COUNCIL DECISION

of 14 April 2014

providing macro-financial assistance to Ukraine

(2014/215/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 213 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Relations between the European Union and Ukraine are developing within the framework of the European Neighbourhood Policy (ENP) and the Eastern Partnership. The Partnership and Cooperation Agreement between the Union and Ukraine entered into force on 1 March 1998. Bilateral political dialogue and economic cooperation have been further developed within the framework of the EU-Ukraine Association Agenda adopted on 23 November 2009. An Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Association Agreement'), including a Deep and Comprehensive Free Trade Area (DCFTA), was negotiated from 2007 to 2011 and was initialled in 2012. On 21 November 2013, the Cabinet of Ministers of Ukraine decided to suspend the signing of the Association Agreement. However, since the resignation of the Ukrainian government in February 2014, the current Ukrainian government has declared its willingness to sign the Association Agreement in the near future. On 6 March 2014, the European Council declared in its Statement on Ukraine its commitment to sign very shortly all political chapters of the Association Agreement, and to unilaterally adopt measures allowing Ukraine to benefit substantially from the DCFTA.

The proposal for a Regulation of the European Parliament and of the Council to that effect was adopted by the Commission on 11 March 2014.

(2) The current political crisis has very damaging effects on Ukraine's already precarious economic and financial stability. Ukraine is facing a very weak and rapidly worsening balance-of-payments and fiscal situation, with the economy moving into recession again. The de facto interruption of Russia's assistance under its USD 15 billion package, and the announced end to the reduced gas prices previously granted by the company Gazprom from April 2014 will cause the situation to deteriorate even further. In such circumstances, Ukraine faces a serious risk of default in the near future.

(3) Following the resignation of the previous government, a new interim President and a new government were appointed by the Ukrainian Parliament on 22 and 27 February 2014 respectively. Even though the Ukrainian Constitution of 2004 was reinstated and presidential elections were announced for 25 May 2014, Ukraine could not return to political stability, since its sovereignty and territorial integrity have recently been violated by the Russian Federation.

(4) In this context, Ukraine requires urgent financial assistance by international creditors and donors. If the decision to provide such financial assistance was to be adopted by the European Parliament and by the Council in accordance with Article 212 of the Treaty on the Functioning of the European Union (TFEU) under the ordinary legislative procedure, the rapid disbursement of the Union's macro-financial assistance to Ukraine ('the Union's macro-financial assistance') in the first half of 2014 would not be possible, and would thus not address the urgent financial needs of Ukraine. It is, therefore, justified to provide the Union's macro-financial assistance on the basis of a Council Decision adopted pursuant to Article 213 TFEU.

(5) The urgency of the assistance is related to Ukraine's immediate need for funds, in addition to those which will be provided by other international financial institutions and other bilateral donors and to the macro-financial assistance provided for by Council Decision 2002/639/EC ([1]) and Decision No 646/2010/EU of the European Parliament and of the Council ([2]).

([1]) Council Decision 2002/639/EC of 12 July 2002 providing supplementary macro-financial assistance to Ukraine (OJ L 209, 6.8.2002, p. 22).

([2]) Decision No 646/2010/EU of the European Parliament and of the Council of 7 July 2010 providing macrofinancial assistance to Ukraine (OJ L 179, 14.7.2010, p. 1).

(6) The current crisis in Ukraine justifies the exceptional use of the urgent procedure under Article 213 TFEU. This Decision providing macro-financial assistance to Ukraine is without prejudice to other future macro-financial assistance operations.

(7) Since the resignation of the Ukrainian government, the Union has, on various occasions, declared its commitment to support the new Ukrainian government in its aims to stabilise the situation and pursue the course of reforms. The Union has also declared its readiness to fully support efforts of the international community and international financial institutions, especially the International Monetary Fund (IMF), with regard to an international assistance package designed to address the urgent needs of Ukraine, conditional on Ukraine's clear commitment to reforms. Financial support from the Union to Ukraine is consistent with the Union's policy as set out in the ENP and in the Eastern Partnership.

(8) The Union's macro-financial assistance should be an exceptional financial instrument of untied and undesignated balance-of-payments support, which aims at addressing the beneficiary's immediate external financing needs and should underpin the implementation of a policy programme containing strong immediate adjustment and structural reform measures designed to improve the balance-of-payments position in the short term.

(9) The Ukrainian authorities and the IMF are expected to agree shortly on an economic programme that will be supported by a financing arrangement with the IMF.

(10) On 5 March 2014, in view of the drastically worsening balance-of-payments situation in Ukraine, the Commission announced a support package, which included the proposed Union's macro-financial assistance. That package was endorsed by the Extraordinary European Council on 6 March 2014. That package includes financial assistance in the amount of EUR 11 billion for the period 2014-2020, including a total amount of up to EUR 1,565 billion in grants for the same period mobilised under the European Neighbourhood Instrument, the Neighbourhood Investment Facility, the Instrument contributing to Stability and Peace and the budget of the Common Foreign and Security Policy.

The disbursement of the macro-financial assistance provided for by Decision 2002/639/EC and Decision No 646/2010/EU can take place as soon as the IMF programme is in place.

(11) Given that Ukraine is a country covered by the ENP, it is eligible to receive the Union's macro-financial assistance.

(12) Given that the drastically worsening external financing needs of Ukraine are expected to be well above the resources that will be provided by the IMF and other multilateral institutions, the urgent Union's macro-financial assistance to be provided to Ukraine is, under the current exceptional circumstances, considered to be an appropriate response to Ukraine's request to support financial stabilisation. The Union's macro-financial assistance would support the economic stabilisation and the structural reform agenda of Ukraine, supplementing resources made available under the IMF financial arrangement.

(13) The Union's macro-financial assistance should aim to support the restoration of a sustainable external financing situation for Ukraine, thereby supporting its economic and social development.

(14) The amount of the Union's macro-financial assistance is based on a preliminary estimate of Ukraine's residual external financing needs and takes into account its capacity to finance itself with its own resources, in particular the international reserves at its disposal. The Union's macro-financial assistance should complement the programmes and resources provided by the IMF and the World Bank. The determination of the amount of the assistance also takes into account the need to ensure fair burden-sharing between the Union and other donors, as well as the pre-existing deployment of the Union's other external financing instruments in Ukraine and the added value of the overall Union involvement.

(15) The Commission should ensure that the Union's macro-financial assistance is legally and substantially in line with the key principles, objectives and measures taken in the different areas of external action and other relevant Union policies.

(16) The Union's macro-financial assistance should support the Union's external policy towards Ukraine. The Commission services and the European External Action Service should work closely together throughout the macro-financial assistance operation in order to coordinate, and to ensure the consistency of, Union external policy.

(17) The Union's macro-financial assistance should support Ukraine's commitment to values shared with the Union, including democracy, the rule of law, good governance, respect for human rights, sustainable development and poverty reduction, as well as its commitment to the principles of open, rule-based and fair trade.

(18) A pre-condition for granting the Union's macro-financial assistance should be that Ukraine respects effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and guarantees respect for human rights. In addition, the specific objectives of the Union's macro-financial assistance should strengthen the efficiency, transparency and accountability of the public finance management systems in Ukraine and promote structural reforms aimed at supporting sustainable growth and fiscal consolidation. Both fulfilment of the pre-condition and the achievement of those objectives should be regularly monitored by the Commission.

(19) In order to ensure that the Union's financial interests linked to the Union's macro-financial assistance are protected efficiently, Ukraine should take appropriate measures relating to the prevention of, and fight against, fraud, corruption and any other irregularities linked to the assistance. In addition, provision should be made for the Commission to carry out checks and for the Court of Auditors to carry out audits.

(20) Release of the Union's macro-financial assistance is without prejudice to the powers of the European Parliament and of the Council.

(21) The amounts of the provision required for macro-financial assistance should be consistent with the budgetary appropriations provided for in the multiannual financial framework.

(22) The Union macro-financial assistance should be managed by the Commission. In order to ensure that the European Parliament and the Council are able to follow the implementation of this Decision, the Commission should regularly inform them of developments relating to the assistance and provide them with relevant documents.

(23) In order to ensure uniform conditions for the implementation of this Decision, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council [1],

HAS ADOPTED THIS DECISION:

Article 1

1. The Union shall make macro-financial assistance available to Ukraine of a maximum amount of EUR 1 billion, with a view to supporting Ukraine's economic stabilisation and reforms ('the Union's macro-financial assistance'). The assistance shall contribute to covering Ukraine's urgent balance-of-payments needs as identified in the government's economic programme supported by the IMF.

2. The full amount of the Union's macro-financial assistance shall be provided to Ukraine in the form of loans. The Commission shall be empowered on behalf of the Union to borrow the necessary funds on the capital markets or from financial institutions and to on-lend them to Ukraine. The loans shall have a maximum maturity of 15 years.

3. The release of the Union's macro-financial assistance shall be managed by the Commission in a manner consistent with the agreements or understandings reached between the IMF and Ukraine, and with the key principles and objectives of economic reforms set out in the EU-Ukraine Association Agenda, agreed under the ENP.

4. The Commission shall regularly inform the European Parliament and the Council of developments regarding the Union's macro-financial assistance, including disbursements thereof, and shall provide those institutions with the relevant documents in due time.

5. The Union's macro-financial assistance shall be made available for a period of one year, starting from the first day after the entry into force of the Memorandum of Understanding referred to in Article 3(1) of this Decision. The availability period may be extended by a decision of the Council on a proposal from the Commission.

6. Where the financing needs of Ukraine decrease fundamentally during the period of the disbursement of the Union's macro-financial assistance compared to the initial projections, the Commission, acting in accordance with the examination procedure referred to in Article 7(2), shall reduce the amount of the assistance or suspend or cancel it.

[1] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Article 2

A pre-condition for granting the Union's macro-financial assistance shall be that Ukraine respects effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and guarantees respect for human rights.

The Commission shall monitor the fulfilment of this pre-condition throughout the life-cycle of the Union's macro-financial assistance.

This Article shall be applied in accordance with Council Decision 2010/427/EU ([1]).

Article 3

1. The Commission, in accordance with the examination procedure referred to in Article 7(2), shall agree with the Ukrainian authorities on clearly defined economic policy and financial conditions, focusing on structural reforms and sound public finances, to which the Union's macro-financial assistance is to be subject, to be laid down in a Memorandum of Understanding which shall include a timeframe for the fulfilment of those conditions.

The economic policy and financial conditions set out in the Memorandum of Understanding shall be consistent with the agreements or understandings referred to in Article 1(3), including the macro-economic adjustment and structural reform programmes implemented by Ukraine, with the support of the IMF.

2. Those conditions shall aim, in particular, to enhance the efficiency, transparency and accountability of the public finance management systems in Ukraine, including for the use of the Union's macro-financial assistance. Progress in mutual market opening, the development of rules-based and fair trade and other priorities in the context of the Union's external policy shall also be duly taken into account when designing the policy measures. Progress in attaining those objectives shall be regularly monitored by the Commission.

3. The detailed financial terms of the Union's macro-financial assistance shall be laid down in a Loan Agreement to be agreed between the Commission and the Ukrainian authorities.

4. The Commission shall verify at regular intervals that the conditions laid down in Article 4(3) continue to be met, including that the economic policies of Ukraine are in accordance with the objectives of the Union's macro-financial assistance. In so doing, the Commission shall coordinate closely with the IMF and the World Bank, and, where necessary, with the European Parliament and the Council.

Article 4

1. Subject to the conditions in paragraph 3, the Union's macro-financial assistance shall be made available by the Commission in two loan instalments. The size of each instalment shall be laid down in the Memorandum of Understanding. If, exceptionally, circumstances so require, the Union macro-financial assistance may be made available in one single loan instalment.

2. The amounts of the Union's macro-financial assistance shall be provisioned, where required, in accordance with Council Regulation (EC, Euratom) No 480/2009 ([2]).

3. The Commission shall decide on the release of the loan instalments subject to the fulfilment of all of the following conditions:

(a) the pre-condition set out in Article 2;

(b) a continuous satisfactory track record of implementing a policy programme that contains adjustment and structural reform measures supported by a non-precautionary IMF credit arrangement;

(c) the implementation, within a specific time-frame, of the economic policy and financial conditions agreed in the Memorandum of Understanding.

In case a second instalment is foreseen, it shall not take place earlier than three months after the release of the first instalment.

([1]) Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

([2]) Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 establishing a Guarantee Fund for external actions (OJ L 145, 10.6.2009, p. 10).

4. Where the conditions in paragraph 3 are not met, the Commission shall temporarily suspend or cancel the disbursement of the Union's macro-financial assistance. In such cases, it shall inform the European Parliament and the Council of the reasons for that suspension or cancellation.

5. The Union's macro-financial assistance shall be disbursed to the National Bank of Ukraine.

6. The disbursement shall start immediately as soon as the IMF programme is in place.

Article 5

1. The borrowing and lending related to the Union's macro-financial assistance shall be carried out in euro, using the same value date, and shall not involve the Union in the transformation of maturities, or expose it to any exchange or interest rate risk, or to any other commercial risk.

2. Where the circumstances permit, and if Ukraine so requests, the Commission may take the steps necessary to ensure that an early repayment clause is included in the loan terms and conditions, and that it is matched by a corresponding clause in the terms and conditions of the borrowing operations.

3. Where circumstances permit an improvement of the interest rate of the loan, and if Ukraine so requests, the Commission may decide to refinance all or part of its initial borrowings, or may restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with paragraphs 1 and 4, and shall not have the effect of extending the maturity of the borrowings concerned or of increasing the amount of capital outstanding at the date of the refinancing or restructuring.

4. All costs incurred by the Union which relate to the borrowing and lending under this Decision shall be borne by Ukraine.

5. The Commission shall inform the European Parliament and the Council of developments in the operations referred to in paragraphs 2 and 3.

Article 6

1. The Union's macro-financial assistance shall be implemented in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council [1] and Commission Delegated Regulation (EU) No 1268/2012 [2].

2. The implementation of the Union's macro-financial assistance shall be under direct management.

3. The Memorandum of Understanding and the Loan Agreement to be agreed with the Ukrainian authorities shall contain provisions:

(a) ensuring that Ukraine regularly checks that financing provided from the budget of the Union has been properly used, takes appropriate measures to prevent irregularities and fraud, and, if necessary, takes legal action to recover any funds provided under this Decision that have been misappropriated;

(b) ensuring the protection of the Union's financial interests, in particular providing for specific measures in relation to the prevention of, and fight against, fraud, corruption and any other irregularities affecting the Union's macro-financial assistance, in accordance with Council Regulation (EC, Euratom) No 2988/95 [3], Council Regulation (Euratom, EC) No 2185/96 [4] and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council [5];

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[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

[2] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

[3] Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

[4] Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

[5] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

(c) expressly authorising the Commission, including the European Anti-Fraud Office, or its representatives to carry out checks, including on-the-spot checks and inspections;

(d) expressly authorising the Commission and the Court of Auditors to perform audits during and after the availability period of the Union's macro-financial assistance, including document audits and on-the-spot audits, such as operational assessments; and

(e) ensuring that the Union is entitled to early repayment of the loan where it has been established that, in relation to the management of the Union's macro-financial assistance, Ukraine has engaged in any act of fraud or corruption or any other illegal activity detrimental to the financial interests of the Union.

4. During the implementation of the Union's macro-financial assistance, the Commission shall monitor, by means of operational assessments, the soundness of Ukraine's financial arrangements, the administrative procedures, and the internal and external control mechanisms which are relevant to the assistance.

Article 7

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 8

1. By 30 June of each year, the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Decision in the preceding year, including an evaluation of that implementation. That report shall:

(a) examine the progress made in implementing the Union's macro-financial assistance;

(b) assess the economic situation and prospects of Ukraine, as well as progress made in implementing the policy measures referred to in Article 3(1);

(c) indicate the connection between the economic policy conditions laid down in the Memorandum of Understanding, Ukraine's ongoing economic and fiscal performance and the Commission's decisions to release the instalments of the Union's macro-financial assistance.

2. Not later than two years after the expiry of the availability period referred to in Article 1(5), the Commission shall submit to the European Parliament and to the Council an ex post evaluation report, assessing the results and efficiency of the completed Union's macro-financial assistance and the extent to which it has contributed to the aims of the assistance.

Article 9

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

Done at Luxembourg, 14 April 2014.

For the Council

The President

C. ASHTON