

January 22, 2024

Dear Members of the Senate Foreign Relations Committee:

As supporters of Ukraine, we applaud Members of the Committee for advancing the Rebuilding Economic Prosperity and Opportunity for Ukrainians (REPO) Act. Russia is engaged in a brutal war of aggression against Ukraine and against the Free World. The Putin regime has made it clear that its aims are not limited to Ukraine, but include deterring, discrediting, and dividing the U.S. and its partners. The REPO Act is a moral, just, and effective tool to impose costs on Russian President Vladimir Putin and to aid Ukraine, which is fully consistent with U.S. and international law. We urge the Committee in the strongest terms to pass the REPO Act and oppose efforts that would weaken, postpone, or effectively delay the actionable elements of the legislation.

As the December 2023 G7 Leaders' Statement declares, "It is not right for Russia to decide if or when it will pay for the damage it has caused in Ukraine... [an amount which] already exceeds \$400 billion dollars."¹ It is already a matter of general consensus that the hundreds of billions of dollars in frozen Russian state assets will be used at some point to provide direct or indirect compensation to Ukraine. The crucial question is one of timing. The U.S. cannot wait to act only when many of the potential benefits have passed. Instead, the U.S. must lead the Free World by paving the political pathway for European governments to follow in helping Ukraine and sending a clear signal of resolve to Putin.

Although the executive branch has sufficient authority under the international legal doctrine of state countermeasures and the U.S. International Economic Emergency Powers Act (IEEPA) to transfer frozen Russian assets for the benefit of Ukraine, the REPO Act removes any possible remaining ambiguity on this question by confirming this existing authority.² Transferring Russian state assets will of course be more impactful when done in concert with U.S. allies and partners. However, this should be a matter of policy, not law.

It would be a mistake were the Committee to add in new provisions to the REPO Act that require the approval of third countries—even allies—before the U.S. can transfer Russian state assets. It would be unprecedented and unconstitutional to require the prior consent of foreign governments before the U.S. president can take discretionary action. Such a move would

¹ G7 Leaders' Statement, The White House, December 6, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/06/g7-leaders-statement-6/>

² Yuliya Ziskina, et al., "Multilateral Asset Transfer: A Proposal for Ensuring Reparations for Ukraine," *Newlines Institute*, June 14, 2023, <https://newlinesinstitute.org/rules-based-international-order/multilateral-asset-transfer-a-proposal-for-ensuring-reparations-for-ukraine/>; Laurence Tribe, et al., "The Legal Practical, and Moral Case for Transferring Russian Sovereign Assets to Ukraine," *Renew Democracy Initiative*, September 17, 2023, https://rdi.org/wp-content/uploads/2023/10/RDI-Making-Putin-Pay-Report-September-2023_compressed-1.pdf

significantly hamper the legislation, changing it from a confirmation of pre-existing executive authority to a significant curtailment of the U.S. government's existing ability to counter Russia's illegal war of aggression. This would be an alarming new precedent.

It is advantageous and vital that the U.S. acts multilaterally with its allies on asset transfer. However, such a certification requirement would impose a self-limiting regulation onto an otherwise good and practical policy choice. This would distort a good policy position into an unnecessary and misguided legal requirement, undercutting the efficacy of the REPO Act entirely.

Members of the Committee should be well aware that not only has support for REPO grown within Congress and the Biden Administration, but the idea of asset transfer is increasingly supported by policymakers in Europe. For example, the U.K. Foreign Minister and former Prime Minister David Cameron recently said, "Instead of just freezing that money, let's take that money, spend it on rebuilding Ukraine, and that is, if you like, a down payment on reparations that Russia will one day have to pay for the illegal invasion that they've undertaken... I've looked at all the arguments and so far, I haven't seen anything that convinces me this is a bad idea."³ Other leaders have publicly and privately restated those thoughts with increasing frequency.

The time has long since passed for the executive branch to use Russia's frozen assets for the support of Ukraine, and legislation such as the REPO Act encourages the Administration to take expedient action. Seizing frozen Russian assets and the legislation prompting such action reflect a rare intersection of bipartisan and bicameral agreement. This proposal has support at home and abroad, even more so than is publicly acknowledged. We implore Members of the Committee to pass the REPO Act in its current form.

³ Athena Stavrou, "David Cameron calls for \$350bn in frozen Russian bank accounts to fund Ukraine war," *The Independent*, December 9, 2023, <https://www.independent.co.uk/news/world/europe/david-cameron-russia-ukraine-war-b2461413.html>

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