

**EXCEPTIONAL MACRO-FINANCIAL ASSISTANCE FOR
UKRAINE**

LOAN FACILITY AGREEMENT

Between

**UKRAINE
as Borrower**

and

**THE NATIONAL BANK OF UKRAINE
as Agent to the Borrower**

AND

**THE EUROPEAN UNION
as Lender**

2022

This Loan Facility Agreement is made by and between

Ukraine, represented by the Minister of Finance,

as the Borrower,

and

the **National Bank of Ukraine**, acting as an agent to the Borrower, represented by the Governor of the National Bank of Ukraine,

and

the **European Union**, represented by the European Commission,

as the Lender,

herein jointly referred to as the “Parties” and each of them a “Party”.

PREAMBLE

Whereas:

- (1) The European Parliament and the Council, by Decision (EU) 2022/1628 of 20 September 2022 decided to provide exceptional macro-financial assistance to Ukraine of a maximum amount of EUR 5 billion in the form of a loan;¹
- (2) The requirements to be complied with if Ukraine is to be entitled to the benefit of the Facility are laid down in the Memorandum of Understanding signed between the European Union and Ukraine on or about the date of this agreement and in subsequent (Supplemental) Memoranda of Understanding, if any;
- (3) Provisions of 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 966/2012² (**‘Financial Regulation’**) relating to the implementation of financial assistance by the Lender shall apply to the Loan under this Agreement;
- (4) The Commission will launch in due course, on behalf of the EU and after receiving the written request by the Borrower defining the main terms of an Instalment as set out hereinafter, bond issues or any other appropriate financial

¹ Decision (EU) 2022/1628 of the European Parliament and of the Council of 20 September 2022 providing exceptional macro-financial assistance to Ukraine, reinforcing the common provisioning fund by guarantees by Member States and by specific provisioning for some financial liabilities related to Ukraine guaranteed under Decision No 466/2014/EU, and amending Decision (EU) 2022/1201, OJ L245/1, 22.9.2022, p. 1-13.

² OJ L 193, 30.7.2018, p. 1–222.

transactions for the funding, the proceeds of which will be on-lent to the Borrower;

- (5) The Lender may, upon request by the Borrower, grant an interest rate subsidy and a waiver of administrative costs related to the borrowing and lending, with the exception, inter alia, of default interests and of costs related to early reimbursement of the Loan;
- (6) Financial assistance under this Agreement is given in conjunction with, and strictly related to, the bond issues or any other appropriate financial transactions (also the "**Borrowing Contracts**");
- (7) The loan instalment or tranche thereof will in principle be funded by the European Commission on the capital market. Nevertheless, taking into consideration the urgent funding needs of the Borrower, the Lender may also consider funding an Instalment using short term financing, including credit lines that are available to the Lender, in conjunction with bond issuance at maturities matching those of the loan. The Commission may also refinance all or part of its initial borrowing using short or long term financing;
- (8) Appropriate measures related to the prevention of, and the fight against fraud, corruption and other irregularities affecting the Loan shall be provided for by the authorities of the Borrower.

Now, therefore, the Parties hereto have agreed as follows:

1. **DEFINITIONS**

In this Agreement (including its recitals) the following terms have the following meaning:

- (1) "**Agreement**" means this Loan Facility Agreement.
- (2) "**Availability Period**" means the period of 12 months commencing on the first day following the entry into force of the MoU.
- (3) "**Borrower**" means Ukraine.
- (4) "**Borrowing Contract**" means an arrangement (bond issues or any other appropriate short term financial transactions) the Lender enters into to finance an Instalment. The terms of the Instalment shall be the same as those determined in the corresponding Borrowing Contract, provided such terms are consistent with those set out in the relevant Request for Funds.
- (5) "**Business Day**" means a day on which the TARGET2 payment system is open for business.
- (6) "**Commission**" means the European Commission.
- (7) "**Confirmation Notice**" means the Lender's written notice to the Borrower in the form of Annex 2 setting out the final terms of the Instalment or, as the case may be, a tranche of the Instalment.

- (8) **"Decision"** means Decision (EU) 2022/1628 of the European Parliament and of the Council of 20 September 2022 providing exceptional macro-financial assistance to Ukraine, reinforcing the common provisioning fund by guarantees by Member States and by specific provisioning for some financial liabilities related to Ukraine guaranteed under Decision No 466/2014/EU, and amending Decision (EU) 2022/1201.
- (9) **"Disbursement Date"** means, in relation to the Instalment or, as the case may be, to each tranche of the Instalment, the date of transfer of the Net Disbursement Amount to the Borrower's account with the National Bank of Ukraine.
- (10) **"Due Date"** means any day on which a payment by the Borrower to the Lender is due under this Agreement.
- (11) **"Event of Default"** means an event defined in Clause 9(1).
- (12) **"EU"** means the European Union.
- (13) **"External Indebtedness"** means all indebtedness of the Borrower (i) which is denominated or payable in a currency other than the lawful currency of the Borrower and (ii) which was not originally incurred or assumed under an agreement or instrument made with or issued to creditors substantially all of whom are residents of Ukraine or entities having their head office or principal place of business within the territory of Ukraine.
- (14) **"Facility"** means the sum of the tranches of the Instalments which the Lender makes available to the Borrower in an aggregate principal amount of up to EUR 5 billion under this Agreement.
- (15) **"Financial Transaction"** means a bond issue or any other appropriate financial transaction for the funding of the amount of the Instalment or of each tranche of the Instalment.
- (16) **"IMF"** means the International Monetary Fund.
- (17) **"IMF Arrangement"** means any agreement, programme, facility or other financial arrangement between the Borrower and the IMF.
- (18) **"Instalment"** means a part of the Loan pursuant to Clause 2(2).
- (19) **"Interest Period"** means, in relation to any tranche of the Instalment, the first Interest Period and each consecutive twelve-month period thereafter until Maturity Date.
- (20) **"Interest Rate"** means the per annum interest rate which applies to the Instalment during an Interest Period.
- (21) **"Interest Rate Subsidy"** means the interest rate subsidy that the European Union may grant in accordance with Clause 6 of this Agreement.

- (22) **"Legal Opinion"** means the legal opinion issued by the Ministry of Justice of the Borrower in the form set out in Annex 4.
- (23) **"Lender"** means the European Union.
- (24) **"Loan"** means collectively all disbursements made or to be made to the Borrower under the Agreement.
- (25) **"Maturity Date"** means the scheduled date for full repayment of principal of the Instalment or a tranche of the Instalment as defined in a Confirmation Notice.
- (26) **"MoU"** means the Memorandum of Understanding signed on or about the date of this Agreement between the European Union and Ukraine and any subsequent (Supplemental) Memoranda of Understanding or any Addendum to those.
- (27) **"Net Disbursement Amount"** means the proceeds of the Financial Transaction less the aggregate amount of (i) any commissions, fees and costs related to such Financial Transaction and its preparation and execution, as referred to in Clause 6(4), in relation to the Instalment or a tranche of the Instalment, and (ii) any amount resulting from the refinancing of a previously disbursed Instalment or tranche thereof, resulting in an amount to be disbursed to the Borrower.
- (28) **"Request for Funds"** means the Borrower's request for funds in the form of Annex 1, irrevocably accepting the terms thereby indicated pursuant to Clause 4(2).
- (29) **"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

2. THE LOAN FACILITY

- (1) The Lender makes available to the Borrower a loan facility in euro in an aggregate principal amount of up to EUR 5 billion, subject to the terms and conditions of the Decision, the MoU and of this Agreement.
- (2) The Facility shall be made available in two or more Instalments. The Instalments shall be disbursed in one or more tranches, according to the choice of the Lender.
- (3) The Borrower shall use all amounts borrowed by it under the Facility in conformity with its obligations under the MoU and this Agreement.
- (4) The National Bank of Ukraine shall act as the Borrower's financial agent and shall not be liable for any financial obligations of the Borrower under this Agreement.
- (5) The Loan shall be denominated solely in euro, which shall be the currency of account and payment.

3. MATURITY

The average maturity of the Loan shall not exceed 25 years.

4. DRAWDOWN, CONDITIONS PRECEDENT AND DISBURSEMENT

- (1) No disbursement shall be made prior to the entry into force of this Agreement. Subject to the terms and conditions of this Agreement and of the MoU, the Borrower may, after consultation with the Lender, request the disbursement of the Instalment of the Loan by delivery to the Lender of a duly completed Request for Funds. The Borrower is irrevocably bound by the terms of the Request for Funds, except if the Lender has served a notice indicating that the European Union is not able to conclude the Financial Transaction at the terms indicated in the respective Request for Funds.
- (2) A Request for Funds will not be regarded as having been duly completed unless it specifies the information set out in Annex 1.
- (3) Following submission of a Request for Funds by the Borrower, the Lender's obligation to pay the Net Disbursement Amount in respect of the Instalment or tranche thereof to the Borrower under this Agreement shall be subject to:
 - (a) no event having occurred that would render incorrect any statement made in the Legal Opinion issued by the Ministry of Justice of the Borrower in the form set out in Annex 4;
 - (b) the Lender having received from the Minister of Finance of the Borrower an official document indicating the persons authorised to sign the Requests for Funds (and thus validly commit the Borrower) and containing the specimen signatures of these persons;

- (c) the Lender having received from the Minister of Finance, prior to the Instalment or first tranche thereof, an official document identifying: (i) the euro account of the National Bank of Ukraine to which the Lender shall transfer the Net Disbursement Amount of the Instalment or a tranche thereof on the Disbursement Date, and (ii) the account of the State Treasury Service held at the National Bank of Ukraine to which the Borrower will transfer the Net Disbursement Amount;
 - (d) the Lender having adopted a release decision regarding the Instalment;
 - (e) confirming compliance by the Borrower with the terms of the MoU;
 - (f) the Lender having adopted a Commission borrowing decision;
 - (g) the Lender on the one hand, and a bank or a syndicate of banks on the other hand, having signed Borrowing Contracts and having received on the Disbursement Date the net proceeds of the Financial Transaction from the bank or the syndicate of banks;
 - (h) no material adverse change having occurred since the date of this Agreement such as would, in the opinion of the Lender, after consultation with the Borrower, be likely to prejudice materially the ability of the Borrower to fulfil its payment obligations under this Agreement, *i.e.* to service the Instalment or any tranche thereof to be funded and to repay them; and
 - (h) no Event of Default having occurred which has not been cured to the satisfaction of the Lender.
- (4) Subject to the above conditions, the Lender shall, at its discretion, launch a bond issue or any other appropriate Financial Transaction for the funding of the amount of the Instalment or any tranche thereof.
- (5) Once the Financial Transaction is concluded, the Lender shall issue to the Borrower a Confirmation Notice setting out the final financial terms of the Instalment or tranche thereof. The Borrower shall be deemed to have accepted in advance the terms of the Instalment or tranche thereof set out in the Confirmation Notice, provided that such terms are consistent with the terms set out by the Borrower in the applicable Request for Funds. For the avoidance of doubt, the Lender is under no obligation to consider favourably any request from the Borrower at any time to modify any of the financial terms of the Instalment or tranche thereof.
- (6) The Lender shall transfer the Net Disbursement Amount of the Instalment or tranche thereof on the Disbursement Date to the euro account of the National Bank of Ukraine as notified according to Clause 4(3)(c).
- (7) The disbursement of a tranche of the Instalment shall under no circumstances commit any of the Parties to proceed with the lending and borrowing of any further tranches of the Instalment.

- (8) The Borrower's right to receive the Instalment or tranches thereof under this Agreement expires at the end of the Availability Period, following which any undisbursed amount of the Facility shall be considered as immediately cancelled, except for any tranches of the Instalment for which the Commission has adopted a release decision and a borrowing decision prior to that date and for which disbursement subsequently takes place.

5. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

(1) Representations

By signing this Agreement, the Borrower represents and warrants to the Lender that on the date of this Agreement and on each Disbursement Date:

- (a) the Instalment or any tranche thereof shall constitute an unsecured, direct, unconditional, unsubordinated and general obligation of the Borrower and will rank at least *pari passu* with all other present and future unsecured and unsubordinated loans and obligations of the Borrower arising from its present or future External Indebtedness, provided however that the Borrower shall have no obligation to effect equal or rateable payment(s) at any time with respect to any such other External Indebtedness and, in particular, shall have no obligation to pay other External Indebtedness at the same time or as a condition of paying sums due on the Loan and vice versa; and
- (b) the Legal Opinion of the Ministry of Justice provided in accordance with Annex 4 is accurate and correct.

(2) Undertakings

The Borrower undertakes, until such time as all principal under this Agreement has been fully reimbursed and all interest and additional amounts, if any, due under this Agreement have been fully paid:

- (a) to utilise the Net Disbursement Amount of each tranche of the Instalment consistently with the Decision and in accordance with the MoU, applicable at the time of issuing the Request for Funds for the Instalment;
- (b) to obtain and maintain in full force and effect all authorisations necessary for it to comply with its obligations under this Agreement;
- (c) to comply in all respects with applicable laws which might affect its ability to perform this Agreement;
- (d) to pay any fees, costs and expenses, including if applicable breakage costs and cost of carry, resulting from any Financial Transaction that the Lender may have undertaken under this Agreement following receipt of a Request for Funds, regardless of whether the disbursement of the Instalment or tranches thereof will ultimately take place;

- (e) in relation to External Indebtedness to recognise that the Lender shall have the identical legal capacity, immunities and privileges as accorded to international financial institutions;
- (f) to ensure that the checks and measures referred to under Clause 11(5) of this Agreement are in place;
- (g) with the exception of those encumbrances enumerated in Subparagraphs (1) to (7) below:
 - (i) not to secure by mortgage, pledge or any other encumbrance upon its own assets or revenues any present or future External Indebtedness and any guarantee or indemnity given in respect thereof, unless the Loan at the same time shares *pari passu* and *pro rata* in such security; and
 - (ii) not to grant to any other creditor or holder of its sovereign debt any priority over the Lender.

The grant of the following encumbrances shall not constitute a breach of this Clause:

- (1) encumbrances upon any property incurred to secure financing for the purchase price or construction of such property and any renewal or extension of any such encumbrance which is limited to the original property covered thereby and which secures any renewal or extension of the original secured financing; and
- (2) encumbrances on commercial goods arising in the course of ordinary commercial transactions (and expiring at the latest within one year thereafter) to finance the import or export of such goods into or from the country of the Borrower; and
- (3) encumbrances securing or providing for the payment of External Indebtedness incurred exclusively in order to provide financing for a specific investment project, provided that the properties to which any such encumbrances apply are properties which are the subject of such project financing, or which are revenues or claims which arise from the project; and
- (4) any other encumbrances in existence on the date of the signing of this Agreement, provided that such encumbrances remain confined to the properties presently affected thereby and properties which become affected by such encumbrances under contracts in effect on the date of the signing of this Agreement (including, for the avoidance of doubt, the crystallization of any floating charge which had been entered into at the date of this Agreement), and provided further that such encumbrances secure or provide for the payment of only those obligations so secured or provided for on the date hereof or any refinancing of such obligations; and

- (5) all other statutory encumbrances and privileges which operate solely by virtue of law and which cannot be reasonably avoided by the Borrower and any encumbrance arising by order of any court in respect of Ukraine's USD 3 billion 5% Notes due 2015 (the "2015 Notes"); and
- (6) any encumbrance securing the Borrower's obligations with any central securities depository such as *Euroclear* given in the normal course of the business; and
- (7) any encumbrance securing an indebtedness of less than EUR 3 million, provided that the maximum aggregate amount of indebtedness secured by such encumbrances does not exceed EUR 50 million.

As used in this Clause, "financing for a specific investment project" means any financing of the acquisition, construction, or development of any properties in connection with a project if the providing entity for such financing expressly agrees to look to the properties financed and the revenues to be generated by the operation of, or loss or damage to, such properties as the principal source of repayment for the moneys advanced.

6. INTEREST, COSTS AND EXPENSES

- (1) In respect of each outstanding Instalment or any tranche thereof the Borrower shall transfer to the account referred to in Clause 8(3) on each Due Date the amount of interest which by the end of an Interest Period will have accrued on the principal amount outstanding of that Instalment or any tranche thereof, and such amount shall be applied to discharge the interest due under such Instalment or any tranche thereof in respect of such Interest Period on the Due Date. The Interest Rate and the Due Dates will be, for each Instalment or for any tranche thereof, communicated to the Borrower in the Confirmation Notice for that Instalment or for any tranche thereof.
- (2) The Interest Rate, the Interest Periods and the Due Dates for payment of interest shall be the same as those determined in the corresponding Borrowing Contracts.
- (3) Without prejudice to the terms of Clause 9 of this Agreement, if the Borrower fails to pay any sum payable under this Agreement on its Due Date, the Borrower shall pay in addition default interest on such sum (or, as the case may be, the amount thereof for the time being due and unpaid) to the Lender from the Due Date to the date of actual payment in full, calculated by reference to successive interest periods (each of such length as the Lender may from time to time select, the first period beginning on the relevant Due Date and, wherever possible, the length of such period shall be that of one week) on such overdue sum at the higher of:
 - (a) a rate per annum being the aggregate of:

- (i) 200 basis points, and
- (ii) the EURIBOR rate for the relevant period selected by the Lender,

or

- (b) 200 basis points over the Interest Rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the Instalment or tranche thereof.

So long as the failure to pay continues, such rate shall be re-fixed in accordance with the provisions of this Clause 6(3) on the last day of each such interest period and unpaid interest under this Clause concerning previous interest periods shall be added to the amount of interest due at the end of each such interest period. The default interest is immediately due and payable.

- (4) The Borrower undertakes to pay all properly documented costs and expenses incurred and payable by the Lender in relation to the Financial Transaction and the preparation and implementation of the Borrowing Contracts and any other costs and expenses incurred and payable by the Lender in relation to such Borrowing Contracts and any related costs and expenses during the life of the Borrowing Contracts. These costs and expenses to be borne by the Borrower may include, *inter alia*, legal costs (such as the costs incurred for legal opinions), rating costs and commissions related to the financial service of the Borrowing Contracts, taxes, registration fees and publication costs and shall be deducted from the proceeds of the Financial Transaction(s).
- (5) The Borrower undertakes to pay to the Lender all additional interest and all costs and expenses, including legal fees, incurred and payable by the Lender as a result of a breach of any obligation under this Agreement by the Borrower. For the avoidance of doubt, a payment by the Borrower on any date different from the Due Date will be construed as in breach of repayment obligations under this Agreement.
- (6) If the Lender due to prevailing market conditions at the time of launching a bond issue or any other Financial Transaction is not able to obtain a funding at or below the maximum Interest Rate referred to in the relevant Request for Funds, then the Lender is under no obligation to make the Net Disbursement Amount of the Instalment or tranche thereof available to the Borrower. However, upon request from the Borrower, the Lender may after consultation with the Borrower propose a revised Interest Rate in the light of the then prevailing market conditions, in which case the Borrower may submit an amended Request for Funds reflecting such revised Interest Rate.
- (7) Upon request by the Borrower by the end of March of each year, the Lender may grant the Interest Rate Subsidy and administrative costs related to the borrowing and lending, with the exception of costs related to early reimbursement of the Loan and interests due under Clause 6(3) and 6(5) of this Agreement.

The Lender shall notify the Borrower whether the grant has been awarded or rejected and, if awarded, the amount of the grant. The award of the Interest Rate Subsidy and the waiver of administrative costs discharges the obligations of the

Borrower under Clauses 6(1) and 6(4) in respect of the amount awarded for the given year.

There shall be no right, legal claim or legitimate expectations of the Borrower to receive Interest Rate Subsidy and the waiver of administrative costs by the Lender. In any case, the grant shall be subject to the availability of budgetary resources by the Lender.

7. REPAYMENT, EARLY REPAYMENT AND CANCELLATION

- (1) The Borrower shall repay the principal amount of the Instalment or tranche thereof on the date(s) and under the conditions determined in the corresponding Borrowing Contracts and as notified to it by the Lender based on the relevant Confirmation Notice.

The Borrower shall transfer the amount of principal due to the account referred to in Clause 8(3) on the Due Date.

Any amount of principal which is transferred for the purpose of a repayment to the account referred to in Clause 8(3) by the Borrower cannot be re-borrowed.

- (2) The terms and conditions of the Financial Transaction shall not include an early repayment clause.
- (3) The Lender may suspend or cancel the undrawn Instalment of the Facility or tranches of the Instalment if:
 - (a) the Borrower declares its intention not to draw any more under the Facility; or
 - (b) the financing needs of the Borrower decrease fundamentally compared to the initial projections;
 - (c) the Borrower does not comply with the terms of the MoU, the Decision, or the Agreement.

8. PAYMENTS

- (1) All payments to be made by the Borrower shall be paid without set-off or counterclaim, free and clear of, and without deduction for and on account of, any Taxes, commissions and any other charges for the entire term of this Agreement.
- (2) The Borrower declares that all payments and transfers under this Agreement, as well as the Agreement itself, are not subject to any Tax or any other impost in the country of the Borrower and shall not be so subject for the entire term of this Agreement. If nevertheless the Borrower or the National Bank of Ukraine is required by law to make any such deductions, the Borrower shall pay the requisite additional amounts so that the Lender receives in full the amounts specified by this Agreement.

- (3) All payments by the Borrower shall be made in euro on the Due Date before 11:00 a.m. Luxembourg time to the euro-account of the Lender with *Banque et Caisse d'Epargne de l'Etat Luxembourg*; BIC BCEELULL, account IBAN LU90 0019 3455 9164 5000, ref. "EU macro financial assistance for Ukraine" or to such other account as the Lender may communicate by written notice prior to the relevant Due Date.
- (4) If the Borrower pays an amount in relation to any of the Instalment or to any tranche thereof which is less than the total amount due and payable under this Agreement, the Borrower hereby waives any rights it may have to make any appropriation of the amount so paid as to the amounts due.

The amount so paid in respect of the Instalment or of any tranche thereof shall be applied in or towards satisfaction of payments due under such Instalment or any tranche thereof in the following sequence:

- (a) *first* against any fees, expenses and indemnities;
- (b) *second* against any interest for late payments as determined under Clause 6(3);
- (c) *third* against interest; and
- (d) *fourth* against principal,

provided that these amounts are due or overdue for payment on that date.

- (5) Any calculation and determination by the Lender under this Agreement:
 - (a) shall be made in a commercially reasonable manner; and
 - (b) shall, absent manifest error, be binding on the Lender and the Borrower.
- (6) Business Day Convention as communicated in the Confirmation Notice shall apply.

9. EVENTS OF DEFAULT

- (1) The Lender may by written notice to the Borrower cancel the Facility and/or declare the outstanding principal amount of the Loan to be immediately due and payable, together with accrued interest, if:
 - (a) the Borrower fails or shall fail to pay any amount of principal or interest in respect of any Instalment or of any tranche thereof or any other amounts due under this Agreement on its Due Date, whether in whole or in part, in the manner as agreed in this Agreement;
 - (b) the Borrower defaults or shall default in the performance of any obligation under this Agreement other than that referred to in Clause 9(1)(a) (including the obligation set out in Clause 2(3) to use the Loan in accordance with the terms of the MoU and this Agreement, but

excluding any other obligations under the MoU and this Agreement), and such default shall continue for a period of one month after written notice thereof shall have been given to the Borrower by the Lender; or

- (c) the Lender sends the Borrower a declaration of default in circumstances where the Borrower's obligations under this Agreement are declared by a court of competent jurisdiction not to be binding on or enforceable against the Borrower or are declared by a court of competent jurisdiction to be illegal; or
 - (d) the Lender sends the Borrower a declaration of default in circumstances where (i) it has been established that in relation to this Agreement, or the MoU, the Borrower has engaged in any act of fraud or corruption, or any other illegal activity detrimental to the financial interests of the Lender or (ii) any representation or warranty made by the Borrower under this Agreement or the MoU is inaccurate, untrue or misleading and which in the opinion of the Lender could have a negative impact on the capacity of the Borrower to fulfil its obligations under this Agreement or on the rights of the Lender under it; or
 - (e) any loan agreement between the Borrower and the Lender or any EU institution or body, regardless of the amount, is subject of a declaration of default or there is a default on any payment obligation of any kind towards the Lender or any EU institution or body by the Borrower which gives rise to a declaration of default; or
 - (f) the Borrower fails or shall fail to pay any amount of guarantee call under any guarantee by which the Borrower guarantees to the Lender the fulfilment of payment obligations of another party towards the Lender; or
 - (g) External Indebtedness of the Borrower (other than the 2015 Notes) having an aggregate principal amount in excess of EUR 50 million is the subject of a declaration of default as defined in any instrument governing or evidencing such indebtedness and as a result of such a declaration of default there is an acceleration of such indebtedness or a *de facto* moratorium on payments; or
 - (h) the Borrower does not make timely repurchases from the IMF in relation to the IMF Arrangement and is subject of a declaration of default; or
 - (i) the Borrower does not pay a substantial portion of its External Indebtedness as it falls due or declares or imposes a moratorium on the payment of its External Indebtedness or of External Indebtedness assumed or guaranteed by it, in each case other than the 2015 Notes.
- (2) The Lender may, but is not obliged to, exercise its rights under this Clause and may also exercise them only in part without prejudice to the future exercise of such rights. No waiver is to be implied from any delay in exercise of any such rights.

- (3) The Borrower shall reimburse all costs, expenses and fees payable by the Lender as a consequence of an early reimbursement of any tranche of the Instalment under this Clause, including interest until the original maturity date. In addition, the Borrower shall pay default interest, as provided for in Clause 6(3) above, which shall accrue as from the date when the outstanding principal amount of the Loan has been declared immediately due and payable, until the date of actual payment in full.

10. INFORMATION UNDERTAKINGS

- (1) With effect from the submission of the first Request for Funds, the Borrower shall promptly supply to the Lender:
 - (a) any information regarding its fiscal and economic condition, as the Lender may reasonably request in line with the MoU;
 - (b) any information pertaining to any event which could reasonably be expected to cause an Event of Default to occur (and the steps, if any, being taken to remedy it) including any relevant information for the assessment of any acts or activity under Clause 9(1)(d)(i) of this Agreement;
- (2) The Borrower undertakes to inform the Lender promptly if any event occurs that would render incorrect any statement made in the Borrower's Legal Opinion as set out in Annex 4.
- (3) The Borrower undertakes to inform the Lender within one month from each Disbursement Date, based on the declaration set out in Annex 3, of the transfer of the Instalment or tranches thereof to the account of the State Treasury Service and of the related entries in the public accounts.

The Lender shall be entitled to withhold the release of any tranche of the Instalment in case the Borrower has not made the declaration of Annex 3 with regard to the previous tranche of the Instalment.

11. UNDERTAKINGS RELATING TO INSPECTIONS, FRAUD PREVENTION AND AUDITS

- (1) During the implementation of the Union's macro-financial assistance, the Commission shall have the right to monitor the soundness of the Borrower's financial arrangements, the administrative procedures, and the internal and external control mechanisms which are relevant to the assistance.
- (2) In conformity with the Financial Regulation, the Lender, including the European Anti-Fraud Office, and the European Court of Auditors shall have the rights and access required to exert their respective competences, including the right to send their own agents or duly authorised representatives to carry out any technical or financial controls, investigations including on-the-spot checks and inspections (including digital forensic operations and interviews) and audits (including document audits and on-the-spot audits) that they consider necessary in relation

to the management of this Loan in order to protect the Lender's financial interests.

- (3) The Borrower shall supply relevant information and documents which may be requested for the purpose of such assessments, investigations, controls or audits, and take all suitable measures to facilitate the work of persons instructed to carry them out, including granting the persons referred to in Paragraph 2 access to sites and premises where the relevant information and documents are kept.
- (4) The Borrower shall regularly check that financing provided by the Lender has been properly used and shall ensure investigation and satisfactory treatment of any suspected and actual cases of fraud, corruption or any other illegal activity in relation to the management of the Loan, detrimental to the EU's financial interests. All such cases as well as measures related thereto taken by national competent authorities, including legal actions to recover any funds provided under this Agreement, shall be reported to the Lender without delay.
- (5) The Borrower shall regularly check that amounts borrowed under the Facility are used in accordance with the Decision, the MoU, and this Agreement, and shall ensure that appropriate measures to prevent irregularities and fraud are in place. In case of irregular or improper use of the amounts borrowed under the Facility, the Borrower shall take legal actions to recover such amounts.

12. NOTICES

- (1) All notices in relation to this Agreement shall be validly given if in writing and sent to the addressees listed in Annex 5. Each Party will update addressees and notify it to the other Party hereto upon the same being amended from time to time.
- (2) Notices become effective on the date of receipt of the e-mail or letter by which they are delivered.
- (3) All documents, information and materials to be furnished under this Agreement shall be in the English language.
- (4) Each Party to this Agreement will notify to the other, as appropriate, the list and specimen signatures of the persons authorised to act on its behalf under this Agreement, promptly upon its signature of this Agreement. Likewise, each Party will update such list and notify the other Party hereto upon the same being amended from time to time.

13. MISCELLANEOUS

- (1) If any one or more of the provisions contained in this Agreement should be or become fully or in part invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or

impaired thereby. Provisions which are fully or in part invalid, illegal or unenforceable shall be interpreted and thus implemented according to the spirit and purpose of this Agreement. The provisions of this Clause are without prejudice to Clause 9(1)(C) of this Agreement.

- (2) The Preamble and the Annexes to this Agreement do and shall hereafter form an integral part of this Agreement. This Agreement incorporates by reference the terms of the MoU.
- (3) The Lender may in its full discretion resort to Financial Transactions that fund also instalments or tranches under other loan agreements. Should this be the case, the financial terms of such Borrowing Contracts apply to the Borrower only *pro rata* to its tranches of the Instalment.
- (4) The purpose of this Agreement is to set up the conditions under which the Lender makes available to the Borrower the proceeds of the corresponding Financial Transactions arranged by the Lender to this effect. As a consequence, the Borrower and the Lender accept that their rights and obligations, unless otherwise stated in this Agreement, are defined and interpreted by reference to the corresponding borrowing documentation. In particular, the terms of the Borrowing Contracts shall be applicable to the Agreement. However, if there is any conflict between the terms of this Agreement and any Borrowing Contract, the terms of this Agreement shall prevail.
- (5) The Borrower shall not have any right to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender.

14. GOVERNING LAW AND JURISDICTION

- (1) This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and shall be construed in accordance with European Union law, supplemented where necessary by Luxembourgish law. The Borrowing Contracts will be governed by Luxembourgish law.
- (2) The Parties undertake to submit any dispute which may arise relating to the legality, validity, interpretation or performance of this Agreement to the exclusive jurisdiction of the Court of Justice of the European Union in accordance with Article 272 of the Treaty on the functioning of the European Union.
- (3) Judgements of the Court of Justice of the European Union shall be fully binding on and enforceable by the Parties.
- (4) The Lender may enforce any judgement obtained from the Court of Justice of the European Union, or other rights against the Borrower in the courts of the country of the Borrower in accordance with the procedures for enforcement of international arbitration courts as set forth by the Ukrainian legislation.
- (5) The Borrower hereby irrevocably and unconditionally waives all immunity to which it is or may become entitled, in respect of itself or its assets, from legal

proceedings in relation to this Agreement, including, without limitation, immunity from suit, judgement or other order, from attachment, arrest or injunction prior to judgement, and from execution and enforcement against its assets, to the extent not prohibited by mandatory law.

- (6) The Lender acknowledges that the Borrower considers this Agreement to be an "International Treaty" in the sense of Article 2 of the Law of Ukraine "On International Treaties of Ukraine".

15. ENTRY INTO FORCE

- (1) Following its signature by all Parties, this Agreement shall enter into force on the date on which the Lender has received the official notification in the form of the legal opinion (Annex 4 to this Agreement) by the Borrower that all constitutional and legal requirements for the entry into force of this Agreement and the valid and irrevocable commitment of the Borrower to all obligations under this Agreement have been fulfilled.
- (2) The entry into force shall not be later than 6 months after signature of the Agreement. If the Agreement has not entered into force by that date, the Parties to the Agreement shall no longer be bound by it.
- (3) A signed or electronically signed copy of this Agreement transmitted by secure email, or other secure means of electronic transmission, shall be deemed to have the same legal effect as the delivery of an original executed copy of this Agreement for all purposes.

16. EXECUTION OF THE AGREEMENT

This Agreement shall be executed by each Party in four originals in the English language, each of which shall constitute an original instrument.

17. ANNEXES

The Annexes to this Agreement shall constitute an integral part thereof:

1. Form of Request for Funds
2. Form of Confirmation Notice
3. Form of Declaration on the use of loan instalment
4. Form of Legal Opinion
5. List of Contacts

Done in Kyiv on 30 September and in Luxembourg on 3 October 2022 in four copies.

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 1

FORM OF REQUEST FOR FUNDS

[on letterhead of the Borrower]

European Commission
Directorate-General for the Budget
Unit E-3: Borrowing and Lending operations
Attn.: Head of Unit
L-2920 Luxembourg

**Subject: European Union Exceptional Macro-Financial Assistance
Request for Funds for the [•] Instalment**

Dear Sirs,

We refer to the Loan Facility Agreement dated [•] between the European Union as Lender and Ukraine as Borrower and the National Bank of Ukraine as financial agent to the Borrower (the "**Agreement**"). Terms defined in the Agreement shall have the same meaning herein.

1. We hereby irrevocably request that any tranche of Instalment of the Loan be disbursed under and in accordance with the Agreement upon the following terms:
 - a. Principal amount of the Instalment: EUR [•].
 - b. The Net Disbursement Amount of the Instalment or any tranche thereof to be at least 90% of the principal amount of the Instalment or any tranche thereof.
 - c. The fixed nominal Interest Rate of the Instalment or any tranche thereof shall not be higher than [•] % per annum.
 - d. The disbursement under the Instalment shall be carried out before: [•].
 - e. The principal repayment of the Instalment [or tranches thereof] shall be [[between [2030] and [2053]]] [[•]]³.
2. We acknowledge and agree that the disbursement of each tranche of the Instalment shall be in accordance with and subject to
 - a. the Lender being satisfied at all times that the corresponding funds are available to it from a counterparty in the international capital markets or

³ Precise date in case of short term financing

money markets on terms and conditions that are acceptable to it and that are consistent with the terms set out in this Request for Funds;

b. the Lender carrying out one or several Financial Transactions to obtain the proceeds requested in this Request for Funds. We irrevocably undertake to pay any fees, costs and expenses, including if applicable breakage costs and cost of carry, resulting from any Financial Transactions undertaken by the Lender, regardless of whether the disbursement of an Instalment will ultimately take place;

c. the issue by the Lender, in due course, of a Confirmation Notice.

3. We confirm that:

a. The list of authorised signatories sent on behalf of the Borrower by the Minister of Finance on [*date*] remains valid and applicable.

b. No event has occurred that would render incorrect any statement made in the Legal Opinion issued by the Minister of Justice dated [*•*].

c. No Event of Default has occurred.

4. We acknowledge and agree that the Lender may verify the respect of the obligations of the Borrower, including the political precondition, and of the conditions of the loan facility under the Memorandum of Understanding and the Agreement until the disbursement of each of the tranches of the Instalment.

5. We acknowledge and agree that the Instalment or any tranche thereof may be refinanced by the Lender, according to the choice of the Lender, and that we will bear any costs resulting from such short or long term financing.

[authorised signature]

Copy to the National Bank of Ukraine
[*Insert address*]

ANNEX 2

FORM OF CONFIRMATION NOTICE



EUROPEAN COMMISSION
DIRECTORATE GENERAL
BUDGET
Asset, debt and financial risk management
Borrowing and Lending operations

[Insert Borrower's contact details]

**Subject: European Union Exceptional Macro-Financial Assistance
Disbursement of the [•] Instalment**

Dear Sir or Madam,

We refer to the Loan Facility Agreement dated [•] between the European Union as Lender, Ukraine as Borrower and the National Bank of Ukraine as financial agent to the Borrower of a maximum amount of EUR 5 billion (the "**Agreement**"). Terms defined in the Agreement shall have the same meaning herein.

In line with the Request for Funds dated [•], the terms of the Financial Transaction which the European Union has undertaken to fund the Instalment or tranche thereof are as follows:

Nominal amount	EUR [•]
Issue price	EUR [•]
Bond fees	EUR [•]
Net proceeds	EUR [•]
Transaction cost recovery	EUR [•]
Net Disbursement Amount	EUR [•]
Disbursement Date	[•]
Maturity Date	[•]
Interest Rate (Coupon)	[•] % p.a.
Interest payment dates	Annually on [•]
First interest payment date	[•]
(Short/Long) first coupon	EUR [•]

The applicable Day Count Convention is [•].

Please find the payment schedule of the loan attached.

Yours faithfully,

EUROPEAN UNION
represented by
EUROPEAN COMMISSION

[•]

[•]

Annex: Loan payment schedule

Copy: National Bank of Ukraine

ANNEX 3

DECLARATION ON THE USE OF LOAN INSTALMENT

[on letterhead of the Borrower]

European Commission
Directorate-General for the Budget
Unit E-3: Borrowing and Lending operations
Attn.: Head of Unit
L-2920 Luxembourg

**Subject: European Union exceptional macro financial assistance
Declaration with regard to the protection of the EU's financial
interests**

Dear Sir or Madam,

We refer to the Loan Facility Agreement dated [insert date] between the European Union as Lender and Ukraine as Borrower and the National Bank of Ukraine as financial agent to the Borrower (the "Agreement"). Terms defined in the Agreement shall have the same meaning herein.

We hereby confirm that:

1. The first/second/third/... [delete and complement as appropriate] tranche of the Instalment disbursed on [insert date] has been transferred to the account of the State Treasury Service at the National Bank of Ukraine.
2. The first/second/third/... tranche of the Instalment [delete and complement as appropriate] has been accounted for as "External Financing" in the public accounts for the year [insert year] based on the EUR/[insert local currency] exchange rate of [insert applicable FX rate] applicable on [insert date], the [insert local currency] equivalent of the net disbursement amount being [insert local currency] [insert amount].

The relevant accounting documents of the National Bank of Ukraine and of the Ministry of Finance are available upon request.

Minister of Finance of Ukraine

Copy to the National Bank of Ukraine

ANNEX 4

FORM OF LEGAL OPINION

MINISTRY OF JUSTICE OF UKRAINE

(to be issued on official letterhead of the Ministry of Justice of Ukraine)

[*place, date*]

European Commission
Directorate General for the Budget
Unit E-3 – Borrowing and Lending operations
L-2920 Luxembourg

Re: Loan Facility Agreement between the European Union (as Lender) and Ukraine (as Borrower) and the National Bank of Ukraine (as financial agent to the Borrower) for a maximum amount of EUR 5 billion

Dear Sirs,

In my capacity as the Minister of Justice, I refer to the above referenced Loan Facility Agreement dated [*date*] and its Annexes which constitute an integral part thereof (hereinafter together referred to as the "**Agreement**") between the European Union (hereinafter referred to as the "**Lender**") and Ukraine (hereinafter referred to as the "**Borrower**") and the National Bank of Ukraine as financial agent to the Borrower for a maximum amount of EUR 5 billion. I also refer to the Memorandum of Understanding dated [*date*] between the European Union and Ukraine (hereinafter referred to as the "**MoU**").

I warrant that I am fully competent to issue this legal opinion in connection with the Agreement on behalf of the Borrower.

I have examined originals or copies of the execution versions of the Agreement and of the MoU. I have also examined the relevant provisions of national and international law applicable to the Borrower and the National Bank of Ukraine, the powers of signatories and such other documents as I have deemed necessary or appropriate. Furthermore, I have made such other investigations and reviewed such matters of law as I have considered relevant to the opinion expressed herein.

I have assumed (i) the genuineness of all signatures (except the Borrower and the National Bank of Ukraine) and the conformity of all copies to originals, (ii) the capacity and power to enter into the Agreement of, and their valid authorisation and signing by, each Party other than the Borrower and National Bank of Ukraine and (iii) the validity, binding effect and enforceability of the Agreement on each Party under Union law and, solely where EU law is silent on a particular issue, Luxembourgish law.

Terms used and not defined in this opinion shall have the meaning set out in the Agreement and in the MoU.

This opinion is limited to Ukraine law as it stands at the date of this opinion.

Subject to the foregoing, I am of the opinion that:

1. With respect to the laws, regulations and legally binding decisions currently in force in Ukraine, the Borrower is by the execution of the Agreement by [*insert name*], validly and irrevocably committed to fulfil all of its obligations under it.
2. The Borrower's execution, delivery and performance of the Agreement and the MoU: (i) have been duly authorised by all necessary consents, actions, approvals and authorisations; and (ii) do not violate any applicable regulation or ruling of any competent authority or any international agreement or treaty binding on it.
3. Nothing in this Agreement contravenes or limits the rights of the Borrower to make punctual and effective payment of any sum due for the principal, interest or other charges under the Agreement.
4. The Agreement and the MoU are in proper legal form under Ukrainian law for enforcement against the Borrower. The enforcement of the Agreement would not be contrary to mandatory provisions of Ukrainian law, to the ordre public of Ukraine, to international treaties or to generally accepted principles of international law binding on the Borrower.
5. It is not necessary in order to ensure the legality, validity or enforceability of the Agreement and the MoU that they be filed, recorded, or enrolled with any court or authority in Ukraine.
6. No taxes, duties, fees or other charges imposed by Ukraine or any taxing authority thereof or therein are payable in connection with the execution and delivery of the Agreement and with any payment or transfer of principal, interest, commissions and other sums due under the Agreement.
7. No exchange control authorisations are required and no fees or other commission are to be paid on the transfer of any sum due under the Agreement.
8. The signature of the Agreement and the MoU by [*insert name*], Governor of the National Bank of Ukraine, legally and validly binds the National Bank of Ukraine.
9. The choice of Union law and, solely where EU law is silent on a particular issue, Luxembourgish law as governing law for the Agreement is a valid choice of law binding the Borrower and the National Bank of Ukraine in accordance with Ukraine law.
10. The Borrower has legally, effectively and irrevocably submitted to the exclusive jurisdiction of the Court of Justice of the European Union in connection with

ANNEX 5

LIST OF CONTACTS

For the Lender:

European Commission
Directorate-General for the Budget –
Unit E-3 "Borrowing and Lending operations"
Attn: Head of Unit
L-2920 Luxembourg

Christian Engelen
Christian.ENGELEN@ec.europa.eu

Thilo Sarre
Thilo.SARRE@ec.europa.eu

For the Borrower:

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

Yuryi Draganchuk
Draganchuk@minfin.gov.ua

Dmytro Mantsurov
Mantsurov@minfin.gov.ua

With copy to:

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

