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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
Decision of the European Parliament and of the Council providing macro-
financial assistance to the Kyrgyz Republic

Decision No .../2013/EU
of the European Parliament and of the Council

of ...

providing macro-financial assistance to the Kyrgyz Republic

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 209 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 procedure¹,

¹ Position of the European Parliament of 11 December 2012 and position of the Council at first reading of ...(not yet published in the Official Journal). Position of the European Parliament of ...(not yet published in the Official Journal).

Whereas:

- (1) Cooperation between the Union and the Kyrgyz Republic is based on the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part¹ (PCA) that entered into force in 1999. The Union grants Generalised System of Preferences treatment to the Kyrgyz Republic.
- (2) The Kyrgyz economy was affected in 2009 by the international financial crisis and in June 2010 by ethnic violence. These events disrupted economic activities, creating substantial public expenditure needs for reconstruction and social assistance, and resulted in important external and budgetary financial gaps.
- (3) At a High Level Donors Meeting held in Bishkek on 27 July 2010, the international community pledged USD 1,1 billion in emergency support to assist in the recovery of the Kyrgyz Republic. At that meeting, the Union announced that it would provide up to EUR 117,9 million in financial assistance.

¹ OJ L 196, 28.7.1999, p. 48.

- (4) The Council, meeting in its foreign affairs configuration, in its conclusions on the Kyrgyz Republic of 26 July 2010, welcomed the efforts of the new Kyrgyz government to establish a democratic institutional framework and invited the Commission to continue providing assistance, including in the form of new assistance programmes, to the authorities of the Kyrgyz Republic in the implementation of their reform programme and to contribute to the sustainable economic and social development of the country.
- (5) Union political and economic support to the Kyrgyz Republic's incipient parliamentary democracy would provide a political signal of the Union's strong support to democratic reforms in Central Asia, consistent with the Union's policy towards the region, as set out in the Union Strategy for Central Asia (2007-2013) and in the Council conclusions on Central Asia of 25 June 2012.
- (6) In line with the Joint Declaration by the European Parliament and the Council adopted together with the decision providing further macro-financial assistance to Georgia^{1*}, Union macro-financial assistance should be an exceptional financial instrument of untied and undesignated balance-of-payments support, which aims at restoring a beneficiary's sustainable external finance situation and should underpin the implementation of a policy programme containing 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.

¹ OJ ...

* OJ: Please insert the reference for the Joint Declaration, which will be published together with the Decision in document PE-CONS 38/13.

- (7) The economic adjustment and reform process of the Kyrgyz Republic is supported by financial assistance from the International Monetary Fund (IMF). In June 2011, the Kyrgyz authorities and the IMF agreed on a non-precautionary three-year IMF Extended Credit Facility ("IMF programme") of SDR 66,6 million (Special Drawing Rights) in support of the country. The IMF approved the fourth review of that programme in June 2013. The objectives of the IMF programme are consistent with the purpose of the Union macro-financial assistance, namely to alleviate short-term balance of payment difficulties, and the implementation of strong adjustment measures consistent with the aim of Union macro-financial assistance.
- (8) The Union provides sectoral budget support to the Kyrgyz Republic under the Development Cooperation Instrument of a total of EUR 33 million over the period 2011-2013 to support reforms in social protection, education and public financial management.
- (9) In 2010, in view of the worsening economic situation and outlook, the Kyrgyz Republic requested Union macro-financial assistance.
- (10) Given the Kyrgyz Republic's strategic importance for the Union, as well as the determining role it plays in regional stability, the Kyrgyz Republic should, exceptionally, be considered to be eligible to receive Union macro-financial assistance.

- (11) Given that there is still a significant residual external financing gap in the balance of payments of the Kyrgyz Republic over and above the resources provided by IMF and other multilateral institutions, and despite the implementation of strong economic stabilisation and reform programmes by the Kyrgyz Republic, the Union macro-financial assistance to be provided to the Kyrgyz Republic ("the Union's macro-financial assistance") is, under the current exceptional circumstances, considered to be an appropriate response to the Kyrgyz Republic's request to support economic stabilisation in conjunction with the IMF programme.
- (12) The Union's macro-financial assistance should aim to support the restoration of a sustainable external financing situation for the Kyrgyz Republic thereby supporting its economic and social development.
- (13) The determination of the amount of the Union's macro-financial assistance is based on a complete quantitative assessment of the Kyrgyz Republic's residual external financing needs, and takes into account its capacity to finance itself with its own resources, in particular the international reserves at its disposal. The Union's macro-financial assistance should complement the programmes and resources provided by the IMF and the World Bank. The determination of the amount of the assistance also takes into account expected financial contributions from multilateral donors and the need to ensure fair burden sharing between the Union and other donors, as well as the pre-existing deployment of the Union's other external financing instruments in the Kyrgyz Republic and the added value of the overall Union involvement.

- (14) Taking into consideration the Kyrgyz Republic's residual external financing needs, the level of its economic development, as measured by per capita income and poverty ratios, its capacity to finance itself with its own resources, in particular the international reserves at its disposal, and the assessment of its ability to repay drawing on debt sustainability analysis, a part of the assistance should be provided in the form of grants.
- (15) The Commission should ensure that the Union's macro-financial assistance is legally and substantially in line with the key principles, objectives and measures taken within the different areas of external action and other relevant Union policies.
- (16) The Union's macro-financial assistance should support the Union's external policy towards the Kyrgyz Republic. Commission services and the European External Action Service should work closely together throughout the macro-financial assistance operation in order to coordinate, and to ensure the consistency of, Union external policy.
- (17) The Union's macro-financial assistance should support the Kyrgyz Republic's commitment to values shared with the Union, including democracy, the rule of law, good governance, respect for human rights, sustainable development and poverty reduction, as well as its commitment to the principles of open, rule-based and fair trade.

- (18) A precondition for granting the Union's macro-financial assistance should be that the Kyrgyz Republic respects effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and guarantees respect for human rights. In addition, the specific objectives of the Union's macro-financial assistance should strengthen the efficiency, transparency and accountability of public finance management systems in the Kyrgyz Republic. Both fulfilment of the precondition, and the achievement of those objectives should be regularly monitored by the Commission.
- (19) In order to ensure that the Union's financial interests linked to the Union's macro-financial assistance are protected efficiently, the Kyrgyz Republic should take appropriate measures relating to the prevention of, and fight against, fraud, corruption and any other irregularities linked to the assistance. In addition, provision should be made for the Commission to carry out checks and for the Court of Auditors to carry out audits.
- (20) Release of the Union's macro-financial assistance is without prejudice to the powers of the European Parliament and the Council.
- (21) The amounts of macro-financial assistance provided in the form of grants and the amounts of the provision required for macro-financial assistance in the form of loans should be consistent with the budgetary appropriations provided for in the multi-annual financial framework.

- (22) The Union's macro-financial assistance should be managed by the Commission. In order to ensure that the European Parliament and the Council 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.
- (23) 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 Council¹.
- (24) The Union's macro financial assistance should be subject to economic policy conditions, to be laid down in a Memorandum of Understanding. In order to ensure uniform conditions of implementation and for reasons of efficiency, the Commission should be empowered to negotiate such conditions with the Kyrgyz authorities under the supervision of the committee of representatives of the Member States in accordance with Regulation (EU) No 182/2011. Under 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 assistance of more than EUR 90 million, it is appropriate that the examination procedure be used for operations above that threshold. Considering the amount of the Union's macro-financial assistance to the Kyrgyz Republic, the advisory procedure should apply to the adoption of the Memorandum of Understanding, and to any reduction, suspension or cancellation of the assistance.

¹ 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 (OJ L 55, 28.2.2011, p. 13).

- (25) According to the IMF, the Kyrgyz Republic falls under the category of emerging and developing economies; according to the World Bank, the Kyrgyz Republic is part of the group of low-income economies and International Development Association (IDA) countries; according to the UN-OHRLLS¹, the Kyrgyz Republic falls under the category of landlocked-developing country; according to the OECD's Development Assistance Committee, it is in the list of other low income countries. Therefore, the Kyrgyz Republic should be considered as a developing country in the sense of Article 208 TFEU, which justifies the choice of Article 209 TFEU as a legal basis for this Decision,

HAVE ADOPTED THIS DECISION:

¹ UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States.

Article 1

1. The Union shall make macro-financial assistance available to the Kyrgyz Republic ("the Union's macro-financial assistance") of a maximum amount of EUR 30 million, with a view to supporting the Kyrgyz Republic's economic stabilisation and covering its balance of payments needs as identified in the current IMF programme. Of that maximum amount, up to EUR 15 million shall be provided in the form of loans and up to EUR 15 million in the form of grants. The release of the Union's macro financial assistance is subject to the approval of the Union budget for the relevant year by the European Parliament and the Council.
2. In order to finance the loan component of the Union's macro-financial assistance, the Commission shall be empowered on behalf of the Union to borrow the necessary funds on the capital markets or from financial institutions and to on-lend them to the Kyrgyz Republic. The loans 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 the Kyrgyz Republic, and with the key principles and objectives of economic reforms set out in the PCA and in the Union Strategy for Central Asia (2007-2013).
The Commission shall regularly inform the European Parliament and the Council of developments regarding the Union's macro-financial assistance, including disbursements thereof, and shall provide those institutions with the relevant documents in due time.

4. The Union's macro-financial assistance shall be made available for a period of two years from the first day after the entry into force of the Memorandum of Understanding referred to in Article 3(1).
5. Where the financing needs of the Kyrgyz Republic decrease fundamentally during the period of the disbursement of the Union's macro-financial assistance compared to the initial projections, the Commission, acting in accordance with the advisory procedure referred to in Article 7(2), shall reduce the amount of the assistance or suspend or cancel it.

Article 2

A pre-condition for granting the Union's macro financial assistance shall be that the Kyrgyz Republic respects effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and guarantees respect for human rights. The Commission shall monitor the fulfilment of this pre-condition throughout the life-cycle of the Union's macro-financial assistance. This Article shall be applied in accordance with Council Decision 2010/427/EU¹.

¹ Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

Article 3

1. The Commission, in accordance with the advisory procedure referred to in Article 7(2), shall agree with the Kyrgyz authorities on clearly defined economic policy and financial conditions, focusing on structural reforms and sound public finances, to which the Union's macro-financial assistance is to be subject, to be laid down in a Memorandum of Understanding ("the Memorandum of Understanding") which shall include a timeframe 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), including the macro-economic adjustment and structural reform programmes implemented by the Kyrgyz Republic, with the support of the IMF.
2. Those conditions shall aim, in particular, to enhance the efficiency, transparency and accountability of the Union's macro-financial assistance, including public finance management systems in the Kyrgyz Republic. 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 shall also be duly taken into account when designing the policy measures. Progress in attaining those objectives shall be regularly monitored by the Commission.

3. The detailed financial terms of the Union's macro-financial assistance shall be laid down in a Grant Agreement and a Loan Agreement to be agreed between the Commission and the Kyrgyz authorities.
4. During the implementation of the Union's macro-financial assistance, the Commission shall monitor the soundness of the Kyrgyz Republic's financial arrangements, the administrative procedures and the internal and external control mechanisms which are relevant to the assistance, as well as the Kyrgyz Republic's adherence to the agreed timeframe.
5. The Commission shall verify at regular intervals that the conditions in Article 4(3) continue to be met, including that the economic policies of the Kyrgyz Republic are in accordance with the objectives of the Union's macro-financial assistance. In so doing, the Commission shall coordinate closely with the IMF and the World Bank, and, where necessary, with the European Parliament and the Council.

Article 4

1. Subject to the conditions in paragraph 3, the Union's macro-financial assistance shall be made available by the Commission in two instalments, each of which shall consist of a loan and a grant element. The size of each instalment shall be laid down in the Memorandum of Understanding.
2. The amounts of the Union's macro-financial assistance provided in the form of loans shall be provisioned, where required, in accordance with Council Regulation (EC, Euratom) No 480/2009¹.
3. The Commission shall decide on the release of the instalments subject to the fulfilment of all of the following conditions:
 - (a) the precondition set out in Article 2;
 - (b) a continuous satisfactory track record of implementing a policy programme that contains strong adjustment and structural reform measures supported by a non-precautionary IMF credit arrangement; and
 - (c) the implementation, within a specific time-frame, of the economic policy conditions agreed in the Memorandum of Understanding.

The disbursement of the second instalment shall not take place earlier than three months after the release of the first instalment.

¹ Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 establishing a Guarantee Fund for external actions (OJ L 145, 10.6.2009, p. 10).

4. Where the conditions in paragraph 3 are not met, the Commission shall temporarily suspend or cancel the disbursement of the Union's macro-financial assistance. In such cases, it shall inform the European Parliament and the Council of the reasons for that suspension or cancellation.
5. The Union's macro-financial assistance shall be disbursed to the National Bank of the Kyrgyz Republic. Subject to provisions to be agreed in the Memorandum of Understanding, including a confirmation of residual budgetary financing needs, the Union funds may be transferred to the Treasury of the Kyrgyz Republic as the final beneficiary.

Article 5

1. The borrowing and lending operations related 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 involve the Union in the transformation of maturities, or expose it to any exchange or interest rate risks, or to any other commercial risk.
2. Where the circumstances permit, and if the Kyrgyz Republic so requests, the Commission may take the steps necessary 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 borrowing operations.

3. Where circumstances permit an improvement of the interest rate of the loan and if the Kyrgyz Republic so requests, the Commission may decide to refinance all or part of its initial borrowings or may restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with paragraphs 1 and 4 and shall not have the effect of extending the maturity of the borrowings concerned or of 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 the Kyrgyz Republic.
5. The Commission shall inform the European Parliament and the Council of developments in the operations referred to in paragraphs 2 and 3.

Article 6

1. 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 Council¹ and Commission Delegated Regulation (EU) No 1268/2012².
2. The implementation of the Union's macro-financial assistance shall be under direct, decentralised management.
3. The Memorandum of Understanding, the Loan Agreement and the Grant Agreement to be agreed with the Kyrgyz authorities shall contain provisions:
 - (a) ensuring that the Kyrgyz Republic regularly checks that financing provided from the budget of the Union has been properly used, takes appropriate measures to prevent irregularities and fraud, and, if necessary, takes legal action to recover any funds provided under this Decision that have been misappropriated;

¹ 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 and repealing Council Regulation (EC, Euratom) No 1605/2002 (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 on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

- (b) ensuring the protection of the Union's financial interests, in particular providing for specific measures in relation to the prevention of, and fight against, fraud, corruption and any other irregularities affecting the Union's macro-financial assistance, in accordance with Council Regulation (EC, Euratom) No 2988/95¹, Council Regulation (EC, Euratom) No 2185/96² and Regulation (EC) No 1073/1999 of the European Parliament and of the Council³;
- (c) expressly authorising the Commission, including the European Anti-Fraud Office, or its representatives to carry out checks, including on-the-spot checks and inspections;
- (d) expressly authorising the Commission and the Court of Auditors to perform audits during and after the availability period of the Union's macro-financial assistance, including document audits and on-the-spot audits, such as operational assessments;
- (e) ensuring that the Union is entitled to full repayment of the grant and/or early repayment of the loan where it has been established that, in relation to the management of the Union's macro-financial assistance, the Kyrgyz Republic has engaged in any act of fraud or corruption or any other illegal activity detrimental to the financial interests of the Union.

¹ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

² Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission to protect the Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

³ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 1).

4. During the implementation of the Union's macro-financial assistance, the Commission shall monitor, by means of operational assessments, the soundness of the Kyrgyz Republic's financial arrangements, the administrative procedures, and the internal and external control mechanisms which are relevant to such assistance.

Article 7

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 8

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 of that implementation. The report shall:
 - (a) examine the progress made in implementing the Union's macro-financial assistance;
 - (b) assess the economic situation and prospects of the Kyrgyz Republic, as well as progress made in implementing the policy measures referred to in Article 3(1);

- (c) indicate the connection between the economic policy conditions as laid down in the Memorandum of Understanding, the Kyrgyz Republic's on-going economic and fiscal performance and the Commission's decisions to release the instalments of the Union's macro-financial assistance.

2. Not 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, assessing the results and efficiency of the completed Union's macro-financial assistance and the extent to which it has contributed to the aims of the assistance.

Article 9

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

Done at ...

For the European Parliament
The President

For the Council
The President
