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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the Union in the Council of Europe bodies on the change of status of the European Union from Associate Member to Participant in the Enlarged Partial Agreement on the Register of Damage caused by the Aggression of the Russian Federation against Ukraine

Delegations will find attached document COM(2024) 224 final.

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2024/0125 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union in the Council of Europe bodies on the change of status of the European Union from Associate Member to Participant in the Enlarged Partial Agreement on the Register of Damage caused by the Aggression of the Russian Federation against Ukraine

EXPLANATORY MEMORANDUM

This proposal concerns the change of status of the European Union from Associate Member to Participant in the Enlarged Partial Agreement on the Register of Damage caused by the Aggression of the Russian Federation against Ukraine (“Register of Damage” or “Register”).

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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 Ukraine¹.

The Register of Damage serves as a record, in documentary form, of evidence and claims information on damage, loss or injury caused to all natural and legal persons concerned, as well as the State of Ukraine, caused from 24 February 2022 in the territory of Ukraine by the Russian Federation’s internationally wrongful acts in or against Ukraine.

Due to the time constraints ahead of the Council of Europe’s 4th summit held on 16-17 May 2023 in Reykjavik, in which the establishment of the Register of Damage was announced, the only way for the Union to become a founding member of the Register of Damage was to join the Enlarged Partial Agreement as Associate Member, in accordance with Article 4, paragraph 2, of the Statute of the said Enlarged Partial Agreement.

To this end, on 11 May 2023, following a policymaking decision by the Council supporting such a move², the Commission adopted a Decision pursuant to Article 220 of the Treaty on the Functioning of the European Union (TFEU) to authorise the President of the Commission to notify the Secretary General of the Council of Europe of the Union’s intention to join the Enlarged Partial Agreement on the Register of Damage, in a first step as founding Associate Member³. The participation of the Union as Associate Member in the Enlarged Partial Agreement did not, nor was it intended to, create any legal obligations for the Union under international law.

As of today, in addition to the Union, 43 States have joined the Register of Damage, 40 as Participants⁴ – including 26 Member States⁵ – and three as Associate Members⁶.

In accordance with Article 5(7) of the Statute of the Register of Damage, Associate Members that make voluntary contributions to the Register of an amount equal to the amount they would have to pay if they were Participants have the full range of rights of Participants during the financial year for which they made such a contribution. The Union already paid a

¹ 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).

² I/A Item Note 9016/23, 5 May 2023.

³ C(2023) 3241, 11.5.2023.

⁴ Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.

⁵ Hungary has not joined the Register of Damage.

⁶ Canada, Japan and the United States.

voluntary contribution of EUR 1 million for 2023 and has pledged to pay the annual recommended contribution for 2024. Therefore, it currently enjoys the full range of rights that Participants have.

Considering the interest of the Union in ensuring that the Russian Federation bears the legal consequences of its internationally wrongful acts, and given that the establishment of the Register of Damage constitutes a significant first step to ensure timely compensation for the victims, it is now appropriate to change the Union's status in the Enlarged Partial Agreement from Associate Member to Participant, thereby reiterating the Union's firm commitment to the activities of the Register, including via the payment of the annual compulsory contribution.

The change of status would not only be politically significant for the Register of Damage but also of practical benefit as it would bring financial stability to the Register, based on the guarantee of a compulsory financial contribution from the Union.

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

The change of the Union's status in the Enlarged Partial Agreement on the Register of Damage is consistent with the Union's commitment to ensuring that damages caused by the Russian Federation's aggression against Ukraine and other violations of international law are duly compensated, as already demonstrated by the Union's early participation in the same Enlarged Partial Agreement as a founding Associate Member. The Commission Decision of 11 May 2023, by which the Commission President was authorised to notify the Secretary General of the Council of Europe of the Union's intention to join the Enlarged Partial Agreement on the Register of Damage as Associate Member, already acknowledged that such status was meant to be only a first step in the Union's participation in the Enlarged Partial Agreement.

Furthermore, becoming Participant in the Register of Damage complements several initiatives undertaken at the European level since the end of February 2022 and 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. This is the case, in particular, for the setting up of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) at Eurojust. The present proposal is likewise consistent with the Union's participation in different fora 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, such as the Dialogue Group and the Atrocity Crimes Advisory Group.

- **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. In particular, the Union has adopted unprecedented restrictive measures against the Russian Federation to increase the costs on the Russian Federation for its illegal actions and to thwart its ability to continue its aggression. To enhance the enforcement of these 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 measures.⁷ 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, and has published guidance to national authorities and private operators in dealing with the interpretation of the relevant Union rules on the matter.

Furthermore, the Union's participation in the Enlarged Partial Agreement on the Register of Damage is consistent with the long-standing cooperation between the Union and the Council of Europe in the fields of human rights and fundamental freedoms, democracy and the rule of law.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 218(9) TFEU provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

It is to be noted that Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility⁸ already provides for the legal basis for the Union's contribution to the Register of damage.

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 proposal has one main aim, namely the cooperation of the Union with the Register of Damage, established within the institutional framework of the Council of Europe. The Register of Damage plays a critical role in supporting and enforcing international justice in Ukraine as it constitutes the first step towards an international compensation mechanism for victims of the aggression of the Russian Federation against Ukraine. Such initiative is carried out within the framework of the principles and objectives of the Union's external action, notably in relation to its commitment to ensuring that the Russian Federation is held fully accountable for its war of aggression against Ukraine. Thus, the substantive legal basis for this proposal is Article 212 TFEU.

Therefore, this proposal is based on Article 212 TFEU in conjunction with Article 218(9) TFEU.

• Subsidiarity (for non-exclusive competence)

In accordance with Article 3(2) TFEU, the cooperation between the Union and the Register of Damage and the ensuing Union's membership in the Enlarged Partial Agreement on the Register of Damage falls within the exclusive external competence of the Union. Therefore, this proposal is not subject to a subsidiarity check.

⁷ Directive (EU) 2024/... of the European Parliament and of the Council of ... on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (not yet published).

⁸ 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.

- **Proportionality**

The Union's objectives with regard to this proposal as set out above can only be achieved by the Union entering as Participant into a binding international agreement providing for a commitment to the long-term payment of the annual compulsory contribution.

- **Choice of the instrument**

Participation in the Enlarged Partial Agreement on the Register of Damage, given its overall structure and prescriptive language, has legal effects and hence the Union's position needs to be established by a Council decision under Article 218(9) TFEU. The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question.

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 violation of international law 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 Register of Damage, 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

The status of the Union as Participant in the Enlarged Partial Agreement on the Register of Damage requires its financial commitment to pay the annual compulsory contribution.

Pursuant to Article 10(3) of the Statute of the Register of Damage, both the amount of the annual compulsory contributions of Participants and that of the recommended voluntary contributions of Associate Members are based on the criteria for the determination of the annual scale of contributions to the general budget of the Council of Europe.

The Register is established for an initial period of three years, in accordance with the Resolution establishing the Enlarged Partial Agreement on the Register of Damage. The review of the functioning of the Register, with a view to considering the continuation of its operation, is envisaged by the end of the initial period of three years, i.e. by May 2026.

Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility⁹ provides for the legal basis for the Union's contribution to the Register of Damage. On the basis of the objectives set out in Regulation (EU) 2024/792, and in particular assistance under Chapter V, Article 34(3) of Regulation (EU) 2024/792 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 Enlarged Partial Agreement on the Register of Damage 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 in accordance with which the Union can provide its financial contribution to the Enlarged Partial Agreement on the Register of Damage.

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 239 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union¹⁰, which enables the Union to pay membership fees to bodies of which the Union is a member, is applicable for the Union's compulsory contribution to the Register and has already been applied for the payment of the 2023 Union's voluntary contribution to the Register.

On 16 November 2023, the Conference of Participants of the Register of Damage adopted the annual budget for 2024. The Union's contribution for 2024 was set at EUR 845 863,71 and the corresponding call for contribution was issued to the Union. The contribution should be paid before 1 July 2024 in accordance with the above-mentioned modalities.

⁹ 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.

¹⁰ 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.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 includes the position to be taken, on behalf of the Union, on the change of the Union's status from Associate Member to Participant in the Enlarged Partial Agreement on the Register of Damage.

Article 2 provides for the entry into force of the Decision.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 14 November 2022, the United Nations General Assembly adopted a Resolution recognising the need for the establishment of an international mechanism for reparation for damage, loss or injury arising from the internationally wrongful acts of the Russian Federation against Ukraine. The Resolution further recommends the creation by Member States, in cooperation with Ukraine, of an international register of damage to serve as a record of relevant evidence and claims information thereon.
- (2) 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.
- (3) The Register of Damage should serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused to all natural and legal persons concerned, as well as the State of Ukraine, caused from 24 February 2022 in the territory of Ukraine by Russian Federation's internationally wrongful acts in or against Ukraine.
- (4) 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 220 TFEU, and notified on the same day to the Secretary General of the Council of Europe. Before adopting the Decision, the Commission had consulted the Council on the Union's participation as founding Associate Member in the Register of Damage, which politically endorsed the decision to participate.
- (5) The Commission Decision of 11 May 2023, by which the Union joined the Enlarged Partial Agreement on the Register of Damage, already acknowledged that the Union's status as Associate Member was meant to be only a first step in the Union's participation in said Enlarged Partial Agreement.
- (6) 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 funding for initiatives and bodies involved in supporting and enforcing international justice in Ukraine.

- (7) Given the interest of the Union 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, and in reiterating the firm commitment of the Union to participate in the Register of Damage as well as its interest in enjoying the full rights as Participant, it is appropriate to change the Union's status in the Enlarged Partial Agreement on the Register of Damage from Associate Member to Participant.
- (8) Participants in the Enlarged Partial Agreement on the Register of Damage are required to pay an annual compulsory contribution to the Register of Damage. For the Union, this payment should be made in accordance with the relevant provisions of Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union shall be to notify the change of the Union's status in the "Enlarged Partial Agreement on the Register of Damage caused by the Aggression of the Russian Federation Against Ukraine" from Associate Member to Participant.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*