



EUROPEAN
COMMISSION

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Recommendation for a

COUNCIL DECISION

**authorising the European Commission to participate, on behalf of the European Union,
in the negotiations of the international instrument setting up the International Claims
Commission for Ukraine**

EXPLANATORY MEMORANDUM

With this recommendation, the Commission is requesting the authorisation from the Council to open negotiations on the international instrument setting up the International Claims Commission for Ukraine (hereinafter: ‘the instrument setting up the Claims Commission’), which will review, assess and decide eligible claims recorded in the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine and determine the compensation due in each case.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 14 November 2022, the United Nations General Assembly adopted resolution ES-11/5¹, (‘the UN General Assembly Resolution’) entitled “Furtherance of remedy and reparation for aggression against Ukraine”, in which the General Assembly recognised that the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law, and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts.

That Resolution further recognised the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation for damage, loss or injury, arising from the internationally wrongful acts of the Russian Federation in or against Ukraine; and recommended the creation by Member States, in cooperation with Ukraine, of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss, or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, as well as to promote and coordinate evidence-gathering.

In line with the UN General Assembly Resolution, States adopted a stepwise approach, choosing to establish the Register first, to be followed by the other elements of the compensation mechanism, namely a Claims Commission and a Compensation Fund. This approach was reflected in the Register’s Statute, where it is acknowledged that the Register, including its digital platform with all data about claims and evidence recorded therein, is meant as the first component of the compensation mechanism to be established by a separate international instrument in co-operation with Ukraine².

On 12 May 2023, the Committee of Ministers of the Council of Europe adopted the Resolution establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (hereinafter: ‘Register of Damage’ or ‘Register’)³.

The Register of Damage, announced at the 4th Summit of Heads of State and Government of the Council of Europe in Reykjavik (16-17 May 2023), serves as a record, in documentary form, of evidence and claims information on damage, loss or injury caused to all natural and

¹ UNGA resolution A/RES/ES-11/5, OP2-OP4

² Appendix to Resolution CM/Res(2023) of 12 May 2023, Statute of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, Article 2.5.

³ Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (Adopted by the Committee of Ministers on 12 May 2023 at the 1466th meeting of the Ministers’ Deputies).

legal persons concerned, as well as the State of Ukraine, on or after 24 February 2022 in the territory of Ukraine by the Russian Federation's internationally wrongful acts in or against Ukraine.

The Union joined the Enlarged Partial Agreement on the Register of Damage as a founding Associate Member by means of a Commission Decision, adopted on 11 May 2023, pursuant to Article 212 TFEU⁴. On 22 July 2024, the Council adopted the Decision on the Union's change of status from Associate Member to Participant⁵, thereby reiterating the Union's firm commitment to the activities of the Register, including via the payment of the annual compulsory contribution.

By establishing the Register of Damage, the Council of Europe and the founders of the Register followed through with the UN General Assembly Resolution.

At the 'Restoring Justice for Ukraine' Ministerial Conference of 2 April 2024, where the Register officially launched its activities, interested States agreed to organise a meeting in due course to discuss a draft instrument on the setting up of a Claims Commission as a next step towards a compensation mechanism for Ukraine.

Subsequently, the Secretariat of the Register of Damage prepared a 'zero draft' of the instrument setting up the Claims Commission (hereinafter: 'draft instrument') and, together with Ukraine and the Netherlands, organised preparatory meetings to exchange preliminary views on such draft and its further revised versions (9-10 July 2024, 12-13 September 2024 and 13-15 November 2024; and 28-30 January 2025). The 94 States that voted in favour of the above-mentioned UN General Assembly resolution were invited to the meetings. In the course of these meetings, delegations were encouraged to seek a mandate to participate in a future Diplomatic Conference to adopt and sign the instrument setting up the Claims Commission, taking into account that it may take the form of a legally binding international instrument.

In accordance with relevant provisions of the draft instrument, the Claims Commission should be an administrative body to review, assess and decide eligible claims and determine the amount of compensation due in each case. To this end, the draft instrument envisages that the work of the Register is to be transferred to the Claims Commission, including facilities and resources for its administrative build-up.

The draft instrument has been prepared on the understanding that there is not yet consensus with respect to the institutional framework of the future Claims Commission, or its functioning and governance. In the preparatory meetings held so far, the participating States discussed the following options for the establishment of the Claims Commission: (i) under the auspices of the Council of Europe through a Council of Europe convention; (ii) through a standalone international instrument establishing the Claims Commission; (iii) through a standalone international instrument establishing the Claims Commission, which would nonetheless rely on secretarial support from the Council of Europe (the so-called 'hybrid model'). The formal negotiations of the instrument setting up the Claims Commission are nonetheless expected to start by March 2025.

⁴ C(2023) 3241, 11.5.2023.

⁵ Council Decision (EU) 2024/2045 of 22 July 2024 on the position to be taken on behalf of the Union within the Council of Europe bodies as regards the status of the European Union in the Enlarged Partial Agreement on the Register of Damage caused by the Aggression of the Russian Federation against Ukraine, OJ L, 2024/2045, 24.7.2024, ELI: <http://data.europa.eu/eli/dec/2024/2045/oj>.

The objective of this recommendation is therefore to ensure the timely participation of the Union in the forthcoming negotiations of the instrument setting up the Claims Commission, during which the nature of such instrument, the features of the Claims Commission and all the relevant rules concerning its framework, governance and functioning will be agreed upon.

- **Consistency with existing policy provisions in the policy area**

The Union's participation in the negotiations of the instrument setting up the Claims Commission is consistent with its commitment to ensuring that damages caused by the Russian Federation's aggression against Ukraine and other violations of international law by the Russian Federation are duly compensated. This commitment was already demonstrated by the Union's participation, first as a founding Associate Member and then as a Participant, in the Enlarged Partial Agreement establishing the Register of Damage.

Furthermore, the participation in the establishment of the Claims Commission complements several initiatives undertaken at Union level since February 2022, which are aimed at ensuring that the Russian Federation is held accountable for its war of aggression against Ukraine and that individuals responsible for international crimes committed in and against Ukraine are brought to justice. Notably, the Union has enabled the setting up of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) at Eurojust. Eurojust has been assisting national authorities participating in the JIT and the ICPA through its tailor-made operational, technical, logistical and financial support, including via its Core International Crimes Evidence Database. The present proposal is likewise consistent with the Union's participation in international forums and structures aimed at enhancing the cooperation among national competent authorities investigating the international crimes committed in and against Ukraine and ensuring that there will be no impunity for such crimes. These forums include the US-UK-EU Atrocity Crimes Advisory Group which facilitates assistance by experts to the Prosecutor General's Office of Ukraine, as well as the Dialogue Group, which acts as an international coordination platform for initiatives concerning support to Ukraine's investigative and prosecutorial capacities, actions by international organisations and CSOs. .

- **Consistency with other Union policies**

The Union's unwavering support for Ukraine reflects a shared commitment to democratic principles and to the safeguarding of the rules-based international order and peace in Europe. The present proposal is therefore consistent with other Union policies that aim to safeguard the international order and peace in Europe, notably in the context of the current war of aggression against Ukraine. The Union has joined the Register of Damage as full Participant, which is consistent with its long-standing cooperation with the Council of Europe in the fields of human rights and fundamental freedoms, democracy and the rule of law.

To achieve these objectives, the Ukraine Facility Regulation⁶, adopted on the basis of Article 212 TFEU, aims at 'supporting initiatives and bodies and organisations involved in supporting and enforcing democracy, international justice and anti-corruption efforts in Ukraine' (Article 3(i)) and 'strengthening compliance with international law' (Article 3(h)).

Finally, in particular with a view to safeguarding peace, preventing conflicts and strengthening international security, in accordance with the UN Charter, the Union has adopted an unprecedented amount of restrictive measures against the Russian Federation with a view to increase the costs of the Russian Federation for its illegal actions and to thwart its ability to

⁶ Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility, OJ L, 2024/792, 29.2.2024.

continue its aggression. To enhance the enforcement of restrictive measures, the Union has, among others, set up the Freeze and Seize Task Force, adopted a Directive that harmonises the definition of, and criminal penalties for the violation of Union restrictive measures⁷. The Commission appointed an EU Sanctions Envoy to ensure continuous, high-level discussions with third countries to avoid the evasion or circumvention of the Union restrictive measures, in particular those adopted against Russia, and has published guidance to national authorities and private operators in dealing with the interpretation of the relevant Union rules on the matter.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 218(3) TFEU provides for the submission by the Commission of ‘recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.’

Pursuant to Article 218(4) TFEU, ‘the Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted’.

According to established case-law of the European Court of Justice⁸, the substantive legal basis depends primarily on the objective and content of the envisaged act. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, a legal act must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component. The present recommendation aims at ensuring that the Union is authorised to participate in the negotiations of the instrument setting up the Claims Commission.

The establishment of the Claims Commission is meant to provide the necessary technical and financial assistance to a third country, notably Ukraine, to ensure that the Russian Federation is held fully accountable for its war of aggression against Ukraine and that all damages, losses and injuries caused to all natural and legal persons concerned, as well as the State of Ukraine, including its regional and local authorities, state-owned or controlled entities, by the Russian Federation's internationally wrongful acts in or against Ukraine are duly compensated. The ultimate objective of the instrument setting up the Claims Commission is therefore addressing administrative, financial, procedural, legal and policy issues of the Claims Commission to ensure that the Russian Federation will make full reparation as provided for in the mandate and function of the Claims Commission in the zero-draft of the international instrument and which is consistent with the aim under Article 212 TFEU. This would also be consistent with both the substantive legal basis of the Council Decision on the change of the Union's status from Associate Member to Participant in the Register of Damage adopted on the basis of Article 212 TFEU, and with the envisaged Union's annual contribution to the Claims Commission under the Regulation establishing the Ukraine Facility, which provides financial assistance equally on the basis of Article 212 TFEU.

⁷ Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, OJ L, 2024/1226, 29.4.2024, ELI: <http://data.europa.eu/eli/dir/2024/1226/oj>.

⁸ Judgment of 24 June 2014 (Grand Chamber), *European Parliament v Council*, C-658/11, para 55-57 and Judgment of the Court of Justice in case C-130/10 *European Parliament v Council*, para 80.

At the same time, the context of this initiative and the preamble of the zero draft show that the envisaged Claims Commission pursues the objective of ensuring respect for international law and holding the Russian Federation accountable for its unlawful acts. As illustrated by the UNGA resolutions referred to in the preamble of the draft instrument, this mechanism will be set up to respond to the crime of aggression committed by the Russian Federation against Ukraine, in manifest violation of Article 2(4) of the UN Charter. The setting up of this mechanism will thus also form part of the efforts of the international community to ensure international peace and security. From the perspective of the EU, participation in this mechanism corresponds to the objectives underpinning the EU's external action, as set out in Article 21(2) TEU.

This recommendation is based on Article 212 TFEU in conjunction with Article 218(3) and (4) TFEU and foresees the appointment of the Commission as the Union negotiator.

- **Subsidiarity (for non-exclusive competence)**

In accordance with Article 216(1) TFEU, the Union's participation in the negotiations of the instrument setting up the Claims Commission falls within the external competence of the Union.

According to Article 212(3), second subparagraph, TFEU, the negotiation of an international agreement by the Union is without prejudice to the Member States' competence to negotiate in international bodies and to conclude such agreements. In view of the joined objectives of the EU and its Member States to ensure the payment of war damages by the Russian Federation, it is appropriate that both the Union and those Member States which so decide, participate in these negotiations.

- **Proportionality**

The Union's objectives with regard to this proposal as set out above can only be achieved by the Union's participation in the negotiations of the instrument setting up the Claims Commission.

- **Choice of the instrument**

The Union's participation in the negotiations of the instrument setting up the Claims Commission needs to be established by a Council Decision authorising the opening of negotiations, nominating the Union's negotiator and addressing directives to the negotiator under Article 218(3) and (4) TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The aggression of the Russian Federation against Ukraine is a grave violation of international law which causes and has already caused massive damages in Ukraine and to the Ukrainian population. The present proposal aims at strengthening the Union's commitment to ensuring that, via the Claims Commission, such damages can be duly compensated, including those resulting from the violation by the Russian Federation of fundamental rights such as the rights to life, to the integrity of the person and to property, as well as of the prohibition of torture and inhuman or degrading treatment or punishment.

4. BUDGETARY IMPLICATIONS

As provided in the draft instrument, in accordance with international law the Russian Federation should bear the costs of the work of the Claims Commission. In the draft instrument, it is further stipulated, however, that until the Russian Federation discharges its obligation, the Claims Commission should be financed through the annual contributions of its Members, and voluntary contributions. These contributions shall be considered advances on payments owed by the Russian Federation under international law and recoverable from the Russian Federation. More specifically, the annual contributions from Members should be determined by the Financial Committee of the Assembly, based on the scale adopted by the United Nations for its regular budget. Under the draft instrument, the Members are not expected to contribute to the compensation fund which will be set up to execute the decisions of the Claims Commission awarding compensation.

Therefore, if the Union intends to participate as a Member in the instrument setting up the Claims Commission, it will be required to pay an annual contribution. Further details on the Union's financial impact may be found in the legislative financial statement annexed to this proposal.

Regulation (EU) 2024/792 establishing the Ukraine Facility provides for the legal basis for the Union's contribution to the Claims Commission until 2027. On the basis of the objectives set out in Regulation (EU) 2024/792, and in particular under Chapter V, Article 34(3) of said Regulation provides that '[a]ssistance under this Chapter shall also strengthen capacities for conflict prevention, peacebuilding and address pre- and post-crisis needs, including through, confidence-building measures and processes that promote justice, truth-seeking, comprehensive post-conflict rehabilitation for an inclusive, peaceful society, as well as collection of evidence of crimes committed during the war. Funding for initiatives and bodies involved in supporting and enforcing international justice in Ukraine may be provided under this Chapter'. Therefore, as the instrument setting up the Claims Commission aims to enforce international justice in Ukraine by contributing to a mechanism that will compensate the damages suffered by Ukraine and its population and caused by the Russian Federation's violations of international law, Article 34(3) of Regulation (EU) 2024/792 provides for the appropriate legal basis for the Union to provide its financial contribution to the Claims Commission until 2027.

The budget line that would cater for this expenditure would be line 16 06 03 01 — Union accession assistance and other measures, whereby in the relative budget remarks it is explained that this item 'will also cover support for [...] other measures that are

complementary to EU action, such as accountability mechanisms for Russia's war of aggression'.

With regard to the method of implementation, Article 245 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast)⁹, which enables the Union to pay membership fees to bodies of which the Union is a member, is applicable for the Union's contribution to the Claims Commission.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

Regarding reporting arrangements, the Council may designate a special committee within the meaning of Article 218(4) TFEU, which should be consulted for conducting the negotiations. If this committee will be designated, the Commission should regularly report to it on the steps undertaken pursuant to the Council Decision and consult it on a regular basis.

Whenever so requested by the Council, the Commission should report to it on the conduct and the outcome of the negotiations, including in writing.

• Explanatory documents (for directives)

Not applicable.

• Detailed explanation of the specific provisions of the proposal

Article 1 includes the authorisation of the Commission to participate, on behalf of the Union, in the negotiations of an international agreement establishing the International Claims Commission for Ukraine. Article 1 further sets out that the negotiations should be conducted on the basis of the negotiating directives of the Council attached in the annex to the Decision.

Article 2 provides for the nomination of the Commission as Union negotiator.

Article 3 provides for the designation of a special committee in consultation with which the negotiations must be conducted.

Article 4 provides that the Decision is addressed to the Commission.

Article 5 provides for the entry into force of the Decision.

⁹ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>.

Recommendation for a

COUNCIL DECISION

authorising the European Commission to participate, on behalf of the European Union, in the negotiations of the international instrument setting up the International Claims Commission for Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, in particular Article 212, in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission

Whereas:

- (1) Following the unprovoked and unjustified war of aggression waged by the Russian Federation against Ukraine,¹⁰ on 14 November 2022, the United Nations General Assembly adopted Resolution ES-11/5, entitled “Furtherance of remedy and reparation for aggression against Ukraine”.¹¹
- (2) In addition to recalling the obligations of States under Article 2 of the Charter of the United Nations, including that of refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, the General Assembly expressed grave concern at the loss of life, civilian displacement, catastrophic destruction of infrastructure and natural resources, loss of public and private property, and economic calamity caused by the Russian Federation’s aggression against Ukraine.¹²
- (3) The United Nations General Assembly recognised that the Russian Federation must be held to account for any violations of international law committed against Ukraine. In addition, it further stressed that the Russian Federation must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by its wrongful acts.¹³
- (4) Under this framework, the United Nations General Assembly emphasised the need to establish, in cooperation with Ukraine, an international mechanism for reparation for damage, loss or injury, arising from the internationally wrongful acts of the Russian Federation in or against Ukraine.¹⁴ To this end, it recommended the creation of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, as well as to promote and coordinate evidence-gathering.¹⁵

¹⁰ UN DOC A/ES-11/L.1.

¹¹ UN Doc A/RES/ES-11/5.

¹² Ibid Recitals 2, 9.

¹³ Ibid para 2.

¹⁴ UN Doc A/RES/ES-11/5 para 3.

¹⁵ Ibid para 4.

- (5) On 12 May 2023, the Committee of Ministers of the Council of Europe adopted the Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.
- (6) In order to push forward accountability efforts towards the establishment of an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine, States adopted a stepwise approach, choosing to establish the Register first, to be followed by the other elements of the compensation mechanism, namely a Claims Commission and a Compensation Fund. This approach was reflected in the Register's Statute, where it is acknowledged that the Register, including its digital platform with all data about claims and evidence recorded therein, is meant as the first component of the compensation mechanism to be established by a separate international instrument in co-operation with Ukraine and relevant international organisations and bodies.
- (7) After joining the Register of Damage as a founding Associate Member on 11 May 2023 by means of a notification to the Secretary-General of the Council of Europe, the Union changed its status to Participant on 22 July 2024.
- (8) On 29 February 2024, the European Parliament and the Council adopted Regulation (EU) 2024/792 establishing the Ukraine Facility, by which the co-legislators have *inter alia* provided the legal basis for assistance for initiatives and bodies involved in supporting and enforcing international justice in Ukraine, including by covering the Union's financial contribution to the Register of Damage.
- (9) In 2024, the Office of the President of Ukraine, the Ministry of Foreign Affairs of Ukraine, the Ministry of Foreign Affairs of the Kingdom of the Netherlands and the Register of Damage for Ukraine invited the States that supported the adoption of United Nations General Assembly Resolution A/RES/ES-11/5 to Preparatory Meetings on an International Instrument to establish a Claims Commission for Ukraine in The Hague, the Netherlands. The first formal negotiation round is expected to take place in March 2025.
- (10) The Secretariat of the Register of Damage prepared a 'zero draft' of an international instrument for the establishment of a Claims Commission for Ukraine. The 'zero draft' includes provisions on the Claims Commission's mandate, function, legal status, seat, membership and participation, organisational structure, financing and budget as well as on the procedure for the review of claims, membership of the Russian Federation, and transfer of the work of the Register of Damage.
- (11) Given the interest of the Union in reiterating its firm commitment in ensuring that the Russian Federation bears the legal consequences of its internationally wrongful acts against Ukraine, including the obligation to make reparation for any damage, loss and injury caused by those acts, it is appropriate for the Union to participate in the negotiations of the international instrument setting up the Claims Commission.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an international instrument setting up an International Claims Commission for Ukraine.

Article 2

The negotiations shall be conducted on the basis of the negotiating directives set out in the Annex.

Article 3

The Commission is hereby nominated as the Union negotiator.

Article 4

The Union's participation in the negotiations referred to in Article 1 shall be conducted in consultation with the the special committee designated in accordance with Article 218(4) TFEU.

The Commission shall regularly report to the special committee referred to in the first subparagraph on the steps undertaken pursuant to this Decision and consult it on a regular basis.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*



EUROPEAN
COMMISSION

Brussels, 4.2.2025
COM(2025) 42 final

ANNEXES 1 to 2

ANNEXES

to the

Recommendation for a Council Decision

**authorising the European Commission to participate, on behalf of the European Union,
in the negotiations of the international instrument setting up the International Claims
Commission for Ukraine**

ANNEX 1

Directives for the negotiations of the international instrument setting up the International Claims Commission for Ukraine

In the course of the negotiations, the Commission should aim to achieve the objectives set out in detail below.

- (1) The objective of the international instrument setting up the International Claims Commission for Ukraine shall be to create the legal basis under international law for an administrative body to review, assess and decide eligible claims and determine the amount of compensation due in each case for damage, loss, or injury caused on or after 24 February 2022, in the territory of Ukraine within its internationally recognised borders, extending to its territorial sea as well as in its exclusive economic zone and continental shelf to all natural and legal persons concerned, as well as the State of Ukraine, including its regional and local authorities, state-owned or controlled entities, by the Russian Federation's internationally wrongful acts in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law.
- (2) The international instrument shall provide the legal status and legal personality of the Claims Commission as necessary for the exercise of its functions and fulfilment of its mandate.
- (3) The international instrument shall spell out clearly and precisely the titles of membership for States and International Organisations and their modalities of participation to the instrument.
- (4) The international instrument shall clearly outline the organisational structure of the Claims Commission, in particular, as regards the governance structure and modalities of participation of States and International Organisations.
- (5) The international instrument shall specify that, in accordance with international law, the Russian Federation shall bear the costs of the Claims Commission. It shall also specify that, until the Russian Federation discharges the said obligation, the Claims Commission shall be financed through the annual assessed contributions of its Members and voluntary contributions, and that Members' contributions shall be recoverable from the Russian Federation.
- (6) The international instrument shall clearly set out the modalities of determination of the annual financial contribution from the Members and the financial rules and procedures governing the Claims Commission.
- (7) The international instrument shall include the modalities needed for a smooth and precise transfer of the work of the Register of Damage, and detail the Register's possible continuation within the framework of the Claims Commission.
- (8) The procedure for negotiations shall be as follows:
 - (a) The negotiations must be prepared for well in advance. To this end, the Commission shall inform the special committee designated in accordance with Article 218(4) TFEU of the schedule anticipated and the issues to be negotiated, and share the relevant information as early as possible.
 - (b) Where necessary, the negotiating sessions shall be preceded by a meeting of the special committee designated in accordance with Article 218(4) TFEU in

order to identify the key issues, formulate opinions and provide guidance, as appropriate.

- (c) The Commission shall report to the special committee designated in accordance with Article 218(4) TFEU on the outcome of the negotiations after each negotiating session or, when a number of negotiations are conducted in parallel, after a series of negotiation sessions.
- (d) The Commission shall inform the special committee designated in accordance with Article 218(4) TFEU on any important issue that may arise during the negotiations.

ANNEX 2

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1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Recommendation for a Council Decision authorising the European Commission to participate, on behalf of the European Union, in negotiations on the international agreement establishing the International Claims Commission for Ukraine.

1.2. Policy area(s) concerned

Justice

Financial and technical assistance to third countries

1.3. Objective(s)

1.3.1. General objective(s)

The present proposal has the main objective of authorising the Commission to participate, on behalf of the Union, in the negotiations of the international instrument on the setting up of the Claims Commission. The establishment of a Claims Commission will play a critical role in supporting and enforcing international justice for Ukraine as it constitutes an integral part of an international compensation mechanism for victims of the aggression of the Russian Federation against Ukraine.

1.3.2. Specific objective(s)

1. To ultimately provide the necessary assistance to Ukraine to ensure that the Russian Federation bears the legal consequences of its internationally wrongful acts against Ukraine including the obligation to make reparation for any damage, loss or injury caused by those acts.
2. To abide by the Statute of the Register of Damage – in which the EU is a Participant – which provides that the Register, including its digital platform with all data about claims and evidence recorded therein, is meant as the first component of the compensation mechanism to be established by a separate international instrument in co-operation with Ukraine and relevant international organisations and bodies.
3. To establish the International Claims Commission and ensure the Union's participation therein.
4. To give the means to the International Claims Commission to review, assess and decide eligible claims recorded in the Register of Damage and determine the amount of compensation due in each case.

1.3.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The International Claims Commission would work as a fact-finding body and review, assess and decide eligible claims recorded in the Register and determine the amount of compensation due in each case.

1.3.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

The setting up of the International Claims Commission.

1.4. The proposal/initiative relates to:

- ☒ a new action
- ☐ a new action following a pilot project / preparatory action¹
- ☐ the extension of an existing action
- ☐ a merger or redirection of one or more actions towards another/a new action

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

There are two main requirements that can be expected when implementing this initiative. The first one, which is short term, is to formally receive the mandate to participate for the EU in the negotiation process on the setting up of the International Claims Commission. The second one, which is long term, could be assessed only once the International Claims Commission is fully operational. Once this will be case, the efficiency of this instrument could be evaluated against its ability to review, assess and decide eligible claims and determine the amount of compensation due in each case.

1.5.2. Added value of EU involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this section 'added value of EU involvement' is the value resulting from EU action, that is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at EU level (ex-ante)

The Union reiterated on various occasions its commitment to ensure that the Russian Federation bears the legal consequences of its internationally wrongful acts, including the obligation to make reparation for any damage caused by such acts. This commitment notably echoes the call made by the United National General Assembly 2022 resolution entitled “Furtherance of remedy and reparation for aggression against Ukraine”, which recognised the need for the establishment of an international mechanism for reparation for damage, loss or injury arising from Russia’s war of aggression against Ukraine. Answering to this call, on 12 May 2023, the Committee of Ministers of the Council of Europe adopted the Resolution establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine. States adopted a stepwise approach, choosing to establish the Register first, to be followed by the other elements of the compensation mechanism, namely a claims commission and a compensation fund. This approach was reflected in the Register’s Statute, where it is acknowledged that the Register, including its digital platform with all data about claims and evidence recorded therein, is meant as the first component of the compensation mechanism to be established by a separate international instrument in co-operation with Ukraine and relevant international organisations and bodies. After initially joining the Register of Damage as a founding Associate Member on 11 May 2023 by means of a Commission Decision, the Union, further to a Council Decision adopted on 22 July 2024, changed its status to a fully-fledged Participant. The Union therefore

¹ As referred to in Article 58(2), point (a) or (b) of the Financial Regulation.

participates within its own role in the Register, together with and in addition to the Member States (except for Hungary). Such participation allows the Union to stand by its commitment to support Ukraine and contribute to the restoration of a rule-based international legal order. At the same time, it allows the Commission to better coordinate its actions related to reparations with the Member States, thus ensuring that the Union can speak with one voice. The possibility for the Commission to participate in the negotiations of the Claims Commission, and ultimately in the Claims Commission itself once established, is thus the natural continuation and development of the existing status quo.

Expected generated EU added value (ex-post)

By participating in the setting up of the International Claims Commission, the EU would contribute to ensure that the Russian Federation bears the legal consequences of its wrongful acts and that, in such endeavour, the EU can speak with one voice. Whenever necessary, the Commission could ensure coordination with and among Member States in the different phases of the establishment and functioning of the Claims Commission, thus contributing to the efficient management of this new body.

1.5.3. Lessons learned from similar experiences in the past

The main lessons learned in the past draw from previous similar instruments. The UN Compensation Commission (UNCC) is the most relevant precedent, which can give some insights on the design and costs of the Claims Commission for Ukraine. It existed for 31 years (1991 to 2022) but its adjudicative activities lasted 12 years. Due to the groundwork already done by the Register and the technological developments in the last decades, the Claims Commission could have a shorter lifespan than the UNCC, currently estimated at 10 years. The Union did not however participate in the UNCC.

1.5.4. Compatibility with the multiannual financial framework and possible synergies with other appropriate instruments

The Union's unwavering support to Ukraine reflects a shared commitment to democratic principles and the safeguarding of the rule-based international order and peace in Europe. The present proposal is therefore consistent with other Union policies that aim to support Ukraine and safeguard the international order and peace in Europe, notably in the context of the current Russia's war of aggression against Ukraine. The objectives of this proposal are supported by Regulation (EU) 2024/792 establishing the Ukraine Facility. Article 34(3) of the latter provides that assistance under Pillar III of the Ukraine Facility "shall also strengthen capacities for conflict prevention, peacebuilding and address pre and post-crisis needs, including through, confidence-building measures and processes that promote justice, truth-seeking, comprehensive post-conflict rehabilitation for an inclusive, peaceful society, as well as collection of evidence of crimes committed during the war. Funding for initiatives and bodies involved in supporting and enforcing international justice in Ukraine may be provided under this Chapter".

1.5.5. Assessment of the different available financing options, including scope for redeployment

Regulation (EU) 2024/792 establishing the Ukraine Facility provides the legal basis for the Union's contribution to the International Claims Commission until 2027. On the basis of the objectives set out in Regulation (EU) 2024/792, and in particular

under Chapter V, Article 34(3) of said Regulation provides that '[a]ssistance under this Chapter shall also strengthen capacities for conflict prevention, peacebuilding and address pre- and post-crisis needs, including through, confidence-building measures and processes that promote justice, truth-seeking, comprehensive post-conflict rehabilitation for an inclusive, peaceful society, as well as collection of evidence of crimes committed during the war. Funding for initiatives and bodies involved in supporting and enforcing international justice in Ukraine may be provided under this Chapter'. Therefore, as the instrument setting up the International Claims Commission aims to enforce international justice in Ukraine by contributing to a mechanism that will compensate the damages suffered by Ukraine and its population and caused by the Russian Federation's violations of international law, Article 34(3) of Regulation (EU) 2024/792 provides for the appropriate legal basis for the Union to provide its financial contribution to the Claims Commission until 2027. The budget line that would cater for this expenditure would be line 16 06 03 01 — Union accession assistance and other measures, whereby in the relative budget remarks it is explained that this item 'will also cover support for [...] other measures that are complementary to EU action, such as accountability mechanisms for Russia's war of aggression'. The Union's contribution to the Register of Damage is also covered by the Ukraine Facility.

1.6. Duration of the proposal/initiative and of its financial impact

☒ limited duration

- ☒ in effect from 2025 to 2035²
- ☐ financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☐ unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Method(s) of budget implementation planned³

☒ Direct management by the Commission⁴

- ☐ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ Shared management with the Member States

☐ Indirect management by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated
- ☐ international organisations and their agencies (to be specified)⁵
- ☐ the European Investment Bank and the European Investment Fund
- ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation
- ☐ public law bodies
- ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees
- ☐ bodies or persons entrusted with the implementation of specific actions in the common foreign and security policy pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act
- ☐ bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by public law bodies or by bodies governed by private law with a public service mission, and are provided

² The lifetime of the International Claims Commission is currently estimated at 10 years.

³ Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>.

⁴ This contribution will be made via the payment of a membership fee under Article 245 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>. This is an instrument under direct management.

⁵ It is expected that International Claims Commission itself will take care of the budget implementation tasks.

with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Regarding reporting arrangements, the Union's participation in the negotiations on setting up the Claims Commission shall be conducted in consultation with a special committee within the meaning of Article 218(4) TFEU. The Commission shall regularly report to the special committee on the steps undertaken pursuant to this Decision and consult it on a regular basis. Whenever so requested by the Council, the Commission shall report to it on the conduct and the outcome of the negotiations, including in writing.

2.2. Management and control system(s)

2.2.1. *Justification of the budget implementation method(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

With regard to the method of implementation, Article 245 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union⁹, which enables the Union to pay membership fees to bodies of which the Union is a member, is applicable to the Union's contribution to the Claims Commission.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

No specific risks have been identified at this stage.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio between the control costs and the value of the related funds managed), and assessment of the expected levels of risk of error (at payment & at closure)*

Following the Commission central services' guidance, the cost of the controls at Commission level is assessed by the cost of the different control stages. The overall assessment for each management mode is obtained from the ratio between all those costs and the total amount paid in the year for the related management mode.

2.3. Measures to prevent fraud and irregularities

Standard rules for this type of expenditures apply.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ⁶	from EFTA countries ⁷	from candidate countries and potential candidates ⁸	From other third countries	other assigned revenue
0	16 06 03 01	Diff.	NO	NO	NO	NO

⁶ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁷ EFTA: European Free Trade Association.

⁸ Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below

3.2.1.1. Appropriations from voted budget

EUR million (to three decimal places)

Heading of multiannual financial framework	0	Expenditure outside the annual ceilings set out in the Multiannual Financial Framework				
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DG: European Neighbourhood Policy and Enlargement Negotiations						
	Year	Year	Year	Year	Year	TOTAL MFF 2021- 2027
Operational appropriations						
16 06 03 01 — Union accession assistance and other measures	Commitments	(1a)	0.000	0.000	3.000	6.000
	Payments	(2a)	0.000	0.000	3.000	6.000
Appropriations of an administrative nature financed from the envelope of specific programmes ⁹						
Budget line		(3)				
TOTAL appropriations for DG European Neighbourhood Policy and Enlargement Negotiations	Commitments	=1a+1b+3	0.000	0.000	3.000	6.000
	Payments	=2a+2b+3	0.000	0.000	3.000	6.000 ¹⁰

⁹

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

¹⁰

The estimated annual EU's contribution is likely to range between EUR 2 million and EUR 3 million.

		Year	Year	Year	Year	TOTAL MFF 2021-2027
		2024	2025	2026	2027	
TOTAL	operational appropriations					
	Commitments	(4)	0.000	3.000	3.000	6.000
	Payments	(5)	0.000	3.000	3.000	6.000
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	0.000	0.000	0.000	0.000
TOTAL appropriations under HEADING 0						
of the multiannual financial framework		=4+6	0.000	3.000	3.000	6.000
		=5+6	0.000	3.000	3.000	6.000

3.2.2. Estimated output funded from operational appropriations (not to be completed for decentralised agencies)

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see Section1.6)				TOTAL	
		OUTPUTS										
		Type ¹¹	Average cost	Cost 0N	Cost 0N	Cost 0N	Cost 0N	Cost 0N	Cost 0N	Cost 0N	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ¹² ...												

¹¹ Outputs are products and services to be supplied (e.g. number of student exchanges financed, number of km of roads built, etc.).
¹² As described in Section 1.3.2. 'Specific objective(s)'

3.2.3. Summary of estimated impact on administrative appropriations

- ☒ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below

3.2.3.1. Appropriations from voted budget

VOTED APPROPRIATIONS	Year	Year	Year	Year	TOTAL 2021 - 2027
	2024	2025	2026	2027	
HEADING 7					
Human resources	0.000	0.000	0.000	0.000	0.000
Other administrative expenditure	0.000	0.000	0.000	0.000	0.000
Subtotal HEADING 7	0.000	0.000	0.000	0.000	0.000
Outside HEADING 7					
Human resources	0.000	0.000	0.000	0.000	0.000
Other expenditure of an administrative nature	0.000	0.000	0.000	0.000	0.000
Subtotal outside HEADING 7	0.000	0.000	0.000	0.000	0.000
TOTAL	0.000	0.000	0.000	0.000	0.000

3.2.4. Estimated requirements of human resources

- ☒ The proposal/initiative does not require the use of human resources
- ☐ The proposal/initiative requires the use of human resources, as explained below

3.2.4.1. Financed from voted budget

Estimate to be expressed in full-time equivalent units (FTEs)¹³

VOTED APPROPRIATIONS		Year 2024	Year 2025	Year 2026	Year 2027
• Establishment plan posts (officials and temporary staff)					
20 01 02 01 (Headquarters and Commission's Representation Offices)		0	0	0	0
20 01 02 03 (EU Delegations)		0	0	0	0
01 01 01 01 (Indirect research)		0	0	0	0
01 01 01 11 (Direct research)		0	0	0	0
Other budget lines (specify)		0	0	0	0
• External staff (inFTEs)					
20 02 01 (AC, END from the 'global envelope')		0	0	0	0
20 02 03 (AC, AL, END and JPD in the EU Delegations)		0	0	0	0
Admin. Support line [XX.01.YY.YY]	- at Headquarters	0	0	0	0
	- in EU Delegations	0	0	0	0
01 01 01 02 (AC, END - Indirect research)		0	0	0	0
01 01 01 12 (AC, END - Direct research)		0	0	0	0

¹³ Please specify below the table how many FTEs within the number indicated are already assigned to the management of the action and/or can be redeployed within your DG and what are your net needs.

Other budget lines (specify) - Heading 7	0	0	0	0
Other budget lines (specify) - Outside Heading 7	0	0	0	0
TOTAL	0	0	0	0

The staff required to implement the proposal (in FTEs):

	To be covered by current staff available in the Commission services	Exceptional additional staff*		
		To be financed under Heading 7 or Research	To be financed from BA line	To be financed from fees
Establishment plan posts			N/A	
External staff (CA, SNEs, INT)				

Description of tasks to be carried out by:

Officials and temporary staff	
External staff	

3.2.5. Overview of estimated impact on digital technology-related investments

TOTAL Digital and IT appropriations	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL MFF 2021 - 2027
HEADING 7					
IT expenditure (corporate)	0.000	0.000	0.000	0.000	0.000
Subtotal HEADING 7	0.000	0.000	0.000	0.000	0.000
Outside HEADING 7					
Policy IT expenditure on operational programmes	0.000	0.000	0.000	0.000	0.000
Subtotal outside HEADING 7	0.000	0.000	0.000	0.000	0.000
TOTAL	0.000	0.000	0.000	0.000	0.000

3.2.6. Compatibility with the current multiannual financial framework

The proposal/initiative:

- ☒ can be fully financed through redeployment within the relevant heading of the multiannual financial framework (MFF)

Regulation (EU) 2024/792 establishing the Ukraine Facility provides for the legal basis for the Union's contribution to the International Claims Commission until 2027. On the basis of the objectives set out in Regulation (EU) 2024/792, and in

particular under Chapter V, Article 34(3) of said Regulation provides that '[a]ssistance under this Chapter shall also strengthen capacities for conflict prevention, peacebuilding and address pre- and post-crisis needs, including through, confidence-building measures and processes that promote justice, truth-seeking, comprehensive post-conflict rehabilitation for an inclusive, peaceful society, as well as collection of evidence of crimes committed during the war. Funding for initiatives and bodies involved in supporting and enforcing international justice in Ukraine may be provided under this Chapter'. Therefore, as the instrument setting up the Claims Commission aims to enforce international justice in Ukraine by contributing to a mechanism that will compensate the damages suffered by Ukraine and its population and caused by the Russian Federation's violations of international law, Article 34(3) of Regulation (EU) 2024/792 provides for the appropriate legal basis for the Union to provide its financial contribution to the International Claims Commission until 2027.

- ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation
- ☐ requires a revision of the MFF

3.2.7. *Third-party contributions*

The proposal/initiative:

- ☒ does not provide for co-financing by third parties
- ☐ provides for the co-financing by third parties estimated below:

3.3. Estimated impact on revenue

- ☒ The proposal/initiative has no financial impact on revenue.
- ☐ The proposal/initiative has the following financial impact:
 - ☐ on own resources
 - ☐ on other revenue
 - ☐ please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

4. DIGITAL DIMENSIONS

Not applicable.

4.1. Requirements of digital relevance

Not applicable.

4.2. Data

Not applicable.

4.3. Digital solutions

Not applicable.

4.4. *Interoperability assessment*

Not applicable.

4.5. **Measures to support digital implementation**

Not applicable.