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2022/0369 (APP)

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal for an amendment of Regulation (EU, Euratom) 2020/2093¹ is presented together with the proposal for a Regulation establishing an instrument to provide support to Ukraine² and the proposal to amend Regulation (EU, Euratom) 2018/1046³ as regards the establishment of a diversified funding strategy as a general borrowing method.

Following the unprovoked and unjustified Russian invasion of Ukraine, the Union has provided significant support to Ukraine to strengthen its resilience, provide humanitarian assistance, military aid and other support. Ukraine will require continued assistance to sustain the functioning of the State.

The macro-financial assistance (MFA) to Ukraine by the Union so far has been generous and effective, but it has been provided on an ad hoc basis, covering a few months at a time, and required significant provisioning from the Union's budget and national guarantees in each funding round. The experience with the Macro-Financial Assistance (MFA) loans to Ukraine has revealed the constraints to finance the provisioning for new loan programmes under the ceilings of the Multiannual Financial Framework (MFF) 2021-2027. The recourse to Member States' guarantees to complement the budgetary resources presented numerous operational and financial drawbacks. The fragmented approach that had to be applied for the recent MFA loans to Ukraine is in the light of the current situation no longer sustainable. The Union's budget needs to be equipped with a structural solution to ensure continued financial support for Ukraine.

The amendment of Regulation (EU, Euratom) 2020/2093 will extend the budgetary coverage currently applied to the loans to the Member States also to loans to Ukraine available for the years 2023 and 2024, which refers to financial assistance in respect of which a decision authorising the release is adopted in those years. Accordingly, if the Union has to honour repayment obligations from resources of the Union's budget - in the case a beneficiary state (a Member State or Ukraine for financial assistance available for the years 2023 and 2024) fails to provide the due payment on time – the necessary amounts would be mobilised over and above the MFF ceilings up to the limits of the own resources ceiling (from the so called 'headroom').

The related amendment of Regulation (EU, Euratom) 2018/1046 provides that borrowing is organised based on the diversified funding strategy. Thanks to the diversified funding strategy any temporary cash shortages that arise could be met by recourse to the liquidity pool that supports this solution. The combination of the diversified funding strategy and alignment of

¹ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ L 433I, 22.12.2020, p. 11.

² Proposal for a Regulation of the European Parliament and of the Council establishing an instrument to provide support to Ukraine (macro-financial assistance +), COM(2022)597.

³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

the budgetary coverage of loans to Ukraine for financial assistance available for the years 2023 and 2024 to that of Member States in the MFF Regulation therefore ensures a robust, flexible and efficient framework for financial assistance to Ukraine. The two amendments will allow to put in place a structured financing solution for continuing the EU support to Ukraine proposed in the Regulation establishing an instrument to provide support to Ukraine.

The budgetary coverage from the headroom should only apply to new financial assistance to Ukraine, which is available for the years 2023 and 2024 and authorised in accordance with Article 220(1) of the Financial Regulation.

In view of allowing the provision of rapid and efficient support to Ukraine, it is proposed to treat this specific proposal for a targeted amendment of Regulation (EU, Euratom) 2020/2093 as a stand-alone proposal, separate from the proposal of 22 December 2021 (COM(2021)569).

2. LEGAL ELEMENTS OF THE PROPOSAL

- **Legal basis**

Article 312 TFEU constitutes the legal basis for the adoption of the Multiannual Financial Framework.

- **Subsidiarity (for non-exclusive competence)**

The initiative falls under a policy area where the EU has exclusive powers (under Article 312 TFEU). Therefore, the subsidiarity principle does not apply.

- **Proportionality**

The changes are proportionate to the urgent needs to establish an instrument to provide support to Ukraine, which can only be implemented after the budgetary coverage currently applied to the loans to the Member States over and above the MFF ceilings up to the limits of the own resources ceiling is extended to Ukraine for financial assistance available for the years 2023 and 2024.

- **Detailed explanation of the specific provisions of the proposal**

Under the existing provisions of Article 2(3) of Regulation (EU, Euratom) 2020/2093 amounts needed to honour repayment obligations of the Union under borrowing-and-lending operations in case the Union does not receive from the beneficiary Member State the due payment on time (i.e. the mobilisation of a guarantee for financial assistance to Member States) would be mobilised over and above the MFF ceilings. This provision was first introduced in Article 3(2) of Council Regulation 1311/2013⁴ laying down the MFF for the years 2014-2020.

The amount mobilised cannot result in exceeding the limits of the own resources ceiling. The provision extending the budgetary coverage from the headroom to the guarantee for financial assistance to Ukraine is therefore compatible with paragraphs 1 and 3 of Article 312 TFEU, under which the MFF ‘*shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources*’, and ‘*shall lay down any other provisions required for the annual budgetary procedure to run smoothly*’.

⁴ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020, OJ L 347, 20.12.2013, p. 884–891.

3. BUDGETARY IMPLICATIONS

By extending the mobilisation of a guarantee for financial assistance over and above the MFF ceilings to Ukraine for financial assistance available for the years 2023 and 2024 in addition to financial assistance to EU Member States, the proposal will allow a more efficient use of the budgetary resources under the MFF ceilings. The possibility to mobilise the guarantee over and above the MFF ceilings would offer full coverage of the financial assistance to Ukraine available for the years 2023 and 2024, in accordance with the principle of sound financial management. The proposal has no impact on the expenditure of the 2021-2027 MFF.

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 312 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁵,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has been supporting Ukraine following the unprovoked and unjustified aggression of Russia with a series of financial measures. The support has been provided on an *ad hoc* basis for a limited period of time and requires significant provisioning from the Union's budget and national guarantees.
- (2) Ukraine will require continued assistance to sustain the functioning of the State. The Union is expected to contribute together with other international partners to covering these urgent needs. To that end, the Union has adopted a new instrument under Regulation (EU) [XXX] of the European Parliament and of the Council⁶. In accordance with that instrument, a significant part of the envisaged financial assistance is to be provided in the form of loans.
- (3) Amid heightened external instability, it is appropriate to provide for a structured financing solution for the years 2023 and 2024 to ensure continued financial support for Ukraine.
- (4) It is therefore appropriate to allow the Union to provide the needed budgetary resources in a sustainable and sound manner. This should be done by extending the existing mechanism in the form of a Union budget guarantee to cover financial assistance which is available to Ukraine in the years 2023 and 2024. This mechanism should enable a mobilisation of up to 100% of the financial liability amounts needed to honour repayment obligations of the Union under borrowing-and-lending operations in the event that the Union does not receive from the beneficiary country the due payment on time.

⁵ OJ C [...], [...], p. [...].

⁶ OJ [...], [...], p. [...].

- (5) It should be possible to mobilise the needed appropriations in the Union budget over and above the ceilings of the Multiannual Financial Framework for Member States, as well as for financial assistance for Ukraine available for the years 2023 and 2024. This possibility should be without prejudice to the obligation to respect the own resources ceiling laid down in Article 3(1) Council Decision (EU, Euratom) 2020/2053⁷.
- (6) This Regulation should only apply to programmes of financial assistance to Ukraine available for the years 2023 and 2024.
- (7) In view of the urgency entailed by the exceptional circumstances caused by Russia's unprovoked and unjustified war of aggression, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (8) In light of the current situation in Ukraine, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.
- (9) Council Regulation (EU, Euratom) 2020/2093 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

In Article 2(3) of Regulation (EU, Euratom) 2020/2093, the following subparagraph is added:

‘Where it is necessary to mobilise a guarantee for financial assistance to Ukraine which is available for the years 2023 and 2024 and authorised in accordance with Article 220(1) of the Financial Regulation, the necessary amount shall be mobilised over and above the MFF ceilings.’

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*

⁷ Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1)