

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

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

According to a [report](#) on 2 May 2022 prepared by the President's Office, the government and the Kyiv School of Economics Institute, Ukraine had already suffered losses of **USD 600bn** due to the war. In the same estimate, direct damage to property and infrastructure amounts to **USD 92bn**. On 22 April, the [World Bank](#) estimated physical damage at roughly **USD 60bn**.

## War destruction<sup>1</sup>

### Infrastructure

**USD 100bn** including:

- 23,800km of roads worth USD 29.7bn;
- 295km of bridges worth USD 1.6bn;
- Two ports worth USD 622m;
- 11 airports at USD 6.8bn;
- Railway lines worth USD 3.5bn.



### Energy sector

**USD 2bn<sup>2</sup>** including:

- renewables of USD 860m (of which USD 750m relates to windfarms)<sup>3</sup>;
- seven CHPs & HPPs worth USD 101m<sup>4</sup>;
- NPP operator losses are USD 1.21bn<sup>5</sup>;
- the Zaporizhzhia NPP (6GW) and Kakhovka HPP (357 MW) are occupied;
- 47 gas distribution stations and gas storages in the east of Ukraine have been shut down.



### Industrial property

**USD 10bn**

- 195 plants and adjacent properties have been damaged or destroyed.



### Malls, kindergartens and public buildings

**USD 1bn** including:

- 24 shopping malls worth USD 315m;
- 543 kindergartens worth USD 421m;
- 82 public buildings costing USD 449m.



### Warehouses

**USD 225m**

- only in the Kyiv region, CBRE Ukraine estimates that 325,000sq.m. of warehouses have been ruined – 21% of space in the region.



### Residential, educational, and healthcare real property

**USD 32bn** including:

- 33,700 sq.m. of residential property worth USD 29.6bn;
- 940 educational facilities costing USD 1.2bn;
- 231 healthcare facilities worth USD 1.8bn.



### Environmental and land damage

**200 areas of the Emerald Network**

(approximately 3m hectares), stated by the Ministry of the Environment and Natural Resource Protection.



<sup>1</sup> Key estimates (where a source of information is not mentioned) were obtained from the [KSE Report](#) dated 2 May 2022.

<sup>2</sup> According to the Ministry of Energy of Ukraine (<https://www.epravda.com.ua/news/2022/03/28/684804/>).

<sup>3</sup> According to analysis of analytics firm Verisk (<https://thebulletin.org/2022/04/damage-to-ukraines-renewable-energy-sector-could-surpass-1-billion/?fbclid=IwAR264tEU4awpHpoo1NoGE1PuOBoZPQXsjfckfT9x274ciBD9YceV1Zohv8>).

<sup>4</sup> This estimate was obtained from the KSE Report dated 1 April 2022 (<https://kse.ua/about-the-school/news/over-the-week-the-damage-caused-to-ukraine-s-infrastructure-during-the-war-has-increased-by-over-5-billion/>).

<sup>5</sup> According to Energoatom (<https://www.epravda.com.ua/news/2022/04/15/685798/>).

# Where to go – venues to submit compensation claims for war damage

Affected parties can consider seeking compensation for war damage in the 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 suffered damage 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 2022, the Supreme Court effectively waived Russian immunity from war damage lawsuits in civil proceedings and recognised the competence of Ukraine's courts to consider and resolve war damage lawsuits against Russia (case No. 308/9708/19).

### **PROS:**

- Ukrainian civil **courts have the competence** to consider individual lawsuits.
- **Time and cost-efficient** procedure: the civil procedure should be rather quick and the court fee 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 Ukraine's courts.
- There are **procedural and practical hurdles** to pursuing claims against Russia in Ukraine's 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 the 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 the Ukrainian law enforcement bodies (police, security service, etc.).
- Legal entities and individuals can seek compensation 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 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 the foreign courts and international arbitration for pursuing their claims against Russia. However, the feasibility of the former option would primarily depend on the qualification of Russia's actions and their nexus with 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 occur before **16 September 2022** (the consequences of Russia's membership cessation in the Council of Europe).
- **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 will cease to be a party to the European Convention on 16 September 2022 and may **refuse to comply with ECHR awards** after that time.

### **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**).

For more information on the draft procedures under discussion, please see ["Recovery of war damages: where to get funds?"](#).

# How to report war damages in Ukraine

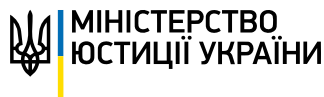
The Ukrainian government, Prosecutor General's Office, and private institutions and businesses have been engaged to create various resources for recording war damages:



[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.



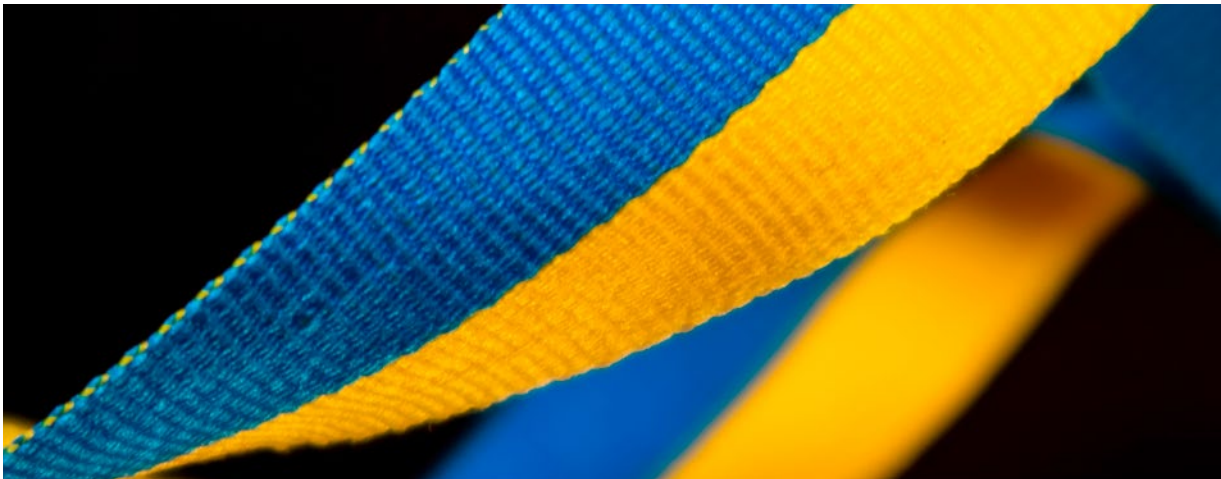
[SEI Platform](#) – a platform maintained by the State Ecological Inspectorate of Ukraine to process applications about environmental harm caused by Russian aggression.



[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.



# 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 the 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. 7198<sup>6</sup>) 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 the compensation within 30 days in the form of: (i) monetary compensation; or (ii) financing the construction of a new residential real 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.

<sup>6</sup> 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".

# How to evaluate war damages to be claimed

## Currently available options

To calculate direct damages before any special methods have been developed by the government, real estate owners may consider:

- carrying out a construction valuation study; and
- preparing a property valuation report.

Construction valuation studies must be carried out by forensic experts from special state expert institutions. Property valuation reports can be prepared by any duly certified appraiser.

## (law in progress)

### Methods to be approved

The currently effective procedure (**Resolution No. 326 of 20 March 2022**<sup>7</sup>) provides a general guideline as to criteria to be used to evaluate war damages caused, among others, to the following real estate:

- housing, including under construction;
- industrial real estate; and
- objects of energy infrastructure.

At the same time, Ministries and the Property Fund of Ukraine, in consultation with the Ministry for Reintegration of the Temporary Occupied Territories, are yet to develop practical methods on evaluating these damages.

### More on evaluating procedures: what is the Ukrainian parliament discussing?

**Draft law No. 7198** stipulates that the costs for the restoration of damaged residential real estate will be determined under the method approved the Cabinet of Ministers of Ukraine. This provision contradicts the rules established by Resolution No. 326. We expect this discrepancy to be resolved after parliament passes the bill.

At the same time, **Draft law No. 7237**<sup>8</sup> provides that the valuation of lost, damaged, or destroyed property will be carried out automatically considering:

- the information indicated in the State Register of Destroyed, Damaged or Lost Property as a Result of Aggression by the Russian Federation<sup>9</sup>;
- the report of the committee on the surveying of damaged and destroyed property; and
- mediated costs for the construction of housing in a relevant region of Ukraine.

### Calculation of energy infrastructure damages

Energy infrastructure losses include destroyed or damaged:

- gas pipelines;
- oil pipelines;
- other energy infrastructure such as electricity grids, electricity substations, and gas distribution stations.

According to the currently effective procedure (**Resolution No. 326 of 20 March 2022**), factors to be considered when calculating energy infrastructure losses include:

- length of lost, destroyed and damaged gas and oil pipelines;
- length of lost, destroyed and damaged electricity grids;
- costs of the lost, destroyed and damaged objects of energy infrastructure; and
- costs of gas losses in the case of damaged gas pipelines.

At the same time, the Ministry of Energy, in consultation with the Ministry for the Reintegration of the Temporarily Occupied Territories, is yet to develop the methodology to evaluate these damages.

<sup>7</sup> Resolution of the CMU "On the Approval of Procedures for the Valuation of Damages and Losses Caused to Ukraine as a Result of Military Aggression by the Russian Federation" No. 326, dated 20 March 2022.

<sup>8</sup> Draft law No. 7237 "On the Compensation for Lost, Damaged and Destroyed Property as a Result of Military Aggression by the Russian Federation, and Fair Reparation Distribution".

<sup>9</sup> On 29 April 2022, the Cabinet of Ministers of Ukraine passed Resolution No. 505 "On amendments to Resolutions of the Cabinet of Ministers of Ukraine dated 20 March 2022 No. 326 and dated 26 March 2022 N. 380". Under this resolution, the Ministry of Infrastructure should ensure the setting up and further operation of this register.



# 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.

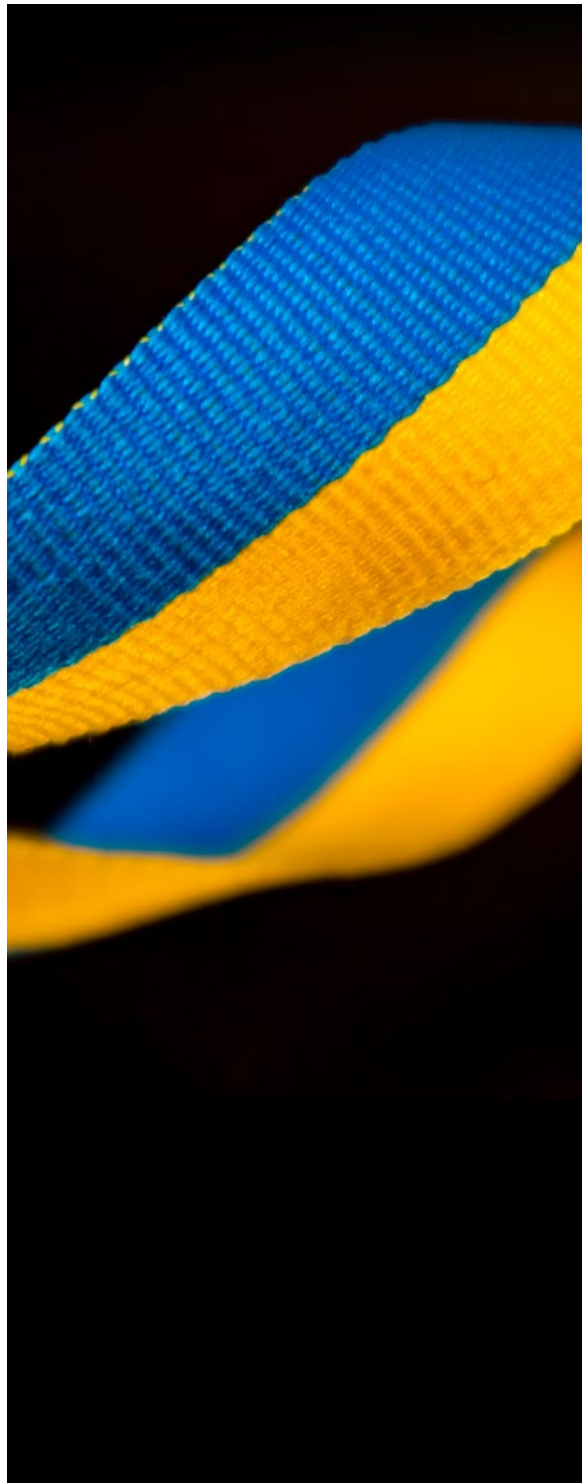
According to **Draft law No. 7237**, damages should be compensated from the Destroyed Property and Infrastructure Restoration Fund. This fund may use the following sources:

- 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.



# Recovery of war damages – potential options

## World's experience

### How can the UN help prove the damages?

As an international intergovernmental organisation, the UN can facilitate the process of compensation for losses and damages following a similar procedure, as it established for Kuwait.

In 1991, the UN established the United Nations Compensation Commission (UNCC) under a resolution of the Security Council. This subsidiary body participated in compensating losses and damages suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait in 1990–1991, and operated until January 2022.

Since then, the Compensation Commission processed more than 2.7m claims with an asserted value of **USD 352.5bn**. The compensatory process lasted for more than 30 years and 1.5m claims were satisfied with a total value of **USD 52.4bn**.

In Iraq's case, the UN used following below sources to compensate losses and damages:

- Iraq's assets located in UN member-states;
- **30% of the proceeds** from the export of Iraqi petroleum and petroleum products (decreasing to 3% in 2017).

Payments for Iraqi oil were made into an escrow account and the escrow agent paid a percentage of the proceeds to the account of the UNCC.

It also should be noted that within the framework of the UNCC, environmental damages have also been compensated. This was based on Resolution No. 687 of the UN Security Council, which affirmed that Iraq was liable under international law "for any direct loss, damage, including **environmental damage** and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

A similar commission should be established under the resolution of the UN Security Council. And this is the weak point in this scenario, as the aggressor, the Russian Federation, is a permanent member of the UN Security Council with a veto right.

### Measures that may be taken by the EU and the individual states

In 2012, the EU imposed an oil embargo and other sanctions on Iran, the majority of which were lifted in 2016.

These sanctions included the following measures that could be of particular effectiveness in Ukraine's case:

- restrictions on trade in several goods, namely a **prohibition on importing crude oil, natural gas, petrochemical and petroleum products**; a prohibition on selling or supplying key equipment used in the energy sector;
- restrictions in the financial sector: freezing the assets of the Central Bank of Iran and major Iranian commercial banks, **laying down notification and authorisation mechanisms to transfers funds above certain amounts to Iranian financial institutions**;
- measures in the transport sector: preventing access to EU airports of Iranian cargo flights, a **prohibition on the maintenance and service of Iranian cargo aircraft and vessels carrying prohibited materials and goods**.

In the year before Russia began its unprovoked war, it enjoyed a current account surplus and record-high exports of USD 490bn per year, of which oil and gas products constituted only half, according to the official balance-of-payments data. In 2022, a potential oil embargo by the EU and US (50% of Russian oil exports) and the EU cutting natural gas imports (70% of Russian exports) by two-thirds, would decrease total exports by only a quarter. EU bans on imports of Russian coal that have already been imposed cost as little as EUR 4bn per year and on imports of metals as little as EUR 3bn.

Additionally, the European community considers that seized Russian reserves can be used to rebuild Ukraine. Josep Borrell, High Representative of the Union for Foreign Affairs and Security Policy, in his interview for the Financial Times<sup>10</sup> notes that EU capitals should consider seizing frozen Russian foreign exchange reserves to cover the costs of rebuilding Ukraine after the war. Given that, we believe that our allies may soon start discussions about methods of ensuring "war reparations" from Russia.

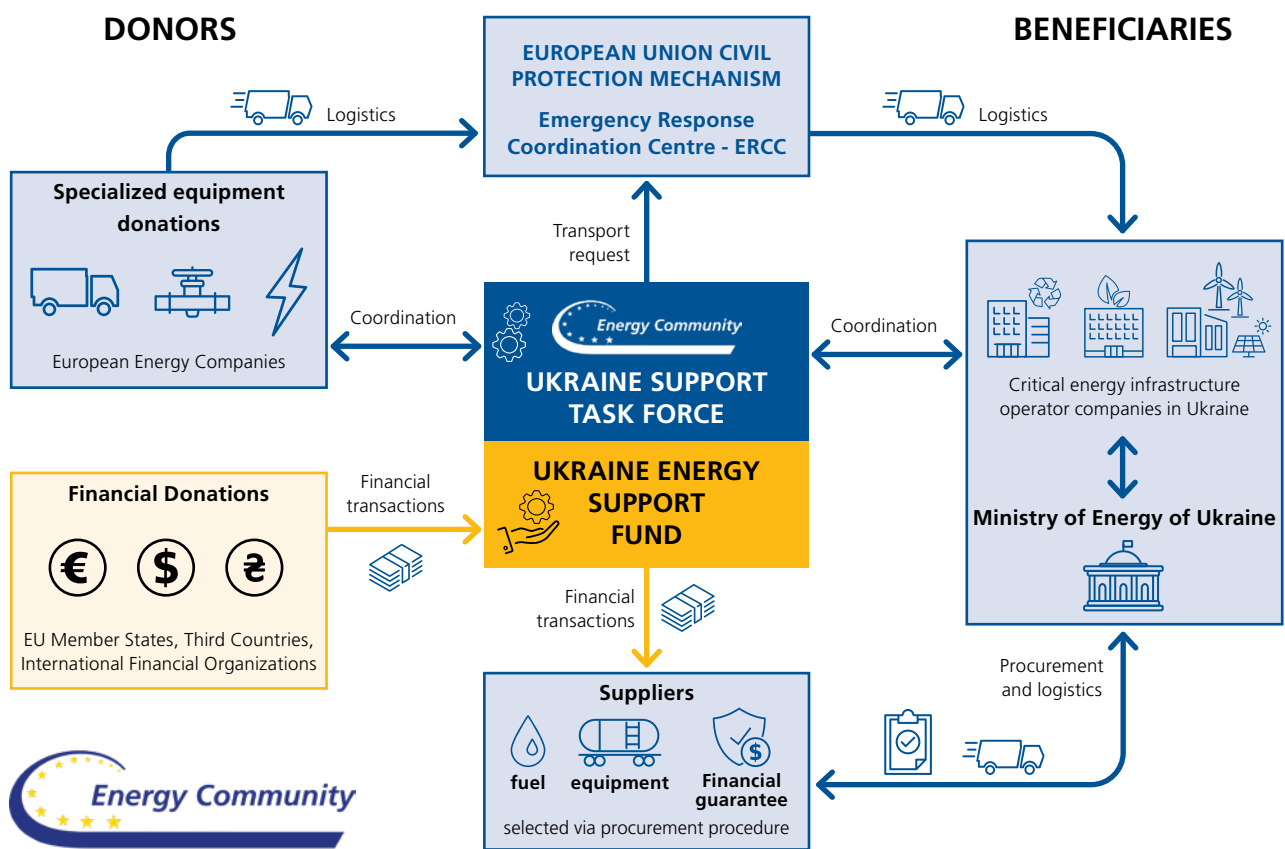
<sup>10</sup> Article published on 9 May 2022 in the Financial Times, "[EU should seize Russian reserves to rebuild Ukraine, top diplomat says](#)".

# Readily available support

## Energy Community

The Energy Community has established the Ukraine Support Task Force (USTF), which assists with in-kind donations of specialised equipment to reach Ukraine, and the Energy Support Fund (ESF), which will accumulate donations from governments and IFIs.

### Energy Community Secretariat Ukraine Support Activities<sup>11</sup>



<sup>11</sup>The USTF coordinates equipment donations that are channelled through the EU Civil Protection Mechanism. A number of shipments of specialised equipment has already reached Ukraine and numerous new ones are in preparation.

Donations to the ESF will be used to purchase energy supplies, repair damaged energy infrastructure, and inject liquidity in the energy sector. They may also be used as a collateral for public and private loans to Ukrainian energy companies.

The Ministry of Energy of Ukraine keeps a list of companies that are eligible for support under the ESF. Currently, there are such 23 companies.

The procurement of equipment, fuels and services financed by the ESF will be supported by EU-based governmental procurement agencies on the basis of arrangements with the Ministry of Energy of Ukraine.

<sup>11</sup> Table provided in Energy Community's article "[Energy Community Secretariat Ukraine Support Activities](#)".

# 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:



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