

Initial Comments on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing the Ukraine Facility

Key recommendations:

- Avoid ‘reinventing the wheel’ and instead build on the best practices of other EU instruments, such as the Recovery and Resilience Facility (RRF)
- Integrate the European Code of Conduct on Partnership, a common set of standards proven to enhance public consultations that have been weakened amid martial law in Ukraine
- Apply an ex-ante rather than ex-post approach to oversight
- Ensure the Ukraine Facility is strategically developed in close consultation with the European Commission and wider public
- Add conditionality on environmental sustainability
- Provide support to enhance decentralisation efforts
- Prioritise the role of the European Parliament in ensuring oversight

Background

On 20 June 2023, the European Commission, as part of its review of the Multiannual Financial Framework (MFF), submitted a draft proposal on establishing the Ukraine Facility, ‘a medium-term single instrument that brings together the bilateral support provided by the Union to Ukraine, ensuring coordination and efficiency’.¹

The Facility is intended to serve as a ‘dedicated financing instrument that will provide coherent, predictable as well as flexible support for the period 2024-2027 to Ukraine, adapted to the unprecedented challenges of supporting a country at

¹ European Commission, [Proposal for a Regulation of the European Parliament and of the Council on Establishing the Ukraine Facility](#), *EUR-Lex*, 12, 20 June 2023.

For more information

Valeriya Izhyk
EU policy officer
CEE Bankwatch Network
Valeriya.izhyk@bankwatch.org

Learn more: bankwatch.org



war'.² According to the proposal, the Facility will ensure 'a consistent approach through a unified instrument, by replacing or, where appropriate, complementing activities under the existing instruments'.³ As such, the Facility is a continuation of the EU's support for Ukraine, aimed at assisting the country on its path towards EU membership through the 'fulfilment of reforms and investments'.⁴

The Facility will provide assistance to Ukraine under three pillars: Pillar I involves financial support in the form of grants and loans in order to implement reforms and investments (to be detailed in the Ukraine Plan) and support the sustainability of the country's finances; Pillar II is dedicated to the Ukraine Investment Framework, intended to mobilise and attract public and private investment in Ukraine's recovery and reconstruction; and Pillar III provides technical assistance and various bilateral support measures typically available to pre-accession countries under the Instrument for Pre-Accession (IPA), potential support for initiatives aimed at responding to the ongoing war, and interest rate subsidies for the cost of loans.

The Facility aims to sustain 'macro-financial stability, promote recovery as well as modernise the country whilst implementing key reforms on its EU accession track' while supporting the country's 'transition towards a green, digital and inclusive economy that is progressively aligned with EU rules and standards'.⁵ The proposal emphasises the importance of 'ensuring that the recovery, reconstruction and modernisation is sustainable, resilient and future-proof, based on the 'do no harm' and 'leave no one behind' principles'.⁶ The Facility also prioritises the alignment of activities and measures with international legislation on environmental protection and human rights.

To receive support under the Facility, as stated in Pillar I, Ukraine is required to submit a Ukraine Plan that sets out the measures and reforms that will guide the recovery, reconstruction and modernisation of the country.

Our priorities

Although the timeline for the adoption of the Ukraine Facility legislation, which aims to 'provide assistance to a country at war as of beginning of 2024',⁷ is quite short, we believe that it must be guided by consultations – both at national and international level – to ensure that it truly reflects the interests of all parties, especially civil society partners.

Furthermore, the EU Partnership Principle needs to be integrated within the regulation to ensure effective planning, implementation and evaluation. The EU's best practices and support tools must be utilised to

² European Commission, '[Ukraine: Commission proposes to set up a dedicated Facility to support Ukraine's recovery, reconstruction and modernisation](#)', *European Commission*, 20 June 2023.

³ European Commission, '[Proposal for a Regulation of the European Parliament and of the Council on Establishing the Ukraine Facility](#)', *EUR-Lex*, 12, 20 June 2023.

⁴ *Ibid*, 12.

⁵ European Commission, '[Ukraine: Commission proposes to set up a dedicated Facility to support Ukraine's recovery, reconstruction and modernisation](#)', *European Commission*, 20 June 2023.

⁶ European Commission, '[Proposal for a Regulation of the European Parliament and of the Council on Establishing the Ukraine Facility](#)', *EUR-Lex*, 4, 20 June 2023.

⁷ *Ibid*, 6.

promote multi-level governance and a bottom-up approach, such as establishing monitoring committees involving the participation of a diverse range of stakeholders, including non-governmental organisations.

The Government of Ukraine should prepare the **Ukraine Plan in close consultation with the Commission**, ensuring a wide and inclusive public participation process. This approach is the only way to craft an ambitious, yet sustainable recovery and modernisation strategy. Early involvement of the EU at this stage will help Ukraine align its plan with the European Green Deal and implement reforms for accession. Adopting an ex ante approach will help to prevent possible inconsistencies in the Plan and decrease opportunities for the misappropriation of funds and other problems on the ground. We believe that implementing ex-post analysis and audit systems to assess the fulfilment of conditionalities is important for safeguarding the financial interests of the Union. However, it is equally important to conduct thorough due diligence on the activities proposed and their potential for achieving their objectives. This will help to reduce risks and increase the capacities of Ukraine's national and local authorities.

The regulation underlying the Facility should establish a foundation for structural consultation and dialogue with Ukrainian and international civil society from the very outset and throughout all stages of the Plan. This includes implementation, monitoring and evaluation in line with the European Code of Conduct. The Commission has already been in close contact with Ukrainian civil society organisations, with the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) establishing informal dialogue in January 2023. The Commission should now strengthen these ties by supporting Ukraine in organising consultations and engaging with social partners, civil society and other relevant stakeholders in the drafting and implementation of the Ukraine Plan.

We believe that the EU should use the Ukraine Facility to further support Ukraine's decentralisation efforts. This can be achieved by clearly delineating competencies and implementing a well-defined mechanism that mandates the participation of regional and local authorities in the Ukraine Plan and other types of cooperation. Adopting this approach will increase the variety of organisations and entities responsible for managing projects, increase implementation capacity and provide a more effective means of preventing corruption.

To realise the Facility's objective of not only 'rebuilding what was destroyed', but also 'building a modern and vibrant Ukraine',⁸ the projects, programmes and initiatives in the Ukraine Plan should adopt the same EU standards that have been applied to the implementation and funding of projects in Member States through other EU funding instruments, such as the cohesion policy funds and the Recovery and Resilience Facility.⁹

All activities supported by the Facility must fully comply with the climate and environmental standards and priorities of the EU. The Ukraine Facility, particularly through Pillar I, can build on the EU's experience in developing the Recovery and Resilience Facility (RRF). Similar to the RRF, the Ukraine Facility must have clear climate earmarking in place, strictly apply the 'do no significant harm' principle and involve all relevant stakeholders in alignment with the EU Partnership Principle. The Facility should also include key

⁸ Ibid, 4.

⁹ Vladlena Martynkevych, Francesca Canali, [Applying best practices from EU funds to the reconstruction of Ukraine](#), CEE Bankwatch Network, 20 December 2022.

milestones and targets to support Ukraine's green transition, such as setting a climate expenditure target of 37 per cent.

As an EU membership candidate and one of the contracting parties to the Energy Community Treaty, Ukraine should develop a national energy and climate plan (NECP) according to the provisions of the Regulation on the Governance of the Energy Union.¹⁰ The NECP should serve as the main document for guiding reconstruction efforts and associated sectoral policies. According to Energy Community requirements, when preparing their NECPs, contracting parties should undertake public consultations, establish multilevel climate and energy dialogue, and cooperate with each other and with the Member States of the European Union. Each country must submit a progress report every 2 years, following the structure, format, technical details and process specified in the Commission Implementing Regulation.¹¹ The Commission is obliged to monitor the EU's progress as a whole by publishing regular state of the energy union reports¹² towards achieving its energy and climate targets.

To follow the best practices of the RRF, the Ukraine Plan should be built on the cornerstones of environmental sustainability, productivity, fairness and macroeconomic stability. Unfortunately, conditionality on environmental sustainability is completely absent from the current proposal.

Environmental reforms are among the most complex, financially demanding and time-consuming to implement. To ensure the success of the Facility, it is essential to include thematic policy objectives in the Regulation that focus on a green, low-carbon transition. This can be achieved through green investments, the circular economy, climate change mitigation and adaptation, risk prevention and management, and sustainable urban mobility. EU funds disbursed via the Facility should support infrastructure projects that comply with the environmental legislation set out in chapter 27 of the EU *acquis*.

The third pillar of the Facility proposes accession assistance and support measures, 'which will support Ukraine's progressive alignment to the Union *acquis* and progressive integration into the Single Market with a view to future Union membership'.¹³ Since there will be no other dedicated pre-accession funding similar to what is available for Western Balkan countries until 2027, the Ukraine Facility should explicitly establish a connection between the Ukraine Plan and the country's progress towards EU accession.

Ukraine is currently flouting the EU's horizontal legislation on the environment, particularly its Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) directives. The recent adoption of legal amendments in Ukraine means that reconstruction work carried out during the

¹⁰ European Parliament, Council of the European Union, [REGULATION \(EU\) 2018/1999 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations \(EC\) No 663/2009 and \(EC\) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and \(EU\) 2015/652 and repealing Regulation \(EU\) No 525/2013 of the European Parliament and of the Council](#), *EUR-Lex*, 21 December 2018

¹¹ European Commission, [COMMISSION IMPLEMENTING REGULATION \(EU\) 2022/2299 of 15 November 2022 laying down rules for the application of Regulation \(EU\) 2018/1999 of the European Parliament and of the Council as regards the structure, format, technical details and process for the integrated national energy and climate progress reports](#), *EUR-Lex*, 25 November 2022.

¹² European Commission, [Energy union](#), *European Commission*, accessed 20 July 2023.

¹³ European Commission, [Proposal for a Regulation of the European Parliament and of the Council on Establishing the Ukraine Facility](#), *EUR-Lex*, 9, 20 June 2023.

reconstruction period under martial law is not subject to EIAs or SEAs. Additionally, these assessments are not applicable to the recovery plans adopted by regions and territorial communities. It is essential that these types of derogations are not applied to the Ukraine Facility or the Ukraine Plan, which must be subject to strategic EIA procedures in order to identify and properly mitigate potential negative environmental and social impacts.

Ukraine will require extensive and sustained external support that no individual Member State, or single donor can provide alone. Therefore, EU involvement in donor coordination is vitally important for improving coordination gains, providing legal certainty, and maximising the effectiveness and complementarity of coordination efforts. Regrettably, however, the proposed Facility lacks a proper coordination mechanism across local, national and international levels. Instead, the focus is solely on coordinating contributions from Member States. Therefore, to ensure effective international donor alignment of standards applied to reconstruction projects, the regulation should include a mechanism outlining how the EU will facilitate coordination among international donors, potentially involving the establishment of a memorandum of understanding between donors.

The European Parliament has an important role to play in overseeing the implementation of the Facility. To ensure that the funds are disbursed effectively and align with thematic targets, the Commission should regularly report to the Parliament at least 3 times a year.

In summary, we welcome the European Commission's proposal for the Ukraine Facility. We hope that the involvement of the European Parliament will ensure that this financial instrument aligns with the sound economic policies and sustainable development goals of the European Green Deal. Oversight by the European Parliament will ensure the implementation of much-needed structural reforms and the efficient, transparent and accountable disbursement of EU funding. This support will be instrumental in facilitating Ukraine's smooth integration into the EU.