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[1] Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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[1] Text with EEA relevance

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2013/38/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 August 2013

amending Directive 2009/16/EC on port State control

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) On 23 February 2006, the International Labour Organisation (ILO) adopted the Maritime Labour Convention, 2006 (MLC 2006), desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.

(2) Council Decision 2007/431/EC [3] authorised Member States, in the interests of the European Community, to ratify MLC 2006. Therefore, Member States should ratify it as soon as possible.

(3) Member States, when performing port State control inspections in accordance with Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control [4] in relation to matters covered by Conventions which they have not yet ratified and which stipulate that every ship is subject to control by officers duly authorised when in a port of another contracting State or Party, should make every effort to comply with procedures and practices under those Conventions and should thus refrain from making reports relevant to port State control to the International Maritime Organisation (IMO) and/or the ILO. Member States which have not yet ratified an international convention covered by Directive 2009/16/EC at the time of its entry into force should make every effort to establish similar conditions on board their ships in accordance with the requirements of that Convention.

(4) In order to ensure a harmonised approach to the effective enforcement of international standards by Member States when performing both flag and port State control inspections and to avoid friction between international and Union law, Member States should aim at ratifying the Conventions by the date on which they enter into force, at least those parts thereof falling under Union competence.

(5) MLC 2006 sets out maritime labour standards for all seafarers regardless of their nationality and of the flag of the ships on which they serve.

(6) For the purposes of Directive 2009/16/EC, it is preferable, rather than the terms 'seafarer' and 'crew' being defined, that those terms be understood in each instance in accordance with the way in which they are defined or understood in the relevant international conventions. In particular, for any matters relating to the enforcement of MLC 2006, the term 'crew' should be understood as referring to 'seafarer' as defined in MLC 2006.

(7) For any matters covered by this Directive relating to the enforcement of MLC 2006, including for ships for

[1] OJ C 299, 4.10.2012, p. 153.
[2] Position of the European Parliament of 2 July 2013 (not yet published in the Official Journal) and decision of the Council of 22 July 2013.
[3] OJ L 161, 22.6.2007, p. 63.
[4] OJ L 131, 28.5.2009, p. 57.

which the International Safety Management Code is not applicable, references in Directive 2009/16/EC to 'company' should be understood to mean 'shipowner' as defined by the relevant provision of MLC 2006, since the latter definition better fits the specific needs of MLC 2006.

(8) A substantial part of the MLC 2006 standards is implemented within Union law by means of Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 ([1]) and Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) ([2]). Those MLC 2006 standards which fall within the scope of Directive 2009/13/EC or Directive 1999/63/EC are to be implemented by the Member States in line with those Directives.

(9) As a matter of general principle, the measures adopted to give effect to this Directive should under no circumstances constitute grounds justifying a reduction by Member States in the general level of protection of seafarers on board ships flying the flag of a Member State under the applicable Union social law.

(10) MLC 2006 contains enforcement provisions defining the responsibilities of States performing port State control obligations. In order to protect safety and to avoid distortions of competition, Member States should be allowed to verify compliance with the provisions of MLC 2006 by any ship calling at their ports and anchorages, irrespective of the State whose flag it flies.

(11) Port State control is governed by Directive 2009/16/EC, which should include MLC 2006 among the Conventions the implementation of which is verified by Member States' authorities in their ports.

(12) Member States, when performing port State control inspections in accordance with Directive 2009/16/EC, should take into account the provisions of MLC 2006 which stipulate that the maritime labour certificate and the declaration of maritime labour compliance are to be accepted as prima facie evidence of compliance with the requirements of MLC 2006.

(13) The law of the Union should also reflect the procedures set out in MLC 2006 with regard to the handling of onshore complaints relating to the matters dealt with in MLC 2006.

(14) In order to ensure uniform conditions for the implementation of Directive 2009/16/EC, implementing powers should be conferred on the Commission. The Commission should be entitled to adopt implementing acts: to implement a methodology for the consideration of generic risk parameters relating in particular to the flag State criteria and company performance criteria; to ensure uniform conditions for the scope of expanded inspections, including the risk areas to be covered; to ensure uniform application of the procedures for the control and security checks of ships; to set up a harmonised electronic format for the reporting of complaints related to MLC 2006; to implement harmonised procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and of follow-up actions taken by Member States; and to establish the detailed arrangements for publication of information on companies with a low and very low performance, the criteria for aggregating the relevant data and the frequency of updates. This is a highly technical exercise to be carried out in the framework of the principles and criteria which have been established by that Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([3]).

(15) Implementing acts relating to the methodology for the consideration of generic risk parameters concerning in particular the flag State criteria and company performance criteria, to the reports from pilots and port authorities or bodies, including harmonised procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and of follow-up actions taken by Member States, and to the detailed arrangements for the publication of information on companies with a low or very low performance, should not be adopted by the Commission where the committee referred to in this Directive delivers no opinion on the draft implementing act presented by the Commission.

(16) When establishing implementing rules, the Commission should specifically take into account the expertise and experience gained with the inspection system in the Union and build upon the expertise of the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, in its up-to-date version ('Paris MOU').

(17) The implementing rules, including references to Paris MOU instructions and guidelines, should not compromise the exercise of the professional judgment of inspectors or of the competent authority and the flexibility provided for in Directive 2009/16/EC.

([1]) OJ L 124, 20.5.2009, p. 30.
([2]) OJ L 167, 2.7.1999, p. 33.
([3]) OJ L 55, 28.2.2011, p. 13.

(18) The inspection database referred to in Directive 2009/16/EC should be adapted and developed in line with the amendments introduced by this Directive or changes adopted within the context of the Paris MOU.

(19) The Paris MOU seeks to eliminate the operation of sub-standard ships through a harmonised system of port State control, comprising coordinated inspection of ships calling at ports, including Member States' ports, in the Paris MOU Region. Those inspections are aimed at verifying that ships meet international safety, security and environmental standards, and that seafarers have adequate living and working conditions, in conformity with the international conventions in force. When inspections are carried out and when reference is made to Paris MOU instructions and guidelines, account should be taken of the fact that those instructions and guidelines are developed and adopted to ensure consistency and to guide inspections with a view to facilitating the greatest possible degree of convergence.

(20) The inspection of on-board living and working conditions of seafarers and of their training and qualifications, to verify that these comply with the requirements of MLC 2006, requires the necessary level of training for inspectors. The European Maritime Safety Agency and Member States should promote the issue of training for inspectors for the purposes of reviewing compliance with MLC 2006.

(21) In order to allow the Commission to update the relevant procedures swiftly, thereby contributing to the achievement of a global level playing field for shipping, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to Annex VI to Directive 2009/16/EC containing the list of the 'Instructions' adopted by the Paris MOU, with a view to keeping the procedures applicable and enforceable in the territory of the Member States, in line with those agreed upon at international level and in compliance with the relevant Conventions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(22) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(23) Directive 2009/16/EC should therefore be amended accordingly.

(24) According to Article VIII, MLC 2006 is to come into force 12 months after the date on which there have been registered ratifications by at least 30 Members of the ILO with a total share in the world gross tonnage of ships of 33 per cent. This condition was fulfilled on 20 August 2012, and MLC 2006 enters into force on 20 August 2013.

(25) This Directive should enter into force on the same date as MLC 2006,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/16/EC

Directive 2009/16/EC is hereby amended as follows:

(1) Article 2 is amended as follows:

(a) point 1 is amended as follows:

(i) point (g) is deleted;

(ii) the following points are added:

'(i) the Maritime Labour Convention, 2006 (MLC 2006);

(j) the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS 2001);

(k) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention, 2001).';

(b) the following points are added:

'23. 'Maritime labour certificate' means the certificate referred to in Regulation 5.1.3 of MLC 2006.

24. 'Declaration of maritime labour compliance' means the declaration referred to in Regulation 5.1.3 of MLC 2006.';

(c) the following paragraph is added:

'All the references in this Directive to the Conventions, international codes and resolutions, including for certificates and other documents, shall be deemed to be references to those Conventions, international codes and resolutions in their up-to-date versions.'.

(2) Article 3 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. When inspecting a ship flying the flag of a State which is not a party to a Convention, Member States shall ensure that the treatment of that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris MOU.';

(b) the following paragraph is added:

'5. Measures adopted to give effect to this Directive shall not lead to a reduction in the general level of protection of seafarers under Union social law in the areas to which this Directive applies, as compared to the situation which already prevails in each Member State. In implementing those measures, if the competent authority of the port State becomes aware of a clear violation of Union law on board ships flying the flag of a Member State, it shall, in accordance with national law and practice, forthwith inform any other relevant competent authority in order for further action to be taken as appropriate.'.

(3) In Article 8, paragraph 4 is deleted.

(4) In Article 10, paragraph 3 is replaced by the following:

'3. Implementing powers shall be conferred on the Commission to implement a methodology for the consideration of generic risk parameters relating in particular to the flag State criteria and company performance criteria. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'.

(5) In Article 14, paragraph 4 is replaced by the following:

'4. The scope of an expanded inspection, including the risk areas to be covered, is set out in Annex VII. The Commission may adopt detailed measures to ensure uniform conditions for the application of Annex VII. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'.

(6) In Article 15, paragraph 4 is replaced by the following:

'4. The Commission may adopt detailed measures to ensure uniform application of the procedures referred to in paragraph 1 and of the security checks referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'.

(7) In Article 17, the following paragraphs are added:

'Where, following a more detailed inspection, the living and working conditions on the ship are found not to conform to the requirements of MLC 2006, the inspector shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification.

In the event that the inspector considers such deficiencies to be significant, or if they relate to a possible complaint under point 19 of Part A of Annex V, the inspector shall also bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organisations in the Member State in which the inspection is carried out, and may:

(a) notify a representative of the flag State;

(b) provide the competent authorities of the next port of call with the relevant information.

In respect of matters concerning MLC 2006, the Member State in which the inspection is carried out shall have the right to transmit a copy of the inspector's report, to be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties who might be interested in availing themselves of relevant recourse procedures.'.

(8) In Article 18, the fourth paragraph is replaced by the following:

'The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned. The inspector shall take appropriate steps to safeguard the confidentiality of complaints made by seafarers, including ensuring confidentiality during any interviews of seafarers.'.

(9) The following Article is inserted:

'*Article 18a*

Onshore MLC 2006 complaint-handling procedures

1. A complaint by a seafarer alleging a breach of the requirements of MLC 2006 (including seafarers' rights) may be reported to an inspector in the port at which the seafarer's ship has called. In such cases, the inspector shall undertake an initial investigation.

2. Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided for under Regulation 5.1.5 of MLC 2006 have been pursued. The inspector may also conduct a more detailed inspection in accordance with Article 13 of this Directive.

3. The inspector shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.

4. In the event that the investigation or the inspection reveals a non-conformity that falls within the scope of Article 19, that Article shall apply.

5. Where paragraph 4 does not apply and a complaint by a seafarer related to matters covered by MLC 2006 has not been resolved at the ship-board level, the inspector shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action to be submitted by the flag State. A report of any inspection carried out shall be transmitted by electronic means to the inspection database referred to in Article 24.

6. Where the complaint has not been resolved following action taken in accordance with paragraph 5, the port State shall transmit a copy of the inspector's report to the Director-General of the International Labour Office. The report shall be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate seafarers' and shipowners' organisations in the port State shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General of the International Labour Office.

Such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and brought to the attention of parties, including seafarers' and shipowners' organisations, which might be interested in availing themselves of relevant recourse procedures.

7. In order to ensure uniform conditions for the implementation of this Article, implementing powers shall be conferred on the Commission regarding the setting-up of a harmonised electronic format and procedure for the reporting of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

8. This Article shall be without prejudice to Article 18. The fourth paragraph of Article 18 shall also apply to complaints relating to matters covered by MLC 2006.'.

(10) Article 19 is amended as follows:

(a) The following paragraph is inserted:

'2a. In the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers or deficiencies which constitute a serious or repeated breach of MLC 2006 requirements (including seafarers' rights), the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped.

The detention order or stoppage of an operation shall not be lifted until those deficiencies have been rectified or if the competent authority has accepted a plan of action to rectify those deficiencies and it is satisfied that the plan will be implemented in an expeditious manner. Prior to accepting a plan of action, the inspector may consult the flag State.';

(b) paragraph 6 is replaced by the following:

'6. In the event of detention, the competent authority shall immediately inform, in writing and including the report of inspection, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognised organisations responsible for the issue of classification certificates or statutory certificates in accordance with Conventions shall also be notified where relevant. Moreover, if a ship is prevented from sailing due to serious or repeated breach of the requirements of MLC 2006 (including seafarers' rights) or due to the living and working conditions on board being clearly hazardous to the safety, health or security of seafarers, the competent authority shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The competent authority shall also inform forthwith the appropriate seafarers' and shipowners' organisations in the port State in which the inspection was carried out.'.

(11) In Article 23, paragraph 5 is replaced by the following:

'5. Implementing powers shall be conferred on the Commission to adopt measures for the implementation of this Article, including harmonised procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'.

(12) In Article 27, the second paragraph is replaced by the following:

'Implementing powers shall be conferred on the Commission to establish the detailed arrangements for publication of the information referred to in the first paragraph, the criteria for aggregating the relevant data and the frequency of updates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'.

(13) The following Articles are inserted:

'Article 30a

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 30b, concerning amendments to Annex VI, in order to add to the list set out in that Annex further instructions relating to port State control adopted by the Paris MOU Organisation.

Article 30b

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 30a shall be conferred on the Commission for a period of five years from 20 August 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 30a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 30a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'.

(14) Article 31 is replaced by the following:

'*Article 31*

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and the Council (*). That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion on a draft implementing act to be adopted pursuant to Articles 10(3), 23(5) and the second paragraph of Article 27 respectively, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

(*) OJ L 324, 29.11.2002, p. 1.'.

(15) Article 32 is deleted.

(16) Article 33 is replaced by the following:

'*Article 33*

Implementing rules

When establishing the implementing rules referred to in Articles 10(3), 14(4), 15(4), 18a(7), 23(5) and 27 in accordance with the procedures referred to in Article 31(3), the Commission shall take specific care that those rules take into account the expertise and experience gained with the inspection system in the Union and build upon the expertise of the Paris MOU.'.

(17) In Annex I, Part II, point 2B is amended as follows:

(a) the fifth indent is replaced by the following:

'— Ships which have been the subject of a report or complaint, including an onshore complaint, by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, on-board living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded.';

(b) the following indent is added:

'— Ships for which a plan of action to rectify deficiencies as referred to in Article 19(2a) has been agreed but in respect of which the implementation of that plan has not been checked by an inspector.'.

(18) Annex IV is amended as follows:

(a) points 14, 15 and 16 are replaced by the following:

'14. Medical certificates (see MLC 2006).

15. Table of shipboard working arrangements (see MLC 2006 and STCW 78/95).

16. Records of hours of work and rest of seafarers (see MLC 2006).';

(b) the following points are added:

'45. Maritime labour certificate.

46. Declaration of maritime labour compliance, parts I and II.

47. International Anti-Fouling System Certificate.

48. Certificate of insurance or other financial security in respect of civil liability for bunker oil pollution damage.'.

(19) In Annex V, Part A, the following points are added:

'16. The documents required under MLC 2006 are not produced or maintained or are falsely maintained or the documents produced do not contain the information required by MLC 2006 or are otherwise invalid.

17. The living and working conditions on the ship do not conform to the requirements of MLC 2006.

18. There are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with MLC 2006.

19. There is a complaint alleging that specific living and working conditions on the ship do not conform to the requirements of MLC 2006.'.

(20) In Annex X, point 3.10 is amended as follows:

(a) the title is replaced by the following:

'Areas under MLC 2006';

(b) the following points are added:

'8. The conditions on board are clearly hazardous to the safety, health or security of seafarers.

9. The non-conformity constitutes a serious or repeated breach of the requirements of MLC 2006 (including seafarer's rights) relating to the living and working conditions of seafarers on the ship, as stipulated in the ship's maritime labour certificate and declaration of maritime labour compliance.'.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 21 November 2014. They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on 20 August 2013, the date of entry into force of MLC 2006.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 12 August 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	L. LINKEVIČIUS

DIRECTIVE 2013/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 August 2013

on attacks against information systems and replacing Council Framework Decision 2005/222/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) The objectives of this Directive are to approximate the criminal law of the Member States in the area of attacks against information systems by establishing minimum rules concerning the definition of criminal offences and the relevant sanctions and to improve cooperation between competent authorities, including the police and other specialised law enforcement services of the Member States, as well as the competent specialised Union agencies and bodies, such as Eurojust, Europol and its European Cyber Crime Centre, and the European Network and Information Security Agency (ENISA).

(2) Information systems are a key element of political, social and economic interaction in the Union. Society is highly and increasingly dependent on such systems. The smooth operation and security of those systems in the Union is vital for the development of the internal market and of a competitive and innovative economy. Ensuring an appropriate level of protection of information systems should form part of an effective comprehensive framework of prevention measures accompanying criminal law responses to cybercrime.

(3) Attacks against information systems, and, in particular, attacks linked to organised crime, are a growing menace in the Union and globally, and there is increasing concern about the potential for terrorist or politically motivated attacks against information systems which form part of the critical infrastructure of Member States and of the Union. This constitutes a threat to the achievement of a safer information society and of an area of freedom, security, and justice, and therefore requires a response at Union level and improved cooperation and coordination at international level.

(4) There are a number of critical infrastructures in the Union, the disruption or destruction of which would have a significant cross-border impact. It has become apparent from the need to increase the critical infrastructure protection capability in the Union that the measures against cyber attacks should be complemented by stringent criminal penalties reflecting the gravity of such attacks. Critical infrastructure could be understood to be an asset, system or part thereof located in Member States, which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, such as power plants, transport networks or government networks, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions.

(5) There is evidence of a tendency towards increasingly dangerous and recurrent large-scale attacks conducted against information systems which can often be critical to Member States or to particular functions in the public or private sector. This tendency is accompanied by the development of increasingly sophisticated methods, such as the creation and use of so-called 'botnets', which involves several stages of a criminal act, where each stage alone could pose a serious risk to public interests. This Directive aims, inter alia, to introduce criminal penalties for the creation of botnets, namely, the act of establishing remote control over a significant number of computers by infecting them with malicious software through targeted cyber attacks. Once created, the infected network of computers that constitute the botnet can be activated without the computer users' knowledge in order to launch a large-scale cyber attack, which usually has the capacity to cause serious damage, as referred to in this Directive. Member States may determine what constitutes serious damage according to their national law and practice, such as disrupting system services of significant public importance, or causing major financial cost or loss of personal data or sensitive information.

(6) Large-scale cyber attacks can cause substantial economic damage both through the interruption of information systems and communication and through the loss or alteration of commercially important confidential information or other data. Particular attention should be paid to raising the awareness of innovative small and medium-sized enterprises to threats relating to such attacks and their vulnerability to such attacks, due to their increased dependence on the proper functioning and availability of information systems and often limited resources for information security.

([1]) OJ C 218, 23.7.2011, p. 130.

([2]) Position of the European Parliament of 4 July 2013 (not yet published in the Official Journal) and decision of the Council of 22 July 2013.

(7) Common definitions in this area are important in order to ensure a consistent approach in the Member States to the application of this Directive.

(8) There is a need to achieve a common approach to the constituent elements of criminal offences by introducing common offences of illegal access to an information system, illegal system interference, illegal data interference, and illegal interception.

(9) Interception includes, but is not necessarily limited to, the listening to, monitoring or surveillance of the content of communications and the procuring of the content of data either directly, through access and use of the information systems, or indirectly through the use of electronic eavesdropping or tapping devices by technical means.

(10) Member States should provide for penalties in respect of attacks against information systems. Those penalties should be effective, proportionate and dissuasive and should include imprisonment and/or fines.

(11) This Directive provides for criminal penalties at least for cases which are not minor. Member States may determine what constitutes a minor case according to their national law and practice. A case may be considered minor, for example, where the damage caused by the offence and/or the risk to public or private interests, such as to the integrity of a computer system or to computer data, or to the integrity, rights or other interests of a person, is insignificant or is of such a nature that the imposition of a criminal penalty within the legal threshold or the imposition of criminal liability is not necessary.

(12) The identification and reporting of threats and risks posed by cyber attacks and the related vulnerability of information systems is a pertinent element of effective prevention of, and response to, cyber attacks and to improving the security of information systems. Providing incentives to report security gaps could add to that effect. Member States should endeavour to provide possibilities for the legal detection and reporting of security gaps.

(13) It is appropriate to provide for more severe penalties where an attack against an information system is committed by a criminal organisation, as defined in Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ([1]), where a cyber attack is conducted on a large scale, thus affecting a significant number of information systems, including where it is intended to create a botnet, or where a cyber attack causes serious damage, including where it is carried out through a botnet. It is also appropriate to provide for more severe penalties where an attack is conducted against a critical infrastructure of the Member States or of the Union.

(14) Setting up effective measures against identity theft and other identity-related offences constitutes another important element of an integrated approach against cybercrime. Any need for Union action against this type of criminal behaviour could also be considered in the context of evaluating the need for a comprehensive horizontal Union instrument.

(15) The Council Conclusions of 27 to 28 November 2008 indicated that a new strategy should be developed with the Member States and the Commission, taking into account the content of the 2001 Council of Europe Convention on Cybercrime. That Convention is the legal framework of reference for combating cybercrime, including attacks against information systems. This Directive builds on that Convention. Completing the process of ratification of that Convention by all Member States as soon as possible should be considered to be a priority.

(16) Given the different ways in which attacks can be conducted, and given the rapid developments in hardware and software, this Directive refers to tools that can be used in order to commit the offences laid down in this Directive. Such tools could include malicious software, including those able to create botnets, used to commit cyber attacks. Even where such a tool is suitable or particularly suitable for carrying out one of the offences laid down in this Directive, it is possible that it was produced for a legitimate purpose Motivated by the need to avoid criminalisation where such tools are produced and put on the market for legitimate purposes, such as to test the reliability of information technology products or the security of information systems, apart from the general intent requirement, a direct intent requirement that those tools be used to commit one or more of the offences laid down in this Directive must be also fulfilled.

(17) This Directive does not impose criminal liability where the objective criteria of the offences laid down in this Directive are met but the acts are committed without criminal intent, for instance where a person does not know that access was unauthorised or in the case of mandated testing or protection of information systems, such as where a person is assigned by a company or vendor to test the strength of its security system. In the context of this Directive, contractual obligations or agreements to restrict access to information systems by way of a user policy or terms of service, as well as labour disputes as regards the access to and use of information systems of an employer for private purposes, should not incur criminal liability where the access under such circumstances would be deemed unauthorised and thus would constitute the sole basis for criminal proceedings. This Directive is without prejudice to the right of access to information as laid down in national and Union law, while at the same time it may not serve as a justification for unlawful or arbitrary access to information.

([1]) OJ L 300, 11.11.2008, p. 42.

(18) Cyber attacks could be facilitated by various circumstances, such as where the offender has access to security systems inherent in the affected information systems within the scope of his or her employment. In the context of national law, such circumstances should be taken into account in the course of criminal proceedings as appropriate.

(19) Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. They should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders. It remains within the discretion of the judge to assess those circumstances together with the other facts of the particular case.

(20) This Directive does not govern conditions for exercising jurisdiction over any of the offences referred to herein, such as a report by the victim in the place where the offence was committed, a denunciation from the State of the place where the offence was committed, or the non-prosecution of the offender in the place where the offence was committed.

(21) In the context of this Directive, States and public bodies remain fully bound to guarantee respect for human rights and fundamental freedoms, in accordance with existing international obligations.

(22) This Directive strengthens the importance of networks, such as the G8 or the Council of Europe's network of points of contact available on a 24 hour, seven-day-a-week basis. Those points of contact should be able to deliver effective assistance thus, for example, facilitating the exchange of relevant information available and the provision of technical advice or legal information for the purpose of investigations or proceedings concerning criminal offences relating to information systems and associated data involving the requesting Member State. In order to ensure the smooth operation of the networks, each contact point should have the capacity to communicate with the point of contact of another Member State on an expedited basis with the support, inter alia, of trained and equipped personnel. Given the speed with which large-scale cyber attacks can be carried out, Member States should be able to respond promptly to urgent requests from this network of contact points. In such cases, it may be expedient that the request for information be accompanied by telephone contact in order to ensure that the request is processed swiftly by the requested Member State and that feedback is provided within eight hours.

(23) Cooperation between public authorities on the one hand, and the private sector and civil society on the other, is of great importance in preventing and combating attacks against information systems. It is necessary to foster and improve cooperation between service providers, producers, law enforcement bodies and judicial authorities, while fully respecting the rule of law. Such cooperation could include support by service providers in helping to preserve potential evidence, in providing elements helping to identify offenders and, as a last resort, in shutting down, completely or partially, in accordance with national law and practice, information systems or functions that have been compromised or used for illegal purposes. Member States should also consider setting up cooperation and partnership networks with service providers and producers for the exchange of information in relation to the offences within the scope of this Directive.

(24) There is a need to collect comparable data on the offences laid down in this Directive. Relevant data should be made available to the competent specialised Union agencies and bodies, such as Europol and ENISA, in line with their tasks and information needs, in order to gain a more complete picture of the problem of cybercrime and network and information security at Union level and thereby to contribute to formulating a more effective response. Member States should submit information on the modus operandi of the offenders to Europol and its European Cybercrime Centre for the purpose of conducting threat assessments and strategic analyses of cybercrime in accordance with Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) [1]. Providing information can facilitate a better understanding of present and future threats and thus contribute to more appropriate and targeted decision-making on combating and preventing attacks against information systems.

(25) The Commission should submit a report on the application of this Directive and make necessary legislative proposals which could lead to broadening its scope, taking into account developments in the field of cybercrime. Such developments could include technological developments, for example those enabling more effective enforcement in the area of attacks against information systems or facilitating prevention or minimising the impact of such attacks. For that purpose, the Commission should take into account the available analyses and reports produced by relevant actors and, in particular, Europol and ENISA.

(26) In order to fight cybercrime effectively, it is necessary to increase the resilience of information systems by taking appropriate measures to protect them more effectively against cyber attacks. Member States should take the necessary measures to protect their critical infrastructure from cyber attacks, as part of which they should consider the protection of their information systems and associated data. Ensuring an adequate level of protection

[1] OJ L 121, 15.5.2009, p. 37.

and security of information systems by legal persons, for example in connection with the provision of publicly available electronic communications services in accordance with existing Union legislation on privacy and electronic communication and data protection, forms an essential part of a comprehensive approach to effectively counteracting cybercrime. Appropriate levels of protection should be provided against reasonably identifiable threats and vulnerabilities in accordance with the state of the art for specific sectors and the specific data processing situations. The cost and burden of such protection should be proportionate to the likely damage a cyber attack would cause to those affected. Member States are encouraged to provide for relevant measures incurring liabilities in the context of their national law in cases where a legal person has clearly not provided an appropriate level of protection against cyber attacks.

(27) Significant gaps and differences in Member States' laws and criminal procedures in the area of attacks against information systems may hamper the fight against organised crime and terrorism, and may complicate effective police and judicial cooperation in this area. The transnational and borderless nature of modern information systems means that attacks against such systems have a cross-border dimension, thus underlining the urgent need for further action to approximate criminal law in this area. In addition, the coordination of prosecution of cases of attacks against information systems should be facilitated by the adequate implementation and application of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflict of jurisdiction in criminal proceedings ([1]). Member States, in cooperation with the Union, should also seek to improve international cooperation relating to the security of information systems, computer networks and computer data. Proper consideration of the security of data transfer and storage should be given in any international agreement involving data exchange.

(28) Improved cooperation between the competent law enforcement bodies and judicial authorities across the Union is essential in an effective fight against cybercrime. In this context, stepping up the efforts to provide adequate training to the relevant authorities in order to raise the understanding of cybercrime and its impact, and to foster cooperation and the exchange of best practices, for example via the competent specialised Union agencies and bodies, should be encouraged. Such training should, inter alia, aim at raising awareness about the different national legal systems, the possible legal and technical challenges of criminal investigations, and the distribution of competences between the relevant national authorities.

(29) This Directive respects human rights and fundamental freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the protection of personal data, the right to privacy, freedom of expression and information, the right to a fair trial, the presumption of innocence and the rights of the defence, as well as the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

(30) The protection of personal data is a fundamental right in accordance with Article 16(1) TFEU and Article 8 of the Charter on Fundamental Rights of the European Union. Therefore, any processing of personal data in the context of the implementation of this Directive should fully comply with the relevant Union law on data protection.

(31) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Directive.

(32) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(33) Since the objectives of this Directive, namely to subject attacks against information systems in all Member States to effective, proportionate and dissuasive criminal penalties and to improve and encourage cooperation between judicial and other competent authorities, cannot be sufficiently achieved by the Member States, and can therefore, by reason of their scale or effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(34) This Directive aims to amend and expand the provisions of Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems ([2]). Since the amendments to be made are of substantial number and nature, Framework Decision 2005/222/JHA should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive,

([1]) OJ L 328, 15.12.2009, p. 42.

([2]) OJ L 69, 16.3.2005, p. 67.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of attacks against information systems. It also aims to facilitate the prevention of such offences and to improve cooperation between judicial and other competent authorities.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) 'information system' means a device or group of interconnected or related devices, one or more of which, pursuant to a programme, automatically processes computer data, as well as computer data stored, processed, retrieved or transmitted by that device or group of devices for the purposes of its or their operation, use, protection and maintenance;

(b) 'computer data' means a representation of facts, information or concepts in a form suitable for processing in an information system, including a programme suitable for causing an information system to perform a function;

(c) 'legal person' means an entity having the status of legal person under the applicable law, but does not include States or public bodies acting in the exercise of State authority, or public international organisations;

(d) 'without right' means conduct referred to in this Directive, including access, interference, or interception, which is not authorised by the owner or by another right holder of the system or of part of it, or not permitted under national law.

Article 3

Illegal access to information systems

Member States shall take the necessary measures to ensure that, when committed intentionally, the access without right, to the whole or to any part of an information system, is punishable as a criminal offence where committed by infringing a security measure, at least for cases which are not minor.

Article 4

Illegal system interference

Member States shall take the necessary measures to ensure that seriously hindering or interrupting the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

Article 5

Illegal data interference

Member States shall take the necessary measures to ensure that deleting, damaging, deteriorating, altering or suppressing computer data on an information system, or rendering such data inaccessible, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

Article 6

Illegal interception

Member States shall take the necessary measures to ensure that intercepting, by technical means, non-public transmissions of computer data to, from or within an information system, including electromagnetic emissions from an information system carrying such computer data, intentionally and without right, is punishable as a criminal offence, at least for cases which are not minor.

Article 7

Tools used for committing offences

Member States shall take the necessary measures to ensure that the intentional production, sale, procurement for use, import, distribution or otherwise making available, of one of the following tools, without right and with the intention that it be used to commit any of the offences referred to in Articles 3 to 6, is punishable as a criminal offence, at least for cases which are not minor:

(a) a computer programme, designed or adapted primarily for the purpose of committing any of the offences referred to in Articles 3 to 6;

(b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.

Article 8

Incitement, aiding and abetting and attempt

1. Member States shall ensure that the incitement, or aiding and abetting, to commit an offence referred to in Articles 3 to 7 is punishable as a criminal offence.

2. Member States shall ensure that the attempt to commit an offence referred to in Articles 4 and 5 is punishable as a criminal offence.

Article 9

Penalties

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 8 are punishable by effective, proportionate and dissuasive criminal penalties.

2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 7 are punishable by a maximum term of imprisonment of at least two years, at least for cases which are not minor.

3. Member States shall take the necessary measures to ensure that the offences referred to in Articles 4 and 5, when committed intentionally, are punishable by a maximum term of imprisonment of at least three years where a significant

number of information systems have been affected through the use of a tool, referred to in Article 7, designed or adapted primarily for that purpose.

4. Member States shall take the necessary measures to ensure that offences referred to in Articles 4 and 5 are punishable by a maximum term of imprisonment of at least five years where:

(a) they are committed within the framework of a criminal organisation, as defined in Framework Decision 2008/841/JHA, irrespective of the penalty provided for therein;

(b) they cause serious damage; or

(c) they are committed against a critical infrastructure information system.

5. Member States shall take the necessary measures to ensure that when the offences referred to in Articles 4 and 5 are committed by misusing the personal data of another person, with the aim of gaining the trust of a third party, thereby causing prejudice to the rightful identity owner, this may, in accordance with national law, be regarded as aggravating circumstances, unless those circumstances are already covered by another offence, punishable under national law.

Article 10

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 8, committed for their benefit by any person, acting either individually or as part of a body of the legal person, and having a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within the legal person.

2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has allowed the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 8 for the benefit of that legal person.

3. The liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators or inciters of, or accessories to, any of the offences referred to in Articles 3 to 8.

Article 11

Sanctions against legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 10(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 10(2) is punishable by effective, proportionate and dissuasive sanctions or other measures.

Article 12

Jurisdiction

1. Member States shall establish their jurisdiction with regard to the offences referred to in Articles 3 to 8 where the offence has been committed:

(a) in whole or in part within their territory; or

(b) by one of their nationals, at least in cases where the act is an offence where it was committed.

2. When establishing jurisdiction in accordance with point (a) of paragraph 1, a Member State shall ensure that it has jurisdiction where:

(a) the offender commits the offence when physically present on its territory, whether or not the offence is against an information system on its territory; or

(b) the offence is against an information system on its territory, whether or not the offender commits the offence when physically present on its territory.

3. A Member State shall inform the Commission where it decides to establish jurisdiction over an offence referred to in Articles 3 to 8 committed outside its territory, including where:

(a) the offender has his or her habitual residence in its territory; or

(b) the offence is committed for the benefit of a legal person established in its territory.

Article 13

Exchange of information

1. For the purpose of exchanging information relating to the offences referred to in Articles 3 to 8, Member States shall ensure that they have an operational national point of contact and that they make use of the existing network of operational points of contact available 24 hours a day and seven days a week. Member States shall also ensure that they have procedures in place so that for urgent requests for assistance, the competent authority can indicate, within eight hours of receipt, at least whether the request will be answered, and the form and estimated time of such an answer.

2. Member States shall inform the Commission of their appointed point of contact referred to in paragraph 1. The Commission shall forward that information to the other Member States and competent specialised Union agencies and bodies.

3. Member States shall take the necessary measures to ensure that appropriate reporting channels are made available in order to facilitate the reporting of the offences referred to in Article 3 to 6 to the competent national authorities without undue delay.

Article 14

Monitoring and statistics

1. Member States shall ensure that a system is in place for the recording, production and provision of statistical data on the offences referred to in Articles 3 to 7.

2. The statistical data referred to in paragraph 1 shall, as a minimum, cover existing data on the number of offences referred to in Articles 3 to 7 registered by the Member States, and the number of persons prosecuted for and convicted of the offences referred to in Articles 3 to 7.

3. Member States shall transmit the data collected pursuant to this Article to the Commission. The Commission shall ensure that a consolidated review of the statistical reports is published and submitted to the competent specialised Union agencies and bodies.

Article 15

Replacement of Framework Decision 2005/222/JHA

Framework Decision 2005/222/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limit for transposition of the Framework Decision into national law.

In relation to Member States participating in the adoption of this Directive, references to the Framework Decision 2005/222/JHA shall be construed as references to this Directive.

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 September 2015.

2. Member States shall transmit to the Commission the text of the measures transposing into their national law the obligations imposed on them under this Directive.

3. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 17

Reporting

The Commission shall, by 4 September 2017, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals. The Commission shall also take into account the technical and legal developments in the field of cybercrime, particularly with regard to the scope of this Directive.

Article 18

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 12 August 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	L. LINKEVIČIUS

DECISIONS

DECISION No 778/2013/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 August 2013

providing further macro-financial assistance to Georgia

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure, in the light of the joint text approved by the Conciliation Committee on 26 June 2013 [1],

Whereas:

(1) Relations between Georgia and the European Union are developing within the framework of the European Neighbourhood Policy. In 2006, the Community and Georgia agreed on a European Neighbourhood Policy Action Plan identifying medium-term priorities in EU-Georgia relations. In 2010, the Union and Georgia launched the negotiations of an Association Agreement that is expected to replace the existing EU-Georgia Partnership and Cooperation Agreement [2]. The framework of EU-Georgia relations is further enhanced by the newly launched Eastern Partnership.

(2) The extraordinary European Council meeting on 1 September 2008 confirmed the Union's willingness to strengthen EU-Georgia relations in the aftermath of the armed conflict in August 2008 between Georgia and the Russian Federation.

(3) The Georgian economy has been affected by the international financial crisis since the third quarter of 2008, with declining output, falling fiscal revenues and rising external financing needs.

(4) At the International Donors' Conference held on 22 October 2008, the international community pledged support to Georgia's economic recovery in line with the Joint Needs Assessment carried out by the United Nations and the World Bank.

(5) The Union announced that it would provide up to EUR 500 million as financial assistance to Georgia.

(6) Georgian economic adjustment and recovery is supported by financial assistance from the International Monetary Fund (IMF). In September 2008, the Georgian authorities agreed with the IMF on a Stand-By Arrangement of USD 750 million to support the Georgian economy in making the necessary adjustments in the light of the financial crisis.

(7) Following a further deterioration of Georgia's economic situation and a necessary revision of the underlying economic assumptions of the IMF programme as well as Georgia's greater external financing needs, an agreement was reached between Georgia and the IMF for a loan increase of USD 424 million under the Stand-By Arrangement, which was approved in August 2009 by the IMF Board.

(8) The Union allocated, for 2010-2012, under the European Neighbourhood and Partnership Instrument (ENPI), budget support grants to Georgia of, on average, EUR 24 million per year.

(9) In view of Georgia's deteriorating economic situation and outlook, it has requested Union macro-financial assistance.

(10) Given that there is still a residual financing gap in Georgia's balance of payments, macro-financial assistance is considered an appropriate response to Georgia's request under the current exceptional circumstances to support economic stabilisation in conjunction with the current IMF programme.

(11) The Union macro-financial assistance to be provided to Georgia ('the Union's macro-financial assistance') should not merely supplement programmes and resources from the IMF and the World Bank, but should ensure the added value of Union involvement.

(12) The Commission should ensure that the Union's macro-financial assistance is legally and substantially in line with the measures taken within the different areas of external action and other relevant Union policies.

[1] Position of the European Parliament of 10 May 2011 (OJ C 377 E, 7.12.2012, p. 211) and position of the Council at first reading of 10 May 2012 (OJ C 291 E, 27.9.2012, p. 1). Position of the European Parliament of 11 December 2012 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 4 July 2013 (not yet published in the Official Journal) and decision of the Council of 9 July 2013.

[2] Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part (OJ L 205, 4.8.1999, p. 3).

(13) The specific objectives of the Union's macro-financial assistance should strengthen efficiency, transparency and accountability. Those objectives should be regularly monitored by the Commission.

(14) The conditions underlying the provision of the Union's macro-financial assistance should reflect the key principles and objectives of the Union's policy towards Georgia.

(15) In order to ensure efficient protection of the Union's financial interests linked to the Union's macro-financial assistance, it is necessary that Georgia adopt appropriate measures relating to the prevention of, and the fight against, fraud, corruption and any other irregularities linked to that assistance. It is also necessary that the Commission provide for appropriate checks and that the Court of Auditors provide for appropriate audits.

(16) The release of the Union's macro-financial assistance is without prejudice to the powers of the budgetary authority.

(17) The Union's macro-financial assistance should be managed by the Commission. In order to ensure that the European Parliament and the Economic and Financial Committee are able to follow the implementation of this Decision, the Commission should regularly inform them of developments relating to the Union's macro-financial assistance and provide them with relevant documents.

(18) In order to ensure uniform conditions for the implementation of this Decision, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([1]).

(19) In this context, it is recalled that in the terms of that Regulation the advisory procedure should, as a general rule, apply in all cases other than as provided for in that Regulation. Considering the potentially important impact of the operations superior to the threshold of EUR 90 million, it is appropriate that the examination procedure is used for these operations. Considering the amount of the Union's macro-financial assistance to Georgia, the advisory procedure should apply for the adoption of the Memorandum of Understanding, or for reducing, suspending or cancelling of the assistance,

HAVE ADOPTED THIS DECISION:

Article 1

1. The Union shall make macro-financial assistance available to Georgia of a maximum amount of EUR 46 million, with a view to supporting Georgia's economic stabilisation and covering its balance of payments needs, as identified in the current IMF programme. Of that maximum amount, up to EUR 23 million shall be provided in the form of grants and up to EUR 23 million in the form of loans. The release of the Union's macro-financial assistance shall be subject to the approval of the 2013 Union budget by the budgetary authority.

2. The Commission shall be empowered to borrow the necessary resources on behalf of the Union in order to finance the loan component of the Union's macro-financial assistance. The loan shall have a maximum maturity of 15 years.

3. The release of the Union's macro-financial assistance shall be managed by the Commission in a manner consistent with the agreements or understandings reached between the IMF and Georgia and with the key principles and objectives of economic reform set out in the EU-Georgia Partnership and Cooperation Agreement. The Commission shall regularly inform the European Parliament and the Economic and Financial Committee of developments in the management of the Union's macro-financial assistance and provide them with relevant documents.

4. The Union's macro-financial assistance shall be made available for a period of two years and six months starting from the first day after the entry into force of the Memorandum of Understanding referred to in Article 2(1).

Article 2

1. The Commission shall adopt, in accordance with the advisory procedure referred to in Article 6(2), a Memorandum of Understanding containing the economic policy and financial conditions to which the Union's macro-financial assistance is subject, including a time-frame for the fulfilment of those conditions. The economic policy and financial conditions set out in the Memorandum of Understanding shall be consistent with the agreements or understandings referred to in Article 1(3). Those conditions shall aim, in particular, at strengthening the efficiency, transparency and accountability of the Union's macro-financial assistance, including public finance management systems in Georgia. Progress in attaining those objectives shall be regularly monitored by the Commission. The detailed financial terms of the Union's macro-financial assistance shall be laid down in the Grant Agreement and the Loan Agreement to be agreed between the Commission and the Georgian authorities.

2. During the implementation of the Union's macro-financial assistance, the Commission shall monitor the soundness of Georgia's financial arrangements, the administrative procedures and the internal and external control mechanisms which are relevant to such assistance, as well as Georgia's adherence to the agreed timeframe.

3. The Commission shall verify at regular intervals that Georgia's economic policies are in accordance with the objectives of the Union's macro-financial assistance and that the agreed economic policy conditions are being satisfactorily fulfilled. To that end, the Commission shall coordinate closely with the IMF and the World Bank, and, where required, with the Economic and Financial Committee.

Article 3

1. Subject to the conditions set out in paragraph 2, the Union's macro-financial assistance shall be made available by

([1]) OJ L 55, 28.2.2011, p. 13.

the Commission in two instalments, each of them consisting of a grant and a loan element. The size of each instalment shall be laid down in the Memorandum of Understanding.

2. The Commission shall decide on the release of the instalments subject to the satisfactory fulfilment of the economic policy and financial conditions agreed in the Memorandum of Understanding. The disbursement of the second instalment shall take place no earlier than three months after the release of the first instalment.

3. The Union's funds shall be paid to the National Bank of Georgia. Subject to provisions to be agreed in the Memorandum of Understanding, including a confirmation of residual budgetary financing needs, the Union's funds may be transferred to the Treasury of Georgia as the final beneficiary.

Article 4

1. The borrowing and lending operations relating to the loan component of the Union's macro-financial assistance shall be carried out in euro using the same value date and shall not expose the Union to any transformation of maturities, to any exchange or interest rate risks, or to any other commercial risk.

2. The Commission shall take the necessary steps, if Georgia so requests, to ensure that an early repayment clause is included in the loan terms and conditions and that it is matched by a corresponding clause in the terms and conditions of the Commission's borrowing operations.

3. Where circumstances permit an improvement of the interest rate of the loan and if Georgia so requests, the Commission may refinance all or part of its initial loan or may restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average maturity of the loan concerned or increasing the amount of capital outstanding at the date of the refinancing or restructuring.

4. All costs incurred by the Union which relate to the borrowing and lending operations under this Decision shall be borne by Georgia.

5. The Commission shall keep the European Parliament and the Economic and Financial Committee informed of developments in the operations referred to in paragraphs 2 and 3.

Article 5

The Union's macro-financial assistance shall be implemented in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [1] and its implementing rules [2]. In particular, the Memorandum of Understanding, the Loan Agreement and the Grant Agreement to be agreed with the Georgian authorities shall provide for specific measures in relation to the prevention of, and the fight against, fraud, corruption and any other irregularities affecting the Union's macro-financial assistance. In order to ensure greater transparency in the management and disbursement of funds, the Memorandum of Understanding, the Loan Agreement and the Grant Agreement shall also provide for checks, including on-the-spot checks and inspections, to be carried out by the Commission, including the European Anti-Fraud Office. Those documents shall also provide for audits, including where appropriate on-the-spot audits, by the Court of Auditors.

Article 6

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 7

1. By 30 June of each year, the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Decision in the preceding year, including an evaluation thereof. The report shall indicate the connection between the economic policy and financial conditions laid down in the Memorandum of Understanding, Georgia's ongoing economic and fiscal performance and the Commission's decisions to release the instalments of the Union's macro-financial assistance.

2. No later than two years after the expiry of the availability period referred to in Article 1(4), the Commission shall submit to the European Parliament and to the Council an *ex post* evaluation report.

Article 8

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 12 August 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	L. LINKEVIČIUS

[1] OJ L 298, 26.10.2012, p. 1.

[2] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 (OJ L 362, 31.12.2012, p. 1).

Joint Declaration by the European Parliament and the Council adopted together with the decision providing further macro-financial assistance to Georgia

The European Parliament and the Council:

— agree that the adoption of the decision on providing further macro-financial assistance to Georgia should be seen in the wider context of the need for a framework that should secure sound and effective decisions on providing macro-financial assistance to third countries;

— agree that the adoption of decisions on macro-financial assistance operations should be based on the considerations and the principles set out below for the granting of Union macro-financial assistance to eligible third countries and territories, without prejudice to the right of legislative initiative and the legal form that a future instrument formalising these considerations and principles might take;

— commit to fully reflect these considerations and principles in the future individual decisions on granting the Unions's macro-financial assistance.

PART A - CONSIDERATIONS

(1) The Union is a major provider of economic, financial and technical assistance to third countries. Union macro-financial assistance ('macro-financial assistance') has proved an efficient instrument for economic stabilisation and a driver for structural reforms in countries and territories benefitting from such assistance ('beneficiaries'). In accordance with its overall policy in respect of candidate, potential candidate, and neighbourhood countries, the Union should be in a position to provide macro-financial assistance to those countries with the aim of developing a zone of shared stability, security, and prosperity.

(2) Macro-financial assistance should be based on ad-hoc, country-specific decisions of the European Parliament and of the Council. These principles aim to enhance the efficiency and effectiveness of the decision-making process leading to such decisions and their implementation, and to strengthen the application by the beneficiary of the political pre-conditions for granting macro-financial assistance and to improve the transparency and democratic scrutiny of that assistance.

(3) In its resolution on the implementation of macro-financial assistance to third countries of 3 June 2003, the European Parliament called for a framework regulation for macro-financial assistance in order to expedite the decision-making process and provide this financial instrument with a formal and transparent basis.

(4) In its conclusions of 8 October 2002, the Council established criteria (the so-called Genval criteria) to guide macro-financial assistance operations. It would be appropriate to update and clarify these criteria, inter alia the criteria for determining the appropriate form of assistance (a loan, a grant or a combination thereof).

(5) These principles should enable the Union to make macro-financial assistance available expeditiously, in particular when circumstances call for immediate action, and to increase the clarity and transparency of the criteria applicable to the implementation of macro-financial assistance.

(6) The Commission should ensure that macro-financial assistance is in line with the key principles, objectives and measures taken within the different areas of external action and other relevant Union policies.

(7) Macro-financial assistance should support the Union's external policy. The Commission services and the European External Action Service (EEAS) should work closely together throughout the macro-financial assistance operation in order to coordinate, and to ensure the consistency of, Union external policy.

(8) Macro-financial assistance should support the beneficiaries' commitment to common values shared with the Union, including democracy, the rule of law, good governance, respect for human rights, sustainable development and poverty reduction, and to the principles of open, rules-based and fair trade.

(9) A pre-condition for granting macro-financial assistance should be that the eligible country respects effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and guarantees respect for human rights. Those pre-conditions should be regularly monitored by the Commission.

(10) The specific objectives of individual macro-financial assistance decisions should include the strengthening of the efficiency, transparency and accountability of public finance management in the beneficiaries. The achievement of these objectives should be regularly monitored by the Commission.

(11) Macro-financial assistance should aim to support the restoration of a sustainable external finance situation for third countries and territories that are facing a shortage of foreign currency and related external financing difficulties. Macro-financial assistance should neither provide regular financial support, nor have as its primary aim the support of the economic and social development of the beneficiaries.

(12) Macro-financial assistance should be complementary to the resources provided by the International Monetary Fund (IMF) and other multilateral financial institutions, and there should be fair burden-sharing between the Union and other donors. Macro-financial assistance should ensure the added value of the involvement of the Union.

(13) In order to ensure that the Union's financial interests linked to macro-financial assistance are protected efficiently, the beneficiaries should take appropriate measures relating to the prevention of, and the fight against, fraud, corruption and any other irregularities linked to this assistance, and provision should be made for checks by the Commission and for audits by the Court of Auditors.

(14) The choice of the procedure for the adoption of the memoranda of understanding should be decided in accordance with the criteria set out in Regulation (EU) No 182/2011. In this context, the advisory procedure should apply as a general rule, but considering the potentially important impact of the operations superior to the threshold set out in part B, it is appropriate that the examination procedure is used for the latter operations.

PART B - PRINCIPLES

1. Aim of the assistance

(a) Macro-financial assistance should be an exceptional financial instrument of untied and undesignated balance-of-payments support to eligible third countries and territories. It should aim to restore a sustainable external finance situation for eligible countries and territories facing external financing difficulties. It should underpin the implementation of a policy programme that contains strong adjustment and structural reform measures designed to improve the balance of payment position, in particular over the programme period, and reinforce the implementation of relevant agreements and programmes with the Union.

(b) Macro-financial assistance should be conditional on a significant and residual external financing gap having been determined by the Commission in cooperation with the multilateral financial institutions over and above the resources provided by the IMF and other multilateral institutions, despite the implementation of strong economic stabilisation and reform programmes by the relevant country or territory.

(c) Macro-financial assistance should be of a short-term nature and should be discontinued as soon as the external financial situation has been brought back to a sustainable situation.

2. Eligible countries and territories

The third countries and territories eligible to become beneficiaries of macro-financial assistance should be:

— candidate and potential candidate countries,

— countries and territories covered by the European Neighbourhood Policy,

— in exceptional and duly justified circumstances, other third countries that play a determining role in regional stability, are of strategic importance for the Union, and are politically, economically and geographically close to the Union.

3. Form of the assistance

(a) Macro-financial assistance should generally take the form of a loan. In exceptional cases, however, the assistance may be provided in the form of a grant or a combination of a loan and a grant. When determining the appropriate share of a possible grant element, the Commission, when preparing its proposal, should take into consideration the level of economic development of the beneficiary, as measured by per capita income and poverty ratios, as well as its ability to repay, drawing on debt sustainability analysis while ensuring that the principle of fair burden-sharing between the Union and other donors is respected. For this purpose, the Commission should also take into account the extent to which international financial institutions and other donors apply concessional terms to the country in question.

(b) Where macro-financial assistance takes the form of a loan, the Commission should be empowered on behalf of the Union to borrow the necessary funds on the capital markets or from financial institutions and on-lend them to the beneficiary.

(c) Borrowing and lending operations should be carried out in euro using the same value date and should not involve the Union in the transformation of maturities, or in any exchange or interest rate risk.

(d) All costs incurred by the Union which relate to borrowing or lending operations should be borne by the beneficiary.

(e) At the request of the beneficiary, and where circumstances permit an improvement of the interest rate of the loan, the Commission may decide to refinance all or part of its initial borrowings or restructure the corresponding financial conditions. Refinancing and restructuring operations should be carried out in accordance with the conditions laid down in point 3(d) and should not have the effect of extending the average maturity of the borrowing concerned or of increasing the amount of capital outstanding at the date of the refinancing or restructuring.

4. Financial provisions

(a) The amounts of macro-financial assistance provided in the form of grants should be consistent with the budget appropriations provided for in the multi-annual financial framework.

(b) The amounts of macro-financial assistance provided in the form of loans should be provisioned in accordance with the Regulation establishing a Guarantee Fund for external actions. The amounts of the provisions should be consistent with the budget appropriations provided for in the multi-annual financial framework.

(c) Annual appropriations should be authorised by the budgetary authority within the limits of the multi-annual financial framework.

5. Amount of the assistance

(a) The determination of the amount of the assistance should be based on the residual external financing needs of the eligible country or territory, and should take into account its capacity to finance itself with its own resources, and in particular the international reserves at its disposal. Those financing needs should be determined by the Commission in cooperation with international financial institutions, based on a complete quantitative assessment and transparent supporting documentation. In particular, the Commission should draw on the latest balance of payments projections of the IMF for the relevant country or territory and take into account the expected financial contributions from multilateral donors, as well as the pre-existing deployment of the Union's other external financing instruments in that eligible country or territory.

(b) The Commission documentation should contain information on the projected stock of foreign exchange reserves in the absence of macro-financial assistance compared to levels considered to be adequate, as measured by relevant indicators such as the ratio of reserves to short-term external debt and the ratio of reserves to imports of the beneficiary country.

(c) The determination of the amount of macro-financial assistance provided should also take into account the need to ensure fair burden sharing between the Union and the other donors and the added value of the overall Union involvement.

(d) Where the financing needs of the beneficiary decrease fundamentally during the period of disbursement of the macro-financial assistance compared to the initial projections, the Commission should, in accordance with the advisory procedure where the assistance is equal to or below EUR 90 million, and in accordance with the examination procedure where the assistance is above EUR 90 million, reduce the amount of such assistance or suspend or cancel it.

6. Conditionality

(a) A pre-condition for granting macro-financial assistance should be that the eligible country or territory respects effective democratic mechanisms, including a multi-party parliamentary system and the rule of law and guarantees respect for human rights. The Commission should provide a publicly available assessment [1] on the fulfilment of this pre-condition and should monitor it throughout the life-cycle of the macro-financial assistance. This point should be applied in accordance with the Decision establishing the organisation and functioning of the EEAS.

(b) Macro-financial assistance should be conditional on the existence of a non-precautionary credit arrangement between the eligible country or territory and the IMF, which fulfils the following conditions:

— the objective of the arrangement is consistent with the purpose of the macro-financial assistance, namely to alleviate short-term balance of payment difficulties;

— the implementation of strong adjustment measures consistent with the aim of macro-financial assistance, as defined in point 1(a).

(c) The disbursement of the assistance should be conditional on a continuous satisfactory track record in respect of an IMF-supported policy programme and on the fulfilment of the pre-condition referred to in letter (a) of this point. It should also be conditional on the implementation, within a specific time frame, of a series of clearly defined economic policy measures focusing on structural reforms and sound public finances, to be agreed between the Commission and the beneficiary and to be laid down in a Memorandum of Understanding.

(d) With a view to protecting the Union's financial interests and reinforcing the beneficiaries' governance, the Memorandum of Understanding should include measures that aim to enhance the efficiency, transparency and accountability of public finance management systems.

(e) Progress in mutual market opening, the development of rules-based and fair trade and other priorities in the context of the Union's external policy should also be duly taken into account in designing the policy measures.

(f) The policy measures should be consistent with the existing partnership agreements, cooperation agreements or association agreements concluded between the Union and the beneficiary and with the macroeconomic adjustment and structural reform programmes implemented by the beneficiary with the support of the IMF.

7. Procedure

(a) A country or territory seeking macro-financial assistance should make a request in writing to the Commission. The Commission should check whether the conditions referred to in points 1, 2, 4 and 6 are met and, if appropriate, could submit a proposal for a decision to the European Parliament and to the Council.

(b) The decision to provide a loan should specify the amount, the maximum average maturity and the maximum number of instalments of the macro-financial assistance. If the decision includes a grant element, it should also specify the amount, and the maximum number of instalments. The decision to provide a grant should be accompanied by a justification for the grant (or grant element) of assistance. In both cases, the period during which the macro-financial assistance is available should be defined. As a rule, that availability period should not exceed three years. When submitting a proposal for a new decision to grant macro-financial assistance, the Commission should provide the information referred to in point 12(c).

[1] This assessment will be based on the annual report on human rights and democracy in the world foreseen in the EU Strategic Framework and Action Plan on Human Rights and Democracy (Council Conclusions on Human Rights and Democracy, 25 June 2012).

(c) Following the adoption of the decision granting macro-financial assistance, the Commission, acting in accordance with the advisory procedure where the assistance is equal to or below EUR 90 million, and in accordance with the examination procedure where the assistance is above EUR 90 million, should agree with the beneficiary, in the Memorandum of Understanding, on the policy measures referred to in points 6(c), (d), (e) and (f).

(d) Following the adoption of the decision granting macro-financial assistance, the Commission should agree with the beneficiary on the detailed financial terms of the assistance. Those detailed financial terms should be laid down in a Grant or Loan Agreement.

(e) The Commission should inform the European Parliament and the Council of developments in country-specific assistance, including disbursements thereof, and provide those institutions with the relevant documents in due time.

8. Implementation and financial management

(a) The Commission should implement macro-financial assistance in accordance with Union financial rules.

(b) The implementation of macro-financial assistance should be under direct centralised management.

(c) Budget commitments should be made on the basis of decisions taken by the Commission in accordance with this point. Where macro-financial assistance extends over a number of financial years, budget commitments for that assistance may be split into annual instalments.

9. Disbursement of the assistance

(a) Macro-financial assistance should be disbursed to the central bank of the beneficiary.

(b) The macro-financial assistance should be disbursed in successive instalments, subject to the fulfilment of the pre-condition referred to in point 6(a) and the conditions referred to in point 6(b) and (c).

(c) The Commission should verify at regular intervals that the conditions referred to in point 6(b) and (c) continue to be met.

(d) Where the pre-condition referred to in point 6(a) and the conditions referred to in point 6(b) and (c) are not met, the Commission should temporarily suspend or cancel the disbursement of the macro-financial assistance. In such cases, it should inform the European Parliament and the Council of the reasons for suspension or cancellation.

10. Support measures

Budgetary funds of the Union may be used to cover expenditure necessary for the implementation of macro-financial assistance.

11. Protection of the Union's financial interests

(a) Any agreements under each country-specific decision should contain provisions ensuring that beneficiaries should regularly check that financing provided from the budget of the Union has been properly used, take appropriate measures to prevent irregularities and fraud, and, if necessary, take legal action to recover any funds provided under each country-specific decision that have been misappropriated.

(b) Any agreement under a country-specific decision should contain provisions ensuring the protection of the Union's financial interests, in particular with respect to fraud, corruption and any other irregularities, in accordance with relevant Union law.

(c) The Memorandum of Understanding referred to in point 6(c) should expressly entitle the Commission and the Court of Auditors to perform audits during and after the availability period of the macro-financial assistance, including document audits and on-the-spot audits such as operational assessments. The Memorandum should also expressly authorise the Commission or its representatives to carry out on-the-spot checks and inspections.

(d) During the implementation of the macro-financial assistance, the Commission should monitor, by means of operational assessments, the soundness of the beneficiary's financial arrangements, the administrative procedures and the internal and external control mechanisms which are relevant to such assistance.

(e) Any agreement under a country-specific decision should contain provisions ensuring that the Union is entitled to the full repayment of the grant and/or the early repayment of the loan where it has been established that, in relation to the management of macro-financial assistance, a beneficiary has engaged in an act of fraud or corruption or any other illegal activity detrimental to the financial interests of the Union.

12. Annual report

(a) The Commission should examine the progress made in implementing macro-financial assistance and should submit an annual report to the European Parliament and the Council by 30 June of each year.

(b) The annual report should assess the economic situation and prospects of the beneficiaries, as well as the progress made in implementing the policy measures referred to in point 6(c).

(c) It should also provide updated information on the available budgetary resources in the form of loans and grants, taking into account operations that are being envisaged.

13. Evaluation

(a) The Commission should send *ex-post* evaluation reports to the European Parliament and the Council, assessing the results and efficiency of recently-completed macro-financial assistance operations and the extent to which they have contributed to the aims of the assistance.

(b) The Commission should regularly, and at least every four years, evaluate the provision of the macro-financial assistance, providing the European Parliament and the Council with a detailed overview of macro-financial assistance. The purpose of such evaluations should be to ascertain whether the objectives of the macro-financial assistance have been met and whether the conditions of the macro-financial assistance, including the threshold set out in point 7(c), continue to be met, as well as to enable the Commission to make recommendations for the improvement of future operations. In its evaluation, the Commission should also assess the cooperation with European or multilateral financial institutions when providing macro-financial assistance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 779/2013

of 13 August 2013

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 August 2013.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

Code NC	Code des pays tiers [1]	Valeur forfaitaire à l'importation
0709 93 10	TR	138,1
	ZZ	138,1
0805 50 10	AR	89,8
	CL	100,4
	TR	70,0
	UY	107,6
	ZA	102,4
	ZZ	94,0
0806 10 10	EG	185,9
	MA	161,8
	MX	263,5
	TR	156,3
	ZZ	191,9
0808 10 80	AR	188,5
	BR	106,6
	CL	134,6
	CN	74,0
	NZ	136,5
	US	164,7
	ZA	110,9
	ZZ	130,8
0808 30 90	AR	177,3
	CL	146,4
	NZ	194,4
	TR	153,8
	ZA	110,4
	ZZ	156,5
0809 30	TR	146,5
	ZZ	146,5
0809 40 05	BA	47,7
	MK	61,9
	TR	83,7
	ZZ	64,4

[1] Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 12 August 2013

concerning the amounts transferred for the financial year 2014 from the national support programmes in the wine sector to the Single Payment Scheme, as provided for in Council Regulation (EC) No 1234/2007

(notified under document C(2013) 5180)

(Only the English, French, Greek, Maltese and Spanish texts are authentic)

(2013/430/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], in particular Article 103za in conjunction with Article 4 thereof,

Whereas:

(1) Article 103n of Regulation (EC) No 1234/2007 provides that the allocation of the available Union funds as well as the budgetary limits for the national support programmes in the wine sector are set out in Annex Xb to that Regulation.

(2) Pursuant to Article 103o of Regulation (EC) No 1234/2007, Member States had the possibility to decide, by 1 December 2012, to provide support to vine-growers for the financial year 2014 by allocating payment entitlements within the meaning of Chapter 1 of Title III of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers [2].

(3) Member States intending to provide support in accordance with Article 103o of Regulation (EC) No 1234/2007 have notified the corresponding amounts. For the sake of clarity, the Commission should publish those amounts.

(4) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS DECISION:

Article 1

The amounts transferred from the national support programmes provided for in Regulation (EC) No 1234/2007 to the Single Payment Scheme provided for in Regulation (EC) No 73/2009 for the financial year 2014 are as set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Hellenic Republic, the Kingdom of Spain, the Grand Duchy of Luxembourg, the Republic of Malta and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 12 August 2013.

For the Commission

Dacian CIOLOȘ

Member of the Commission

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 30, 31.1.2009, p. 16.

ANNEX

Amounts transferred from the national support programmes in the wine sector to the Single Payment Scheme (financial year 2014)

(EUR 1 000)

Financial year	2014
Greece	16 000
Spain	142 749
Luxembourg	588
Malta	402
United Kingdom	120

COMMISSION IMPLEMENTING DECISION

of 12 August 2013

allowing Member States to extend provisional authorisations granted for the active substances benalaxyl-M and valifenalate

(notified under document C(2013) 5184)

(Text with EEA relevance)

(2013/431/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1], and in particular the fourth subparagraph of Article 8(1) thereof,

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC [2], and in particular Article 80(1)(a) thereof,

Whereas:

(1) In accordance with Article 80(1)(a) of Regulation (EC) No 1107/2009, Directive 91/414/EEC shall continue to apply to active substances for which a decision has been adopted in accordance with Article 6(3) of Directive 91/414/EEC before 14 June 2011.

(2) In accordance with Article 6(2) of Directive 91/414/EEC, in February 2002 Portugal received an application from ISAGRO IT for the inclusion of the active substance benalaxyl-M in Annex I to Directive 91/414/EEC. Commission Decision 2003/35/EC [3] confirmed that the dossier was complete and could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to that Directive.

(3) In accordance with Article 6(2) of Directive 91/414/EEC, in September 2005 Hungary received an application from ISAGRO SpA for the inclusion of the active substance valifenalate in Annex I to Directive 91/414/EEC. Commission Decision 2006/586/EC [4] confirmed that the dossier was complete and could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to that Directive.

(4) Confirmation of the completeness of the dossiers was necessary in order to allow them to be examined in detail and to allow Member States the possibility of granting provisional authorisations, for periods of up to three years, for plant protection products containing the active substances concerned, while complying with the conditions laid down in Article 8(1) of Directive 91/414/EEC and, in particular, the conditions relating to the detailed assessment of the active substances and the plant protection products in the light of the requirements laid down by that Directive.

(5) For these active substances, the effects on human health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicants. The rapporteur Member States submitted the respective draft assessment reports to the Commission on 21 November 2003 (benalaxyl-M) and on 19 February 2008 (valifenalate).

(6) Following submission of the draft assessment reports by the rapporteur Member States, it has been found to be necessary to request further information from the applicants and to have the rapporteur Member States examine that information and submit their assessment. Therefore, the examination of the dossiers is still ongoing and it will not be possible to complete the evaluation within the timeframe provided for in Directive 91/414/EEC, read in conjunction with Commission Implementing Decision 2011/671/EU [5].

(7) As the evaluation so far has not identified any reason for immediate concern, Member States should be given the possibility of prolonging provisional authorisations granted for plant protection products containing the active substances concerned for a period of 24 months in accordance with the provisions of Article 8 of Directive 91/414/EEC so as to enable the examination of the dossiers to continue. It is expected that the evaluation and decision-making process with respect to a decision on a possible approval in accordance with Article 13(2) of Regulation (EC) No 1107/2009 for benalaxyl-M and valifenalate will have been completed within 24 months.

(8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Member States may extend provisional authorisations for plant protection products containing benalaxyl-M or valifenalate for a period ending on 31 August 2015 at the latest.

Article 2

This Decision shall expire on 31 August 2015.

[1] OJ L 230, 19.8.1991, p. 1.
[2] OJ L 309, 24.11.2009, p. 1.
[3] OJ L 11, 16.1.2003, p. 52.
[4] OJ L 236, 31.8.2006, p. 31.
[5] OJ L 267, 12.10.2011, p. 19.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 12 August 2013.

For the Commission
Tonio BORG
Member of the Commission

NOTICE TO READERS

Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union*

In accordance with Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ L 69, 13.3.2013, p. 1), as of 1 July 2013, only the electronic edition of the Official Journal shall be considered authentic and shall have legal effect.

Where it is not possible to publish the electronic edition of the Official Journal due to unforeseen and exceptional circumstances, the printed edition shall be authentic and shall have legal effect in accordance with the terms and conditions set out in Article 3 of Regulation (EU) No 216/2013.

NOTE TO READERS — WAY OF REFERRING TO ACTS

As of 1 July 2013 the way of referring to acts has changed.

During a transitional period this new practice will coexist with the previous one.

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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