DECISIONS

DECISION (EU) 2022/313 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 February 2022

providing macro-financial assistance to Ukraine

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Whereas:

(1) Relations between the European Union (the 'Union') and Ukraine continue to develop within the framework of the European Neighbourhood Policy (ENP) and the Eastern Partnership. An association agreement between the Union and Ukraine ([2]) (the 'Association Agreement'), including a Deep and Comprehensive Free Trade Area (DCFTA), 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 five consecutive macro-financial assistance programmes, under which Ukraine has received assistance in the form of loans for a total of EUR 5 billion. The latest macro-financial assistance, which was made available in the context of the COVID-19 pandemic pursuant to Decision (EU) 2020/701 of the European Parliament and of the Council ([3]), provided EUR 1,2 billion in loans to Ukraine and was completed in September 2021.

(3) The economy of Ukraine has been affected by the recession in 2020, which was caused by the COVID-19 pandemic and by prolonged security threats at its border with Russia. The continuous build-up of uncertainty has resulted in a recent loss of confidence, negatively affecting the economic outlook, and, since mid-January 2022, in the loss of access to international capital markets. The deteriorating financing conditions have contributed to a sizable and increasing residual external financing gap and weigh heavily on investment, thereby weakening Ukraine's resilience to future economic and political shocks.

(4) The Ukrainian government has demonstrated a strong commitment to implement further reforms focusing, at the current critical juncture, in the short term on key policy areas such as economic resilience and stability, governance and rule of law, and energy.

([1]) Position of the European Parliament of 16 February 2022 (not yet published in the Official Journal) and decision of the Council of 21 February 2022.

([2]) 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).

([3]) Decision (EU) 2020/701 of the European Parliament and of the Council of 25 May 2020 on providing macro-financial assistance to enlargement and neighbourhood partners in the context of the COVID-19 pandemic (OJ L 165, 27.5.2020, p. 31).

(5) A renewed commitment to carry out such reforms and a strong political will has led the Ukranian authorities to accelerate the implementation of reforms since the summer of 2021. This has also enabled Ukraine to successfully complete the macro-financial assistance operation in the context of the COVID-19 pandemic, as all reform actions agreed with the Union in the Memorandum of Understanding were fulfilled.

(6) To allow for more policy flexibility in the context of the crisis related to the COVID-19 pandemic, the International Monetary Fund (IMF) approved an 18-month Stand-by Arrangement for Ukraine with access equivalent to USD 5 billion in June 2020. That arrangement focuses on four priorities: (i) mitigating the economic impact of the crisis, including by supporting households and businesses; (ii) ensuring continued central bank independence and a flexible exchange rate; (iii) safeguarding financial stability while recovering the costs from bank resolutions; and (iv) moving forward with key governance and anti-corruption measures to preserve and deepen recent gains. Due to an uneven implementation record, the first programme review, which also agreed on an extension of the programme until the end of June 2022, was not concluded until November 2021. This brought total disbursements under the current IMF programme to the equivalent of USD 2,8 billion thus far. Two more reviews are planned to take place by the end of the second quarter of 2022.

(7) In view of high budget financing risks and in the context of a slow recovery from the crisis related to the COVID-19 pandemic and quickly accelerating inflation, Ukraine requested a new long-term macro-financial assistance programme for up to EUR 2,5 billion from the Union on 16 November 2021. Such emergency macro-financial assistance responds, in particular, to the sharp and unexpected increase in the external financing needs of Ukraine, triggered by the de facto loss of access to financial markets, and to the underlying immediate challenges.

(8) Given that Ukraine is a country covered by the ENP, it should be considered to be eligible to receive macro-financial assistance from the Union.

(9) The Union's macro-financial assistance should be an exceptional financial instrument of untied and undesignated balance-of-payments support, which aims to address the beneficiary's immediate external financing needs and should underpin the implementation of a policy programme containing strong immediate adjustment and structural reform measures designed to improve the beneficiary's balance-of-payments position in the short term and economic resilience in the medium term.

(10) Given that the loss of market access and the capital outflow have created a significant residual external financing gap in Ukraine's balance of payments over and above the resources provided by the IMF and other multilateral institutions, the swift provision by the Union of emergency macro-financial assistance to Ukraine is, under the current exceptional circumstances, considered to be an appropriate short-term response to the sizeable risks to the country. The Union's macro-financial assistance would support Ukraine's economic stabilisation and aim to strengthen the immediate resilience of the country, as well as and where feasible at present, strengthen the structural reform agenda of Ukraine, supplementing resources made available under the IMF's financial arrangement.

(11) The Union's macro-financial assistance should aim to support the restoration of a sustainable external financing situation for Ukraine, thereby supporting its economic and social development.

(12) The Union's macro-financial assistance is expected to go hand-in-hand with the implementation of budget support operations under the Neighbourhood, Development and International Cooperation Instrument – Global Europe, established by Regulation (EU) 2021/947 of the European Parliament and of the Council ([4]).

([4]) 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).

(13) The determination of the amount of the Union's macro-financial assistance is based on a quantitative assessment of Ukraine's residual external financing needs, and takes into account its capacity to finance itself with its own resources, in particular the international reserves at its disposal. The Union's macro-financial assistance should complement the programmes and resources provided by the IMF and the World Bank. The determination of the amount of the assistance also takes into account expected financial contributions from multilateral donors and 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.

(14) The Commission should ensure that the Union's macro-financial assistance is legally and substantially in accordance with the key principles and objectives of, and the measures taken within the different areas of external action and other relevant Union policies.

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

(16) The Union's macro-financial assistance should support Ukraine's commitment to values shared with the Union, including democracy, the rule of law, good governance, respect for human rights, sustainable development and poverty reduction, as well as its commitment to the principles of open, rule-based and fair trade.

(17) A precondition for granting the Union's macro-financial assistance should be that Ukraine respects effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and guarantees respect for human rights. In addition, the specific objectives of the Union's macro-financial assistance should strengthen the efficiency, transparency and accountability of the public finance management systems and should promote structural reforms aimed at supporting sustainable and inclusive growth, decent employment creation and fiscal consolidation. The Commission and the European External Action Service should regularly monitor both the fulfilment of the precondition and the achievement of those objectives.

(18) In order to ensure that the Union's financial interests linked to the Union's 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 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.

(19) Release of the Union's macro-financial assistance is without prejudice to the powers of the European Parliament and the Council as budgetary authority.

(20) The amounts of provisioning required for the Union's macro-financial assistance should be consistent with the budgetary appropriations provided for in the multiannual financial framework.

(21) The Union's macro-financial assistance should be managed by the Commission. In order to ensure that the European Parliament and the Council are able to follow the implementation of this Decision, the Commission should regularly inform them of developments relating to that assistance and provide them with the relevant documents.

(22) 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 ([5]).

(23) The Union's macro-financial assistance should be subject to economic policy conditions, to be set out in a memorandum of understanding (MOU). In order to ensure uniform conditions of implementation and for reasons of efficiency, the Commission should be empowered to negotiate such conditions with the Ukrainian authorities under the supervision of the committee of representatives of the Member States in accordance with Regulation (EU) No 182/2011. Under that Regulation, the advisory procedure should, as a general rule, apply in all cases other than as provided for in that Regulation. Considering the potentially significant impact of assistance of more than EUR 90 million, it is appropriate that the examination procedure as specified in Regulation (EU) No 182/2011 be used for operations above that threshold. Considering the amount of the Union's macro-financial assistance to Ukraine, the examination procedure should apply to the adoption of the MOU, and to any reduction, suspension or cancellation of the assistance.

(24) Since the objective of this Decision, namely to provide emergency macro-financial assistance to Ukraine with a view to supporting, in particular, its economic resilience and stability, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve that objective.

(25) In view of the urgency entailed by the exceptional circumstances caused by the COVID-19 pandemic and the associated economic consequences, it is considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(26) In order to allow for the prompt application of measures laid down in this Decision, this Decision should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS DECISION:

Article 1

1. The Union shall make macro-financial assistance of a maximum amount of EUR 1,2 billion available to Ukraine (the 'Union's macro-financial assistance'), with a view to supporting Ukraine's economic stabilisation and substantive reform agenda. The full amount of the Union's macro-financial assistance shall be provided to Ukraine in the form of loans. The release of the Union's macro-financial assistance is subject to the approval of the Union budget for the relevant year by the European Parliament and the Council. The assistance shall contribute to covering Ukraine's balance-of-payments needs as identified in the IMF programme.

2. In order to finance the Union's macro-financial assistance, the Commission shall be empowered, on behalf of the Union, to borrow the necessary funds on the capital markets or from financial institutions and to on-lend them to Ukraine. The loans shall have a maximum average maturity of 15 years.

3. The release of the Union's macro-financial assistance shall be managed by the Commission in a manner consistent with the agreements or understandings reached between the IMF and Ukraine, and with the key principles and objectives of economic reforms set out in the Association Agreement, including the DCFTA, agreed under the ENP.

([5]) 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).

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

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

5. If the financing needs of Ukraine decrease fundamentally during the period of the disbursement of the Union's macro-financial assistance compared to the initial projections, the Commission, acting in accordance with the examination procedure referred to in Article 7(2), shall reduce the amount of the assistance or suspend or cancel it.

Article 2

1. A precondition for granting the Union's macro-financial assistance shall be that Ukraine respects effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and guarantees respect for human rights.

2. The Commission and the European External Action Service shall monitor the fulfilment of the precondition set out in paragraph 1 throughout the life-cycle of the Union's macro-financial assistance.

3. Paragraphs 1 and 2 of this Article shall apply in accordance with Council Decision 2010/427/EU ([6]).

Article 3

1. The Commission, in accordance with the examination procedure referred to in Article 7(2), shall agree with the Ukrainian authorities on clearly defined economic policy and financial conditions, focusing on structural reforms and sound public finances, to which the Union's macro-financial assistance is to be subject. Those economic policy and financial conditions shall be set out in a MOU which shall include a timeframe for the fulfilment of those conditions. The economic policy and financial conditions set out in the MOU shall be consistent with the agreements or understandings referred to in Article 1(3), including the macroeconomic adjustment and structural reform programmes implemented by Ukraine with the support of the IMF.

2. The conditions referred to in paragraph 1 shall aim, in particular, to enhance the efficiency, transparency and accountability of the public finance management systems in Ukraine, including for the use of the Union's macro-financial assistance. Progress in mutual market opening, the development of rule-based and fair trade, and other priorities in the context of the Union's external policy shall also be duly taken into account when designing the policy measures. The Commission shall regularly monitor the progress in attaining those objectives.

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

4. The Commission shall verify, at regular intervals, that the conditions referred to in Article 4(3) continue to be met, including whether the economic policies of Ukraine are in accordance with the objectives of the Union's macro-financial assistance. For the purposes of that verification, the Commission shall coordinate closely with the IMF and the World Bank, and, where necessary, with the European Parliament and with the Council.

Article 4

1. Subject to the conditions referred to in paragraph 3, the Union's macro-financial assistance shall be made available by the Commission in two equal instalments, each of which shall consist of a loan. The timeframe for the disbursement of each instalment shall be laid down in the MOU.

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

2. The amounts of the Union's macro-financial assistance provided in the form of loans shall be provisioned, where required, in accordance with Regulation (EU) 2021/947.

3. The Commission shall decide on the release of the instalments, subject to the fulfilment of the following conditions:

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

(b) a continuous satisfactory track record of implementing a non-precautionary IMF credit arrangement;

(c) the satisfactory implementation of the economic policy and financial conditions agreed in the MOU.

The release of the second instalment shall not, in principle, take place earlier than three months after the release of the first instalment.

4. Where the conditions referred to in paragraph 3, first subparagraph, are not met, the Commission shall temporarily suspend or cancel the disbursement of the Union's 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 macro-financial assistance shall 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 transferred to the Ukrainian Ministry of Finance as the final beneficiary.

Article 5

1. The borrowing and lending operations related to the Union's macro-financial assistance shall be carried out in euro using the same value date and shall not involve the Union in the transformation of maturities, or expose the Union to any exchange or interest rate risk, or to any other commercial risk.

2. Where the circumstances permit, and if Ukraine so requests, the Commission may take the steps necessary to ensure that an early repayment clause is included in the loan terms and conditions and that it is matched by a corresponding clause in the terms and conditions of the borrowing operations.

3. Where circumstances permit an improvement of the interest rate of the loan and if Ukraine so requests, the Commission may decide to refinance all or part of its initial borrowings or may restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with paragraphs 1 and 4 and shall not have the effect of extending the maturity of the borrowings concerned or of increasing the amount of capital outstanding at the date of the refinancing or restructuring.

4. All costs incurred by the Union which relate to the borrowing and lending operations under this Decision shall be borne by Ukraine.

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

Article 6

1. The Union's macro-financial assistance shall be implemented in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([7]).

([7]) 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).

2. The Union's macro-financial assistance shall be implemented under direct management.

3. The loan agreement referred to in Article 3(3) shall contain all of the following provisions:

(a) ensuring that Ukraine regularly checks that financing provided from the general budget of the Union has been properly used, takes appropriate measures to prevent irregularities and fraud, and, if necessary, takes legal action to recover any funds provided under this Decision that have been misappropriated;

(b) ensuring the protection of the Union's financial interests, in particular providing for specific measures in relation to the prevention of, and fight against, fraud, corruption and any other irregularities affecting the Union's macro-financial assistance, in accordance with Council Regulations (EC, Euratom) No 2988/95 ([8]) and (Euratom, EC) No 2185/96 ([9]), Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ([10]) and, for those Member States participating in enhanced cooperation regarding the European Public Prosecutor's Office, Council Regulation (EU) 2017/1939 ([11]);

(c) expressly authorising the European Anti-Fraud Office to carry out investigations, including on-the-spot checks and inspections including digital forensic operations and interviews;

(d) expressly authorising the Commission, or its representatives, to carry out checks, including on-the-spot checks and inspections;

(e) expressly authorising the Commission and the Court of Auditors to perform audits during and after the availability period of the Union's macro-financial assistance, including document audits and on-the-spot audits, such as operational assessments;

(f) ensuring that the Union is entitled to early repayment of the loan where it has been established that, in relation to the management of the Union's macro-financial assistance, Ukraine has engaged in any act of fraud or corruption or any other illegal activity detrimental to the financial interests of the Union;

(g) ensuring that all costs incurred by the Union that relate to the borrowing and lending operations under this Decision are to be borne by Ukraine.

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

Article 7

1. 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 8

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

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

([8]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

([9]) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

([10]) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

([11]) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

(b) assess the economic situation and prospects of Ukraine, as well as the progress made in implementing the policy measures referred to in Article 3(1);

(c) indicate the connection between the economic policy conditions set out in the MOU, Ukraine's ongoing economic and fiscal performance and the Commission's decisions to release the instalments of the Union's macro-financial assistance.

2. Not later than two years after the expiry of the availability period referred to in Article 1(4), the Commission shall submit to the European Parliament and to the Council an *ex-post* evaluation report, assessing the results and efficiency of the completed Union's macro-financial assistance and the extent to which it has contributed to the aims of the assistance.

Article 9

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, 24 February 2022.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	A. PANNIER-RUNACHER