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(Legislative acts)

DECISIONS

DECISION No 388/2010/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 7 July 2010****providing macrofinancial assistance to Ukraine**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

IMF's SBA and the full amount of the third tranche were channelled to Ukraine's State budget.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212 thereof,

(5) Ukraine has requested Union macrofinancial assistance in view of the deteriorating economic situation and outlook.

Having regard to the proposal from the European Commission,

(6) Given that a residual financing gap in 2009-2010 remains in Ukraine's balance of payments, macrofinancial assistance is considered an appropriate response to Ukraine's request to support economic stabilisation in conjunction with the current IMF programme. This macrofinancial assistance is also expected to contribute to alleviating the external financing needs of the State budget.

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

(7) Union macrofinancial assistance can only contribute to economic stabilisation if the main political forces in Ukraine ensure political stability and establish a broad consensus on a rigorous implementation of the necessary structural reforms.

Whereas:

(1) Relations between Ukraine and the European Union are developing within the framework of the European Neighbourhood Policy. In 2005, the Community and Ukraine agreed on a European Neighbourhood Policy Action Plan identifying medium-term priorities in EU-Ukraine relations. That Action Plan was replaced by the EU-Ukraine Association Agenda of November 2009. Since 2007, the Community and Ukraine have been negotiating an Association Agreement that is expected to replace the existing Partnership and Cooperation Agreement. The framework of EU-Ukraine relations is further enhanced by the newly launched Eastern Partnership.

(8) Union macrofinancial assistance should be provided to Ukraine in addition to the loan facility granted under Council Decision 2002/639/EC of 12 July 2002 providing supplementary macrofinancial assistance to Ukraine ⁽²⁾.

(2) The Ukrainian economy has been increasingly affected by the international financial crisis, with dramatically declining output, a deteriorating fiscal position and rising external financing needs.

(9) The Union macrofinancial assistance should not merely supplement programmes and resources from the IMF and the World Bank, but should ensure the added value of Union involvement.

(3) Ukraine's economic stabilisation and recovery is supported by financial assistance from the International Monetary Fund (IMF). The IMF Stand-By Arrangement (SBA) for Ukraine was approved in November 2008.

(4) Following a further deterioration of Ukraine's fiscal position, a large part of the second tranche under the

(10) The Commission should ensure that the Union macrofinancial assistance is legally and substantially in line with the measures taken within the different areas of external action and other relevant Union policies.

⁽¹⁾ Position of the European Parliament of 18 May 2010 (not yet published in the Official Journal) and decision of the Council of 29 June 2010.

⁽²⁾ OJ L 209, 6.8.2002, p. 22.

- (11) The specific objectives of the Union macrofinancial assistance should strengthen efficiency, transparency and accountability. These objectives should be regularly monitored by the Commission.
- (12) The conditions underlying the provision of the Union macrofinancial assistance should reflect the key principles and objectives of the Union's policy towards Ukraine.
- (13) In order to ensure efficient protection of the Union's financial interests linked to this macrofinancial assistance, it is necessary that Ukraine adopt appropriate measures relating to the prevention of, and the fight against, fraud, corruption and any other irregularities linked to this assistance. It is also necessary that the Commission provide for appropriate controls and that the Court of Auditors provides for appropriate audits.
- (14) The release of the Union macrofinancial assistance is without prejudice to the powers of the budgetary authority.
- (15) This macrofinancial assistance should be managed by the Commission. In order to ensure that the European Parliament and the Economic and Financial Committee 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.
- (16) According to Article 291 of the Treaty on the Functioning of the European Union, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers shall be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾ continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable,

HAVE ADOPTED THIS DECISION:

Article 1

1. The Union shall make available to Ukraine macrofinancial assistance in the form of a loan facility with a maximum principal amount of EUR 500 million and a maximum average maturity of 15 years with a view to supporting

Ukraine's economic stabilisation and alleviating its balance of payments and budgetary needs, as identified in the current IMF programme.

2. To this end, the Commission shall be empowered to borrow the necessary resources on behalf of the Union.

3. The release of the Union macrofinancial 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 reform set out in the EU-Ukraine Association Agenda. The Commission shall regularly inform the European Parliament and the Economic and Financial Committee of developments in the management of the assistance and provide them with relevant documents.

4. The Union macrofinancial assistance shall be made available for two years and six months starting from the first day after the entry into force of the Memorandum of Understanding referred to in Article 2(1).

Article 2

1. The Commission, acting in accordance with the advisory procedure referred to in Article 6(2), shall be empowered to agree with the Ukrainian authorities on the economic policy conditions attached to the Union macrofinancial assistance, to be laid down in a Memorandum of Understanding which shall include a timeframe for their fulfilment (hereinafter the 'Memorandum of Understanding'). The conditions shall be consistent with the agreements or understandings reached between the IMF and Ukraine and with the key principles and objectives of economic reform set out in the EU-Ukraine Association Agenda. These principles and objectives aim at strengthening the efficiency, transparency and accountability of the assistance, including in particular public finance management systems in Ukraine. Progress in attaining these objectives shall be regularly monitored by the Commission. The detailed financial terms of the assistance shall be laid down in a Loan Agreement to be agreed between the Commission and the Ukrainian authorities.

2. During the implementation of the Union macrofinancial assistance, the Commission shall monitor the soundness of Ukraine's financial arrangements, administrative procedures, internal and external control mechanisms which are relevant to such assistance and the adherence to the agreed timeframe.

3. The Commission shall verify at regular intervals that Ukraine's economic policies are in accordance with the objectives of the Union macrofinancial assistance and that the agreed economic policy conditions are being satisfactorily fulfilled. In doing so, the Commission shall coordinate closely with the IMF and the World Bank, and, when required, with the Economic and Financial Committee.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Article 3

1. Subject to the conditions of paragraph 2, the Union macrofinancial assistance to Ukraine 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.

2. The Commission shall decide on the release of the instalments subject to satisfactory implementation of the economic policy conditions agreed in the Memorandum of Understanding. The disbursement of the second instalment shall not take place earlier than three months after the release of the first instalment.

3. The Union funds shall be paid to the National Bank of Ukraine. Subject to provisions to be agreed in the Memorandum of Understanding, including a confirmation of residual budgetary financing needs, the Union funds may be transferred to the Treasury of Ukraine as the final beneficiary.

Article 4

1. The borrowing and the lending operations referred to in this Decision shall be carried out in euro using the same value date and shall not involve the Union in the transformation of maturities, in any exchange or interest rate risks or in any other commercial risk.

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

3. At the request of Ukraine, and where circumstances permit an improvement of the interest rate of the loan, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average maturity of the borrowing concerned or increasing the amount of capital outstanding at the date of the refinancing or restructuring.

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

5. The European Parliament and the Economic and Financial Committee shall be kept informed of developments in the operations referred to in paragraphs 2 and 3.

Article 5

The Union macrofinancial assistance shall be implemented in accordance with the provisions of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽¹⁾ and its implementing rules⁽²⁾. In particular, the Memorandum of Understanding and the Loan Agreement to be agreed with the Ukrainian authorities shall provide for specific measures to be implemented by Ukraine in relation to the prevention of, and the fight against, fraud, corruption and other irregularities affecting the assistance. In order to ensure greater transparency in the management and disbursement of funds, the Memorandum of Understanding and the Loan Agreement shall also provide for controls, including on-the-spot checks and inspections, to be carried out by the Commission, including the European Anti-Fraud Office. They shall in addition provide for audits, including where appropriate on-the-spot audits, by the Court of Auditors.

Article 6

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 7

By 31 August 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 thereof. The report shall indicate the connection between the policy conditions as laid down in the Memorandum of Understanding, Ukraine's on-going economic and fiscal performance and the Commission's decisions to release the instalments of the assistance.

No later than two years after the expiry of the availability period referred to in Article 1(4), the Commission shall submit to the European Parliament and to the Council an *ex post* evaluation report.

Article 8

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

Done at Strasbourg, 7 July 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).