Council of the
European Union

Brussels, 9 December 2022
(OR. en)

15727/22

Interinstitutional File:
2022/0371(COD)

ECOFIN 1291
RELEX 1682
NIS 35
FIN 1312
COEST 893
CODEC 1944

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Position of the Council at first reading with a view to the adoption of REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +)

REGULATION (EU) …/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

establishing an instrument for providing support
to Ukraine for 2023 (macro-financial assistance +)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[1],

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[1] Position of the European Parliament of 24 November 2022 (not yet published in the Official Journal) and position of the Council at first reading of ... 2022 (not yet published in the Official Journal). Position of the European Parliament of … (not yet published in the Official Journal).

Whereas:

(1) An association agreement between the Union and Ukraine[1], including a Deep and Comprehensive Free Trade Area, entered into force on 1 September 2017.

(2) In 2014, Ukraine embarked on an ambitious reform programme with the aim of stabilising its economy and improving the livelihoods of its citizens. The fight against corruption, as well as constitutional, electoral and judicial reforms, are among the top priorities on the agenda. The implementation of those reforms was supported by consecutive macro-financial assistance programmes, under which Ukraine has received assistance from the Union in the form of loans for a total of EUR 6,6 billion.

(3) The emergency macro-financial assistance, which was made available in the context of mounting threat, right before the Russian invasion, pursuant to Decision (EU) 2022/313 of the European Parliament and of the Council[2], provided EUR 1,2 billion in loans to Ukraine, disbursed in two instalments, each of EUR 600 million, in March and May 2022.

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1 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L 161, 29.5.2014, p. 3).

2 Decision (EU) 2022/313 of the European Parliament and of the Council of 24 February 2022 providing macro-financial assistance to Ukraine (OJ L 55, 28.2.2022, p. 4).

(4) The Union's exceptional macro-financial assistance of up to EUR 1 billion, made available pursuant to Decision (EU) 2022/1201 of the European Parliament and of the Council[1], provided swift and urgent support to the Ukrainian budget and was fully disbursed in two tranches on 1 and 2 August 2022. That assistance constituted the first stage of the planned exceptional macro-financial assistance to Ukraine of up to EUR 9 billion, announced by the Commission in its communication of 18 May 2022 entitled 'Ukraine Relief and Reconstruction' and endorsed by the European Council of 23-24 June 2022.

(5) Decision (EU) 2022/1628 of the European Parliament and of the Council[2] constituted a further step in the implementation of the Union's planned exceptional macro-financial assistance. It established the basis for providing to Ukraine a further amount of up to EUR 5 billion in the form of loans on highly concessional terms, of which EUR 2 billion was disbursed on 18 October, with the remaining EUR 3 billion to be disbursed by the end of 2022.

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1 Decision (EU) 2022/1201 of the European Parliament and of the Council of 12 July 2022 providing exceptional macro-financial assistance to Ukraine (OJ L 186, 13.7.2022, p. 1).

2 Decision (EU) 2022/1628 of the European Parliament and of the Council of 20 September 2022 providing exceptional macro-financial assistance to Ukraine, reinforcing the common provisioning fund by guarantees by the Member States and by specific provisioning for some financial liabilities related to Ukraine guaranteed under Decision No 466/2014/EU, and amending Decision (EU) 2022/1201 (OJ L 245, 22.9.2022, p. 1).

(6) Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022 has caused Ukraine a loss of access to financial markets and a significant drop in public revenue, while public expenditure to address the humanitarian situation and to maintain the continuity of State services has increased markedly. In that very uncertain and volatile situation, the best estimates of Ukraine's funding needs by the International Monetary Fund (IMF) in the summer of 2022 pointed to an extraordinary funding gap of around USD 39 billion in 2022, of which around half could be met thanks to international assistance. The swift provision by the Union of the macro-financial assistance to Ukraine under Decision (EU) 2022/1628 was, given the extraordinary circumstances, considered to be an appropriate short-term response to the sizeable risks to Ukraine's macro-financial stability. The further amount of up to EUR 5 billion of exceptional macro-financial assistance under that Decision was to support Ukraine's macro-financial stabilisation, strengthen the immediate resilience of the country and sustain its capacity towards recovery, thereby contributing to the public debt sustainability of Ukraine and its ability to ultimately be in a position to meet its financial obligations.

(7) Since the beginning of Russia's war of aggression against Ukraine, the Union, its Member States and European financial institutions have mobilised EUR 19,7 billion for Ukraine's economic, social and financial resilience. That amount combines support from the Union budget, in the amount of EUR 12,4 billion, including the exceptional macro-financial assistance and support from the European Investment Bank and the European Bank for Reconstruction and Development, fully or partially guaranteed by the Union budget, as well as further financial support by Member States, in the amount of EUR 7,3 billion.

(8) In addition, the Council decided on assistance measures to support the Ukrainian armed forces under the European Peace Facility, in the amount of EUR 3,1 billion under Council Decision (CFSP) 2021/509[1], and a military assistance mission in support of Ukraine with EUR 0,1 billion for the common costs under Council Decision (CFSP) 2022/1968[2]. The Union and its Member States have also delivered unprecedented in-kind emergency response via the Union Civil Protection Mechanism under Regulation (EU) 2021/836 of the European Parliament and the Council[3], constituting the largest emergency operation since the creation of that mechanism, and channelling millions of emergency items to Ukraine and the region.

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[1] Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 (OJ L 102, 24.3.2021, p. 14).

[2] Council Decision (CFSP) 2022/1968 of 17 October 2022 on a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine) (OJ L 270, 18.10.2022, p. 85).

[3] Regulation (EU) 2021/836 of the European Parliament and the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (OJ L 185, 26.5.2021, p. 1).

(9) The European Council of 23 June 2022 decided to grant the status of candidate country to Ukraine. Ongoing strong support to Ukraine is a key priority for the Union. As the damage from Russia's war of aggression to the Ukrainian economy, citizens and businesses is tremendous, ongoing strong support to Ukraine requires an organised collective approach as set out in the instrument for providing Union support to Ukraine (macro-financial assistance +) established by this Regulation (the 'Instrument').

(10) Russia's war of aggression against Ukraine represents a strategic geopolitical threat to the Union as a whole and requires Member States to stand strong and united. It is therefore essential that Union support be deployed rapidly and be able to adapt flexibly and gradually for immediate relief and short-term rehabilitation on the way to future reconstruction.

(11) The general objective of the Instrument is to contribute to closing the funding gap of Ukraine in 2023, notably by providing highly concessional short-term financial relief to Ukraine's State budget in a predictable, continuous, orderly and timely manner, including financing the rehabilitation and initial support towards post-war reconstruction, where appropriate, with a view to supporting Ukraine on its path towards European integration.

(12) To attain the Instrument's general objective, the assistance should be provided to support macro-financial stability in Ukraine, and to ease Ukraine's external financing constraints. The Commission should implement the support under the Instrument in accordance with the key principles and objectives of the measures taken within the different areas of external action and other relevant Union policies.

(13) The provision of rehabilitation support, repair, and maintenance of critical functions and infrastructure as well as relief for people in need and for most affected areas in terms of material and social support, temporary housing, residential and infrastructural construction should also count among the main areas of support under the Instrument.

(14) The Instrument should also support the strengthening of the capacity of Ukrainian authorities to prepare for the future post-war reconstruction and for the early preparatory phase of the pre-accession process, as appropriate, including the strengthening of Ukraine's institutions, reforming and reinforcing the effectiveness of public administration as well as transparency, structural reforms and good governance at all levels.

(15) The Instrument will support the Union's external policy towards Ukraine. The Commission and the European External Action Service should work closely together throughout the support operation in order to coordinate, and ensure the consistency of, the Union's external policy. The support to Ukraine under the Instrument will continue to contribute significantly to satisfying Ukraine's funding needs as estimated by the IMF, the World Bank and other international financial institutions, taking into account Ukraine's capacity to finance itself with its own resources. The determination of the amount of the support also takes into account the expected financial contributions from bilateral and multilateral donors, as well as the pre-existing deployment of the Union's other external financing instruments in Ukraine and the added value of the overall Union involvement.

(16) The situation of Ukraine requires a step-by-step approach whereby an instrument focusing on macro-financial stability as well as immediate relief and rehabilitation should be accompanied by continuous support under the Neighbourhood, Development and International Cooperation Instrument – Global Europe established by Regulation (EU) 2021/947 of the European Parliament and of the Council[1] and the humanitarian aid operations under Council Regulation (EC) No 1257/96[2].

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[1] Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (OJ L 209, 14.6.2021, p. 1).

[2] Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid (OJ L 163, 2.7.1996, p. 1).

(17) This Regulation should lay down the resources available for the Instrument for the period from 1 January 2023 to 31 December 2023 with possible disbursements until 31 March 2024. A maximum amount of EUR 18 billion should be made available in the form of loans. In addition, for the period from 1 January 2023 to 31 December 2027, this Regulation should provide for an interest rate subsidy. To ensure coverage of interest costs during the lifetime of the loans, contributions from the Member States beyond 2027 should be renewed and continue as external assigned revenue unless covered through other means in future multiannual financial frameworks. Therefore it might be possible to extend the contributions from the Member States beyond 2027.

(18) This Regulation should provide the possibility for the Member States to make available additional resources, as external assigned revenue, to be implemented under the memorandum of understanding (MoU) of the Instrument. Such a possibility for additional contribution should also be made for interested third countries and parties as external assigned revenues, in accordance with Article 21(2), points (d) and (e), of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[1] (the 'Financial Regulation'). To foster synergies and complementarities, it is appropriate to allow that such additional contributions from the Member States, from interested third countries and parties could also be made available to the programmes established under Regulations (EU) 2021/947 and (EC) No 1257/96 to finance measures contributing to the objectives of the Instrument.

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[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

(19) Voluntary contributions by the Member States should be irrevocable, unconditional and on demand. For that purpose, the Member States should enter into a contribution agreement within the meaning of Article 22(2) of the Financial Regulation with the Commission. Such contribution agreement should cover the contribution to the interest rate subsidy and, should the Member States wish to provide them, also additional amounts.

(20) The support under the Instrument should be made available under the precondition that Ukraine continue to respect effective democratic mechanisms and its institutions, including a multi-party parliamentary system, and the rule of law, and to guarantee respect for human rights.

(21) The support under the Instrument should be linked to policy conditions to be set out in a MoU. Those conditions should also include commitments to strengthen the country's economic performance and resilience, the business environment, facilitate critical reconstruction and address challenges in the energy sector.

(22) The policy conditions should be complemented by stringent reporting requirements, aiming to ensure that the funds are used in an efficient, transparent and accountable manner.

(23) In view of the situation in Ukraine, it is appropriate to provide for a mid-term review of the MoU.

(24) The support under the Instrument should be released subject to the respect of preconditions, satisfactory implementation and progress towards the implementation of the policy conditions.

(25) It is appropriate to provide for the possibility to reassess the funding needs of Ukraine and to reduce, suspend or cancel the support if those needs decrease fundamentally during the period of the disbursement of the support under the Instrument compared to the initial projections. It is also appropriate to provide for the possibility to suspend or cancel the disbursements in case the requirements for the release of the support under the Instrument are not fulfilled.

(26) In the context of Ukraine's urgent financing needs, it is appropriate to organise the financial assistance under the diversified funding strategy provided for in Article 220a of the Financial Regulation and established as a single funding method therein, which is expected to enhance the liquidity of Union bonds and the attractiveness and cost-effectiveness of Union issuance.

(27) Given the difficult situation of Ukraine caused by Russia’s war of aggression and to support Ukraine on its long-term stability path, it is appropriate to provide loans to Ukraine on highly concessional terms with a maximum duration of 35 years and to not start the repayment of the principal before 2033. It is also appropriate to derogate from Article 220(5), point (e), of the Financial Regulation and to allow the Union the possibility to cover the interest rate costs and to waive the administrative costs that would otherwise be borne by Ukraine. The interest rate subsidy should be granted as an instrument deemed appropriate to ensure the effectiveness of the support under the Instrument within the meaning of Article 220(1) of the Financial Regulation. It should be financed from additional voluntary contributions by the Member States and should become available gradually as the agreements with the Member States enter into force.

(28) It should be possible for Ukraine to request the interest rate subsidy and the waiver of administrative costs each year.

(29) The financial liability from loans under this Regulation should not be supported by the External Action Guarantee, by derogation from Article 31(3), second sentence, of Regulation (EU) 2021/947. Support under the Instrument should constitute financial assistance within the meaning of Article 220(1) of the Financial Regulation. In considering the financial risks and the budgetary coverage, no provisioning should be constituted for the financial assistance in the form of loans under the Instrument and, by derogation from Article 211(1) of the Financial Regulation, no provisioning rate as a percentage of the amount referred to in Article 4(1) of this Regulation should be set.

(30) Council Regulation (EU, Euratom) 2020/2093[1] currently does not allow for coverage of the financial liability arising from loans under the Instrument. Pending its possible amendment, which would allow, as a guarantee, the mobilisation of budgetary resources over and above the multiannual financial framework (MFF) ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Council Decision (EU, Euratom) 2020/2053[2], it is appropriate to seek an alternative solution providing additional resources.

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[1] Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433I, 22.12.2020, p. 11).

[2] Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

(31) Voluntary contributions by Member States in the form of guarantees have been identified as an appropriate tool to provide the protection allowing the borrowing and lending operations under this Regulation. The Member States' guarantees should constitute an appropriate safeguard ensuring the Union's ability to repay the borrowings supporting the loans under the Instrument.

(32) The guarantees provided by Member States should cover the support under the Instrument in the form of loans of up to EUR 18 000 000 000. It is important that Member States complete the applicable national procedures to provide the guarantees as a matter of the utmost priority. Given the urgency of the situation, the time needed for the completion of those procedures should not delay the disbursement of the required financial support to Ukraine in the form of loans under this Regulation. At the same time, the financial support under the Instrument in the form of loans should be made available progressively, as the guarantees provided by Member States enter into force. In view of the principle of sound financial management and prudence, the Commission should arrange the loans taking due consideration of its credit standing. However, the support should become available for the full amount of up to EUR 18 000 000 000 as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, which provides for a guarantee of the loans under the Instrument under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053.

(33) The Member States' guarantees should be irrevocable, unconditional and on demand. Those guarantees should ensure the Union's ability to repay the funds borrowed on the capital markets or from financial institutions. The guarantees should cease to be callable as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, which provides for a guarantee of the loans under the Instrument under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053. The guarantees should be called in the event that the Union does not receive a timely payment from Ukraine in respect of the loans under the Instrument, including, in particular, in cases of changes to the payment schedule for any reason whatsoever as well as expected and unexpected non-payments.

(34) Amounts recovered under the loan agreements in respect of the loans under the Instrument should be reimbursed to the Member States that have honoured the guarantee calls, by derogation from Article 211(4), point (c), of the Financial Regulation.

(35) Before calling on the guarantees provided by the Member States, the Commission, at its sole discretion and responsibility as the Union institution entrusted with the implementation of the general budget of the Union in accordance with Article 317 of the Treaty on the Functioning of the European Union, should examine all measures available under the diversified funding strategy provided for in Article 220a of the Financial Regulation, in accordance with the limits set out in this Regulation. In the relevant call on guarantees, the Commission should inform the Member States about the examination, as appropriate.

(36) The relative share of the contributions of each Member State (contribution key) to the overall guaranteed amount should correspond to the relative shares of Member States in the total gross national income (GNI) of the Union. The calls on the guarantees should be made pro rata, applying the contribution key. Until all the guarantee agreements between the Commission and the Member States enter into force, the contribution key should be proportionately adjusted on a temporary basis.

(37) It is appropriate that the Commission and Ukraine conclude a loan agreement for the loan support, within the framework of the conditions set out in the MoU. In order to ensure that the Union's financial interests linked to the support under the Instrument are protected efficiently, Ukraine should take appropriate measures regarding the prevention of and fight against fraud, corruption and any other irregularities linked to that support. In addition, provision should be made in the loan agreement and in the financing agreement for the Commission to carry out checks, for the Court of Auditors to carry out audits and for the European Public Prosecutor's Office to exercise its competences, in accordance with Articles 129 and 220 of the Financial Regulation.

(38) Since the objective of this Regulation, namely to contribute to closing the funding gap of Ukraine in 2023, notably by providing highly concessional short-term relief to Ukraine's State budget in a predictable, continuous, orderly and timely manner, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(39) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1].

(40) In view of the urgency entailed by the exceptional circumstances caused by Russia's unprovoked and unjustified war of aggression, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(41) In light of the situation in Ukraine, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

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[1] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Chapter I

Union support to Ukraine

SECTION 1

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes an instrument for providing Union support to Ukraine (macro-financial assistance +) (the ‘Instrument’) in the form of loans, non-repayable support and an interest rate subsidy.

2. It lays down the objectives of the Instrument, its financing, the forms of Union funding under it and the rules for providing such funding.

Article 2

Objectives of the Instrument

1. The general objective of the Instrument shall be to provide short-term financial relief to Ukraine in a predictable, continuous, orderly and timely manner, financing of rehabilitation and initial support towards post-war reconstruction, where appropriate, with a view to supporting Ukraine on its path towards European integration.

2. To reach the general objective, the main specific objectives shall in particular be to support:

   (a) macro-financial stability, and to ease Ukraine's external and internal financing constraints;

   (b) a reform agenda gearing towards the early preparatory phase of the pre-accession process, as appropriate, including strengthening Ukraine's institutions, reforming and reinforcing the effectiveness of public administration as well as transparency, structural reforms and good governance at all levels;

   (c) rehabilitation of critical functions and infrastructure and relief for people in need.

Article 3

Areas of support

To achieve its objectives, the Instrument shall support notably the following:

(a) the financing of Ukraine’s funding needs, with a view to maintaining the macro-financial stability of the country;

(b) rehabilitation, for instance in restoring critical infrastructure, such as energy infrastructure, water systems, transport networks, internal roads or bridges, or in strategic economic sectors and social infrastructure, such as healthcare facilities, schools, and housing for relocated persons, including temporary and social housing;

(c) sectoral and institutional reforms, including anti-corruption and judicial reforms, respect for the rule of law, good governance, and modernisation of the national and local institutions;

(d) preparation for the reconstruction of Ukraine;

(e) support for the alignment of the regulatory framework of Ukraine to that of the Union and Ukraine’s integration into the single market, as well as strengthening economic development and improving competitiveness;

(f) the strengthening of Ukraine’s administrative capacity through appropriate means, including the use of technical assistance.

Article 4

Available support under the Instrument

1. The support under the Instrument in the form of loans, shall be available, subject to Article 5, for an amount of up to EUR 18 000 000 000 for the period from 1 January 2023 to 31 December 2023 with possible disbursement until 31 March 2024.

   The support shall become available progressively, as Member States' guarantees enter into force in accordance with Article 5(4), while never exceeding the amounts covered by those guarantee agreements.

   However, as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, that provides for a guarantee of the loans referred to in the first subparagraph of this paragraph under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053, the second subparagraph of this paragraph shall cease to apply and the support referred to in the first subparagraph of this paragraph shall become available in full.

2. Additional support under the Instrument for the period from 1 January 2023 to 31 December 2027 shall also be available, subject to Article 7(1), for covering the expenditure pursuant to Article 17. This additional support may be available beyond 31 December 2027 subject to Article 7(1).

3. Additional amounts available in accordance with Article 7(2) and (4) of this Regulation may be implemented as non-repayable support where provided for in the MoU to be concluded in accordance with Article 9 of this Regulation or in accordance with Regulations (EU) 2021/947 and (EC) No 1257/96 to finance measures achieving the objectives referred to in Article 2(2), points (b) and (c), of this Regulation in accordance with the rules of those Regulations.

4. The amounts referred to in paragraph 3 may cover support expenditure for the implementation of the Instrument and for the achievement of its objectives, including administrative support associated with the preparation, follow-up, monitoring, control, audit and evaluation activities necessary for such implementation, as well as expenditure at headquarters and Union delegations for the administrative and coordination support needed for the Instrument, and to manage operations financed under the Instrument, including information and communication actions, and corporate information technology systems.

Article 5

Contributions in the form of guarantees by Member States

1. Member States may contribute by providing guarantees of up to a total amount of EUR 18 000 000 000 in respect of the support under the Instrument in the form of loans referred to in Article 4(1).

2. Where contributions from the Member States are made, they shall be provided in the form of irrevocable, unconditional and on-demand guarantees through a guarantee agreement to be concluded with the Commission, in accordance with Article 6.

3. The relative share of the contribution of the Member State concerned (contribution key) to the amount referred to in paragraph 1 of this Article shall correspond to the relative share of that Member State in the total GNI of the Union, as resulting from heading 'General Revenue' of the budget for 2023, Part A ('Financing of the Union's annual budget, Introduction'), Table 4, column (1), set out in the general budget of the Union for the financial year 2023, as definitively adopted on 23 November 2022.

4. The guarantees shall become effective in respect of each Member State as of the date of entry into force of the guarantee agreement, referred to in Article 6, between the Commission and the Member State concerned.

5. Amounts resulting from calls on the guarantees shall constitute external assigned revenue in accordance with Article 21(2), point (a)(ii), of the Financial Regulation for the repayment of financial liabilities from the support under the Instrument in the form of loans referred to in Article 4(1) of this Regulation.

6. Before calling on guarantees provided by the Member States, the Commission, at its sole discretion and responsibility, shall examine all measures available under the diversified funding strategy provided for in Article 220a of the Financial Regulation, in accordance with the limits set out in this Regulation. Such examination shall not affect the irrevocable, unconditional and on-demand nature of the guarantees provided pursuant to paragraph 2 of this Article. In the call on guarantees, the Commission shall inform the Member States about the examination, as appropriate.

7. By way of derogation from Article 211(4), point (c), of the Financial Regulation, amounts recovered from Ukraine in respect of the support under the Instrument in the form of loans referred to in Article 4(1) of this Regulation shall be reimbursed to those Member States up to the amount of the guarantee calls honoured by Member States pursuant to Article 6, point (a), of this Regulation.

Article 6

Guarantee agreements

The Commission shall conclude a guarantee agreement with each Member State that provides a guarantee referred to in Article 5. That agreement shall set out the rules governing the guarantee, which shall be the same for all Member States, including, in particular, provisions:

(a) establishing the obligation of the Member States to honour guarantee calls made by the Commission in respect of the support under the Instrument in the form of loans referred to in Article 4(1);

(b) ensuring that the guarantee calls are made pro rata, applying the contribution key referred to in Article 5(3); on a temporary basis, the contribution key shall be proportionately adjusted until all the guarantee agreements between the Commission and the Member States enter into force in accordance with Article 5(4);

(c) providing that the guarantee calls ensure the Union's ability to repay the funds borrowed, pursuant to Article 16(1), on the capital markets or from financial institutions following a non-payment by Ukraine, including cases of changes to the payment schedule for any reason whatsoever as well as expected and unexpected non-payments;

(d) ensuring that where a Member State fails, in full or in part, to honour a guarantee call in time, the Commission, in order to cover for the part corresponding to the Member State concerned, shall have the right to make additional guarantee calls on guarantees provided by other Member States. Such additional calls shall be made pro rata to the relative share of each of the other Member States in the GNI of the Union as referred to in Article 5(3) and adapted without taking into account the relative share of the Member State concerned. The Member State which failed to honour the guarantee call shall remain liable to honour it, and shall also be liable for any resulting costs. The other Member States shall be reimbursed any additional contributions from the amounts recovered by the Commission from the Member State which failed to honour a call. The guarantee called from a Member State shall be limited, in all circumstances, to the overall amount of guarantee contributed by that Member State under the guarantee agreement;

(e) regarding the payment conditions;

(f) ensuring that the guarantee shall cease to be callable as of the date of application of an amendment to Regulation (EU, Euratom) 2020/2093, or its successor, which provides for a guarantee of the loans referred to in Article 4(1) of this Regulation under the Union budget over and above the MFF ceilings and up to the limits of the ceilings referred to in Article 3(1) and (2) of Decision (EU, Euratom) 2020/2053.

Article 7

Contributions by Member States and third parties

1. Member States may contribute to the Instrument with the amounts referred to in Article 4(2). The relative share of the contribution of the Member State concerned to those amounts shall correspond to the relative share of that Member State in the total GNI of the Union. For the contributions for year n, the GNI-based relative share shall be calculated as the share in the total GNI of the Union, as resulting from the respective column in the revenue part of the last annual Union budget or amending annual Union budget adopted for the year n-1.

   The support under the Instrument under this paragraph shall become available in respect of any amount set in an agreement between the Commission and the respective Member State after that agreement enters into force.

2. Member States may contribute to the Instrument with additional amounts as referred to in Article 4(3).

3. The contributions referred to in paragraphs 1 and 2 of this Article shall constitute external assigned revenue in accordance with Article 21(2), point (a)(ii), of the Financial Regulation.

4. Interested third countries and parties may also contribute to non-repayable support under the Instrument with additional amounts referred to in Article 4(3), of this Regulation in particular related to the specific objectives referred to in Article 2(2), points (b) and (c), of this Regulation. Those contributions shall constitute external assigned revenue in accordance with Article 21(2), points (d) and (e), of the Financial Regulation.

SECTION 2

CONDITIONS FOR SUPPORT UNDER THE INSTRUMENT

Article 8

Precondition for the support under the Instrument

1. A precondition for granting the support under the Instrument shall be that Ukraine continue to uphold and respect effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and to guarantee respect for human rights.

2. The Commission and the European External Action Service shall monitor the fulfilment of the precondition set out in paragraph 1 throughout the period of the support provided under the Instrument, in particular before disbursements are made, taking, as appropriate, duly into account the Commission's regular enlargement report. The circumstances in Ukraine and the consequences of the application there of martial law shall also be taken account.

3. Paragraphs 1 and 2 of this Article shall apply in accordance with Council Decision 2010/427/EU[1].

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[1] Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

Article 9

Memorandum of Understanding

1. The Commission shall conclude a memorandum of understanding (MoU) with Ukraine which shall in particular establish the policy conditions, the indicative financial planning and the reporting requirements as referred to in Article 10 to which the Union support under the Instrument is to be linked.

   The policy conditions shall be linked, as appropriate, in the context of the overall situation in Ukraine, to the objectives and their implementation referred to respectively in Articles 2 and 3 and to the precondition set out in Article 8. They shall include commitment to the principles of sound financial management with focus on anti-corruption, fight against organised crime, anti-fraud and avoidance of conflict of interests and the establishment of a transparent and accountable framework for the management of rehabilitation and, where appropriate, reconstruction.

2. The MoU may be reviewed by the Commission at mid-term. The Commission may amend the MoU following the review.

3. The MoU shall be adopted and amended in accordance with the examination procedure referred to in Article 19(2).

Article 10

Reporting requirements

1. Reporting requirements for Ukraine shall be included in the MoU and shall ensure, in particular, the efficiency, transparency and accountability of the use of the support provided under the Instrument.

2. The Commission shall verify, at regular intervals, the implementation of the reporting requirements and the progress made towards fulfilling the policy conditions set out in the MoU. The Commission shall inform the European Parliament and the Council of the results of that verification.

SECTION 3

RELEASE OF THE SUPPORT UNDER THE INSTRUMENT, ASSESSMENT AND INFORMATION OBLIGATIONS

Article 11

Release of the support under the Instrument

1. Subject to the requirements referred to in Article 12, the support under the Instrument shall be made available by the Commission in instalments. The Commission shall decide on the timeframe for the disbursement of each instalment. An instalment may be disbursed in one or more tranches.

2. The release of the support under the Instrument shall be managed by the Commission based on its assessment of the implementation of the policy conditions included in the MoU.

Article 12

Decision on release of the support under the Instrument

1. Ukraine shall submit a request for funds ahead of the disbursement of each instalment, accompanied by a report in accordance with the provisions of the MoU.

2. The Commission shall decide on the release of the instalments subject to its assessment of the following requirements:

(a) respect for the precondition set out in Article 8;

(b) the satisfactory implementation of the reporting requirements agreed in the MoU;

(c) satisfactory progress towards the implementation of the policy conditions set out in the MoU.

3. Before the maximum amount of the support under the Instrument is disbursed, the Commission shall verify the fulfilment of all the policy conditions set out in the MoU.

Article 13

Reduction, suspension and cancellation of the support under the Instrument

1. If the funding needs of Ukraine decrease fundamentally during the period of the disbursement of the Union's support under the Instrument compared to the initial projections, the Commission may reduce the amount of the support, suspend it or cancel it.

2. Where the requirements set out in Article 12(2) are not met, the Commission shall suspend or cancel the disbursement of the support under the Instrument.

Article 14

Assessment of implementation of the support under the Instrument

During the implementation of the Instrument, the Commission shall assess, by means of an operational assessment, which may be conducted together with the operational assessment provided for under Decisions (EU) 2022/1201 and (EU) 2022/1628, the soundness of Ukraine's financial arrangements, the administrative procedures, and the internal and external control mechanisms which are relevant to the support under the Instrument.

Article 15

Information to the European Parliament and to the Council

The Commission shall inform the European Parliament and the Council of developments regarding the Union support under the Instrument, including disbursements thereof, and developments in the operations referred to in Article 11, and shall provide those institutions with the relevant documents in due time. In case of suspension or cancellation pursuant to Article 13(2), it shall without delay inform the European Parliament and the Council of the reasons for the suspension or cancellation.

Chapter II
Specific provisions
related to the implementation of the support

Article 16

Borrowing and lending operations

1. In order to finance the support under the Instrument in the form of loans, the Commission shall be empowered, on behalf of the Union, to borrow the necessary funds on the capital markets or from financial institutions in accordance with Article 220a of the Financial Regulation.

2. The detailed terms of the support under the Instrument in the form of loans shall be laid down in a loan agreement in accordance with Article 220 of the Financial Regulation, to be concluded between the Commission and Ukraine. The loans shall have a maximum duration of 35 years.

3. By derogation from Article 31(3), second sentence, of Regulation (EU) 2021/947, macro-financial assistance provided to Ukraine in the form of loans under the Instrument shall not be supported by the External Action Guarantee.

No provisioning for the loans under this Regulation shall be constituted and, by derogation from Article 211(1) of the Financial Regulation, no provisioning rate as a percentage of the amount referred to in Article 4(1) of this Regulation shall be set.

Article 17

Interest rate subsidy

1. By derogation from Article 220(5), point (e), of the Financial Regulation and subject to available resources, the Union may bear interest by granting an interest rate subsidy and cover administrative costs related to the borrowing and lending, with the exception of costs related to early repayment of the loan, in respect of the loans under this Regulation.

2. Ukraine may request the interest rate subsidy and coverage of the administrative costs by the Union each year.

Article 18

Financing agreement for non-repayable support

The detailed terms of the non-repayable support referred to in Article 4(3) of this Regulation shall be laid down in a financing agreement to be concluded between the Commission and Ukraine. By derogation from Article 220(5) of the Financial Regulation, the financing agreement shall contain only provisions referred to in Article 220(5), points (a), (b) and (c), thereof. The financing agreement shall include provisions on the protection of the Union's financial interests, checks, audits, prevention of fraud and other irregularities, and the recovery of funds.

Chapter III

Common and final provisions

Article 19

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 20

Annual report

1. The Commission shall submit to the European Parliament and to the Council, an assessment of the implementation of Chapter I of this Regulation, including an evaluation of that implementation. That report shall:

   (a) examine the progress made in implementing the Union's support under the Instrument;

   (b) assess the economic situation and prospects of Ukraine, as well as the implementation of the requirements and conditions referred to in Section 2 of Chapter I of this Regulation;

   (c) indicate the connection between the requirements and conditions set out in the MoU, Ukraine's ongoing macro-financial situation and the Commission's decisions to release the instalments of the support under the Instrument.

2. Not later than two years after the end of the availability period, the Commission shall submit to the European Parliament and to the Council an *ex-post* evaluation report, assessing the results and efficiency of the completed Union's support under the Instrument and the extent to which it has contributed to the aims of the assistance.

Article 21

Final provisions

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …,

For the European Parliament *For the Council*
The President *The President*