



THE EUROPEAN COMMISSION

AND

[MEMBER STATE]

**GUARANTEE AGREEMENT PURSUANT TO
ARTICLE 10 OF EUROPEAN PARLIAMENT AND
COUNCIL DECISION (EU) 2022/1628**

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THIS GUARANTEE AGREEMENT is between

- (1) [Member State], (“**Guarantor**”); and
- (2) The European Commission (“**the Commission**”)

Respectively a Party to this agreement.

WHEREAS

- (A) Decision (EU) 2022/1201 of the European Parliament and of the Council of 12 July 2022 providing exceptional macro-financial assistance to Ukraine (“**Decision (EU) 2022/1201**”) permits the Union, under circumstances contained therein, to make available exceptional macro-financial assistance of a maximum amount of EUR 1 000 000 000 to Ukraine in the form of a loan.
- (B) 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 the 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 (“**Decision (EU) 2022/1628**”) complements Decision (EU) 2022/1201 by permitting the Union, under circumstances contained therein, to make available further exceptional macro-financial assistance of a maximum amount of EUR 5 000 000 000 to Ukraine in the form of loans.
- (C) The detailed financial terms of the exceptional macro-financial assistance provided under Decision (EU) 2022/1201 and Decision (EU) 2022/1628 are laid down in the respective loan agreements concluded between the Commission and Ukraine (each one being a “**Loan Agreement**”).
- (D) Decision (EU) 2022/1201 and Decision (EU) 2022/1628 have empowered the Commission on behalf of the Union to borrow on the capital markets or from financial institutions in order to finance the exceptional macro-financial assistance to Ukraine (“**Borrowings**”).
- (E) In the event of a partial or total non-payment under a Loan Agreement, the Union risks not having sufficient resources under current budgetary planning to fulfil the payment obligations arising from the Borrowings.
- (F) Decision (EU) 2022/1628 provides that the Member States of the European Union (together called the “**Guarantors**”) may complement the provisioning in respect of macro-financial assistance kept in the Common Provisioning Fund, by providing guarantees up to the total amount of EUR 3 660 000 000 in respect of the Union’s exceptional macro-financial assistance to Ukraine under Article 1 of Decision (EU) 2022/1628 and under Decision (EU) 2022/1201 These guarantees shall be irrevocable, unconditional and on-demand. Article 9(2) of Decision (EU) 2022/1628 provides that the Commission is to conclude an agreement with a contributing Member State on the irrevocable, unconditional and on-demand guarantee (a “**Guarantee Agreement**”). Article 10 provides for the essential elements of those guarantee agreements.

- (G) Decision (EU) 2022/1628 provides that contributions by Member States in the form of guarantees are needed as an additional layer of protection for the Union budget in addition to 9% provisioning already foreseen in the budget. Analysis of the probability of default and loss-given-default has identified an additional coverage of 61% of the value of the loans as a sound and conservative additional layer of protection for these loans. The share of each Member State in this additional guarantee corresponds to the relative share of that Member State in the total gross national income of the Union as resulting from the 2022 budget, and the nominal amounts of each Member State guarantee are set out in Schedule 1 to this agreement.
- (H) The ability to call resources from Member States for these amounts is needed to cater for a situation in which the Union would not receive a payment from Ukraine of the macro-financial assistance granted under Decision (EU) 2022/1201 and Decision (EU) 2022/1628 in time to meet the Union's financial obligations arising from bonds issued to finance the loans, or in case the payment schedule of the loans granted under this Decision and Decision (EU) 2022/1201 were to be modified. The Commission would call on a guarantee only if future losses on the new macro-financial assistance to Ukraine exceed the available provisioning set aside in respect of macro-financial assistance under Decision (EU) 2022/1201 and under Decision (EU) 2022/1628 once the overall amounts of initial provisioning set aside in the Common Provisioning Fund in respect of financial liability arising from the covered MFAs have been or are to be drawn down.
- (I) Decision (EU) 2022/1201 and Decision (EU) 2022/1628 provide that Ukraine may request an interest rate subsidy and coverage of the administrative costs by the Union in respect of the exceptional macro-financial assistance under that Decision, with an envelope being provided for the MFF 2021-27. Non-repayment of interest during this period will therefore not result in calls on the guarantees, as they are already covered by the budget, provided that Ukraine is granted the interest rate subsidy and coverage of the administrative costs by the Union.
- (J) The exceptional macro-financial assistance under the Loan Agreements and guaranteed under this Guarantee Agreement should be disbursed in instalments each of which may be disbursed in one or more tranches and funded by bonds issued with a range of long term maturities. The information, monitoring and reporting obligations under the Financial Regulation will apply in respect of the macro-financial assistance under the Loan Agreements and the related provisioning held in the Common Provisioning Fund.
- (K) Each Member State of the European Union remains fully and individually liable for the commitments that it has made under a Guarantee Agreement.

1. **GUARANTEE AND INDEMNITY**

1.1 **Guarantee**

The Guarantor hereby unconditionally and irrevocably guarantees to the Union the due and punctual payment on demand of up to 100 per cent of its contribution (the "**Guaranteed Contribution**") and accordingly undertakes to pay to the Union, within

20 (twenty) Business Days of receiving a written demand from the Commission in accordance with this Guarantee Agreement (a "**Demand**") up to 100 per cent of its Guaranteed Contribution.

- 1.2 This Guarantee Agreement is solely related to Borrowings, and the associated Loan Agreements, that are authorised by Decision (EU) 2022/1201 and Decision (EU) 2022/1628. Any other Union borrowings on capital markets and with financial institutions, and other loan agreements, shall not give rise to any claim or liability under this Guarantee Agreement.
- 1.3 The Guaranteed Contribution of the Guarantor is equal to the value set out in column "Amount (EUR)" next to the Guarantor's name in the Schedule attached to this Guarantee Agreement. The Guarantee Contribution Key of the Guarantor is equal to the share indicated in the column "GNI Key" set out next to the Guarantor's name in the Schedule to this Guarantee Agreement.
- 1.4 The cumulative total value of any or all Demanded Amounts (as defined by Clause 1.6) on the Guarantor may never exceed the Guaranteed Contribution of the Guarantor. The Guarantor shall not be liable to pay an amount in excess of its Guaranteed Contribution.
- 1.5 The obligations of the Guarantor under this Guarantee Agreement and of other Guarantors under their respective Guarantee Agreements are several only.
- 1.6 A Demand under this Guarantee may be made by the Commission at any time before or after a principal payment, or where relevant, an interest payment or any other amount is due under Borrowings (together the "**Amount Due**"), if:
 - (i) the Union (for whatsoever reason) has not received in full a payment as and when due under a Loan Agreement or it is notified by Ukraine or becomes aware that Ukraine will not make or will not be able to make payment in full under such a Loan Agreement as and when such payment is due, or that the payment schedule established in a Loan Agreement has been or is to be modified for whatsoever reason; and
 - (ii) the Commission has informed or informs the Guarantor that the overall amounts of the initial, or subsequently replenished, provisioning set aside in the Common Provisioning Fund authorised under Decision (EU) 2022/1628 in respect of macro-financial assistance to Ukraine authorised under Decision (EU) 2022/1201 and Decision (EU) 2022/1628 has been or will be fully drawn down.

In such an event, the Commission shall at its sole discretion determine an amount to be called from the Guarantors ("**Amount of the Call**"), up to the total amount of the maximum Guaranteed Contributions, in order to ensure that the Union has sufficient resources to fulfil the payment obligations arising from the Borrowings, in accordance with the principle of sound financial management. In particular, in determining the Amount of the Call, the Commission shall aim at having sufficient resources to pay the Amount Due and at the replenishment of the Common Provisioning Fund to reach up to the level of paid in provisioning provided for under Article 11(1) second sentence of Decision (EU) 2022/1628.

The Commission shall make Demands on all Guarantors. The Demands shall be pro rata to the relative share of each Guarantor in the Guarantee Contribution Key.

Any Demand shall specify the Amount Due, the extent to which amounts set aside in the Common Provisioning Fund have been or will be drawn, and the Amount of the Call, and shall request in writing the Guarantor to transfer an amount equal to its Guarantee Contribution Key of the Amount of the Call (such amount being the “**Demanded Amount**”), in cleared funds to the account referred to in Clause 1.8. The Demanded Amount shall comply with Clause 1.4. The Guarantor unconditionally and irrevocably guarantees to the Commission the due and punctual payment of the Demanded Amount on demand and the Guarantor shall transfer the Demanded Amount in accordance with the terms of such Demand. The transfer shall occur within 20 (twenty) Business Days of receiving the Demand from the Commission. The Guarantor, which failed to honour the Demand, shall remain liable to honour it.

- 1.7 The Commission shall reimburse the Guarantor from amount(s) recovered by the Commission in respect of the Loan Agreement(s) in a proportion to the Demanded Amounts paid by the Guarantor in the Amount(s) of Call(s). The sum of amounts reimbursed to the Guarantor shall not exceed the sum of Demanded Amounts paid by the Guarantor.

For the purposes of reimbursement, the Commission shall by notice request payment details of the Guarantor and upon their receipt reimburse the Guarantor within ten (10) Business Days for any amount provided under the respective Demand.

- 1.8 Payments under this Guarantee Agreement shall be made to the account as identified in each Demand.
- 1.9 The Guarantor is not entitled to set-off or deduct any amounts owed to it by the Union from any payments due by the Guarantor under this Guarantee Agreement.

2. **PRESERVATION OF RIGHTS**

2.1 Continuing obligations

The obligations of the Guarantor herein contained shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever and shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the Union's obligations under or in respect of any Borrowings and shall continue in full force and effect for so long as and until all sums due from the Union in respect of the Borrowings have been paid, and all other actual or contingent obligations of the Union thereunder or in respect thereof have been satisfied, in full provided that each Guarantor shall only be liable for its Guaranteed Contribution.

2.2 Obligations not discharged

The obligations of the Guarantor herein contained shall not be discharged, impaired or otherwise affected by:

- 2.2.1 *Indulgence, Waivers or Consents*: time or other indulgence or any waiver or consent being granted or agreed to be granted to the Union or to the

Commission in respect of any of its obligations under or in respect of any Borrowings and/or Loan Agreement; or

2.2.2 *Amendment*: any amendment, novation, supplement, extension, (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement, waiver or release of, any obligation of the Union under or in respect of any Borrowings or any security or other guarantee or indemnity in respect thereof including without limitation any extension of or any increase of the obligations of the Union in respect of any Borrowings or the addition of any new obligations for the Union provided that none of the foregoing shall result in any increase of the Guarantor's liability under this Guarantee Agreement.

2.3 *Pari passu*

The Guarantor undertakes that its obligations hereunder will at all times rank *pari passu* with all other present and future, direct, unconditional, unsubordinated and unsecured obligations of such Guarantor.

2.4 Subrogation of Guarantor's Rights

Acknowledging that this Guarantee Agreement does not guarantee the repayment of the Loan Agreements, the Guarantor acknowledges that it is not entitled to any rights of subrogation.

3. **INFORMATION UNDERTAKINGS**

3.1 The Commission shall inform the General Secretariat of the Council of the European Union of the signature of the Guarantee Agreement.

3.2 The Commission shall immediately notify the Guarantors of becoming aware of any event that may reasonably be expected to result in a call under the Guarantee Agreement.

3.3 The Commission shall inform Guarantors on the outstanding claims under Loan Agreements and liabilities under Borrowings (including the planned interest and principal payments) in respect of macro-financial assistance under Decision (EU) 2022/1201 and under Decision (EU) 2022/1628 on a quarterly basis.

4. **BENEFIT OF THE GUARANTEE AGREEMENT**

4.1 Benefit

The Guarantor shall honour this Guarantee Agreement on demand.

4.2 Assignment

The Guarantor shall not be entitled to assign or transfer all or any of their rights, benefits and obligations hereunder.

5. EXPIRY OF THE GUARANTEE

- 5.1 Subject to Clause 5.2, this Guarantee Agreement shall expire on the date (the "**Expiration Date**") which is the earlier of (i) the date when all Borrowings have been irrevocably paid in full, no further Borrowings may be issued under Decision (EU) 2022/1628, and any and all obligations of the Guarantor have been fully and irrevocably paid and (ii) 31 December 2058.
- 5.2 In the event of any Demand under this Guarantee Agreement, the obligation of the Commission to reimburse the Guarantor from amounts recovered in line with Clause 1.7 shall continue until there is a reimbursement in full notwithstanding the occurrence of the Expiration Date.

6. INTERPRETATION IN CONFORMITY AND PARTIAL INVALIDITY

All provisions hereof shall be interpreted, in case of doubt, so that they are in conformity with the governing law. If at any time any provision hereof is or becomes illegal, invalid or unenforceable under the governing law, the legality, validity or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

7. NOTICES

7.1 Address for notices

All notices, demands and other communications to the Guarantor hereunder shall be made in writing (by letter, fax, or e-mail) and shall be sent to the Guarantor at:

[...]

[...]

[...]

Fax: [...]

E-mail: [...]

Attention: [...]

With a copy to: European Commission

Fax: BUDG-Fax-E2@ec.europa.eu

E-mail: budg-e-back-office@ec.europa.eu

Attention: BUDG E Back Office

or, in relation to the Guarantor, to such other address or fax number or for the attention of such other person or department as the Guarantor has notified to the Commission in the manner prescribed for the giving of notices.

7.2 Effectiveness

Every notice, demand or other communication sent in accordance with Clause 7.1 (*Address for notices*) shall be effective upon actual receipt by the Guarantor; *provided that* any such notice, demand or other communication which would otherwise take effect after 4.00 p.m. on any particular day or on a day which is not a Business Day shall not take effect until 10.00 a.m. on the immediately succeeding Business Day.

8. INTERPRETATION

8.1 Definitions

In this Guarantee Agreement:

"**Business Day**" shall mean a day on which the TARGET2 payment system is open for business.

8.2 Other agreements

All references in this Guarantee Agreement to an agreement, instrument or other document shall be construed as a reference to that agreement, instrument or other document as the same may be amended, supplemented, restated, extended, replaced or novated from time to time.

9. LAW AND JURISDICTION

9.1 Governing law

This Guarantee 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 if necessary by the Luxembourgish law.

9.2 Exclusive Jurisdiction

The Court of Justice of the European Union, in accordance with Article 272 of the Treaty on the Functioning of the European Union, shall have exclusive jurisdiction to settle any dispute (a "**Dispute**"), arising out of or in connection with this Guarantee Agreement (including a dispute relating to the existence, validity or termination of this Guarantee Agreement or any non-contractual obligation arising out of or in connection with this Guarantee Agreement) or the consequences of its nullity.

All Clauses and terms stipulated herein have been duly noted and approved by the [**Member State**] and the Commission. This Guarantee Agreement shall enter into force upon the date of signature by the last Party.

Done in two originals, one for the Guarantor and for the Commission.

EXECUTED as a guarantee

by the [**Member State**]

Represented by:

[NAME]

[POSITION]

[DATE OF SIGNATURE]

EXECUTED as a guarantee

by the European Commission

Represented by:

SCHEDULE
GUARANTEED CONTRIBUTIONS

Member State	GNI Key	Amount (EUR)
Kingdom of Belgium	0,034000174878957	124 440 640
Republic of Bulgaria	0,004550449681350	16 654 646
Czech Republic	0,015687822964194	57 417 432
Kingdom of Denmark	0,023558303784917	86 223 392
Federal Republic of Germany	0,253247029326755	926 884 129
Republic of Estonia	0,002022510226741	7 402 387
Ireland	0,021021584078222	76 938 998
Hellenic Republic	0,012368780107407	45 269 735
Kingdom of Spain	0,087654863376925	320 816 800
French Republic	0,174521278940931	638 747 881
Republic of Croatia	0,003837286143212	14 044 467
Italian Republic	0,124701335288098	456 406 887
Republic of Cyprus	0,001503305549774	5 502 098
Republic of Latvia	0,002211957947675	8 095 766
Republic of Lithuania	0,003544290610155	12 972 104
Grand Duchy of Luxembourg	0,003118952609779	11 415 367
Hungary	0,010378150397812	37 984 030
Republic of Malta	0,000908164465981	3 323 882
Kingdom of the Netherlands	0,058849700115398	215 389 902
Republic of Austria	0,027837527042134	101 885 349
Republic of Poland	0,037802158492532	138 355 900
Portuguese Republic	0,015023098718768	54 984 541
Romania	0,016517449218175	60 453 864
Republic of Slovenia	0,003417205537271	12 506 972
Slovak Republic	0,006853712838507	25 084 589
Republic of Finland	0,017546264835718	64 219 329
Kingdom of Sweden	0,037316642822613	136 578 913
EU-27		3 660 000 000