from aiming higher than what mere “financing gaps” indicate. I don’t mean just enough to stop rationing weapons on the battlefield. I mean much larger, and predictably sustained, injections of funds into the economy itself.

Last year I wrote about the surprisingly dynamic state of the economy of the free parts of Ukraine. The numbers have borne that out, as the economy grew by 5 per cent in 2023 and 3.3 per cent last year. If a highly finance-constrained economy can grow at such rates, just think of what an amply financed economy could do in terms of investments, jobs and — just possibly — the start of a virtuous circle of returning refugees, further fuelling growth in relatively secure parts of the country. Especially if adequate war insurance for private investments and trade is finally put in place. (For the long-term prospects of Ukraine’s economy, see this recent report from the Vienna Institute.)

In addition, there are huge reconstruction needs that can be addressed immediately. That is obviously true in energy. The FT recently reported that Russian destruction had reduced Ukraine’s power generation capacity by more than half, from 55GW before 2022 to below 20GW at present; 10GW of this loss is due to bombardments just since March. The faster generation and transmission capacity can be built or rebuilt, the better (including interconnectors with the EU). And there is no shortage of homes, schools, hospitals, commercial buildings and infrastructure to rebuild now.

The upshot is that it is a severe mistake to think reconstruction and recovery funding is a lower priority than the war, or something to prepare just for when the fighting stops — the URC’s unspoken premise (at least of western participants). The right way to look at it is to realise that the more that is

rebuilt immediately, and the more growth can be stimulated in the safer part of the economy, the more likely the war is to end sooner — because it would increase the resilience of Ukrainians and because it would generate more domestic resources that could in turn free up funds for the military effort.

It is in this context that we need to see the paradoxical debate over what to do with Russia's central bank reserves. Western politicians are becoming ever more adamant that Russia must pay for its destruction. Just this week, 24 chairs of foreign affairs committees in western parliaments wrote a punchy open letter in the FT calling for the “confiscation of all €300bn in frozen Russian central bank assets”. All this money — less than what Russia has destroyed, but still a game-changing amount — sits in blocked accounts in the west. But most western governments are so far unwilling to transfer Russia's money to Ukraine.

There are exceptions, of which a timely one is Estonia, which has just passed a law to provide for the transfer of assets linked to Russia's war — public and private — to Ukraine according to specified criteria and procedures (sanctions must be in place, and Ukraine must make a request and document the damage to be compensated). Estonia's foreign minister Margus Tsahkna told me the country decided a year ago to establish how “to use [frozen Russian] assets even during the war, and also give them to Ukraine”. Estonia, at least, gets the urgent need for much more money now.

At the time “no one [in Europe] wanted to listen to this question, everyone was either afraid or not listening”. So Estonia, Tsahkna said, “wanted to set an example” of a legal confiscation-and-transfer process, compatible with EU law and a constitution with strong property protections, to “take down all these excuses we have heard that we can't use Russian assets because European law does not allow this”. The law came on the books this month.

There are no known Russian state assets in Estonia, however, so the example will only be set for private assets, and for the legal principle applying to sovereign ones in theory. Still, Tsahkna reported “huge interest” from other EU countries — some interested in following suit, others nervous about what this precedent does to the argument that it cannot be done. “It's impossible to explain to your voters why we're not using frozen assets but taxpayer money,” remarked Tsahkna. It will be interesting to see how Ukraine avails itself of the procedure Estonia has put in place and how smoothly it works.

For now, the European G7 countries have fiercely resisted touching Russia's central bank reserves. The US, Canada and UK, in contrast, have all warmed to at least contemplating confiscation; the first two have legislated for it (but not the UK). This fundamental disagreement is coming to a head at the G7 summit starting today, after two years of contortions to find some other way of “mobilising” the blocked central bank reserves for Ukraine's benefit.

A goal of the summit is to find a compromise that gets a significant sum of money, somehow based on Russia's reserves, to Ukraine soon. But a compromise between what and what? Here are three relatively simple scenarios, in order of political boldness and significance:

A. Do nothing beyond simply blocking Russia's access to its reserves. This has been the reality until very recently.

B. Tax the bulk of extraordinary profits made by western securities depositories (primarily Euroclear) because they pay Moscow zero interest on cash that accumulates from Russia's assets. This is what the EU has very recently resolved to do, after two years of humming and hawing. Policymakers have

operated with a number of €3bn or so per year. This is timid in the extreme. As Brad Setser and Michael Weilandt show, the maximum amount could easily exceed €10bn a year.

D. (Yes, D, just wait.) Seize the full \$300bn or so of Russian reserves and transfer them to a fund for compensating and rebuilding Ukraine.

The compromise to be found is something between B and D. The current candidate for option C is often referred to as the US “collateralisation” or “securitisation” plan, which would raise a loan (either on financial markets or directly from western Treasuries) whose security would be based on the Russian reserves. The idea is to leverage the future stream of profits from Euroclear into a larger upfront transfer to Ukraine — the number talked about is \$50bn — rather than the drip-feed of a few billion a year.

The devil is in the detail here, however, and it’s often unclear what is supposed to be collateralised or securitised. Much of the commentary fails to distinguish between three or four superficially related but really quite different financial constructions. One is to use the reserves themselves as formal security for the loan. This is not going to happen at this summit because it requires the same legal claim as policy D.

The second is to formally collateralise the future profit stream at Euroclear, but with no claim on the actual reserves. This, like A and B, does not lay legal claim to Russia’s state assets. But it’s completely uncertain how long these profits will flow however, as it depends on market conditions and above all how long the underlying assets will remain blocked. The third adds to the second policies that would ensure profits would continue to flow for long enough. The fourth is to devote the future profit streams, such as they are, to servicing the loan, but provide some other ultimate formal security should those profits be insufficient — presumably some government guarantees.

This should make clear the difficulty of reaching an agreement. The second is a poor idea because you can’t get anyone to put up \$50bn against a £3bn annual stream that could dry up next year. The third — which I understand Washington is pushing for — requires the EU to decide today to impose restrictions on Russia’s central bank in place for a long time into the future (say 10 years) rather than six months at a time as at present. Those decisions require unanimity. Good luck with that. The fourth, meanwhile, is straightforward but begs the question why you are linking things to Russian blocked assets at all, since if you are going to finance Ukraine through a government-secured loan, you can just go ahead and do so. The assets play no role in that version.

These contradictions are abundantly clear to the G7 officials who have to prepare something for their political masters. But there is no “compromise” available between these. Given the Eurozone G7’s hard anti-confiscation line — which presupposes that Russia could and should be given access to its reserves again when its behaviour changes — all but the last, pointless, option would require a European about-turn.

That would, of course, be a good choice. Estonia’s Tsahkna points out that a decision to legally keep Russia’s reserves blocked for the long term would protect against any temptation by some countries to go soft on Russia and give the reserves back. “It would be a huge deal to [commit to] keep things frozen for a long time — it would be very useful to ensure that we can’t go back to business as usual before Russia pays. If we can use [the profits from the blocked assets] as guarantee for long-term loans, that’s good enough.” Indeed, it would blur the distinction between blocking and confiscating.

But I would not expect this outcome from Puglia. Expect, instead, a political promise to “mobilise” \$50bn in some unspecified way to be resolved by further technical work. But that will be a fudge, because a solution requires a political change.

I could be wrong. And I do think that political change will eventually come. The Eurozone G7 could warm to confiscation in the end. They could realise that bank regulation presents ways to direct the resources to Ukraine without confiscating anything at all. Belgium (where Euroclear is) could even learn, from Estonia, that it is possible to act at the national level. The possibilities are many. As Tsahkna says: “We need to talk loudly, honestly, and finally people will be asking: why are we not using the Russia assets? This is the right question.”



Legal options for confiscation of Russian state assets to support the reconstruction of Ukraine

Study 23-02-2024

This report analyses the options under international law for the confiscation of Russian state assets to support Ukraine's reconstruction. It focuses on Russian Central Bank assets, US\$300 billion of which are frozen in various jurisdictions. The report considers four avenues for overcoming Russia's immunity from enforcement: avoidance of immunity through purely executive or legislative action; justification for the breach of international law on the grounds that it is a countermeasure; evolution of international law to lift immunity from enforcement upon, for example, a finding of aggression by a United Nations principal organ; and an exception in international law for the enforcement of international judgments. The report addresses proposals based on third-party countermeasures and collective self-defence. It assesses six options under current review: enforcement of European Court of Human Rights judgments; an international treaty setting up a compensation commission; taxing windfall contributions; placing Russian state assets into an escrow account as collateral; identifying Russia as a state sponsor of terrorism; and the establishment of an investment 'common fund'. In conclusion, the report presents a risk assessment of each option, noting that (i) confiscation based on third-party countermeasures with a conditional element and (ii) confiscation based on the enforcement of international judgments against Russia are most likely to comply with international law.

Het rapport is geschreven door dr. Philippa Webb in opdracht van het Europees Parlement en is hier te lezen: [Legal options for confiscation of Russian state assets to support the reconstruction of Ukraine | Think Tank | European Parliament \(europa.eu\)](#)

Ministerie van Buitenlandse Zaken

Aan de Voorzitter van de
Tweede Kamer der Staten-Generaal
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Betreft Beantwoording vragen van de leden Boswijk, Piri, Brekelmans, Veldkamp en Paternotte over mogelijkheden om bevroren Russische tegoeden te gebruiken voor hulp aan Oekraïne

Onze Referentie
BZDOC-1709587134-35
Uw Referentie
2024Z08865
Bijlage(n)

Geachte voorzitter,

Hierbij bied ik u de antwoorden aan op de schriftelijke vragen gesteld door de leden Boswijk (CDA), Piri (GroenLinks-PvdA), Brekelmans (VVD), Veldkamp (Nieuw Sociaal Contract) en Paternotte (D66) over mogelijkheden om bevroren Russische tegoeden te gebruiken voor hulp aan Oekraïne. Deze vragen werden ingezonden op 23 mei 2024 met kenmerk 2024Z08865.

De minister van Buitenlandse Zaken,

Hanke Bruins Slot

Antwoorden van de minister van Buitenlandse Zaken op vragen van de leden Boswijk (CDA), Piri (GroenLinks-PvdA), Brekelmans (VVD), Veldkamp (Nieuw Sociaal Contract) en Paternotte (D66) over mogelijkheden om bevroren Russische tegoeden te gebruiken voor hulp aan Oekraïne

Ministerie van Buitenlandse Zaken

Onze Referentie

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Vraag 1

Bent u ermee bekend dat het parlement van Estland een wet aangenomen heeft waarmee het mogelijk wordt gemaakt om bevroren Russische tegoeden te gebruiken voor hulp aan Oekraïne? 1)

Antwoord

Ja, deze wet gaat specifiek over het nationaal mogelijk maken om private tegoeden van Russische gesanctioneerde entiteiten voor Oekraïne in te zetten.

Vraag 2

In het artikel wordt erop gewezen dat er de afgelopen zes maanden, in aanloop naar deze wetgeving, door meerdere internationale bondgenoten en organisaties is gewerkt aan het wegwerken van mogelijke juridische knelpunten, kunt u aangeven welke landen en internationale organisaties hierbij betrokken waren?

Antwoord

Estland heeft bilateraal contact gehad met verschillende landen van de G7 en de EU die een dergelijke wet overwogen. Ook de Europese Commissie was betrokken bij het proces.

De wet is voorbereid in samenwerking tussen het Estse Ministerie van Buitenlandse Zaken en het Ministerie van Justitie. Ook het Estse Parlement heeft verschillende juristen, academici en voormalige Kanseliers van Justitie gehoord in zowel open als gesloten sessies.

Inmiddels heeft de Estse President de wet ondertekend en zal deze in werking treden 10 dagen na publicatie in de State Gazette. De Kanselier van Justitie heeft de mogelijkheid om een grondwettelijke toets uit te voeren.

Vraag 3

Wat is de stand van zaken van het onderzoek in internationaal verband naar de mogelijkheden voor het inzetten van het onderliggende vermogen van geïmmobiliseerde tegoeden ten behoeve van Oekraïne? 2)

Antwoord

Er lopen verschillende initiatieven, met name in EU- en G7-verband. Vooral nog is er geen internationale overeenstemming over of er een internationaalrechtelijke basis bestaat voor het gebruik van het onderliggende vermogen. Daarnaast zijn er zorgen omtrent de financieel-economische risico's van het gebruik van onderliggend vermogen. Ondertussen wordt er gekeken wat er op korte termijn al wel mogelijk is. Het kabinet is positief over de stappen die de EU nu al zet en blijft ambitieus in het verkennen van verdergaande stappen.

Vraag 4

Wat is de stand van zaken van de uitvoering van de aangenomen motie Brekelmans c.s. waarin verzocht wordt een voortrekkersrol te nemen in de EU voor een plan om bevroren Russische tegoeden in te zetten als onderpand voor

financiële steun aan Oekraïne? 3)

Antwoord

Nederland is ambitieus als het gaat om het verkennen van verregaander mogelijkheden voor gebruik en probeert aan te sluiten bij initiatieven in G7-verband. Daarnaast zet het kabinet actief in om het ambitieniveau in de EU te verhogen, zoals ook aan uw Kamer is gecommuniceerd in het verslag van de Raad Buitenlandse Zaken op 27 mei 2024.

Ministerie van Buitenlandse Zaken

Onze Referentie
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Vraag 5

Vindt u dat we moeten streven naar het invoeren van een zogenoemde 'Navalny Act' zoals voorgesteld door Bill Browder, die eerder voor de 'Magnitsky Act' lobbyde? 4)

Antwoord

Linksom of rechtsom, voor het kabinet staat vast dat Rusland moet betalen voor de schade die het aanricht in Oekraïne. Daarvoor worden verschillende paden en middelen verkend. Momenteel vindt er geen discussie plaats over de naamgeving van eventuele maatregelen.

Vraag 6

Kunt u aangeven in hoeverre de wet die door het parlement van Estland is aangenomen, een basis zou kunnen vormen voor soortgelijke wetgeving in Nederland en/of in de Europese Unie (EU)?

Antwoord

De wet die nu is aangenomen in Estland is alleen toepasbaar binnen de Estse nationale wetgeving en context. Voor Nederland geldt dat het Nederlandse sanctie-instrumentarium, gericht op buitenlandpolitieke doelstellingen en als bestuursrechtelijke, tijdelijke maatregel, zich niet leent voor gebruik van private tegoeden van gesanctioneerde entiteiten.

Op dit moment voorziet Nederlandse wetgeving niet in mogelijkheden voor confiscatie op basis van ingestelde sancties, zoals de wet die nu is aangenomen in Estland voorziet. Confiscatie van private tegoeden is in Nederland enkel mogelijk als een uitkomst van een strafrechtelijk proces. Zonder dit strafrechtelijk kader roept het overgaan tot confiscatie op basis van sancties serieuze vragen op omtrent de waarborg van individuele rechten zoals het eigendomsrecht. Bovendien zouden nationale sanctiemaatregelen de werking van de interne markt kunnen aantasten, het vrije verkeer beperken en een concurrentieverstorend effect hebben. Wel geeft Nederland – via Nederlandse wetgeving - uitvoering aan alle VN- en EU-sancties.

Om Rusland te laten betalen voor de schade die het aanricht, is het kabinet ambitieus in het verkennen van alle opties samen met internationale partners. Nederland pleit voor een actieve verkenning van verdergaande mogelijkheden ten aanzien van de geïmmobiliseerde tegoeden van de Russische Centrale Bank, hetgeen niet gaat over confiscatie van private tegoeden buiten de strafrechtketen om. Op dit moment is er echter internationaal gezien geen overeenstemming over een dergelijke stap. Mocht dat er wel komen dan zal Nederland daar uitvoering aan geven.

Vraag 7

Bent u bereid om een voorstel te ontwikkelen om soortgelijke wetgeving in Nederland in te voeren? Zo nee, waarom niet?

Ministerie van Buitenlandse Zaken

Antwoord

Voor soortgelijke wetgeving bestaat op dit moment geen internationale overeenstemming over de internationaalrechtelijke basis en bestaan er zorgen omtrent financieel-economische risico's van het gebruik van dergelijk vermogen. Uw Kamer is hier uitgebreid over geïnformeerd in december 2022¹ en in november 2023.² Daarbij gaat het bijvoorbeeld om het eigendomsrecht en de juiste (internationale) grondslag. De in de Kamerbrief van november 2023 geschetste uitgangspunten van internationaal recht ten aanzien van het gebruik van de onderliggende tegoeden blijven daarom voornamelijk leidend. Deze uitgangspunten zien kortgezegd op de inzet van sancties als preventief instrument, het respecteren van het grondrechtelijk en verdragsrechtelijk beschermd eigendomsrecht. Het kabinet is bereid en blijft tegelijkertijd ambitieus in het verkennen van alle mogelijkheden om (rente-inkomsten over) bevroren en geïmmobiliseerde Russische Centrale banktegoeden aan te kunnen wenden voor steun aan Oekraïne.

Onze Referentie

BZDOC-1709587134-35

¹ Kamerstuk 21501-02 nr. 2577, Verslag Raad Algemene Zaken van 13 december 2022 toen is ook uitgebreid ingegaan op de toezeggingen uit CD RAZ d.d. 8 december 2022.

² Kamerstuk 21501-02 nr. 2779.