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(pursuant to Articles 212 and 322, TFEU)

**concerning the proposal
for a Regulation
of the European Parliament
and of the Council
on establishing
the Ukraine Facility**

**[Interinstitutional File
2023/0200(COD)
of 20 June 2023]**

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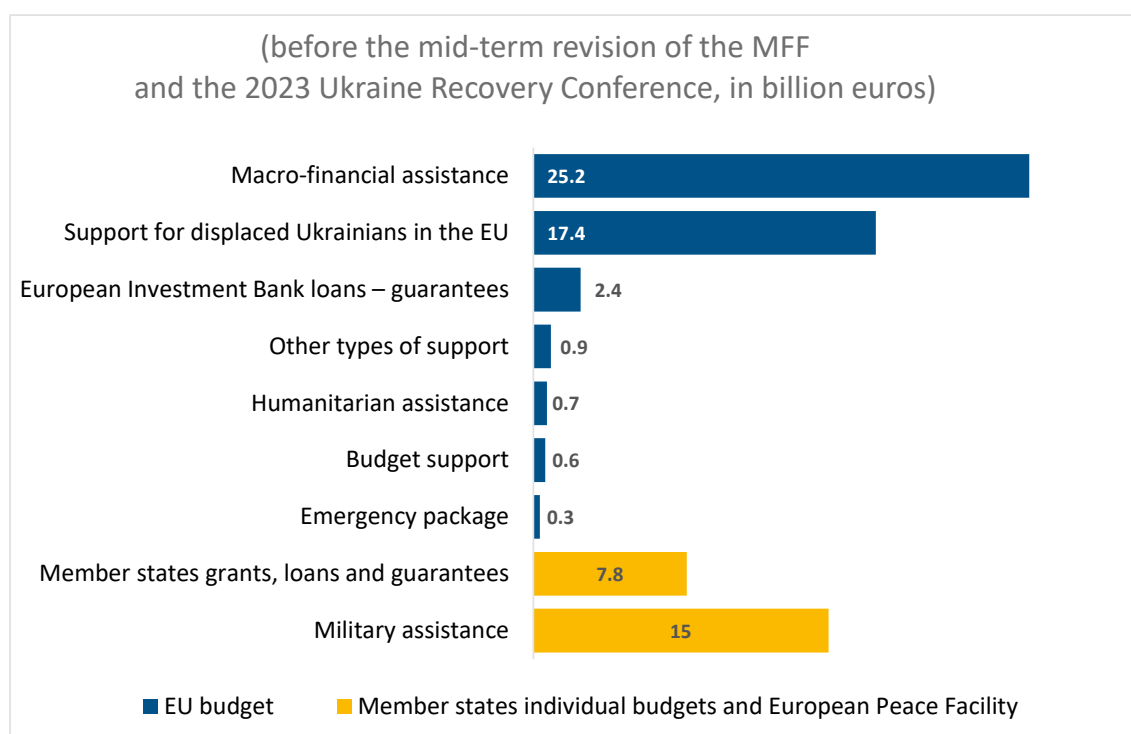
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Introduction

Context

01 Ukraine has continued to suffer enormous damage as a result of Russia's war of aggression. Between the start of the invasion on 24 February 2022 and June 2023, the EU and its member states made support of over €70 billion available to Ukraine and its people. This comprises various forms of assistance, including humanitarian aid, macro-financial assistance, budget support, assistance for Ukrainians who have fled to EU countries, and military assistance provided outside the EU budget (see [Figure 1](#)).

Figure 1 – Support made available to Ukraine by June 2023



Source: ECA, based on Commission figures.

02 At the [Ukraine Recovery Conference](#) in London on 20-21 June 2023, international donors, including the EU and its member states, pledged to sustain their support for Ukraine. On the first day of the conference, the Commission proposed establishing a dedicated financing instrument, the **Ukraine Facility**. This facility would provide continuous support of **up to €50 billion** over the 2024-2027 period to support Ukraine's efforts to maintain macro-financial stability, promote recovery, and rebuild and modernise the country, while also supporting reforms as part of its EU accession

path. Ukraine was granted candidate status on 23 June 2022¹. According to the Commission, “investment in Ukraine’s recovery and reconstruction cannot wait until the end of the war”². Waiting for hostilities to end would come at the cost of a significantly worsening situation for the people of Ukraine, while increasing their dependency on international assistance.

03 The facility will be financed within the EU budget but above the MFF ceilings³, and is expected to be operational from the beginning of 2024. Funding will be in the form of non-repayable support (such as grants, guarantees, and interest subsidies) and highly concessional loans.

Scope, timeline and limitations of this opinion

Scope

04 On 20 June 2023, the Commission published a proposal for establishing the **Ukraine Facility**⁴. The legal basis for the proposal is Articles 212 and 322 of the Treaty on the Functioning of the EU, meaning that the European Court of Auditors (ECA) must be consulted as part of the legislative process. The European Parliament and the Council submitted formal requests for an ECA opinion on 17 July 2023. This opinion fulfils the consultation requirement.

05 In parallel to the proposal, the Commission presented a communication on the mid-term revision of the multiannual financial framework (MFF) 2021-2027⁵ and a proposal to amend the MFF Regulation⁶. The latter proposes establishing a Ukraine Reserve as a special instrument to finance non-repayable support provided under the

¹ EUCO 24/22, European Council Conclusions, 23-24.6.2022.

² Questions and Answers – A new Ukraine Facility, 20.6.2023.

³ COM(2023) 337, Proposal for a Council Regulation amending the multiannual financial framework, Article 1(1)(b) and Article 10b.

⁴ COM(2023) 338, Proposal for a Regulation of the European Parliament and of the Council on establishing the Ukraine Facility, 20.6.2023 (‘the proposal’).

⁵ COM(2023) 336, Communication from the Commission on the Mid-term revision of the Multiannual Financial Framework 2021-2027, 20.6.2023.

⁶ COM(2023) 337, Proposal for a Council Regulation amending the multiannual financial framework.

Ukraine Facility. We refer to the proposal to amend the MFF Regulation where we consider this appropriate.

06 This opinion is based on a review of the legislative proposal and the related documents, such as the explanatory memorandum and the legislative financial statement. We consulted the Commission’s Directorates-General for Neighbourhood and Enlargement Negotiations (DG NEAR) and Budget (DG BUDG). We complemented our review by analysing research papers from sources such as the European Parliament Research Service. This opinion builds upon a series of our previous special reports and opinions on Ukraine, the EU enlargement process, and financial assistance to third countries (see [Annex I](#)).

07 The opinion expresses our views on the legislative proposal, and contributes to the legislative procedure by making suggestions about how to clarify certain parts of the proposal with an impact on financial management of EU funds⁷.

Timeline

08 The European Parliament and the Council submitted formal requests for an ECA opinion on 17 July 2023. The Council invited the ECA to submit its opinion by the end of September 2023 at the latest, while the Parliament’s request mentioned a deadline of three months from the aforementioned date, i.e. by 17 October 2023. We decided to publish our opinion on 5 October 2023, at the same time as the [ECA’s 2022 annual report](#), so as to be able to refer to the audit observations it contains.

Limitations

09 The Commission proposed establishing the Ukraine Facility without preparing an impact assessment, stating in its explanatory memorandum that this was due to “the urgent nature of the proposal”. This limited our ability to issue a fully informed opinion.

10 The Commission planned to publish an analytical document “presenting the evidence behind the proposal and cost estimates within three months of the initiative’s adoption”⁸. However, as of 26 September 2023 (date on which the ECA

⁷ Opinions in the [Guide to our methodology](#), pp. 24-25.

⁸ Explanatory memorandum in the proposal, p. 6.

adopted this opinion), the Commission has not published this document. This meant that we could not consider it in our opinion.

Specific comments

Explanatory memorandum

Assessment of Ukraine's needs

11 As stated in paragraph 09, the legislative proposal is not accompanied by an impact assessment. The proposal notes that the Ukraine Facility draws upon the updated Ukraine Rapid Damage and Needs Assessment⁹ jointly prepared by the World Bank, the United Nations, the EU, and Ukraine, and upon recent data from the International Monetary Fund.

12 The Ukraine Rapid Damage and Needs Assessment estimated that total reconstruction needs were equivalent to €384 billion over the next 10 years (2023-2033), of which €142 billion for the 2023-2027 period¹⁰. In addition, on 30 March 2023 the International Monetary Fund “estimated the State financing gap up to 2027 reached €75.1 billion, and agreed with Ukraine a €14.4 billion four-year programme to support economic stability and recovery”¹¹. This results in a remaining fiscal gap of about €60.7 billion. According to the Commission, Ukraine’s “fast recovery needs” of about €50 billion bring the total funding gap to €110 billion by 2027¹². Due to the rapidly evolving situation in Ukraine, these estimates represent an assessment of needs at a specific point in time, and are subject to reassessment.

13 With the €50 billion envisaged for the Ukraine Facility, the EU would cover 45 % of this funding gap¹³. However, in the absence of an impact assessment and of an analytical document “presenting the evidence behind the proposal and cost estimates”¹⁴, it was not possible to assess whether the intended contribution of

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

¹⁰ Explanatory memorandum in the proposal, p. 6.

¹¹ [Questions and Answers – A new Ukraine Facility](#), 20.6.2023.

¹² [Keynote speech](#) by Commission President von der Leyen at the Ukraine Recovery Conference in London on 21.6.2023.

¹³ [Keynote speech](#) by Commission President von der Leyen at the Ukraine Recovery Conference in London on 21.6.2023.

¹⁴ Explanatory memorandum in the proposal, p. 6.

€50 billion from the Ukraine Facility is adequate in relation to the €110 billion funding gap, or vis-à-vis overall reconstruction needs of €142 billion for the 2023-2027 period. It is also unclear from the proposal whether or how other EU instruments (humanitarian aid, assistance for displaced Ukrainians, and military assistance) and/or other donors would allow the remaining needs to be covered. In addition, the Commission stated that the contribution by the Ukraine Facility takes account of the country's absorption capacity¹⁵. However, the Commission did not provide a calculation of the country's absorption capacity, or an analysis of how that capacity was assessed.

Chapter I – General provisions

14 The 'General provisions' define the structure of the Ukraine Facility, which will consist of three pillars:

- Pillar I – Ukraine Plan (Chapter III of the legislative proposal);
- Pillar II – Ukraine Investment Framework (Chapter IV);
- Pillar III – Union accession assistance and support measures (Chapter V).

15 Article 3 of the proposal defines general objectives, and specific objectives that are rather broad. Also, the precondition for support has rather general conditions, namely to "continue to uphold and respect effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and to guarantee respect for human rights, including the rights of persons belonging to minorities"¹⁶.

16 The proposal to establish the Ukraine Facility leaves many important aspects to be defined as part of subsequent agreements – i.e. the framework agreement, the Ukraine Plan, loan agreements, financing agreements, and guarantee agreements – which will be concluded only once the Ukraine Facility Regulation has entered into force. For instance, only the Ukraine Plan (to be prepared by the Government of Ukraine) will set out detailed measures on how to implement the aforementioned specific objectives¹⁷, and serve as the basis for allocating funds between the objectives of the Facility. – Agreements to be concluded after the Ukraine Facility Regulation

¹⁵ Explanatory memorandum in the proposal, p. 1 and recital 46 of the proposal.

¹⁶ Article 5 of the proposal.

¹⁷ Article 15(2) and Article 16(2) of the proposal.

enters into force – Agreements to be concluded after the Ukraine Facility Regulation enters into force summarises the different agreements to be put in place.

Chapter II – Financing and implementation

17 The maximum resources envisaged for the Facility are €50 billion for the 2024-2027 period. The Facility is to be financed as part of the MFF revision¹⁸ by:

- (a) the ‘Ukraine Reserve’, a new special instrument ‘over and above’ the MFF ceilings to be established to finance non-repayable support.
- (b) loans financed through borrowing operations on financial markets, and guaranteed by the ‘headroom’ of the EU budget, ‘over and above’ the MFF ceilings (discussed below in paragraphs [38-42](#));

A special instrument within the EU budget but above the MFF ceilings

18 To finance the non-repayable support under the Ukraine Facility, the Commission opted to establish a new thematic special instrument, the Ukraine Reserve. The Reserve will be part of the EU budget, but would be established ‘over and above’ the MFF ceilings. The choice of setting up a special instrument has certain advantages, such as enhancing the visibility and flexibility of EU support for Ukraine, to be provided in a highly exceptional and fast-evolving context.

19 However, as a general rule, instruments above MFF ceilings should be created only as an exception, to respond to unforeseen events and under special circumstances. In our 2023 report on the EU’s financial landscape, we recommended that the Commission should “within the existing framework, ensure that any new instrument it proposes contains an assessment of the design chosen and the need to create that instrument inside or outside the EU budget”¹⁹.

20 The Commission justified the choice of a special instrument by highlighting the fact that “the EU budget provided tremendous support through flexibilities and re-prioritisations but the 2021-2027 MFF was not designed to address the consequences

¹⁸ COM(2023) 337, Proposal for a Council Regulation amending the multiannual financial framework, Article 1(1)(b) and Article 10b.

¹⁹ Special report 05/2023: The EU’s financial landscape – A patchwork construction requiring further simplification and accountability, Recommendation 1(a).

of a war in Europe”²⁰. The Commission further explained that for various reasons, the resources under MFF heading 6 are depleted, including the NDICI-Global Europe cushion of which almost 80 % has already been used or planned, one third of it for Ukraine²¹. It highlighted that “a structural solution is needed to support Ukraine for the remainder of the current MFF”²². Recently, the Commission proposed revising the MFF, a revision which would include increasing the MFF heading 6 ceiling by an additional €10.5 billion²³. However, the Commission took the view that increasing the MFF heading 6 ceiling in such a way that the Reserve would also be integrated within the MFF would not be appropriate. According to the Commission²⁴, this is because any future increase in Ukraine’s financing needs could again negatively affect the other spending programmes under the MFF heading 6.

21 The Commission believes that setting up the Ukraine Reserve as a special instrument responds to an unprecedented situation. It is important to note that the maximum amount that could be spent by the Ukraine Reserve is €16.7 billion per year²⁵; this would correspond to almost 10 % of the EU annual budget. However, although we do not question the exceptional nature of this particular instrument, we highlight the need for the future to prevent any unnecessary multiplication of special instruments, and instead to maximise the use of existing instruments within the MFF.

Allocation of funds between the pillars

22 Article 6 establishes an indicative allocation of funds between the three pillars of the Facility (see [Table 1](#)). The overall split of two thirds for loans and one third for non-repayable support (grants, guarantees, and interest subsidies) is indicative, and will be

²⁰ [COM\(2023\) 337](#), Proposal for a Council Regulation amending the multiannual financial framework, p. 2.

²¹ [SWD\(2023\) 336](#), Staff Working Document accompanying the Mid-term revision of the MFF 2021-2027, 20.6.2023, pp. 23-24.

²² *Ibid.*, p. 29.

²³ [Communication on the Mid-term revision of the MFF 2021-2027](#), p. 6.

²⁴ Interview with Commission staff on 25.7.2023.

²⁵ [COM\(2023\) 337](#), Proposal for a Council Regulation amending the multiannual financial framework, Article 10b (2).

determined every year when the annual EU budget is adopted²⁶, thus providing the Ukraine Facility with the necessary flexibility.

Table 1 – Ukraine Facility

Pillar I Ukraine Plan	Pillar II Ukraine Investment Framework	Pillar III Assistance programmes
€39 billion: — €33 billion in loans — €6 billion in grants	€8 billion for guarantees, financial instruments, and blending (including about €6.2 billion for provisioning and €1.8 billion for grants) expected to mobilise €17.8 billion in investments	€2.5 billion: — about €1.53 billion for borrowing costs — about €1 billion for pre-accession reforms and civil society
Support for reforms needed for EU accession, for recovery, reconstruction, and modernisation Support for urgent financial needs to deliver uninterrupted public services (e.g. schools, hospitals, and social benefits)	De-risking mechanism available to investors through international financial institutions to scale up investments and crowd in new investors Support for the Ukrainian private sector	Technical assistance for the government (EU legislative <i>acquis</i> , structural reforms) Capacity building for the authorities at national, regional, and local level Support for civil society Borrowing-cost subsidies for loans under Pillar I Other measures such as the functioning of the Audit Board
Up to €500 million in administrative assistance incurred by the Commission.		

Note: All amounts shown in Table 1 are indicative. The amount earmarked for Pillar II (€8 billion) should not be confused with the total guarantee capacity of €8.9 billion of the Ukraine Guarantee under Article 30.

Source: ECA, based on the legislative financial statement (annexed to the proposal for establishing the Ukraine Facility) and on Commission factsheet [A new Ukraine Facility](#), 20.6.2023.

23 Starting in 2024, the Facility will replace bilateral support that would be provided to Ukraine under the Neighbourhood, Development and International Cooperation

²⁶ Legislative financial statement annexed to the proposal for a [Regulation on establishing the Ukraine Facility](#), pp. 5 and 11.

Instrument – Global Europe Regulation (the [NDICI Regulation](#))²⁷, loans in the context of MFA+, and assistance “that Ukraine, as a candidate country, would normally receive under the Instrument for Pre-accession Assistance”²⁸. Nevertheless, Ukraine will remain eligible for regional, cross-border, thematic, and crisis-response programmes financed under the NDICI. Bilateral programmes adopted under the NDICI before the Facility was created will also continue to run as planned.

24 The Facility will not cover humanitarian aid and support for people fleeing the war, which will continue to be funded via existing instruments, or military assistance (financed outside the EU budget)²⁹. To spend the funds in a manner coordinated with other donors, the Facility envisages making full use of the [G7 Multi-agency Donor Coordination Platform](#), a dedicated international coordination platform co-chaired by the Commission and comprising Ukraine, the G7 members³⁰, the EU, the European Investment Bank, the European Bank for Reconstruction and Development, the International Monetary Fund, and the World Bank.

Derogations from the Financial Regulation

25 The entire proposal contains 12 derogations from the [Financial Regulation](#), most of which are comparable with those contained in the [NDICI Regulation](#). These provide the Facility with the necessary flexibility to use unspent funds in another year. However, a derogation from the requirement to provision loans to third countries could represent a considerable risk for the EU budget (see paragraphs [38-42](#) on loans).

26 In addition, the proposal contains two derogations from the NDICI Regulation relating to Pillar II, enabling it to create a separate guarantee instrument with a specific guarantee portfolio. We list all the derogations in – Derogations from the Financial Regulation and the NDICI Regulation– Derogations from the Financial Regulation and the NDICI Regulation.

²⁷ [Regulation \(EU\) 2021/947](#) of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe.

²⁸ Explanatory memorandum of the proposal, p. 3, and the Legislative Financial Statement, point 1.5.4.

²⁹ Recital 16 of the proposal.

³⁰ Canada, France, Germany, Italy, Japan, the United Kingdom and the United States.

Exceptional financing

27 Article 13(1) of the proposal allows for exceptional financing to be provided to Ukraine “in duly justified exceptional circumstances, in particular where a significant deterioration of the war makes it impossible for Ukraine to fulfil the conditions attached to the forms of support under this Regulation (...)”. However, Article 13 and recital 25 do not specify according to which criteria, and for how long the exceptional financing would be granted. Article 13(2) states that exceptional financing would be provided through a Council implementing decision following a Commission proposal. However, apart from the initial Council decision, there is little control for such an exceptional measure over time. This approach potentially involves a high risk to the EU budget. The **Commission and legislators should therefore consider** limiting the validity of the Council implementing decision for a fixed period, with a view to re-assessing whether the situation in Ukraine still justifies granting the exceptional financing.

Chapter III – Pillar I: Ukraine Plan

Ukraine Plan

28 In order to receive the non-repayable financial support and loans envisaged under Pillar I, the Government of Ukraine will prepare the Ukraine Plan encompassing its “vision for the recovery, reconstruction and modernisation of the country and for the reforms it intends to undertake as part of the EU accession process”³¹. The Plan should “constitute the basis for the support provided under the first pillar of the Facility [and] provide a reference for the support to be provided under the second and third pillars”³². According to the Commission, the Plan should be a single comprehensive document covering the country’s reconstruction needs, i.e. that go beyond the scope of the Ukraine Facility. The Plan could offer a basis for other donors to identify their priority funding areas for the reconstruction of the country.

29 The Plan will have to contain a timeline for disbursements and a set of conditions relating firstly to “essential requirements” such as macro-financial stability, budget oversight and public financial management, and secondly to reforms and investments set out in the Plan³³. Quarterly requests for payments are meant to allow the Commission to verify the fulfilment of relevant conditions before it disburses the

³¹ Proposal, p. 3.

³² Recital 67 of the proposal.

³³ Recital 69 and Article 15(2) of the proposal.

funds. If the Commission assesses that progress on reforms has not been satisfactory, it can withhold the corresponding amounts until Ukraine has fulfilled the relevant conditions³⁴. Crucially, where Ukraine has not taken the necessary steps within 12 months of the initial negative assessment, the Commission will reduce the overall support to be disbursed to Ukraine proportionally to the part corresponding to the relevant conditions³⁵.

30 In addition, the Commission may reduce the support to be disbursed to Ukraine in the event of identified cases of, or serious concerns in relation to, irregularities, fraud, corruption and conflicts of interests that have not been corrected by Ukraine³⁶. The Commission can also base this decision on reports by the Audit Board and information provided by the European Anti-Fraud Office (OLAF). However, ECA reports are not mentioned in this context. Therefore, the **Commission and legislators should consider** explicitly citing ECA reports at the end of Article 25(7).

31 At the same time, the proposal allows measures having “started from 1 January 2023 onwards”³⁷ to be eligible for support under the Plan. However, the [Financial Regulation](#) only allows retroactive eligibility under strict conditions stipulated in Article 193. To comply with this Article, it is important that all grants identified as starting in 2023 should be duly justified and properly documented as exceptions.

32 By July 2023, the Government of Ukraine had already started drafting the Plan outlining the desired reforms and conditions for payments³⁸. Ukraine has the option of submitting a draft Plan to the Commission, but the Commission will assess the Plan only once it has been completed by the Ukrainian Government. The Commission will then submit the Plan and its assessment thereof to the Council for approval³⁹. This procedure for developing the Ukraine Plan certainly enhances the country’s ownership of it. However, it also leaves considerable leeway for the Ukrainian Government to design the conditions for disbursement. Furthermore, the proposal does not explicitly allow the Commission to request that Ukraine review and/or modify the Plan.

³⁴ Article 25(5) of the proposal.

³⁵ Article 25(6) of the proposal.

³⁶ Article 25(7) of the proposal.

³⁷ Recital 68 and Article 15(4) of the proposal.

³⁸ Press release of the [5th Steering Committee of the G7 Donor Coordination Platform for Ukraine](#), 26.7.2023.

³⁹ Articles 17, 18 and 19 of the proposal.

33 As regards the disbursement conditions, there is a risk that the conditions to be defined in the Ukraine Plan will not be ambitious enough and that the underlying indicators will not be sufficiently clear and measurable⁴⁰. In our 2016 report on EU assistance to Ukraine, we observed that financing agreements for *budget support* had not always clearly defined the steps and milestones for measuring ‘satisfactory progress’⁴¹. The readiness and reliability of the underlying data posed significant concerns over time⁴². In the case of conditions linked to loans provided during the 2013-2015 period, the terms used to assess progress varied from one programme to another. In addition, there were no clear cut-off points for assessing partial fulfilment of the conditions⁴³. The difficulties we observed in 2016 illustrate the importance of clearly defined conditions and milestones. Without them, this could lead to contestations during the assessment process and unnecessary delays in disbursement⁴⁴.

34 Another risk that we highlighted in our 2016 report was that the Commission does not place enough emphasis on the effective implementation and sustainability of reforms. Examples include backtracking on accepted legislation and its counter-revisions (such as for the procurement law) and on the stability of public administration management⁴⁵. Similarly, in our 2021 report on reducing grand corruption in Ukraine, we pointed out that “the sustainability of Commission’s interventions and support for reforms is constantly under threat”⁴⁶. It is unclear from the proposal how the Commission intends to ensure that this risk will be mitigated. The proposal only notes that “the satisfactory fulfilment of [the conditions] shall presuppose that measures related to the steps for which Ukraine had achieved satisfactory fulfilment have not been reversed by Ukraine”⁴⁷. It is also unclear from the proposal what ‘satisfactory fulfilment’ of the conditions would actually mean. Therefore, the **Commission should consider** defining clear assessment criteria.

⁴⁰ Similar observations were raised in [special report 32/2016](#) on EU assistance to Ukraine.

⁴¹ [Special report 32/2016](#) on EU assistance to Ukraine, paragraph 38.

⁴² *Ibid.*, paragraphs 71 and 72.

⁴³ *Ibid.*, paragraph 40 and Box 2.

⁴⁴ *Ibid.*, Recommendation 2.

⁴⁵ *Ibid.*, paragraphs 12, 13, 49 and Box 3.

⁴⁶ [Special report 23/2021](#) on Reducing grand corruption in Ukraine, paragraph 55.

⁴⁷ Article 25(3) of the proposal.

35 Lastly, as the Ukraine Plan is meant to provide an ‘overarching framework’ for achieving the Facility’s objectives, and given the risks described above, the **Commission and legislators should consider** amending Article 18 in such a way that the Commission (following its assessment of the Plan) can not only *make observations* on the Ukraine Plan, but also request that Ukraine *review and/or modify* the Plan accordingly. Such a revision would be aligned with the approval process for cross-border programmes in which Ukraine participates, as stated in Article 18(3) and (4) of the [Interreg Regulation](#)⁴⁸.

Pre-financing and exceptional bridge financing

36 Activities under the Ukraine Plan will be financed by grants of around €6 billion, and by loans for which the proposal indicatively allocated €33 billion. With the submission of the Ukraine Plan, Ukraine may request a pre-financing payment (see [Table 1](#) above). Subject to specific conditions, Ukraine could receive up to 7 % in pre-financing of all support under Pillar I. This could represent up to €2.7 billion in pre-financing.

37 In another scenario, if the submission and/or adoption of the Ukraine Plan is delayed, there is a risk that the Facility’s implementation may not start as intended from 1 January 2024. In such a case, the Commission could decide to activate ‘exceptional bridge financing’⁴⁹ that would cover Ukraine’s urgent funding needs in the early months of 2024. This would mean paying up to €4.5 billion to Ukraine (up to €1.5 billion per month over a period of up to three months) subject to rather general conditions, such as Ukraine making ‘satisfactory progress’ on preparing the Plan.

Highly concessional loans

38 As explained above, the proposal indicatively allocated €33 billion in loans for Ukraine. These would be highly concessional loans, meaning with maturity of up to 35 years; repayment of the principal would start only from 2034, and be accompanied by borrowing-cost subsidies for interest and other costs⁵⁰. The Commission would

⁴⁸ [Regulation \(EU\) 2021/1059](#) on specific provisions for the European territorial cooperation goal (Interreg) supported by the ERDF and external financing instruments.

⁴⁹ Article 24 of the proposal.

⁵⁰ Recital 75 and Article 21 of the proposal.

finance the loans for Ukraine by borrowing the necessary funds on capital markets or from financial institutions.

39 By derogation from the NDICI regulation and the Financial Regulation, the loans will not be guaranteed by the External Action Guarantee and no provisioning will be constituted⁵¹. Instead, the loans would be guaranteed by the EU budget's 'headroom'. This means that the risk of Ukraine defaulting on these loans would be directly borne by future EU budgets.

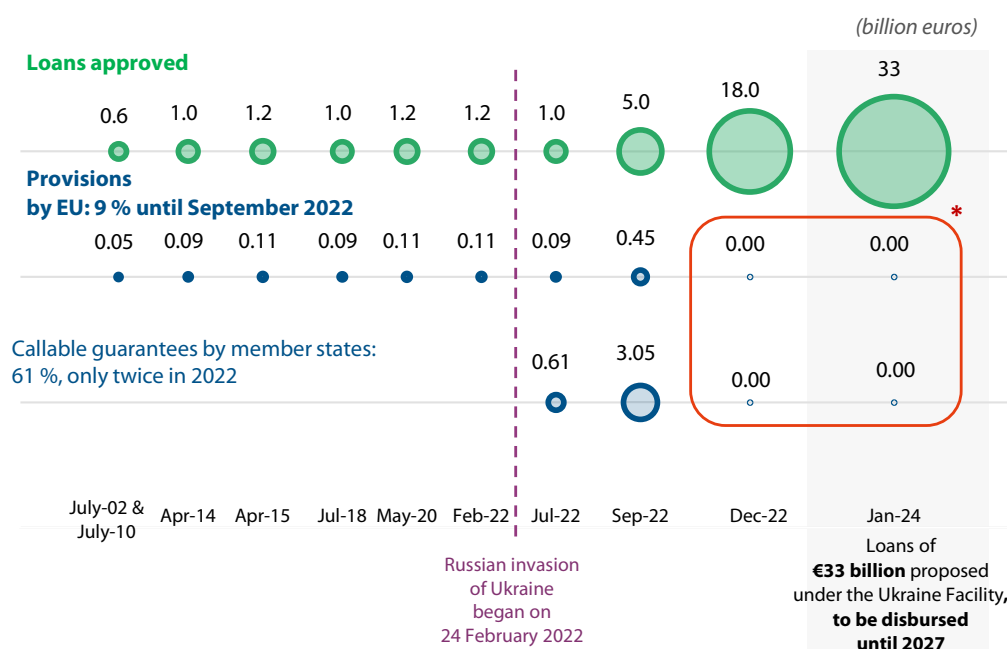
40 The 'headroom' is the margin between the expenditure limits set in the MFF and the own resources ceiling up to which the Commission, as a last resort, is entitled to call up resources from member states to service EU debt. In December 2020, the own resources ceiling was raised from 1.23 % to 1.40 % of the collective Gross National Income of the 27 member states⁵².

41 It is also important to note that provisioning for all loans from the EU budget to third countries was previously set at 9 % of the loan value, to comply with the requirement stipulated in Article 211(1) in the Financial Regulation. In 2022, for the exceptional loans provided to Ukraine, the member states even agreed to making additional callable guarantees available for up to 61 %, bringing the total budgetary cover to 70 %. However, no provisioning is required either for the €18 billion in macro-financial assistance plus (MFA+) loans that are being disbursed during 2023, or for the €33 billion in loans proposed under the Ukraine Facility. *Figure 2* shows previous and currently proposed loans to Ukraine.

⁵¹ Article 21(3) and (4) of the proposal.

⁵² [Council Decision \(EU, Euratom\) 2020/2053](#) on the system of own resources of the European Union, 14.12.2020.

Figure 2 – Timeline of approved MFA loans and loans proposed under the Ukraine Facility



- * The €18 billion in MFA+ loans (approved in December 2022) and the €33 billion proposed under the Ukraine Facility have **no provisions**.
These loans are to be covered by budgetary headroom as a guarantee.

Source: ECA, based on Figure 2.18 in the [ECA's 2022 annual report](#) and on the [proposal for establishing the Ukraine Facility](#).

42 In 2022, in our opinion on the EU's *diversified funding strategy*, we highlighted the risks of guaranteeing loans directly by the EU budget's headroom⁵³. More recently, the ECA's 2022 annual report underlined that "any losses relating to the MFA+ will have to be covered by future EU budgets or by the budgetary 'headroom' between the MFF ceiling and the own resources ceiling"⁵⁴. This report also underscored a significant increase in the EU budget's exposure to Ukraine⁵⁵. The proposed €33 billion in loans would inevitably put additional pressure on the budgetary 'headroom'.

⁵³ [Opinion 07/2022](#), concerning the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) 2018/1046 as regards the establishment of a diversified funding strategy as a general borrowing method [2022/0370 (COD)], in particular paragraphs 15-17.

⁵⁴ [ECA's 2022 annual report](#), Chapter II on Budgetary and financial management, paragraph 2.44.

⁵⁵ *Ibid.*, paragraph 2.46.

43 The Commission regularly assesses the capacity of the ‘headroom’ to face the additional contingent liabilities as part of the annual reports on contingent liabilities⁵⁶ that are public. For the purpose of the Ukraine Facility, the Commission prepared an internal analysis and shared it with the European Parliament and the Council. In the document made available to the auditors, the Commission shows that, even if exposed to multiple stress tests, the headroom “appears to constitute a large safety buffer for the EU’s financial capacity to cover its liabilities”.

44 Nevertheless, given the rising exposure of future EU budgets to liabilities, and in accordance with the principle of prudence, the **Commission and legislators should consider** complementing the guarantee by the ‘headroom’ with additional safeguards, such as provisioning, to cover a sudden and unexpected default by Ukraine. This would provide the member states with time to prepare for any potential contributions needed.

45 In addition, the **Commission should consider** making public an analysis of the ‘headroom’ to face additional contingent liabilities stemming from the proposed Ukraine Facility in the next annual report on contingent liabilities. This would provide the public with access to this essential information.

Transparency with regard to funding recipients

46 A key measure for increasing transparency is an obligation for Ukraine to “publish the data on persons and entities receiving amounts of funding exceeding the equivalent of € 500 000 for the implementation of reforms and investments specified in the Ukraine Plan referred to in this Chapter”⁵⁷. However, it is unclear from the proposal whether this amount corresponds to a cumulative total of all funds that one person or entity could receive, or whether one person or entity could receive several smaller amounts below the publication threshold. To avoid any misinterpretation, the **Commission and legislators should consider** clarifying this point in Article 26(1).

47 It is important to note that Article 26(3) also provides for exceptions from this publication requirement. The information on recipients “shall not be published where disclosure risks [...] seriously harming the commercial interests of the recipients”. However, this exception potentially provides room for circumventing the reporting

⁵⁶ COM(2022) 560, Report from the Commission on financial instruments, budgetary guarantees, financial assistance and contingent liabilities, 28.10.2022.

⁵⁷ Article 26 of the proposal.

obligation. To reduce such a risk, the **Commission and legislators should consider** amending Article 26(3) and (4) so that any exceptional cases are reported to the Commission. If necessary, these cases could be published anonymously.

Chapter IV – Pillar II: Ukraine Investment Framework

48 Pillar II consists of a specific *Ukraine Investment Framework*, building largely upon the model of the European Fund for Sustainable Development Plus (EFSD+)⁵⁸. It will finance blending operations (a mix of loans and EU grants) and guarantees designed to de-risk private and public investments and to attract additional and new investments to Ukraine⁵⁹. Although it complements other existing financial instruments, the proposal envisages the creation of a Ukraine Guarantee, separate from the existing External Action Guarantee financed under the EFSD+. The Ukraine Guarantee will have capacity to cover guarantee operations of up to €8.9 billion. The guarantee will be gradually provisioned, initially at 70 %⁶⁰ (unlike the loans described in paragraphs 38-42).

49 One risk with Pillar II is that the Ukraine Guarantee agreements are concluded too late. The proposal sets the deadline for concluding guarantee agreements at 31 December 2027⁶¹, which coincides with the end of the Facility's implementation period. Experience from the EFSD⁶² and EFSD+ suggests that such guarantee programmes require several years to be concluded with eligible counterparts. Once the Ukraine Guarantee agreements are in place, the counterparts will have up to three years "to sign contracts with financial intermediaries of final recipients"⁶³. In theory, these contracts could be signed as late as the end of 2030. There is therefore a risk that the guarantee programmes will become effective only towards the end of or even after the intended implementation period for the Facility (2024-2027). To speed up implementation of the Ukraine Guarantee, the **Commission and legislators should consider** shortening the deadlines envisaged in Article 30(3) and (7).

⁵⁸ The EFSD+ is set up under the [NDICI Regulation](#), Chapter IV.

⁵⁹ Article 27 of the proposal.

⁶⁰ Article 30 and Article 31(1) of the proposal.

⁶¹ Article 30(3) of the proposal.

⁶² [Opinion 07/2020](#) accompanying the Commission's report on the implementation of the EFSD, paragraphs 31 and 34.

⁶³ Article 30(7) of the proposal.

50 In addition to this, our 2021 report on Ukraine highlighted that the Ukrainian market was distorted by the presence of oligopolies (state-owned enterprises) managed by oligarchs. In this context, the Commission accepted our recommendation to “identify and avoid supporting (via projects, loans and guarantees) those companies under oligarchic influence that create impediments to free and fair competition”⁶⁴. However, the provisions of the Ukraine Guarantee do not envisage any basis for excluding certain final recipients. Therefore, to promote fair competition, the **Commission and legislators should consider** amending Article 30 in such a way as to ensure that companies under oligarchic influence do not receive support.

Chapter V – Pillar III: Union accession assistance and support measures

51 With indicative funding of €2.5 billion, Pillar III appears smaller in comparison to the other pillars. Nevertheless, it aims to provide support that is essential during the EU enlargement process. Pillar III will offer technical assistance and other supporting measures, including provision of expertise on reforms and other forms of assistance that the EU usually provides to pre-accession countries so as to enable them to align with the EU legislative *acquis* and progressively integrate into the single market. This pillar also includes capacity building for local authorities and civil society, and support aimed at enforcing international justice.

52 This Pillar will also cover borrowing-cost subsidies for loans provided under Pillar I⁶⁵. The Commission has estimated that borrowing costs could account for €1.53 billion for 2025-2027. In addition, this Pillar will finance the functioning of the Audit Board.

53 As a result, the amount available for pre-accession reforms and civil society (as described in paragraph [51](#)) would represent about €1 billion, i.e. less than 40 % of the support envisaged under Pillar III.

Chapter VI – Protection of the financial interests of the Union

54 The proposal emphasises the need to strengthen audit and control mechanisms in order to address the risks of fraud and corruption. In particular, the framework

⁶⁴ Recommendation 3a in [special report 23/2021](#) on Reducing grand corruption in Ukraine.

⁶⁵ Article 32, in particular 32(1), 32(3) and 32(6) of the proposal.

agreement will set out “specific arrangements for the management, control, supervision, monitoring, evaluation, reporting and audit of funds under the Facility, as well as to prevent, investigate and correct irregularities, fraud, corruption and conflicts of interest”⁶⁶. Similarly, the framework agreement, the financing agreements and the loan agreement “shall ensure that the obligations set out in Article 129 [of the Financial Regulation on Cooperation for protection of the financial interests of the Union] can be fulfilled”⁶⁷. Payments under Pillar I will be made conditional upon Ukraine’s progress in carrying out reforms in these areas (see paragraph 29).

55 However, in our 2021 report on reducing grand corruption in Ukraine⁶⁸, we concluded that grand corruption and state capture were still widespread in Ukraine despite EU action to address the issue as a cross-cutting priority. In particular, the report highlighted that:

- (a) judicial reform was experiencing setbacks as evidenced by a lack of appropriate implementation, frequent amendments to laws, delays, and the introduction of bylaws⁶⁹;
- (b) anti-corruption institutions’ effective operability was at risk⁷⁰;
- (c) trust in anti-corruption institutions remained low, mainly because of a failure to prosecute and sanction high-profile cases⁷¹;
- (d) the number of convictions for grand corruption was small⁷².

56 The report found that oligarchs and vested interests across Ukraine were the root cause of corruption, and posed the main obstacle to the rule of law and economic development in the country⁷³. This highlights a systemic risk for the Ukraine Facility. In this context, we would like to point out that as part of the EU’s multidimensional approach to tackling corruption, the Commission and the European External Action

⁶⁶ Article 9(1) of the proposal.

⁶⁷ Article 9(3) of the proposal.

⁶⁸ [Special report 23/2021](#).

⁶⁹ *Ibid.*, paragraph 55.

⁷⁰ *Ibid.*, paragraphs 61, 62 and 71.

⁷¹ *Ibid.*, paragraphs 23 and 59.

⁷² *Ibid.*, paragraphs 86 and 89.

⁷³ *Ibid.*, paragraphs 39 and 90.

Service accepted our recommendation to “develop a strategic document on how to prevent and combat grand corruption, including state capture [...]”. If prepared in time, this document would provide a useful basis for guiding anti-corruption efforts as outlined under Pillar I.

57 Similarly to our 2021 report, in 2023 the Commission’s first enlargement report on Ukraine emphasises a series of weaknesses in internal control systems and external auditing⁷⁴. The report notes that “Ukraine is at an early stage of preparation for implementing the EU *acquis* [in these areas]”⁷⁵. It underscores the need for reform of the Accounting Chamber of Ukraine, the establishment of solid internal controls and auditing of public funds, and alignment of national legislation with the protection of the EU’s financial interests. This illustrates a few of the challenges ahead for the Facility in the area of public financial management.

ECA audit rights

58 Although the proposal provides the ECA with explicit audit rights for audit Pillars I and III, our audit rights under Pillar II appear less clear. Given the large amounts of EU funds involved, incontestable audit rights for the ECA are essential across all three pillars of the Facility.

Content of the framework agreement

59 Firstly, Article 9 of the proposal imposes an obligation to protect the EU’s financial interests through the framework agreement to be concluded with Ukraine. Article 9(4)(h) regulates the content of the framework agreement, and stipulates that it needs to lay down rules for protecting financial interests. However, this provision would be even clearer if access to data and documentation for the ECA was mentioned in the same way as for the Commission and OLAF. Therefore, in order to avoid misunderstandings about the ECA’s rights, the **Commission and legislators should consider** explicitly naming the ECA in Article 9(4)(h).

Definition of eligible counterparts

60 Secondly, Article 33(2)(e) of the proposal states that “the agreements referred to in Articles 9, 10 and 21 shall provide for the obligations of Ukraine [...] to expressly

⁷⁴ SWD(2023) 30, Analytical report following Commission Opinion on Ukraine’s application for membership of the EU, 1.2.2023, pp. 12-14.

⁷⁵ Ibid., p. 14.

authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights". This relates to the framework agreement, financing agreements (concluded for Pillars I and III), and the loan agreement concluded under Pillar I. However, this Article does not include guarantee agreements under Article 30 and the contracts to be signed with financial intermediaries or final recipients, i.e. Pillar II.

61 The proposal states that control systems for Pillar II (and Pillar III) "will be based on the systems, rules and procedures of the International Finance Institutions and implementing partners involved in the implementation"⁷⁶. Under Pillar II, the Ukraine Guarantee and the financial instruments will be implemented under "indirect management". Pillar III will be implemented through a mix of direct management and indirect management⁷⁷.

62 In this context, it is important to note that Article 29(2) of the proposal defines the eligible counterparts and entrusted entities that would implement the Ukraine Guarantee and the financial instruments. This could potentially include "international organisations or their agencies", as stipulated in Article 62(1)(c)(ii) of the Financial Regulation on indirect management.

63 In contrast, Article 8(3) of the proposal lists a more restrictive set of counterparts which does not include international organisations: "European Investment Bank or the European Investment Fund, a multilateral European finance institution, such as the European Bank for Reconstruction and Development, or a bilateral European finance institution, such as development banks". Thus, it is not fully clear whether the intention is to limit counterparts or implementing partners to the European investment institutions listed under Article 8(3), or whether other international organisations and entities would be eligible.

64 The definition of 'eligible counterparts' is important, as the ECA has repeatedly pointed out that certain international organisations have hindered access to the documentation the ECA needs to carry out its audit work properly⁷⁸. In order to avoid

⁷⁶ Explanatory memorandum of the proposal, p. 4.

⁷⁷ Point 2.2.1 of the Legislative Financial Statement.

⁷⁸ The [ECA's 2022 annual report](#) notes that some United Nations agencies "continue to provide read-only access to supporting documentation or do not provide access to all supporting documentation requested" (Annex 9.2 to Chapter 9 – Neighbourhood and the World; and Annex III of the European Development Fund Annual Report), repeating earlier findings from 2018, 2020, and 2021.

any misinterpretation, the **Commission and legislators should therefore consider** aligning the definition of eligible counterparts throughout the proposal.

Content of the Ukraine Guarantee agreements

65 Thirdly, as regards the content of the Ukraine Guarantee agreements, Article 30(4)(g) currently mentions only ‘monitoring, reporting, transparency and evaluation obligations’, but does not mention ‘audit’ obligations. While Article 30(9) of the proposal requires the eligible counterparts to provide the Commission and the ECA with annual financial reports on financing and investment operations to be audited by an independent external auditor, there is no explicit obligation to ensure direct audit rights for the ECA. The **Commission and legislators should therefore consider** adding audit arrangements to Article 30(4), including explicit ECA audit rights, as obligatory content for the Ukraine Guarantee agreements.

Audit Board

66 Pillar I is due to benefit from a reinforced audit and control system. In addition to the Commission’s checks of the funds spent, the Facility would accompany a reform of the State’s audit institutions. The Commission will also appoint independent members of an **Audit Board**⁷⁹, to be set up before Ukraine submits its first payment request. The Commission can invite representatives of member states and other donors to participate in the activities of the Audit Board. However, it is unclear from the proposal whether the Audit Board would be based in Kyiv or elsewhere, what the composition of the Board would be, how its members would be selected, what the requirements for independence would be, or what professional experience would be required.

67 It is also unclear what the exact scope of the Audit Board’s role and tasks would be. For instance, the proposal states that the Audit Board shall “assist the Commission in fighting mismanagement of Union funding under the Facility”⁸⁰, regularly report to the Commission on any cases of mismanagement of public funding, and submit recommendations to Ukraine on addressing risk or weaknesses in the control system⁸¹. However, the proposal does not say how the Audit Board would assess the control systems, or how it would uncover irregularities, whether through audit, investigations, or otherwise.

⁷⁹ Article 34 of the proposal.

⁸⁰ Article 34(6) of the proposal.

⁸¹ Article 34(7) of the proposal.

68 The proposed Regulation instructs the Audit Board to “act without prejudice to the powers of the Commission, OLAF, the Court of Auditors and, where applicable, the EPPO”⁸². The Audit Board should also “ensure regular dialogue and cooperation with the European Court of Auditors”⁸³. However, in the absence of a precise description of tasks, it is unclear what the “regular dialogue and cooperation” should consist of exactly, and to what extent its activities might overlap with those of the ECA, with the Commission’s Internal Audit Service, and potentially also with OLAF. The **Commission and legislators should therefore consider** defining more precisely the tasks to be carried out by the Audit Board.

Chapter VII – Work programmes, monitoring, reporting and evaluation

Monitoring and reporting

69 Article 36 of the proposal requires the Commission to monitor the implementation of the Facility and prepare annual reports on the progress achieved. However, the proposal does not specify monitoring arrangements and related indicators for the Facility as a whole. In our previous reports on Ukraine⁸⁴, we highlighted the importance of setting up a robust monitoring framework and defining precise monitoring indicators so that results can be aggregated. Therefore, as far as possible, the **Commission and legislators should consider** using existing monitoring frameworks, such as the NDICI monitoring framework⁸⁵, for the Ukraine Facility. This would be aligned with the pre-accession programmes that also apply the NDICI monitoring framework, as stated in Article 13 of the [IPA III Regulation](#)⁸⁶.

Evaluation requirements

70 Article 37 of the proposal envisages the Commission carrying out an *ex post* evaluation of the Ukraine Facility between 2028 and 2031. However, given the fast-

⁸² Article 34(3) of the proposal.

⁸³ Article 34(4) of the proposal.

⁸⁴ [Special report 27/2022](#) on EU support to cross-border cooperation with neighbouring countries and [special report 23/2021](#) on Reducing grand corruption in Ukraine.

⁸⁵ Article 41 of the [NDICI Regulation](#).

⁸⁶ [Regulation \(EU\) 2021/1529](#) on establishing the Instrument for Pre-Accession assistance.

evolving context in Ukraine, the **Commission and legislators should consider** carrying out a mid-term review of the Facility, preferably by the end of 2026. This would allow the Commission to steer action for the Facility's remaining years. Moreover, the results of the mid-term review would provide timely lessons learned for the next MFF starting in 2028.

Chapter VIII – Final provisions

71 Nothing to comment upon.

Legislative Financial Statement

72 The Legislative Financial Statement envisages a substantial increase in administrative and human resources for the Facility. It shows that administrative costs would amount to €183.5 million in total for the 2024-2027 period. Of this amount, €10.7 million would be accounted for under MFF Heading 7 *European public administration*, and €172.8 million outside the MFF headings⁸⁷.

73 The required human resources have been estimated at 135 full-time equivalents. This would include 13 officials and temporary staff, and 122 posts consisting mostly of contract staff. Of the 135, 56 staff would be deployed at the EU Delegation to Ukraine. In August 2023, the delegation had 105 staff. The resources envisaged for the Facility would increase the number of staff at the delegation by 50 %.

74 Given the financial significance of the amounts involved in the Ukraine Facility and the novelty of its financial architecture, we note that the proposal does not address the resources the ECA needs to audit the Facility.

⁸⁷ Legislative Financial Statement, p. 13.

Concluding remarks

75 Ukraine has continued to suffer enormous damage as a result of Russia's war of aggression. The Commission proposed establishing the Ukraine Facility to provide up to €50 billion in both non-repayable support and loans to support Ukraine's efforts to maintain macro-financial stability, promote recovery, and rebuild and modernise the country.

76 The proposal leaves many aspects to be defined as part of subsequent agreements which will be concluded only once the Ukraine Facility Regulation has entered into force. In particular, the Ukraine Plan leaves considerable leeway for the Government of Ukraine to define the conditions for disbursing support under Pillar I. The proposal sets only an indicative ratio of one third for grants and guarantees, and two thirds for loans. The loans could represent about €33 billion, to be provided on highly concessional terms. In the absence of a provisioning rate, the loans would be guaranteed directly by the EU budget's 'headroom'. As we have highlighted in our previous work, this approach entails considerable risks for the EU budget.

77 The provisions relating to the ECA's audit rights for Pillar II could be made more explicit. Also, the duties of the Audit Board are not specific enough. Given the large amounts of EU funding involved and the novelty of the proposed architecture for the instrument, we believe that effective control and audit arrangements, as well as incontestable audit rights for the ECA, are essential across all three pillars of the Facility.

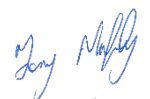
78 As a result of our review of the legislative proposal, we suggest that the **Commission and legislators should consider:**

- limiting exceptional financing for a fixed period (where it is granted), with a view to re-assessing whether the situation in Ukraine still justifies it (see paragraph [27](#));
- explicitly citing ECA reports among documents that could constitute the basis for the Commission's decision to reduce support (see paragraph [30](#));
- defining clear criteria for 'satisfactory fulfilment' under the Ukraine Plan (see paragraph [34](#));
- enabling the Commission to request that Ukraine review and/or modify the Ukraine Plan (see paragraph [35](#));

- for the loans for Ukraine, complementing the guarantee by the ‘headroom’ with additional safeguards, such as provisioning, to cover a sudden and unexpected default by Ukraine (see paragraphs [38-44](#));
- making public an analysis of the ‘headroom’ to face additional contingent liabilities stemming from the proposed Facility in the next annual report on contingent liabilities (see paragraph [45](#));
- clarifying transparency requirements for funding recipients, while ensuring that any exceptions are reported to the Commission (see paragraphs [46-47](#));
- clarifying the definition of ‘eligible counterparts’ under the Ukraine Guarantee and shortening the deadlines for the Guarantee’s implementation (see paragraphs [48-50](#));
- ensuring incontestable audit rights for the ECA by stating them explicitly throughout the proposal (see paragraphs [58-65](#));
- providing more precise definitions of the tasks to be carried out by the Audit Board (see paragraphs [66-68](#));
- using an existing monitoring framework, such as the NDICI monitoring framework to capture the Facility’s results (see paragraph [69](#));
- carrying out a mid-term review of the Facility by the end of 2026 (see paragraph [70](#)).

This opinion was adopted by Chamber III headed by Ms Bettina Jakobsen, Member of the Court of Auditors, in Luxembourg at its meeting of 26 September 2023.

For the Court of Auditors



Tony Murphy
President

Annexes

Annex I – Previous ECA special reports and opinions

ECA publications dealing with loans to third countries

2023	Annual reports concerning the 2022 financial year
Special report 05/2023	The EU's financial landscape A patchwork construction requiring further simplification and accountability
Opinion 07/2022	Opinion concerning the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) 2018/1046 as regards the establishment of a diversified funding strategy as a general borrowing method [2022/0370 (COD)]

Special reports dealing with EU projects in Ukraine

Special report 27/2022	EU support to cross-border cooperation with neighbouring countries Valuable support, but implementation started very late and problems with coordination need to be addressed
Special report 23/2021	Reducing grand corruption in Ukraine Several EU initiatives, but still insufficient results
Special report 32/2016	EU assistance to Ukraine
Special report 06/1997	TACIS subsidies allocated to Ukraine

Special reports dealing with pre-accession countries and the enlargement process

Special report 01/2022	EU support for the rule of law in the Western Balkans Despite efforts, fundamental problems persist
Special report 27/2018	The Facility for Refugees in Turkey Helpful support, but improvements needed to deliver more value for money
Special report 07/2018	EU pre-accession assistance to Turkey Only limited results so far
Special report 21/2016	EU pre-accession assistance for strengthening administrative capacity in the Western Balkans A meta-audit
Special report 20/2016	Strengthening administrative capacity in Montenegro Progress but better results needed in many key areas
Special report 11/2016	Strengthening administrative capacity in the former Yugoslav Republic of Macedonia Limited progress in a difficult context
Special report 19/2014	EU Pre-accession Assistance to Serbia
Special report 18/2012	European Union assistance to Kosovo related to the rule of law
Special report 14/2011	Has EU assistance improved Croatia's capacity to manage post-accession funding?

Annex II – Agreements to be concluded after the Ukraine Facility Regulation enters into force



Source: ECA, based on the legislative proposal on establishing the Ukraine Facility.

Annex III – Derogations from the Financial Regulation and the NDICI Regulation

Derogations from Regulation (EU, Euratom) 2018/1046 (Financial Regulation)

Proposal for a “Regulation on establishing the Ukraine Facility”		“Financial Regulation” Title of Article
Article where derogation is used	Purpose of the derogation	
Article 12(1)	Unused commitment and payment appropriations under the Facility shall be automatically carried over and may be committed and used, respectively, up to 31 December of the following financial year.	Article 12(4) Cancellation and carry-over of appropriations
Article 12(3)	Commitment appropriations corresponding to the amount of decommitments made as a result of total or partial non-implementation of an action under the Facility shall be made available again to the benefit of the budget line of origin.	Article 15 Making appropriations corresponding to decommitments available again
Article 12(4) Recital (63)	Any revenues and repayments from financial instruments established under this Regulation shall constitute internal assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046, to the Facility or its successor programme.	Article 209(3) 1st, 2nd and 4th subparagraphs Principles and conditions applicable to financial instruments and budgetary guarantees
Article 12(5) Recital (64)	Any surplus of the provisions for the Ukraine Guarantee shall constitute internal assigned revenue within the meaning of Article 21(5) of Regulation (EU, Euratom) 2018/1046 to the Facility or its successor programme.	Article 213(4)(a) Effective provisioning rate
Article 12(6)	The third subparagraph of Article 114(2) of Regulation (EU, Euratom) 2018/1046 shall not apply to the actions extending over more than one financial year.	Article 114(2), 3rd subparagraph Time limits for commitments
Article 21(4) Recital (77)	No provisioning rate as a percentage of the amount referred to in Article 6(2) of this Regulation shall be set.	Article 211(1) Provisioning of financial liabilities

Proposal for a “Regulation on establishing the Ukraine Facility”		“Financial Regulation” Title of Article
Article where derogation is used	Purpose of the derogation	
Article 22	The Union may bear the cost of funding, cost of liquidity management, and cost of service for administrative overheads related to the borrowing and lending (“borrowing costs subsidy”), except for costs related to early repayment of the loan.	Article 220(5) Financial assistance – Rules and implementation
Article 25(8) Recital (80)	The payment deadline as referred to in Article 116(1)(a) of Regulation (EU, Euratom) 2018/1046 shall start running from the date of the communication of the decision authorising the disbursement to Ukraine pursuant to paragraph 4 of this Article.	Article 116(2) Time limits for payments
Article 25(9) Recital (80)	The payment of default interest by the Commission to Ukraine, for payments made pursuant to this Article and to Article 23 of this Regulation, is excluded.	Article 116(5) Time limits for payments
Article 29(2)	Bodies governed by private law of a member state, or a third country which has contributed to the Ukraine Guarantee in accordance with Article 28 of this Regulation, and which provide adequate assurance of their financial and operational capacity shall be eligible for the purpose of the Ukraine Guarantee.	Article 62(1)(c) Methods of budget implementation
Article 31(1) Recital (84)	The provisioning shall be constituted until 31 December 2027 and be equal to the amount of provisioning corresponding to the Ukraine guarantee granted (instead of the amount of global provisioning). The provisioning may also be constituted gradually to reflect the progress in selection and implementation of the financing and investment operations supporting the objectives of the Facility.	Article 211(2), 2nd subparagraph, 2nd sentence Provisioning of financial liabilities
Article 31(4)	The effective provisioning rate shall not apply to the provisioning set aside in the common provisioning fund in respect of the Ukraine Guarantee.	Article 213 Effective provisioning rate

**Derogations from Regulation (EU) 2021/947 establishing the Neighbourhood, Development and International Cooperation Instrument
– Global Europe (NDICI)**

Proposal for a “Regulation on establishing the Ukraine Facility”		NDICI Regulation Title of Article
Article where derogation is used	Purpose of the derogation	
Article 21(3) Recital (77)	The financial assistance provided to Ukraine in the form of loans under the Facility shall not be supported by the External Action Guarantee.	Article 31(3), 2nd sentence EFSD+, the External Action Guarantee, budgetary guarantees and financial assistance to third countries – Scope and financing
Article 30(5)(c)	The operations covered by the Ukraine Guarantee under this paragraph shall constitute a separate portfolio of Ukraine Guarantee and shall not be taken into account for the purposes of calculating the 65 % coverage referred to in Article 36(1) of Regulation (EU) 2021/947.	Article 36(1), 2nd subparagraph Role of the European Investment Bank

Source: ECA, based on the legislative proposal on establishing the Ukraine Facility.

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