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ANNEX

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

Exceptional Assistance Measure regarding Ukraine

1. IDENTIFICATION

Action:	Strengthen investigation and prosecution capacity of the ICC to respond to increased needs
Action Reference:	NDICI CR 2022 / 22
Cost:	EUR 7 250 000 (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

In recognition of the significant additional strain on the investigation and prosecution capacity of the International Criminal Court (ICC) stemming from the scale of alleged international crimes committed by Russia in Ukraine, and against a backdrop of rapidly growing demands for processing new types of evidence, this 18-month measure will provide targeted support to the Office of the Prosecutor of the ICC. The aim is to further scale up the Office's data storage and processing infrastructure and to build up additional analytical and forensic capacity for new types of evidence, including digital. The support will strengthen efficient and effective data-processing, for example through automated transcription and translation of audio materials and through the provision of additional expert analysts, delivering a critical injection of capacity that will benefit investigative work across all situations addressed by the Office of the Prosecutor. The action will further contribute to global efforts to fight impunity and will specifically strengthen the overall capacity of the ICC to work with massive quantities of audio and visual evidence, thereby facilitating its criminal investigations of the most serious crimes in relation to any situation under consideration by the Court.

3. BACKGROUND AND RATIONALE

3.1 BACKGROUND

On 24 February 2022, Russia began a military aggression against Ukraine. There is a reasonable ground to believe that war crimes and crimes against humanity have been and are being committed in Ukraine. On 2 March 2022, the Prosecutor of the International Criminal Court announced he had proceeded to open an investigation into the situation in Ukraine¹. National and international authorities are collecting evidence of the international crimes that may have been committed in Ukraine, to enable investigation and future adjudication by relevant actors. In this context, the EU is providing support to the Office of the Ukrainian Prosecutor General and to civil society on the collection and safe storage of evidence of war crimes and other serious crimes under international law, including with the assistance of the EU Advisory Mission Ukraine. The EU also supports the investigation launched by the Prosecutor of the ICC, following the referral of the situation in Ukraine to the ICC by 41 state parties.

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

Possible war crimes and crimes against humanity committed during the Russian war of aggression against Ukraine are being investigated by the ICC and national prosecution authorities, which requires the collection and processing of large amounts of evidence, constituting 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

Risk	Risk level H/M/L	Mitigation measures
Lack of coordination among donors resulting in duplication of efforts or inefficient allocation of resources.	M	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.

¹ Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, 2 March 2022.

Risk	Risk level H/M/L	Mitigation measures
Reduced attention to other situations under investigation by the Court.	L	By specifically strengthening the overall capacity of the ICC to collect, store and effectively analyse information, the action will contribute to global efforts to fight impunity, facilitating criminal investigations of the most serious crimes in relation to all situations under consideration by the Court.

4. OBJECTIVES

4.1 OVERALL OBJECTIVE

The overall objective of the action is to support the investigation and prosecution capacities of the ICC.

4.2 SPECIFIC OBJECTIVES

4.2.1 The data storage and processing infrastructure of the Office of the Prosecutor of the ICC is upscaled and additional analytical and forensic capacity for new types of evidence, including digital, is built up.

5. ACTION COMPONENTS AND EXPECTED RESULTS

The main expected results/outcomes include:

Expected Result (1): The investigation and prosecution capacities of the Office of the Prosecutor of the ICC are strengthened.

Activities (indicative):

- 5.1.1 Provision of equipment for the storage and assessment of audio, visual and digital evidence;
- 5.1.2 Support to the ICC's evidence storage platform;
- 5.1.3 Provision of expertise.

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 measures².

6.1.1 Indirect management with an international organisation

This action may be implemented in indirect management with the ICC. This implementation entails support to the prosecution capabilities of the Office of the Prosecutor of the ICC. The envisaged entity has been selected using the following criteria: the ICC's mandate under the Rome Statute to fight impunity for crimes under international law.

Exception to the non-retroactivity of costs

The Commission authorises that the costs incurred may be recognised as eligible as of 15 May 2022 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 7 250 000**. 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
Component 1: Support to the International Criminal Court		
6.1.1 – Indirect Management with the International Criminal Court	7 250 000	n/a
Total	7 250 000	n/a

6.3 ORGANISATIONAL SET-UP AND RESPONSIBILITIES

The action shall be implemented under indirect management. It will be devolved and sub-delegated to the **European Union Delegation in Ukraine** with the support of the Commission for the conclusion of the contracts implementing the action.

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

² 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.

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

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation.

In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and delegation agreements.

The Communication and Visibility Requirements for European Union External Action (or any succeeding document) shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

Acknowledging that activities financed under this action will be politically sensitive and/or may constitute a security risk for the implementing partner/beneficiaries, the communication and visibility plan for this measure should develop a differentiated approach to satisfy the

requirements from the legal obligations to which EU external funding is bound to without putting at risk the actions supported by this measure.

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 development cooperation efforts in Ukraine.

This action will in particular complement the on-going long-term support to the ICC made available through the NDICI-GE thematic pillar. It also complements support by Eurojust to the Joint Investigation Team, which was set-up by Lithuania, Poland and Ukraine and which the ICC has joined as a participant. It will also underpin the recent Commission proposal on the collection, analysis and storage of evidence at Eurojust to support member states' actions to combat genocide, crimes against humanity and war crimes. The measure will further reinforce the cooperation and exchange of data between Eurojust and the ICC, enhance the follow-up to the activities carried out by the EU Advisory Mission Ukraine and will further strengthen the necessary coordination efforts.

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