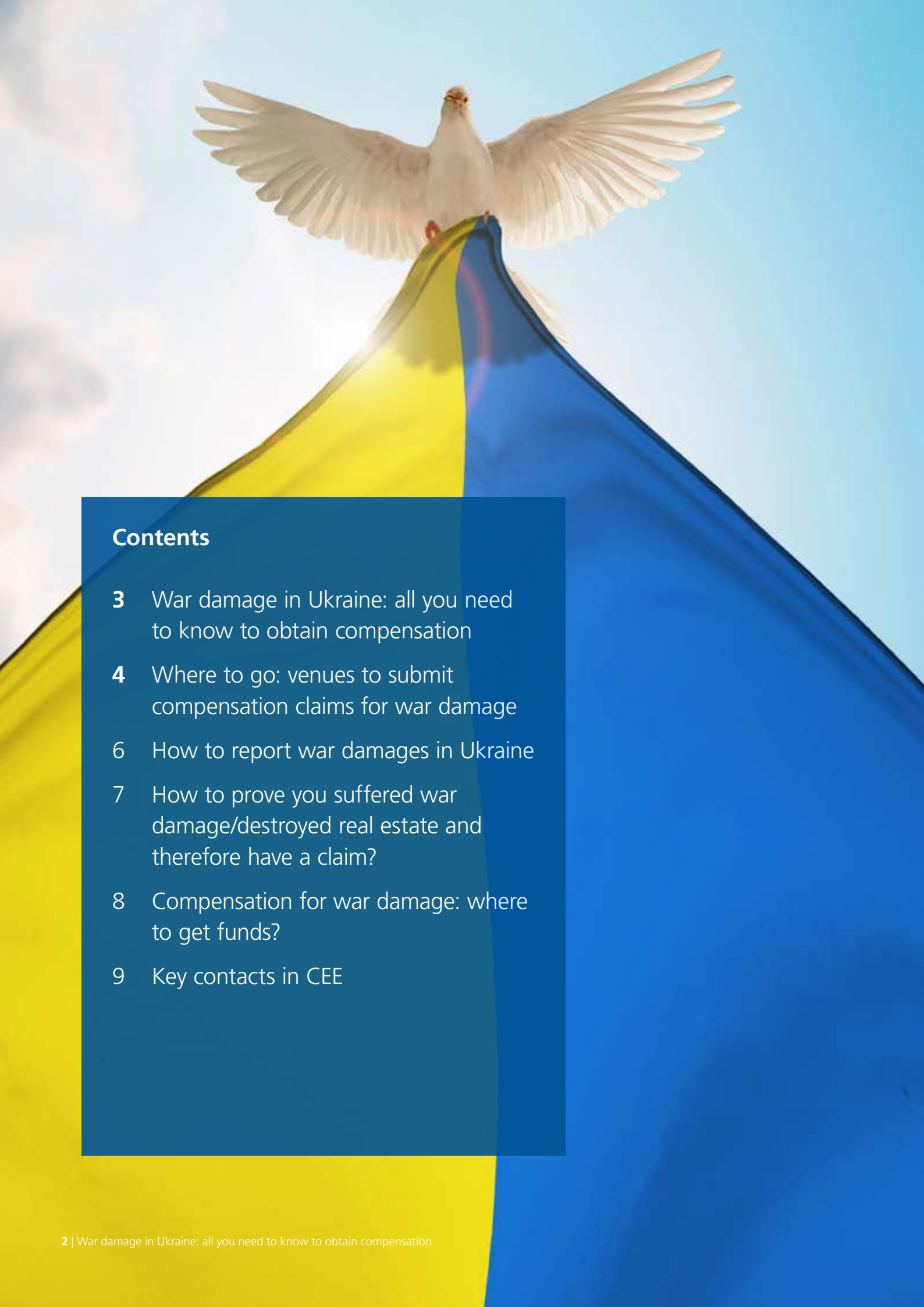


War damage in Ukraine: all you need to know to obtain compensation



Contents

- 3** War damage in Ukraine: all you need to know to obtain compensation
- 4** Where to go: venues to submit compensation claims for war damage
- 6** How to report war damages in Ukraine
- 7** How to prove you suffered war damage/destroyed real estate and therefore have a claim?
- 8** Compensation for war damage: where to get funds?
- 9** Key contacts in CEE

War damage in Ukraine: all you need to know to obtain compensation

According to a [report](#) on 9 September 2022 prepared by the World Bank, the European Commission and the Ukrainian government, the cost of rebuilding Ukraine and its economy has already reached at least **USD 349bn (EUR 346bn)**.

At the same time, direct damage to property and infrastructure amounts to over **USD 127bn**.

War destruction¹

Infrastructure

USD 35.3bn including:

- 25,000km of roads;
- 315 bridges
- 4 ports and port infrastructure
- 19 airports
- 110 railway stations



Energy

USD 3.6bn including:

- 10 thermal power plants
- the nuclear power plant Zaporizhzhya is in occupied territory
- 18% of solar generation is in the occupied territories and 6% has been damaged
- 80% of wind generation is in the occupied territories
- 3.5% of bioenergy facilities are under occupation and at least 4 plants have been destroyed.



Industry and business services

USD 9.9bn including:

- 412 enterprises, plants and factories have been destroyed or damaged



Agriculture and farmland resources

USD 6.9bn including:

- agricultural machinery and equipment (USD 3bn)
- stolen grain and oilseeds (USD 1.87bn)
- 6.5 million tonnes' capacity of destroyed storage facilities



Retail sector

USD 2.4bn including:

- 2,910 retail outlets with a total area of 1.6 million sq. m. have been damaged.
- 1991 shops
- 305 gas stations
- 23 shopping malls
- 5 warehouses



Environmental damage

USD 443 million including:

- 330 events that pose a threat to the environment in Ukraine
- Almost 3 million hectares of forest have been affected by the war



Healthcare

USD 1.6bn including:

- 24 private medical facilities damaged
- dispensaries (356) and hospitals (289) have suffered the most



¹ Key estimates (where a source of information is not mentioned) were obtained from the [KSE Report](#) dated 01 September 2022.

Where to go: venues to submit compensation claims for war damage

Affected parties can consider seeking compensation for war damage in Ukraine's courts, foreign courts and international arbitration, and the European Court of Human Rights.

1. Ukraine's courts

Affected parties can pursue their claims against Russia for compensation for damage suffered in Ukrainian civil and criminal proceedings.

Civil proceedings

Ukrainian citizens are entitled to sue Russia for sustained war damage in civil/commercial proceedings in Ukraine.

In April and May 2022, the Supreme Court effectively waived Russian immunity from war damage lawsuits in civil proceedings and recognised the competence of Ukrainian courts to consider and resolve war damage lawsuits against Russia (cases No. 308/9708/19 and No. 760/17232/20).

PROS:

- Ukrainian civil **courts have the competence** to consider individual lawsuits.
- **Time and cost-efficient** procedure: the civil procedure should be relatively quick and the court fees for lodging a claim with a trial court are limited to 1% of the claim value.
- **Enforceable decision** in Ukraine and, potentially, abroad based on existing treaties for mutual legal assistance and reciprocity, subject to other states' views on Russia's immunity.
- The court decisions can be used in any further proceedings to **evidence war losses**.

CONS:

- **Legal entities are not explicitly mentioned in the Supreme Court decision as allowed** to pursue Russia in Ukrainian courts.
- There are **procedural and practical hurdles** to pursuing claims against Russia in Ukrainian courts while martial law remains in effect.

- There may still be issues with Russia's **immunity from enforcement** of court decisions against Russia in Ukraine.
- Russian **immunity from enforcement** proceedings can hinder the enforcement of court decisions against Russia **in foreign jurisdictions**, depending on such jurisdictions' view of Russia's immunity.

Criminal proceedings

Affected legal entities and individuals can lodge their complaints regarding damage to property by agents of Russia with law enforcement bodies to investigate the crimes committed and subsequently seek compensation for losses from the criminal suspect(s) in trial courts based on civil claims.

PROS:

- **Both legal entities and individuals** can request the initiation of criminal proceeding through Ukrainian law enforcement bodies (police, security service, etc.).
- Legal entities and individuals can seek compensation for actual damage and lost profits by submitting a civil **claim to the suspect** in criminal proceedings.
- A trial court can convict Russia's agents and **satisfy damage compensation relief**.

CONS:

- A civil claim can only be submitted after the enforcement bodies **designate a suspect**.
- There is a **high standard and burden of proof** in criminal proceedings.
- There may still be issues with Russia's **immunity from enforcement** of court decisions against it.



2. Foreign courts and international arbitration

Affected parties can also consider foreign courts and international arbitration for pursuing claims against Russia. However, the feasibility of the former option would primarily depend on the qualification of Russia's actions and their nexus with a specific jurisdiction, and Russia's sovereign immunity from adjudication and enforcement in a particular state. The feasibility of the latter option would primarily depend on the grounds for triggering the legal protection of the affected party and the competence of specific arbitration institutions to consider war damage claims. The potential of the mentioned venues is yet to be tested.

3. European Court of Human Rights

Affected legal entities and individuals can pursue their claims against Russia in the ECHR for Russia's violations of their protection of property right under the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 1 of the Protocol to the Convention) and Russia's duty to make a just satisfaction (Art. 41 of the Convention).

PROS:

- **Any person**, non-governmental organisation or group of individuals affected by Russia's violations of the European Convention can submit their claims to the ECHR.
- The **ECHR** has the **competence** to consider Russia's violations of the European Convention if they occurred before **16 September 2022** (the consequences of the end of Russia's membership of the Council of Europe).
- **A straightforward procedure** to apply to the ECHR: a brief application form, a four-month deadline, convenient electronic filing, and efficient case-processing flow

CONS:

- The **length** of proceedings before the ECHR. The ECHR endeavours to deal with cases within **three years** after they are brought, but the examination of some cases can take longer, while others can be processed more rapidly.
- Russia ceased to be a party to the European Convention on 16 September 2022 and might **refuse to comply with ECHR awards**.

Special Administrative procedures (yet-to-be-adopted)

The Ukrainian Parliament may soon adopt special procedures to entitle legal entities and individuals with additional options to compensate damage to their property caused by the war at the expense of state funds, international financial aid, Russia's frozen assets, etc (**Draft law No. 7198** and **Draft law No. 7237**).

4. International Compensation Commission (work-in-progress)

Ukraine and its international partners are currently developing a dedicated mechanism for compensation for damages called the International Compensation Commission.

The Commission is envisioned to serve three primary purposes: (i) adjudicating claims for compensation; (ii) preserving or collecting Russian assets for paying awards; and (iii) providing a means of enforcing compensation awards.

On 14 November 2022, Ukraine presented its proposal on the establishment of the compensation mechanism to the United Nations General Assembly. During the special session of the General Assembly, ninety-four countries voted in favour of the resolution to establish the special reparation mechanism (commission) for Ukraine.

How to report war damages in Ukraine

The Ukrainian government, Prosecutor General's Office, and private institutions and businesses have been engaged to create various resources for recording war damages:



[Dія](#) – a Ukrainian public app where individuals can record round-the-clock damaged personal residential property.



[Damaged.in.ua](#) – a resource developed in collaboration with the government, President's Office, and Kyiv School of Economics Institute, aimed at collecting all information on destroyed and damaged infrastructure, business and public buildings.



[Humanrights.gov.ua](#) – a governmental resource for reporting war crimes and submitting evidence, including on property, regarding damage and destruction. This resource gathers information for further submissions to the ECHR.



[SEI Platform](#) – a platform maintained by the State Ecological Inspectorate of Ukraine to process applications about environmental harm caused by Russian aggression.



[Warcrimes.gov.ua](#) – a Prosecutor General's Office of Ukraine resource, where a witness can submit information on war crimes, including damage to and the destruction of infrastructure, healthcare, educational, business property, etc.



[Tribunal](#) – a platform for collecting evidence for the further investigation of crimes, including information on war crimes, cybercrimes, the personal data of Russian soldiers, information about military equipment used by Russian soldiers in Ukraine, etc.

In August 2022, Ukraine officially launched the Register of destroyed and damaged property that will process and store information about residential buildings and other property destroyed during the Russian invasion.



How to prove you suffered war damage/destroyed real estate and therefore have a claim?

Before any specific procedures are approved, everyone (individuals and legal entities) should:

- Collect and keep all documents regarding damaged AND destroyed real property in a safe place (title documents, technical inventory reports, designs, appraisals, permitting documents for construction and commissioning, in hard copies and scans).
- If title documents are lost and official electronic registers lack relevant information, you can try to obtain an official duplicate (for notarised documents) or an official copy (for non-notarised documents). The relevant information confirming that you indeed have title to the property can also be requested from archives or established by a court as a legal fact.
- Collect evidence including photos and videos, official announcements on shelling, bombing, and military operations in your region, witness statements, emergency service reports prepared by officials who were at the scene, call the police and report a crime, order a technical inventory or structural survey.
- Submit a report about your damaged or destroyed property via [Diia](#), [Warcrimes.gov.ua](#) and [Damaged.in.ua](#).

(law in progress) Parliament considers a special procedure for individuals to recover war damages (Draft law No. 7198⁶) that, if adopted, will provide:

- Applying in electronic or paper form to a compensation committee to be established by municipal authorities.
- The committee processing the application (grounds for compensation, feasibility study to assess the possibility of renovating the property, evaluating damages, etc.).
- If the application is approved, transferring compensation within 30 days in the form of:
 - (i) monetary compensation; or (ii) financing the construction of a new residential property or financing renovation works.
- Entering into an agreement with the Ukrainian authorities on the assignment of rights to claim compensation for war damages caused by Russian aggression.
- Introducing information on compensation recipients, damaged property, and decisions on compensation into the State Register of Destroyed, Damaged or Lost Property as a Result of Aggression by the Russian Federation.

⁶ Draft law 7198 "On Compensation for Damaging and the Destruction of Certain Categories of Real Estate as a Result of Military Actions, Terroristic Acts, and Diversions Caused by Military Aggression by the Russian Federation".

Compensation for war damage: where to get funds?

(law in progress)

As proposed by **Draft law No. 7198**, the damages and losses caused to housing can be compensated from the following sources:

- [Destroyed Property and Infrastructure Restoration Fund](#);
- international technical and refundable/non-refundable financial aid; and
- other sources that are not prohibited by Ukrainian law.

However, **Draft law No. 7198** does not regulate the procedure for compensation for war damages and losses caused to industrial real estate and energy infrastructure.

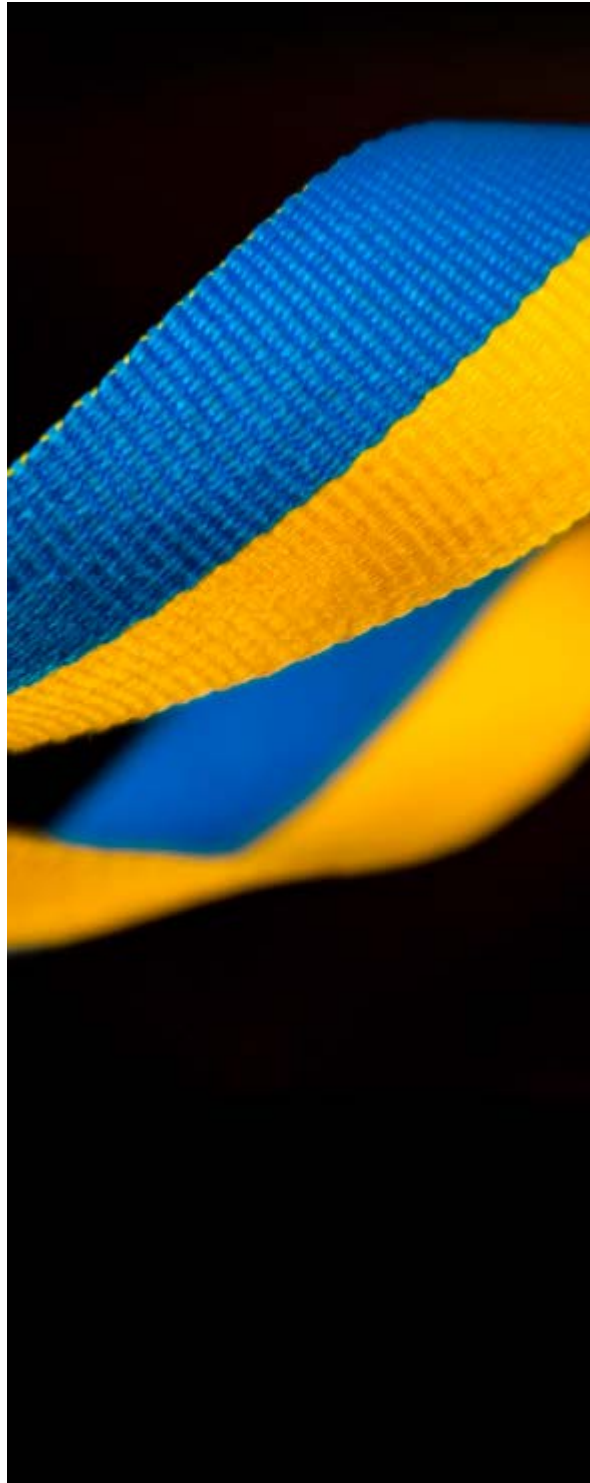
According to **Draft law No. 7237**, damages should be compensated from the Destroyed Property and Infrastructure Restoration Fund. This fund may use the following sources:

- the State Budget of Ukraine;
- international technical and refundable/non-refundable financial aid;
- reparation and other recoveries from the Russian Federation; and
- other sources that are not prohibited by Ukrainian law.

To fundraise costs from public and private entities, the Ukrainian government has opened several special bank accounts:

- [Small and Medium Business Support Fund](#);
- [Economic Recovery and Transformation Fund](#);
- [Humanitarian Fund](#);
- [Debt Management and Redemption Fund](#); and
- [Destroyed Property and Infrastructure Restoration Fund](#).

The last one is supposed to be used to restore damaged property.



Key contacts in Ukraine

For more information on how to obtain compensation for the war damage in Ukraine, please contact one of the following CMS experts:

In Ukraine:

**Vitaliy Radchenko**

Partner, Energy & Climate Change
Ukraine

T +380 44 391 3377

E vitaliy.radchenko@cms-cmno.com

**Natalia Kushniruk**

Partner, Real Estate
Ukraine

T +380 44 391 3377

E natalia.kushniruk@cms-cmno.com

**Maryna Ilchuk**

Counsel, Energy & Climate Change
Ukraine

T +380 44 391 3377

E maryna.ilchuk@cms-cmno.com

**Olga Shenk**

Partner, Dispute Resolution and Compliance
Ukraine

T +380 44 391 3377

E olga.shenk@cms-cmno.com

**Mykhaylo Soroka**

Counsel, Real Estate
Ukraine

T +380 44 391 3377

E mykhaylo.soroka@cms-cmno.com

In CEE:

CEE and Hungary

**Dr Zsolt Okányi**

Partner, Global and CEE Head of
Dispute Resolution

T +36 1 483 4837

E zsolt.okanyi@cms-cmno.com

Bulgaria

**Assen Georgiev**

Partner, Head of Dispute Resolution

T +359 2 921 9913

E assen.georgiev@cms-cmno.com

Poland

**Anna Cudna-Wagner**

Partner, Head of Dispute Resolution

T +48 22 520 5529

E anna.cudna-wagner@cms-cmno.com

Romania

**Horia Draghici**

Partner, Head of Dispute Resolution

T +40 21 407 3844

E horia.draghici@cms-cmno.com

Czech Republic and Slovakia

**Tomáš Matějovský**

Partner, Head of Dispute Resolution

T +420 296 798 852

E tomas.matejovsky@cms-cmno.com

Poland

**Arkadiusz Korzeniewski**

Partner, CEE Head of White Collar Crime

T +48 22 520 5658

E arkadiusz.korzeniewski@cms-cmno.com

Romania

**Mihai Jiganie-Serban**

Senior Counsel, Head of White Collar Crime

T +40 21 407 3821

E mihai.jiganie-serban@cms-cmno.com

CMS Law-Now™

Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.

cms-lawnow.com

.....
CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Cameron McKenna Nabarro Olswang LLP is a limited liability partnership registered in England and Wales with registration number OC310335. It is a body corporate which uses the word “partner” to refer to a member, or an employee or consultant with equivalent standing and qualifications. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales with SRA number 423370 and by the Law Society of Scotland with registered number 47313. It is able to provide international legal services to clients utilising, where appropriate, the services of its associated international offices. The associated international offices of CMS Cameron McKenna Nabarro Olswang LLP are separate and distinct from it. A list of members and their professional qualifications is open to inspection at the registered office, Cannon Place, 78 Cannon Street, London EC4N 6AF. Members are either solicitors or registered foreign lawyers. VAT registration number: 974 899 925. Further information about the firm can be found at cms.law

© CMS Cameron McKenna Nabarro Olswang LLP

CMS Cameron McKenna Nabarro Olswang LLP is a member of CMS Legal Services EEIG (CMS EEIG), a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG’s member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name “CMS” and the term “firm” are used to refer to some or all of the member firms or their offices. Further information can be found at cms.law