

## II

(Non-legislative acts)

## INTERNATIONAL AGREEMENTS

## AGREEMENT

**between the European Union and European Atomic Energy Community of the one part and Ukraine of the other part, on the participation of Ukraine in Horizon Europe – the Framework Programme for Research and Innovation and the Research and Training Programme of the European Atomic Energy Community (2021-2025) complementing Horizon Europe – the Framework Programme for Research and Innovation**

The European Commission (hereinafter referred to as ‘the Commission’), on behalf of the European Union and the European Atomic Energy Community (hereinafter referred to as ‘Euratom’),

of the one part,

and

Ukraine (hereinafter referred to as ‘Ukraine’),

of the other part,

hereinafter referred to as ‘the Parties’

WHEREAS the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part <sup>(1)</sup> (hereinafter referred to as ‘the Association Agreement’), stipulates that Parties are to develop and strengthen their scientific and technological cooperation in order to contribute both to scientific development itself, and to reinforce their scientific potential for contributing to the resolution of national and global challenges;

WHEREAS the Association Agreement specifically provides for promoting civil scientific research in the fields of nuclear safety and security, including joint research and development activities, and training and mobility of scientists and stipulates that cooperation in the civil nuclear sector should take place through the implementation of specific agreements in this field;

WHEREAS Protocol III to the Association Agreement stipulates that the specific terms and conditions regarding the participation of Ukraine in each particular programme, in particular the financial contribution payable and reporting and evaluation procedures, are to be determined in a Memorandum of Understanding between the Commission and the competent authorities of Ukraine on the basis of the criteria established by the programmes concerned <sup>(2)</sup>;

<sup>(1)</sup> OJ L 161, 29.5.2014, p. 3.

<sup>(2)</sup> This Agreement constitutes and has the same legal effects as a Memorandum of Understanding stated under Protocol III to the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other on a Framework Agreement between the European Union and Ukraine on the general principles for the participation of Ukraine in Union programmes.

WHEREAS the European Union programme Horizon Europe - the Framework Programme for Research and Innovation (hereinafter referred to as 'the Horizon Europe Programme') was established by Regulation (EU) 2021/695 of the European Parliament and of the Council <sup>(3)</sup>;

WHEREAS the Research and Training Programme of the European Atomic Energy Community (2021-2025) complementing Horizon Europe – the Framework Programme for Research and Innovation (hereinafter referred to as 'the Euratom Programme') was established by Council Regulation (Euratom) 2021/765 <sup>(4)</sup>;

CONSIDERING the European Union's efforts to lead the response by joining forces with its international partners to address global challenges in line with the plan of action for people, planet and prosperity in the United Nations Agenda 'Transforming our World: the 2030 Agenda for Sustainable Development', and acknowledging that research and innovation are key drivers and essential tools for innovation-led sustainable growth, for economic competitiveness and attractiveness;

RECOGNISING the general principles as set out in Regulation (EU) 2021/695 and Regulation (Euratom) 2021/765;

WHEREAS the general objective of the Euratom Programme is to pursue nuclear research and training activities, with an emphasis on the continuous improvement of nuclear safety, security and radiation protection, as well as to complement the achievement of the Horizon Europe Programme's objectives inter alia in the context of the energy transition;

ACKNOWLEDGING the objectives of the renewed European Research Area to build a common scientific and technological area, create a single market for research and innovation, foster and facilitate the cooperation between universities and the exchange of best practices and attractive research careers, facilitate cross-border and inter-sectoral mobility of researchers, foster free movement of scientific knowledge and innovation, promote the respect of academic freedom and freedom of scientific research, support science education and communication activities, and encourage competitiveness and attractiveness of participating economies, and that associated countries are key partners in this endeavour;

EMPHASISING the role of the European Partnerships addressing some of Europe's most pressing challenges through concerted research and innovation initiatives contributing significantly to those European Union's and Euratom's priorities in the area of research and innovation that require critical mass and long-term vision and the importance of associated countries' involvement in those Partnerships;

SEEKING to establish mutually advantageous conditions in order to create decent jobs, to strengthen and support innovation ecosystems of the Parties by helping enterprises to innovate and scale up in the markets of the Parties and facilitating the uptake as well as deployment and accessibility of innovation, including capacity building activities;

<sup>(3)</sup> Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

<sup>(4)</sup> Council Regulation (Euratom) 2021/765 of 10 May 2021 establishing the Research and Training Programme of the European Atomic Energy Community for the period 2021-2025 complementing Horizon Europe – the Framework Programme for Research and Innovation and repealing Regulation (Euratom) 2018/1563 (OJ L 167 I, 12.5.2021, p. 81.).

RECOGNISING that reciprocal participation in each other's research and innovation programmes should provide mutual benefits; while acknowledging that the Parties reserve their right to limit or condition participation in their research and innovation programmes including in particular for actions related to their strategic assets, interests, autonomy or security;

CONSIDERING the common goals, values and strong links of the Parties in the field of research and innovation, including in the nuclear sector, established in the past through the agreements on Ukraine's participation in the Horizon 2020 and Euratom Research and Training Programme (2014-2018) and its successor Programme, and numerous other international agreements which underpin the relationship between the Parties <sup>(5)</sup>, and recognising the common desire of the Parties to further develop, strengthen, stimulate and extend their relations and cooperation therein,

HAVE AGREED AS FOLLOWS:

#### *Article 1*

##### **Scope of the association**

1. Ukraine shall participate as an associated country in and contribute to all parts of the Horizon Europe – the Framework Programme for Research and Innovation (the Horizon Europe Programme) referred to in Article 4 of Regulation (EU) 2021/695 and implemented through the specific programme established by Council Decision (EU) 2021/764 <sup>(6)</sup>, in their most up to date versions, and through a financial contribution to the European Institute of Innovation and Technology. Ukraine shall participate as an associated country in and contribute to all parts of the Research and Training Programme of Euratom (the Euratom Programme) established by Regulation (Euratom) 2021/765 in its most up to date version.
2. Regulation (EU) 2021/819 of the European Parliament and of the Council <sup>(7)</sup>, and Decision (EU) 2021/820 <sup>(8)</sup>, in their most up to date versions, shall apply to the participation of Ukraine's legal entities in Knowledge and Innovation Communities.

#### *Article 2*

##### **Terms and conditions of participation in the Horizon Europe Programme and the Euratom Programme**

1. Ukraine shall participate in the Horizon Europe Programme and the Euratom Programme in accordance with the conditions laid down in Protocol III to Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, and under the terms and conditions set forth in this Agreement, in the legal acts referred to in Article 1 of this Agreement, as well as in any other rules pertaining to the implementation of those Programmes, in their most up to date versions.
2. Unless otherwise provided for in the terms and conditions referred to in paragraph 1 of this Article, including in implementation of Article 22(5) of Regulation (EU) 2021/695, legal entities established in Ukraine may participate in indirect actions of the Horizon Europe Programme and the Euratom Programme under conditions equivalent to those applicable to legal entities established in the European Union, including respect for EU restrictive measures <sup>(9)</sup>.
3. Before deciding on whether legal entities established in Ukraine are eligible to participate in an action related to the European Union's strategic assets, interests, autonomy or security under Article 22(5) of Regulation (EU) 2021/695, the Commission may request specific information or assurances, such as:
  - a) information whether reciprocal access has been or will be granted to legal entities established in the European Union to existing and planned programmes, projects and activities of Ukraine equivalent to the Horizon Europe action concerned;

<sup>(5)</sup> The Agreement for Cooperation between the Cabinet of Ministers of Ukraine and the Community in the field of controlled nuclear fusion (OJ L 322, 27.11.2002, p. 40.), the Agreement for Cooperation between the Cabinet of Ministers of Ukraine and the Community in the field of nuclear safety (OJ L 322, 27.11.2002, p. 33.) and the Agreement between the Cabinet of Ministers of Ukraine and the Euratom for Co-operation in the Peaceful Uses of Nuclear Energy (OJ L 261, 22.9.2006, p. 27.).

<sup>(6)</sup> Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU (OJ L 167 I, 12.5.2021, p. 1.).

<sup>(7)</sup> Regulation (EU) 2021/819 of the European Parliament and of the Council of 20 May 2021 on the European Institute of Innovation and Technology (recast). (OJ L 189, 28.5.2021, p. 61.).

<sup>(8)</sup> Decision (EU) 2021/820 of the European Parliament and of the Council of 20 May 2021 on the Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT) 2021-2027: Boosting the Innovation Talent and Capacity of Europe and repealing Decision No 1312/2013/EU (OJ L 189, 28.5.2021, p. 91.).

<sup>(9)</sup> The EU restrictive measures are adopted pursuant to Article 29 of the Treaty on the European Union or Article 215 of the Treaty on the Functioning of the European Union.

- b) information whether Ukraine has in place a national investment screening mechanism and assurances that authorities of Ukraine will report on and consult the Commission on any possible cases where in application of such a mechanism they have become aware of planned foreign investment/takeover by an entity established or controlled from outside Ukraine of a Ukrainian legal entity, which has received Horizon Europe funding in actions related to European Union's strategic assets, interests, autonomy or security, provided that the Commission supplies Ukraine with the list of the relevant legal entities established in Ukraine following the signature of grant agreements with these entities; and
- c) assurances that none of the results, technologies, services and products developed under the concerned actions by entities established in Ukraine shall be subject to restrictions on their export to EU Member States during the action and for four years after the end of the action. Ukraine will share an up-to-date list of subjects of national export restrictions on annual basis, during the action and for four years after the end of the action.

4. Legal entities established in Ukraine may participate in the activities of the Joint Research Centre (JRC) under terms and conditions equivalent to those applicable to legal entities established in the European Union unless limitations are necessary to ensure consistency with the scope of participation stemming from the implementation of paragraph 2 and 3 of this Article.

5. Where the European Union implements the Horizon Europe Programme through the application of Articles 185 and 187 of the Treaty on the Functioning of the European Union, Ukraine and Ukrainian legal entities may participate in the legal structures created under those provisions, in conformity with the European Union legal acts that have been or will be adopted for the establishment of those legal structures.

6. This agreement shall not entitle Ukraine to membership to the European Joint Undertaking for ITER and the Development of Fusion for Energy, or participation in the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project.

7. Representatives of Ukraine shall have the right to participate as observers in the committee referred to in Article 14 of Decision (EU) 2021/764 and in the committee referred to in Article 16 of Regulation (Euratom) 2021/765, without voting rights and only for points which concern Ukraine.

These committees shall meet without the presence of the representatives of Ukraine at the time of voting. Ukraine will be informed of the result.

8. Participation as referred to in the previous paragraph shall take the same form, including procedures for receipt of information and documentation, as that applicable to representatives from Member States of the European Union. Ukraine's rights of representation and participation in the European Research Area Committee and its subgroups shall be those applicable to associated countries.

9. Representatives of Ukraine shall have the right to participate as observers in the Board of Governors of the JRC, without voting rights. Subject to that condition, such participation shall be governed by the same rules and procedures as those applicable to representatives of Member States of the European Union, including speaking rights and procedures for receipt of information and documentation in relation to a point that concerns Ukraine.

10. Ukraine may participate in a European Research Infrastructure Consortium (ERIC) in accordance with Council Regulation (EC) No 723/2009<sup>(10)</sup>, in its most up to date version, and with the legal act establishing the ERIC.

11. Travel costs and subsistence expenses incurred by representatives and experts of Ukraine for the purposes of taking part as observers in the work of the committee referred to in Article 14 of Decision (EU) 2021/764 and in the committee referred to in Article 16 of Regulation (Euratom) 2021/765, or in other meetings related to the implementation of the Horizon Europe Programme or Euratom Programme, shall be reimbursed by the European Union on the same basis as and in accordance with the procedures in force for representatives of the Member States of the European Union.

<sup>(10)</sup> Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 8.8.2009, p. 1.).

12. The Parties shall make every effort, within the framework of the existing provisions, to facilitate the free movement and residence of scientists participating in the activities covered by this Agreement and to facilitate cross-border movement of goods and services intended for use in such activities.

13. Ukraine shall take all necessary measures, as appropriate, to ensure that goods and services, purchased in Ukraine or imported into Ukraine, which are partially or entirely financed pursuant to the grant agreements and/or contracts concluded for the realisation of the activities in accordance with this Agreement, are exempted from customs duties, import duties and other fiscal charges, including the VAT, that are applicable in Ukraine.

### Article 3

#### Financial contribution

1. Participation of Ukraine or Ukrainian legal entities in the Horizon Europe Programme and in the Euratom Programme shall be subject to Ukraine contributing financially to each of the respective Programmes and their related management, execution and operation costs under the general budget of the European Union (hereinafter referred to as the 'Union budget').

2. The financial contribution of Ukraine to each Programme shall take the form of the sum of:

- a) an operational contribution; and
- b) a participation fee.

3. The financial contribution of Ukraine to each of the two Programmes shall take the form of an annual payment in two instalments, and shall be due at the latest in June and September.

4. The operational contribution of Ukraine to each Programme shall cover operational and support expenditure of that Programme and be additional both in commitment and payment appropriations to the amounts entered in the Union budget definitively adopted for the respective Programme, including any appropriations corresponding to decommitments made available again as referred to in Article 15(3) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(1)</sup>, in its most up to date version (hereinafter referred to as 'the Financial Regulation'), and increased, by external assigned revenue that does not result from financial contributions to the respective Programme from other donors <sup>(2)</sup>.

For external assigned revenue allocated to the Horizon Europe Programme under Article 3(1) of Council Regulation (EU) 2020/2094 <sup>(3)</sup>, this increase shall correspond to annual appropriations indicated in the documents accompanying the Commission Draft Budget for the Horizon Europe Programme.

5. The initial operational contribution of Ukraine to each Programme shall be based on a contribution key defined as the ratio of the Gross Domestic Product (GDP) of Ukraine at market prices to the GDP of the European Union at market prices. The GDPs at market prices to be applied shall be determined by the dedicated Commission services based on the most recent statistical data available for budget calculations in the year prior to the year in which the annual payment is due. By derogation, for 2021, the initial operational contribution of Ukraine to each Programme shall be based on the GDP of the year 2019 at market prices. Adjustments to this contribution key are laid down in Annex I.

6. The initial operational contribution of Ukraine to each Programme shall be calculated applying the contribution key, as adjusted, to the initial commitment appropriations entered in the Union budget definitively adopted for the applicable year for financing of the respective Programme, increased in accordance with paragraph 4.

<sup>(1)</sup> 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 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>(2)</sup> This includes notably in relation to the Horizon Europe Programme the resources from the European Union Recovery Instrument established by Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23.).

<sup>(3)</sup> Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23.).

7. The participation fee of Ukraine for each Programme shall be 4 % of the annual initial operational contribution to the respective Programme as calculated in accordance with paragraph 5 and 6 and shall be phased in as set out in Annex I. The participation fee shall not be subject to retrospective adjustments or corrections.

8. The initial operational contribution of Ukraine to each Programme for a year N may be adjusted upwards or downwards retrospectively in one or more subsequent years on the basis of the budgetary commitments made on the commitment appropriations of that year N, increased in accordance with paragraph 4, their implementation through legal commitments and their de-commitments. The detailed provisions for the implementation of this Article are set out in Annex I.

9. The European Union shall provide Ukraine with information in relation to its financial participation as included in the budgetary, accounting, performance and evaluation related information provided to the European Union budgetary and discharge authorities concerning the Horizon Europe Programme and the Euratom Programme. That information shall be provided having due regard to the European Union's, Euratom's and Ukraine's confidentiality and data protection rules and shall be without prejudice to the information which Ukraine is entitled to receive under Annex III.

10. All contributions of Ukraine or payments from the European Union, and the calculation of amounts due or to be received shall be made in euro.

#### Article 4

#### **Rules for application of automatic correction mechanism to the operational contribution of Ukraine to Horizon Europe Programme**

1. An automatic correction mechanism shall apply to the operational contribution of Ukraine to the Horizon Europe Programme.

2. An automatic correction mechanism of the initial operational contribution of Ukraine to the Horizon Europe Programme for year N, as adjusted in accordance with Article 3(8), shall apply and shall be calculated in year N+2. It shall be based on the performance of Ukraine and Ukrainian legal entities in the parts of the Horizon Europe Programme which are implemented through competitive grants financed from commitment appropriations from the year N, increased in accordance with Article 3(4).

The amount of the automatic correction shall be calculated based on the difference between:

- a) the initial amounts of the legal commitments for competitive grants from the Horizon Europe Programme actually entered into with Ukraine or Ukrainian legal entities financed from commitment appropriations of the year N, increased in accordance with Article 3(4); and
- b) the corresponding operational contribution of the year N paid by Ukraine as adjusted pursuant to Article 3(8), excluding non-intervention costs financed from commitment appropriations from the year N, increased in accordance with Article 3(4).

3. Where the amount referred to in paragraph 2, whether that amount is positive or negative, exceeds 8 % of the corresponding initial operational contribution of Ukraine to the Horizon Europe Programme as adjusted pursuant to Article 3(8), the initial operational contribution of Ukraine to that Programme for year N shall be corrected. The amount due by or to be received by Ukraine as an additional contribution or reduction of Ukraine's contribution to the Horizon Europe Programme under the automatic correction mechanism shall be the amount exceeding this 8 % threshold, the amount below this threshold of 8 % will not be taken into account in calculating the additional contribution due or compensated.

4. Detailed rules on the automatic correction mechanism applicable to the operational contribution of Ukraine to the Horizon Europe Programme are laid down in Annex I.

*Article 5***Reciprocity**

1. Legal entities established in the European Union may participate in programmes, projects and activities of Ukraine equivalent to the Horizon Europe Programme or Euratom Programme, in accordance with Ukraine's legislation.
2. The list of the equivalent programmes, projects or activities of Ukraine open for participation of legal entities established in the European Union is provided in Part I Annex II. Ukraine shall make every effort to progressively open its programmes, projects and activities identified in Part II of Annex II to participation of legal entities established in the European Union.
3. Funding of legal entities established in the European Union by Ukraine shall be subject to Ukraine's legislation governing the operation of research and innovation programmes, projects and activities. Where funding is not provided, legal entities established in the European Union may participate with their own means.

*Article 6***Open Science**

The Parties shall mutually promote and encourage open science practices in their programmes, projects and activities in accordance with the rules of the Horizon Europe and the Euratom Programmes and Ukraine's legislation.

*Article 7***Monitoring, Evaluation and Reporting**

1. Without prejudice to the responsibilities of the Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors of the European Union in relation to monitoring and evaluation of the Horizon Europe Programme and Euratom Programme, the participation of Ukraine in those Programmes shall be continuously monitored on a partnership basis involving the Commission and Ukraine.
2. The rules concerning sound financial management, including the financial control, recovery and other antifraud measures in relation to European Union funding under this Agreement are laid down in Annex III.

*Article 8***EU/Euratom-Ukraine Joint Research and Innovation Committee**

1. The EU/Euratom-Ukraine Joint Research and Innovation Committee is hereby established (hereinafter referred to as 'EU/Euratom-Ukraine Joint Committee'). The tasks of the EU/Euratom-Ukraine Joint Committee shall include:
  - a) assessing, evaluating and reviewing the implementation of this Agreement, in particular:
    - (i) the participation and performance of the legal entities of Ukraine in the Horizon Europe and Euratom Programmes;
    - (ii) the level of (mutual) openness to the legal entities established in each Party to participate in programmes, projects and activities of the other Party;
    - (iii) the implementation of the financial contribution mechanism and the automatic correction mechanism in accordance with Article 3 and 4;
    - (iv) information exchange and examining any possible questions on the exploitation of results, including intellectual property rights;
  - b) discussing upon request of either Party restrictions applied or planned by the Parties on access to their respective research and innovation programmes, including in particular for actions related to their strategic assets, interests, autonomy or security;
  - c) examining how to improve and develop cooperation;
  - d) discussing jointly the future orientations and priorities of policies related to research and innovation and research planning of common interest; and
  - e) exchanging information, inter alia, on new legislation, decisions or national research and innovation programmes that are relevant for the implementation of this Agreement.

2. The EU/Euratom-Ukraine Joint Committee, which shall be composed of representatives of the European Union and Euratom and of Ukraine, shall adopt its Rules of Procedure.
3. The EU/Euratom-Ukraine Joint Committee may decide to set up any working party/advisory body on an ad hoc basis at expert level that can assist in carrying out the implementation of this Agreement.
4. The EU/Euratom-Ukraine Joint Committee shall meet at least once a year, and, whenever special circumstances so require, at the request of any of the Parties. The meetings shall be organised and hosted alternately by the European Union and by Ukraine.
5. The EU/Euratom-Ukraine Joint Committee shall work on an on-going basis through an exchange of relevant information by any means of communication, in particular in relation to the participation/performance of the legal entities of Ukraine. The EU/Euratom-Ukraine Joint Committee may in particular conduct its tasks in writing whenever the need arises.

#### Article 9

##### Final provisions

1. This Agreement shall enter into force on the date on which the Parties have notified each other of the completion of their internal procedures necessary for that purpose.
2. This Agreement shall apply from 1 January 2021. It shall remain in force for as long as is necessary for all the projects, actions, activities, or parts thereof, financed from the Horizon Europe and Euratom Programmes, all the actions necessary to protect the financial interests of the European Union and all the financial obligations stemming from the implementation of this Agreement between the Parties to be completed.
3. This Agreement shall be extended and apply for the period 2026-2027 under the same terms and conditions to the successor of the Euratom Programme, unless within 3 months of the publication in the *Official Journal of the European Union* of that successor programme either Party notifies its decision not to extend this Agreement to that successor programme. In case of such a notification, this Agreement shall not apply as of 1 January 2026 in respect of the successor to the Euratom Programme.
4. The application of this Agreement in relation to the Horizon Europe Programme or the Euratom Programme may be suspended by the European Union or Euratom in case of partial or full non-payment of the financial contribution to the respective Programme due by Ukraine under this Agreement.

In case of non-payment which may significantly jeopardise the implementation and management of the Horizon Europe Programme or the Euratom Programme, the European Commission shall send a formal letter of reminder. Where no payment is made within 20 working days after the formal letter of reminder, suspension of the application of this Agreement in relation to the relevant Programme shall be notified by the European Commission to Ukraine by a formal letter of notification which shall take effect 15 days following the receipt of this notification by Ukraine.

In case the application of this Agreement is suspended in accordance with the first subparagraph of this paragraph, legal entities established in Ukraine shall not be eligible to participate in award procedures under the relevant Programme not yet completed when the suspension takes effect. An award procedure shall be considered completed when legal commitments have been entered into as a result of that procedure.

The suspension does not affect the legal commitments entered into under the relevant Programme with the legal entities established in Ukraine before the suspension took effect. This Agreement shall continue to apply to such legal commitments.

The Commission acting on behalf of European Union and Euratom shall immediately notify Ukraine once the entire amount of the financial contribution due for the relevant Programme has been received by it. The suspension in relation to this Programme shall be lifted with an immediate effect upon this notification.

As of the date when the suspension is lifted, legal entities of Ukraine shall be again eligible in award procedures launched under the relevant Programme after this date and in award procedures launched before this date, for which the deadlines for submission of applications have not expired.

5. Either Party may terminate this Agreement at any time by a written notification informing of the intent to terminate it.

The termination shall take effect three calendar months after the date on which the written notification reaches its addressee. The date on which the termination takes effect shall constitute the termination date for the purposes of this Agreement.

6. Where this Agreement is terminated in accordance with paragraph 5, the Parties agree that:

- (a) projects, actions, activities or parts thereof in respect of which legal commitments have been entered into after the entry into force of this Agreement, and before this Agreement ceases to apply or is terminated shall continue until their completions under the conditions laid down in this Agreement;
- (b) the annual financial contribution for each of the two Programmes referred to under Article 3(1) of this Agreement of the year N during which this Agreement is terminated shall be paid entirely in accordance with Article 3. The operational contribution of the year N under Horizon Europe Programme shall be adjusted in accordance with Article 3(8) and corrected in accordance with Article 4 of this Agreement. The operational contribution of the year N under Euratom Programme shall be adjusted in accordance with Article 3(8) of this Agreement. The participation fee paid for the year N as part of the financial contribution for each of the two Programmes respectively shall not be adjusted or corrected.
- (c) following the year during which this Agreement is terminated, the initial operational contributions paid for each of the two Programmes referred to in Article 3(1) for the years during which this Agreement applied shall be adjusted in accordance with Article 3(8). In relation to the Horizon Europe Programme, these contributions shall be automatically corrected in accordance with Article 4.

The Parties shall settle by common consent any other consequences of termination of this Agreement.

7. This Agreement may only be amended in writing by common consent of the Parties. The entry into force of the amendments will follow the same procedure as that applicable for the entry into force of this Agreement.

8. The Annexes to this Agreement shall form an integral part of this Agreement.

Done at Kyiv on twelve October in the year two thousand twenty one, in duplicate, in English and in Ukrainian, each of these texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

*For the European Commission, on behalf of the  
European Union and Euratom,*

Josep BORRELL  
*Vice-President of the European Commission*

*For Ukraine,*

Serhii SHKARLET  
*Minister of Education and Science of Ukraine*

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## ANNEX I

**Rules governing the financial contribution of Ukraine to the Horizon Europe Programme (2021-2027) and to the Euratom Research and Training Programme (2021-2025)****I. Calculation of Ukraine's financial contribution**

1. The financial contributions of Ukraine to the Horizon Europe Programme and to the Euratom Programme shall be separate. The financial contribution of Ukraine to each the Horizon Europe Programme and the Euratom Programme respectively shall be established on a yearly basis in proportion to, and in addition to, the amount available each year in the Union budget for commitment appropriations needed for the management, execution and operation of the Horizon Europe Programme and of the Euratom Programme respectively.

2. The participation fee for each of the two Programmes referred to in Article 3(7) of this Agreement shall be phased in as follows:

— 2021: 0,5 %;

— 2022: 1 %;

— 2023: 1,5 %;

— 2024: 2 %;

— 2025: 2,5 %;

— 2026: 3 %;

— 2027: 4 %.

3. In accordance with Article 3(5) of this Agreement, the initial operational contribution to be paid by Ukraine for its participation in each the Horizon Europe Programme and in the Euratom Programme respectively will be calculated for the respective financial years by applying an adjustment to the contribution key.

The adjustment to the contribution key shall be:

$$\text{Contribution Key Adjusted} = \text{Contribution Key} \times \text{Coefficient}$$

The coefficients used for the above calculation to adjust the contribution key shall be 0,07 for the Horizon Europe Programme and 0,21 for the Euratom Research and Training Programme respectively.

4. In line with Article 3(8) of this Agreement, the first adjustment of the financial contribution to each Programme referred to in Article 3(1) pertaining to the budget implementation of year N shall be made in year N+1 when the initial operational contribution for this Programme of year N shall be adjusted upwards or downwards by the difference between:

a) an adjusted contribution calculated by applying the contribution key adjusted of year N to the sum of:

i. the amount of budgetary commitments made on commitment appropriations authorised for year N for the respective Programme under the European Union voted budget and on commitment appropriations corresponding to decommitments made available again; and

ii. any commitment appropriations based on external assigned revenue that do not result from financial contributions to the respective Programme from other donors and that were available at the end of year N;

b) and the initial operational contribution to this Programme of year N.

Starting in year N+2, and each subsequent year, until all the budgetary commitments financed under commitment appropriations originating from year N have been paid or decommitted, and at the latest 3 years after the end of the Horizon Europe Programme or the Euratom Programme, the Union shall calculate an adjustment of the operational contribution for each respective Programme of year N by reducing Ukraine operational contribution by the amount obtained by applying the contribution key adjusted of year N to the decommitments made each year on commitments of year N financed under the Union voted budget or from decommitments made available again.

If commitment appropriations stemming from external assigned revenue of year N that do not result from financial contributions to the respective Programme from other donors are cancelled, the operational contribution of Ukraine to this Programme shall be reduced by the amount obtained by applying the contribution key adjusted of year N to the amount cancelled.

## II. Automatic correction of Ukraine's operational contribution applicable to the Horizon Europe Programme

1. For the calculation of the automatic correction applicable only under Horizon Europe Programme as referred to in Article 4 of this Agreement, the following modalities shall apply:

- a) 'competitive grants' means grants awarded through calls for proposals where the final beneficiaries can be identified at the time of the calculation of the automatic correction. Financial support to third parties as defined in Article 204 of the Financial Regulation is excluded;
- b) where a legal commitment is signed with a consortium, the amounts used to establish the initial amounts of the legal commitment shall be the cumulative amounts allocated to beneficiaries that are Ukraine entities in accordance with the indicative budget breakdown of the grant agreement;
- c) all amounts of legal commitments corresponding to competitive grants shall be established using the European Commission electronic system eCorda and be extracted on the second Wednesday of February of year N+2;
- d) 'non-intervention costs' means costs of the Programme other than competitive grants, including support expenditure, programme-specific administration, other actions <sup>(1)</sup>;
- e) amounts allocated to international organisations as legal entities being the final beneficiary <sup>(2)</sup> shall be considered as non-intervention costs.

2. The mechanism shall be applied as follows:

- a) Automatic corrections for year N in relation to the execution of commitment appropriations for year N shall be applied based on data on year N and year N+1 from e-Corda referred to in point c) of paragraph (1) of point (II) of this Annex in year N+2 after any adjustments in accordance with Article 3(8) of this Agreement have been applied to Ukraine's contribution to the Horizon Europe Programme. The amount considered will be the amount of competitive grants for which data is available, at the time of the calculation of the correction.
- b) Starting in year N+2 and up until 2029, the amount of the automatic correction shall be calculated for year N by taking the difference between:
  - i. the total amount of the competitive grants apportioned to Ukraine or Ukraine legal entities as commitments made on budget appropriations of year N; and

<sup>(1)</sup> Other actions include notably procurement, prizes, financial instruments, direct actions of the Joint Research Centre, Subscriptions (OECD, Eureka, IPEEC, IEA, ...), experts (evaluators, monitoring of projects) etc.

<sup>(2)</sup> International organisations would only be considered as non-intervention costs if they are final beneficiaries. This will not apply where an international organisation is a coordinator of a project (distributing funds to other coordinators).

ii. the amount of Ukraine adjusted operational contribution for year N multiplied by the ratio between:

A. the amount of competitive grants made on commitment appropriations of year N; and

B. the total of all the authorised budgetary commitment appropriations of year N, including non-intervention costs.

**III. Payment of Ukraine's financial contribution to each Programme, payment of the adjustments made on Ukraine's operational contributions to each Programme, and payment of the automatic correction applicable to Ukraine's operational contribution to the Horizon Europe Programme**

1. The Commission shall communicate to Ukraine, as soon as possible and at the latest when issuing the first call for funds of the financial year for each respective Programme referred to in Article 3(1) of this Agreement, the following information:

- a. the amounts in commitment appropriations in the Union budget definitively adopted for the year in question for the budget lines covering participation of Ukraine, in the Horizon Europe Programme and in the Euratom Programme respectively, if relevant, the amount of external assigned appropriations that do not result from financial contribution from other donors on these budget lines;
- b. the amount of the participation fee referred to in Article 3(7) of this Agreement for each respective Programme;
- c. from year N+1 of implementation of the Horizon Europe Programme and of the Euratom Programme, the implementation of commitment appropriations corresponding to budgetary year N and the level of decommitment for each respective Programme;
- d. in relation to Horizon Europe Programme only and for the part of the Horizon Europe Programme where such information is necessary to calculate the automatic correction, the level of commitments entered into in favour of Ukraine legal entities broken down according to the corresponding year of budgetary appropriations and the related total level of commitments.

In relation to each of the two Programmes, on the basis of its Draft Budget, the Commission shall provide an estimate of information for the following year under points (a) and (b) as soon as possible, and, at the latest, by 1 September of the financial year.

2. The Commission shall issue, in April and in July of each financial year, a call for funds to Ukraine corresponding to Ukraine's contribution under each of the two Programmes referred to in Article 3(1) of this Agreement.

Each call for funds shall provide for the payment of six-twelfths of Ukraine's contribution due under the respective Programmes not later than 60 days after the call for funds is issued.

3. By derogation from paragraph 2, the financial contribution for 2021 shall be split in instalments to be divided over multiple calls for funds with the following payment schedule:

— 50 % of the financial contribution for 2021 to be paid in 2022;

— 50 % of the financial contribution for 2021 to be paid in 2023.

The corresponding amounts shall be included in the call for funds of the respective year.

3. The call for funds issued in April each year may also include adjustments of the financial contribution paid by Ukraine for the implementation, management and operation of the previous Framework Programme for Research and Innovation or the Research and Training Programme of Euratom in which Ukraine participated.

4. In relation to the Horizon Europe Programme, each year starting in 2023, the calls for funds shall also reflect the amount of the automatic correction applicable to the operational contribution paid for year N-2 to the Horizon Europe Programme.

For each of the financial years 2028, 2029 and 2030, the amount resulting from the automatic correction applied to the operational contributions paid in 2026 and 2027 to the Horizon Europe Programme by Ukraine or from the adjustments made in accordance with Article 3(8) of this Agreement will be due to or from Ukraine.

5. Ukraine shall pay its financial contribution under this Agreement for each of the two Programmes in accordance with point (III) of this Annex. In the absence of payment by Ukraine by the due date, the Commission shall send a formal letter of reminder.

Any delay in the payment of the financial contribution for either of the two Programmes shall give rise to the payment of default interest by Ukraine on the outstanding amount from the due date.

The interest rate for amounts receivable not paid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of *the Official Journal of the European Union*, in force on the first calendar day of the month in which the due date falls, increased by one and half percentage points.

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## ANNEX II

**Non-exhaustive list of the equivalent programmes, projects and activities of Ukraine****Part 1**

Programmes of Ukraine which are open to participation of legal entities established in the European Union

The following programmes of Ukraine are open to participation of legal entities established in the European Union:

- Competitive calls by National Research Foundation of Ukraine
- Competitive selection of scientific and technical (experimental) developments under the state order, approved by order of the Ministry of Education and Science of Ukraine
- Competitive selection of scientific, scientific and technical works and projects financed by the external instrument of assistance of the European Union for fulfilment of obligations of Ukraine in the Framework program of the European Union on scientific researches and innovations "Horizon 2020"
- Competitive selection of the Ukrainian Startup Fund

**Part 2**

Programmes which Ukraine undertakes to progressively open to participation of legal entities established in the European Union

The following programmes of Ukraine will be progressively open to participation of legal entities established in the European Union

- Foundation of the President of Ukraine for support of education, science and sports
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## ANNEX III

**Sound Financial Management**

## Protection of financial interests and recovery

*Article 1***Reviews and audits**

1. The European Union shall have the right to conduct, in accordance with the applicable acts of one or more Union institutions or bodies and as provided in relevant agreements and/or contracts, technical, scientific, financial, or other types of reviews and audits on the premises of any natural person residing in or any legal entity established in Ukraine and receiving European Union funding, as well as any third party involved in the implementation of Union funds residing or established in Ukraine. Such review and audits may be carried out by the agents of the institutions and bodies of the European Union, in particular of the European Commission and the European Court of Auditors, or by other persons mandated by the European Commission.
2. The agents of the institutions and bodies of the European Union, in particular of the European Commission and the European Court of Auditors, and the other persons mandated by the European Commission, shall have appropriate access to sites, works and documents (both in electronic and paper versions) and to all the information required in order to carry out such audits, including the right of obtaining a physical/electronic copy of, and extracts from, any document or the contents of any data medium held by the audited natural or legal person, or by the audited third party.
3. Ukraine shall not prevent or raise any particular obstacle to the right of entrance in Ukraine and to the access to the premises of the agents and other persons referred to in paragraph 2 on the grounds of the exercise of their duties referred to in this Article.
4. The reviews and audits may be carried out, also after the suspension of application of this Agreement pursuant to its Article 9(5) or its termination, on the terms laid down in the applicable acts of one or more European Union institutions or bodies and as provided in relevant agreements and/or contracts in relation to any legal commitment implementing the European Union budget entered into by the European Union before the date on which the suspension of application of this Agreement pursuant to its Article 9(5) or termination of this Agreement takes effect.

*Article 2***Fight against irregularities, fraud and other criminal offences affecting the financial interests of the Union**

1. The European Commission and the European Anti-Fraud Office (OLAF) shall be authorised to carry out administrative investigations, including on-the-spot checks and inspections, on the territory of Ukraine. These investigations shall be carried out in accordance with the terms and conditions established by applicable acts of one or more Union institutions.
2. The competent Ukrainian authorities shall inform the European Commission or OLAF within reasonable time of any fact or suspicion which has come to their notice relating to an irregularity, fraud or other illegal activity affecting the financial interests of the Union.
3. On-the-spot checks and inspections may be carried out on the premises of any natural person residing in or legal entity established in Ukraine and receiving Union funds, as well as of any third party involved in the implementation of Union funds residing or established in Ukraine.
4. On-the-spot checks and inspections shall be prepared and conducted by the European Commission or OLAF in close collaboration with the competent Ukrainian authority designated by the Ukrainian government. The designated authority shall be notified a reasonable time in advance of the object, purpose and legal basis of the checks and inspections, so that it can provide assistance. To that end, the officials of the competent Ukrainian authorities may participate in the on-the-spot checks and inspections.
5. Upon request by the Ukrainian authorities, the on-the-spot checks and inspections may be carried out jointly with the European Commission or OLAF.

6. Commission agents and OLAF staff shall have access to all the information and documentation, including computer data, on the operations concerned, which are required for the proper conduct of the on-the-spot checks and inspections. They may, in particular, copy relevant documents.

7. Where the person, entity or another third party resists an on-the-spot check or inspection, the Ukrainian authorities, acting in accordance with national rules and regulations, shall assist the European Commission or OLAF, to allow them to fulfil their duty in carrying out an on-the-spot check or inspection. This assistance shall include taking the appropriate precautionary measures under national law, in particular in order to safeguard evidence.

8. The European Commission or OLAF shall inform the Ukrainian authorities of the result of such checks and inspections. In particular, the European Commission or OLAF shall report as soon as possible to the competent Ukrainian authority any fact or suspicion relating to an irregularity which has come to their notice in the course of the on-the-spot check or inspection.

9. Without prejudice to application of Ukrainian criminal law, the European Commission may impose administrative measures and penalties on legal or natural persons of Ukraine participating in the implementation of a programme or activity in accordance with European Union legislation.

10. For the purposes of proper implementation of this Article, the European Commission or OLAF and the Ukrainian competent authorities shall regularly exchange information and, at the request of one of the parties to this Agreement, consult each other.

11. In order to facilitate effective cooperation and exchange of information with OLAF, Ukraine shall designate a contact point.

12. Information exchanged between the European Commission or OLAF and the Ukrainian competent authorities shall take place having due regard to the confidentiality requirements. Personal data included in the exchange of information shall be protected in accordance with applicable rules.

13. The Ukrainian authorities shall cooperate with the European Public Prosecutor's Office to allow it to fulfil its duty to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the European Union in accordance with the applicable legislation.

### *Article 3*

#### **Recovery and enforcement**

1. Decisions adopted by the European Commission imposing a pecuniary obligation on legal or natural persons other than States in relation to any claims stemming from the Horizon Europe Programme shall be enforceable in Ukraine. The order for enforcement shall be appended to the decision, without any other formality than a verification of the authenticity of the decision by the national authority designated for this purpose by the government of Ukraine. The government of Ukraine shall make known its designated national authority to the Commission and the Court of Justice of the European Union. In accordance with Article 4, the European Commission shall be entitled to notify such enforceable decisions directly to persons residing and legal entities established in Ukraine. Enforcement shall take place in accordance with Ukrainian law and rules of procedure.

2. Judgments and orders of the Court of Justice of the European Union delivered in application of an arbitration clause contained in a contract or agreement in relation to Union programmes, activities, actions or projects shall be enforceable in Ukraine in the same manner as European Commission decisions referred to in paragraph (1).

3. The Court of Justice of the European Union shall have jurisdiction to review the legality of the decision of the Commission referred to in paragraph 1 and to suspend its enforcement. However, the Courts of Ukraine shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

*Article 4***Communication and exchange of information**

The European Union institutions and bodies involved in the implementation of Horizon Europe Programme, or in controls over that programme, shall be entitled to communicate directly, including through electronic exchange systems, with any natural person residing in or legal entity established in Ukraine and receiving Union funds, as well as any third party involved in the implementation of Union funds residing or established in Ukraine. Such persons, entities and parties may submit directly to the European Union institutions and bodies all relevant information and documentation which they are required to submit on the basis of the European Union legislation applicable to the Union programme and of the contracts or agreements concluded to implement that programme.

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