

## REGISTER OF DAMAGE FOR UKRAINE IS SET UP TO LAUNCH REGISTRATION OF CLAIMS IN SPRING 2024

On 17 May 2023, the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (the "Register of Damage") was established under the auspices of the Council of Europe. As the parties to the Register of Damage noted this is an important step towards Russia's accountability.

The establishment of the Register of Damage is a welcome development for all individuals and legal entities who have suffered loss or damage due to Russia's aggression but were uncertain as to how to proceed with seeking compensation for their loss.

This note provides a brief overview of the role of the Register of Damage within the legal framework established to compensate for damages resulting from Russia's war on Ukraine.

### THE REGISTER OF DAMAGE

More than 40 countries and the European Union have joined the Register of Damage, which was founded by the Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement<sup>1</sup> on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine and approved at the Summit of the Heads of State and Government of the Council of Europe held in Reykjavik on 16-17 May 2023.

According to the Enlarged Partial Agreement, the Register of Damage will serve as a record of evidence and claim information on damage, loss or injury caused in the territory of Ukraine to natural and legal persons, by Russia's internationally wrongful acts against Ukraine.<sup>2</sup>

The Register of Damage's main activity will be receiving and processing information relating to claims of damage and its supporting evidence. Further,

#### Key points

- The Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine was established on 17 May 2023
- The Register has been signed by more than 40 Signatory States + the EU
- Both individuals and legal entities can submit their applications for loss or damage
- The Register of Damage is the first step in the ultimate mechanism to compensate for damage resulting from Russia's war on Ukraine

<sup>1</sup> Following its specific nature, the Enlarged Partial Agreement is open for signature not only to the organisation's member states, but also to other countries and intergovernmental organisations, provided that they are prepared to support the project in question and comply with the stipulations set out in the agreement.

<sup>2</sup> Article 1.1. of the Statute of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine.

the Register of Damage will classify, categorise, and organise such claims and determine their eligibility for future compensation examination and adjudication.<sup>3</sup>

According to the Deputy Minister of Justice of Ukraine, Iryna Mudra, the Register was to be fully operational from August 2023.<sup>4</sup> In this regard, on 27 June 2023, member-states of the Register of Damage voted by consensus to accept the candidacy of Markiyan Kliuchkovskiy for the position of the Executive Director of the Register.<sup>5</sup> However, in August 2023 the Register was still not set up. Only in November 2023, one of the principal bodies of the Register, the Board of Register, was finally elected. The composition of the Board includes seven members from seven different states – Yulia Kyrpa (Ukraine), Norbert Wühler (Germany), Chiara Giorgetti (Italy), Robert Spano (Iceland), Veijo Heiskanen (Finland), Lucy Reed (United States) and Aleksandra Mężykowska (Poland), elected for a three-year term (renewable once).<sup>6</sup>

The Board's core functions are to propose the rules and regulations governing the work of the Register and record the eligibility criteria for the claims to be filed to the Register. Between 11 and 15 December 2023, the Board conducted its inaugural meeting in the Hague (the Netherlands) and adopted the Rules of Procedure.<sup>7</sup> Furthermore, a representative of the Ukrainian government proposed categories of claims for the Board to approve. The categories will include, in particular, claims related to loss of life, torture and sexual violence, as well as personal injury, involuntary displacement and forced relocation of individuals, loss of property and revenue, and other forms of economic loss, damage to critical infrastructure and other governmental facilities, damage to historic and cultural heritage, environmental damage.<sup>8</sup>

In the meantime, after the Board has already been established, it can be expected that the Register will become fully operational and start taking in spring 2024.<sup>9</sup>

Significantly, the Register of Damage is seen as a first component of what should ultimately be an international compensation mechanism, which might include a compensation commission and a compensation fund, whose mandate would be to adjudicate claims and order payments of compensation for damages caused by the Russian Federation's internationally wrongful acts against Ukraine.<sup>10</sup>

The contours of the compensation mechanism that the Register is creating will draw on the work of the United Nations Compensation Commission ("UNCC"). The UNCC was a subsidiary organ of the United Nations Security Council, whose mandate was to process claims and pay compensations for loss and damage resulting from Iraq's unlawful invasion and occupation of Kuwait in

<sup>3</sup> Article 2 of the Statute of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine

<sup>4</sup> See <https://minjust.gov.ua/news/ministry/irina-mudra-mijnarodniy-reestr-zbitkiv-zapratsyue-z-serpnya-tsoogo-roku>.

<sup>5</sup> See <https://www.lexology.com/library/detail.aspx?g=869a9263-9cca-4066-a9b2-6726721ff1a3>.

<sup>6</sup> See <https://www.coe.int/en/web/portal/-/conference-of-participants-of-the-register-of-damage-for-ukraine-elects-its-board>.

<sup>7</sup> See <https://www.coe.int/en/web/portal/-/the-board-of-the-register-of-damage-for-ukraine-holds-its-inaugural-meeting#:~:text=The%20Register%20was%20established%20as,of%20international%20law%20in%20Ukraine%2C>.

<sup>8</sup> See <https://www.coe.int/en/web/portal/-/the-board-of-the-register-of-damage-for-ukraine-holds-its-inaugural-meeting#:~:text=The%20Register%20was%20established%20as,of%20international%20law%20in%20Ukraine%2C>.

<sup>9</sup> See <https://www.coe.int/hr/web/portal/-/the-conference-of-participants-of-the-register-of-damage-for-ukraine-holds-its-second-meeting>.

<sup>10</sup> Article 2.5. of the Statute of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine.

1990-1991. The UNCC concluded its claim processing in 2005, and it awarded a total of \$52.4 billion to approximately 1.5 million successful claimants.<sup>11</sup>

Clifford Chance successfully submitted claims for clients before the UNCC and one of our lawyers helped to design and manage the claims verification process that has enabled the UNCC to efficiently process and validate the submitted claims. Given our profound knowledge of working with the UNCC and solid experience in international enforcement proceedings, Clifford Chance is well equipped to assist individuals and entities in gathering the appropriate evidence, submitting their applications to the Register of Damage and coordinating further processes.

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<sup>11</sup> See: <https://news.un.org/en/story/2022/02/1111632>.

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