

**Written evidence submitted by REDRESS to the House of Lords European Affairs Committee's inquiry into the implications of Russia's invasion of Ukraine for UK-EU relations**

**31 October 2023**

## **SUMMARY**

1. One of the primary responses of the UK and the EU to the Russian invasion of Ukraine has been the use of targeted sanctions. To date, both jurisdictions have designated over 1,200 Russian individuals and entities for their involvement in the conflict. Many of these designations have been coordinated between the UK and the EU.
2. However, despite the uplift in sanctions and efforts towards coordination, differences in sanction regimes operating across both jurisdictions have led to inevitable divergences in their respective sanction lists. Such divergences risk creating loopholes that can be exploited by sanctioned targets and pose challenges for third parties that must comply with sanctions across multiple jurisdictions. It also causes significant difficulties for those seeking to challenge their designations – an issue that is compounded by the lack of Parliamentary oversight of the UK's sanctions regime.
3. Unlike the EU, the UK is yet to use its sanctions regimes to target Russian individuals and entities specifically for their involvement in human rights violations in Ukraine and recognise in their designations the abuses suffered by victims. Such recognition is crucial to provide a form of accountability and contribute to the documentation of the violations committed in Ukraine.
4. The UK's response towards enforcing its Russia-related sanctions has been weak. Effective enforcement is crucial to protect the integrity of the UK's sanctions regime. It could also provide a source of funding to ensure reparations to victims of the conflict in Ukraine if mechanisms are in place to channel penalties for sanction violations to such purpose.
5. The UK and its allies have made significant commitments to assist in the reconstruction and recovery efforts of Ukraine. However, it is fundamental that in the delivery of these commitments they are guided by a victim-centred approach. This includes, for example, providing support for existing and new funds and mechanisms to deliver reparations to victims of the conflict in Ukraine, including the Register of Damages for Ukraine.

## **INTRODUCTION**

6. REDRESS is an NGO that pursues legal claims on behalf of survivors of torture and human rights violations in the UK and around the world to obtain justice and reparations. As part of our work, we support civil society organisations in filing sanctions submissions under the UK framework in relation to the Russia-Ukraine conflict and propose viable routes for financing and delivering reparations to victims of the conflict in Ukraine.
7. This submission responds to Questions 2 and 4 of the Committee's call for evidence.

**QUESTION 2: HOW WOULD YOU ASSESS COORDINATION AND COOPERATION BETWEEN THE EU, THE UK AND OTHER PARTNERS ON THE IMPOSITION, IMPLEMENTATION AND ENFORCEMENT OF SANCTIONS AGAINST RUSSIA, BELARUS AND INDIVIDUALS FROM THOSE COUNTRIES SINCE THE RUSSIAN INVASION OF UKRAINE?**

**Inconsistency in designations of Russian targets across jurisdictions hinders the full realisation of the potential impact sanctions can have**

8. One of the primary responses of the UK and the EU to the Russian invasion of Ukraine has been the use of targeted sanctions. To date, over 1,627 individuals and 238 entities are subject to UK sanctions under its [Russia \(Sanctions\) \(EU Exit\) Regulations 2019 \(as amended\)](#). Meanwhile, approximately 1,267 individuals and 121 entities are subject to EU sanctions under its [respective Russia sanctions regime](#). Many of these designations have been coordinated between the UK, the EU, and other allies, to ensure maximum effect.
9. For example, over 400 designations made by the UK since March 2022 were made under an 'urgent procedure', pursuant to which the UK Government can designate Russian individuals and entities provided this is in the public interest and they have already been sanctioned by other allied States. This procedure has significantly enhanced the UK's coordination of sanctions against Russian targets with its allies.
10. Nevertheless, differences in sanctions regimes operating across relevant sanctioning jurisdictions following the Russian invasion of Ukraine have led to inevitable divergences in their respective sanctions lists. For example, both the UK's and EU's Russia specific sanctions regulations target conduct that undermines or threatens the territorial integrity, sovereignty, or independence of Ukraine. However, the [UK's regime](#) is wider in scope in that a person may also be designated if they have obtained a benefit from, or support, the Government of Russia.
11. In further deviation from the EU's position, in June 2023, the UK [amended](#) its Russia sanctions regime to allow sanctions to be imposed for the purpose of '*promoting the payment of compensation by Russia*'. This means that, in lieu of compensatory payments from Russia to Ukraine, UK sanctions can remain in place even if the conflict were to end.
12. On the one hand, the different scopes of the regimes risk creating loopholes that can be exploited by sanctioned targets and pose challenges for third parties that must comply with sanctions across multiple jurisdictions. On the other hand, for sanctioned individuals, the UK's broad designation criteria, impedes their ability to effectively challenge the measures, introducing due process concerns. This impacts sanctions' role as a tool for individual accountability as the designation is no longer tied to an individual's own wrongdoing, but instead, to the regime's broader policy.

**Recommendation**

13. Despite the uplift in sanctions and efforts towards coordination, the UK should enhance efforts to narrow and align their designations as much as possible with its allies, ensuring designations are accompanied with mirrored statements of reasons, clearly setting out the designated persons' involvement in the sanctionable activities.

**The absence of transparency and consistency in sanctions designations risks undermining their fairness and effectiveness**

14. It remains unclear on what basis the UK Government would delist an individual or entity. This not only raises due process concerns given the length of time a designated person may stay listed without automatic review but also undermines sanctions' role as a coercive measure to affect behavior change.

15. This issue has been compounded by the lack of parliamentary oversight of the UK's sanctions regime. The limited oversight protections available under the [Sanctions and Anti-Money Laundering Act 2018 \(SAML A\)](#) sections 24, 30 and 32 were removed via the [Economic Crime \(Transparency Enforcement\) Act 2022](#). The previous oversight mechanisms required the appropriate Minister to:
- i) review designations every three years (previously SAML A s.24);
  - ii) annually review whether sanctions regulations were still appropriate under the Act, and lay before Parliament a report containing the conclusions of the review, the reasoning, and any planned action (previously SAML A s.30); and
  - iii) report to Parliament every year on whether they made any regulations under s.1 SAML A, including in respect to human rights purposes and set out in this report whether any Parliamentary Committee had made recommendations that the power under s.1 be exercised for human rights purposes, and what the Government response to such a recommendation had been (previously SAML A s.32).
16. While these mechanisms provided critical due process protections for sanctioned persons and an opportunity to scrutinise the Government's use of sanctions, they did not go far enough. For example, the [Joint Select Committee on Human Rights](#) noted that review of designations every three years was insufficient to protect due process rights of designated persons and instead recommended an annual review.

#### Recommendation

17. To ensure proper scrutiny and Parliamentary oversight over its targeted sanctions regime, the UK Government should re-instate sections 24, 30 and 32 of SAML A and introduce the recommendations by the Joint Select Committee on Human Rights.

#### **The UK's approach towards sanctioning Russian perpetrators fails to acknowledge the abuses suffered by victims in Ukraine**

18. Unlike the EU, the UK has yet to use its Russia sanctions regime or [Global Human Rights Sanctions Regulations 2020 \(GHRS\)](#) to target Russian individuals and entities for their involvement in human rights violations in Ukraine.
19. For example, in June 2022, the EU designated 45 Russian military officers of the 64<sup>th</sup> Separate Motorised Rifle Brigade of Russia's 35<sup>th</sup> Combined Arms Army for their role in the "killing, rape and torture of civilians in Bucha", with each designation stating that the atrocities "[constitute crimes against humanity and war crimes](#)". Of these 45 individuals, the UK designated just five and in the relevant statement of reasons only made sparse mention of the killing of civilians.
20. In addition, in September 2023, the EU sanctioned a Judge and a Deputy Prosecutor at the "Simeferopol District Court in the Republic of Crimea" as well as an Officer of Russia's Federal Security Service for committing serious human rights violations, and partaking in the politically motivated court proceedings, against journalist Vladyslav Yesypenko, who had voiced opposition to the war of aggression against Ukraine, under its [EU Global Human Rights Sanctions Regime](#). None of these individuals have yet been designated by the UK.
21. Indeed, not a single designation made under the UK's Russia sanctions regime mentions the persons' involvement in serious human rights violations, nor the commission of international crimes. Further, the UK has not sanctioned any Russian person for serious

human rights abuses in Ukraine since Russia's full-scale invasion of Ukraine in February 2022 under its [Global Human Rights Sanctions Regulations 2020](#).

22. The EU's explicit recognition of the commission of crimes against humanity and war crimes against Ukrainian victims, and serious human rights violations against those who voice opposition to the war of aggression against Ukraine, provides crucial recognition of the harms suffered by victims in Ukraine, and supports documentation of the violations for the purpose of future accountability mechanisms. These impacts would be significantly strengthened if the designations were replicated across allied jurisdictions.

#### Recommendation

23. The UK should make every effort, on careful assessment of each case, to replicate EU sanctions, particularly in cases of serious human rights violations to strengthen close coordination, ensuring violations are explicitly referred to in statements of reasons.

#### **The UK's failure to effectively enforce sanctions undermines their deterrent potential**

24. The UK's response towards enforcing its Russia-related sanctions has been weak, largely due to lack of political will and resources to relevant agencies.
25. Despite the UK Government having committed £50 million to tackle sanctions evasion through its [Economic Deterrence Initiative](#) in March 2023, the low number of fines imposed by the Office for Financial Sanctions Implementation (**OFSI**) to date and the lack of any criminal prosecution for sanctions breaches since 2010 suggests that there is still insufficient resourcing, affecting the effective enforcement of UK sanctions. Since 2019 **OFSI** has imposed fines on only six entities, worth a combined £20.8 million. In the past year, it imposed two fines totalling £45,000 (only one of which related to breaches of Russia sanctions), despite reportedly receiving [at least 236 reports](#) of potential sanctions breaches in the nine months following Russia's invasion of Ukraine.
26. Enforcement by way of criminal prosecutions has also been extremely limited. There is no public record of prosecutions resulting from the [NCA Kleptocracy Cell's investigations](#), which was introduced in 2022 to specifically target kleptocracy and sanctions evasion. Indeed, only two criminal prosecutions for sanctions violations have ever been publicly reported in [2009](#) and [2010](#).
27. By contrast, individual EU Member States have taken a more forceful approach towards enforcing violations of EU Russia sanctions. For example, the Dutch Public Prosecution Service has reportedly [45 pending criminal investigations](#) in relation to potential violations of EU Russia sanctions. In addition, [on 14 October 2023](#), it sentenced four Dutch companies and eight individuals to community service and fines totalling €160,000 for breaching EU Russia sanctions between 2014 and 2017 by helping Moscow build a bridge to Crimea, and confiscated €71,330 in profits.
28. Once implemented, the [EU's draft directive](#) on the definition of criminal offences and penalties for the violation of EU restrictive measures is expected to further increase enforcement action for sanctions violations across all EU Member States.

#### Recommendation

29. The UK should increase resources for OFSI, the NCA's Kleptocracy Cell and enforcement agencies in the British Overseas Territories to ensure effective enforcement of its Russia sanctions and replicate efforts across the EU to tackle sanctions evasion.

### **The UK Government is failing to seize the opportunity to finance reparations for Ukrainian victims through sanctions enforcement**

30. The enforcement of sanctions may provide an alternative avenue for financing reparations for victims of the conflict in Ukraine. The potential amounts that can be recovered under enforcement penalties can be substantial: in the UK, OFSI can impose up to £1,000,000 or 50% of the value of the funds or resources involved in a sanctions violation, while a criminal conviction could result in an unlimited fine. However, there is currently no legal basis under English law for allowing these funds to be repurposed as reparations for victims of the sanctionable conduct which the violation facilitated.
31. In the absence of such a legal basis, these fines are required to be paid into the Government's general bank account at the Bank of England (the Consolidated Fund), allowing the Government to inadvertently benefit from the violations.

#### Recommendation

32. The UK Government should establish mechanisms that allow for financial penalties for breaches of sanctions that relate to human rights abuses or violations of international humanitarian law to be re-directed as reparations to victims.

### **QUESTION 4: WHAT DO YOU ANTICIPATE AS BEING THE RESPECTIVE ROLES OF THE EU, ITS MEMBER STATES AND THE UK IN THE POST-WAR RECONSTRUCTION OF UKRAINE?**

#### **The UK Government risks excluding victims in Ukraine from the benefits of Ukraine's eventual recovery and reconstruction**

33. A joint [assessment](#) released in March 2023 by the Ukrainian Government, the World Bank Group, the European Commission and the United Nations, estimated that the cost of reconstruction and recovery in Ukraine amounted to US\$411 billion over the first year following Russia's invasion of Ukraine alone. The UK and international allies have all expressed their commitment to assist in the reconstruction and recovery efforts of Ukraine, as exemplified at the [Ukraine Recovery Conference](#) held in London in June 2023.
34. Yet, despite these commitments, there are two significant omissions in the narrative and debate in the UK on the reconstruction and recovery of Ukraine: (i) that efforts can be made *while the conflict is ongoing* (i.e., not only "post-war") and; (ii) that efforts can be made in terms of the *delivery of reparations to victims* of the conflict. These omissions risk jeopardising a victim-centred approach, prioritising the economic recovery of Ukraine and private investors over victim reparations.
35. Victims of the conflict *since 2014* require reparations to address the harm caused, restore their dignity and rebuild their lives. In line with the [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims](#), Ukraine and third States, including the UK, can step in where Russia is unwilling or unable to meet its obligations to provide reparations.
36. There are several existing or planned mechanisms both at international and national levels for delivering reparations to victims of the conflict in Ukraine, which the UK could support:
  - a) On 16 May 2023, the Council of Europe together with a coalition of member and non-member States and the EU, created the [Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine](#) through an Enlarged Partial Agreement which is based in The Hague. The Register is designed to be the

first component of a future international compensation mechanism to be established in co-operation with Ukraine.<sup>1</sup> The Netherlands has already pledged [€1.5 million to the Register](#).

- b) The [International Criminal Court \(ICC\)'s Trust Fund for Victims](#) implements reparations ordered by the ICC against convicted persons for the benefit of the victims and, through its assistance mandate, it provides rehabilitation and support to a broader group of victims and their families who have suffered physical, psychological, and/or material harm as a result of international crimes.
- c) The [Global Survivors Fund](#) is currently supporting Ukrainian authorities to provide a legal structure to deliver urgent interim reparations to ensure that the victims of conflict-related sexual violence receive concrete and life-changing support.
- d) In Ukraine, there are also **national administrative mechanisms** to deliver reparations in place and in progress, including compensation for property damage, and for those who have suffered human rights violations in detention, and reparations for survivors of conflict-related sexual violence.

#### Recommendation

37. In future commitments to assist in the recovery of Ukraine, the UK should adopt a victim-centred approach by including support for existing and new funds and mechanisms to deliver reparations to victims of the conflict.

#### **The UK and its allies have failed to coordinate their approach to asset confiscation to finance reparations**

38. [As of March 2023](#), Western allies had frozen US\$58 billion worth of assets of Russian individuals and entities and US\$300 billion of Russian sovereign assets in response to Russia's invasion of Ukraine. Despite the significant amount of Russian assets frozen or immobilised under sanctions, there is no clear, internationally recognised precedent for confiscating assets of those involved in violations of international law in the Russia-Ukraine context and redirecting them to victims of the conflict.
39. In [June 2022](#), Canada became the first, and only, G7 country to introduce legislation to enable the confiscation of assets frozen under sanctions and their repurposing for the benefit of victims, however due process and human rights concerns have been raised in relation to this. Meanwhile, in the UK, a Private Members' Bill entitled '[Seizure of Russian State Assets and Support for Ukraine Bill](#)', that proposed an executive mechanism to confiscate and distribute Russian State assets stalled at second reading. Other proposals for confiscation have focused on employing existing legal bases to confiscate Russian assets when they are demonstrably linked to the proceeds of crime. As a result, there is a multitude of proposed avenues for repurposing perpetrators' assets for reparations for victims, yet none are sufficient in their current form to capture

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<sup>1</sup> Council of Europe, Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine. It must be noted that the Decree of Cabinet of Ministers No. 326 '[On adoption of Procedure of determining damages caused to Ukraine as a result of the armed aggression of the Russian Federation](#)', 20 March 2022, although introduced in Ukraine without reference to a specific compensation mechanism, could be a useful reference point for the quantification of multiple forms of damage, including to individuals, but also infrastructure and the environment.

many individuals or entities responsible for violations committed by Russia against Ukraine, nor are they necessarily aligned.

40. In this context, the [Ljubljana-Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes recently adopted on 26 May 2023 \(MLA Treaty\)](#) presents a critical opportunity to establish a joint approach towards the recovery of assets belonging to Russian perpetrators for the benefit of victims in Ukraine. Specifically, Article 45(1) of the MLA Treaty requires State Parties to comply with a request for confiscation of the proceeds of crime and “*other property for the purposes of providing reparations to victims*”. However, States are only required to comply with these provisions provided this is in accordance with domestic law.

#### Recommendation

41. The UK should amend its domestic legal framework to create a legal basis for asset confiscation in line with international legal and procedural standards. When the opportunity for signature opens in early 2024, the UK must ratify the MLA Treaty without delay to ensure cooperation on asset confiscation for the benefit of victims (including of the Ukraine conflict) can work as envisaged.

#### **The UK should support the EU’s proposals for a G7-wide windfall tax on any profits generated by frozen Russian assets to finance reparations for victims in Ukraine**

42. Another option which is being put in motion by the EU is creating a [windfall tax](#) on the profits of frozen Russian assets, and repurposing the tax collected for the benefit of Ukraine. The EU is currently holding Russian assets worth about €200 billion, of which €100 billion is cash from Moscow’s foreign reserves, [earning roughly €3 billion](#) in interest a year.
43. Most of these funds are in the temporary ownership of Euroclear, the EU clearing house in Brussels, where interest is currently taxed at 25% by the [Belgian government](#) under its domestic corporate tax regime. Belgium said it would use the tax it has already collected on Euroclear’s profits from the Russian assets to create a [€1.7 billion fund](#) dedicated to Ukraine.
44. The European Commission announced in [July 2023](#) that it would present a proposal on whether there was a legally sound way to tax the funds once the G7 agreed in principle. In response, on [11 October 2023](#), US Treasury Secretary Janet Yellen said that the Biden administration supported taxing windfall proceeds from Russian sovereign assets immobilised in particular clearinghouses and using the funds to support Ukraine. Similarly, on [14 October 2023](#), Jeremy Hunt announced that he had asked the Bank of England to look at options for using Russian sovereign assets to fund Ukraine’s war efforts, signaling support for the EU’s proposal.

#### Recommendation

45. The UK should support a G7-wide windfall tax on the profits of frozen Russian assets and repurpose part of these funds to finance reparations for victims in Ukraine. A coordinated approach is essential to ensure businesses will not [re-route from Euroclear](#) to other international clearing houses free of such requirements.

#### **Chelsea Football Club provides a unique opportunity for the UK Government to trial its voluntary mechanism for sanctioned oligarchs to donate their funds to Ukraine**

46. In June 2023, the UK Government announced a new process whereby Russian sanctioned individuals may apply for funds to be released for the express purpose of supporting Ukraine's recovery and reconstruction. According to the [Government](#), "[t]he precise mechanics of the fund which will disburse these donations will be announced in due course."
47. However, an example of how this voluntary donation mechanism could operate in practice can be seen in the case of Chelsea Football Club. In [March 2022](#), Roman Abramovich, the owner of Chelsea Football Club, declared his willingness to sell the club and use the proceeds worth £2.5 billion "for the benefit of all victims of the war in Ukraine". Shortly after, Abramovich became subject to UK sanctions for his close connections with Putin's regime. With his funds frozen, the sale of Chelsea was made possible by a license granted by the OFSI on [24 May 2022](#) to create a foundation with "exclusively humanitarian purposes supporting all victims of the conflict in Ukraine, and its consequences". The Department for Culture, Media and Sport, stated, in a [unilateral declaration](#) made after completion of the sale on 30 May 2022, that the funds would be used for "exclusively humanitarian purposes in Ukraine", however the process has reached a stalemate, with neither the Government nor those tasked with creating the foundation taking responsibility to progress the matter.

#### Recommendation

48. The UK Government should act to release the sale proceeds of Chelsea Football Club to support victims of the conflict in Ukraine, including repurposing some of these funds into existing reparations mechanisms as outlined above, to demonstrate the feasibility of the voluntary donation mechanism and encourage allied partners to adopt a similar mechanism.