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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Presidency's note on the Regulation on the Ukraine Facility

Delegations will find enclosed a Presidency's note on the Regulation on the Ukraine Facility.

Regulation on the Facility of Ukraine. Article 30 Amendments explainer

AHWP 03.10.2023

This note explains the rationale behind some of the amendments introduced to Article 30 of the proposed Regulation on the Ukraine Facility.

Article 30, Ukraine Guarantee

Member States have sent several comments related to Article 30 affecting the use of the Ukraine Guarantee by the EIB, which can be grouped around four main questions:

1. Whether the text should make clearer that sovereign lending is allowed in Pillar II.
2. Whether the EIB should have exclusivity in the use of the Ukraine Guarantee for sovereign lending, similarly to the approach followed in NDICI
3. Whether a minimum amount or percentage of the Guarantee should be reserved for the EIB's sovereign operations (regardless of whether other implementing partners can or cannot make use of the Guarantee to finance the sovereign -question 2-)
4. The need to establish in the Regulation a reference to the specific risk-sharing arrangement for the EIB sovereign operations under the Ukraine Guarantee, as opposed to the possibility of leaving this open for discussion.

Taking into account in a balanced manner Member States' comments, the Presidency proposes several amendments to Article 30 with a view to answer the above-mentioned questions:

1. **Yes, Pillar II can be used to finance sovereign lending in Ukraine**, in addition to private sector companies, municipalities, state-owned enterprises or other actors. Recital 82 and Article 30.4 confirm this possibility.
2. **No, the Presidency proposal keeps an open architecture approach.** New guarantee agreements can be concluded with any eligible implementing partners for operations with private sector companies, municipalities, state-owned enterprises, and sovereign and non-commercial sub-sovereign. In the case of top ups to NDICI following article 30.5, open architecture is also maintained, except for top-ups to window 1 of NDICI (sovereign and non-commercial sub-sovereign), where exclusivity of EIB operations is preserved.
3. **Yes. The proposal reserves a minimum amount of the Guarantee for the EIB to enable a continuation of EIB sovereign lending to Ukraine and to ensure predictability.** For that aim, a new article 30.4 is created, clarifying that the EIB will have a dedicated investment window for operations with Ukraine sovereign and non-commercial sub-sovereigns, distinct from the NDICI top-up and adapted to a country in war. A safeguard is included to cater for a situation in which the EIB cannot absorb this amount in order to make an efficient use of the total Guarantee.
4. **On the risk-sharing**, we have followed a two-tier approach: i) regarding the 25% dedicated to EIB sovereign operations (article 30.4), the proposal remains silent on the specific risk-sharing arrangements, as this will need to be settled in the guarantee agreement between the EIB and the Commission, ii) regarding the top-up to NDICI (art 30.5), the Commission proposal is maintained and thus the specific risk-sharing of NDICI window 1 is derogated, keeping it also open to discussion.

Annex. Total final distribution of the Guarantee would be as follows:

% total Guarantee amount	Implementing Partner
Minimum indicative amount of 25%	New guarantee agreement for EIB to finance sovereign and non-commercial sub-sovereign
Between 0 and 30%	Top-up to NDICI: • <u>Top-up to Investment Window 1</u> -sovereign and non-commercial sub-sovereign-: only for the EIB (with derogation of art. 36(1) NDICI) • <u>Top-up to other of windows</u>: open architecture approach
From 0 and up to 75%	New guarantee agreements with any Implementing partner. Open architecture. The EIB is not expected to finance sovereign here.