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## Article 122 TFEU:

# The legal workaround to freeze Russian assets and possible repercussions

The EU's decision to immobilise the assets of the Russian Central Bank was a bold move just days before the European Council on 18–19 December. The measure could signify a decisive juncture for the EU but does not come without risks and legal challenges.

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## Summary

The EU has now temporarily – but possibly indefinitely – immobilised the assets of the Russian Central Bank. The decision was a bold move taken on the basis of a 'crisis article': individual Member States did not have veto rights, and it is no longer necessary to renew the freezing every six months. Shortly before the European Council on 18–19 December, the urgency of the matter has prevailed.

The move may imply that the EU has broken its current impasse by asserting its position on the global stage and directly confronting internal dissent. However, the measure is not without risks and legal challenges: it could affect the EU's international standing, specifically the relationship with the United States, and if the decision were to be annulled or amended, it could also have an impact on the future credibility of EU institutions. It may further trigger vetoes against EU decisions that require unanimity, particularly by countries which have strongly opposed the workaround. The increased use of Article 122 also calls for a broad reflection on decision making in times of crisis, as this legal basis entails a lack of democratic control and transparency.

## About the author

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The opinions expressed in this publication are those of the author.

## Introduction

In reaction to the full-scale invasion of Ukraine, the EU decided to freeze the assets of the Russian Central Bank in 2022. Since then, the freezing and other restrictive measures against Russia have had to be prolonged by a unanimous decision of all 27 Member States every six months. On 12 December 2025, the Council of the EU used Article 122 of the Treaty on the Functioning of the European Union (TFEU), a legal basis allowing for a vote by qualified majority, to immobilise these assets. The EU now avoids the recurring risk of expiring sanctions that would allow the Russian Central Bank to repatriate its assets.

This analysis provides an overview of the measure and discusses the implications of using Article 122. It proceeds as follows: The first section sets out the treaty article, and the second section examines previous and most recent Council regulations based on Article 122. After that, section three analyses how the Council voted and how the assets are now locked, before section four turns to criticism and legal challenges. Subsequently, section five looks ahead to the European Council meeting that starts on 18 December, and section six explores four potential repercussions of the recourse to Article 122. The final section concludes with a call to consider constitutionalising the EU's emergency decision-making.

## 1. 'Crisis article' 122 TFEU

Article 122 TFEU is, as SIEPS analysed in 2023,<sup>1</sup> one of three 'crisis articles' in the EU primary law that enables the Council, on a proposal from the Commission, to apply special procedures. The European Parliament does not participate as a co-legislator when the crisis articles are used. This means that of the EU's two co-legislators, which jointly give EU decisions democratic legitimacy, one is sidelined when Article 122 is used.

### Box 1: Article 122 TFEU<sup>2</sup>

1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.
2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

## 2. Previous and most recent Council regulations based on Article 122

Six regulations based on Article 122 were adopted in 2022 and 2023, with five of them related to energy-related consequences of Russia's war and one in the field of public health. During the previous 12 years since the Lisbon Treaty entered into force (i.e., between 2010 and 2022) only five such regulations were adopted. One was linked to the euro crisis, one to the migration crisis and three to the pandemic or economic recovery.<sup>3</sup>

<sup>1</sup> Wetter Ryde, A. (2023). *Oklart rättsläge kring EU:s krishantering – när kan artikel 122 användas?* Swedish Institute for European Policy Studies (SIEPS). <https://sieps.se/publikationer/2023/oklart-rattslage-kring-eus-krishantering-nar-kan-artikel-122-anvandas/>

<sup>2</sup> European Union. (2008). Consolidated version of the Treaty on the Functioning of the European Union, Article 122. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E122:EN:HTML>

<sup>3</sup> See for more details: Wetter Ryde, A. (2023). *Oklart rättsläge kring EU:s krishantering – när kan artikel 122 användas?* Swedish Institute for European Policy Studies (SIEPS). <https://sieps.se/publikationer/2023/oklart-rattslage-kring-eus-krishantering-nar-kan-artikel-122-anvandas/>

In 2025, the Council has adopted two more regulations based on Article 122, both directly related to Russia's war against Ukraine. The first regulation, the Security Action for Europe (SAFE) regulation,<sup>4</sup> will give Member States financial support from the EU in the form of loans for purchasing defence material. SAFE functions in a similar way as the schemes that were put in place during the euro crisis (European Financial Stability Mechanism, EFSM) and the pandemic (Support to mitigate Unemployment Risks in an Emergency, SURE).

Council Regulation 2025/2600, adopted on 12 December, is the only other regulation based on Article 122 in 2025. According to the careful wording in Article 1, it creates 'exceptional and temporary emergency measures addressing the serious economic difficulties within the Union caused by Russia's actions in the context of its war of aggression against Ukraine, and the risk of further deterioration of the economic situation in the Union.'<sup>5</sup> The concrete measures are generally described as 'freezing', notably the prohibition of transferring assets and reserves for the benefit of the Russian Central Bank or related entities, the management of assets and reserves, and a range of safeguards. They are, according to the EU institutions, all seen as falling within the scope of Article 122(1), which serves as the legal basis for the Regulation.

### 3. Majority voting in the Council and locking the assets

The recourse to Article 122(1) seems like a bold legal workaround allowing for a vote on the Regulation by qualified majority. This avoids relying on the EU's normal procedure for restrictive measures ('sanctions') that must be unanimously adopted and renewed in the Council every six months under the legal framework for the Common Foreign and Security Policy (CFSP). The new legal basis thus deprives individual Member States, such as Hungary or Slovakia, of their veto right.

Belgium, which has been at the centre of the debate because the vast majority of frozen Russian Central Bank assets is located in the Belgian entity Euroclear, agreed to the Regulation due to a 'cooperative attitude'.<sup>6</sup> The Council voted on the Regulation by written procedure. The Council Presidency can, if all Member States agree, trigger this procedure for fast-track decision making outside formal Council meetings asking them to reply in writing: 'Member States then explicitly resort to the *majority thresholds* to adopt a proposal [...], a legislative act is deemed to be adopted *as soon as the number of positive replies equals the number of votes required*.'<sup>7</sup> The absence of the unanimity requirement thus undoubtedly accelerated the decision-making process in the case of Council Regulation 2025/2600.

While avoiding a regular renewal of the freeze, the EU stresses the 'temporary nature'<sup>8</sup> of the measures. The procedure for determining the duration of the freeze works as follows: If the EU decides that the measures under the Regulation should end, the Council must amend the Regulation by a qualified majority (Article 6(2)). This would be based on a proposal from the Commission, which will undertake an annual review of the Regulation

**'The absence of the unanimity requirement thus undoubtedly accelerated the decision-making process in the case of Council Regulation 2025/2600.'**

<sup>4</sup> European Union. (2025). *Council Regulation (EU) 2025/1106*. Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32025R1106>

<sup>5</sup> European Union. (2025). *Council Regulation (EU) 2025/2600*. Official Journal of the European Union, L 260. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL\\_202502600](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202502600)

<sup>6</sup> Belga News Agency. (2025, December 12). *Belgium votes for European emergency law but continues to oppose Euroclear loan*. <https://www.belganewsagency.eu/belgium-votes-for-european-emergency-law-but-continues-to-oppose-euroclear-loan>

<sup>7</sup> Van Aken, W. (2012). *Voting in the Council of the European Union*. Swedish Institute for European Policy Studies (SIEPS). [https://sieps.se/media/zuhndvxx/voting-in-the-council-of-the-european-union-2012\\_2.pdf](https://sieps.se/media/zuhndvxx/voting-in-the-council-of-the-european-union-2012_2.pdf), p. 18.

<sup>8</sup> Council of the European Union. (2025, December 12). *Council decides to prohibit transfers of immobilised Central Bank of Russia assets back to Russia*. <https://www.consilium.europa.eu/en/press/press-releases/2025/12/12/council-decides-to-prohibit-transfers-of-immobilised-central-bank-of-russia-assets-back-to-russia/>

for the first time by 31 December 2026 (Article 5). There are three conditions that Council Regulation 2025/2600 sets out for unfreezing the assets: First, Russia must cease its war of aggression. Second, it must provide ‘reparations to Ukraine [...] to allow for reconstruction without adverse economic or financial consequences for the Union’. And third, Russia’s actions in the context of its war of aggression against Ukraine must ‘cease to pose a serious risk of severe difficulties to the economy of the Union and its Member States’ (Article 6(1)).<sup>9</sup>

#### 4. Criticism and legal challenges

**‘This circumvention has faced criticism and even legal challenges in recent years.’**

Article 122 has repeatedly served as the legal basis for Council regulations in severe economic crises, enabling swift action to ensure financial assistance or tackle supply issues. It bypasses the Ordinary Legislative Procedure (formerly known as co-decision) and can help override national vetoes in the Council. This circumvention has faced criticism and even legal challenges in recent years.

In the case of the frozen assets, Belgium, Italy, Bulgaria and Malta reportedly added a statement to the Council minutes arguing that the use of Article 122 ‘implies legal, financial, procedural, and institutional consequences that might go well beyond this specific case’<sup>10</sup> and that the decision should not ‘constitute precedent’ for circumventing the unanimity requirement of CFSP. Just before the Council took the decision by written procedure, Viktor Orbán called the step ‘unlawful’ and reacted by claiming that ‘Brussels will step over the Rubicon today, with a written voting starting which will cause irreparable damage to the Union.’<sup>11</sup>

In earlier cases of Council regulations based on Article 122, the European Parliament took the Council to court and filed a request to annul the SAFE regulation in August 2025.<sup>12</sup> The Parliament contests the legal basis but supports the instrument itself, as President Roberta Metsola repeatedly stressed. Energy-related Council regulations that were adopted based on Article 122 in 2022 have also been challenged by energy company Exxon and by Poland before the Court of Justice of the EU.<sup>13</sup>

#### 5. The December 2025 European Council meeting

Regulation 2025/2600 is a precondition for a reparations loan relying on the frozen assets that would help meeting Ukraine’s financial needs and that is currently under discussion. But other financing options are still possible, and no financing decision has been taken yet.

The European Commission has put a package of legislative proposals on the table, in particular a regulation establishing a Reparations Loan to Ukraine using the frozen assets and an alternative solution that foresees EU borrowing for a loan to Ukraine that relies on the EU budget.<sup>14</sup> A proposed amendment to the multi-annual financial framework serving

<sup>9</sup> European Union. (2025). *Council Regulation (EU) 2025/2600*. Official Journal of the European Union, L 260. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL\\_202502600](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202502600)

<sup>10</sup> Møller-Nielsen, T. (2025, December 12). *Italy, Bulgaria and Malta join Belgium in push for alternatives to €210 billion Ukraine loan*. Euractiv. <https://www.euractiv.com/news/italy-bulgaria-and-malta-join-belgium-in-push-for-alternatives-to-e210-billion-ukraine-loan/>

<sup>11</sup> Reuters (2025, December 12). *Hungary protests “unlawful step” by EU to freeze Russian assets, Orban says*. <https://www.reuters.com/world/europe/hungary-protests-unlawful-step-by-eu-freeze-russian-assets-orban-says-2025-12-12/>

<sup>12</sup> European Union. (2025). *Communication 2025/C 5209*. Official Journal of the European Union. <https://eur-lex.europa.eu/eli/C/2025/5209/oj/eng>

<sup>13</sup> Poland has meanwhile withdrawn its action. See Court of Justice of the European Union. (2025). Order in Case C-301/21. <https://curia.europa.eu/juris/document/document.jsf?docid=301217>. The proceedings in the Exxon case are still ongoing. See European Union. (2023). Official Journal of the European Union, C 54. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC\\_2023\\_054\\_R\\_0027](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2023_054_R_0027)

<sup>14</sup> European Commission. (2025, December 7). *EU proposes measures to use frozen Russian assets for Ukraine reparations*. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_2903](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2903)

both options would, however, require unanimity among the 27 Member States. Two further proposals that would put safeguards in place for the Reparations Loan have not been made public yet.

At its meeting from Thursday, 18 December 2025, onwards, the European Council will discuss the question if and, if yes, how to use the newly frozen Russian Central Bank assets for Ukraine. Any political agreement in the European Council on the next steps will normally have to be found by consensus.

On the one hand, the abovementioned statement by Belgium, Italy, Bulgaria and Malta reportedly invites the Commission and the Council ‘to continue exploring and discussing alternative options in line with EU and international law, with predictable parameters, presenting significantly less risks, to address Ukraine’s financial needs, based on an EU loan facility or bridge solutions.’<sup>15</sup> These four countries seem to prefer the alternative option for supporting Ukraine via EU borrowing.

On the other hand, Germany has very much pushed the reparations loan,<sup>16</sup> and seven Member States (Estonia, Finland, Ireland, Latvia, Lithuania, Poland and Sweden) threw their weight behind the Commission’s reparations loan proposal in a recent letter.<sup>17</sup> At a press conference with Ukrainian President Volodymyr Zelenskyy on 15 December 2025, German Chancellor Friedrich Merz alluded to the possibility of adopting a decision on the reparations loan under Article 122, too. He said that after an initial decision freezing Russian assets in Europe permanently, ‘[t]he question of what funds we will generate from this to provide further support to Ukraine will, I hope, be finally resolved politically this week.’ Merz continued that there was ‘a legal basis for this in the EU Treaty, Article 122, which allows for a decision by qualified majority. Only this decision is possible on the basis of Article 122 [...]’ He added that all other options on the table, such as unused recovery funds or the issuing European bonds, would require unanimity which cannot be achieved. According to him, this leaves the EU ‘with only this instrument, which we can decide on by qualified majority, both in terms of its establishment and its use, and we intend to discuss this further in the European Union in the coming days.’<sup>18</sup> The European Council is facing a decisive December meeting.

**‘The European Council is facing a decisive December meeting.’**

## 6. Four possible repercussions of a bold move

The Commission and a large number of Member States have pushed through a measure that could potentially affect the EU in four ways: internationally, with regard to the credibility and consistency of its actions, in its intergovernmental decision-making capacity, and in terms of a lack of democratic control and transparency.

Firstly, while the EU ‘is putting its thumb on the scales in the so-called peace talks over Ukraine’s future’<sup>19</sup>, as Martin Sandbu of the Financial Times has put it, the measure could seriously upset the United States and thus harm the EU’s international standing. The initial

<sup>15</sup> Sorgi, G. (2025, December 7). *EU heavyweight Italy joins Belgium in opposing Russian frozen assets plan*. Politico. <https://www.politico.eu/article/eu-italy-joins-belgium-opposing-russia-frozen-assets-plan/>

<sup>16</sup> Merz, F. (2025, September 25). *A new financial impetus for peace in Ukraine*. Financial Times. <https://www.ft.com/content/3aacc930-9f5e-4558-90f1-62bf47a31cd5>

<sup>17</sup> *Joint letter on reparations loan* (2025, December 7). Politico. [https://www.politico.eu/wp-content/uploads/2025/12/07/Joint-letter-on-reparations-loan-251207.clean\\_.pdf](https://www.politico.eu/wp-content/uploads/2025/12/07/Joint-letter-on-reparations-loan-251207.clean_.pdf)

<sup>18</sup> Bundesregierung (2025, December 15). *Chance auf einen Friedensprozess ist real*. Pressekonferenz von Bundeskanzler Merz und Präsident Selenskyj. <https://www.bundeskanzler.de/bk-de/aktuelles/pressekonferenz-merz-selenskyj-2399662> (translation by the author)

<sup>19</sup> Sandbu, M. (2025, December 14). *Brussels is finally flexing its muscle on Russian assets*. Financial Times. <https://www.ft.com/content/3dc72bb3-df37-4ac2-b167-5599968c29b1>

**‘Given that the EU did not manage to fight back against Trump’s tariffs despite being a powerful trade bloc, would one expect it to withstand US and Russian pressure?’**

28-point peace plan<sup>20</sup> that was allegedly drafted by the US with significant Russian input contained clauses for investing the frozen Russian assets in ‘US-led efforts to rebuild and invest in Ukraine’ (with the US receiving half of the profits) and ‘a separate US-Russian investment vehicle that will implement joint projects in specific areas’. Europe was expected to contribute an additional \$100 billion for Ukraine’s reconstruction rather than reducing its bill through stricter asset freezing measures and potentially using the assets for a reparations loan to Ukraine.

Secondly, the EU may need to reverse the freezing of Russian Central Bank assets at some point. This is called ‘orderly winding down’ in Article 6(2) of the Regulation 2025/2600. Such a development is very hypothetical at the time of writing but might happen due to a court ruling – for example, by the Court of Justice of the EU – that could annul the Regulation due to an inappropriate legal basis. However, the Court would probably decide to maintain the Regulation’s effects. Another situation that could lead to an unfreezing is pressure from the US and Russia, politically or in form of retaliation. Given that the EU did not manage to fight back against Trump’s tariffs despite being a powerful trade bloc, would one expect it to withstand US and Russian pressure? In such a scenario, the EU’s credibility would be jeopardized both internally and externally. The actions of the European Commission and the Council of the EU would also become inconsistent with the three conditions of the Council Regulation (Article 6(1)). Ultimately, the EU budget, its Member States and the European taxpayer could have to shoulder the burden of reconstructing Ukraine or even of repaying the loan given to it.

Thirdly, the most significant and immediate consequence of invoking Article 122(1) and voting by qualified majority is the potential for even greater ‘bad blood’ than that caused by the 2015 decision on refugee relocation, which saw four Central and Eastern European countries outvoted. Hungary could now be encouraged to veto anything that requires unanimous voting in the Council of the EU or consensus in the European Council. This would lead to EU decision making becoming paralysed and encountering a far-reaching deadlock. Many important EU decisions are taken unanimously, particularly those relating to CFSP and previous packages of restrictive measures (‘sanctions’) against Russia. Would sanctions against Russian individuals and companies simply expire, or could the EU find a legal workaround? Another possible, albeit potentially more damaging solution would be to strip Hungary of its voting rights via the Article 7 TEU procedure. However, with the support of just one other Member State, Hungary could prevent this from happening. It is important to note that the Article 7 TEU procedure started in 2018 and is not a fastpaced solution. Might we therefore see a real ‘coalition of the willing’ emerge, creating permanent structures that exclude some EU Member States?

Fourthly, the use of Article 122 implies a lack of democratic control and transparency. Under normal circumstances, the European Parliament is the Council’s co-legislator, but it does not participate in an Article 122 decision. By invoking Article 122 for the second time in nine months, the European Commission has likely further strained its relationship with the European Parliament. Although the Parliament supports the content of the Regulation, as in the case of SAFE, it could decide to take the Council (and thus indirectly the Commission) to court again. Furthermore, when decision making is based on Article 122, national parliaments’ access to information is limited, which thus reduces their ability to effectively

<sup>20</sup> Hall, B. (2025, November 21). Annotated: the full text of Donald Trump’s 28-point Ukraine-Russia peace plan. *Financial Times*. <https://www.ft.com/content/44d1c236-2a47-48e2-8638-0153db9e6a4b>



hold national governments to account. Just nine days passed between the Commission's presentation of its proposal to freeze the assets and the adoption of the Council Regulation. Alongside the Finnish Eduskunta, which formally supported its government's position,<sup>21</sup> only the Danish Folketing reported that it had started to scrutinise the file.<sup>22</sup>

## 7. Conclusion

Approximately €210 billion euro of Russian Central Bank assets are now temporarily but possibly indefinitely immobilised. Using the 'crisis article' Article 122(1) was a bold move: it took away the veto right of individual Member States in the Council, removed the obligation of renewing the freezing every six months, and sidelined the European Parliament.

**'Is the lack of democratic control and transparency justified, or could it be remedied?'**

The EU has always muddled through until now, finding a way out of deep crises. However, geopolitical and internal tensions have rarely been greater. While one cannot claim that this legal workaround has brought the EU to the brink today, the repercussions of a scheme amounting to only about 1% of the EU's GDP are potentially huge.<sup>23</sup> At the same time, 12 December 2025 could be a date that will have marked a crucial step for the EU in emancipating itself and asserting its position on the international stage, as well as confronting internal dissent head on.

This decision, as part of the trend towards increased use of Article 122, also calls for a broad reflection on the way decisions should be taken in times of crisis. Is the lack of democratic control and transparency justified, or could it be remedied? Does the EU need a proper framework for cases of emergency or even constitutionalised procedures for a state of emergency?<sup>24</sup> Considering the frequent use of Article 122 in recent years and the multiple crises that the EU is facing, such a fundamental question should not be ignored, despite the ongoing day-to-day work to tackle the challenges of geopolitics and decision making.

<sup>21</sup> Parliament of Finland. (2025). *Grand Committee supports the proposal for a ban on transfers of the immobilised assets of the Central Bank of Russia*. <https://www.eduskunta.fi/EN/tiedotteet/Pages/Grand-Committee-supports-the-proposal-for-a-ban-on-transfers-of-the-immobilised-assets-of-the-Central-Bank-of-Russia.aspx>

<sup>22</sup> Interparliamentary EU Information Exchange. (2025). *Proposal COM(2025) 3501*. <https://ipex.eu/IPEXL-WEB/document/COM-2025-3501>

<sup>23</sup> 1% of the EU's GDP is roughly €180bn. The total amount of assets of the Russian Central Bank is €210bn.

<sup>24</sup> For more details, see Wetter Ryde, A. (ed.). (2023). *EU Crisis Management*. Swedish Institute for European Policy Studies (SIEPS). <https://sieps.se/en/publications/2022/eu-crisis-management/>, in particular the chapter by Kreuder-Sonnen, C. The Case for an EU Emergency Constitution, pp. 59-74.