COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

MINISTERS' DEPUTIES Resolutions **CM/Res(2023)3** 16 May 2023

Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine

(Adopted by the Committee of Ministers on 12 May 2023 at the 1466th meeting of the Ministers' Deputies)

The representatives in the Committee of Ministers of Albania, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Ukraine and United Kingdom, as well as the representatives of the European Union, Canada, Japan and the United States of America,

Having regard to the Statute of the Council of Europe (ETS No. 1), which in its preamble underlines the pursuit of peace based upon justice;

Recalling the obligations of all States under Article 2 of the Charter of the United Nations, including the obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means;

Reiterating their condemnation in the strongest terms of the aggression of the Russian Federation against Ukraine and expressing their full support for Ukraine and their solidarity with its people;

Calling on the Russian Federation to immediately cease the aggression, withdraw completely and unconditionally its forces from the internationally recognised territory of Ukraine, and release all civilians forcibly transferred or unlawfully deported to the territory of the Russian Federation or to areas temporarily controlled or occupied by the Russian Federation, in particular children;

Reiterating also their unwavering commitment to the independence, sovereignty and territorial integrity of Ukraine within its internationally recognised borders;

Recalling that, on 16 March 2022, the Committee of Ministers decided to exclude the Russian Federation from the Council of Europe as a result of its aggression against Ukraine, such aggression constituting a serious violation by the Russian Federation of its obligations under Article 3 of the Statute of the Council of Europe and under international law;

Condemning all violations of international law, including international human rights law and international humanitarian law, in particular attacks against civilians and civilian objects, including civilian infrastructure, cultural and religious heritage and the environment of Ukraine, and convinced of the exigent necessity to ensure comprehensive accountability in the context of the Russian Federation's aggression against Ukraine;

Recalling in this respect the 2001 Articles on Responsibility of States for Internationally Wrongful Acts, the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, as well as the 2011 Guidelines of the Committee of Ministers on Eradicating impunity for serious human rights violations;

Recalling the decisions of the Committee of Ministers of 15 September 2022 and 24 February 2023 welcoming ongoing efforts, in co-operation with Ukraine, to secure full reparation for the damage, loss or injury caused by violations by the Russian Federation of international law in Ukraine;

Bearing in mind the United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 "Furtherance of remedy and reparation for aggression against Ukraine" recognising, *inter alia*, that the Russian Federation must bear the legal consequences of all of its internationally wrongful acts in or against Ukraine, including making reparation for the injury, and for any damage, caused by such acts, and noting that this resolution also recognises the need for the establishment of an international mechanism for reparation, and recommends the creation of an international register of damage in co-operation with Ukraine;

Noting that the Parliamentary Assembly of the Council of Europe, in its Resolution 2482 (2023) on "Legal and human rights aspects of the Russian Federation's aggression against Ukraine", reiterated its call on member States to set up an international compensation mechanism and, as a first step, an international register of damage;

Convinced that the establishment of a register of damage constitutes a significant first step to ensure timely compensation for the victims of the Russian Federation's internationally wrongful acts in or against Ukraine;

Having regard to Statutory Resolution Res(93)28 of the Committee of Ministers on partial and enlarged agreements;

Having regard to Resolution Res(96)36 of the Committee of Ministers establishing the criteria for partial and enlarged agreements of the Council of Europe, as amended by Resolution CM/Res(2010)2;

Having regard to the decision of 19 April 2023 whereby the Committee of Ministers authorised the establishment of a Register of Damage caused by the Aggression of the Russian Federation against Ukraine in the form of an Enlarged Partial Agreement within the framework of the Council of Europe,

Resolve to establish the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (hereinafter "the Register"), governed by the Statute appended hereto that shall serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused to all natural and legal persons concerned, as well as the State of Ukraine (including its regional and local authorities, State-owned or controlled entities), caused on or after 24 February 2022 in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, by Russian Federation's internationally wrongful acts in or against Ukraine;

Agree that the Register is established for an initial period of three years;

Agree to review the functioning of the Register, with a view to considering the continuation of its operation, by the end of the initial period of three years;

Invite all member and observer States of the Council of Europe, as well as other States and international organisations, to become members of the Enlarged Partial Agreement, in accordance with the Statute of the Register;

Call on Council of Europe member and observer States, the European Union, the United Nations and other States and international organisations to co-operate with the Register so as to facilitate its work;

Agree to disseminate information on the Register as widely as possible to potential claimants and the public at large, to States and to relevant international organisations and bodies;

Agree to continue working, in co-operation with Ukraine and relevant international organisations and bodies, towards the establishment by a separate international instrument of a future international compensation mechanism, which may include a claims commission and a compensation fund, of which the work of the Register, including its digital platform with all data about claims and evidence recorded therein is intended to constitute an integral part.

Appendix to Resolution CM/Res(2023)3

Statute of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine

Article 1 – Mandate of the Register of Damage

1.1. The Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (hereinafter "the Register") shall serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused, on or after 24 February 2022, in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, to all natural and legal persons concerned, as well as the State of Ukraine, including its regional and local authorities, state-owned or controlled entities, by the Russian Federation's internationally wrongful acts in or against Ukraine.

1.2. The Register shall be established as a platform for intergovernmental co-operation, acting within the institutional framework of the Council of Europe.

Article 2 – Functions of the Register of Damage

2.1. The Register shall receive and process information on claims of damage and evidence; categorise, classify and organise such claims, assess and determine the eligibility of claims for inclusion in the Register and record the eligible claims for the purposes of their future examination and adjudication. The Register shall not have any adjudication functions with respect to such claims, including determination of responsibility and allocation of any payments or compensation.

2.2. Eligibility criteria for recording of claims in the Register for the purposes of their future examination and adjudication shall be determined in the rules and regulations of the Register, bearing in mind that such claims shall be made in relation to damage, loss or injury that was caused:

a. on or after 24 February 2022;

b. in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters;

c. by the Russian Federation's internationally wrongful acts in or against Ukraine.

2.3. Claims, evidence and related information shall be submitted to the Register by natural and legal persons concerned, as well as the State of Ukraine (including its regional and local authorities, and State-owned or controlled entities).

2.4. The Register shall co-operate with relevant national and international partners for the purposes of promotion and co-ordination of gathering of evidence of the damage, loss or injury caused by the Russian Federation's internationally wrongful acts in or against Ukraine.

2.5. The work of the Register, including its digital platform with all data about claims and evidence recorded therein, is intended to constitute the first component of a future international compensation mechanism to be established by a separate international instrument in co-operation with Ukraine (hereinafter "a Compensation Mechanism"). The exact form of a future Compensation Mechanism is to be determined, but may include a claims commission and compensation fund mandated to examine and adjudicate claims and/or pay compensation for damage, loss or injury caused by the Russian Federation's internationally wrongful acts in or against Ukraine. The Register, through its Executive Director and with the support of its Secretariat, shall participate in and facilitate, as appropriate, the work aimed at the establishment of such a Compensation Mechanism, and take the necessary steps to prepare for the Register to be transferred to a Compensation Mechanism in accordance with this Statute.

Article 3 – Legal Status and seat

3.1. The Register shall possess juridical personality under the national law of the Kingdom of the Netherlands and of Ukraine and thus enjoy such legal capacity as is necessary for the exercise of its functions, fulfilment of its mandate and the protection of its interests, in particular the capacity to contract and to acquire and dispose of movable and immovable property.

3.2. The Register shall have capacity to enter into arrangements with States, international organisations and bodies in furtherance of its mandate.

3.3. The Register shall have its seat in The Hague, the Kingdom of the Netherlands. The status and operation of the Register in the Kingdom of the Netherlands shall be regulated by a Host State Agreement concluded by the Council of Europe.

3.4. The Register shall also have a satellite office in Ukraine for the purpose of liaising with the Government of Ukraine and facilitating outreach and contact with potential claimants and the public at large in Ukraine, notably about the existence and purpose of the Register and the procedure for filing a claim for damage.

3.5. The General Agreement on Privileges and Immunities of the Council of Europe shall apply to the Register and its officials, including the Register's satellite office in Ukraine.

Article 4 – Participation

4.1. Any member or observer State of the Council of Europe and the European Union, as well as any other State that has voted in favour of the United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 "Furtherance of remedy and reparation for aggression against Ukraine", may join the Register as a Participant by notification addressed to the Secretary General of the Council of Europe.

4.2. Any member or observer State of the Council of Europe and the European Union, as well as any other State that has voted in favour of the United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 "Furtherance of remedy and reparation for aggression against Ukraine", may join the Register as an Associate Member by notification addressed to the Secretary General of the Council of Europe. Associate Members are encouraged to provide voluntary contributions to the Register in accordance with Article 10. Associate Members may, at any time, become Participants by notification addressed to the Secretary General of the Council of Europe.

4.3. The Conference of Participants may authorise any other State or international organisation having so requested to join the Register as Participant or Associate Member, taking into particular account the position of the Government of Ukraine.

Article 5 – Conference of Participants

5.1. The Conference of Participants (hereinafter "the Conference") shall be composed of one representative appointed by each Participant. Such appointments shall be communicated to the Secretary General of the Council of Europe.

5.2. The Conference shall elect from among its members a Chair and two Vice-Chairs for a period of three years.

5.3. The Conference shall:

a. have overall responsibility for the fulfilment of the Register's mandate;

b. recommend to Participants and Associate Members measures to advance the aims of the Register;

c. approve the rules and regulations proposed by the Board for governing the work of the Register;

d. appoint the members of the Board;

e. designate the Executive Director upon a proposal by the Government of Ukraine;

f. adopt the annual budget of the Register;

g. adopt the annual activity report of the Register;

h. perform any other function vested in it by this Statute.

5.4. The Conference shall meet as often as is necessary, but at least once a year. Travel and accommodation costs relating to the Conference shall be borne by each Participant and Associate Member. The Conference may exercise its decision-making through written procedure and by electronic means.

5.5. The Conference shall adopt its decisions by a two-thirds majority of the votes cast, with each Participant having one vote. Procedural matters shall be settled by a majority of the votes cast. The Conference shall adopt its own rules of procedure and any other arrangements required for the implementation of its activities.

5.6. Without prejudice to Article 5, paragraph 7, Associate Members may participate in the meetings of the Conference without the right to vote. Associate Members may make oral or written statements in the meetings of the Conference.

5.7. Associate Members having made voluntary contributions to the Register of an amount equal to the amount determined by the Conference for Participants in accordance with Article 10, shall have the full range of rights of Participants during the financial year for which they made such a contribution.

5.8. The Secretary General of the Council of Europe may participate or be represented in the meetings of the Conference without the right to vote. The Conference may invite representatives of relevant Council of Europe bodies or international organisations to attend its meetings or a part of its meetings, without voting rights, according to the items on its agenda. It may also invite experts to be present for specific items of its agenda, without the right to vote.

Article 6 – Board

6.1. The Board of the Register (hereinafter "the Board") shall be composed of seven members, taking into account their integrity, experience and multidisciplinary expertise necessary for the efficient functioning of the Register, notably as regards international law, war damages and claims, accounting, and loss assessment, as well as gender and global geographical balance. The Conference may change the number of members of the Board if it is necessary in order to ensure efficient functioning of the Register, taking into account the volume and complexity of claims and related workload of the Board.

6.2. One of the members of the Board shall be appointed by the Conference from among candidates nominated by the Government of Ukraine. The other members of the Board shall be appointed by the Conference from among candidates nominated by Participants and Associate Members. Subject to Article 6, paragraph 3, all the members of the Board shall be appointed for a term of office of three years, renewable once.

6.3. The appointment and removal procedures of the members of the Board shall be determined by the Conference.

6.4. The members of the Board shall sit in their individual capacity, be independent and impartial in the exercise of their functions and be available to carry out their duties in an effective manner. The members of the Board shall be remunerated by the Register for their work on terms established by the Conference.

6.5. The Board shall, without prejudice to Article 5:

a. have responsibility for the exercise of the Register's functions;

b. propose the rules and regulations governing the work of the Register and implement them as appropriate, including, in particular as regards the determination of the categories of claims, the procedures for the receiving, processing and recording of claims, the format of the claim forms and the requirements for evidence with respect to each category of claims, that shall be approved by the Conference;

c. have the ultimate authority in determining the eligibility of claims to be recorded in the Register, based on the recommendation of the Executive Director;

d. perform any other function necessary for the fulfilment of the mandate of the Register that is not vested by this Statute in the Conference, Executive Director or Secretariat.

6.6. The Board shall determine the date from which the Register shall be open for submission of claims, evidence and related information.

6.7. The Board shall adopt its own rules of procedure and any other arrangements required for the implementation of its activities. The Board shall appoint a Chair and a Vice-Chair among its members for a term of office of three years, renewable once.

6.8. The Board shall meet regularly, but at least on a quarterly basis, in order to determine which claims should be recorded in the Register and to make any other decisions necessary to perform its functions. The Executive Director shall participate in these meetings in an advisory capacity.

6.9. The Board shall provide quarterly reports to the Conference. Such reports shall include the number of claims received and the number of eligible claims recorded in the Register, the relevant categories and the total amount of compensation sought (if applicable). Such reports shall also include the summary of other significant factual or legal matters relevant to the work of the Register.

Article 7 – Executive Director

7.1. The Executive Director shall represent the Register and is entitled to act on its behalf.

7.2. The Executive Director shall be entitled to enter into contracts and arrangements on behalf of the Register. Arrangements entered into by the Executive Director on behalf of the Register with national or international bodies providing for co-ordination of evidence gathering or any exchange of information on claims or evidence, shall be approved by the Board.

7.3. The Secretary General of the Council of Europe shall delegate to the Executive Director such powers that are necessary for the exercise of the duties of the Executive Director with respect to the Secretariat.

7.4. The Executive Director shall:

a. have day-to-day responsibility for overseeing and administrating the work of the Secretariat of the Register;

b. together with the Secretariat, ensure substantive, technical, administrative and organisational support for the work of the Conference and the Board, including regular liaison and preparation of their meetings;

c. be responsible for forwarding claims to the Board for approval for recording in the Register;

d. liaise with relevant national and international bodies on various issues related to the work of the Register and the process of collection of claims and evidence;

e. liaise with the Government of the Kingdom of the Netherlands and the Government of Ukraine on various administrative matters related to the work of the Register;

f. perform any other function vested in the Executive Director by this Statute.

7.5. The Executive Director shall be designated by the Conference upon proposal by the Government of Ukraine and appointed by the Secretary General of the Council of Europe, taking into account the integrity, experience and multi-disciplinary expertise necessary for this post. The Executive Director may be dismissed for justified reasons by the Secretary General following a procedure initiated by the Government of Ukraine or the Secretary General and after agreement by the Conference.

Article 8 – Secretariat of the Register

8.1. The Secretariat shall, under the authority of the Executive Director, provide substantive, technical and administrative support for the maintenance and functioning of the Register.

8.2. Without prejudice to Article 8, paragraph 3, the Secretariat shall have full administrative autonomy from the Council of Europe and its bodies.

8.3. The Council of Europe Staff Regulations shall apply to the Secretariat.

Article 9 – Independence

9.1. In the performance of their duties, the members of the Board, the Executive Director and the Secretariat shall not seek or receive instructions from any government, international organisation or from any other authority external to the Register.

9.2. Each Participant and Associate Member of the Register, as well as the Council of Europe and its bodies, commit to respect the exclusively independent character of the responsibilities of the members of the Board, the Executive Director and the Secretariat and not to seek to influence them in the discharge of their responsibilities.

Article 10 – Financing and budget

10.1. The Register shall have its own budget in accordance with Statutory Resolution Res(93)28. The Conference shall adopt every year the Register's budget on expenditure, prepared by the Executive Director.

10.2. The Register shall be financed through the annual contributions of its Participants and voluntary contributions of its Associate Members.

10.3. The Conference shall determine both the amount of the annual contributions of its Participants and the recommended voluntary contributions of its Associate Members. These contributions should be based, as a rule, on the criteria for the determination of the annual scale of contributions to the general budget of the Council of Europe and can be adjusted in accordance with the principles on which that scale is based.

10.4. The Register may receive and utilise additional voluntary grants and other contributions connected with its work, including contributions in kind, subject to the prior authorisation of the Conference. These contributions shall be consistent with the aims and functions of the Register.

10.5. The Conference shall approve every year the Register's annual accounts, which shall be drawn up by the Secretary General of the Council of Europe in accordance with the Financial Regulations of the Council of Europe and submitted to the Conference accompanied by the report of the External Auditor as provided for in the Financial Regulations. In order to discharge the Secretary General from responsibility for the management of the financial year in question, the Conference shall transmit to the Committee of Ministers the annual accounts, together with its approval or any comments, and the report drawn up by the External Auditor, as provided for in the Financial Regulations.

10.6. The Financial Regulations of the Council of Europe shall apply to the adoption and management of the budget of the Register, taking into account the provisions of this Statute.

Article 11 – Confidentiality

11.1. Subject to Article 11, paragraph 2, any information on claims and damage received by the Register, including any evidence, shall be treated as confidential.

11.2. Rules on access to documents and protection of data related to claims submitted to the Register shall be proposed by the Board and approved by the Conference, including on the sharing of information under the provisions of this Statute, in particular for the purposes of Article 2, paragraph 4.

Article 12 – Council of Europe Rules and Regulations

The Conference, upon a justified proposal from the Board, may approve derogations from applicable Council of Europe rules and regulations if doing so is required for the efficient exercise of the Register's functions. Such approved derogations shall be communicated to the Committee of Ministers and the Secretary General of the Council of Europe.

Article 13 – Amendments

This Statute may be amended only by decision of the Committee of Ministers, in its composition restricted to the representatives of the States Participants of the Register, by the majority stipulated in Article 20.*d* of the Statute of the Council of Europe and an identically worded decision of the Conference.

Article 14 – Transfer, succession and termination

14.1. Following the establishment of a Compensation Mechanism as referred to in Article 2, paragraph 5, the work of the Register shall be transferred as appropriate to such Compensation Mechanism in a way that will ensure the uninterrupted operation of the Register until its termination and that will place information on claims and evidence contained therein at the disposal of such Compensation Mechanism. Such transfer shall include the digital platform of the Register, including all information about claims and evidence contained therein, other documentation, including archives, its movable and immovable property, including, but not limited to, bank accounts, IT equipment, software and any licenses thereto, contracts and arrangements of the Register, as well as any associated data.

14.2. The Board shall propose the necessary rules and procedures with a view to ensuring as appropriate a smooth transfer of the Register to such Compensation Mechanism. These rules shall be approved by the Conference.

14.3. Such Compensation Mechanism is intended to be a successor of the Register following the completion of such transfer.

14.4. After such transfer is completed, as determined by the Board and confirmed by the Conference, the Register shall be terminated as an Enlarged Partial Agreement of the Council of Europe.

Article 15 – Settlement of disputes

The Participants shall seek to resolve any dispute which may arise concerning the application or interpretation of the provisions of this Statute by negotiation or by any other means of peaceful settlement accepted by mutual agreement between them.

Article 16 – Withdrawal and expulsion

16.1. Any Participant or Associate Member may withdraw from the Register by means of a notification sent to the Secretary General of the Council of Europe.

16.2. The Secretary General shall acknowledge receipt of the notification and inform the Participants and Associate Members of the Register.

16.3. The withdrawal of a Participant shall take effect at the end of the financial year in which it is notified, if such notification is given before 1 June of that financial year, or at the end of the following financial year, if notification of withdrawal is given on or after 1 June of the financial year. The withdrawal of an Associate Member shall come into effect upon receipt of the notification.

16.4. In accordance with applicable provisions of the Financial Regulations of the Council of Europe, the Conference shall examine the financial consequences of the withdrawal or expulsion of a Participant or an Associate Member and shall make the appropriate arrangements.

16.5. The Secretary General shall immediately inform the Participant concerned of the consequences of its withdrawal in accordance with Article 16, paragraph 3.

16.6. The Conference may decide that any Participant or Associate Member acting in a manner inconsistent with the mandate of the Register or impeding its functions, ceases to be a Participant or Associate Member of the Register as from such date as the Conference determines.