III

(Preparatory acts)

COUNCIL

POSITION (EU) No 9/2012 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Decision of the European Parliament and of the Council providing further macro-financial assistance to Georgia

Adopted by the Council on 10 May 2012

(2012/C 291 E/01)

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 [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 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.

[1] Position of the European Parliament of 10 May 2011 and decision of the Council of … 2012.

[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).

(8) The Union intends to provide, in 2010-2012, under the European Neighbourhood and Partnership Instrument (ENPI), budget support grants to Georgia of EUR 37 million per year.

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

(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.

(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 Union 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 controls 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 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],

HAVE ADOPTED THIS DECISION:

Article 1

1. The Union shall make macro-financial assistance available to Georgia ('the Union's macro-financial assistance') 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 relating to 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).

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

Article 2

1. The Commission shall, in accordance with the examination procedure referred to in Article 6(2), adopt a Memorandum of Understanding laying down the economic policy and financial conditions attached to the Union's macro-financial assistance, including a time-frame for fulfilment of those conditions. The economic policy and financial conditions 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 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 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 satisfactory fulfilment of the economic policy and financial conditions laid down 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, any exchange or interest rate risks, or any other commercial risk.

2. Upon request by Georgia, the Commission shall take the necessary steps 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. Upon request by Georgia, and where circumstances permit an improvement of the interest rate of the loan, the Commission may refinance all or part of its initial loan or 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 in relation 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 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [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 appropriate measures in relation to the prevention of, and the fight against, fraud, corruption and any other irregularities in relation to 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 controls, 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.

[1] OJ L 248, 16.9.2002, p. 1.

[2] Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).

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 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, 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.

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 …

For the European Parliament	*For the Council*
The President	*The President*
…	…

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission adopted its proposal on 13 January 2011.

The European Parliament adopted its position at first reading at its plenary session on 10 May 2011. The European Parliament adopted three amendments.

On 23 January 2012, the Council reached a political agreement on the text of the proposal [1].

In accordance with Article 294 of the Treaty, the Council adopted its position at first reading on 10 May 2012.

II. OBJECTIVE

In the aftermath of the August 2008 armed conflict with Russia and in the context of the global financial crisis, an amount of up to EUR 500 million of EU assistance to support the Georgian economy was pledged by the European Commission at the International Donors' Conference of October 2008. The pledge included two possible macro-financial assistance (MFA) operations of EUR 46 million.

The EU completed in early August 2010 the disbursement of the first MFA operation approved by the Council in November 2009 [2]. The approval of the second MFA operation was conditional on the continued existence of external financing needs over and above those covered by the IMF arrangement.

In a letter from 10 May 2010, the Georgian Minister of Finance requested the activation of the second part of the Commission pledge of EU funds. The Commission considers that the activation of the second part of the MFA pledged in 2008 is warranted as, despite a recovery of the Georgian economy, the balance of payments and budgetary position remain weak and vulnerable.

The proposal aims at contributing to covering the country's external financing needs, as identified in cooperation with the IMF in the context of the IMF Stand-By Arrangement (SBA) of USD 1,17 billion, in place since October 2008. The proposed assistance would be provided half in grants and half in loans.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

On 1 March 2011, *Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers* (the new comitology Regulation) entered into force.

The provisions contained in the Commission proposal on further macro-financial assistance to Georgia as regards the exercise of implementing powers conferred on the Commission therefore needed to be aligned with Regulation (EU) No 182/2011.

Informal contacts were held in April 2011 between the European Parliament, the Commission and the Council as foreseen by points 16 to 18 of the Joint declaration on practical arrangements for the co-decision procedure [3].

The European Parliament disagreed with the Council on the changes required to align the provisions as regards the exercise of implementing powers with Regulation (EU) No 182/2011.

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[1] Doc. 18792/11.
[2] Council Decision 2009/889/EC of 30 November 2009 providing macro-financial assistance to Georgia.
[3] OJ C 145, 30.6.2007, p. 5.

In May 2011, the European Parliament adopted its position at first reading introducing amendments on the following points:

Recital 18 — Implementing powers

European Parliament amendment 1

The drafting of recital 18 on the conferral of implementing powers to the Commission is adapted in order to take into account the entry into force of Regulation (EU) No 182/2011.

Amendment 1 has been included in the Council's position at first reading.

Article 2 — Adoption of the Memorandum of Understanding

European Parliament amendment 2

Amendment 2 of the European Parliament foresees the adoption of a Memorandum of Understanding containing the economic policy and financial conditions to which the Union macro-financial assistance is subject in accordance with the advisory procedure.

This amendment is rejected by the Council on the grounds that, in line with Regulation (EU) No 182/2011, the Memorandum of Understanding should be adopted in accordance with the examination procedure.

Article 6 — Committee

European Parliament amendment 3

Amendment 3 of the European Parliament refers to Article 4 of Regulation (EU) No 182/2011 (advisory procedure).

The amendment is rejected by the Council on the same grounds as for Amendment 2, i.e. the examination procedure should apply.

In addition, the Council proposes to add that in cases where the committee delivers no opinion, the Commission shall not adopt the draft implementing act.

IV. CONCLUSION

The Council's position introduces changes to the European Parliament's position at first reading only as regards the provisions for the exercise of implementing powers in order to ensure their appropriate alignment with the new comitology Regulation (Regulation (EU) No 182/2011). The Council looks forward to constructive discussions with the European Parliament at second reading with a view to the swift adoption of the Decision.