

II

(Non-legislative acts)

DECISIONS

COUNCIL DECISION (CFSP) 2022/338

of 28 February 2022

on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 28(1) and 41(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) In accordance with Decision (CFSP) 2021/509 ⁽¹⁾, the European Peace Facility (EPF) was established for the financing by Member States of Union actions under the common foreign and security policy (CFSP) to preserve peace, prevent conflicts and strengthen international security in accordance with Article 21(2), point (c), of the Treaty. In particular, in accordance with Article 1(2), point (b)(i), of Decision (CFSP) 2021/509, the EPF can finance actions to strengthen the capacities of third States and regional and international organisations relating to military and defence matters.
- (2) Deepening dialogue and cooperation in the field of security and defence is one of the main objectives of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part ⁽²⁾. The enhanced cooperation in the area of the common security and defence policy (CSDP) and alignment with the CFSP between the Union and Ukraine was one of the outcomes of the 2020 EU-Ukraine summit, which was further strengthened at the 2021 EU-Ukraine summit.
- (3) The Ukrainian Armed Forces are engaged in a seven-year conflict with continued military and civilian casualties and deaths. The conflict dramatically escalated in February 2022 due to an unprovoked invasion of Ukraine by armed forces of the Russian Federation.
- (4) Given the deteriorating situation since the beginning of 2022, Member States have been providing assistance to the Ukrainian Armed Forces. Such assistance should be eligible for funding under the EPF.
- (5) On 25 February 2022, the Government of Ukraine made an urgent request to the Union for assistance in the provision of military equipment.

⁽¹⁾ Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 (OJ L 102, 24.3.2021, p. 14).

⁽²⁾ OJ L 161, 29.5.2014, p. 3.

- (6) Assistance measures are to be implemented taking into account the principles and requirements set out in Decision (CFSP) 2021/509, and in particular compliance with Council Common Position 2008/944/CFSP ⁽³⁾, and in accordance with the rules for the implementation of revenue and expenditure financed under the EPF.
- (7) The Council reaffirms its determination to protect, promote and fulfil human rights, fundamental freedoms and democratic principles, and to strengthen the rule of law and good governance in compliance with the United Nations Charter, the Universal Declaration of Human Rights and international law, in particular international human rights and international humanitarian law,

HAS ADOPTED THIS DECISION:

Article 1

Establishment, objectives, scope and duration

1. An assistance measure benefitting Ukraine (the 'beneficiary') is hereby established, to be financed under the European Peace Facility (EPF) (the 'Assistance Measure').
2. The objective of the Assistance Measure is to contribute to strengthening the capabilities and resilience of the Ukrainian Armed Forces to defend the territorial integrity and sovereignty of Ukraine and protect the civilian population against the ongoing military aggression.
3. To achieve the objective set out in paragraph 2, the Assistance Measure shall finance the provision of military equipment, and platforms, designed to deliver lethal force to the Ukrainian Armed Forces.
4. The duration of the Assistance Measure shall be 24 months from the adoption of this Decision.

Article 2

Financial arrangements

1. The financial reference amount intended to cover the expenditure related to the Assistance Measure shall be EUR 450 000 000.
2. All expenditure shall be managed in accordance with the rules for the implementation of revenue and expenditure financed under the EPF.
3. In accordance with Article 29(5) of Decision (CFSP) 2021/509, the administrator for assistance measures may call for contributions following the adoption of this Decision, up to EUR 450 000 000. The funds called by the administrator for assistance measures shall only be used to pay expenditure within the limits approved by the Committee established by Decision (CFSP) 2021/509 in the 2022 amending budget corresponding to the Assistance Measure.
4. Expenditure related to the implementation of the Assistance Measure shall be eligible as from 1 January 2022 and until a date to be determined by the Council.

Article 3

Arrangements with the beneficiary

1. The High Representative shall make the necessary arrangements with the beneficiary to ensure its compliance with international law, in particular international human rights and international humanitarian law, and Article 62(2) of Decision (CFSP) 2021/509, as a condition for the provision of support under the Assistance Measure.

⁽³⁾ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335 13.12.2008, p. 99).

2. The arrangements referred to in paragraph 1 shall include provisions on the suspension and termination of support under the Assistance Measure in the event of the beneficiary being found in breach of the obligations referred to in paragraph 1.

Article 4

Implementation

1. The High Representative shall be responsible for ensuring the implementation of this Decision in accordance with Decision (CFSP) 2021/509 and with the rules for the implementation of revenue and expenditure financed under the EPF, consistent with the Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF.

2. The Committee established by Decision (CFSP) 2021/509 shall further define the type and quantity of support to be financed under the Assistance Measure, considering the priorities recommended by the European Union Military Staff to meet the needs of the Ukrainian Armed Forces.

3. The administrator for assistance measures, on the basis of information received from the implementing actor(s), shall report to the Committee established by Decision (CFSP) 2021/509 on the delivery of equipment, including quantities, types and any other relevant information, for further follow-up and monitoring.

4. The implementation of the activity referred to in Article 1(3) may be carried out by:

- (a) the Ministry of Defence of Belgium;
- (b) the Ministry of Defence of Bulgaria;
- (c) the Ministry of Defence of Croatia;
- (d) the Ministry of Defence of Cyprus;
- (e) the Ministry of Defence of Czechia;
- (f) the Ministry of Defence of Denmark;
- (g) the Estonian Centre for Defence Investments (ECDI) on behalf of the Ministry of Defence of Estonia;
- (h) the Ministry of Defence of Finland;
- (i) the Ministry of Defence of France;
- (j) the Ministry of Defence of Germany;
- (k) the Ministry of Defence of Greece;
- (l) the Ministry of Defence of Hungary;
- (m) the Ministry of Defence of Italy;
- (n) the State Defence Logistics and Procurement Centre of Latvia;
- (o) the Ministry of Defence of Lithuania;
- (p) the Directorate of Defence of the Ministry of Foreign and European Affairs of Luxembourg;
- (q) the Ministry of Defence of the Netherlands;
- (r) the Ministry of Defence of Poland;
- (s) the Ministry of Defence of Portugal;
- (t) the Ministry of National Defence of Romania;
- (u) the Ministry of Defence of the Slovak Republic;
- (v) the Ministry of Defence of Slovenia;
- (w) the Ministry of Defence of Spain;
- (x) the Ministry of Defence of Sweden / Swedish Armed Forces.

*Article 5***Support by Member States**

The Member States shall permit the transit of military equipment, including accompanying personnel, through their territories, including their airspace.

*Article 6***Monitoring, control and evaluation**

1. The High Representative shall ensure the monitoring of the respect of the obligations established in accordance with Article 3 by the beneficiary. Such monitoring shall provide awareness of the context and risks of breaches of the obligations established in accordance with Article 3, including violations of international human rights law and international humanitarian law by units of the Ukrainian Armed Forces supported under the Assistance Measure.
2. The post-shipment control of equipment shall be organised in a manner consistent with the Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF.

*Article 7***Reporting**

During the period of implementation, the High Representative shall provide the PSC with six-monthly reports on the implementation of the Assistance Measure, in accordance with Article 63 of Decision (CFSP) 2021/509.

*Article 8***Suspension and termination**

The PSC may decide to suspend wholly or partially the implementation of the Assistance Measure in accordance with Article 64 of Decision (CFSP) 2021/509.

The PSC may also recommend that the Council terminate the Assistance Measure.

*Article 9***Entry into force**

This Decision shall enter into force on the date of its adoption.

It shall apply from 1 January 2022.

Done at Brussels, 28 February 2022.

For the Council
The President
J.-Y. LE DRIAN
