

Best practice of asset recovery

**US case of imposing liability for
sanctions evasion in response to
Russia's aggression against Ukraine**



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Due to the new round of aggression and brutal violation of international law through the unprovoked military invasion of Ukraine by the Russian Federation, the world is facing new challenges on how to bring the aggressor and its accomplices to at least financial responsibility and ensure compensation for the damage caused.

*An integral principle of both anti-corruption and sanctions policy should be the practical implementation of the principle "**crime does not pay**" and ensuring compensation for those directly or indirectly suffered from such actions.*

To this end, democratic states should adapt existing instruments to current challenges, in particular, improve the institution of asset recovery by extending its scope to compensate victims from seized assets as part of criminal prosecution for circumventing sanctions.

This research was issued by the analytical center "Institute of Legislative Ideas" within the frameworks of the "Compensation for Ukraine's damages at the expense of the aggressor" project.

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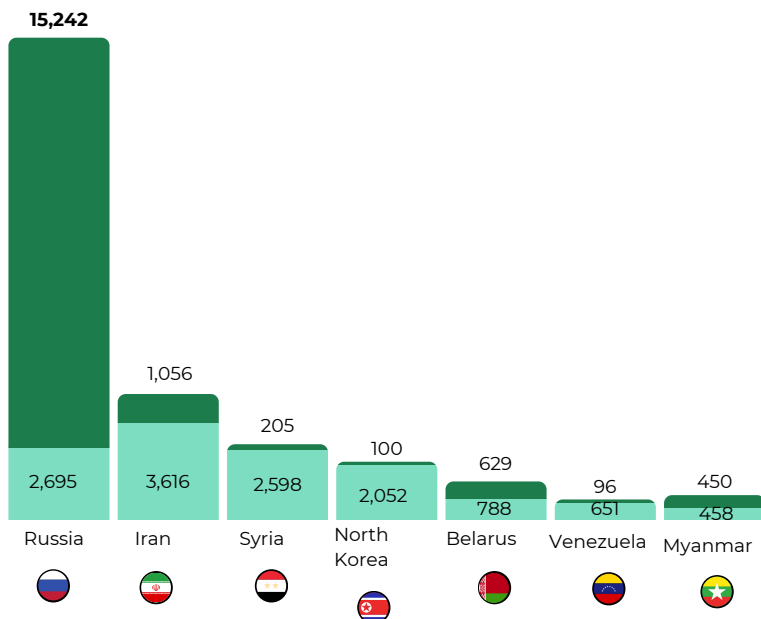
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Introduction

After the full-scale invasion in February 2022, Russia became the number one country in the world in terms of the number of sanctions imposed on it. This was the civilized world's response to the unprecedented aggression, largest since World War II.

COUNTRIES RANKED BY NUMBER OF ACTIVE SANCTIONS APPLIED

■ Before February 2022 ■ After February 2022



As of 16.10.2023

Source: castellum.ai

Most of the personal sanctions were imposed on Russian oligarchs, propagandists and other individuals who became an integral part of Russia's kleptocratic system, built following the collapse of the USSR and fine-tuned during Putin's de facto dictatorship. It came as no surprise that people close to the regime not only failed to stop the full-scale invasion of Ukraine in 2022, but on the contrary, supported it and keep actively participating in the aggression and violation of international law. The secret meeting of Russian President Putin with the most influential Russian oligarchs on the eve of the full-scale invasion is another proof of this. **Thus, it can be argued that most of the sanctioned persons are accomplices of the aggression.**

However, it did not prevent them from spreading their influence and doing business around the world, using the wealth they acquired through their proximity to the regime. Yet everything has changed since the imposition of unprecedented sanctions by Western countries, which no longer allow them to enjoy the wealth that is in fact a dividend from supporting the Kremlin's bloody policies.

Recently, there has been a significant increase in cases of sanctions circumventions, either by directly violating the prohibitions or by finding loopholes in legal instruments and rules. Unfortunately, when it comes to the possibility of making excessive profits, certain individuals and companies around the world prioritize significant financial gain over respect for human rights and the international legal order and do not hesitate to provide their "services" to sanctioned persons.

For example, in Estonia alone, which is not large in terms of territory, 1,500 cases of sanctions violations have been [identified](#)(1), and the Swiss authorities are already investigating 100 [cases](#)(2) of possible violations of Russia-related sanctions, with another 300 cases pending. High-profile cases of sanctions circumvention are also being investigated in the United States.

Given that there are already many schemes to circumvent sanctions and new and more sophisticated ones are emerging each day, it is critical to respond adequately to such illicit activities. Penalizing sanctions evasion is a relatively new but much needed measure that can significantly contribute to the effectiveness of sanctions and the observance of sanctions "discipline".

An inherent principle of both anti-corruption and sanctions-enforcement policy should be the rule that "crime does not pay". And victims shall be compensated for the damage they suffered directly or indirectly as a result of the war.

In the context of anti-Russian sanctions and their circumvention, it is also sensible to consider the asset recovery. However, the existing approaches should be modified: ***since the sanctions were imposed because of the aggression, it is only natural that the proceeds of crime or assets seized in the course of investigating the circumvention of sanctions should be channelled without delay to the victims of the war and to Ukraine.***

(1) https://confiscation.com.ua/en/news/ACAMS_Symposium_held/

(2) https://confiscation.com.ua/en/news/more_than_100_cases_of_potential_sanctions_violations_in_Switzerland/

The US approach

In terms of political steps, the amount and scope of both military and financial support, the United States is one of Ukraine's most important partners. It is the United States that often sets the tone for other allies to make decisions that they hesitate to make. This is also true regarding the issue of sanctions enforcement and the transfer of confiscated assets to Ukraine.

The sanctions regime in the United States is enforced on the levels of *civil* and *criminal* liability. Thus, the coercive measures designed to ensure compliance with special restrictive measures include civil fines, criminal fines and imprisonment for natural persons. In addition, there are two types of [confiscation](#)(3) - *criminal confiscation in personam* (against a person) and *civil confiscation in rem* (against property).

The institution of criminal proceedings against a person on the relevant charges allows for the confiscation of assets that qualify as proceeds of crime. This includes civil confiscation in rem, i.e. confiscation of assets without a conviction. It is applicable in cases of potential sanctions evasion.

The United States became the first state to actually allow the use of asset recovery mechanisms to compensate for the damage caused by the aggression as part of the prosecution for sanctions evasion.

In December 2022, the United States passed a [law](#)(4) that allows for the transfer of funds received from the confiscated assets of sanctioned persons to Ukraine. According to this law, the Attorney General may transfer to the Secretary of State the funds received from the confiscated property for use by the Secretary of State to provide assistance to Ukraine to compensate for the damage caused by Russian aggression. Such transfer shall be considered foreign assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), including for the purposes of the administrative authority and reporting requirements of that Act.

These legislative changes already allow for the transfer of assets confiscated from sanctioned Russian oligarchs to victims of aggression and have significant potential for future application and expansion of this practice in other countries.

(3) <https://www.justice.gov/afms/types-federal-forfeiture>

(4) <https://www.congress.gov/amendment/117th-congress/senate-amendment/6596/text?s=1&r=2>

The case of Konstantin Malofeyev was the first case in the United States to test the mechanism of civil confiscation (within the framework of criminal proceedings on charges of sanctions violation) with the subsequent transfer of funds to Ukraine.

In April 2022, a criminal case was initiated in the United States against Russian oligarch, media mogul, and founder of the Orthodox TV channel Tsargrad TV, Konstantin Malofeyev. He is accused of violating sanctions imposed by the United States back in 2014, during the first stage of the Russian-Ukrainian war.

The [indictment](#)(5) states that Malofeyev, contrary to the existing restrictions, hired an American citizen, Jack Hanick, to work for Malofeyev-owned TV companies in Russia and Greece, as well as to participate in the acquisition of a TV company in Bulgaria. In addition, Malofeyev, in order to circumvent the sanctions imposed on him, tried to antedate his USD 10 million investment in the United States to a straw man. Simultaneously with the indictment, the prosecutor's office requested the confiscation of Malofeyev's assets. On February 2, 2023, the court granted the prosecutor's motion to confiscate Malofeyev's U.S. assets totaling \$5.4 million.

District Judge Paul Gardephe (Federal Court of Manhattan) [authorized](#)(6) the prosecution to confiscate Malofeyev's funds totaling \$5.4 million. Malofeyev did not appeal the confiscation decision. US Attorney General Merrick Garland [said](#)(7) that the funds would be transferred to help Ukraine.

During his visit to Ukraine, U.S. Secretary of State Anthony Blinken [said](#)(8) that for the first time the U.S. will transfer to Ukraine assets confiscated from Russian oligarchs under sanctions, which will now be used to support Ukrainian military veterans.

(5) <https://www.justice.gov/usao-sdny/press-release/file/1491266/download>

(6) <https://www.reuters.com/world/europe/russian-oligarch-ordered-forfeit-54-mln-us-ukraine-may-get-funds-2023-02-02/>

(7) <https://www.youtube.com/watch?v=9aYPlpDVoik>

(8) <https://www.epravda.com.ua/news/2023/09/7/704025/>

The case of the Amadea yacht

On October 23, 2023, the US Department of Justice filed a [lawsuit](#)(9) in a federal court in New York to confiscate the \$300 million Amadea superyacht, the beneficial owner of which is believed to be the sanctioned Russian oligarch Suleiman Kerimov.

KleptoCapture Task Force Co-Director Michael Khoo [said](#)(10) in a statement that the decision to seize Amadea was made "after a careful and painstaking effort to develop the necessary evidence showing Suleiman Kerimov's clear interest in the Amadea and the repeated misuse of the U.S. financial system to support and maintain the yacht for his benefit."

Between July and October 2021, Kerimov purchased the yacht Amadea, registering it to a company owned by Imperial Yachts President Yevhen Kochman. All subsequent expenses for the maintenance of this yacht (servicing, fuel, equipment, inspections and port dues, etc.), contrary to the restrictions imposed by the sanctions, were made with the use of American financial institutions or in favor of US resident companies. In the period from September 2021 to April 2022, such expenses amounted to about USD 1.3 million.

Since Kerimov was under sanctions at the time of the purchase of the yacht, he was prohibited from making any payments to or receiving any services from US companies, as well as from using US financial institutions for the respective transactions.

Other cases concerning sanctions violation currently being investigated by the U.S. authorities, such as the [Goltsev et al. case](#)(11), the [Panchernikov case](#)(12), the [Orekhov et al. case](#)(13), and others, are also promising in the context of asset recovery for the benefit of victims of the aggression.

(9) <https://www.nbcnews.com/politics/justice-department/us-moves-seize-superyacht-russian-gatsby-billionaire-suleiman-kerimov-rcna121732>

(10) <https://www.nbcnews.com/politics/justice-department/us-moves-seize-superyacht-russian-gatsby-billionaire-suleiman-kerimov-rcna121732>

(11) <https://www.justice.gov/usao-edny/pr/brooklyn-resident-and-two-russian-canadian-nationals-charged-massive-sanctions-evasion>

(12) <https://www.justice.gov/usao-cdca/pr/former-us-serviceman-sentenced-27-months-prison-illegally-exporting-night-vision>

(13) <https://www.justice.gov/opa/pr/justice-department-announces-charges-and-arrests-two-cases-involving-export-violation-schemes>

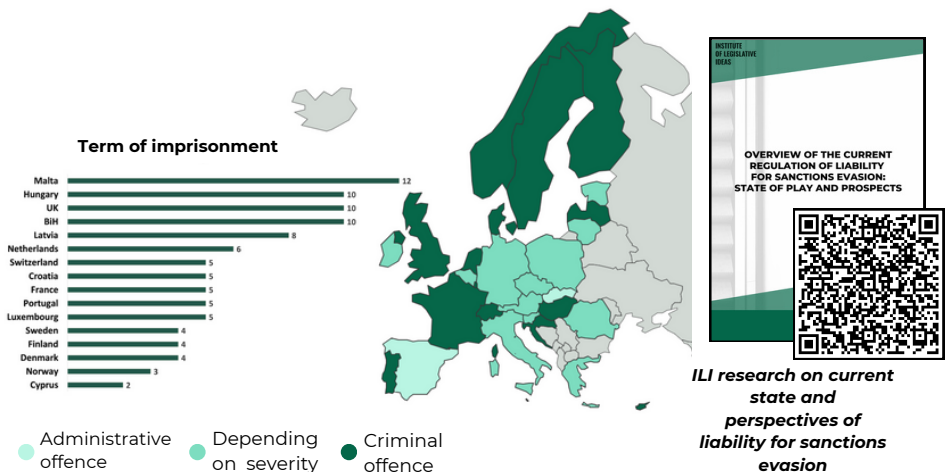
The EU approach

Unlike the United States, the EU countries have not yet made significant progress in asset recovery as part of criminal prosecutions for sanctions evasion, but strive to deter such actions by improving and unifying their criminal law policies in this area. EU Chief Diplomat Joseph Borrell said that the EU has almost exhausted sanctions against Russia and will now focus on countering sanctions [circumvention](#)(14).

Despite the relative unity of the political stance of European countries on the imposition of sanctions, there is no common approach to liability for circumventing them. For example, a large number of EU countries consider violation of sanctions to be a criminal offense (Cyprus, Denmark, Finland, France, Croatia, Hungary, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Sweden), while in Slovakia and Spain it is considered an administrative offense. At the same time, in Austria, Belgium, Bulgaria, the Czech Republic, Germany, Estonia, Greece, Ireland, Italy, Lithuania, Poland, Romania, and Slovenia, such violations can be categorized as either criminal or administrative offenses, depending on their severity.

In non-EU European countries, for example, in Norway, Bosnia and Herzegovina, Switzerland, and the United Kingdom, violation of sanctions is a criminal offense.

TYPES OF LIABILITY FOR SANCTIONS VIOLATION



Source: rtlnieuws.nl

(14) <https://cutt.ly/VwOsI02a>

In view of this, the European Commission decided to unify the approach to liability for sanctions evasion. The Commission has developed proposals for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures.

As of now, the European Parliament has to vote on a resolution to support the Directive in the first reading. In turn, the EU Council is currently deliberating on the document.

Having a unified approach, which will be reflected in the Directive and implemented in the legislation of the EU Member States, will facilitate the effective investigation and prosecution of such violations in all Member States.

The Directive determines which actions fall under the definition sanctions evasion, establishes the types of penalties for individuals and corporations, and provides safeguards for participants to the proceedings. These provisions must be implemented by EU member states into their own legislation.

Despite there is currently no provision at the EU level on the recovery of assets confiscated in criminal proceedings for sanctions evasion, member states are free to introduce such measures at the national level.

For example, in Lithuania, the funds collected for non-compliance with international and national sanctions will be transferred to the Cooperation Development Fund and will be used to rebuild Ukraine.

In November, 99 deputies of the Seimas of Lithuania voted in favor of this amendment to the Law on Cooperation and Humanitarian Assistance, with no votes against or abstentions.

According to the adopted amendment, the funds received from fines and confiscated property in case of non-compliance with international or national sanctions will be transferred to the said fund.

The amendment also states that these funds will be used to support the recovery of Ukraine from Russian invasion.

'Such a step would demonstrate Lithuania's strong determination to support Ukraine, which is suffering from Russian aggression, and would contribute to the efforts of the international community to ensure the basic principle that the aggressor must compensate for the damage it has caused', – the accompanying documents to the draft law say.

Conclusions

The new challenges that the world is facing as a result of blatant violations of international law and the inefficiency of existing institutions that should have prevented them, including the UN, call for new and comprehensive solutions. This includes the modification of the established approaches to asset recovery.

In modern conditions, it is important to make it flexible and adaptive, in particular, to extend the practice of asset recovery to cases involving violations of sanctions imposed in response to the aggression against Ukraine.

In a situation where there are no real mechanisms to bring the aggressor and its accomplices to justice, the accumulated wealth of Putin and his supporters, as well as those who want to profit from the circumvention of sanctions, can become a real source of compensation for the victims. For this purpose, it is necessary to provide for the possibility of directing assets confiscated within criminal prosecution for violation of sanctions to the victims of the war and to Ukraine.

The US law development is an example of such changes, where a special tool has been introduced that allows for the transfer to Ukraine of the funds received as a result of bringing to justice sanctions violators. Due to this tool, \$5.4 million confiscated from a Russian oligarch has already been transferred for the rehabilitation of victims.

Ukraine expects similar steps from the European Union, which is currently trying to unify liability for sanctions evasion by adopting the respective Directive, and welcomes the efforts of Lithuania, which, rather than waiting for a common EU decision, has adopted legislation allowing for the transfer of assets seized for sanctions evasion to Ukraine.

Every civilized state should make the same decisions and help ensure that the funds confiscated from the accomplices of aggression are recovered for the victims of this aggression. After all, as former US President Ronald Reagan said: ***'Evil is powerless if the good is unafraid'***.

The Institute of Legislative Ideas is an independent think tank that studies the implementation of anti-corruption policy in Ukraine and its compliance with international anti-corruption standards. We analyze the asset recovery mechanism and explore the opportunities for its improvement and extension. Today, we consider it one of the primary tasks to ensure compensation for the damage caused by the Russian aggression against Ukraine at the expense of Russian assets.

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