



Brussels, 23.6.2023  
C(2023) 4087 final

**COMMISSION IMPLEMENTING DECISION**

**of 23.6.2023**

**on an exceptional assistance measure regarding Ukraine**

# COMMISSION IMPLEMENTING DECISION

of 23.6.2023

## on an exceptional assistance measure regarding Ukraine

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Article 110 thereof,

Having regard to 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 and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009<sup>2</sup>, and in particular Article 23(6) thereof,

Whereas:

- (1) The Government of Ukraine and its international partners have been cooperating to ensure that the perpetrators of international crimes since the start of the full-scale Russian war of aggression against Ukraine are held accountable. The Ukrainian Office of the Prosecutor General (OPG) has already opened investigations into more than 87 000 incidents of alleged international crimes committed in the context of the full-scale Russian military invasion of Ukraine. On the international level, the International Criminal Court (ICC) has launched an investigation into the situation in Ukraine. The scope of the investigation encompasses war crimes, crimes against humanity and genocide. In addition, Ukraine and the competent authorities of Lithuania, Latvia, Estonia, Poland, Romania and Slovakia have formed a Joint Investigation Team (JIT) to support the exchange of information and cooperation on investigations of international crimes committed in Ukraine, to which the ICC also participates; Europol is expected to join as participant soon. While the ICC does not have jurisdiction over the ‘crime of aggression’ in the present circumstances, Ukraine and several other members of the JIT have opened related national investigations. These cooperate and are also supported by Eurojust. To further strengthen the support to these investigations, on 9 February 2023, the European Council endorsed the setting up of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) as a standing coordination body for the JIT, with a focus on enhancing and supporting the investigation into the crime of aggression against Ukraine. The present situation makes it necessary to adopt an exceptional assistance measure regarding Ukraine.

---

<sup>1</sup> OJ L 193, 30.7.2018, p. 1.

<sup>2</sup> OJ L 209, 14.6.2021, p. 1.

- (2) In order to ensure the implementation of the measure, it is necessary to adopt a financing decision. Article 110 of Regulation (EU, Euratom) 2018/1046 ('the Financial Regulation') establishes detailed rules on financing decisions.
- (3) The planned assistance is to comply with the conditions and procedures set out by the restrictive measures<sup>3</sup> adopted pursuant to Article 215 TFEU.
- (4) The objective of the measure set out in this Decision is to contribute to the accountability of perpetrators of international crimes committed in Ukraine in order to remedy exceptional and unforeseen situations as referred to in Article 4(4)(a) of Regulation (EU) 2021/947.
- (5) In accordance with point (e) of Annex IV, paragraph 1, second paragraph of Regulation (EU) 2021/947, the activities set out in this Decision will support the urgent preservation and exchange of evidence through the establishment of the International Centre for the Prosecution of the Crime of Aggression.
- (6) The effectiveness of the Union response to the situation referred to in recital (1) depends on the rapid and flexible implementation of an exceptional assistance measure of limited duration in accordance with Article 23(6) of Regulation (EU) 2021/947.
- (7) The measure provided for in this Decision is complementary to assistance provided under other Union short-term or long-term external assistance instruments. No fully adequate response can be provided under those instruments to the specific needs being addressed. Therefore, an effective response is required to enable early action in accordance with Article 4(4) of Regulation (EU) 2021/947.
- (8) The measure provided for in this Decision is consistent with the Union strategic policy framework for Ukraine. Synergies and complementarities are expected with other Union interventions, as detailed in point 7 of the Annex.
- (9) In order to urgently support the preservation of evidence on the crime of aggression against Ukraine, it is necessary to use indirect management for the implementation of the measure.
- (10) The Commission is to ensure a level of protection of the financial interests of the Union with regard to entities and persons entrusted with the implementation of Union funds by indirect management as provided for in Article 154(3) of the Financial Regulation. To this end, such entities and persons are to be subject to an assessment of their systems and procedures in accordance with Article 154(4) of the Financial Regulation<sup>4</sup> and, if necessary, to appropriate supervisory measures in accordance with Article 154(5) thereof before a contribution agreement can be signed.
- (11) The Commission should authorise the eligibility of costs as of a date preceding that of submission of a proposal, which is prior to the date of adoption of this Decision, for reasons of extreme urgency in crisis management aid or in situations of imminent or immediate danger to the stability of Ukraine, including by an armed conflict, where an early engagement of the Union may prevent an escalation.
- (12) It is necessary to allow for the payment of interest due for late payment on the basis of Article 116(5) of the Financial Regulation.

---

<sup>3</sup> [www.sanctionsmap.eu](http://www.sanctionsmap.eu). Note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy, the OJ prevails.

<sup>4</sup> Except for the cases set out in Article 154(6) of the Financial Regulation, where the Commission may decide not to require an ex-ante assessment.

- (13) In order to allow for flexibility in the implementation of the measure, it is appropriate to define changes which should not be considered substantial for the purposes of Article 110(5) of the Financial Regulation.
- (14) The European Parliament and the Council have been informed of the exceptional assistance measure to be adopted by this Decision, in accordance with Article 25(3) of Regulation (EU) 2021/947.

HAS DECIDED AS FOLLOWS:

*Article 1*  
*The measure*

The financing decision for the implementation of the exceptional assistance measure regarding Ukraine, for 2023, as set out in the Annex, is adopted.

The measure shall include the following action: Support to the Establishment of the International Centre for the Prosecution of the Crime of Aggression (ICPA), as set out in the Annex.

*Article 2*  
*Union contribution*

The maximum Union contribution for the implementation of the measure for 2023 is set at EUR 8 300 000 and shall be financed from the appropriations entered in the budget line 14 02 03 10 of the general budget of the Union.

The appropriations provided for in the first paragraph may also cover interest due for late payment.

*Article 3*  
*Methods of implementation and entrusted entities or persons*

The implementation of the actions carried out by way of indirect management, as set out in the Annex, may be entrusted to the entities or persons referred to or selected in accordance with the criteria laid down in point 6 of that Annex.

The eligibility of costs prior to the submission of a proposal and which is prior to the date of adoption of this Decision shall be authorised as of the date set out in the Annex.

*Article 4*  
*Duration of the measure*

The maximum duration of the exceptional assistance measure adopted under this Decision shall be 18 months. The authorising officer responsible may decide to extend this period twice by a further period of up to six months, up to a total maximum duration of 30 months, under the conditions laid down in Article 23(6) of Regulation (EU) 2021/947.

If the implementation of this measure or any of its components is suspended owing to ‘force majeure’ or circumstances beyond the control of the contracting authority and its implementing partner(s), the period of suspension shall not be taken into account for the calculation of the duration of the implementation of this measure.

*Article 5*  
*Flexibility clause*

Increases or decreases of up to EUR 10 million and not exceeding 20% of the contribution set in the first paragraph of Article 2 or cumulated changes<sup>5</sup> to the allocations of specific actions not exceeding 20% of that contribution, as well as extensions of the implementation period shall not be considered substantial for the purposes of Article 110(5) of the Financial Regulation provided that these changes do not significantly affect the nature and objectives of the actions.

The authorising officer responsible may apply the changes referred to in the first paragraph. Those changes shall be applied in accordance with the principles of sound financial management and proportionality.

Done at Brussels, 23.6.2023

*For the Commission*  
*Josep BORRELL FONTELLES*  
*Vice-President*

---

<sup>5</sup> These changes can come from assigned revenue made available after the adoption of the financing decision.