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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 7 July 2022 with a view to the adoption of Decision (EU) 2022/… of the European Parliament and of the Council providing exceptional macro-financial assistance to Ukraine (EP-PE_TC1-COD(2022)0213)

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 7 July 2022

with a view to the adoption of Decision (EU) 2022/… of the European Parliament and of the Council providing exceptional macro-financial assistance to Ukraine

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 7 July 2022.

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. Given that the European Council of 23 June 2022 recognised the European perspective of Ukraine and decided to grant the status of candidate country to Ukraine, Ukraine should be considered to be eligible to receive macro-financial assistance from the Union.

(2) In spring 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 six consecutive macro-financial assistance programmes, under which Ukraine has received assistance in the form of loans for a total of EUR 6,2 billion. The latest emergency macro-financial assistance, which was made available in the context of mounting tensions at the border with Russia, 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 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).

(3) Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022 has caused Ukraine a loss of market access and a drastic drop in public revenues, while public expenditures to address the humanitarian situation and to maintain the continuity of State services have increased markedly. In this very uncertain and volatile situation, the best estimates of Ukraine's funding needs by the International Monetary Fund (IMF) point to an extraordinary funding gap of around USD 39 billion in 2022 ,of which around half could be met if the international support pledged thus far would be fully disbursed. The swift provision by the Union of macro-financial assistance to Ukraine under this Decision, as a first stage of the implementation of the full exceptional macro-financial assistance of up to EUR 9 billion, is, under the current extraordinary circumstances, considered to be an appropriate short-term response to the immediate most urgent funding needs of Ukraine and to the sizeable risks to the macro-financial stability of the country. The Union's macro-financial assistance is to support Ukraine's macro-financial stabilisation and strengthen the resilience of the country, thereby contributing to the public debt sustainability of Ukraine and its ability to ultimately be in a position to repay its financial obligations.

(4) The determination of the amount of the Union's macro-financial assistance under this Decision, while also taking into account the planned full exceptional macro-financial assistance, is based on a quantitative assessment of Ukraine's residual external funding needs, conducted in cooperation with the IMF and other international financial institutions, and takes into account Ukraine's capacity to finance itself with its own resources. This determination also takes into account expected financial contributions from bilateral and multilateral donors, the need to ensure fair burden sharing between the Union and other 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. The Ukrainian authorities' commitment to close cooperation with the IMF on the design and implementation of short-term emergency measures and their intent to work with the IMF on an appropriate economic programme when conditions permit should be acknowledged. The Union's macro-financial assistance should aim to maintain macro-financial stability and resilience under the war circumstances. The Commission should ensure that the Union's macro-financial assistance is legally and substantially in accordance with the key principles and objectives of the measures taken within the different areas of external action and other relevant Union policies.

(5) The Union's macro-financial assistance should support the Union's external policy towards Ukraine. The Commission and the European External Action Service should work closely together throughout the macro-financial assistance operation in order to coordinate, and ensure the consistency of, Union external policy.

(6) A precondition for granting the Union's macro-financial assistance should be that Ukraine respect effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and guarantee respect for human rights. The ongoing war, and in particular the current state of martial law, should not encroach on those principles, despite the concentration of power in the executive branch.

(7) In order to ensure that the Union's financial interests linked to the Union's exceptional macro-financial assistance are protected efficiently, Ukraine should take appropriate measures relating to the prevention of, and fight against, fraud, corruption and any other irregularities linked to that assistance. In addition, provision should be made in the loan 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 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[1] (the 'Financial Regulation').

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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).

(8) The Union's macro-financial assistance under this Decision, as a first stage of the implementation of the planned full exceptional macro-financial assistance to Ukraine, should be linked to stringent reporting requirements, to be set out in a memorandum of understanding (MoU). Those stringent reporting requirements should aim, under the current war circumstances, to ensure that the funds are used in an efficient, transparent and accountable manner. Policy conditions, which should aim to strengthen the immediate resilience of Ukraine and its longer-term debt sustainability, thereby reducing risks linked to the repayment of its outstanding and future financial obligations, will be attached to future macro-financial assistance operations.

(9) In order to ensure uniform conditions for the implementation of this Decision, 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].

(10) The macro-financial assistance of up to EUR 1 billion under this Decision constitutes a financial liability for the Union within the overall volume of the External Action Guarantee under Regulation (EU) 2021/947 of the European Parliament and of the Council[2].

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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).

[2] 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).

(11) In accordance with Article 210(3) of the Financial Regulation the contingent liabilities arising from budgetary guarantees or financial assistance borne by the budget are to be deemed sustainable, if their forecast multiannual evolution is compatible with the limits set by Council Regulation (EU, Euratom) 2020/2093[1] and the ceiling on annual payment appropriations set out in Article 3(1) of Council Decision (EU, Euratom) 2020/2053[2]. In order to enable the Union to provide substantial support to Ukraine through macro-financial assistance in a financially safe manner, while preserving the high credit standing of the Union and, hence, its capacity to deliver effective financing in the context of both its internal and external policies, it is essential to adequately protect the Union budget from the materialisation of those contingent liabilities and to ensure they are financially sustainable within the meaning of Article 210(3) of the Financial Regulation.

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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).

(12) In accordance with the principle of sound financial management it is necessary, before proceeding with the provision of additional loans under the exceptional macro-financial assistance to Ukraine, to reinforce the resilience of the common provisioning fund with means commensurate to the risks arising from the contingent liabilities linked to the Union's macro-financial assistance to Ukraine under this Decision. Without such a reinforcement, the Union budget would not be able to provide, on financially safe grounds, the assistance that the war-related needs of Ukraine require. To protect the Union budget, based on the current assessment, the envisaged coverage for the Union's full exceptional macro-financial assistance loans of up to EUR 8,8 billion to Ukraine, including this instalment of EUR 1 billion, should be at 70 % of the loan value.

(13) On that basis, the provisioning rate for the loan of EUR 1 billion should be set at 70 %, instead of applying the general rule set out in Article 31(5), third subparagraph, of Regulation (EU) 2021/947. The corresponding amount of EUR 700 million should be financed from the financial envelope for geographic programmes under Regulation (EU) 2021/947. This amount should be committed and paid into a dedicated compartment of the common provisioning fund in the period up to 2027.

(14) Given the increased provisioning rate for this instalment of the Union's macro-financial assistance, it is appropriate to manage the financial liability from the macro-financial assistance under this Decision separately from other financial liabilities under the External Action Guarantee. Furthermore, it is proposed to use the provisioning set aside in the common provisioning fund in respect of macro-financial assistance under this Decision solely for financial liabilities under this Decision, instead of in accordance with the general rule set out in Article 31(6) of Regulation (EU) 2021/947. That should be followed by the exclusion of the provisioning set aside in respect of macro-financial assistance under this Decision from the application of the effective provisioning rate implemented in accordance with Article 213 of the Financial Regulation.

(15) Since the objective of this Decision, namely to provide the Union's macro-financial assistance to Ukraine with a view to supporting, in particular, its economic resilience and stability, 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 (TEU). In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.

(16) 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 TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(17) Given the difficult situation of Ukraine caused by Russia's war of aggression, and to support it on its long-term stability path, it is 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 related to the loan under this Decision and to waive the administrative costs otherwise to be borne by Ukraine. The interest rate subsidy should, exceptionally, be granted as an instrument deemed appropriate to ensure the effectiveness of the support within the meaning of Article 220(1) of the Financial Regulation and should be borne by the Union's budget. During the period of the multiannual financial framework 2021-2027 the interest rate subsidy should be borne by the financial envelope referred to in Article 6(2), point (a), first indent, of Regulation (EU) 2021/947. It should be possible for Ukraine to request the interest rate subsidy and the waiver of administrative costs each year by the end of March. To allow for flexibility in the repayment of the principal, it should also be possible to roll over the associated borrowings contracted on behalf of the Union, by derogation from Article 220(2) of the Financial Regulation.

(18) In light of the situation in Ukraine, this Decision 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 DECISION:

Article 1

1. The Union shall make available to Ukraine macro-financial assistance of a maximum amount of EUR 1 billion (the ‘Union’s macro-financial assistance’) with a view to supporting Ukraine’s macro-financial stability. The Union’s macro-financial assistance shall be provided to Ukraine in the form of a loan.

2. In order to finance the Union’s macro-financial assistance, the Commission shall be empowered, on behalf of the Union, to borrow the necessary funds on the capital markets or from financial institutions and to on-lend them to Ukraine. The loan shall have a maximum average maturity of 25 years.

3. The financial envelope referred to in Article 6(2), point (a), first indent, of Regulation (EU) 2021/947 shall be used to cover the costs of interest payments related to the macro-financial assistance during the period of the multiannual financial framework 2021-2027, as an interest rate subsidy referred to in Article 5(2) of this Decision.

4. The release of the Union's macro-financial assistance shall be managed by the Commission in a manner consistent with the agreements or understandings reached between the Commission and Ukraine in the MoU referred to in Article 3(1).

5. The Commission shall regularly inform the European Parliament and the Council of developments regarding the Union's macro-financial assistance, including disbursements thereof, and shall provide those institutions with the relevant documents in due time.

6. The Union's macro-financial assistance shall be made available for a period of 12 months, starting on the first day after the entry into force of the MoU referred to in Article 3(1).

7. If the financing needs of Ukraine decrease fundamentally during the period of the disbursement of the Union's macro-financial assistance compared to the initial projections, the Commission shall reduce the amount of the assistance, suspend it or cancel it.

Article 2

1. A precondition for granting the Union's macro-financial assistance shall be that Ukraine respect effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and 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 life-cycle of the Union's macro-financial assistance, in particular before disbursements are made, also taking into account the circumstances in Ukraine and the consequences of the application there of martial law.

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

Article 3

1. The Commission shall agree with Ukraine on clearly defined reporting requirements to which the Union's macro-financial assistance is to be linked. The reporting requirements shall be set out in a Memorandum of Understanding (MoU) and adopted in accordance with the examination procedure referred to in Article 8(2).

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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).

2. The reporting requirements shall ensure, in particular, that the Union's macro-financial assistance is used in an efficient, transparent and accountable manner. The Commission shall regularly monitor the implementation of those reporting requirements.

3. The detailed financial terms of the Union's macro-financial assistance shall be laid down in a loan agreement to be concluded between the Commission and Ukraine.

4. The Commission shall verify, at regular intervals, the implementation of the Union's macro-financial assistance, and in particular of the reporting requirements set out in the MoU. The Commission shall inform the European Parliament and the Council about the results of that verification.

Article 4

1. Subject to the requirements referred to in paragraph 2, the Union's macro-financial assistance shall be made available by the Commission in a single instalment, in the form of a loan. The Commission shall decide on the timeframe for the disbursement of the instalment. The instalment may be disbursed in one or more tranches.

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

   (a) respect for the precondition set out in Article 2(1);

   (b) entry into force of the MoU, which shall provide for the setting-up of a reporting system applicable during the entire period of the loan.

3. Where the requirements set out in paragraph 2 are not met, the Commission shall temporarily suspend or cancel the disbursement of the Union's macro-financial assistance, or take appropriate measures pursuant to the loan agreement. In such cases, it shall inform the European Parliament and the Council of the reasons for the suspension or cancellation.

4. The Union's macro-financial assistance shall in principle be disbursed to the National Bank of Ukraine. Subject to the provisions to be agreed in the MoU, including a confirmation of residual budgetary financing needs, the Union funds may be disbursed to the Ukrainian Ministry of Finance as the final beneficiary.

Article 5

1. The borrowing and lending operations shall be carried out in accordance with Article 220 of the Financial Regulation.

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

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

4. Where necessary, by derogation from Article 220(2) of the Financial Regulation, the Commission may roll over the associated borrowings contracted on behalf of the Union.

5. The Commission shall inform the European Parliament and the Council of developments in the operations referred to in paragraphs 2 and 3.

Article 6

During the implementation of the Union's macro-financial assistance, the Commission shall re-assess, by means of an operational assessment, the soundness of Ukraine's financial arrangements, the administrative procedures, and the internal and external control mechanisms which are relevant to the assistance.

Article 7

1. For the Union's macro-financial assistance provided in the form of a loan under this Decision, the provisioning rate of 70 % shall apply instead of the general rule set out in Article 31(5), third subparagraph, of Regulation (EU) 2021/947.

2. Instead of the general rule set out in Article 31(6) of Regulation (EU) 2021/947, the financial liabilities from the Union's macro-financial assistance provided in the form of a loan under this Decision shall be covered separately from other financial liabilities under the External Action Guarantee and the provisioning set aside in the common provisioning fund in respect of the Union's macro-financial assistance provided in the form of a loan under this Decision shall be used solely for the financial liabilities derived therefrom.

3. By way of derogation from Article 213 of the Financial Regulation, the effective provisioning rate shall not apply to the provisioning set aside in the common provisioning fund in respect of the Union's macro-financial assistance provided in the form of a loan under this Decision.

Article 8

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 9

1. By 30 June of each year, the Commission shall submit to the European Parliament and to the Council, as part of its annual report, an assessment of the implementation of this Decision in the preceding year, including an evaluation of that implementation. That report shall:

   (a) examine the progress made in implementing the Union's macro-financial assistance;

   (b) assess the economic situation and prospects of Ukraine, as well as the implementation of the requirements referred to in Article 3(1);

   (c) indicate the connection between the requirements and conditions set out in the MoU, Ukraine's ongoing macro-financial situation, and the Commission's decision to release the instalment of the Union's macro-financial assistance.

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 macro-financial assistance and the extent to which it has contributed to the aims of the assistance.

Article 10

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

Done at ...,

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