



*Committee on Budgetary Control
The Chair*

8.8.2023

Mr David McAllister
Chair
Committee on Foreign Affairs
BRUSSELS

Mr Johan Van Overtveldt
Chair
Committee on Budgets
BRUSSELS

Subject: Opinion on the Regulation establishing the Ukraine Facility (COM(2023)0338 – C9-0210/2023 – 2023/0200(COD))

Dear Chairs,

Under the procedure referred to above, the Committee on Budgetary Control has been asked to submit an opinion to the Committee on Foreign Affairs and to the Committee on Budgets. At its meeting of 18 July 2023, the committee decided to send the opinion in the form of a letter. It considered the matter at its meeting of 4 September 2023 and adopted the opinion at that meeting.

The opinion consists of the following amendments, which, in accordance with the usual treatment of opinions under Rule 56, I kindly ask you to put to the vote during the vote on the report in your committees:

CONT 1

Recital 88

In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) should be in a position to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. ***OLAF should be provided with sufficient administrative capacities to conduct these investigations.***

CONT 2

Recital 89

In accordance with Regulation (EU, Euratom) 2018/1046, the necessary rights and access should be granted to the Commission, OLAF, the European Court of Auditors and, where applicable, the European Public Prosecutor's Office (EPPO) where relevant, including from third parties involved in the implementation of Union funds. Ukraine should also *use the Early Detection and Exclusion System and* report irregularities in relation to the use of the funds to the Commission.

CONT 3

Recital 90

The reinforcement of internal control systems, the fight against corruption, the promotion of transparency, good administration, *(and)¹* efficient public financial management, *and verification by an independent external auditor* are important reform priorities for Ukraine and should be supported by the Facility.

CONT 4

Recital 91

The Commission should ensure that the financial interests of the Union are effectively protected under the Facility. To this end, an independent Audit Board should be set up to provide the Commission with information on possible mismanagement of funds *and guarantee that the correct level of assurance is obtained through an independent external audit*. Such information should be made available to OLAF and where appropriate to the relevant Ukrainian authorities. The Commission, with the assistance of the Union delegation, should be entitled to perform checks on how Ukraine implements funds along the whole project life cycle. The Audit Board should ensure regular dialogue and cooperation with the European Court of Auditors.

CONT 5

Article 9 - Paragraph 1

The Commission shall conclude a framework agreement with Ukraine for the implementation of the Facility setting out specific arrangements for the management, control, supervision, monitoring, evaluation, reporting and audit of funds under the Facility, as well as to prevent, *detect*, investigate and correct irregularities, fraud, corruption and conflicts of interest. The

¹ To be deleted

framework agreement shall be complemented by financing agreements in accordance with Article 10 and loan agreements in accordance with Article 21, setting out specific provisions for the management and implementation of funding under the Facility.

CONT 6

Article 9 - Paragraph 4 (a)

the commitment of Ukraine to progress towards more efficient and effective control systems, and to strengthen the fight against money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion, *misuse of public funds and corruption*;

CONT 7

Article 16 - Paragraph 2 (h)

an explanation of Ukraine's system to effectively prevent, detect and correct irregularities, fraud, corruption and conflicts of interests, when using the funds provided under the Facility, and of the arrangements (*that aim*)² to avoid double funding from the Facility and other Union programmes or donors;

CONT 8

Article 16 - Paragraph 2 (h) new

an explanation how Ukraine shall ensure an adequate level of protection of the EU financial interests by applying at least the same standards as provided for in the Financial Regulation and other related EU legislation;

CONT 9

Article 26 Paragraph 1

Ukraine shall publish data on persons and entities *that receive(ing)*³ amounts of funding exceeding the equivalent of EUR *(500 000)*⁴ *300 000* for the implementation of reforms and investments specified in the Ukraine Plan referred to in this Chapter. Ukraine shall update those data twice a year, in June and December.

CONT 10

² To be deleted

³ To be deleted

⁴ To be deleted

Article 32 - Paragraph 4

Assistance under this Chapter shall support the creation and strengthening of Ukrainian authorities responsible for ensuring appropriate use of funds, *audit* and effective fight against mismanagement of public funding, in particular fraud, corruption, conflict of interests and irregularities incurred in relation to any amount spent to achieve the objectives of the Facility.

CONT 11

Article 33 - Paragraph 2 (b)

to take appropriate measures to prevent, detect and correct fraud, corruption, conflicts of interests and irregularities affecting the financial interests of the Union, to *detect and* avoid double funding and to take legal actions to recover funds that have been misappropriated, including in relation to any measure for the implementation of reforms and investment projects under the Ukraine Plan;

CONT 12

Article 33 - Paragraph 2 (c)

to accompany a request for payment as set out in Chapter III by a declaration that the funds were used in accordance with the principle of sound financial management and for their intended purpose and managed appropriately in particular in accordance with Ukrainian rules complemented by international standards, on prevention, detection and correction of irregularities, fraud, corruption and conflicts of interests, *accompanied by a declaration of assurance by the Ukrainian authorities;*

CONT 13

Article 33 - Paragraph 2 (c) new

to use the Early Detection and Exclusion System;

CONT 14

Article 33 - Paragraph 2 (e) new

to provide a similar level of access to information and authority to carry out on-the-spot controls as the Commission and the Court of Auditors to the independent external auditor appointed by the Audit Board;

CONT 15

Article 33 - Paragraph 3

The Commission shall *(strive to)*⁵ make available to Ukraine an integrated and interoperable information and monitoring system including a single data-mining and risk-scoring tool to access and analyse the relevant data, including the data listed in paragraph 2(d). Where such a system is available, Ukraine shall use and feed the relevant data into the system, including with support referred to under Chapter V. ***Data shall be inserted in English to allow the Commission and other audit authorities to fulfil their duties without undue delay. The system shall allow for downloads in a machine-readable format.***

CONT 16

Article 34 - Paragraph 3 a new

the Audit Board shall appoint an independent external auditor that provides an annual statement of assurance on the declarations by the Ukrainian authorities that accompany a request for payment. It shall also approve the annual work plan of the independent external auditor;

CONT 17

Article 34 - Paragraph 3 b new

the Audit Board shall decide on recommendations to the Commission and the Ukrainian authorities on amounts to be recovered following the findings of the independent external auditor, and inform the Commission and the Ukrainian authorities of these recommendations;

CONT 18

Article 34 - Paragraph 7

For that purpose, the Audit Board shall regularly report to the Commission, ***and the relevant committees of the Council and Parliament***, and transmit to the Commission without delay any information it obtains or is made aware of, on any identified cases of, or serious concerns in relation to, mismanagement of public funding incurred in relation with any amount spent to achieve the objectives of the Facility, ***including its performance.***

In addition, the Audit Board shall adopt recommendations to Ukraine on all cases where in its views competent Ukrainian authorities have not taken the necessary steps to prevent, detect and correct fraud, corruption, conflict of interests and irregularities that have affected or seriously risk affecting the sound financial management of the expenditure financed under the

⁵ To be deleted

Facility and in all cases where it identifies weaknesses affecting the design and functioning of the control system put in place by Ukrainian authorities. ***A summary of the recommendation shall be published by the Audit Board.*** Ukraine shall implement such recommendations, or provide a justification on why it has not done so. ***The information provided by the Ukrainian authorities on the recommendations shall also be published by the Audit Board.***

The reports of, and information from, the Audit Board shall also be sent to OLAF and may be shared with the relevant Ukrainian authorities, especially in case they need to take steps to prevent, detect and correct fraud, corruption, conflict of interests and irregularities.

CONT 19

Article 34 - Paragraph 10

The functioning of the Audit Board shall be funded under Chapter V, ***including the funding for the appointed independent external auditor.***

Yours sincerely,

Monika Hohlmeier