



**Macro-financial assistance to Ukraine
of up to EUR 1.2 billion**

MEMORANDUM OF UNDERSTANDING

between

**Ukraine
as Borrower**

and

**The European Union
as Lender**

MEMORANDUM OF UNDERSTANDING BETWEEN UKRAINE AND THE EUROPEAN UNION

1. On 25 May 2020, the European Parliament and the Council of the European Union adopted a decision (Decision (EU) 2020/701) to make available macro-financial assistance to enlargement and neighbourhood countries in the context of the COVID-19 pandemic.¹ The Decision makes available to Ukraine (hereafter referred to as “the Country”) macro-financial assistance (hereafter referred to as “assistance”) of up to EUR 1.2 billion in the form of a loan. The assistance shall be made available for one year starting from the first day after the entry into force of this Memorandum of Understanding (hereafter referred to as “the MoU”).
2. The objective of this assistance is to ease the Country’s external financing constraints, alleviate its balance of payments and budgetary needs, strengthen its foreign exchange reserve position and help the Country address the current external and financial vulnerabilities. This assistance from the European Union is complementary to the resources provided to the Country by international financial institutions and bilateral donors in support of the authorities’ economic stabilisation and reform programme.
3. The assistance shall be disbursed in two instalments of up to EUR 600 million each.
4. The first instalment of the assistance shall be released upon the signature and entry into force of this MoU and the accompanying Loan Facility Agreement and shall be conditional upon a satisfactory track record of implementation of the programme agreed between the Country and the International Monetary Fund (hereafter referred to as “the IMF”).

The release of the second instalment shall not, in principle, take place earlier than three months after the release of the first instalment.

The disbursement of the second instalment of the assistance will be conditional on both a satisfactory track record in the implementation of the programme agreed with the IMF and on a positive assessment by the European Commission (hereafter referred to as “the Commission”) on behalf of the European Union, of progress made with respect to a number of macroeconomic and structural adjustment measures. The policy conditions attached to this assistance are based on the economic stabilisation and reform programme endorsed by the authorities of the Country and are consistent with agreements reached by the Country with the IMF. Accordingly, before the release of each instalment of this assistance, the Commission, in co-operation with the national authorities and IMF staff, will verify that the conditions attached to this assistance have been adequately respected or new understandings reached.

¹ Decision (EU) 2020/701 of the European Parliament and of the Council of 25 May 2020 providing macro-financial assistance to enlargement and neighbourhood partners in the context of the COVID-19 pandemic, OJ L 165, 27.5.2020, p. 31-37.

5. Prior to the release of the second instalment by the Commission, the Country's authorities shall provide the Commission with a Compliance Statement on the fulfilment of the conditionality attached to it. Upon receipt of the compliance statement by the authorities of the Country, the Commission will evaluate, based on consultations with the authorities of the Country and IMF staff, progress made with respect to the fulfilment of the conditionality. In this evaluation, particular attention will be paid to reforms in public finance management, the rule of law and the fight against corruption, the business climate, as well as sector reforms, including to state-owned enterprises. The concrete policy measures and frame of reference for this evaluation are made explicit in Annex I. In case of a negative evaluation, the Commission may withhold the disbursement of the instalments until the Country proves the compliance with the conditionality. If necessary, Annex I may be amended upon mutual agreement, following the completion of the respective approval processes of the European Union and the Country.
6. The Commission will also continuously verify the financing needs of the Country and may reduce, suspend or cancel the assistance in case the financing needs of the Country have decreased fundamentally during the period of disbursement compared to the initial projections.
7. The Commission shall transfer the instalments to a euro account of the State Treasury of Ukraine (hereafter referred to as "the Recipient") at the National Bank of Ukraine (hereafter referred to as "the Agent"). Given the substantial budgetary financing needs faced by the Country, the proceeds of the loan will be used to finance the Country's budget.
8. During the implementation of the assistance, the Country's authorities shall supply the Commission with all information that is relevant for the monitoring of its economic and financial situation and for the assessment of progress in structural reforms. In particular, the authorities will supply to the Commission on a timely basis the relevant information as set out in Annex II.
9. With a view to preventing irregularities and fraud related to the use of the assistance and ensuring the protection of the EU's financial interests, the relevant provisions of the Loan Facility Agreement will apply, notably those regarding regular checks by the Country on the use of European Union assistance, and checks, audits and investigations performed by the Commission, including the European Anti-Fraud Office, the European Court of Auditors and the European Public Prosecutor's Office. Also, the provisions of the Loan Facility Agreement on early repayment will apply in case it has been established that the Country has engaged, in relation to the management of this assistance, in any act of fraud, corruption or any other illegal activity.
10. The Commission, represented by its own agents or its duly mandated experts, shall have the right to carry out operational assessments of the administrative procedures and financial circuits of the Country and of the Agent that relate to the management of European Union macro-financial assistance throughout the duration of this MoU and for five years after the disbursement of the last instalment (*ex-post* period).
11. An independent *ex-post* evaluation of the assistance may be carried out by the Commission or its duly authorised representatives. The authorities of the Country are committed to supplying all necessary information to the Commission, represented by its

own agents or its duly mandated experts, for the duration of this process. The evaluation report will be made available to the authorities of the Country for comments.

12. The authorities will ensure, as appropriate, close co-operation with the European Commission. Confidential information under this Memorandum shall be exchanged in accordance with the Agreement between Ukraine and the European Union on the security procedures for the exchange of classified information of 13 June 2005.
13. This assistance is implemented on the understanding that the authorities of the Country will continue to respect effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and to guarantee the respect for human rights. The Country also undertakes to safeguard central bank independence and to make progress towards implementation of the Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA).
14. Annexes I and II are an integral part of this MoU.
15. All notices in relation with the present MoU shall validly be given if in writing and sent to:

For Ukraine

Ministry of Finance
12/2 Hrushevskyi Street
Kyiv 01008
Ukraine
For the attention of: Minister or Deputy
Ministers and the Department of Debt
Policy

With copy to:
National Bank of Ukraine
9 Instytutska Street
Kyiv 01601
Ukraine
For the attention of: Governor or Deputy
Governors

For the European Union

European Commission
Directorate General for
Economic and Financial Affairs
CHAR 11/248
B-1049 Brussels, Belgium

16. The present MoU shall enter into force following the signature by the Country and the European Union and upon its ratification by the Country's Parliament.
17. The MoU may be amended upon mutual agreement of the parties in form of a written Addendum. The Addendum will be an integral part of this MoU and will enter into force according to the same procedures as the MoU.


Done in Brussels on 23 July 2020 in two originals in the English language.

FOR UKRAINE
as Borrower



Sergii MARCHENKO
Minister of Finance of Ukraine

FOR THE EUROPEAN UNION
as Lender



Valdis DOMBROVSKIS
Executive Vice-President
of the European Commission

FOR THE NATIONAL BANK
OF UKRAINE
as Agent to the Borrower



Kyrylo SHEVCHENKO
Governor



ANNEX I

STRUCTURAL REFORM CRITERIA

At the time of the Commission staff review that will precede the decision on the disbursement of the second instalment, the authorities of the Country are committed to have accomplished the following actions:

Public finance management

1. In order to improve the transparency and efficiency of medical procurement, notably in view of the current medical urgencies related to the COVID-19 outbreak, the Ministry of Health of Ukraine will transfer all centralised procurement of medicines, medical devices and personal protective equipment to the SOE “Medical Procurements of Ukraine” (MPU) with the exception of procurement conducted via specialised international procurement organisations, and establish an independent supervisory board selected in a transparent and competence-based procedure. The Supervisory Board’s responsibilities will include the appointment and dismissal of the head of the MPU. To ensure that the MPU can adequately carry out its activities, the authorities will approve technical regulations concerning the MPU structure, staffing and the procurement process.

2. The authorities will continue the reform of tax and customs administrations by conducting a competitive and competence-based selection procedure to the positions of heads of the State Tax Service of Ukraine and the State Customs Service of Ukraine after the end of the quarantine and by pursuing the implementation of the tax and customs reform plans, notably relative to the enhanced VAT monitoring system based on risk management, developing the concept and methodology of electronic tax audit and launch a public consultation on them, implementing electronic cash registers (“software registrars of settlement operations”) and the use of new IT solutions to speed up customs clearance.

Governance and rule of law

3. The authorities will strengthen the independence, integrity and effective functioning of the judiciary, taking into account the opinions from the Venice Commission, including through legislative amendments, to ensure:

a) the creation of a new High Qualification Commission of Judges of Ukraine through a transparent selection procedure conducted by a Selection Commission with international participation; and

b) the creation of an Ethics Commission with international participation, which would have the mandate to 1) carry out a one-time assessment of the integrity and ethics of members of the High Council of Justice and recommend their dismissal to the electing (appointing) authorities in those cases where the members of the High Council have been found non-complying with the standards, and 2) establish a pool of pre-selected candidates from which the electing (appointing) authorities for members of the High Council of Justice will draw their nominations.

4. The authorities will ensure a merit-based civil service and strengthen the transparency and efficiency of the public administration system, as well as the independent and effective operation of the anti-corruption institutions and of the prosecution, including by:

- a) conducting merit-based competitions as per the European Principles of Public Administration for high-level appointments ("category A"), including for positions temporarily filled during the COVID-19-related quarantine; for management positions in anti-corruption institutions the selection should, in addition, be conducted by a depoliticised selection commission with adequate procedures and selection criteria;
- b) authorising the autonomous NABU/SAPO e-case management system, notably through amendments to the Criminal Procedure Code and certification of the system by the KSZI, and launching its operationalisation, notably by preparing its integration with the register of criminal proceedings and by adopting an inter-agency resolution on the practical use of the system, and
- c) completing the attestation of prosecutors at the regional level and launching the attestation process at the local level in line with the law and the procedures applied during the attestation at the Prosecutor General's Office, ensuring that new prosecutors at all levels, including in managerial positions, are selected in a transparent and politically impartial process that includes a system of credible integrity checks, and dedicating appropriate resources to the defence of court cases related to the attestation.

Improving the business climate

5. In order to ensure that legitimate claims can be effectively recovered, the authorities will:
 - a) expand the mandate of private enforcement officers (PEO) to claims of up to one hundred thousand (100,000) hryvnia against any debtor (including public or publicly owned entities) and to administrative fines and draw up a roadmap towards the full equalisation of their mandate with that of public enforcement officers, notably as concerns PEOs acting on behalf of any client and against any debtor, as well as facilitate access to the profession of PEOs to increase their overall number and review the disciplinary and inspection regime;
 - b) facilitate the blocking of funds on bank accounts by authorising electronic communication between enforcement officers and banks, and
 - c) continue their efforts on asset recovery in state-owned banks using all existing instruments for settling distressed assets, including by pursuing action through the courts and criminal prosecution where appropriate, and continue publishing comprehensive semi-annual reports on asset recovery in state-owned banks.
6. In line with government plans, the Cabinet of Ministers will adopt a decision on the phased dismantling of the existing State Fiscal Service (tax police) and – with a view to full enactment by 1 January 2021 – the Verkhovna Rada of Ukraine will adopt in the first reading a draft law on establishing a new agency to investigate serious economic and financial crimes, ensuring that this agency operates in line with the following key principles: 1) clear definition of the mandate of the agency and clear delineation of its competencies with other law enforcement agencies, in particular the SSU and national police, 2) political and operational independence (including through competitive and merit-based selection of the head), and 3) analytical strength and risk-based approach.

Sector reforms and state-owned enterprises

7. The Cabinet of Ministers will review and enforce the corporate governance legal framework for state-owned enterprises in line with the OECD guidelines. This will include the selection and remuneration of independent Supervisory Board members and senior management, as well as state ownership policies for the 10 largest SOEs.

8. To improve the functioning of the gas market in Ukraine, the authorities will:

a) terminate the public service obligation on gas supply for the needs of households as outlined in the Resolution of the Cabinet of Ministers No. 303 of 24 April 2020 and enable all consumers to freely choose and easily switch supplier without fees and without restrictions for access to relevant data or infrastructure, and

b) enact and effectively enforce cost-reflective grid tariffs in line with EU Directives and grid code rules applicable under the Association Agreement and with the Gas Transmission System Operator certification decision.

ANNEX II

MONITORING SYSTEM

1. Monitoring of macro-economic and financial developments and policies

During the implementation of the European Union macro-financial assistance, the following indicators and reports shall be published or provided to the Commission by the relevant authorities of the Country, on a quarterly basis.

a) Information submitted by the Ministry of Finance:

- GDP or national income (quarterly)
- Main components of GDP (quarterly)
- Employment and unemployment rates (quarterly)
- Level and composition of general and central government revenue and expenditure as well as government payment arrears (quarterly)
- Fiscal balance of the central government (quarterly)
- Fiscal balance of the general government (annual)
- External public debt stock and (interest and principal) payments (quarterly)
- Domestic public debt stock and (interest and principal) payments (quarterly)
- Scheduled quarterly payments (interest and principal) of domestic and external public debt for the years 2020-2022 (quarterly)
- Consumer and producer prices (monthly)
- Interest rates on benchmark government bonds at liquid maturities (monthly)

b) Information submitted by the National Bank of Ukraine

- Interbank interest rates at benchmark maturities (monthly)
- Banks' overall lending rate (monthly)
- Balance-of-payments and main components (quarterly)
- International reserve position (monthly)
- Nominal bilateral exchange rates against the euro and the USD (monthly)

2. Monitoring of structural policies

During the implementation of the European Union macro-financial assistance, data and/or information relating to the implementation of policy measures specified in Annex I shall be provided to the Commission by the relevant authorities of the Country, on request from the Commission, notably:

- number and value of medical procurement, monthly (condition 1);
- the overall number of licenced private enforcement officers and the new amounts claimed for recovery, with a breakdown between private and public entities, monthly (condition 5);
- the composition of the Supervisory Boards of the 10 largest SOEs, with an indication of average remuneration, including variable components, quarterly (condition 7); and
- number of consumers who switch gas supplier and average fees and time for switching between gas suppliers, broken down by households and companies, quarterly (condition 8).