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THE EUROPEAN PARLIAMENT THE COUNCIL

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DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL PROVIDING EXCEPTIONAL MACRO-FINANCIAL ASSISTANCE TO UKRAINE, REINFORCING THE COMMON PROVISIONING FUND BY GUARANTEES BY 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

DECISION (EU) 2022/…
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 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

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],

[1] Position of the European Parliament of 15 September 2022 (not yet published in the Official Journal) and decision of the Council of 20 September 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.

(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 consecutive macro-financial assistance programmes, under which Ukraine has received assistance in the form of loans for a total of EUR 6,6 billion. The 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, 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).

The Union's exceptional macro-financial assistance of up to EUR 1 billion 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 full Union's exceptional macro-financial assistance to Ukraine for 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. This Decision constitutes the second stage in the implementation of that envisaged Union's exceptional macro-financial assistance. It establishes the basis for providing to Ukraine a further amount of up to EUR 5 billion of macro-financial assistance in the form of loans on highly concessional terms. This Decision should be followed swiftly by the adoption of a further decision implementing the third stage of the planned full Union's exceptional macro-financial assistance for a further amount of up to EUR 3 billion once the design of that assistance has been determined.

[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).

(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 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) point to an extraordinary financing gap of around USD 39 billion in 2022, of which around half could be met if the international support pledged thus far were fully disbursed. The swift provision by the Union of the macro-financial assistance to Ukraine under this Decision is, under the current 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 Union's exceptional macro-financial assistance under this Decision is 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 repay its financial obligations.

(4) The Union's exceptional macro-financial assistance under this Decision will contribute significantly to satisfying Ukraine's funding needs as estimated by the IMF 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 Union's exceptional macro-financial assistance 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. Such a programme was formally requested in August 2022. The Union's exceptional macro-financial assistance should aim to maintain macro-financial stability and resilience under the war circumstances. The Commission should ensure that the Union's exceptional 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 exceptional 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 exceptional 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 exceptional macro-financial assistance should be linked to stringent reporting requirements and policy conditions, to be set out in a memorandum of understanding (the '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. The policy conditions 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.

(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].

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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).

(10) The loans provided under this Decision and Decision (EU) 2022/1201 should together have a maximum average maturity of 25 years.

(11) Given that the loans under this Decision and Decision (EU) 2022/1201 imply the same risks for the Union budget and should have together a maximum average maturity of 25 years, the total amount of EUR 6 billion of the Union's macro-financial assistance to Ukraine under this Decision and Decision (EU) 2022/1201 should be covered by a common methodology for managing the financial and budgetary implications. In particular, the same level of budgetary cover should be established as adequate protection against the possibility of potential non-repayment by Ukraine of some or all of the loans at the scheduled time. The provisions made available from the Union budget against the two sets of loans of the Union's exceptional macro-financial assistance should be managed as an integrated set of provisions. Such management will enhance the resilience and flexibility of the Union budget in response to any situation of non-payment. Decision (EU) 2022/1201 should therefore be amended accordingly.

(12) The exceptional macro-financial assistance under this Decision and Decision (EU) 2022/1201 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[1]. The total amount of up to EUR 6 billion of Union's exceptional macro-financial assistance loans to Ukraine should benefit from 9 % of paid-in provisioning available for macro-financial assistance loans under the External Action Guarantee. The amount of provisioning should be financed from the financial envelope programmed for macro-financial assistance under Regulation (EU) 2021/947 for a total amount of EUR 540 million. That amount should be committed and paid into the common provisioning fund under the multiannual financial framework 2021-2027, laid down in Council Regulation (EU, Euratom) 2020/2093[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 (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433 I, 22.12.2020, p. 11).

(13) In accordance with Article 210(3) of the Financial Regulation, the contingent liabilities arising from budgetary guarantees or financial assistance borne by the Union budget are to be deemed sustainable if their forecast multiannual evolution is compatible with the limits set by Regulation (EU, Euratom) 2020/2093 and the ceiling on annual payment appropriations set out in Article 3(1) of Council Decision (EU, Euratom) 2020/2053[1]. In order to enable the Union to provide substantial support to Ukraine through the Union's exceptional macro-financial assistance in unprecedented amounts 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.

1 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).

(14) In accordance with the principle of sound financial management, the common provisioning fund should be reinforced with means commensurate to the risks arising from the contingent liabilities linked to this unprecedently large Union's exceptional macro-financial assistance to a single beneficiary. Without such a reinforcement, the Union budget would not be able to provide, on financially safe grounds, the unprecedentedly large assistance that the war-related needs of Ukraine require. To protect the Union budget, the Union's exceptional macro-financial assistance loans to Ukraine of up to EUR 6 billion should benefit from a 70 % coverage through paid-in provisioning (at the level of 9 %), which may be supplemented with Member States' guarantees to provide budgetary cover for losses of up to a further 61 % of the loan values.

(15) Resources under Regulation (EU, Euratom) 2020/2093 are under high pressure in view of the Union's overall spending priorities. It is therefore appropriate to seek an alternative solution for additional resources which does not affect the regular expenditure foreseen in the financial programming of the multiannual financial framework 2021-2027.

(16) Voluntary contributions by Member States in the form of guarantees have been identified as an appropriate tool to provide protection on top of the initial paid-in provisioning. The Member States' guarantees should be provided voluntarily and should constitute an appropriate backstop supporting the Union budget, after the provisions in the common provisioning fund in respect of financial liabilities under this Decision and Decision (EU) 2022/1201 have been or are to be fully drawn down. The contributions under those guarantees should be included into the amount of authorised financial liability by derogation from Article 211(1), first subparagraph, of the Financial Regulation. Those amounts should be taken into account for calculating the provisioning resulting from the provisioning rate referred to in Article 211(1) of the Financial Regulation, by derogation from Article 211(4), second subparagraph, of the Financial Regulation.

(17) The guarantees provided by Member States should cover the exceptional macro-financial assistance loans under this Decision and Decision (EU) 2022/1201 (the 'covered MFAs'). Those 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. They should be called only when strict conditions, relating to the adequacy of the available provisions, are met and in the event that the Union does not receive a payment from Ukraine of the exceptional macro-financial assistance loans granted under the covered MFAs in time to satisfy the Union's financial obligations from bonds or in the event that the payment schedule of the loans granted under the covered MFAs were to be changed. A call on the guarantees provided by Member States should be made for an amount corresponding to the amount arising from losses on financial assistance to Ukraine under the covered MFAs and to replenish the common provisioning fund to the required level of paid-in provisioning. The calls on the Member States' guarantees should only be made after the amount of initial provisioning set aside in respect of the exceptional macro-financial assistance under the covered MFAs has been or is to be fully drawn down. Amounts recovered under the loan agreements in respect of the exceptional macro-financial assistance to Ukraine under the covered MFAs 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.

(18) In the event that payment of the Union's financial obligations arising from bonds for the exceptional macro-financial assistance to Ukraine under the covered MFAs were met temporarily from provisions set aside in the common provisioning fund to cover other financial liabilities of the Union, the call on the guarantees provided by Member States could be used to replenish the provisioning of those financial liabilities.

(19) Given the exceptional nature of the macro-financial assistance backed by the guarantees, it is appropriate to manage the provisions held against the financial liabilities arising from the macro-financial assistance under the covered MFAs and for any disbursements after 15 July 2022 of loans guaranteed under Decision No 466/2014/EU of the European Parliament and of the Council[1] separately from other financial liabilities under the External Action Guarantee and the Guarantee Fund for external actions. It is therefore appropriate to use the provisioning set aside in the common provisioning fund solely for financial liabilities from the exceptional macro-financial assistance under the covered MFAs, instead of applying the general rule set out in Article 31(6) of Regulation (EU) 2021/947. Furthermore, it is appropriate to use the provisioning set aside in the common provisioning fund in respect of the loans guaranteed under Decision No 466/2014/EU disbursed after 15 July 2022 solely for the financial liabilities from those loans and to apply the rules of the Financial Regulation to the provisioning, instead of applying the general rule set out in Article 31(8) of Regulation (EU) 2021/947. That should be complemented by the exclusion of the provisioning set aside in respect of the exceptional macro-financial assistance under this Decision from the application of the effective provisioning rate, by derogation from Article 213 of the Financial Regulation.

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[1] Decision No 466/2014/EU of the European Parliament and of the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union (OJ L 135, 8.5.2014, p. 1).

(20) 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 of the Union. The calls on the guarantees should be made pro rata, applying that contribution key.

(21) It is important that Member States complete their national procedures for the guarantees to enter into force 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 urgently needed exceptional macro-financial assistance to Ukraine under this Decision. The macro-financial assistance loans under this Decision will be arranged swiftly upon the entry into force of this Decision, adoption of the MoU and signing of the loan agreement.

(22) Given the difficult situation caused by Russia's war of aggression, and to support Ukraine 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 loans under this Decision 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 within the meaning of Article 220(1) of the Financial Regulation and should be borne by the Union budget at least during the period of the multiannual financial framework 2021-2027. During the period from 2021 to 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.

(23) 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.

(24) Faced with Ukraine's urgent financing needs, the Commission agreed in July 2022 to the repurposing and disbursement of a further EUR 1,59 billion of the European Investment Bank loans to Ukraine guaranteed under the External Lending Mandate 2014-2020 (ELM). However, as those loans are for the Ukrainian sovereign and state-owned entities, they embody the same level of risk for the Union budget as the macro-financial assistance loans. The Union budget should consequently apply the same precautionary approach to those exposures as it does to the macro-financial assistance loans under the covered MFAs. This Decision therefore applies a 70 % provisioning rate to the repurposed ELM loans of EUR 1,59 billion as well as to any further disbursements of ELM loans to Ukraine. That provisioning rate should apply instead of the provisioning rate set out in Article 31(8), third sentence, of Regulation (EU) 2021/947. The 70 % provisioning for the EUR 1,59 billion ELM loans disbursements to Ukraine will be financed from the Union budget.

(25) A regular review of the provisioning for the respective macro-financial assistance loans and ELM loans should be undertaken every six months, starting on 30 June 2023 or earlier, if appropriate. That review should in particular assess whether the situation of Ukraine has evolved in a way that would warrant an increase or decrease of the provisioning rate. The Commission might re-assess the provisioning rate on an ad hoc basis, in particular if justified by a notable relevant event. In order to ensure that the provisioning rate remains adequate to the financial risks, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of increasing or decreasing the provisioning rate, as appropriate. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[1]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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1 OJ L 123, 12.5.2016, p. 1.

(26) Since the objective of this Decision, namely to provide the Union's exceptional 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. 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.

(27) 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.

(28) 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:

Chapter I

Union's exceptional macro-financial assistance

Article 1

Making available of the Union's exceptional macro-financial assistance

1. The Union shall make available to Ukraine exceptional macro-financial assistance of a maximum amount of EUR 5 000 000 000 (the 'Union's exceptional macro-financial assistance') with a view to supporting Ukraine's macro-financial stability. The Union's exceptional macro-financial assistance shall be provided to Ukraine in the form of loans. It shall contribute to covering Ukraine's financing gap as identified in cooperation with international financial institutions.

2. In order to finance the Union's exceptional 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 loans provided under paragraph 1 of this Article and under Decision (EU) 2022/1201 shall together have a maximum average maturity of 25 years.

3. The Union's exceptional macro-financial assistance shall be made available starting on the day after the entry into force of the MoU referred to in Article 3(1) and during the availability period set out therein, even if the guarantees set out in Chapter II, Section 1, of this Decision have not yet been provided.

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

Article 2

Precondition for the Union's macro-financial assistance

1. A precondition for granting the Union's exceptional 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 shall monitor the fulfilment of the precondition set out in paragraph 1 throughout the life-cycle of the Union's exceptional 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

Memorandum of Understanding

1. The Commission shall agree with Ukraine on policy conditions to which the Union's exceptional macro-financial assistance is to be linked. The policy conditions shall be adopted in accordance with the examination procedure referred to in Article 15(2). Those policy conditions shall be set out in a Memorandum of Understanding (the 'MoU').

2. The reporting requirements that were adopted under Decision (EU) 2022/1201 shall be included in the MoU and shall ensure, in particular, the efficiency, transparency and accountability of the use of the Union's exceptional macro-financial assistance.

[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).

3. The detailed financial terms of the Union's exceptional 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 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 about the results of that verification.

Article 4

Release of the Union's exceptional macro-financial assistance

1. Subject to the requirements referred to in paragraph 3, the Union's exceptional macro-financial assistance shall be made available by the Commission in instalments, each of which shall consist of a loan. 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 Union's exceptional macro-financial assistance shall be managed by the Commission in a manner consistent with the MoU.

3. 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 2(1);

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

   (c) for the second and subsequent instalments, satisfactory progress towards the implementation of the policy conditions set out in the MoU.

   Before the maximum amount of the Union's macro-financial assistance is disbursed, the Commission shall verify the fulfilment of all the policy conditions set out in the MoU.

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

5. The Union's exceptional 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

Borrowing and lending operations

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

2. 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.

Article 6

Interest rate subsidy

1. By derogation from Article 220(5), point (e), of the Financial Regulation, the Union may bear interest by granting an interest rate subsidy and covering 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 Decision.

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

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 Union's macro-financial assistance during the period of the multiannual financial framework 2021-2027 as an interest rate subsidy.

Article 7

Information to the European Parliament and to the Council

The Commission shall inform the European Parliament and the Council of developments regarding the Union's exceptional macro-financial assistance, including disbursements thereof, and developments in the operations referred to in Article 5(2), and shall provide those institutions with the relevant documents in due time.

Article 8

Assessment of implementation of the Union's exceptional macro-financial assistance

During the implementation of the Union's exceptional 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. That operational assessment may be conducted together with the operational assessment provided for under Decision (EU) 2022/1201.

Chapter II

Reinforcement of the common provisioning fund

SECTION 1

GUARANTEES BY THE MEMBER STATES FOR THE UNION'S EXCEPTIONAL MACRO-FINANCIAL ASSISTANCE UNDER THIS DECISION AND DECISION (EU) 2022/1201

Article 9

Contributions in the form of guarantees by Member States

1. Member States may complement the provisioning in respect of macro-financial assistance kept in the common provisioning fund, by providing guarantees up to a total amount of EUR 3 660 000 000 in respect of the Union's exceptional macro-financial assistance to Ukraine under Article 1 of this Decision and under Decision (EU) 2022/1201 (the 'covered MFAs').

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 10.

3. The relative share of the contribution of the Member State concerned (contribution key) to the amount referred to in paragraph 1 shall correspond to the relative share of that Member State in the total gross national income of the Union, as resulting from heading ‘General Revenue’ of the budget for 2022, 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 2022, as definitively adopted on 24 November 2021[1].

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 10, between the Commission and the Member State concerned.

Article 10

Guarantee agreements

The Commission shall conclude a guarantee agreement with each Member State that provides a guarantee referred to in Article 9. 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 covered MFAs, once the overall amounts of initial, or subsequently replenished, provisioning set aside in the common provisioning fund in respect of financial liability arising from the covered MFAs have been or are to be fully drawn down;

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[1] OJ L 45, 24.2.2022.

(b) ensuring that the guarantee calls are made pro rata, applying the contribution key referred to in Article 9(3);

(c) providing that the guarantee calls ensure the Union's ability to repay the funds borrowed, pursuant to Article 1(2), on the capital markets or from financial institutions following a non-payment by Ukraine, including cases of changes to the payment schedule for whatsoever reason as well as expected non-payments;

(d) ensuring that the guarantee calls may be used to replenish the common provisioning fund for provisioning where it has been drawn down in respect of the covered MFAs;

(e) ensuring that a Member State that has failed to honour a call remains liable to honour it;

(f) regarding the payment conditions.

SECTION 2

PROVISIONING OF THE COVERED MFAS AND OF SOME ELM FINANCIAL LIABILITIES IN UKRAINE

Article 11

Provisioning of the covered MFAs

1. For the covered MFAs, a provisioning rate of 70 % shall apply instead of the general rule set out in Article 31(5), third subparagraph, of Regulation (EU) 2021/947. However, the level of provisioning paid into the common provisioning fund shall be kept at, and if drawn down replenished, without prejudice to Article 10, point (a), of this Decision, to 9 % of the outstanding liability from the covered MFAs until the guarantees referred to in Article 9 are fully drawn on.

2. Amounts resulting from calls on the guarantees referred to in Article 9 shall constitute external assigned revenue for the repayment of financial liabilities from the covered MFAs and payments to the common provisioning fund in accordance with Article 21(2), point (a)(ii), of the Financial Regulation.

3. By way of derogation from Article 211(1), first subparagraph, second sentence, of the Financial Regulation, the amount of guarantees referred to in Article 9(1) shall be included into the amount of authorised financial liability. By way of derogation from Article 211(4), second subparagraph, of the Financial Regulation, the amounts of provisioning referred to in paragraph 2 of this Article shall be taken into account for calculating the provisioning resulting from the provisioning rate in respect of the covered MFAs.

4. By way of derogation from Article 211(4), point (c), of the Financial Regulation, amounts recovered from Ukraine in respect of the covered MFAs shall not contribute to the provisioning up to the amount of the guarantee calls honoured by Member States pursuant to Article 10, point (a), of this Decision. Those amounts shall be reimbursed to those Member States.

Article 12

Reinforcement of provisioning in respect of some financial liabilities in Ukraine guaranteed under Decision No 466/2014/EU

1. By way of derogation from Article 31(8), third sentence, of Regulation (EU) 2021/947, the provisioning rate of 70 % shall apply to loan amounts disbursed after 15 July 2022 under European Investment Bank (EIB) financing operations in Ukraine signed by the EIB before 31 December 2021 and guaranteed by the Union in accordance with Decision No 466/2014/EU (the 'covered ELM financial liabilities in Ukraine'), and Articles 211, 212 and 213 of the Financial Regulation shall apply, subject to Articles 13 and 14 of this Decision.

2. For the purposes of Article 211(1), second subparagraph, of the Financial Regulation, the provisioning shall reach by 31 December 2027 the level corresponding to the provisioning rate applied to the total amount of outstanding liabilities from covered ELM financial liabilities in Ukraine.

Article 13

Assessment of adequacy of the provisioning rate and review procedure

1. Every six months starting on 30 June 2023, and whenever the Commission concludes that other reasons or events indicate the need to do so, the Commission shall assess whether there are new developments which could impact in a lasting and meaningful manner the adequacy of the provisioning rate, including the rate of the paid-in provisioning, referred to in Articles 11 and 12. The Commission shall in particular identify the presence of a sustained significant change in the credit risk profile of those exposures using data from a period of at least two years.

2. The Commission is empowered to adopt a delegated act in accordance with Article 16 to amend Articles 11 and 12 to adjust the provisioning rate, in particular to reflect the developments referred to in paragraph 1.

Article 14

Provisioning held in the common provisioning fund

1. Instead of the general rule set out in Article 31(6) of Regulation (EU) 2021/947, the financial liability from the covered MFAs 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 covered MFAs shall be used solely for financial liabilities under the covered MFAs.

   Instead of the general rule set out in Article 31(8) of Regulation (EU) 2021/947, the financial liability from the covered ELM financial liabilities in Ukraine shall be covered separately from other financial liabilities under the Guarantee Fund for External Action, and the provisioning set aside in the common provisioning fund in respect of the covered ELM financial liabilities in Ukraine shall be used solely for financial liabilities under the covered MFAs.

2. 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 covered MFAs and covered ELM financial liabilities in Ukraine.

3. By way of derogation from Article 213(4), point (a), of the Financial Regulation, any surplus of provisioning referred to in Article 12(2) of this Decision shall constitute external assigned revenue within the meaning of Article 21(5) of the Financial Regulation to the external assistance programme under which Ukraine is eligible.

Chapter III
Common provisions

Article 15

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 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 13(2) shall be conferred on the Commission for an indeterminate period of time from … [the date of entry into force of this Decision].

3. The delegation of power referred to in Article 13(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 13(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 17

Annual report

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 Chapter I 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 exceptional macro-financial assistance;

   (b) assess the economic situation and prospects of Ukraine, as well as the implementation of the requirements and conditions referred to in Article 3(1) and (2);

   (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 Union's exceptional 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 exceptional macro-financial assistance and the extent to which it has contributed to the aims of the assistance.

Chapter IV

Amendments to Decision (EU) 2022/1201 and final provision

Article 18

Amendments to Decision (EU) 2022/1201

Decision (EU) 2022/1201 is amended as follows:

(1) in Article 1(2), the second sentence is replaced by the following:

‘The loans under paragraph 1 and under Decision (EU) 2022/…of the European Parliament and of the Council[*+] shall together have a maximum average maturity of 25 years.

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[*] Decision (EU) 2022/… of the European Parliament and of the Council of … providing exceptional macro-financial assistance to Ukraine, reinforcing the common provisioning fund by guarantees by 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 ..., p. ...).’;

(2) Article 7 is deleted.

[+] OJ: Please insert in the text the number of the Decision contained in document PE-CONS 49/22 (2022/0281(COD)) and insert the number, date, title and OJ reference of that Decision in the footnote.

Article 19

Final provision

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

Done at Brussels,

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