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Subject: Draft DECISION OF THE EU-UKRAINE ASSOCIATION COUNCIL as regards the amendment of Annex XLIV to the 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

DRAFT

DECISION No .../2023 OF THE EU-UKRAINE ASSOCIATION COUNCIL

of ...

**as regards the amendment of Annex XLIV to the 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**

THE EU-UKRAINE ASSOCIATION COUNCIL,

Having regard to the 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, and in particular Article 463 thereof,

Whereas:

- (1) The 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 part¹ ('the Agreement') entered into force on 1 September 2017.
- (2) The Preamble to the Agreement recognises the Parties' desire to move the reform and approximation process forward in Ukraine, thus contributing to the gradual economic integration and deepening of political association, as well as to achieving economic integration through extensive regulatory approximation.
- (3) Article 1(2), point (d), of the Agreement refers to the objective to support Ukrainian efforts to complete the transition into a functioning market economy by means of, inter alia, the progressive approximation of its legislation to that of the Union.
- (4) Pursuant to Article 459(1) of the Agreement, the Parties are to implement assistance in accordance with the principles of sound financial management and cooperate in protecting of the financial interests of the EU and of Ukraine as set out in Annex XLIII to the Agreement. The Parties are to take effective measures to prevent and fight fraud, corruption and any other illegal activities, inter alia by means of mutual administrative assistance and mutual legal assistance in the fields covered by the Agreement.

¹ OJ EU L 161, 29.5.2014, p. 3.

- (5) Pursuant to Article 459(2) of the Agreement, Ukraine is to also gradually approximate its legislation in line with the provisions as set out in Annex XLIV to the Agreement.
- (6) Article 474 of the Agreement provides for the general commitment of Ukraine to carry out gradual approximation of its legislation to EU law, based on commitments identified in, inter alia, Title VI of the Agreement. Commitments concerning gradual approximation of Ukrainian legislation to EU law identified in Title VI of the Agreement include protection of the financial interests of the EU and of Ukraine in the context of financial assistance provided through the relevant EU funding mechanisms and instruments in order to achieve the objectives of the Agreement taking into account Ukraine's needs, sector capacities and progress with reforms.
- (7) Pursuant to Article 463(1) and (3) of the Agreement, the Association Council has the power to take decisions for the purpose of attaining the objectives of the Agreement. In particular, it may update or amend the Annexes to the Agreement, taking into account the evolution of EU law and applicable standards set out in international instruments deemed relevant by the Parties.

- (8) Since the conclusion of negotiations for the Agreement, EU law on protection of the financial interests of the European Union, provisions of which were incorporated in Annex XLIV to the Agreement, was replaced by Directive (EU) 2017/1371 of the European Parliament and of the Council¹, and thus Ukraine's commitments envisaged by the implementation of the Agreement have changed as well. Those amendments of EU law need to be reflected in Annex XLIV to the Agreement, which therefore needs to be amended.
- (9) The Association Council is therefore to amend Annex XLIV to the Agreement and to adjust the deadline for implementation of the provisions referred to in that Annex in order to take into account the new amendments of EU law,

HAS ADOPTED THIS DECISION:

¹ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ EU L 198, 28.7.2017, p. 29).

Article 1

Annex XLIV to the Agreement is replaced by the Annex to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at ...,

*For the Association Council
The Chair*

ANNEX

‘ANNEX XLIV TO TITLE VI FINANCIAL COOPERATION, WITH ANTI-FRAUD PROVISIONS

Ukraine undertakes to gradually approximate its legislation to the following EU legislation within the stipulated timeframes:

Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law¹:

- Article 3 – Fraud affecting the Union’s financial interests;
- Article 4 – Other criminal offences affecting the Union’s financial interests;
- Article 6 – Liability of legal persons;
- Article 7 – Sanctions with regard to natural persons;
- Article 9 – Sanctions with regard to legal persons;
- Article 12 – Limitation periods for criminal offences affecting the Union’s financial interests.

Timetable: these provisions shall be implemented by 31 December 2023.’.

¹ OJ EU L 198, 28.7.2017, p. 29.