

COUNCIL DECISION (CFSP) 2023/231**of 2 February 2023****on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces trained by the European Union Military Assistance Mission in support of Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

- (1) Council Decision (CFSP) 2021/509 ⁽¹⁾ establishes the European Peace Facility (EPF) 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 pursuant to Article 21(2), point (c), of the Treaty. In particular, pursuant to Article 1(2), point (b)(i), of Decision (CFSP) 2021/509, the EPF is to be used for the financing of assistance measures such as 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 Union and Ukraine ⁽²⁾. The enhanced cooperation in the area of Common Security and Defence Policy (CSDP) and alignment with the CFSP between the Union and Ukraine was one of the outcomes of the 22nd summit between the European Union and Ukraine of 6 October 2020, that was further strengthened at the 23rd summit between the European Union and Ukraine which took place in Kyiv on 12 October 2021.
- (3) Russia's aggression against Ukraine since 2014 dramatically escalated in February 2022 with the unprovoked invasion of Ukraine. The Ukrainian Armed Forces (UAF) continue to defend the territorial integrity of Ukraine and to protect its civilians with the available limited resources.
- (4) On 30 September 2022, the Minister for Foreign Affairs and the Minister of Defence of Ukraine jointly welcomed the Union's support to the UAF and requested the Union to launch a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine) for strengthening the capabilities of the UAF.
- (5) On 17 October 2022, the Council adopted Decision (CFSP) 2022/1968 on a European Union Military Assistance Mission in support of Ukraine ⁽³⁾. As underlined in that Decision, the Mission is part of the EU Integrated Approach in providing support to Ukraine, which includes assistance measures supporting the UAF.
- (6) EUMAM Ukraine will be entrusted with the implementation of the assistance measure. It is to be responsible for the reimbursement of personal training kits and any other equipment and supplies not designed to deliver lethal force provided by Member States to support the training activities. Close coordination will be required between the EU Military Staff, EUMAM Ukraine and other headquarters of the Mission, as well as between Member States engaged in the training activities.

⁽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⁾ 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 (OJ L 161, 29.5.2014, p. 3).

⁽³⁾ Council Decision (CFSP) 2022/1968 of 17 October 2022 on a European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine) (OJ L 270, 18.10.2022, p. 85).

- (7) In accordance with Article 11(3) of Decision (CFSP) 2022/1968, personal training kits are no longer to be regarded as common costs once they are provided under an EPF assistance measure.
- (8) The assistance measure is to be implemented taking into account the principles and requirements set out in Decision (CFSP) 2021/509, in particular compliance with Council Common Position 2008/944/CFSP⁽⁴⁾, and in accordance with the rules for the implementation of revenue and expenditure financed under the EPF.
- (9) 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 law and international humanitarian law,

HAS ADOPTED THIS DECISION:

Article 1

Establishment, objectives, scope and duration

1. An assistance measure benefitting Ukraine (the 'beneficiary') to be financed under the European Peace Facility (EPF) (the 'assistance measure') is hereby established.
2. The objective of the assistance measure is to support the capacity building of the Ukrainian Armed Forces (UAF) by the European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine), in order to allow the UAF to defend the territorial integrity and sovereignty of Ukraine as well as to 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 by Member States of:
 - (a) equipment and supplies not designed to deliver lethal force, as required to meet the operational requirements of EUMAM Ukraine and as requested by Ukraine; and
 - (b) services, including transportation, custody, maintenance and repair of the items under point (a) made available by Member States, for the training under EUMAM Ukraine.
4. Upon completion of the training or when EUMAM Ukraine is terminated, the custody of the equipment and supplies not designed to deliver lethal force, which were provided under this assistance measure, shall be transferred back to the beneficiary. Based on needs by Ukraine, items within the personal kits may be transferred back to the beneficiary once they have been used in the training.
5. The duration of the assistance measure shall be 24 months from the date of adoption of this Decision or until the expiry of the Decision establishing EUMAM Ukraine, whichever is the earlier.

Article 2

Financial arrangements

1. The financial reference amount intended to cover the expenditure related to the assistance measure shall be EUR 45 000 000.
2. All expenditure shall be managed in accordance with the rules for the implementation of revenue and expenditure for operations financed under the EPF.

⁽⁴⁾ 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).

3. In accordance with Article 29(5) of Decision (CFSP) 2021/509, the administrator for operations may call for contributions following the adoption of this Decision, up to EUR 45 000 000. The funds called by the administrator for operations shall only be used to pay expenditure within the limits approved by the Committee established by Decision (CFSP) 2021/509 in the related amending budget corresponding to the assistance measure.

4. Expenditure related to the implementation of the assistance measure shall be eligible from the date of the launch of EUMAM Ukraine. Expenditure related to personal training kits shall be eligible under this assistance measure from the date of entry into force of this Decision.

Article 3

Arrangements with the beneficiary

1. The High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative') shall make the necessary arrangements with the beneficiary to ensure its compliance with the requirements and conditions established by this Decision as a condition for the provision of support under the assistance measure.

2. The arrangements referred to in paragraph 1 shall include provisions obliging the beneficiary to ensure:

- (a) the compliance of the units of the UAF supported under the assistance measure with relevant international law, in particular international human rights law and international humanitarian law;
- (b) the proper and efficient use of any assets provided under the assistance measure for the purposes for which they were provided;
- (c) the sufficient maintenance of any assets provided under the assistance measure to ensure their usability and their operational availability over their life cycle;
- (d) that any assets provided under the assistance measure will not be lost, or be transferred without the consent of the Facility Committee established under Decision (CFSP) 2021/509 to persons or entities other than those identified in the arrangements referred to in paragraph 1, at the end of their life cycle.

3. 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 set out in paragraph 2.

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, in line with the Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF.

2. The activities referred to in Article 1(3), relating to the reimbursement and monitoring of the equipment and supplies not designed to deliver lethal force, provided by Member States, shall be implemented by EUMAM Ukraine.

Article 5

Monitoring, control and evaluation

1. The High Representative shall monitor the respect by the beneficiary of the obligations set out in Article 3. This monitoring shall be used to provide awareness of the context and the risks of breaches of the obligations established in accordance with Article 3, and shall contribute to the prevention of such breaches, including violations of international human rights law and international humanitarian law by units of the UAF supported under the assistance measure.

2. The post-shipment control of equipment shall be organised in line with the Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF.
3. The High Representative shall conduct a final evaluation upon completion of the assistance measure to assess whether the assistance measure has contributed to reaching the objective stated in Article 1(2).

Article 6

Reporting

During the period of implementation, the High Representative shall provide the Political and Security Committee (PSC) with six-monthly reports on the implementation of the assistance measure, in accordance with Article 63 of Decision (CFSP) 2021/509. The administrator for operations, with the support of the Mission Commander, shall regularly inform the Facility Committee established by Decision (CFSP) 2021/509 on the implementation of revenue and expenditure in accordance with Article 38 of that Decision.

Article 7

Suspension and termination

1. 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.
2. The PSC may also recommend that the Council terminate the assistance measure.

Article 8

Entry into force

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

Done at Brussels, 2 February 2023.

For the Council
The President
J. ROSWALL
