

**GUIDANCE  
ON APPLYING  
EUROPEAN VALUATION STANDARDS  
IN WARTIME CIRCUMSTANCES**

European Valuation Standards Board – 20<sup>th</sup> December 2022

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**1. Introduction**

1.1 There are two significant tasks being considered by The European Group of Valuers' Associations (TEGOVA) and the European Valuation Standards Board (EVS) in conjunction with its Ukrainian member associations and the State Property Fund of Ukraine (SPFU). They are guidance on the application of European Valuation Standards to:

- the assessment of war damage to individual properties and businesses in Ukraine, as is being undertaken by valuers for clients
- the assessment of the costs of post-war reconstruction.

It is suggested here that these two assessments might often be made most effectively at the same time.

1.2 European Valuation Standards (EVS) provide a framework of standards for the valuation of property, businesses and plant and machinery. They consider bases of value, the qualified valuer, the valuation process and the valuation report. EVS have been prepared and updated

by TEGOVA for over 40 years, most recently in 2020 to 2022. In that process, EVS have considered a growing range of assets and issues as well as more contexts than the ordinary, including the Global Financial Crisis and the consequent dislocated markets. Challenges are found in many situations (EVS 4.5.7) and Russia's invasion of Ukraine with all the associated disruption of war now requires specific consideration.

## **2. Application of EVS to War Damage**

2.1 The circumstances of war do not disapply European Valuation Standards but rather pose particular and challenging circumstances. They are not a casualty of war. It is, though, important to understand how they provide support for professional valuations in such extreme circumstances, which may vary from property still being under hostile occupation, through total destruction and significant damage to looting. This Guidance gives an initial consideration of the issues

2.2 In the circumstances of armed conflict, occupation, war damage and their aftermath, the valuer assessing the loss to a business may very often find that the information available is limited and incomplete, not of the quality that would usually be found for the same assets in a conventional peacetime situation. It may prove necessary to rely more on evidence that would normally be of lesser weight in the hierarchy of evidence, yet may be of better quality than is available for the direct evidence that would ordinarily be preferred. This is an extreme version of the problem that can be encountered in valuing assets that are rarely found or have very limited markets.

2.3 EVS 1.4.9.3 states that:

“The valuer must undertake inspections and investigation to the extent necessary in to produce a professional valuation for the purpose instructed.”

and continues to discuss in general terms the position where the information available is limited or restricted, as may often be the case in the context of war. The valuer's task is still to form an independent, objective and professional opinion as to the value by:

- gathering the available evidence
- applying professional skill and experience to the evidence available
- making reasonable assumptions as seems required or instructed

and then recognising in the report the limitations on the certainty to be attached to the valuation. In such an unusually challenging position, the valuer should be able to form an opinion as to value and then sign the report stating that opinion.

2.4 With the various possible uses of the report and the potential for the valuer to be called as an expert witness in an assessment review, tribunal or court, the report should clearly explain the position with relevant evidence so that a third party can understand from it:

- what has been valued, with details of the property and the damage or other loss
- how the loss arose from the war
- how the opinion as to value was formed.

2.5 Regard may be had to the principles set out in the [\*Joint Declaration on Post-Crisis Assessments and Recovery Planning\*](#) agreed by the European Commission, the United Nations Development Group and the World Bank on 25<sup>th</sup> September 2008.

2.6 The valuer is not determining any compensation or payment but is providing a professional and objective view on which a claim for compensation or payment may be based. The valuation might be scrutinised or challenged as part of the process by which the claim is determined, whether by a court, a tribunal, a commission or other body. The valuer may need to explain the expert opinion in that process, perhaps under hostile challenge.

### **3. The Valuer**

3.1 The valuer is to be suitably skilled, competent, experienced and objective (EVS 3.1) and qualified (EVS 3.2) complying with the European Valuers' Code of Conduct (EVS 3.3.1).

3.2 Even more than ordinarily, the expectation of objectivity is critical in appraising the damage, how it arose and is properly valued. The very demanding context of such a war and the natural desires of clients are likely to test that quality but it is a quality that is essential to the preparation of claims that will be sustained under review or challenge.

3.3 That prospect of challenge reinforces the need to be aware of any conflicts of interest and disclose them (EVS 3.5.2).

3.4 It is recognised that many valuers will have been in military service rather than valuation work for a period of time and, once available again, will need to familiarise themselves with the circumstances.

3.5 Clear terms of engagement of the valuer by the client are required by EVS (EVS 4.3) and should record the instruction. Where the owner of the property is dead, incapacitated, absent, or abroad or the client is claiming inheritance, the valuer should establish that the instruction is from someone able to act for the owner – and the extent to which they can provide records that will assist. It is understood that good title to the property is to be assumed by the valuer.

3.6 Instructions might also come from state or local authorities where they have the authority to require a valuation. Any commission or other body established to determine compensation might choose to instruct a valuer to assist work.

### **4. The Valuation Process**

4.1 The requirements of EVS 4.6, Supporting the Valuation, are affirmed but will need pragmatic interpretation according to the circumstances of the property in question.

4.2 **Defining the Property and/or Assets to be Valued** – This needs to be defined for the valuation to be undertaken. The nature of subject may then guide the approach to the

valuation; for example, whether it is a business that was a going concern or the underlying real estate with or without other assets.

4.3 The property may have been lost (as by being removed, remaining under Russian occupation or movable goods looted), destroyed or damaged. There may be associated losses, such as loss of profits. Types of possible claims are illustrated in the Appendix drawn from the experience of the post-invasion and occupation claims made to the United Nations Compensation Commission for Kuwait. For the purposes of Ukrainian law, the *Resolution of the Cabinet of Ministers of Ukraine of 26<sup>th</sup> March 2022 No 380* sets out the kinds of initial information required for each of these categories of lost, destroyed and damaged property.

4.4 **Inspection – Wherever** possible, the property should be visited for an inspection. Even where the property has been badly damaged, this will help develop an informed view of the property involved in its context and so also of the appropriateness of the available evidence and submissions that may then be considered.

4.5 There will be circumstances in which this is not possible – as where the property is still under occupation – or it is unreasonable to inspect it on site, perhaps because of unexploded ordnance. Where it is not reasonable to enter into one or more buildings, it may be possible to undertake an external inspection.

4.6 In either case and especially for very large or complex properties, such as farms or factory complexes an aerial inspection may assist or be a substitute, as by using:

- drones as part of an inspection, able to go where it might be impossible or too dangerous to visit physically
- satellite imagery to an appropriate resolution.

The video or photographic records from this should be securely dated.

4.7 **Evidence of the Property to be Valued** – All available evidence, including records and photographs, should be gathered, to said understanding of:

- the property as it had been
- the loss or damage it has sustained
- how that directly arose from the war

This may often also concern plant, machinery stocks and other goods that may have been lost or damaged.

4.8 Particular weight should be given to contemporary evidence and what may be available as objective documents or from independent third parties, rather than solely from the uncorroborated testimony of the client.

4.9 For business losses, the business' pre-war and post-war accounts with stocktakings and associated papers would assist any claims based on the loss of stock or of profits.

4.10 **Evidence of the Relevant Market and Costs** – The valuer will hold or be gathering evidence of relevant comparables and, as necessary, costs to sustain the valuation, after appropriate adjustments.

4.11 In this context, the evidence is to be relevant as the case may be to:

- 23<sup>rd</sup> February 2022
- 20<sup>th</sup> February 2014

as the day immediately preceding the start of the war for the area in question, even though values may have changed subsequently.

4.12 **Methodologies** – The circumstances of such a war may mean that the evidence for the valuation is more imperfect than is ordinarily met, with the possibility of only limited comparables. With the challenges that this poses for valuers, the nature of the available evidence may guide the choice of methodology, sometimes perhaps prompting the use of an alternative method that might ordinarily be less favoured but for which there is better evidence. That places more stress on cross-checking between the results from methodologies and applying the final sense check as to whether the value found is realistic.

4.13 Part II of EVS 2020 considers valuation methodologies with the conventional approaches to market value of applying and adjusting evidence from other transactions, whether capital values (comparables) or yields (the income approach). It also considers working from costs with the issues that this approach also raises. These three approaches, together with methods and models are described in EVS. There will be strains in applying each to the varying circumstances and properties to be met in Ukraine. With the valuer expected to form a professional and objective opinion as to value that may have to be presented not only in a Ukrainian court but also in an international one, this paper offers an overview of the potential advantages and inadequacies of each approach:

4.14 **The Comparative Approach** – Assuming that valuations are to be assessed as at 23<sup>rd</sup> February 2022 (20<sup>th</sup> February 2014 in some cases) as the day before the Russian invasion, much will depend on the extent and quality of the data base of transactions held by or available to the valuer and, so far as is appropriate and available to valuers, the SPFU. Paragraph 6.2 of EVS 2020 Part II, Valuation Methodology, allows that it may be necessary to have regard to other evidence. Where such valuations have been derived using Automated Valuation Models (AVM), in reliance on knowledge of asking prices or the secondary evidence of valuation reports, care should be taken to understand how remote the figures given are from real evidence of actual market behaviour when making adjustments to arrive at market value. Similar care will be needed where it appears that reported transactions values may be inaccurate. The task is to find the best evidence for a professional opinion as to value on the basis of the definition of market value.

4.15 Alongside such evidence from more direct comparables, the valuer may consider general data on market movements, including indexes, and then other sources of information

so far can be shown to be relevant and appropriate. The extent of the use made of each of these categories and the opinion of their reliability should be disclosed in the report. It should be remembered that the valuation could be subject to challenge in court.

4.16 It might also be that, in areas of prolonged conflict before the 2022 invasion, there could be little such evidence available. That and similar points will be matters to be judged in relevant cases.

4.17 **The Income Approach** – In normal circumstances, this would be the typical method of valuing properties commonly held for their income, often properties in commercial use, and also businesses. Guidelines should be developed to help the valuer construct cash flows at the date of valuation, looking to the future disregarding the Russian invasion. Again, the quality of valuations will be dependent on market reports and analysis immediately before the invasion.

4.18 **The Cost Approach** – Normally this would be an approach of last resort used in the absence of any relevant market evidence. Cost and value are different concepts.

4.19 However, in the context of the many varieties of war damage and a purpose of restitution, the cost of making a damaged property good may often be the practical answer to put an affected party in the same position as they were before the damage. While such a cost might exceed market value, market value might not achieve restitution. That might be where there are no comparable replacement properties available, whether because there are no useable properties or there is no market. Such losses might also include the work of de-mining, remedying contamination and a reflection of residual risks.

4.20 In the context of a claim for loss, it would be usual to use a depreciated replacement cost approach, as reviewed in EVS 2020 at Section 8 of Part II, Valuation Methodology, so taking account of the actual age, condition and remaining period of economic life of the property, among any other relevant factors.

4.21 **Compensation for What Was Lost** – Especially where a costs-based approach is adopted, care must be taken to understand the property as it was so that the assessment is of compensation for loss, not a provision for improving the property beyond what would have been required by contemporary legal standards or what would be efficient in the marketplace, in mitigating loss. With the need to recognise depreciation, some properties or assets might already have been depreciated to a greater or lesser extent or be less useful than they once were, even obsolete for their purpose.

4.22 **Overview** – This framework and the guidance that may be developed under it are offered to support the valuer facing the challenges that will be met in particular cases. More detailed Ukrainian guidance, drafted with an awareness of Ukrainian law, practice and conditions could assist considerably. However, with the valuer's task of forming a professional and objective opinion as to value, there will be a risk in making that guidance too prescriptive

to the point where it requires an answer that is not right for an individual property or business. The guidance would benefit from a recognition that it should evolve as practical experience is gained of war damage assessments. While Ukrainian courts might give particular regard to guidance developed in Ukraine and understand its context, once a case reaches an international court such a valuation based on Ukrainian guidance could be closely scrutinised. The valuer being cross-examined by a hostile party will need to be able to show that the valuation was professional and objective and not artificially distorted by the guidance.

## **5. The Valuation Report**

5.1 The valuation report (as defined at EVS 5.3 and more generally described at EVS 5.4) must set matters out clearly and here particularly:

- describing the property as it was
- recording the loss or damage
- stating how it arose from the war
- stating the value
- explain how that value has been assessed, with the data used and the sources of that data, the results of analysis of the reliability and sufficiency of that data and any assumptions or special assumptions that had been made
- providing any necessary explanation of uncertainty as to that value, whether overall or in respect of any particular element of claim

in each case with reference to the relevant evidence.

5.2 Again, EVS 5.4.1.5 stresses the importance of objectivity in the report.

5.3 EVS 5.4.2.7 recognises that properties may be affected by unusual uncertainty. The explanation of uncertainty, likely to be qualitative with reasons rather than quantitative, may assist anyone reviewing the valuation to understand whether:

- the effect of the uncertainty is of a material scale in the light of the reported damage
- the opinion is reasonable in the circumstances.

## **6. Beyond the Valuation – Additional Items of Claim**

6.1 The valuation will assess the value lost. The fact of the damage imposed on the claimant imposes a further cost, that of the preparing and advancing the claim. It is conventional that the reasonable costs of a property owner's reasonable defence of property rights against statutory action are met by the body imposing on the property. These should be part of claimant's claim arising from military aggression.

6.2 **Interest** – The valuation for war damage will give the loss that was suffered as at the date of the invasion. Even if settled now, eight months would have passed; eight and half years for the older cases. It might be years yet before claims are settled and properties and businesses made good. That makes it important for interest to be due in addition on the sum finally awarded.

6.3 Whichever date is used, interest should then accumulate on a compound basis at a rate that reflects the circumstances. Purely to illustrate the point and the selection of a rate in circumstances a decade ago, the International Court of Justice determined in *Diallo (Republic of Guinea v Democratic Republic of Congo)*, 19<sup>th</sup> June 2012 that:

“Nevertheless, considering that the award of post-judgment interest is consistent with the practice of other international courts and tribunals, the Court decides that, should payment be delayed, post-judgment interest on the principal sum due will accrue as from 1 September 2012 at an annual rate of 6 per cent. This rate has been fixed taking into account the prevailing interest rates on the international market and the importance of prompt compliance. The Court recalls that the sum awarded to Guinea in the exercise of diplomatic protection of Mr. Diallo is intended to provide reparation for the latter’s injury.”

6.4 While that determination followed much practice with interest only accruing from the date of the determination, it would be more just for it to apply to the sum finally determined but from the original valuation date as the date of the loss.

## **7. The Cost of Post-War Reconstruction**

7.1 This second issue being considered is a very different question as it is very clearly an assessment of cost of building anew. This is not a task of assessing compensation, reparation or restitution. Achieving better properties may be exactly what is in mind; the Ukrainian Government’s policy is to “Build Back Better” and has referred to the standards expected by the EU, including the prospective revised Energy Performance of Buildings Directive, its minimum energy performance standards and its energy performance certificate. This assessment is not a market value at all but one of costs assessed to a specification, including construction costs with fees and required payments as well as any land acquisition and finance costs that might be necessary. In EVS terms, this is most similar to EVGN 3, *Valuation for Insurance Purposes* (notably at 3.4, 4.4 and 4.5) save that liability as a result of armed aggression is of a non-contractual nature.

7.2 Unless recognised elsewhere, any costs for necessary demolition, the removal of explosives, decontamination, remediation and the management of residual risks would be part of this.

7.3 It would typically be appropriate to compare the resulting assessment with the market value of the reconstructed property, whether to avoid excessive costs or to indicate that an alternative, cheaper answer existed. That might, according to the needs of the business, be in a different but acceptable or more useful location but meeting the required improved standards.

7.4 This assessment can only be as at the date it is made even though the actual work will be at an unknown post-War date. That suggests that, where such an assessment is required, in reality it would be more practical for it to be prepared in conjunction with the valuation of



loss, making efficient use of the inspection and appraisal, perhaps even as two distinct parts of one report. Recognising that, for reasons offered below, such assessment is likely to prove to be an underestimate, it would in these circumstances still be the most secure basis for early presentation and subsequent revision, whether by an index or other means. Leaving this work until later would reduce its usefulness.

7.5 While assessing cost might appear more straightforward, the challenges here include:

- the experience of post-War reconstruction elsewhere is that there will be a period, even years, before it starts and, naturally taking time, many years before it is complete and so in which costs and values are likely to change
- the difference between what work is needed for immediate recovery and what for longer term reconstruction
- partially damaged properties, for which the principles for “major renovation” should be followed (see EVGN 3 at 4.6)
- the post-War economy and patterns of development may be very different to those pre-War, as where some areas become much less central to economic activity and new areas more so; people will now live in different places and pursue new lines of business
- determining the standard that is to be expected for reconstruction; using the example of energy efficiency of buildings, is the standard to be that of a pre-War standard, the EPC Band D now thought to be expected by the EU as the minimum for existing buildings by 2033, EPC Band A (with net zero emissions) or a net zero, whole of life standard?
- the requirements that reconstruction at such a scale will make on contractors, equipment, materials and all else involved are likely to drive substantial increases in costs, both when initially estimated and as the work continues
- the initial works of remediation, decontamination, explosives clearance and demolition seem likely to have a particular and significant cost in their own while being a factor in the timescale for the later work of reconstruction.

7.6 The issue is the specification to which reconstruction is to be done. Beyond that is the question of how it is to be controlled so that it is not only done properly but economically and efficiently. There will be a cost in the planning and supervision for that.

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## ILLUSTRATION

### A Property under Occupation when the Valuation is Made

As of the date when the damage was assessed and when the valuation report was issued, it was impossible for the valuer to carry out a physical inspection of the property and the assets at the location shown on the attached map and described above.

Their location is in an area occupied on those dates by the Russian Federation as a result of its armed aggression against Ukraine which began on 24<sup>th</sup> February, 2022, in accordance with the Decree of the President of Ukraine dated February 24, 2022 No. 64/2022, *On the Introduction of Martial Law in Ukraine*.

The claimant lost physical control over its property and assets at this location on ....., ceasing business.

*Note* – *Satellite imagery may be available, especially to demonstrate damage and its scale.*

The date of determining the amount of losses is 23<sup>rd</sup> February 2022 as the day before the armed aggression commenced. It was also the last day of the company's control over the assets and so the last opportunity for the company's employees to provide information about the technical condition and characteristics of the property and assets there.

The following documentary information and evidence about the technical condition and technical characteristics of the property and assets has been provided by the company:

***[LIST WHAT THE CLIENT HAS PROVIDED]***

As of the date of the assessment, the valuer is unable to undertake a physical check of the information provided by the claimant but as it appears internally consistent it is considered a reasonable basis for this valuation. However, the valuer, being unable to verify it, does not accept responsibility for its reliability, a responsibility which lies with the claimant.

*Note* – *There may be other information in accounts, other material and on the internet that may be given whatever weight is appropriate.*

This valuation is made on the basis that the claimant has lost control of the property and assets in an area of military occupation and sustained fighting. It therefore assumes their physical destruction with the loss of business that was operated from them.

This valuation should be reviewed and as necessary revised should the claimant recover possession of the property and assets when their condition and usefulness might be reassessed.

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## APPENDIX I

### SOME POTENTIAL MATTERS TO BE VALUED

#### Notes

This is a non-exhaustive list drawn from the experience of compensation claims by business under the UN scheme following Iraq's invasion and occupation of Kuwait.

While the claim may include the costs of preparing it, including the cost of the valuation, they are not part of the valuation and neither is any interest that might be claimed.

**Real estate** - whether for destruction, damage and loss of utility, having regard to its previous age and condition and other factors.

Different types of property may pose particular questions.

**Tangible property** – including:

- moveable assets
- stocks and inventories
- plant and machinery
- vehicles
- cash

All requiring evidence of their existence, the claimant's ownership, their nature and the loss or damage.

**Lost profits** – generally assessed from accounts before and after the war with a view to be taken on the relevant period and appropriate rates, looking across the business activities of the claimant.

Issues over cancelled letters of credit were considered under lost profits.

The Panel had to consider some situations where a claimant business, such as a car dealership, with losses from the invasion and occupation then had exceptional post-war profits, as from sharply increased car sales to those had lost cars in the war.

**Bad debts** – for debts that were recoverable immediately before the invasion and became uncollectable because of it.

**Costs of restarting business** – in some cases, this might not be a loss of profits claim but is a matter of evidence.

**Business contracts frustrated by the war and invasion** – contract might have failed, been terminated or repudiated in the circumstances, with profit lost (for a period to be identified) and costs potentially incurred.

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## APPENDIX II

### ABOUT TEGOVA

[The European Group of Valuers' Associations](#) (TEGOVA) unites 70 national valuers' associations from 38 countries representing 70 000 qualified valuers. Its [European Valuation Standards](#) (EVS) are cited as reliable standards for the valuation of residential immovable property for mortgage lending purposes in [Directive 2014/17/EU](#) (the Mortgage Credit Directive) and have been given precedence over all other standards by the European Central Bank in successive editions of its [Asset Quality Review Manual](#) for the updating of banks' real estate collateral values.

The first edition of [European Business Valuation Standards](#) was published in 2020 and the first edition of [European Plant, Machinery & Equipment Valuation Standards](#) in 2022.

TEGOVA awards the Recognised European Valuer (REV), TEGOVA Residential Valuer (TRV), Recognised European Business Valuer (REV-BV) and Recognised European Plant, Machinery & Equipment Valuer (REV-PME) marks of excellence, contributing to a consistent high European standard of practice recognisable by professionals, investors and European and national public authorities.