



By: TA | AP Insight

# Russia has limited legal options to challenge EU frozen asset plan



A core question for **European Union leaders** discussing whether to use frozen Russian assets to help Ukraine is whether the idea is legally sound. But even if they approve the plan, Russia has limited options for challenging it in court.

The 27-nation bloc's leaders are set to decide on whether to use tens of billions of euros in **frozen Russian Central Bank assets** to underwrite a loan to meet Ukraine's military and financial needs over the next two years.

The bulk of the assets are held in Belgium-based financial clearinghouse **Euroclear**.

Belgium said Thursday that it wants ironclad guarantees that it will be protected from retaliation — legal, financial or otherwise — and that's become a major stumbling block.

## Russia tries targeting Euroclear

Russia's Central Bank filed a complaint last week at Moscow's Arbitration Court against Euroclear, trying to recover the assets that have been frozen since the start of the full-scale invasion of Ukraine on Feb. 24, 2022.

The central bank said in a statement that the lawsuit was over the "illegal blocking and use of its assets, in the amount of the illegally withheld assets and lost profits."

Should the central bank prevail, it would struggle to collect on any judgment. For more than a decade, the EU has banned enforcement of Russian court judgments involving the frozen assets.

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Belgium has voiced repeated concerns about its liability under a 1989 treaty with Russia encouraging economic ties between the countries.

Belgian Prime Minister Bart de Wever said on Thursday that any EU plan must take into account the "financial risks arising from the bilateral investment treaty."

The arbitration options provided in the treaty are limited and designed for Russian companies investing in Belgium.

The mechanism is for "disputes between a private investor and the state in which the investment was made," lawyer Patrick Heinemann, who co-authored a legal risk analysis on the topic, told The Associated Press.

## Other options

Russia could try to file a lawsuit in any domestic court in the world where its assets are held, but would have to waive its own state immunity to do so — opening itself up to a host of other legal challenges, Heinemann says.

And Belgium, or any other country holding Russian assets, would have to agree to waive their own immunity for a lawsuit to proceed.

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Moscow could challenge Euroclear, a private company, in a Belgian court, but would then in turn be vulnerable to a countersuit by Euroclear and any outcome would likely be unenforceable in Belgium.

## A last resort

Although Russia isn't part of the EU, it could contest any decision made by Brussels at the bloc's top court in Luxembourg. It's rare for nonmember states to bring complaints at the Court of Justice of the European Union, but it

has happened, including by Moscow over EU sanctions packages. That complaint was found to be inadmissible.



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More recently, Venezuela went after the EU over sanctions placed on the South American country over **human rights abuses**.

Caracas was also unsuccessful, with judges finding Brussels has wide latitude over foreign security policy.

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The United Nations' top court, the International Court of Justice based in The Hague, is also an unlikely arena, says Mike Becker, an expert on international human rights law at Trinity College Dublin.

“It is not clear that any treaty in force confers jurisdiction upon the Court to hear such a case,” he told the AP.

A recent white paper by law firm Covington & Burling came to a similar conclusion, noting that “Russia does not accept the compulsory jurisdiction of the Court.”