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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine
DEPREZ, Director

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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 IMPLEMENTING DECISION extending
temporary protection as introduced by Implementing Decision (EU)
2022/382

Delegations will find attached document COM(2023) 546 final.

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Brussels, 19.9.2023
COM(2023) 546 final

2023/0331 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

extending temporary protection as introduced by Implementing Decision (EU) 2022/382

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

During the first weeks of the Russian full-scale invasion of Ukraine, peaks of around 200 000 entries into the Union per day were registered. Given the scale and intensity of the mass influx, the Commission proposed to the Council to trigger the Council Directive 2001/55/EC of 20 July 2001 (“the Temporary Protection Directive”), considering it to be the most appropriate EU instrument to respond to that situation, as it provides an adequate level of protection to the persons concerned while ensuring that the asylum systems of Member States are not overwhelmed by the significant number of persons fleeing the war in Ukraine.

On 4 March 2022, the Council adopted implementing Decision 2022/382¹ and activated the Temporary Protection Directive for certain categories² of people displaced on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date. Pursuant to Article 4(1) of the Temporary Protection Directive, the initial duration of temporary protection is one year, which may be extended automatically by six monthly periods for a maximum of one year. Temporary protection was automatically extended by one year and it is currently in place until 3 March 2024.

The objective of this proposal is to extend temporary protection as introduced by the Council Implementing Decision 2022/382 by a further period of one year. This will have the effect of continuing temporary protection in respect of the categories of persons identified in Council Implementing Decision 2022/382, for the period from 4 March 2024 to 3 March 2025³.

The purpose of the Temporary Protection Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons. The activation of the Temporary Protection Directive has allowed displaced persons fleeing Russia’s invasion of Ukraine to enjoy a set of harmonised rights across the Union, including residency rights, the possibility to engage in employed or self-employed activities, access to suitable accommodation, access to education for persons under 18 years old, the necessary social welfare assistance, medical or other assistance, and means of subsistence, and legal guardianship for unaccompanied minors.

¹ [Council Implementing Decision \(EU\) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection](#)

² Article 2 of the Council Implementing Decision 2022/382 provides that temporary protection applies to (a) Ukrainian nationals residing in Ukraine before 24 February 2022; (b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and, (c) family members of the persons referred to in points (a) and (b). Member States shall apply either this Decision or adequate protection under their national law, in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.

³ OJ L 71, 4.3.2022, p. 1.

It also serves the important purpose of mitigating the risk that the asylum systems would be unable to process the inflow without adverse effects for their efficient operation. The immediate access to the rights granted under temporary protection allowed Member States to reduce formalities to a minimum, which enabled them to respond faster to the urgency of the situation. Solidarity has been the defining feature of the EU's response to the Russian aggression against Ukraine and a testament of the Union's unity. In particular, Member States declared their willingness to waive the application of Article 11 of the Temporary Protection Directive, thereby facilitating the possibility for persons enjoying temporary protection in one Member State to move to other Member States to enjoy temporary protection there.

Immediately after the activation of the Temporary Protection Directive, it was essential to set up an ad-hoc Platform that would allow Member States to share information about the persons registered as beneficiaries of temporary protection in accordance with Articles 10 and 27 of the Directive. The Commission developed the Temporary Protection Registration Platform in just six weeks and it has been operative since 31 May 2022. The purpose of the Platform is to allow the parties to exchange information to ensure that people enjoying temporary protection or adequate protection under national law can effectively benefit from their rights in all Member States while limiting possible abuse, notably by allowing Member States to detect double registrations. The Platform will continue to perform its operations as long as temporary protection is in place and no amendment to its functioning is required under the present proposal for the prolongation of temporary protection.

Since the start of the Russia's war of aggression, compared to the 4.1 million registrations for temporary protection of persons displaced fleeing Ukraine, only some 39 560 applications for international protection were lodged by Ukrainian nationals in EU Member States, Norway and Switzerland, the majority of which during the first few weeks after the Russian full-scale invasion of Ukraine from an initial estimation that between 1.2 and 3.2 million persons potentially would do so. The limited number of applications for international protection shows that temporary protection has delivered on its purpose, including preventing Member States' asylum systems from being overwhelmed.

Under Article 4(2) of the Temporary Protection Directive, the Council, on a proposal from the Commission, can extend temporary protection by up to one year, where reasons for temporary protection persist. In its Communication on one year of temporary protection, the Commission announced that it was ready to make a proposal for prolongation if necessary⁴.

Today, around 4.1 million persons displaced from Ukraine, including almost one fifth of the Ukrainian children, enjoy temporary protection in the EU, with Germany, Poland and Czechia being the countries hosting the highest number of displaced people (around 1 million in both Germany and Poland, more than half a million in Czechia). Since the activation of the Temporary Protection Directive, Member States, particularly those most affected by the mass displacement of persons, have continued to show a high level of solidarity, not only by hosting people, but also by making concrete efforts to facilitate their inclusion in the host society and by supporting them towards self-reliance. These persons are unable to return to Ukraine, as the situation in the country is not yet conducive to ensure that they can return in safe and durable conditions.

⁴ Communication from the Commission to the European Parliament and the Council, Temporary protection for those fleeing Russia's war of aggression against Ukraine: one year on, COM(2023) 140 final, 8.3.2023.

In fact, the International Organization for Migration (IOM) estimates that, as of 25 May 2023, 5.1 million people are internally displaced within Ukraine⁵. More than half of all internally displaced persons reported having been displaced for one year or longer. The United Nations High Commissioner for Refugees estimates, as of June 2023, the same number of persons displaced inside Ukraine and that over 17 million people in the country are in need of urgent humanitarian assistance⁶. In June 2023, in view of the situation in the country at the time, the United Nations High Commissioner for Refugees reiterated its position⁷ on returns to Ukraine expressed in March 2022, which called upon States not to forcibly return nationals and former habitual residents of Ukraine, including those who have had their asylum claims rejected.

Moreover, the number of weekly registrations in accordance with Article 10 of Council Directive 2011/55/EC with respect to persons enjoying temporary protection declined after the first months of the Russia's war of aggression from 60 000 weekly registrations in June 2022 to around 20 000 new registrations on average per week in March 2023, and has continued steadily declining. Therefore, the overall number of registrations of persons enjoying temporary protection has remained stable at around 4.1 million, with few persons reporting going home back to Ukraine on a permanent basis. The developments indicate that the situation in Ukraine continues to remain volatile across the entire Ukrainian territory as a result of Russia's war of aggression. Heavy fighting and attacks against civilians and infrastructure continues in many areas and the risk of escalation remains. This, combined with the difficult humanitarian situation in Ukraine, could lead, in addition, to a sudden and further increase of arrivals into the Union that could reach the level of a mass influx.

The current uncertainty and volatility in Ukraine show that there is no solution in sight for those beneficiaries of temporary protection currently present in the EU Member States. These persons still need to be protected within the Union. By the same token, the risk to the efficient operation of the national asylum systems remains were temporary protection to cease soon and all these persons request international protection at once.

Given the considerations above, the Commission considers that the reasons for temporary protection persist and that temporary protection should therefore be prolonged as a necessary and appropriate response to the current situation. The prolongation should be adopted as soon as possible and for another year, *i.e.* for the period from 4 March 2024 to 3 March 2025, in accordance with Article 4(2) of the Temporary Protection Directive. This is to ensure that persons displaced from Ukraine and hosted in the EU Member States are provided with as much stability and prospects as possible under the current circumstances. Furthermore, Member States should be given the possibility to undertake in a timely manner the necessary administrative and legal steps (such as renewal of residence permits) to prepare for the prolongation of temporary protection. Clarity and certainty are also needed for the Member States' authorities to effectively plan and provide for temporary protection.

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

This proposal is fully consistent with the EU asylum *acquis*, as the Temporary Protection Directive forms an integral part of the Common European Asylum System and was foreseen to face an extraordinary situation of mass influx of displaced persons as is currently the case due to the full-scale invasion of Ukraine by Russia. It is also fully consistent with the

⁵ [Ukraine Internal Displacement Report, general population survey, June 2023](#)

⁶ [Ukraine emergency | UNHCR](#)

⁷ [UNHCR position on voluntary return to Ukraine, June 2023](#)

European Union's objective of establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

The elements of the proposal are also consistent with the Pact on Migration and Asylum of September 2020 and the accompanying legislative proposals. The Temporary Protection Directive has proven to be an essential instrument to provide immediate protection in the EU and continues at this stage to be the most appropriate instrument to address the displacement caused by the Russian war of aggression against Ukraine. On one side, it allows Member States' asylum systems not to be overwhelmed by applications for international protection and, on the other, it provides for a harmonised set of rights for persons displaced across the Union ensuring an adequate protection. Furthermore, the current legal migration *acquis* excludes beneficiaries of temporary protection from its scope. The Commission considered, in its Communication on one year of temporary protection⁸, that the Temporary Protection Directive should remain part of the toolbox available to the European Union in the future.

- **Consistency with other Union policies**

This proposal is fully consistent with the need to allow Member States to process potential applications for international protection in an orderly manner without overwhelming their asylum systems and to continue providing for the necessary measures in case of a mass influx of displaced persons from Ukraine that would avoid the overwhelming of the Member States' asylum systems. It is also consistent with the Union's external actions. This proposal is also consistent with EU restrictive measures and other actions. This proposal is part of a comprehensive set of EU actions responding to the Russian war of aggression against Ukraine.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is Article 4(2) of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons, considering that the reasons for temporary protection persist. This allows for measures that promote a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

- **Subsidiarity (for non-exclusive competence)**

Title V of the TFEU on the Area of Freedom, Security and Justice confers certain powers on these matters to the European Union. These powers must be exercised in accordance with Article 5 of the Treaty on the European Union, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States alone and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Union.

The situation in Ukraine as a result of the Russian war of aggression impacts the EU as a whole. It has been met with an unprecedented and unified response by the European Union.

⁸ [COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Temporary protection for those fleeing Russia's war of aggression against Ukraine: one year on](#)

This shows that it still requires EU solutions and EU support as well as strong coordination at EU level, as there is a continuous need for all Member States to effectively respond to the situation together and to ensure the same standards and a harmonised set of rights are applied across the Union for the 4.1 million people currently hosted in the Union and in case of a new (mass) influx of displaced persons because of the ongoing volatility. It is clear that actions taken by individual Member States cannot satisfactorily reply to the need for a common EU approach to what clearly constitutes a problem common to whole of the EU.

Such a common approach cannot be sufficiently achieved by the Member States individually and can, by reason of the scale and effects of this proposed Council Implementing Decision, be better achieved and coordinated at Union level, as also indicated by Member States themselves. The Union must therefore act and may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on the European Union, the proposed Council Implementing Decision provides for an extension of temporary protection for the limited period of time, i.e. for one year for the specific group of persons to whom it already applies.

The proposed measure is limited to what is necessary given the scale and gravity of the situation in Ukraine, as a result of which around 4.1 million displaced persons currently present in the EU Member States are not able to return to Ukraine in safe and durable conditions. In addition, this extension also constitutes a proportionate response in view of the current situation, as temporary protection has ensured that the asylum system of the Member States have not been overwhelmed by a significant number of persons fleeing to the EU Member States.

- **Choice of the instrument**

Article 4(2) of the Temporary Protection Directive requires a Council Implementing Decision to extend temporary protection by up to one year where reasons for temporary protection persist.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Evidenced-based policy making**

Immediately after the activation of the Temporary Protection Directive, the Commission set up the EU Migration Preparedness and Crisis Blueprint Network with a focus on Ukraine, which has been providing a common situational awareness of the migratory implications of the Russian full-scale invasion of Ukraine and the EU's and Member States' preparedness. In addition, the Solidarity Platform Ukraine ensures a coordinated response to the crisis and provides a framework, among others, for regular exchanges and for increasing the overall preparedness at EU level. Information and data on the current situation and on the movements of people has been collected in both fora. Moreover, the Temporary Protection Registration Platform has allowed participating Member States to exchange information on beneficiaries of temporary protection and of adequate protection available under national law, while detecting double registrations within the same Member State and across EU Member States.

In addition, the European Commission, other institutions such as the World Bank and the United Nations, as well as the Government of Ukraine are regularly assessing the situation in Ukraine. The World Bank publishes reports on the Ukraine Rapid Damage and Needs Assessment⁹.

Since the outbreak of the war, the IOM has worked to provide a better understanding of the situation of displaced persons and to track internal displacement in Ukraine and mobility flows, in addition to monitoring through surveys the intentions of those fleeing the war and of those crossing the border back to Ukraine. The UNHCR has been regularly publishing information on intentions and perspectives of (also internally) displaced persons from Ukraine. Surveys and papers from the abovementioned international organisations indicate the current situation is still volatile and uncertain, therefore not allowing for return under safe and durable conditions. The estimation of persons seeking protection provided at the time of the activation of the Temporary Protection Directive (March 2022) indicated that half of the displaced persons were likely to be absorbed by the significant existing diaspora networks across the EU, mainly but not only in “traditional” destination countries (Poland, Czech Republic, Germany, Italy and Spain). The registrations for temporary protection recorded so far indicate that this estimation was confirmed. At the end of 2022, almost half of the total current beneficiaries of temporary protection (3.8 million) were hosted in Germany and Poland, followed by Czechia, Italy, and Spain. As of June 2023, UNHCR estimates that 6.3 million persons fleeing Ukraine are recorded worldwide¹⁰.

- **Stakeholder consultations and collection and use of expertise**

To gather evidence-based information, the Commission regularly consulted through the Migration Preparedness and Crisis Management Network and the Solidarity Platform Member States’ authorities, the European External Action Service, and relevant EU Agencies, Ukrainian authorities and international organisations, while maintaining exchanges with non-governmental and civil society organisations.

The Commission held specific discussions on the extension of temporary protection in the Solidarity Platform. In this forum and in the Integrated Political Crisis Response (IPCR)) Member States unanimously expressed the need to extend temporary protection for an additional year to maintain a common European response, provide clarity to beneficiaries and enable Member States to undertake the necessary administrative and legal steps at national level (such as renew residence permits). In parallel, regular contacts with the Ukrainian authorities were held to gather information on the situation on the ground. Member States were consulted in the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) in July 2023, where they underlined the need for temporary protection to be prolonged. In addition, in line with Article 3 of the Temporary Protection Directive, the Commission specifically consulted the United Nations High Commissioner for Refugees, which has been assessing the situation and provided relevant input, and conducting surveys on the intentions of displaced persons. The UNHCR recently published a position paper underlining that non-voluntary returns to Ukraine should not be carried out. In May 2023, 59 civil society organisations, led by the European Council for Refugees and Exiles (ECRE) published a joint statement to call on the European Commission to prepare a proposal for a Council Implementing Decision on the extension of temporary protection until March 2025 as a matter of urgency.

⁹ [Ukraine Rapid Damage and Needs Assessment, February 2022 - February 2023](#)

¹⁰ [Ukraine emergency | UNHCR](#)

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, as well as the obligations stemming from international law, including the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967.

4. BUDGETARY IMPLICATIONS

Since the start of Russia's war of aggression against Ukraine, funding needs linked to the application of the Temporary Protection Directive have been accommodated within the budget of the existing EU funding instruments under the period 2014-2020 and 2021-2027, in particular under Cohesion Policy.

Since March 2022, the rules governing cohesion policy were revised several times through the Cohesion's Action for Refugees in Europe (CARE) package to enable Member States to reallocate up to €17 billion of unused funds from the 2014-2020 envelope and provide additional liquidity also from the new 2021-2027 envelope. The CARE package increased the flexibility of existing rules; it provided €13.6 billion of additional liquidity to finance urgent needs and simplified reporting for the managing authorities. Under the Home Affairs Funds, in March 2022 the implementation period of the three Funds (i.e. the AMIF, ISF Borders & Visa and ISF Police) was prolonged by one year. This allowed the Member States to have access to available unspent funds and to swiftly redirect them under the existing programmes towards urgent migration and border management needs arising from the large numbers of people fleeing the war. In addition, a targeted reinforcement of EUR 152 million was agreed by the budgetary authority and used as part of the EUR 400 million emergency assistance package to support the most affected Member States with first reception needs linked to the high inflow of displaced people from Ukraine. Finally, the Commission proposed in its mid-term revision of the Multiannual Financial Framework (MFF) of 20 June 2023 to increase the resources for Heading 4 by EUR 2 billion for 2025-2027. These additional resources are necessary to support Member States' implementation of the Pact on Migration and Asylum, continue structural support to Member States with an external border that face exceptional pressure, and preserve efficient and rapid responses for crisis and emergency situations. They could also be used to address the many priorities in the field of asylum, migration and border management, including the reception of beneficiaries of temporary protection.

5. OTHER ELEMENTS

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

Article 1 establishes the extension of temporary protection for one year (from 4 March 2024 to 3 March 2025) for displaced persons referred to in Article 2 of Council Implementing Decision 2022/382.

Article 2 establishes the date from which the Council Implementing Decision should apply, i.e. 4 March 2024.

Proposal for a

COUNCIL IMPLEMENTING DECISION

extending temporary protection as introduced by Implementing Decision (EU) 2022/382

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof¹¹, and in particular Article 4(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Directive 2001/55/EC establishes minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.
- (2) On 4 March 2022, the Council adopted Implementing Decision (EU) 2022/382¹² establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC with the effect of introducing temporary protection.
- (3) In accordance with Article 4(1) of Directive 2001/55/EC, temporary protection first applied for an initial period of one year, until 3 March 2023, and was then automatically extended for one additional year until 3 March 2024.
- (4) In the context of its activation, Member States agreed not to apply Article 11 of the Directive 2001/55/EC in relation to persons that enjoy temporary protection in a given Member State in accordance with the Council implementing Decision, and move to another Member State without authorisation, unless on a bilateral basis Member States agree otherwise.
- (5) There are around 4.1 million displaced persons currently benefitting from temporary protection in the Union. The situation in Ukraine does not allow for their return to

¹¹ OJ L 212, 7.8.2001, p.12.

¹² [Council Implementing Decision \(EU\) 2022/382 of 4 March establishing the existence of mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection \(OJ L 71, 4.3.2022, p. 1\).](#)

Ukraine in safe and durable conditions. The International Organization for Migration estimates that, as of 25 May 2023, 5.1 million people are internally displaced within Ukraine. More than half of all internally displaced persons reported having been displaced for one year or longer. The United Nations High Commissioner estimated that more than 5 million people are displaced inside Ukraine and that over 17 million people are in need of urgent humanitarian assistance. In June 2023, in view of the current situation in Ukraine, the United Nations High Commissioner for Refugees reiterated its previous position on returns to Ukraine, which called upon States not to forcibly return nationals and former habitual residents of Ukraine, including those who have had their asylum claims rejected.

- (6) The overall number of registrations of persons enjoying temporary protection has remained stable at around 4.1 million, with few persons reporting going home back to Ukraine on a permanent basis. Moreover, the risk of future mass influx and displacement of more persons fleeing Ukraine to the EU continues to exist due to the volatility and the uncertainty of the situation in Ukraine as a result of hostile actions by Russia. Heavy fighting continues in many areas. Risk of escalation remains. This, combined with the difficult humanitarian situation in Ukraine could lead, in addition, to a sudden and further increase of arrivals into the Union that could reach the level of a mass influx. At the same time, the risk to the efficient operation of the national asylum systems remains were temporary protection to cease soon and all those persons apply for international protection at once.
- (7) Since the high number of displaced persons in the Union benefitting from temporary protection is not likely to decrease as long as the war against Ukraine continues, extending the temporary protection is necessary to address the situation of persons currently benefitting from temporary protection in the Union or who will need such protection as of 4 March 2024, as it provides for immediate protection and access to a harmonised set of rights while reducing formalities to a minimum in a situation of mass influx to the Union. Extending temporary protection will also help in ensuring that the asylum systems of the Member States are not overwhelmed by a significant increase in the number of applications for international protection that could be lodged by persons benefitting from temporary protection until 3 March 2024, were temporary protection to cease by then or by persons fleeing the war in Ukraine arriving in the Union after that date and before 4 March 2025.
- (8) Therefore, considering that the reasons for temporary protection persist, temporary protection for the categories of displaced persons referred to in Implementing Decision (EU) 2022/382 should be extended until 3 March 2025.
- (9) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (10) In accordance with Article 4 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified, by letter of 11 April 2003, its wish to take part in the adoption and application of Directive 2001/55/EC. Ireland is therefore bound by this Decision.

- (11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Implementing Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

The temporary protection given to persons displaced from Ukraine referred to in Article 2 of Council Implementing Decision (EU) 2022/382 is extended for a period of one calendar year as of 4 March 2024.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 4 March 2024.

Done at Brussels,

For the Council
The President