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### ANNEX

#### **Neighbourhood, Development and International Cooperation Instrument (NDICI) – Global Europe**

#### **Exceptional Assistance Measure regarding Ukraine**

### **1. IDENTIFICATION**

Action:	Support to the Establishment of the International Centre for the Prosecution of the Crime of Aggression (ICPA)
Action Reference:	NDICI CR 2023 /18
Cost:	EUR 8 300 000 (European Union (EU) contribution).
Budget Line:	14 02 03 10
Duration:	Maximum 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.
Lead service:	FPI

### **2. ACTION SUMMARY**

This exceptional assistance measure will support the urgent preservation and sharing of evidence collected during the investigations of the crime of aggression against Ukraine within the Joint Investigation Team (JIT) through the establishment and initial phase of operation of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA). The ICPA will be comprised of prosecutors investigating the crime of aggression appointed by the JIT members, as well as legal experts and other support staff. The ICPA will enhance the investigations into the crime of aggression against Ukraine by allowing the preservation and storage and transfer of evidence via Eurojust's new database on core international crimes, Core International Crimes Evidence Database (CICED), and enabling the regular exchange amongst JIT members for the preparation of specific cases. These investigations would remain within the judicial systems of the JIT members, while the preparatory work done within the ICPA could also be used to support further national and international proceedings, including before a future special tribunal for the crime of aggression as well as by the International Criminal Court (ICC) for cases within its jurisdiction.

### 3. BACKGROUND AND RATIONALE

#### 3.1 BACKGROUND

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 ICC has launched an investigation into the situation in Ukraine. 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. 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, focussed specifically on the investigation of the crime of aggression against Ukraine, to be hosted by Eurojust at its premises in The Hague.

#### 3.2 RATIONALE FOR CRISIS RESPONSE ACTIONS UNDER THE RAPID RESPONSE PILLAR OF THE NEIGHBOURHOOD, DEVELOPMENT AND INTERNATIONAL COOPERATION INSTRUMENT

The ongoing Russian war of aggression against Ukraine constitutes an exceptional and unforeseen situation in the sense of Article 4(4) (a) of the NDICI Regulation. An adequate response cannot be provided under any other European Union Instrument due to the urgency with which the funds are required and due to available resources already being firmly committed.

Annex IV, paragraph 1, second paragraph, point (e) of Regulation (EU) 2021/947 specifically provides for the use of the NDICI rapid response pillar to provide (e) support for international criminal tribunals and *ad hoc* national tribunals, truth and reconciliation commissions, transitional justice and other mechanisms for the legal settlement of human rights claims and the assertion and adjudication of property rights.

#### 3.3 RISKS AND ASSUMPTIONS

<b>Risk</b>	<b>Risk level H/M/L</b>	<b>Mitigation measures</b>
Lack of coordination among donors resulting in duplication of efforts or inefficient allocation of resources.	<b>M</b>	Continued coordination among EU actors will be pursued and the action will specifically include provisions for improved donor coordination with the EU, EU Member States and other partners.

<b>Risk</b>	<b>Risk level H/M/L</b>	<b>Mitigation measures</b>
Needs for a standing coordination structure under the Joint Investigation Team beyond the duration of the exceptional assistance measure.	<b>H</b>	By coordinating closely within the European Commission and with other donors, DG JUST in close coordination with DG BUDG will work towards a sustainable financing for potential further needs and identifying sustainable funding options from programmable funding streams for the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA).

#### **4. OBJECTIVES**

##### **4.1 OVERALL OBJECTIVE**

The overall objective of the action is to contribute to the accountability of perpetrators of international crimes committed in Ukraine.

##### **4.2 SPECIFIC OBJECTIVES**

4.2.1 Enhance the preservation and exchange of evidence for investigations of the crime of aggression against Ukraine by the members of the Joint Investigation Team (JIT).

#### **5. ACTION COMPONENTS AND EXPECTED RESULTS**

**The main expected results/outcomes** include:

**Expected Result (1):** The cooperation and exchange of information and evidence for investigations of the crime of aggression against Ukraine by the members of the Joint Investigation Team (JIT) are strengthened.

Activities (indicative):

- 5.1.1 Support the preservation and storage of evidence of the crime of aggression against Ukraine;
- 5.1.2 Provide expert and logistical support to the investigators and prosecutors of the Joint Investigation Team;
- 5.1.3 Provide a standing structure for the cooperation of investigators and prosecutors of the Joint Investigation Team.

## 6. IMPLEMENTATION

### 6.1 IMPLEMENTATION MODALITIES

The Commission will ensure that the appropriate EU rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures<sup>1</sup>.

#### 6.1.1 Indirect management with a pillar assessed entity

This action may be implemented in indirect management with Eurojust. This implementation entails support to the investigations of the crime of aggression against Ukraine by the Joint Investigation Team. The envisaged entity has been selected because of Eurojust's mandate to support judicial cooperation, including the support to Joint Investigation Teams.

#### Exception to the non-retroactivity of costs

The Commission authorises that the costs incurred may be recognised as eligible as of 1 June 2023 because of the urgency of the crisis situation in Ukraine.

### 6.2 INDICATIVE BUDGET

The total European Union contribution under this Financing Decision **will not exceed EUR 8 300 000**. A breakdown among components is provided hereunder, and is indicative.

#### Indicative budget breakdown

Components	EU contribution (amount in EUR)	Indicative third party contribution, in currency identified
Support to the Establishment of the International Center for the Prosecution of the Crime of Aggression (ICPA)	8 300 000	
6.1.1 – Indirect management with a pillar-assessed entity	8 300 000	N/A
Total	8 300 000	

### 6.3 ORGANISATIONAL SET-UP AND RESPONSIBILITIES

The action shall be implemented under indirect management. It will be managed by the Commission, with the support of the European Union Delegations for the monitoring of the action.

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<sup>1</sup> [www.sanctionsmap.eu](http://www.sanctionsmap.eu) Please 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 between the published legal acts and the updates on the website, it is the OJ version that prevails.

## **6.4 PERFORMANCE AND RESULTS MONITORING AND REPORTING**

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process and part of the implementing partner's responsibilities. To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual) and final report. Each report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and outcomes) as measured by corresponding indicators, using as reference the Logframe matrix. The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

## **6.5 EVALUATION**

Having regard to the nature of the action, an evaluation will not be carried out for this action or its components.

The Commission may, during implementation, decide to undertake such an evaluation for duly justified reasons either on its own decision or on the initiative of the partner.

The financing of the evaluation shall be covered by another measure constituting a financing decision.

## **6.6 AUDIT**

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

The financing of the audit shall be covered by another measure constituting a financing decision.

## **6.7 COMMUNICATION AND VISIBILITY**

The 2021-2027 programming cycle has adopted a new approach to pooling, programming and deploying strategic communication and public diplomacy resources.

It will remain a contractual obligation for all entities implementing EU-funded external actions to inform the relevant audiences of the Union's support for their work by displaying the EU emblem and a short funding statement as appropriate on all communication materials related to the actions concerned. This obligation will continue to apply equally, regardless of whether the actions concerned are implemented by the Commission, partner countries, service providers, grant beneficiaries or entrusted or delegated entities such as UN agencies, international financial institutions and agencies of EU member states.

The 2022 "Communicating and Raising EU Visibility: Guidance for external actions" reference document shall be used to establish the appropriate contractual obligations.

## **7. COMPLEMENTARITY, COORDINATION AND FOLLOW-UP**

Complementarity and coordination will be sought with previous and ongoing crisis response projects, as well as the EU's ongoing support to accountability for international crimes committed in Ukraine.

Given the high level of international interest in supporting Ukraine in the response to the ongoing crisis situation, particular emphasis will also be placed on ensuring good coordination with other support initiatives by EU Member States and other donors.

Specific emphasis will be placed on identifying sustainable funding options for the ICPA, as it is expected that its period of operation will extend beyond the implementation duration of this exceptional assistance measure.