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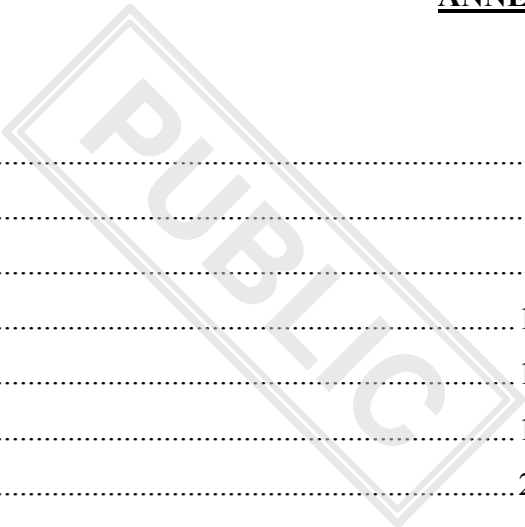
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INFORMATION NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Multiannual Financial Framework (MFF) 2021-2027 revision - delegations' comments

Delegations will find attached a compilation of the comments and questions to the Commission proposal on the Ukraine Facility communicated after the AHWP meeting on 7 July 2023 (deadline: 14 July 2023).

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CZECH REPUBLIC

comments and questions on the UA Facility

Financing

One of the Pillar under the UA Facility should be the Ukraine Reserve. The Czech Republic welcomes all the information and explanations the Commission has provided so far - in its' presentations, in the fiches or directly during the AHWP discussions. While we recognise that some of the details have thus been provided, we are still not fully satisfied with the replies received so far.

Firstly, we would like to ask the Commission to provide all the explanations, information, data and assumptions in writing.

Secondly, while acknowledging the uncertainties and possible underlying difficulties, we would like to repeat and insist on some of our question we already raised as well as to add new ones, as the answers and our full and correct understanding of the process and functioning of the Facility are of crucial.

Based on the explanations given by the Commission, the minimum annual limit for the mobilisation of the Ukraine Reserve would de facto be EUR 2.5 bn (to cover some necessary costs occurred). The upper annual limit (of EUR 16.7 bn) was then introduced to "ease" the predictions for national budgets.

- Is this understanding correct?
- What are the Commission's expectations of the yearly needs (best guess)?
- The mobilisation of these amounts will be in the given year in commitments. We therefore expect the payment profile will extend through several years. Can the Commission provide us with the expected payment profiles (e.g. at least based on the simplified assumption of an even mobilisation of the Reserve in the four years)? Does the Commission envisage some pre-financing on the grants?
- How much of this reserve (especially as the non-repayable part is concerned) does the Commission intend to include in/propose for the 2024 budget?

Governance and Coordination

What are the concrete proposals of the Commission to secure coordination with other donors (including their contributions to the Facility) and equal and inclusive participation of all donors (including Member States) on the governance of the facility?

Will the preparation of the Ukrainian Plan be discussed with Member States? Where and when? We consider it important for the alignment with bilateral planning and the overall securing of coordinated, transparent reconstruction process without overlaps.

Impact on NDICI-GE

Can the Commission specify if Ukraine will have access to the flexible NDICI-GE funds, namely Cushion and Rapid Response Pillar? If not, what is the proposed alternative for these instruments enabling flexible allocations of funds in case of unfavourable development of situation and unplanned needs.

Given the specific role and expertise of the FPI, we would like to know to which funding and to what extent it will have access to the financing under the Facility.

We kindly ask the Presidency to include the discussion on the impacts of the facility on NDICI-GE and its programming (including the use of the remaining funds) on the agenda of CODEV/NDICI-GE subgroup to maintain the strategic role of the Council.

Official Development Assistance (ODA)

In its presentations in AHWG MFF as well as AHWG on multiagency donor platform, the Commission confirmed that the majority of actions financed under Facility will be ODA. We would like to know, what is the basis for this assessment and what is the estimated percentage?

Second pillar of the Facility – guarantees and insurance

Could the Commission specify, how private sector from Member States which do not have a pillar assessed financial entity will be able to benefit from the guarantees and insurance foreseen under this pillar?

Audit Board

We would welcome more details on the selection procedures criteria, required expertise and foreseen financing of the experts.

How will the Member States and other donors be invited to participate in the Board?

Outreach to other donors

We would like to ask the Presidency to invite the Commission to provide a detailed debrief at the AHWP Ukraine Platform on the outreach to other donors taken place to the date.

In order to participate on the outreach bilaterally, we would appreciate an elaboration of common lines to take in a Team Europe manner.

CROATIA

In general, we support the creation of the UA facility and agree with its proposed structure, but we still consider that pillar III should play a more significant role within the facility, given the large needs that UA will have in the field of capacity building, de-mining and rehabilitation of veterans and victims of war.

1. We would kindly ask the Commission to provide an overview of the expected needs within the MFA until the end of 2027. Including the current availabilities, expected payment schedule and the foreseen needs for Tunisia, Western Balkans and other EU neighborhood countries.
2. Could the Commission explain, what would be the impact of the creation of the UA facility on the EU borrowing costs until the end of 2027. We would in particular welcome more information on the interplay between the borrowing that would be done in the context of this facility and other borrowing operations conducted by the COM (i.a. RRF).
3. Could the Commission elaborate further on the cooperation with the EIB in providing aid to UA, as well as on the cooperation with other institutions. Please provide some examples of ongoing projects.
4. Commission, please elaborate more on the procedure how actions in the area of de-mining and rehabilitation of veterans and victims of war would be covered by the facility. If we understand correctly, their inclusion in the pillar I would depend on them being included in the Plan for UA, but what about pillar III. How would it be decided to what extent such measures would be covered under that pillar.
5. As regards capacity building measures, we would like more information on how such measures would work in practice, especially on the role foreseen for seconded experts from the MS. Please explain in more detail what would be the procedure for nominating them, how would they be chosen and who would cover their costs.

DENMARK

Overall budgetary architecture

- Can the Commission provide an estimate of how much support the EU would be able to mobilise under the current MFF agreement, including via loans guaranteed under the current headroom?
- Can the Commission confirm that an entirely loan based Ukraine Facility without further adjustments to the MFF regulation than an adjustment of the duration of possible mobilisation of a guarantee over and above the MFF ceilings referred to in Article 2(3) second subparagraph?
- Can the Commission confirm that the proposal leaves full flexibility regarding the total annual amount and the division between loans and grants? If so, does the Commission consider that modality in line with the aim of providing “stable, predictable and sustainable financial support for Ukraine” in the conclusions from the European Council meeting on 29-30 June 2023?

Member State contributions

- Assuming the Commissions’ indicative allocation of loans and non-repayable support holds true, can the Commission provide an estimate of the contributions per Member State in 2024-2027 and an estimate of the long term contributions and in case:
 - o Ukraine does not request a borrowing cost subsidy *and* repays the full amount of loans
 - o Ukraine does request a borrowing cost subsidy and repays the full amount of loans.
 - o Ukraine does request a borrowing cost subsidy and does not repay the loans.

Other support for Ukraine

- Could the Ukraine interest rate subsidy of 717 million (2024-2027) as well as provisioning of Ukraine EIB loans of 966 million (2024-2027) in principle be covered by the Ukraine Facility/Reserve
- Can the Commission confirm that, except for some smaller NDICI amounts for regional, thematic and cross-border, all non-military support for Ukraine in 2024-2027 is intended to be covered by the Ukraine Facility and that Ukraine will not receive any pre-accession support (IPA) on top of what is foreseen to support EU membership in the Ukraine Facility?

ODA eligibility

- The Commission is requested to provide an estimate of the payments reportable as official development assistance per year and per Member State.
- Does the Commission consider the costs for provisioning of the Ukraine Guarantee eligible as official development assistance?

Ukraine Plan

- Can the Commission confirm that the quarterly payments to finance the Ukraine Plan be halted, if Ukraine does not live up to the basic conditionality of multi-party democracy, human rights and fundamental freedoms?
- Will the Ukraine Plan, when it is presented for the Council for approval, already have been approved by Ukraine?
- When does the Commission expect to put a Ukraine Plan forward for approval by the Council?
- How will the Commission ensure proper involvement of the Council in decision making and policy guidance pertaining to the Ukraine Plan?
- How will the Commission promote consultations and coordination with EUMS on assistance to Ukraine and the Ukraine Plan both on a policy and operational level in a situation in which only few EUMS are part of the Multi-agency Donor Coordination Platform?
- Can the Commission elaborate on which concrete elements it expects in a Ukraine Plan in order to render a positive assessment by the Commission?
- Can the Commission please provide a diagram on the decision making proposed with the draft regulation, clearly depicting the Council's role/ decision making power including relevant majorities?

Ukraine Guarantee

- How does the Commission propose to ensure adequate involvement of the private sector in Ukraine in setting the modalities for the Ukraine Guarantee?
- Will guarantees and blending operations only support investments in Ukraine, or will they also promote trade between Ukraine and Member States?
- In case the provisioning for the Ukraine Guarantee is not sufficient to cover losses, how will the financing be made available?
- Can the Commission elaborate on who the representatives of the operational board will be?

Protection of the financial interests of the Union

- Do the quarterly payments require any other approval than by the Commission?
- How will the Commission continuously assess whether the preconditions for support are met?
- What kind of powers do the EU audit, control and investigative bodies have in Ukraine? What is the composition of the proposed Audit Board and what authority will the Board have in Ukraine?

Additional contributions

- Does the Commission intend to reduce its proposals for mobilisation of the Ukraine Reserve in case additional funding is mobilised through restrictive measures in view of Russia's actions in Ukraine? Can the Commission elaborate on why these resources are not added as *other funding* as suggested in the Presidency progress report from the AHWP on frozen and immobilised assets?
- Can the Commission confirm that external funding from third countries and other international partners will be added on top of the ceiling of 50 billion euros?

Contingent liabilities

- At the AHWP on the 5th of July 2023, the Commission informed the working party that the contingent liabilities arising from the Ukraine Facility would amount to approximately 720 million euros annually until 2053. The Commission is requested to elaborate on the underlying assumptions, including the maturity and grace period of the loans.

FINLAND

Ukraine Facility – Written Comments/Questions

- How would the conditionalities and audit and control framework of the UA facility fit together with the work under the Donor Coordination Platform with the G7 and IFIs? It is important for Ukraine to have one, coherent plan going forward, and therefore we should avoid any unnecessary overlaps especially with the already ongoing work by key IFIs such as the IMF and the World Bank.
- We would appreciate a clarification of what part of the financing under the new UA facility would be envisioned for 1) budget support, 2) reconstruction to keep critical infrastructure and institutions running in the Ukrainian economy, and 3) capacity building, respectively.
- It is essential that co-ordination with the EIB works well, also regarding concrete projects. We must avoid any unnecessary overlaps.
- Could the Commission explain, more in detail, how Pillar II including Ukraine Guarantee would work in practice? What is the relationship to the External Action Guarantee? Is there duplicate work? How are Union liabilities and risks managed?
- What kind of considerations regarding anti-corruption and governance issues have been taken?
- Education, culture and development of a vibrant civil society play a crucial role in the reconstruction process and in ensuring that Ukraine's development is anchored in European values. How will these aspects be reflected in the process?
- How could the governance model of the Ukraine Facility be modified to strengthen the role of the Council, including a meaningful involvement during the preparatory stage of the Ukraine plan?
- The Commission will provide an annual report to the EP and the Council on progress towards the achievement of the objectives of this Regulation, but should there be a supplementary monitoring mechanism to keep EU MS informed on implementation?
- How to strengthen predictability and allow for national budgetary planning (grants vs loans)? Could there be a fixed maximum amount or percentage for grants? Does the Commission proposal allow the entire 50 bn to be grants?
- Why would the Commission alone decide taking out a loan? Should the Council be consulted? Is the European Parliament also involved in the decision on a loan? Should the process also be laid out in the Ukraine Facility regulation explicitly?
- What kind of administrative expenditure could be financed from Article 6 (1) (c) - 5 % and from Article 6 (1) (d) - max. 1 %? Will this sufficiently ensure the administrative capacity of the Ukrainian authorities, considering that Article 6 (1) (c) also covers borrowing costs subsidy?
- What are the grounds for the Commission's requests for more resources and staff in the Financial Statement? The level of administrative expenditure should be moderate. Could there be unnecessary administrative burden?

- In which respects does the Ukraine Facility remind the administrative structure of the RRF? Will Ukrainian officials be responsible for audit and control? How will the achievement of the objectives be monitored?
- For comparison, please provide figures for the Ukraine Facility at 2018 prices.
- Please provide an estimate of the interest rate subsidy that would be covered by the Ukraine Facility (Pillar III).
- What does the Ukraine Facility proposal entail for Heading 6, in particular NDICI and IPA? What are the impacts on the pre-accession funding to other EU candidate countries?
- Could the Commission justify the proposed use of delegated acts and implementing acts?
- Could the Commission justify the derogations from the Financial regulation? Particularly the derogation in article 12(3) requires a thorough justification.

FRANCE

1. Est-il possible de disposer d'ici la fin de l'été d'une proposition de répartition des formes de soutien (crédits budgétaires/prêts) pour 2024 en raison des procédures nationales de budgétisation – soit avant la lettre rectificative d'octobre comme indiqué au groupe ad hoc du 7 juillet ?
2. **[Considérant 16]** La Commission peut-elle expliquer pourquoi les besoins additionnels en termes d'aide humanitaire seraient couverts par une augmentation des plafonds sur la réserve de solidarité et d'urgence et/ou l'instrument de flexibilité, et non pas par des redéploiements au sein de la rubrique 6 ? La Commission peut-elle fournir une estimation des besoins relevant des programmes existants du budget UE et qui ne sont pas encore budgétisés pour 2024 ?
3. **[Considérant 17]** La Commission peut-elle préciser quels seront les documents mis à la disposition du Conseil et du Parlement européen (évaluations techniques des besoins et ressources) dans le cadre de la procédure budgétaire annuelle afin de discuter de la ventilation annuelle et de la répartition entre les différents types de soutien ?
4. **[Considérant 22]** La Commission peut-elle préciser les modalités d'implication des collectivités locales dans le cadre de la Facilité dans le contexte actuel ?
5. **[Considérant 23]** Le considérant fait-il référence à l'assistance technique prévu dans le pilier III ? La Commission peut-elle préciser ce que le considérant peut impliquer concrètement pour les États membres (un échange de bonnes pratiques) ?
6. **[Considérant 25]** La Commission peut-elle confirmer que le financement exceptionnel serait financé par la réserve Ukraine ?
7. **[Considérant 26]** Quelle sera concrètement l'articulation de la facilité et des instruments dédiés à l'élargissement ? L'obtention du statut de candidat à l'adhésion doit permettre l'intégration de l'Ukraine (et de la Moldavie) à la programmation de l'IPA. Quel est le calendrier anticipé par la Commission s'agissant de la programmation IPA ? Est-ce que la facilité a vocation à se substituer à cet instrument, de manière temporaire ?
8. **[Considérant 46]** La Commission peut-elle préciser les circonstances qui ne permettraient pas d'intensifier le soutien aux investissements dans la reconstruction à long terme ? La Commission peut-elle préciser comment serait évalué la capacité d'absorption de l'Ukraine sur la période (marché du travail, capacités administratives, etc.) ?
9. **[Considérant 47]** La Commission peut-elle confirmer que le plafond de 50 Md€ au sein du règlement CFP ne s'applique qu'à la réserve Ukraine, et non à l'ensemble des instruments, comme l'indique le considérant ?
10. **[Considérant 52]** Compte tenu du niveau des montants disponibles sous la *headroom*, la Commission mettra-t-elle à disposition des États membres les données actualisées et prévisionnelles afférentes, chaque année au début de la procédure budgétaire, afin de documenter le nécessaire arbitrage entre les différentes formes de soutien ?

11. **[Considérant 56]** La Commission peut-elle confirmer que la participation de l'Ukraine aux programmes de l'Union serait financée par la réserve Ukraine ? Quels sont les montants envisagés à ce stade pour financer la participation de l'Ukraine aux programmes de l'Union au sein du CFP actuel ?
12. **[Considérant 65]** La Commission peut-elle confirmer que l'assistance macro-financière, sous la forme de prêt ou de dons, serait également soumise à la mise en œuvre du plan ukrainien (atteinte des « étapes ») ?
13. **[Considérant 84]** La Commission peut-elle préciser l'éventuel impact de cette flexibilité permettant de constituer de manière progressive le provisionnement ? Une fois les discussions plus avancées, la Commission sera-t-elle en mesure de formaliser une estimation de la répartition pluriannuelle ?
14. **[Considérant 92]** La Commission dispose-t-elle d'assurances sur la capacité des autorités ukrainiennes en termes de système d'information ? Sinon, des investissements préalables sont-ils nécessaires et ne risquent-ils pas de retarder le suivi de la mise en œuvre du plan ? Est-ce que le financement de tels investissements serait couvert par le pilier III ?
15. **[Article 3]** La Commission peut-elle expliquer le périmètre choisi des objectifs assignés à la Facilité ? Pourquoi n'a-t-elle pas centré ces objectifs sur les priorités identifiées à moyen terme d'un pays en situation de guerre sur son territoire ? Par exemple, la décentralisation constitue-t-elle toujours un objectif pour les autorités ukrainiennes ? La Commission peut-elle préciser l'articulation envisagée entre le soutien à court terme et le financement de la reconstruction ?
16. **[Article 4]** Dans quelles situations un financement de la facilité pourrait s'ajouter à un financement d'un programme du budget de l'UE, sans risquer de double financement ? La Commission juge-t-elle que l'association des parties prenantes est réalisable dans les conditions actuelles ?
17. **[Article 5]** Le projet de règlement prévoit, à ce stade, que la Commission puisse adopter une décision de suspension des paiements pour non-respect des conditions de l'article 5. La Commission prévoit-elle un rapport d'évaluation préalable, en s'inspirant des mécanismes applicables aux discussions dans le cadre du processus d'adhésion. Quelles modalités d'association du Conseil sont-elles envisagées ?
18. **[Article 6]** La Commission peut-elle confirmer que le paragraphe 3 signifie que les prêts sont plafonnés à hauteur de 50 Md€ sur la période 2024-2027, avant déduction des autres formes de soutien ? Dans un tel cas, cela signifie-t-il que le montant relevant du paragraphe 1 de l'article est nul ? Dans un tel cas, comment le financement des piliers II et III serait-il assuré ?

- 19. [Article 11]** L'éligibilité des opérateurs à la mise en œuvre de la Facilité (article 11) est très large, puisqu'elle couvre, au-delà des États membres de l'UE et de l'EEE, tous les pays du voisinage et les bénéficiaires de l'IPA III, ainsi que les pays « pour lesquels l'accès réciproque à l'assistance extérieure à l'Ukraine est établi par la Commission »? Pourquoi le champ d'éligibilité diffère-t-il de celui de l'IPA III dont la Facilité Ukraine partage de nombreux objectifs ? Quelles seraient les conséquences du critère de réciprocité s'agissant de l'Ukraine ? Comment la Commission compte-t-elle évaluer la réunion des conditions pour permettre à des fournisseurs non éligibles de participer à la Facilité dans les cas d'urgence ou lorsque les biens et services ne sont pas disponibles (article 11.3) ?
- 20. [Article 12]** La Commission peut-elle préciser les justifications de telles dérogations au règlement financier ? De telles dispositions entraîneraient des incertitudes importantes sur les montants effectivement disponibles une année donnée et seraient à l'origine de difficultés de pilotage budgétaire pour les États membres.
- 21. [Article 13]** Compte tenu des fortes disparités territoriales en Ukraine, accentuées dans le contexte actuel, sur la base de quels critères seront évaluées les circonstances susceptibles d'actionner l'article 13 ? Comment le Conseil serait-il associé à de telles décisions ?
- 22. [Article 17]** La Commission pourrait-elle préciser les modalités de préparation du plan Ukraine et, concrètement, la manière dont pourrait se mettre en place l'approche « *bottom-up* » et le « système de gouvernance multi-niveaux » à court terme ? Les autorités ukrainiennes ont-elles indiqué qu'un tel délai pour préparer le plan était envisageable de leur point de vue ?
- 23. [Article 18]**
- Quel est le délai et la fréquence d'évaluation envisagé par la Commission ?
 - Paragraphe 2 : La « détermination des montants alloués à l'Ukraine » inclut-elle également la détermination de la nature du soutien financier (prêts/dons) ?
 - Paragraphe 3b : soutien à la décentralisation (cf. article 3) ?
 - L'évaluation à réaliser par la Commission pourra-t-elle faire intervenir des entités tierces (États, organisations internationales, etc.) ? Ne serait-il pas plus pertinent que la Commission soit assistée du Comité ?
- 24. [Article 19]**
- La ventilation annuelle des fonds dédiés au plan ukrainien sera-t-elle déterminée en fonction du nombre d'étapes prévues chaque année, comme les décaissements de la Facilité pour la relance et la résilience (FRR) ?
 - Comment la Commission compte-t-elle informer le Conseil de la préparation du Plan Ukraine ?
- 25. [Article 20]** Comment de tels changements seraient-ils pris en compte dans la procédure budgétaire ? Quelles sont les circonstances objectives qui justifieraient une modification du plan pour la Commission ?
- 26. [Article 21]** Comment le Conseil sera-t-il associé à la préparation et à la validation de l'accord de prêt ?
- 27. [Article 22]** Que désignent les coûts administratifs ? La Commission peut-elle préciser à quel moment dans l'année pourrait intervenir la demande de l'Ukraine visant la prise en charge des intérêts des prêts octroyés ?

28. **[Article 23]** Comment s'articule la flexibilité offerte à la Commission quant au calendrier de décaissement du préfinancement avec le calendrier prévisionnel d'appel de fonds auprès des États membres ? Le préfinancement est-il bien financé au prorata de la répartition entre dons et prêts au sein du Pilier I ?
29. **[Article 24]** Comment le Conseil sera-t-il associé à une telle décision ?
30. **[Article 25]** La Commission dispose-t-elle d'informations sur les capacités administratives mises en place en Ukraine pour la construction du plan puis sa mise en œuvre ? La faisabilité de 4 demandes de paiement par an est-elle assurée ? La Commission peut-elle préciser le sens et les conséquences du point 3 (« *The satisfactory fulfilment of qualitative and quantitative steps shall presuppose that measures related to the steps for which Ukraine had achieved satisfactory fulfilment have not been reversed by Ukraine.* ») ? Comment le Conseil sera-t-il associé à l'évaluation des demandes de paiement ? Comment seraient calculées les réductions éventuelles de paiement (points 6 et 7) ? La Commission pourrait-elle être assistée du Comité plutôt que d'experts dans ce travail ?
31. **[Article 26]** Quelle est la faisabilité de cette obligation par les autorités ukrainiennes ? Dans le cas où l'Ukraine ne parviendrait pas à réunir et publier les informations visées à l'article 26, quelles seraient les conséquences mises en œuvre par la Commission ?
32. **[Article 27]** Comment seraient définies les objectifs et les priorités du *Ukraine Investment Framework* ? Comment les décisions d'investissement seraient-elles prises ?
33. **[Article 28]** Concrètement, comment la Commission envisage-t-elle de relier le pilier II de la Facilité pour l'Ukraine à la plateforme du G7 ?
34. **[Article 29]** Comment la Commission entend-elle sélectionner les opérateurs concernés par la mise en œuvre de la garantie Ukraine ?
35. **[Article 30]**
Par. 2 : La Commission peut-elle préciser : (i) si les contreparties éligibles sont les institutions financières éligibles ? (ii) pourquoi la Commission ne mentionne-t-elle pas la préférence européenne pour les contreparties éligibles à l'UE instruments financiers ? (iii) quels sont les bénéficiaires finaux des différents instruments financiers : les contreparties souveraines, les contreparties non commerciales sous-souveraines, les contreparties commerciales sous-souveraines, le secteur privé ?
Par. 10 : Comment la Commission s'assurera que le risque pris n'excède pas la capacité budgétaire de l'Union ?
36. **[Article 31]** La Commission peut-elle préciser les éléments qui sous-tendent la détermination du taux de provisionnement (70 %) et les modalités précises de réévaluation de ce taux chaque année ?
37. **[Article 32]** La Commission compte-elle considérer le Pilier III selon le même fonctionnement que l'instrument IPA [*cité dans les considérants mais pas dans cet article*] ?
38. **[Article 33]** Les autorités ukrainiennes considèrent-elles être en mesure de remplir de telles obligations ?

39. **[Article 35]** La Commission peut-elle préciser le lien entre ces programmes de travail et le plan Ukraine ?
40. **[Article 36]** La Commission peut-elle préciser le rythme d'information du Conseil envisagé ?
41. **[Article 37]** Une première évaluation sera nécessaire dès avant la fin d'année 2027 pour déterminer les modalités de poursuite du soutien à l'Ukraine, la Commission peut-elle confirmer que les rapports annuels visés à l'article 36 comporteront des premiers éléments d'évaluation de l'efficience de l'instrument ?
42. **[Dépenses administratives]** La Commission peut-elle faire un état des lieux des moyens administratifs (postes, fonctionnement) d'ores et déjà existants en lien avec l'aide apportée à l'Ukraine ? La Commission pourrait-elle préciser si les postes (135) figurant dans son étude d'impact sont des créations de postes ? La Commission peut-elle confirmer que ces postes ne sont pas compris dans les 885 demandés dans le cadre de la révision du CFP ? Rapporté au montant de la facilité, le coût des dépenses administratives qui y serait imputé (173 M€) représente 0,35 % alors que celui de la FRR est fixé à 0,03 %. Qu'est-ce qui explique une telle différence ? La Commission peut-elle détailler le périmètre des missions dévolues à ces 135 personnes ?

GERMANY

questions regarding the Ukraine Facility

- 1) How will COM ensure complementarity and avoid duplications with other donors' and MS activities? Could it make sense to have clear requirements in the proposal for the linkage/demarcation of those activities to ensure their reflection in the Ukraine Plan? In what way will collaboration and contribution to the facility by third parties be promoted? Will the Team Europe approach apply?
- 2) How will COM use the facility in discussions with other donors to achieve their commitments as well?
- 3) What should be the relationship between the conditionality of the Ukraine Plan and the conditionality of the IMF? What is the connection to the G7-Donor Platform?
- 4) The draft regulation states that the Council approves the Ukraine Plan. What is planned for the Council's and MS involvement during the implementation of the Plan, also given the intended duration of 4 years?
- 5) The proposal provides flexibility in the event that Ukraine cannot meet the requirements e.g. because of the development of the war. There is also the possibility for an adjustment of the Ukraine Plan upon request by Ukraine, if objective circumstances prevent the implementation of the Plan. Could it make sense to additionally define certain points in time for an "automatic" review if any adjustments to the Plan are needed or to foresee the possibility for the Council to request a review?
- 6) What is the rationale and analysis behind the proposals for the indicative allocation among grants and loans and among the three pillars? What is the needs assessment behind the proposal of the endowment for Pillar I?
- 7) Our understanding is that Ukraine is already working on the drafting of the Plan. We expect member states to be closely involved into the drafting process; this will facilitate adoption by the Council at the end of the process. We would like COM to provide us with more information on the status, the process going forward and the way COM intends to involve MS throughout the drafting process.
- 8) On what basis does COM intend to distinguish in the Ukraine Plan between liquidity support and funds for specific investment projects? Is such a separation envisaged? Will some of the funds be earmarked for cross-cutting objectives, i.e., sustainability, environmental protection?

- 9) How is the audit board equipped to ensure its ability to act?
- 10) How is the minimum threshold of EUR 500,000 in Article 26 justified?
- 11) What interest costs does COM expect? "Negative surprises" like the increase of NGEU interest costs should be avoided.
- 12) What is the reason for the deviations from budget principles in Article 12?
- 13) When will the announced working paper on the rationale for the volume of EUR 50 billion be presented?
- 14) According to Article 6, 78% of the grants should be earmarked for Pillar I. However, this does not match the indicative distribution, according to which Pillar I is to be allocated EUR 6 billion out of a total of EUR 17 billion in grants (=35%). How can this contradiction be explained?
- 15) According to the COM proposal, Council and EP should decide on the grant component in the annual budget process. Who should decide on the loan component and at what point in time?
- 16) Recital 82 refers only to the private sector, municipalities, state-owned enterprises and other stakeholders. In the legal text (Art.30), however, the reference to existing support under EFSD+ refers to direct support of the state (sovereign and sub-sovereign lending). Is sovereign and sub-sovereign lending covered by pillar II? Could COM explain how the eligibility criteria of projects under pillar II are designed? Could COM provide examples of projects that would be grouped under pillar II?
- 17) As regards Pillar II of the UKR Facility, it is our understanding that all (multilateral and national) European Development Banks and financing institutions shall have access to the guarantees. But there seems to be some lack of clarity whether the guarantees shall cover both sovereign and private sector operations. Could the COM clarify?
- 18) How are the differences between pillars I and II regarding risk management (cash buffer) and conditionality justified?
- 19) Why should Ukraine become a full-fledged member of the Operational Board (Article 27)?
- 20) Could COM specify if the guarantee will cover the entire amount of an operation and/or whether implementing partners will be required to provide own risk resources as well?

- 21) How much funding does COM foresee for blending operations (incl. investment grants) under the Ukraine investment framework?
- 22) What happens to EU-guaranteed IFI loans in the event of moratoria (restructuring, debt relief)?
- 23) The EU Ministers of Culture and UKR Minister Oleksandr Tkachenko were in favour of taking the cultural dimension into account appropriately (Council Conclusions of 16.05.). How can this be reflected in the Ukraine Plan and in the programming of support?

HUNGARY

Ukraine Facility questions

General questions

- The total support of the EU and its Member States toward Ukraine since the beginning of the war, is 70 billion EUR (of which 30,5 billion EUR coming from the EU budget). Before providing any additional financial resources to Ukraine, it is of utmost importance to see how did the Ukrainian government use the money provided so far, therefore first we would like to see a detailed comprehensive audit report from the Commission. When can we expect to receive such a document?
- We would like to understand why the Commission proposed an RRF-type instrument for supporting Ukraine, when the implementation of the normal RRF shows¹ that the instrument is not adequate for providing quick and reliable financial support. This is especially true for the current climate of sky-rocketing interest rates, as evidenced by NGEU interest costs.
- According to the proposal the Ukraine Plan for the purpose of this Facility could also serve to guide other donors' assistance programming to Ukraine. How would it work in practice? Will there be only one plan or Ukraine has to come up with different plans for different donors? Who monitors the fulfilment of objectives? Does this mean that in each case the Commission is tasked with monitoring the implementation of goals set by partners?

Article 3 – Objectives of the Ukraine Facility

- Ukraine is in a devastating war, therefore in general the first and foremost objective should be saving as many human lives as possible. Why is this obvious aim missing completely from the regulation? Striving for an immediate ceasefire would save the most human lives, therefore we would like to know why it is not mentioned in the text as an important objective.
- Paragraph (1): As the war is still ongoing in the Ukraine and most probably will last for years, we do not understand how could “recovery, reconstruction and modernisation” be the first general objective and not the aim of keeping the state of Ukraine functioning and avoiding default.
- Furthermore, the proposal insist that the Facility would finance reconstruction as well while the war is still on-going. What are the guarantees that the EU funds will not be used for projects that are destroyed during the war?

¹ Three years after the historic MFF-NGEU agreement, aimed at facilitating the recovery from the consequences of the pandemic, 5 Member States still have not received any money from the RRF. Even the 22 Member States, who are allowed to submit payment requests, lagging behind the planned schedule: until the Q2 2023 indicative deadline 72 payment requests should have been submitted, but only half of it (36) were actually done. Quite telling that in this year (2023) only one payment request has been submitted so far.

- Paragraph (2): The logic of the Commission’s approach in the country specific recommendations or in the conditionality mechanism highlights that strengthening the rule of law, fight against corruption, etc. is a precondition for a stable investment environment. Therefore point (d) should come before point (c), so we would like to know why the Commission decided the change their order.

Article 4 – General principles

- Based on this article, we would forget the fact that Ukraine is in a devastating war. We would like to understand why there is no reference to this sad reality.
- Point (2) mentions that the “support from the Facility shall be additional”, while so far, we thought that the Facility should be the main tool and any support from other Union programmes would be additional. Could the Commission clarify this? What other additional instruments the Commission foresees for the support of Ukraine that are under preparation? In our understanding this approach is used by the Commission to avoid the lengthy national procedures linked to MFA+ support. Does this indicate that the Commission also anticipates using MFA+ support?
- Point (6): how realistic is the hold proper consultations in the current situation?

Article 5 – Precondition for Union support

- Do we understand correctly that the precondition is equivalent to the so-called super milestone in the RRF? Could the Commission confirm that no payment (including prefinancing, exceptional financing, etc.) is possible if the fulfilment of the precondition is not comprehensive?
- How will the Commission monitor the fulfilment of the precondition? Detailed objective methodology is essential.
- What is the guarantee that the Commission will be able to resist to the political pressure of providing continuous support to Ukraine and stand up if any breach of the fulfilment of the precondition arise?
- The Commission indicated in its oral report on Ukraine, Moldova and Georgia that the condition related to national minorities is not yet fulfilled, the recommendations of the Venice Commission are not applied. It is important that precondition enshrined in Article 5 should be in conformity with the condition set for Ukraine in its accession process. This precondition could be considered fulfilled only if the condition linked to Ukraine’s accession process is also fulfilled. Can the Commission confirm our common understanding? How does the Commission ensure that no progress on minority rights will be rolled back once the relevant instalments are paid?
- We request the Commission to make a comparison table showing the similarities and differences of the precondition of the Ukraine Facility and the similar conditions enshrined in the NDICI regulation.
- We request the Commission to share its detailed assessment whether Ukraine currently fulfils the precondition defined in Article 5, especially with regard to guaranteeing respect for human rights, including the rights of persons belonging to national minorities.
- Beside the Commission, will any actor (e.g. Member States) have the right to question the proper fulfilment of the precondition? How often, in what form and at what level the Commission intends to report back to the Council?

In case of the conditionality mechanism, there is a complaint form to report any breach of the principles of the rule of law affecting the Union budget or financial interests. Will there be something similar in case of the Ukraine Facility?

- How will the Commission take into account the consequences of the application of martial law?
- Why did the Commission decide to define only one precondition? Can there be other conditions set in the course of the operation of the Facility?
- How will the fulfilment of the condition vis-à-vis the national minorities factor in the evaluation of eligibility of the funds?

Article 6 – Budget

- We do not consider the 50 billion EUR for 4 years a realistic figure for the Ukraine Facility, therefore we would like to know the detailed calculations why the Commission thinks that this amount will be adequate? Furthermore, what will happen if it is disbursed faster than the Commission expects and we run out of money?
- How did the Commission end up with the 78%-16%-5%-1% indicative division of the budget? While here the shares are indicative in Article 30 the Ukraine Guarantee's budget is concretely defined in 8,9 billion EUR. The second one should be fixed amount, regardless of the budget shares or the 8,9 billion is also indicate amount?

Article 7 – Additional financial resources for the Facility

- Will the additional financial resources always be provided as non-repayable support to Ukraine?
- How is it possible to include in the Facility the additional financial resources? Whenever an actor provides new additional financial resources, then Ukraine has to modify the Ukraine Plan?
- As there is a possibility for third parties for additional contributions, we were wondering whether the Commission already have some initial indication to do so from some of our partners? How realistic is that e.g. the US, Canada, will contribute to an EU instrument?

Article 9 – Framework Agreement

- Paragraph (4) (a): in this case what is the definition of the “commitment of Ukraine”?

Article 13 – Exceptional financing

- What is the methodology to assess the possibility of the fulfilment of the conditions?
- Could the Commission confirm that it is not possible to duly justify exceptional circumstances that makes it impossible for Ukraine to fulfil the precondition?

Article 17 – Preparation and submission of the Ukraine Plan

- What are the similarities and differences compared to the same process in the RRF? What is the reasoning behind the deviations from the RRF-rules?

Article 18 – Commission assessment of the Ukraine Plan

- What are the similarities and differences compared to the same process in the RRF? What is the reasoning behind the deviations from the RRF-rules?

Article 19 – Council implementing decision

- What are the similarities and differences compared to the same process in the RRF? What is the reasoning behind the deviations from the RRF-rules?
- In general, we would like to see a detailed comparison between the role of the Council in the governance structure of the RRF and in the governance structure of the Ukraine Facility.

Article 20 – Amendments to the Ukraine Plan

- What are the similarities and differences compared to the same process in the RRF? What is the reasoning behind the deviations from the RRF-rules?

Article 23 – Pre-financing

- What methodology does the Commission follow when evaluate the fulfilment of the precondition?
- Could the Commission confirm that it is not possible to duly justify exceptional circumstances that makes it possible to pay the pre-financing even without the comprehensive fulfilment of the precondition?

Article 24 – Exceptional bridge financing

- Could the Commission confirm that it is not possible to duly justify exceptional circumstances that makes it possible to pay exceptional bridge financing even without the comprehensive fulfilment of the precondition?

Article 25 – Rules on payments, withholding and reduction of non-repayable financial support and loans

- What are the similarities and differences compared to the same process in the RRF? What is the reasoning behind the deviations from the RRF-rules?
- In case of the RRF payments an emergency break mechanism was included according to the request of the leaders, but this possibility is missing from the Ukraine Facility proposal. Why?

Article 34 – Audit Board

- We would like to ask the Commission to provide a detailed comparison table between the proposed Audit Board of the Ukraine Facility and the Integrity Authority required from Hungary in the conditionality procedure and as a super milestone in the RRF. Should there be any area, where the power of the Audit Board is not as extensive as the Integrity Authority's, the Commission must provide detailed reasoning.

ITALY

- 1) We understand the need to keep the Facility flexible to meet Ukrainian needs, which cannot be foreseen in advance. At the same time national budget procedures need predictability, in particular through a more precise breakdown between loans and grants. Could such uncertainty be mitigated for example establishing smaller annual ranges for the amount of grants and for the mix of loans and grants? As for the grants, a timeline for the disbursements should be provided as well.
- 2) In addressing Member States' comments and questions on the proposals on the MFF 2021-2027 revision (AHWP on 5 July 2023), the Commission has focused on the governance of Pillar I, while the role played by Member States in the context of Pillar II and Pillar III remains less clear. Could you provide some clarification on these?
- 3) The interactions between the Ukraine Plan - which should be the only Plan - the Facility and additional resources that would come from other donors is unclear. The Commission explained that other donors could finance the Plan in two ways: through the Facility or channeling their financing directly to the Ukraine Government (or through the IFIs). How would expenditures relating to the Plan be shared among EU and other donors in the different scenarios? could then the Plan have multiple layers, depending on the source of financing? would other donors be involved in the assessment of the Plan? If yes, how and at what stage? How would they be involved in the assessment and execution of the Plan in case they provide contribution to the Facility? could other donors finance expenditure outside the Plan?
- 4) We believe that the Council should play a significant role in the various steps related to the adoption and execution of the Plan. The role of the Member States cannot be limited to the initial adoption of the Plan through a Council implementing decision. Could the Commission clarify how would Member states be consulted on the Plan and its execution? how would the Council be involved in the assessment on conditions? How would member States be involved in the decision on bridge-financing?
- 5) Could the Commission better explain – through concrete examples –how would the annual budgetary procedure be involved in the decision on the amount of loans?
- 6) In its presentation on MFF mid-term review (AHWP on 7 July 2023), the Commission said that the EUR 8bn grant under Pillar II will be used for guarantee provisioning (78%) and for grant support under blending (22%). What are these percentages based upon?
- 7) The EU Council called in December and June for the EIB to support Ukraine. However, a defined, predictable and dedicated guarantee to support financing the public sector is not mentioned. This is necessary for the normal functioning of the external mandate of the EIB in the medium-long term and requested by Member States during the discussion of the temporary Ukraine Trust Fund. An amendment is needed.

LITHUANIA

comments and questions considering Ukraine Facility

General comment: Lithuania supports the proposed Facility as a structural long-term solution to support Ukraine, which should ensure a stable provision of financing needed for functioning of Ukrainian State, reconstruction, modernisation and reforms and investments needed for EU integration.

Financial issues

We still have questions regarding the proposed financial envelope of the Facility. Our main concern is that the proposed amount would not be sufficient for the financing needs of Ukraine and the EU would be forced to look for additional sources of support once again.

How has the Commission decided on setting the maximum yearly amount of support from Ukraine Reserve at 16,7 billion euros? We are not convinced by the COM explanation that this amount was set considering the sustainability of headroom, as Fiche No. 2 clearly shows that headroom would be sustainable even with the combined adverse/unfavourable shock.

According to Article 10b of the proposed MFF regulation, at least 2,5 billion euros have to be mobilized from Ukraine Reserve for Ukraine Facility annually. In that case, grants should amount to at least 10 billion euros for the entire duration of the Facility. However, paragraph 2 of Article 6 of the regulation for Ukraine Facility states that: *„The financial support pursuant to Chapter III in the form of a loan, shall be available for an amount of up to EUR 50 000 000 000 for the period from 1 January 2024 to 31 December 2027.”* How are these two provisions compatible with paragraph 3 of Article 6 of Ukraine Facility regulation which states that: *„The sum of the resources made available pursuant to paragraphs 1 and 2 shall not exceed EUR 50 000 000 000 for the period 2024 to 2027”*.

What is the Commission's rationale of setting the amount of 3 billion euros for Pillar III? We believe there is a risk that significant amount of this envelope would be used for interest rate subsidies, depriving the Ukraine of technical assistance needed to prepare and implement the Plan. Moreover, in the regulation we would propose to include that Commission and EU Member States may assist Ukraine through Team Europe approach in preparation and implementation of the plan by providing consultations, expert, and technical assistance. On Article 13 – why is there no deadline for the Commission to evaluate and present proposal to the Council? Ukraine should be allowed to initiate this procedure by informing the Commission about its inability to fulfil the conditions set due to the deterioration of the war. Ukraine should also be involved in the decision, when the fulfilment of conditions becomes possible again.

Other elements

According to the regulation of Ukraine Facility, Ukraine Plan should include reforms and investments. However, it does not specifically address the support for the budget, necessary for stable functioning of the Ukrainian State. If the Facility is only going to compensate Ukraine for implemented reforms and investments, without providing any support for the functioning of the State, it would not be possible to ensure that all Ukrainian needs are met. Therefore, we believe that Plan should be divided into two compartments – one for providing budgetary support (without any super-preconditions set), and another setting the reforms and investments agreed (RRF-like model with respective preconditions). The amounts for the both parts should be enshrined in the Plan.

On Article 16 – conditions set for the Ukraine Plan should be rational and take into account the fact that Ukraine is a country still at war. We agree that green and digital transitions are important, however, they mostly concern the reconstruction phase. Therefore, the conditions set in Ukraine plan should be as much flexible as possible, especially before the war ends.

Milestones should also be set in a flexible way. For example, what would happen if Ukraine uses the Facility financing for projects concerning energy infrastructure and Russia would attack it? Could Ukraine use the financing from Facility for the same investments (e.g., repairing or changing the destroyed energy infrastructure)?

Considering Articles 18 and 19 - why are there no deadlines set in the regulation for the COM's assessment of Ukraine Plan and for Council's agreement on the implementing decision? The same goes for the procedure of amending the Plan foreseen in Article 20.

Can the Commission confirm that the exceptional bridge financing foreseen in the Article 23 would come on top of the 50 billion euros Ukraine facility?

Could the Commission provide more information on the provision stating that „*the Commission may make the payment of pre-financing <...> subject to the available funding*”?

On Article 34 – will the Commission alone be responsible for the composition of the Audit Board? How will the members be selected?

THE NETHERLANDS

comments and questions on Ukraine facility

General comments (and questions)

- Our starting points remains clear: reserved about mid-term review. The starting point should be the best possible use of existing resources within the current ceilings and using the existing budget flexibility above these ceilings, especially where existing policy goals overlap with new priorities.
- Appreciate Commission's proposal to provide more structured and predictable to support the recovery and reconstruction of Ukraine.
- Important to consider what is appropriate and proportionate regarding the size, conditions and form of said support.
- Important to adequately integrate proposal in broader EU engagement vis-à-vis Ukraine. Need to maintain comprehensive overview of package.
- With this proposal the EU takes a leading role in supporting recovery and reconstruction of Ukraine. What does the commission expect to be presented from other leading partners? Considerable contributions from our international partners private sector funding and additional bilateral contributions remain necessary. EU needs to communicate clearly on this to manage expectations.

Questions

Funding:

- For us it's unclear how much is needed for reconstruction 2024-2027. There is talk of 124 billion, but also 50 billion over 4 years. How do these figures compare? Which one is correct?
- We would appreciate additional explanation of the Committee's budgetary choices (slide 10 powerpoint). The total funds needed until 2027 are $142 + (75-15) = 192$. How does the Committee arrive at 50 billion? Can more insight into the figures be provided?
- CION indicates that *Financial architecture caters legally for having 100% grants or loans or a mix of the two. The indicative split of loans and grants is a yearly decision.* How does the CION intend to provide clarity here towards member states and the market?
- Which and how much in remaining funds (e.g., from NDICI) would go into the Ukraine Facility?
- Article 5: Appreciate that the values as mentioned in art. 5 have been included as preconditions for support. Will the Commission report to Member States on its monitoring efforts regarding the fulfilments of the preconditions? Could the Commission elaborate in which way it is foreseen to take into account "the context in Ukraine"?
- Article 32: To what extent do the conditionalities laid out for pillar I apply to the support proposed under pillar III?
What mechanisms are foreseen to effectively put conditionalities into practice? Pillar III includes support similar to IPA financing under article 32. Conditionality is included in the IPA regulation under article 8, yet the experience has learnt that it is rarely put into practice. The report of the European Court of Auditors has pointed this out as well.
- Article 6(3) states that the sum of resources made available will not exceed the amount of 50 billion euros for the 2024 to 2027 period. This would potentially mean an effective decline in support provided to Ukraine. What would this mean if the needs of Ukraine would turn out to require more funding over the 2024-2027 period?
- Article 7(1) paragraph 2: NL is fully committed to exploring possibilities to use of frozen assets for the reconstruction of Ukraine. However, key to find solution that is legally sound and mitigates financial, political, and economic risks.
- Article 30(1): the total amount of the Guarantee is stated to be 8 914 million here. However, the proposal further states 8 billion in expenses foreseen for pillar II. How do these numbers correspond, given the stated maximum budget of 50 billion for the Facility in its entirety?

- Article 22: will the borrowing costs subsidy of MFA+ (2023) be covered by pillar III of the Ukraine Facility for the 2024-2027 period as well in this proposal?
- How much/what part of the Ukraine facility counts as Official Development Assistance (ODA)?

Involving third parties:

- Article 7(1): what efforts have and will be undertaken by the Commission to involve said parties (third countries, IOs, IFIs)?
- Article 11: To what extent will efforts be undertaken to ensure tenders comply with EU legislation and/or requirements?
- Article 16: How will the Commission ensure that the Ukraine Plan is compatible with the efforts of support coordination by other international platforms, especially with regard to the plan Ukraine is formulating regarding the G7 Multi-agency Donor Coordination Platform? How will the Commission ensure that other relevant EU platforms such as the AHWP Ukraine Reconstruction Platform are involved in the proceedings?
- Article 28: what efforts of outreach will be undertaken by the Commission to involve third countries and third parties to contribute to the Ukraine Guarantee and to the financial instruments set up under the Ukraine Investment Framework? How confident is the Commission that the Ukraine Guarantee would be enough for private sector parties to shift the cost-benefit analysis of investing in Ukraine?

Governance and involvement of member states:

- Article 9: How will the Council be involved before the FA is signed?
- Article 19/20: What would the governance of the Ukraine Facility effectively look like? Apart from agreement with the Ukraine Plan and amendments thereof, how are member states involved in decision-making regarding the allocation of funds over the 2024-2027 period?
- Article 23: what are the conditionalities regarding a possible Ukrainian request for pre-financing?
- Article 25: How will the Council be updated on the extent to which Ukraine met the qualitative and quantitative steps required to receive payments?
- Article 27: What will the effective role of the operational board be, apart from its advisory role explained in article 27(4)? How often does this board meet and what is the status of their formulated opinions?
- Article 34(2): what would MS participation in the Audit Board's activity look like? Will the Commission make a selection of participating MS or will every MS participate, similar to the Guarantee's operational board?

Other (also for Presidency):

- To what extent do the conditions specifically formulated under pillar I also apply to pillar III? In the CIE's explanatory statement, under the heading of monitoring, nothing is said about Pillar III.
- How is the AHWP Ukraine Reconstruction Platform involved in the preparation of the Ukraine Plan?
- How are other relevant experts (in other working parties) involved in the discussion?

POLAND

regarding the Ukraine Facility

1. Could we ask for an explanation of the discrepancy between the annual amount given in Budgetary Implications (page 7) - €2.5 billion and the annual amount from the LFS (page 11) of €4.25 billion?
2. Does the EC have any other plans for the long-term reconstruction of Ukraine?
3. Why doesn't the EC think that the Ukraine Facility, and in particular the loan component, should be more concentrated in 2024 and 2025, with a larger loan amount than the currently proposed €8.25 billion per year?
4. When will the details be known about the support for culture and cultural heritage mentioned verbatim in Article 3.2(c) of the draft? Will there be a separate funds for this support? When will the detailed tables be known?
5. In Poland's preliminary opinion, in addition to supporting culture and cultural heritage, the specific objective should also be to support the creative sector and media. Does the EC share this position?
6. Question regarding recital 83: According to Polish pillar assessed DFI, taking into consideration national banking regulations, Ukraine Guarantee should allow to cover 100% risk of the DFIs investments by the EC (at least until the war actions continue). Would it be possible, taking into account the fact that the war still continues? Alternatively, other solutions could be examined to allow DFIs to guarantee their skin in the game by another instrument. Does the EC see such an option? What instrument would it be? Without such risk coverage possibilities of national DFIs to present their applications to Ukraine Guarantee would be strongly limited or impossible.
7. Regarding provision in recital 83 “Export credit agencies and other financial institutions providing trade facilitation support may act as financial intermediaries.” please explain what does it mean in practice?

8. Question regarding art. 16(2h). According to Polish pillar assessed DFI it is important to ensure that no moratorium on cross-border foreign currency payments will be implemented by the Ukrainian authorities. Does the EC have any plans to ensure there will be no such restrictions?

9. Regarding art. 30(5d) please explain the context, does it mean that the skin in the game by the DFIs will be required only to those projects which were supported by EFSD+ and which will not get an additional top-up from the Ukraine Guarantee OR the skin in the game will be requirement for all investments which are to be covered by Ukraine Guarantee? If the second case is correct, then in our view there should be an option to have alignment of interest between the EC and DFIs other than by providing a direct share of risk.

10. Regarding art. 30(10) and the provision: “The overall risk profile of operations covered by the Ukraine Guarantee may be different from the overall risk profile of the External Action Guarantee.” please provide more details on how the mechanism shall differ from rules applied to EFSD+ guarantee.

11. The comparison of the value of overall EU support to Ukraine in 2022-2023 with the maximum funds envisaged in the Instrument (50 bln euro for four years) indicates that EU yearly support for Ukraine will decrease. What will happen if the needs are above the UF limits? Is there any financial cushion envisaged?

12. Could the NDICI-GE instrument contribute to the newly created Ukraine Facility with the funds that it would normally allocate to Ukraine in the form of bilateral support?

13. Ukraine Facility, although it is created as part of the mid-term revision of the EU budget, does not take into account the Polish demand to create a Reserve for the consequences of the war in Ukraine, which we proposed in our non-paper on MTR. Such a reserve should cover huge costs related to the reception of refugees who fled to the EU to escape the war (according to the OECD, the cost of hosting refugees from Ukraine in Poland in 2022 exceeded EUR 8.4 billion). Poland reiterates its request to the EC to address the needs of the frontline countries.

14. Funds from the Instrument should be spent in the most transparent way and ensuring fair competition, which also applies to the selection of partners by the EC in the case of indirect management. All deliveries of goods or services should be covered by public procurement procedures, ensuring equal access for all entities from the European Union and Ukraine. The procedures should be defined in such a way so as to ensure equal access to information on the tenders announced, including language issues (mandatory publication in English) and technical issues (one place of publication for all tenders). The same tendering procedures should also apply to intermediate bodies in the case of indirect management. How the COM plans to achieve these overarching goals?

15. Art. 11.7 allows to exclude practically any entity from any tender. We understand the rationale of this point, but warn that the provision might be misused. How the COM plans to counteract such a possibility?

16. Art. 30.1 We request for clarification of the EUR 8.9 billion in Article 30 of the draft regulation on the Ukraine Facility, while the financial impact table and the presentation of the Commission shows EUR 8 billion.

17. According to art. 39 The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. The influence of the Member States over the UF within this procedure seems to be too limited, given the value and importance of the UF. How can we ensure more involvement of the MS in the decision making?

18. Ad. Subsidiarity part saying “With its presence on the ground in Ukraine through its Delegation, the EU can ensure comprehensive access to information on developments affecting the country”. The only EU Ambassador that remained in Kiev at the beginning of the Russian invasion of Ukraine was the Ambassador of Poland, H.E. Bartosz Cichocki. Can we somehow reflect a special role played by the Embassy of the Republic of Poland in the most difficult times of the invasion?

19. How the instrument will be used in the broader coordination of Ukraine's international reconstruction within the G7, including the Donor Coordination Platform. In particular, what are the plans of other G7 countries regarding financial contributions to the reconstruction of Ukraine?

SWEDEN

General comments (incl. need for clarifications in regulation)

Annual budgetary procedure: The process of decision making of the yearly amount of support and distribution between loans and grants is not regulated strictly enough. The decision process should be more stringent, with less influence from the European Parliament and creating more budgetary certainty both for Ukraine and Member States. This could possibly be avoided with less flexibility for amounts and distribution to be decided upon in the annual budget procedure (e.g. by deciding on annual amounts in the Council implementing decision).

Also, the process for deciding on the yearly amounts for loans must be made clearer in the regulation, and should involve the Council.

Flexibility: Important that the facility can adapt after the current situation and needs in Ukraine. At the same time, predictability in the budgetary planning for Member States must be ensured. Both the annual maximum ceiling proposed in the MFF-regulation and the full flexibility between loans and grants proposed in the UA facility are problematic and should be more restrictive.

ODA: Support under the Ukraine facility should mainly be classified as ODA. Can the Commission provide any information on whether certain types of financing are predicted to not be classified as ODA (e.g. will guarantee provisions under pillar II be classified as ODA)?

Headroom: Can the Commission provide information on the headroom post 2027 with yearly guarantee provisions?

Administration: Would need a written explanation to the additional staff purposed and how it is financed. To what extend will the principle of stable staffing be used? To which extent can existing expertise be used, e.g. the ECA for auditing purposes and the EIB involved in the investment framework?

Third party contribution: Regulation should ensure the right balance between including and creating incentives for third party contribution and at the same time avoiding administrative burdens and tedious processes for Ukraine to adapt to additional support. Important to keep third parties involved and engaged in Ukraine's reconstruction processes, e.g. through including their views in the Ukraine plan. Can the Commission indicate how non-EU partner countries and IFIs' contributions will be ensured in the Facility and across pillars? How would the process be for a third-party contributor?

Council (MS) involvement: Important to ensure Council involvement in the facility, seeing that it is an instrument under the MFF. Would like to see that the role of the Council is clearer defined in the regulation and in important processes, such as the framework agreement and loan agreements. Can the Commission clarify the role of the Operational Board, its activities and functioning (e.g. differences and similarities to other instruments under EU's external actions such as the NDICI Committee)? The Council should further be involved and consulted as the support changes between different phases. Can the Commission clarify if any sunset clauses or points for re-evaluation are necessary to include, e.g. transitioning to post-war support?

Financial distribution: Can the Commission clarify the proposed distributions between the pillars? For pillar II e.g. which guarantees are envisioned (EIB, EBRD?), for pillar III e.g. which technical assistance, together with cost estimations, as well as borrowing cost estimations?

Explanation for funding: Important that it is clearly stated how the Commission has decided on the proposed amounts, including distributions between years, different pillars as well as loans and grants. Explanations for proposed amount and distribution between loans and grants should be added to recitals 8 and 9.

Amendment of the Ukraine plan: Could it be clarified when additional support to the facility, or bilateral support to the plan, could lead to an amendment of the Ukraine plan? E.g. support above certain amounts?

Funding to Ukraine under the EU-budget ceilings: Could it be clarified under which programs and instruments funding to Ukraine would continue to be eligible? According to recitals 14 and 15 EU support to Ukraine should be provided primarily and mainly through the Facility and replace bilateral support under NDICI. How will the Commission ensure duplications of support efforts are avoided? Regulation should be clearer on this point.

Comments related to articles:

Article 3.2: The facility entails objectives for rebuilding and reconstructing Ukraine. Seeing that other third parties (especially non-EU G7 countries and key IFI:s) are or will be included in the long-term support for Ukraine – how have they been or will be involved in outlining reconstruction efforts in Ukraine? How does the Commission ensure they are also engaged in the Ukraine plan, and providing sense of ownership for the country’s reconstruction process?

How do these objectives differ from a facility for rebuilding Ukraine in post-war? Will the Commission propose a new instrument when the war ends? Clear processes with Council involvement for when support alters between phases, or sunset clauses should be defined.

Article 4.2: Can the Commission clarify how funds under NDICI can be reprioritised when bilateral support to Ukraine is no longer included?

Article 4.7: Can the Commission clarify how, and in which processes will the Member States be involved to contribute to the implementation of EU commitments to increased transparency and accountability in the delivery of assistance?

Article 6.1 (a): Support under pillar I should be both non-repayable (grants) and repayable (loans) support as has been communicated by the Commission. Can the Commission clarify this in the article?

Article 6.2: Support should be predictable and structured, for both Ukraine and member states. The flexibility between grants and loans as well as between years creates difficulties for member states to plan their yearly budgets, seeing that the instrument is placed over and above the expenditure ceilings. With a maximum ceiling for grants at 16.7 bn euro entails substantial effects on Member State’s budgets a given year. There is also no explanation to the proposed ceiling. Understanding the need for flexibility, the Commission must be able to provide a more elaborate schedule for programming (e.g. need for front loading is predicted; initially predominantly pillar I, with pillar II increasing towards the end of the period).

Article 7: Will external assigned revenues act as a top-up to the instrument or reduce the funding needed from the instrument over and above the budgetary ceilings accordingly? What inflows of additional contributions does the Commission foresee from Member States and third parties? How does the Commission ensure there are incentives in place for third party contributions?

Article 8.3: Can the Commission clarify what kinds of complementary support to the facility is envisioned? Do these bilateral contributions affect the leverage effects?

Article 4.4 & 4.5: Usage of the term “successor programme” raises questions around the Commission’s intentions for future support to be of the same structure. Does the Commission envision the Facility being used as fully focused on rebuilding Ukraine in a post-war period? It is important that the facility does not precede any future MFF negotiations.

Article 4: Are these conditions also applicable for external assigned revenues in the Facility?

Article 18.3: Ensuring third party contribution to support for Ukraine is important, as well as ensuring coordination. How do the listed assessment criteria for the Ukraine Plan adhere with other key partners’ support, e.g. IMF EFF program and OECD criteria? Are they in line with other support plans of other donors, envisioned as possible contributors to the Facility?

Article 22.1: Can the Commission provide estimations of the borrowing costs subsidy, following the indicative distribution of loans? Are there any maximum amounts of loans that can be covered in the facility to ensure that borrowing costs can be funded under pillar III?

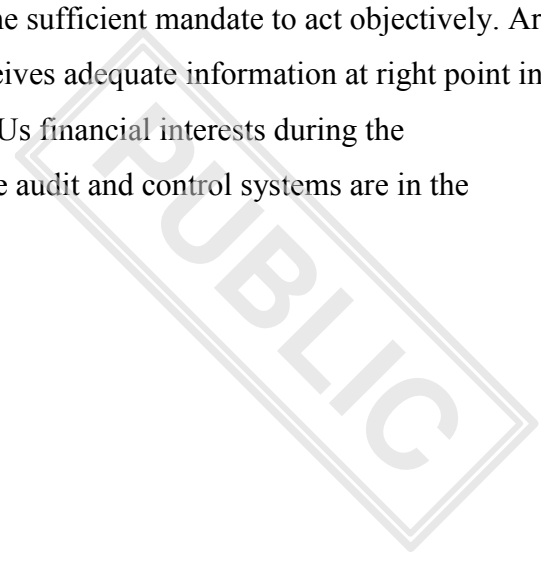
Article 22.2: Does the Commission foresee any risks for the borrowing costs subsidy to exceed the limits of appropriations made available in the annual budget?

Article 27.3 & 27.4: What are the responsibilities of the Operational Board and how will the board be working complementary to the IFI:s, such as EIB and EBRD?

Article 34.2: The composition and ensuring adequate participation of members are crucial for the functioning of the Audit Board. We would need some additional information about the selection of members to the Audit Board, and a clarification on which activities other donors are invited to participate in.

Article 34.3 & 34.5: Important to ensure the Audit Board can work objectively. Suggest that the Audit Board only focuses on revision and control, since there are other areas of technical assistance under pillar III that can be used for capacity building. Could perhaps the Council Legal Service provide any assessment regarding this?

Article 34.8: Important to ensure the Audit Board has the sufficient mandate to act objectively. Are the right systems in place to ensure the Audit Board receives adequate information at right point in time? How does the Commission ensure protection of EUs financial interests during the implementation of the reforms in question, i.e., while the audit and control systems are in the process of enhancement?



SLOVENIA

UA Facility – Questions and comments

Monitoring

We welcome the commitment of the Commission to continuously monitor the implementation of the Facility. However, the draft Regulation does not include performance indicators for assessing progress towards the achievement of the objectives of the Facility. How does the Commission intend to monitor the implementation?

Following the example of NDICI and IPA III Regulations, the UAF Regulation should include a list of key performance indicators. At the same time, a list of transparent and measurable indicators would enable to more effectively monitor mainstreaming of the horizontal issues as listed in Articles 3 and 4.

We support the flexibility of the Facility. However, this calls for full involvement of Member States. What structures are foreseen within and outside comitology?

Monitoring the reforms related to the pre-accession process is of key importance. How will this process be governed?

What would be the link to other, non-EU contributors?

Duration of the Regulation

The Facility is dedicated to support Ukraine from 2024 to 2027. The financial impact is limited to this period for commitment appropriations and to 2024 for payment appropriations. The Commission proposal for Council implementing decision (Article 19) sets the time limit (31 December 2027), by which the final qualitative and quantitative steps for both investment projects and reforms must be completed.

However, the duration of the Regulations is marked as unlimited. Does the Commission see a particular reason for an unlimited duration of the Regulation?

Given that the Facility will be a new instrument and taking into account the complex situation in Ukraine, it seems difficult to foresee its performance.

Aligning the duration of the Regulation to the MFF, therefore ending in 2027, would be a preferable choice.

Furthermore, the validity of a delegated acts (Article 38) should be in line with the validity of the Regulation.

Official Development Assistance (ODA)

In its presentations in AHWG MFF as well as AHWG on multiagency donor platform, the Commission confirmed that the majority of actions financed under Facility will be ODA. We would like to know what is the basis for this assessment and what is the estimated percentage?

We share the view of some Member States who suggested to indicate the percentage of the ODA in the Regulations, as is the case in NDICI Regulation.

Timeframe and deadlines

We kindly ask the Commission to provide a timeframe with all relevant deadlines for Ukraine, the Commission, the Council and the European Parliament.

The deadline for Ukraine to submit the Plan is foreseen for two months after the entry into force of the Regulation. However, there is no deadline for the Commission to prepare the assessment of the Plan and submit a proposal for a Council implementing decision. Why did the Commission not propose a deadline in Article 18? It would be appreciated if the Commission would define this timeframe as well.

The timeframe for delegated acts should be aligned with that in NDICI and IPA III. The Council and the Parliament are to be given a period of two months for possible objection. Understanding the urgency to establish the Facility, the Council and the Parliament are to be encouraged to speed up the process and notify the Commission as soon as possible.

Audit Board

We welcome the intention of the Commission to establish an independent Audit board. The mandate, as outlined in the draft Regulation (Article 34), includes obtaining information, reporting to the Commission, preparing recommendation for UA, and, at the same time, be engaged in capacity building activities supporting UA to fight against mismanagement of public funding.

This broad mandate calls for further clarification on possible conflict of interests and questions on how the Board can secure its independence?
