

**Working Breakfast “Rebuilding Ukraine: Investments and the Rule of Law”**

**Tuesday, 31 January 2023, 8:00–10:30 a.m.**

**German Embassy, 4645 Reservoir Road, Washington, D.C.**

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**Background Paper on the Topic of Rebuilding Ukraine<sup>1</sup>**

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## I. Introduction<sup>2</sup>

The German Federal Minister of Justice, Dr. Marco Buschmann on 17 December 2022 stated to the Redaktionsnetzwerk Deutschland that the targeted destruction of the civilian infrastructure of Ukraine is a crime against humanity, which will be added to the Russian Federation (“RF”) war crimes portfolio to be investigated at the International Criminal Court in The Hague.<sup>3</sup>

The enormous scale of devastation cannot be precisely evaluated at this time, as the destruction of Ukraine continues by on-going RF’s attacks. RF is also engaged in massive looting of Ukraine’s assets on the occupied territories. So far, the more recent numbers estimated by the World Bank place the reconstruction cost between €500-600B.<sup>4</sup> There is a new damage assessment report coming up in February 2023 from the World Bank.

Apart from physical destruction of Ukraine’s infrastructure, due to the war Ukraine's economy shrank by 30.4% over the year. The Ukrainian currency, UAH, after sharp devaluation at the beginning of the full-scale war, has since remained stable (it is now set by the government, and that currency regulation by necessity is strict). Inflation reached almost 27% in October 2022 but has later leveled out. In the complete absence of air traffic and blocked seas ports, Ukraine continues to move goods and commodities through its railways, roads and river transportation.

The resilience of Ukraine’s economy and considerable on-going assistance from its international partners is directed towards current and urgent wartime needs, and has not even started flowing into the massive rebuilding, which can only fully begin after Ukraine’s victory in the war.

At the same time, there are already multiple preparatory efforts taking place to discuss the future Rebuilding of Ukraine, the sources of funding, the agencies involved, the stakeholders, the procedures, etc. For example, there have been already two major conferences held on this subject: *International Expert Conference on the Recovery, Reconstruction, and Modernization of Ukraine* in Berlin on 25 October 2022<sup>5</sup> and before that *Ukraine Recovery*

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<sup>2</sup> The topic of this Paper does not extend to the issue of compensation of victims and mechanism for the international claims commission for Ukraine.

<sup>3</sup> <https://www.euointegration.com.ua/news/2022/12/17/7152695/>

<sup>4</sup> <https://ubn.news/the-world-bank-has-increased-the-reconstruction-cost-and-ukraines-gdp-decline/>

<sup>5</sup> Participants List, Agenda and other documents of this conference are available at <https://www.bundesregierung.de/breg-en/news/experts-2137600>

*Conference* in Lugano on 4-5 July 2022<sup>6</sup>. The next Ukraine Recovery Conference is planned in London on 21-22 June 2023<sup>7</sup>. Several other conferences are planned in 2023.

There are also multiple papers, reports and articles addressing Rebuilding of Ukraine. Just a few examples: International Working Group on Russian Sanctions Working Group Paper #6 “Why and How to Confiscate Russia’s Sovereign Assets to Help Rebuild Ukraine”<sup>8</sup>; White Paper “Modern Marshall Plan for Ukraine” prepared by the Washington DC-based German Marshall Fund (GMF)<sup>9</sup>; series of articles by Timothy Ash<sup>10</sup>; series of articles by Anders Åslund<sup>11</sup>; series of articles on Rebuilding Ukraine: Principles and Policies<sup>12</sup> by the Centre for Economic Policy Research (CEPR)<sup>13</sup> and the book “Rebuilding Ukraine: Principles and Policies”<sup>14</sup>; article “The Politics of Ukrainian Reconstruction” by Howard J. Shatz, Khrystyna Holynska, and William Courtney<sup>15</sup>.

There are also several organization or coalitions dedicated solely to rebuilding Ukraine. For example, RISE is a Ukraine-based civil society organization of 40+ members that coordinates and prepares a detailed practical plan on various aspects of rebuilding Ukraine through inclusive dialogue, open data and the latest digital technology.<sup>16</sup>

All stakeholders agree on the principle: “**Building Back Better**”, which should apply not only in the physical sense, meaning rebuilding the destroyed infrastructure and housing according

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<sup>6</sup> <https://www.urc2022.com/urc-2022>

<sup>7</sup> <https://www.urc2022.com/>

<sup>8</sup> International Working Group on Russian Sanctions; Working Group Paper #6  
<https://drive.google.com/file/d/1cBAR-tpJSqU8R1nVPHSKcSTFKeSEWbfi/view>

<sup>9</sup> Modern Marshall Plan for Ukraine White Paper GMF <https://www.gmfus.org/news/modern-marshall-plan-ukraine>

<sup>10</sup> <https://timothyash.substack.com>

<sup>11</sup> <https://www.kyivpost.com/article/opinion/op-ed/how-to-rebuild-ukraine.html>;  
<https://www.kyivpost.com/opinion/10>; <https://www.kyivpost.com/opinion/2103>; <https://www.project-syndicate.org/commentary/russia-reparations-to-ukraine-seize-reserves-for-reconstruction-by-anders-aslund-2022-03?barrier=accesspaylog>; <https://forbes.ua/company/yakim-bi-mig-buti-plan-marshalla-dlya-ukraini-rozmirkovue-ekonomist-i-diplomat-anders-oslund-01042022-5238>;

<sup>12</sup> <https://voxukraine.org/en/rebuilding-ukraine-principles-and-policies/>

<sup>13</sup> <https://cepr.org/about> and CERP’s Ukraine Initiative <https://cepr.org/themes/ukraine-initiative>;

<sup>14</sup> Presentation on the book:  
<https://docs.google.com/presentation/d/1gvK3pOw2VR6ukwZ8xkxoXkWpgDKNJI7I/edit#slide=id.p1>

<sup>15</sup> <https://thehill.com/opinion/international/3755640-the-politics-of-ukrainian-reconstruction/>

<sup>16</sup> <https://www.rise.org.ua/>

to the modern environmental and civic standards, but also in the sense of building new Ukraine as the modern, transparent, efficient, competitive, institution-based, and rule-of-law based democracy.

## II. Sources of Funding for Rebuilding Ukraine

Below is a non-exhaustive list of potential sources of funding for Rebuilding Ukraine, which should be used in parallel:

1. **Russian frozen assets, both sovereign and also seized from Russian individuals and companies**, which by far are the largest source of sufficient financing. International Working Group on Russian Sanctions argues that in response to RF's gross violations of international law, the frozen Russian sovereign assets, primarily the frozen Central Bank reserves, should be confiscated through an international compensation mechanism and subsequent national legislation, and then diverted towards a Compensation Fund for Ukraine. In the future, other seized assets from Russian individuals, companies, and the state might also be transferred to this Fund. The RF's Central Bank reserves, however, should be the first and most appropriate target. They and their owner are identified. They are indisputable property of the Russian Federation that is highly liquid and involve minimal administrative and legal work.<sup>17</sup> The topic of Russian frozen assets as the source of funding for Rebuilding Ukraine was also summarized by Anders Åslund<sup>18</sup>, Timothy Ash<sup>19</sup>, Franklin D. Kramer<sup>20</sup> and others.
2. **Western Governments, IFIs and other donors**
3. **Direct reconstruction projects.** There are multiple reconstruction projects planned, whereby various countries, cities, regions, institutions and industries in other countries "adopt" Ukrainian counterparts for rebuilding and development.

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<sup>17</sup> International Working Group on Russian Sanctions; Working Group Paper #6: <https://drive.google.com/file/d/1cBAR-tpJSqU8R1nVPHSKcSTFKeSEWbfi/view>

<sup>18</sup> <https://www.kyivpost.com/opinion/10>; <https://www.project-syndicate.org/commentary/russia-reparations-to-ukraine-seize-reserves-for-reconstruction-by-anders-aslund-2022-03?barrier=accesspaylog>

<sup>19</sup> [https://timothyash.substack.com/p/allocate-frozen-russian-assets-to?r=ynli4&utm\\_campaign=post&utm\\_medium=web](https://timothyash.substack.com/p/allocate-frozen-russian-assets-to?r=ynli4&utm_campaign=post&utm_medium=web)

<sup>20</sup> <https://thehill.com/opinion/international/3633236-time-for-the-west-to-seize-russian-state-assets/>

4. **Private sector.** There will be massive role and opportunities for the private sector in the post-war recovery process. Considering the risks and the scale of this process, private sector will have to be supported by governments and IFIs. Selected instruments for such support include loans and loan guarantees, insurance, including against political and military risks, provided by the national governmental institutions (e.g. US International Development Finance Corporation-DFC), and by IFIs (MIGA); sovereign guarantees, providing private companies with coverage for their losses, etc. For example, DFC's CEO Scott Nathan already announced on 31 January 2023 in Kyiv that DFC allocates \$250M in loans for small businesses and promised another \$1B in investment.<sup>21</sup> This is an important first step, but as the Goldman Sachs CEO David Solomon said, the recovery process will not be simple and linear, and it will require a significant amount of capital and the cooperation of the private and public sectors.<sup>22</sup>
5. **SDRs.** As it is summarized by Timothy Ash and Polina Kurdyavko<sup>23</sup>, selected IMF shareholders (from the G20 group of countries) currently have a large amount of unallocated reserved assets, "special drawing rights" (SDRs), valued at \$40-\$90bn. It is proposed to channel these unallocated SDRs into a newly created IMF vehicle, a Brady bond-style collateralized restructuring facility, to be used as hard-currency collateral for Ukrainian bonds to finance the reconstruction effort and Ukraine's debt.

**Ukraine's Prime Minister Denys Shmyhal** also weighed on the subject of funding and stated that Ukrainian Government has identified four key funding sources for Ukraine's recovery program (although it seems that he was addressing the immediate recovery needs and not massive post-war recovery): (1) UAH 17B of confiscated funds from Russian banks have already been directed to the newly created national Fund for Liquidation of the Consequences of Armed Aggression; (2) funding from the state budget (in 2023 UAH 35.5B will be directed to the proposed Fund from NBU profits); (3) funding international partners; (4) the funds from donors, which are being collected through the United24 platform. Shmyhal clarified that the total amount for recovery from identified sources is about UAH 110B (\$3B). In total, Ukraine expects to receive \$17B (UAH 680B) to restore its damaged properties.<sup>24</sup>

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<sup>21</sup> <https://ubn.news/american-financial-institution-dfc-allocates-250m-in-loans-for-small-businesses-and-promises-another-1b-in-investment/>

<sup>22</sup> <https://ubn.news/the-worlds-largest-investment-banks-are-ready-to-join-in-ukraines-restoration/>; January 20, 2023.

<sup>23</sup> <https://cepa.org/article/rebuilding-ukraine-a-historic-plan-for-us-congress/>

<sup>24</sup> <https://ubn.news/ukraine-already-knows-where-to-get-the-first-uah-110b-for-reconstruction/>

**With regards to the Russian assets frozen in certain countries, the question is how to confiscate and transfer them for the Rebuilding of Ukraine?**

First, with regards to the frozen sovereign assets, according to the public statistics of the Central Bank of Russia, on 1 January 2022, such assets amounted to \$316 billion. Germany held \$96 billion, France \$61 billion, Japan \$57 billion, the United States \$39 billion, the United Kingdom \$31 billion, Canada \$17 billion, and Austria \$15 billion.

Second, we should note that there is also a separate issue of compensation of victims and the mechanism for the international claims commission for Ukraine, which would also rely on frozen Russian assets, and it is not clear at this time how such assets will be allocated between these two major causes – rebuilding and compensation of victims.

Third, the issue of confiscating the frozen Russian assets is extremely complicated both legally and politically<sup>25</sup>, and any successful solution would require a relatively unified international approach (further implemented through the national legislation), especially among the countries that hold most of the frozen assets. So far, such approach has not been agreed upon, but there have been initial significant developments in individual countries and at the intergovernmental level.

**Canada** has taken the lead in adopting a law in June 2022 to confiscate the assets of both individuals and states that are linked to violations of international peace and security, as well as gross violations of human rights. Although no practical steps at implementing this legislation have been reported so far, it could potentially serve as a useful model for other countries currently holding Russia assets.

**With regards to the United States**, some experts have argued that the laws and legal mechanisms for this asset transfer are already in place. Gary Hufbauer and Jeffrey Schott of the Peterson Institute for International Economics note that the United States has two powerful laws for seizing foreign assets: the Trading with the Enemy Act of 1917 and the International Emergency Economic Powers Act of 1977. Both these laws focus on the freezing of foreign assets. The USA Patriot Act of 2001 also gives the US government additional powers to seize assets of belligerent countries as well as to dispose of them as the president sees fit. President George W. Bush used the revised International Emergency Economic Powers Act to

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<sup>25</sup> An article with an overview of political and legal challenges: “Politics, Not Law, Is Key to Confiscating Russian Central Bank Assets” by Anton Moiseienko <https://www.justsecurity.org/82712/politics-not-law-is-key-to-confiscating-russian-central-bank-assets/>; an article arguing against confiscation <https://foreignpolicy.com/2023/01/13/putin-sanctions-oligarchs-freeze-seize-assets/>; a response by Timothy Ash arguing for confiscation [https://timothyash.substack.com/p/allocate-frozen-russian-assets-to?utm\\_source=direct&r=ynli4&utm\\_campaign=post&utm\\_medium=web](https://timothyash.substack.com/p/allocate-frozen-russian-assets-to?utm_source=direct&r=ynli4&utm_campaign=post&utm_medium=web)

use Iraqi assets for humanitarian and reconstruction needs in Iraq. President Biden invoked the same law to transfer \$3.5 billion of International Working Group on Russian Sanctions in the central bank reserves of Afghanistan for humanitarian purposes.<sup>26</sup>

Furthermore, in December 2022, US Congress passed, and the President signed the Consolidated Appropriations Act of 2023<sup>27</sup>, which allows the Justice Department to direct forfeited funds to the State Department for the purpose of providing aid to Ukraine. To this end, Andrew Adams, the head of the Department of Justice’s KleptoCapture<sup>28</sup>, in his remarks at the Hudson Institute event in Washington, DC on 19 January 2023, confirmed that “We’re ... poised to begin the transfer of forfeited assets for the benefit of Ukraine” noting that “It’s not a silver bullet, but it is something that makes me hopeful that we will start to see the first transfers from justice to the State Department occurring in the coming weeks and months, as the first final orders of forfeiture are obtained with respect to certain assets”.<sup>29</sup> It appears, however, that the assets he was referring to are not Russia’s sovereign assets (Central Bank reserves), but rather the seized assets of Russian individuals and companies.

The first practical breakthrough was announced on 3 February 2023 by US Attorney General Merrick Garland, who stated that he “authorized the first ever transfer of forfeited Russian assets for use in Ukraine,” adding that: “These forfeited assets follow the announcement I made last April of the indictment of designated Russian oligarch Konstantin Malofeyev, on charges of sanctions evasions.” The seized amount of \$5.4 million will go toward aiding Ukraine.<sup>30</sup>

**As to EU**, EU Commission President Ursula von der Leyen on multiple occasions stated that Russia will have to pay for the destruction it caused and will have to contribute to the

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<sup>26</sup> International Working Group on Russian Sanctions; Working Paper #6. Pages 4 and 5:  
<https://drive.google.com/file/d/1cBAR-tpJSqU8R1nVPHSKcSTFKeSEWbfi/view>

<sup>27</sup> <https://www.congress.gov/bill/117th-congress/house-bill/2617>

<sup>28</sup> In early March 2022 DOJ launched Task Force KleptoCapture – an interagency task force created to enforce these measures against Kremlin-linked Russian elites and their professional facilitators: <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture>. KleptoCapture is a US component of the Russian Elites, Proxies, and Oligarchs (REPO) Task Force, a multilateral initiative targeting Russian sanctions evasion. In addition to the high-profile pursuit of Russian yachts and luxury real estate, REPO countries have collectively frozen hundreds of billions of dollars in Russian state assets and tens of billions of dollars belonging to Kremlin-linked elites.

<sup>29</sup> <https://www.youtube.com/watch?v=tg1KhaJ0QJU&t=29s>

<sup>30</sup> [https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-2-3-23/h\\_9eab4ff25eb9c91fac7f79b4cae49211](https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-2-3-23/h_9eab4ff25eb9c91fac7f79b4cae49211); <https://www.justice.gov/opa/video/attorney-general-merrick-b-garland-met-ukrainian-prosecutor-general-andriy-kostin>



reconstruction of Ukraine, and that EU is exploring with its partners how to use Russia's public assets and partly the assets of oligarchs to the benefit of Ukraine.<sup>31</sup> European Council President Charles Michel stated that it is “...extremely important not only to freeze assets, but also to make possible to confiscate it, to make it available for the rebuilding of the country (Ukraine)” and added that he has tasked the European Council’s legal service to come up with ways of making it work “in line with the principles of rule of law”.<sup>32</sup> In the Joint Statement made on 3 February 2023 following the 24th EU-Ukraine Summit by Charles Michel, President of the European Council, Ursula von der Leyen, President of the European Commission, and Volodymyr Zelenskyy, President of Ukraine, the EU also promised to “step up its work towards the use of Russia's frozen assets to support Ukraine’s reconstruction and for the purposes of reparation, in accordance with EU and international law.”<sup>33</sup>

On 19 January 2023 the European Parliament in its Resolution on “The establishment of a tribunal on the crime of aggression against Ukraine” called to discuss the “the legal possibility of using sovereign assets of the Russian state as reparations for the violations of international law by Russia in Ukraine, including potentially by denying such assets the protections of sovereign immunity or limiting such protections owing to the gross nature of these violations” (paragraph 12.)<sup>34</sup>

More recently, Bloomberg reported that EU lawyers are at the initial stages of preparing a proposal on pooling together the Russian Central Bank frozen assets at the EU or international level in order to generate returns, using the interest to help pay for the reconstruction of Ukraine (EU officials estimate that about €33.8 billion of Russian Central Bank frozen assets is sitting in EU-based deposits, although the figure is still under assessment).<sup>35</sup> Apart from the fact that the Bloomberg report is itself quite confusing, it seems that these discussions are at a very preliminary stage and the approach is quite cautious, whereas much more decisive and prompt actions are needed.

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<sup>31</sup> Statement by President von der Leyen at the joint press conference with Ukrainian President Zelenskyy; 2 February 2023. [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_23\\_546](https://ec.europa.eu/commission/presscorner/detail/en/statement_23_546); Remarks at the *Ukraine Recovery Conference* in Lugano on 4-5 July 2022.

<sup>32</sup> <https://www.euractiv.com/section/global-europe/news/charles-michel-sell-seized-russian-assets-to-rebuild-ukraine/>

<sup>33</sup> <https://www.consilium.europa.eu/en/press/press-releases/2023/02/03/joint-statement-following-the-24th-eu-ukraine-summit/>

<sup>34</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0015\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0015_EN.pdf)

<sup>35</sup> <https://www.bloomberg.com/news/articles/2023-01-26/eu-sees-legal-grounds-to-use-seized-russian-central-bank-assets?leadSource=uverify%20wall>

**Estonia** announced that it is already developing such a mechanism. Bloomberg reported on 9 January 2023<sup>36</sup> that Estonia plans to introduce a legal blueprint for seizing Russian assets as it moves ahead with a bid to deliver the funds frozen under EU sanctions to Ukraine. Estonia plans to present the legal blueprint by the time the European Commission develops the arrangement to deal with €300 billion in Russian central-bank reserves and billions more in frozen assets of sanctioned Russian oligarchs. “The EU countries need to take work forward on securing accountability for the crime of aggression and to use Russia’s frozen assets,” Estonian Prime Minister Kaja Kallas stated in December 2022. According to the estimates of Estonia’s authorities, the frozen funds in Russian-owned accounts in Estonia amount to approximately €20 million.

**Germany’s** government is also open to converting the frozen Russian assets to aid for Ukraine if all legal issues are resolved, according to Bloomberg.

### III. Rebuilding Mechanism

#### (1) Marshall Plan for Ukraine or Financial Ramstein

Chancellor Olaf Scholz of Germany has repeatedly called for a Marshall Plan for Ukraine, stating that “like war-destroyed Europe then, Ukraine needs a Marshall Plan for its reconstruction.”<sup>37</sup> EU Commission President Ursula von der Leyen described the reconstruction as a “colossal undertaking”.<sup>38</sup>

Many stakeholders are calling to establish “Financial Ramstein”, a format similar to the existing unified inter-governmental mechanism in the defense sector in which more than 40 states are participating (Contact Group on Defense of Ukraine).

In fact, Ukraine’s PM Denys Shmyhal reported on 26 January on the first Financial Ramstein on-line meeting, focusing on three main areas: (i) short- and long-term support for Ukraine in 2023; (ii) planning and ensuring beginning of rebuilding of Ukraine, prioritizing energy, demining, rebuilding of the housing, critical and social infrastructure; and (iii) coordination of financial instruments of supporting the economy and private sector (insurance of military

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<sup>36</sup> <https://www.bloomberg.com/news/articles/2023-01-09/estonia-to-move-ahead-of-eu-with-plans-to-seize-russian-assets>

<sup>37</sup> <https://www.bundesregierung.de/breg-en/news/ukraine-recovery-conference-2129426>;  
<https://www.kyivpost.com/world/ukraine-needs-marshall-plan-to-rebuild-germanys-scholz.html>;

<sup>38</sup> <https://www.bundesregierung.de/breg-en/news/ukraine-recovery-conference-2129426>

risks, public-private partnership, funding of small business development).<sup>39</sup> It was previously reported that the participants of the Financial Ramstein include government ministers of partner-countries and representatives of various international organizations and institutions: the EU, G7, the IMF, the European Investment Bank, EBRD, OECD, and other IFIs.<sup>40</sup>

## (2) New International Reconstruction Agency

According to most experts, the confiscated Russian assets, as well as other sources of funding, should be accumulated in a single [newly created] international agency that will be responsible for funding and Rebuilding of Ukraine.

Timothy Ash suggests the name: **Agency for Ukraine Reconstruction and Accession (to the EU), AURA**.<sup>41</sup> International Working Group on Russian Sanctions suggests **Ukrainian Development Authority**.<sup>42</sup> White Paper “Modern Marshall Plan for Ukraine” prepared by the Washington DC-based German Marshall Fund (GMF): **Ukraine Reconstruction and Recovery Task Force (URRTF)**.<sup>43</sup>

There seems to be an agreement among all stakeholders that this Agency needs to be jointly controlled both by the donors and by Ukraine, and that a rigorous system of good governance, transparency, accountability and independent supervision should be established. For example, International Working Group on Russian Sanctions suggests that its governing body should have a majority of donors, while the minority should be Ukrainian state representatives.<sup>44</sup>

The director of BlackRock, Larry Fink noted that it is necessary to create an appropriate platform, organizational structure, calculate KPI, determine where the money will go, how to use it, and hire Ukrainians to manage it.<sup>45</sup>

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<sup>39</sup> PM Denys Shmyhal’s Telegram Chanel; 26 January 2023 [https://t.me/Denys\\_Smyhal/4390](https://t.me/Denys_Smyhal/4390)

<sup>40</sup> <https://ubn.news/the-first-financial-ramstein-meeting-will-take-place-this-week/>

<sup>41</sup> <https://timothyash.substack.com/p/ukraine-reconstruction;>

<sup>42</sup> International Working Group on Russian Sanctions; Working Paper #6. Page 6: <https://drive.google.com/file/d/1cBAR-tpJSqU8R1nVPHSKcSTFKeSEWbfi/view>

<sup>43</sup> Modern Marshall Plan for Ukraine White Paper GMF <https://www.gmfus.org/news/modern-marshall-plan-ukraine>

<sup>44</sup> International Working Group on Russian Sanctions; Working Paper #6. Page 6: <https://drive.google.com/file/d/1cBAR-tpJSqU8R1nVPHSKcSTFKeSEWbfi/view>

<sup>45</sup> <https://ubn.news/the-worlds-largest-investment-banks-are-ready-to-join-in-ukraines-restoration/>; January 20, 2023.

It is also crucial that the Agency avoids the bureaucratic overload, but at the same time operates in the most efficient manner, directing assistance, funding and investments where they are needed most, and making sure the local authorities are well equipped to use these funds. Therefore, the Agency needs to be compact, devoid of usual international bureaucracy overload, dynamic, IT-reliant, transparent, efficient and not prone to overspending on its own needs rather than directing the funds where they are needed most.

Experts also insist that “Civil society organizations as well as cities and municipalities must be closely involved”<sup>46</sup>, which was confirmed in the Joint Statement made on 3 February 2023 following the 24th EU-Ukraine Summit by Charles Michel, President of the European Council, Ursula von der Leyen, President of the European Commission, and Volodymyr Zelenskyy, President of Ukraine (“**EU-Ukraine Summit Joint Statement**”): “We acknowledged the crucial role civil society, local administrations and private actors will play in Ukraine’s reconstruction.”<sup>47</sup>

To this end, decentralization reforms have been very important for the progress of the economic and democratic development of Ukraine, and as the majority of reconstruction will be on the local level, there must be local capacity building for this process to succeed.

There have been several proposals pending with regards to the Agency: in March-April 2022, the European Council discussed setting up a Ukraine Solidarity Trust Fund.<sup>48</sup> So far, however, no unified comprehensive approach on how this Agency should be set up and administered has been adopted yet, and an agreement is needed by all key stakeholders.

### (3) An IFI-based Agency

In July 2022, the European Investment Bank (EIB) offered to create the new EU-Ukraine **Gateway Trust Fund** to support urgent and long-term investing in Ukraine's reconstruction.<sup>49</sup>

The World Bank has already established the new multi-donor **Ukraine Relief, Recovery, Reconstruction and Reform Trust Fund (URTF)**, managed by the World Bank, in order to

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<sup>46</sup> Modern Marshall Plan for Ukraine White Paper GMF <https://www.gmfus.org/news/modern-marshall-plan-ukraine>

<sup>47</sup> <https://www.consilium.europa.eu/en/press/press-releases/2023/02/03/joint-statement-following-the-24th-eu-ukraine-summit/>

<sup>48</sup> <https://www.reuters.com/world/europe/eu-set-up-ukraine-post-war-reconstruction-fund-draft-statement-says-2022-03-22/>; <https://www.consilium.europa.eu/en/press/press-releases/2022/05/05/remarks-by-president-charles-michel-at-the-high-level-international-donors-conference-for-ukraine/>

<sup>49</sup> <https://www.eib.org/en/press/all/2022-307-ukraine-recovery-conference-in-lugano-eib-presents-a-new-funding-tool-to-support-rebuilding-the-country>

provide a coordinated financing and support mechanism to assist the Government of Ukraine to sustain its administrative and service delivery capacity, conduct relief efforts, as well as plan and implement Ukraine’s reconstruction and reform agenda.<sup>50</sup>

However, **there are strong arguments against giving the World Bank, EBRD or another IFI the task of administering the Agency**, which were summarized by Timothy Ash: *“The World Bank has shareholders, including Russia, China, India, South Africa, who simply cannot have the same priority focus on Ukraine’s reconstruction. Obviously, Russia wants this to fail. Same also really for EBRD, as it’s original mission might have been “transition from plan to market” but it has since branched out to supporting development beyond Emerging Europe, to North Africa and Turkey. It’s shareholders include Russia, but also countries outside the Western alliance. Inevitably the likes of the World Bank and EBRD will be pulled in different directions both because of their diverse shareholder group but because of their more diversified focus. They are compromised in both in terms of their ownership structures and their focus. Both are distractions. And let’s be realistic here, the bulk of the finance for Ukraine reconstruction will come from Western taxpayers, which should have a razor focus here on ensuring Ukraine’s successful economic development as a national security priority. Why should these funds be administered by entities with just different objectives?”*<sup>51</sup>

#### **(4) A G7-based Agency**

GMF’s White Paper strongly advocated G7 for this purpose, also suggesting that the **European Union could serve as the secretariat**: “The G7 is the logical choice to lead on donor coordination, in partnership with Ukraine’s government, while allowing flexible opportunities for non-G7 countries such as Australia and other willing partners to opt into the reconstruction and recovery effort. To further elaborate on this concept, as a member of the G7, the European Union could serve as the secretariat...”<sup>52</sup> It is also important that G7 non-EU members, such as US, Canada, UK and Japan are equally involved in the rebuilding process through the G7 mechanisms.

G7 in turn already announced that it “will establish a multi-agency Donor Coordination Platform. Through this platform, we will coordinate existing mechanisms to provide ongoing short- and long-term support – with particular responsibility by the Finance Track for short

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<sup>50</sup> <https://www.worldbank.org/en/news/press-release/2022/12/16/new-multi-donor-trust-fund-established-to-channel-donor-support-to-ukraine>

<sup>51</sup> <https://timothyash.substack.com/p/ukraine>

<sup>52</sup> Modern Marshall Plan for Ukraine White Paper GMF <https://www.gmfus.org/news/modern-marshall-plan-ukraine>

term support – coordinate further international funding and expertise, and encourage Ukraine’s reform agenda as well as private sector led growth”.<sup>53</sup>

EU Commission President Ursula von der Leyen confirmed that: “The G7 Donors' Coordination Platform is now in place. The Platform will help coordinate the international assistance and will support your [Ukraine’s] reform agenda. Then, there is an engine, a motor, that is the secretariat that is led by representatives of your [Ukraine’s] government and the Commission. And that secretariat is present both here in Kyiv and in Brussels.”<sup>54</sup>

#### **IV. Ukraine’s Initiatives on Rebuilding [also see Annex to this Paper for more details]**

In April 2022 Ukraine established the **National Council for the Recovery of Ukraine from the Consequences of War**, but only as an advisory body under the President of Ukraine.<sup>55</sup> Co-chairs of the National Council are the Chairman of the Verkhovna Rada, the Prime Minister and the Head of the Presidential Office.<sup>56</sup> The National Council therefore relies entirely on the central government, notably lacking representatives of local governments and civil society.<sup>57</sup> The National Council consists of 24 working groups, which have developed various measures for the post-war recovery and development of Ukraine, the list of proposals for priority reforms, strategic initiatives and draft legal acts, which should be adopted for the effective work and recovery of Ukraine during the war and after the war.<sup>58</sup>

On 16 May 2022, the Secretary of the National Council, MP Danylo Getmantsev, reported that an **Advisory Council to the National Council** was created that includes world-famous economists.<sup>59</sup> However, no local governments or civil society organizations are reported to

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<sup>53</sup> <https://www.gov.uk/government/news/g7-leaders-statement-12-december-2022>

<sup>54</sup> Statement by President von der Leyen at the joint press conference with Ukrainian President Zelenskyy; 2 February 2023. [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_23\\_546](https://ec.europa.eu/commission/presscorner/detail/en/statement_23_546)

<sup>55</sup> <https://www.kmu.gov.ua/en/national-council-recovery-ukraine-war/about-national-council-recovery-ukraine-war>

<sup>56</sup> <https://zakon.rada.gov.ua/laws/show/266/2022#Text>

<sup>57</sup> <https://www.kmu.gov.ua/diyalnist/nacionalna-rada-z-vidnovlennya-ukrayini-vid-naslidkiv-vijni/sklad-nacionalnoyi-radi-z-vidnovlennya-ukrayini-vid-naslidkiv-vijni>

<sup>58</sup> In Ukrainian: <https://www.kmu.gov.ua/diyalnist/nacionalna-rada-z-vidnovlennya-ukrayini-vid-naslidkiv-vijni/robochi-grupi> In English: <https://www.kmu.gov.ua/en/national-council-recovery-ukraine-war/working-groups>

<sup>59</sup> The following experts were mentioned: Professor of Political Science at Stanford University Michael McFaul; EBRD Managing Director in Eastern Europe and Caucasus Matteo Patrone; former Finance Minister of Slovakia Ivan Miklos; Professor of Economics at the University of California Berkeley Yuri Gorodnichenko;

be involved in the Advisory Council.<sup>60</sup> Later Getmantsev confirmed that the Advisory Council was established,<sup>61</sup> but after that there was no information publicized about its progress.

Ukrainian Government also created a **website called “Ukraine Recovery Plan”**, which contains its vision of the recovery plan and mechanism: <https://recovery.gov.ua/>

Finally, Ukrainian Government created a new executive body associated with the Ministry of Infrastructure called **the State Agency for Reconstruction and Development of Infrastructure of Ukraine**. As Prime Minister Denys Shmyhal explained, the agency will optimize work processes and strive to avoid chaos in the planning and implementation of projects. The State Recovery Agency will be responsible for the infrastructure reconstruction’s efficiency, transparency, and accountability.<sup>62</sup> The Cabinet of Ministers appointed Deputy Minister of Infrastructure Mustafa Nayem as the Head of this State Recovery Agency.<sup>63</sup>

President Zelensky has also announced a private-sector initiative called Advantage Ukraine to rebuild major industrial capacity in ten key sectors, such as pharmaceuticals, logistics, military-defense, and energy.<sup>64</sup> The government is seeking \$400 billion for this initiative.

## V. Eurointegration and its impact on Reforms and FDI (Foreign Direct Investments)

One of the crucial elements of preparing Ukraine for the successful post-war reconstruction is internal reforms and modernization, accelerated by Ukraine’s EU Candidate status.

### (1) Reforms and FDI

There is a consensus among existing and potential investors that further substantial reforms are needed to ensure transparent, efficient, competitive and rule-of-law-based business

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President of the KSE Tymofiy Mylovanov; Professor at Stanford University Francis Fukuyama; World Bank Regional Country Director for Eastern Europe Arup Banerji; IMF’s Alternate Executive Director Vladyslav Rashkovan.

<sup>60</sup> <https://interfax.com.ua/news/economic/832557.html>; <https://t.me/getmantsevdanil/2966>

<sup>61</sup> <https://sluga-narodu.com/danylo-hetmantsev-nazvav-osnovni-tsili-ukrainy-pislia-viyny-styka-ekonomika-shvydke-vidnovlennia-ta-modernizatsiia/>

<sup>62</sup> <https://ubn.news/a-newly-created-state-agency-will-manage-ukraines-reconstruction/>

<sup>63</sup> <https://ukranews.com/en/news/911483-nayem-appointed-head-of-agency-for-reconstruction-and-development-of-infrastructure>

<sup>64</sup> Andrea Shalal, “Ukraine’s Zelenskiy ‘rings’ NYSE bell, seeks \$400 bln in foreign investment,” Reuters, September 6, 2022. <https://www.reuters.com/markets/us/ukraines-zelenskiy-rings-nyse-bell-quest-foreign-investment-2022-09-06/>

climate in Ukraine. Michael Harms, the Executive Director of the German Eastern Business Association (Ost-Ausschuss der Deutschen Wirtschaft) summarized this by stating that "Companies need reliable contacts, quick tenders and approval processes, and financial and legal security".<sup>65</sup>

The director of BlackRock, Larry Fink, noted that in conversations with President Zelenskyy, he emphasized that "Our goal is not to create new oligarchs but to create a new country, to create a capitalist system where capital can be used correctly. This does not mean we will restore the old Ukraine: we will build the best Ukraine."<sup>66</sup>

An article published by economists Veronika Movchan and Kenneth Rogoff notes that<sup>67</sup>:

*"The good news is that trade was already a bright spot before the latest invasion, with Ukraine having achieved a high degree of openness and become an important exporter... the significant progress Ukraine has made in negotiating past trade agreements, as well as the agreements it is currently discussing; combined, they should help provide a framework for deeper integration into global value chains in some industries."*

*"The situation with foreign direct investment (FDI) is much more difficult, but it will need to be solved for Ukraine to fulfil its trade potential. With Ukraine having suffered so much damage to its infrastructure, and with Russian drone and missile attacks laying waste to many factories and metal-processing plants, rebuilding is going to require a considerable investment of capital. Here, Ukraine's weak past performance in attracting foreign direct investment provides less of a foundation, and it will be essential to strengthen institutions and legal systems to stem corruption and other problems that have hampered FDI into the Ukraine. An optimistic but fully plausible view is that Ukraine will benefit greatly from the process of integrating into the EU, which offers a template for reform."*

## **(2) Eurointegration as the central element in transformation of Ukraine**

Ukraine has been on the path of Eurointegration for many years, harmonizing its legislation with EU legislation, but this process was quite slow and ineffective. The first real impact on this process was made by the EU Association Agreement, including The Deep and Comprehensive Free Trade Areas (DCFTA), signed in 2014<sup>68</sup>. The new formal EU Candidate

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<sup>65</sup> <https://www.dw.com/en/german-and-eu-leaders-call-for-ukraine-marshall-plan/a-63535319>

<sup>66</sup> <https://ubn.news/the-worlds-largest-investment-banks-are-ready-to-join-in-ukraines-restoration/>; January 20, 2023.

<sup>67</sup> <https://voxukraine.org/en/reconstructing-ukraine-trade-and-foreign-direct-investment/>

<sup>68</sup> <https://www.consilium.europa.eu/en/policies/eastern-partnership/ukraine/>



status, granted on 23 June 2022<sup>69</sup>, and the accession prospect accelerated this process and made it a top priority for Ukrainian society and for all Government institutions. Even the war does not slow down preparation of Ukrainian legislation and institutions for EU membership.

Ukraine's progress was assessed at the EU-Ukraine Summit held in Kyiv on 3 February and the immediately preceding meeting with 15 EU Commissioners on 2 February 2023, with the main results summarized by EU.<sup>70</sup>

Edward Chow in recent Op-ed in Kyiv Independent stated that: "European integration is the North Star for economic reform in Ukraine."<sup>71</sup> Anders Aslund in his remarks at the Atlantic Council webinar, noted that EU accession was one of the key factors in the phenomenal success of Central and Eastern European countries in the 90-s (Baltic countries, Poland, Czech Republic and others), and it is the central element in transformation of Ukraine<sup>72</sup>.

The fundamental connection between EU accession and successful rebuilding and transformation of Ukraine was underlined in the EU-Ukraine Summit Joint Statement: "...relief, reconstruction, reforms and Ukraine's European path are mutually reinforcing, underpinning Ukraine's efforts in its modernization and alignment with EU standards."<sup>73</sup>

EU accession process provides for numerous benefits to Ukraine. For example, Ukraine has signed an agreement on participation in the EU's Single Market Program<sup>74</sup>, which provides EU financial support with a budget of €4.2B for seven years. It will simplify access to markets, help create a favorable business environment, promote business development and growth, and ensure the competitiveness and stability of companies and entire economic sectors. It is envisaged that Ukraine will also participate in the *Enterprise Europe Network* and Erasmus for Young Entrepreneurs, and in many other programs.<sup>75</sup>

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<sup>69</sup> <https://www.consilium.europa.eu/en/policies/eastern-partnership/ukraine/#candidate>

<sup>70</sup> <https://www.consilium.europa.eu/en/meetings/international-summit/2023/02/03/>

<sup>71</sup> <https://kyivindependent.com/opinion/edward-c-chow-energy-european-intergration>

<sup>72</sup> <https://www.youtube.com/watch?v=94vVKvJEXbl>; 23 January 2023

<sup>73</sup> <https://www.consilium.europa.eu/en/press/press-releases/2023/02/03/joint-statement-following-the-24th-eu-ukraine-summit/>

<sup>74</sup> <https://www.kmu.gov.ua/en/news/denys-shmyhal-ukraina-ta-ies-uklaly-dvi-uhody-za-pidsumkamy-spilnykh-konsultatsii-uriadu-ta-ievrokomisii>

<sup>75</sup> <https://ubn.news/ukraine-is-close-to-enacting-the-e4-2b-single-market-program-with-the-eu/>; January 20, 2023.

### (3) Conditionality

Negotiations for the EU accessions (as well as a large portion of the 2023 EU's macroeconomic aid<sup>76</sup>) depend on certain conditions, under the broad umbrella of alignment with EU legislation, completing fundamental reforms related to the rule of law, judiciary and property rights protection.

European Council's representative Ana Pisonero noted that the European Council granted Ukraine candidate status on the condition that specific steps would be taken: reforms of the Constitutional Court; the continuation of judicial reform; the fight against corruption, including the appointment of the head of the specialized anti-corruption prosecutor's office; the fight against money laundering; the implementation of the anti-oligarch law; the harmonization of audiovisual legislation with European legislation; changes in the legislation on national minorities.<sup>77</sup>

On 17 January 2023 Ukraine's Prime Minister Denys Shmyhal acknowledged that it is important for Ukraine to timely and fully accomplish its "homework".<sup>78</sup>

The topic of conditionality also runs through the EU-Ukraine Summit Joint Statement.<sup>79</sup>

**The new European Commission's report on Ukrainian legislation's alignment with EU legislation was published on 1 February 2023<sup>80</sup>**, but it reflects the period up to June 2022, which makes it outdated because Ukraine has made multiple alignment steps since then. The summary of the steps undertaken in the fourth quarter of 2022 is provided by Vox Ukraine.<sup>81</sup>

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<sup>76</sup> <https://www.eurointegration.com.ua/articles/2023/01/16/7154226/>

<sup>77</sup> <https://ubn.news/the-european-commissions-report-on-ukrainian-legislations-conformity-with-eu-legislation-in-order-to-join-the-eu-is-at-the-final-stage/>

<sup>78</sup> <https://www.kmu.gov.ua/en/news/premier-ministr-dlia-ukrainy-vazhlyvo-zavershyty-konkurs-na-zainiattia-posady-dyrektora-nabu-do-nastupnoho-samitu-ukraina-ies>

<sup>79</sup> <https://www.consilium.europa.eu/en/press/press-releases/2023/02/03/joint-statement-following-the-24th-eu-ukraine-summit/>

<sup>80</sup> [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD\\_2023\\_30\\_Ukraine.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_30_Ukraine.pdf)

<sup>81</sup> <https://voxukraine.org/nablyzhennya-do-yes-oglyad-reform-za-chetvertyj-kvartal-2022/>

## Annex: Overview of Ukraine’s Plans for the Mechanism to Rebuild Ukraine

Ukrainian Government advanced the first plans for Rebuilding Ukraine in March 2022. According to the statement of the Prime Minister Shmyhal on 3 March 2022, President Zelensky has instructed the Cabinet of Ministers of Ukraine (the “**CMU**”) to establish four funds, resources of which will be used to restore Ukrainian economy: 1) Destroyed Property and Infrastructure Restoration Fund; 2) Fund for Economic Recovery and Transformation; 3) Debt Management and Redemption Fund; 4) Fund for Support of Affected Businesses.<sup>82</sup>

The mechanism was chosen to open bank accounts, to which any individual or legal entity may transfer money. On 29 July 2022, the Resolution of the CMU “On Approval of the Procedure for Use of Funds from the Account “Restoration of Destroyed Property and Infrastructure Fund” No. 879 was adopted.<sup>83</sup> This is one of the official accounts for donations in support of Ukraine “United24”.<sup>84</sup> There are accounts for supporting the Fund for Economic Recovery and Transformation,<sup>85</sup> the Debt Management and Redemption Fund,<sup>86</sup> the Small and Medium Business Support Fund.<sup>87</sup>

Subsequently, a new approach has been declared by Ukrainian leadership. On 13 September 2022, the Head of the Office of the President of Ukraine (hereinafter – the “**OPU**”) A. Yermak announced that “next week” (i.e., from 19 September to 23 September 2022) President Zelensky will submit to the Verkhovna Rada (Parliament) the Draft Law on the activities of the Ukraine Restoration Fund (the “**Fund**”). However, according to A. Yermak “before that, the document will be presented to the partner stated, and Ukraine will wait for their comments.”<sup>88</sup> On 22 September 2022, then Deputy Head of the OPU K. Tymoshenko announced that the Draft Law on the Fund will provide for the following:

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<sup>82</sup> <https://www.epravda.com.ua/news/2022/03/3/683202/>

<sup>83</sup> <https://zakon.rada.gov.ua/laws/show/879-2022-%D0%BF#Text>

<sup>84</sup> <https://zakon.rada.gov.ua/laws/show/472-2022-%D0%BF#n21> ;  
<https://www.kmu.gov.ua/gromadskosti/fondi-vidnovlennya-ukrayini/destroyed-infrastructure-fund-vidnovlennya-infrastrukturi>

<sup>85</sup> <https://www.kmu.gov.ua/gromadskosti/fondi-vidnovlennya-ukrayini/economy-restoration-fund-vidnovlennya-ekonomiki>

<sup>86</sup> <https://www.kmu.gov.ua/gromadskosti/fondi-vidnovlennya-ukrayini/public-debt-fund-obslugovuvannya-borgu>

<sup>87</sup> <https://www.kmu.gov.ua/gromadskosti/fondi-vidnovlennya-ukrayini/affected-business-fund-pidtrymka-biznesu>

<sup>88</sup> <https://www.president.gov.ua/news/andriy-yermak-i-kirilo-tymoshenko-prezentuvali-poslam-inozem-77741>

- the Fund will deal with both fundraising and reconstruction projects, including their financing;
- control over the Fund by donor countries (75% of the members of the Supervisory Board of the Fund will represent these countries and international organizations; the Supervisory Board will choose the management and implement all initiatives of the Fund);
- information about the objects that need to be restored will be submitted to the Fund. The Fund will carry out all procurement procedures and select contractors. After that, tripartite contracts will be concluded between the Fund, asset holders of respective facilities and subcontractors chosen by the Fund.

There were various statements made by K. Tymoshenko and the Chairman of the Verkhovna Rada R. Stefanchuk that the Draft Law on the Fund will be submitted to the Verkhovna Rada shortly, so that the Fund will be operational in 2022.<sup>89</sup> However, as of 30 January 2023 the text of the Draft Law has not yet been published, and it is not known from open sources whether the OPU has submitted the Draft Law to the Verkhovna Rada.

Besides, on 19 October 2022, the Verkhovna Rada adopted the Law “On Amendments to the Law of Ukraine “On the State Budget for 2022” regarding the creation of Fund for Liquidation of the Consequences of Armed Aggression. The Law provides for the creation of the Fund in 2022 as part of special fund of the State Budget, i.e. as a specific financial mechanism. Money of the Fund must be used for the construction, reconstruction, restoration, capital repairs of public buildings, civil protection structures, critical infrastructure facilities, housing for people who lost their homes, compensation for damage to life and health caused by the armed aggression of the Russian Federation, etc. The procedure for use of the money is determined by the Cabinet of Ministers of Ukraine, the respective report is submitted by the State Treasury Service of Ukraine to number of state bodies on a monthly basis.<sup>90</sup>

Property of the Russian Federation and its residents in the monetary form seized in Ukraine is the source for formation of the Fund.<sup>91</sup> UAH 17B of confiscated funds from Russian banks have already been directed to the Fund.<sup>92</sup>

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<sup>89</sup> <https://www.ukrinform.ua/rubric-economy/3577108-u-radu-cogo-tizna-vnesut-zakonoproekt-pro-fond-vidnovlenna-ukraini-op.html>; <https://www.rada.gov.ua/news/Top-novyna/228274.html>

<sup>90</sup> <https://itd.rada.gov.ua/billInfo/Bills/Card/40445>

<sup>91</sup> <https://zakon.rada.gov.ua/laws/show/2116-20#Text> (Article 4)

<sup>92</sup> <https://ubn.news/ukraine-already-knows-where-to-get-the-first-uah-110b-for-reconstruction/>