

# DIRECTIVES

## DIRECTIVE (EU) 2017/1564 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 September 2017

**on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society**

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 114 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 <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Union legal acts in the area of copyright and related rights provide legal certainty and a high level of protection for rightholders, and constitute a harmonised legal framework. That framework contributes to the proper functioning of the internal market and stimulates innovation, creation, investment and the production of new content, including in the digital environment. It also aims to promote access to knowledge and culture by protecting works and other subject matter and by permitting exceptions or limitations that are in the public interest. A fair balance of rights and interests between rightholders and users should be safeguarded.
- (2) Directives 96/9/EC <sup>(3)</sup>, 2001/29/EC <sup>(4)</sup>, 2006/115/EC <sup>(5)</sup> and 2009/24/EC <sup>(6)</sup> of the European Parliament and of the Council harmonise the rights of rightholders in the area of copyright and related rights. Those Directives, together with Directive 2012/28/EU of the European Parliament and of the Council <sup>(7)</sup>, provide for an exhaustive list of exceptions and limitations to those rights, which allow the use of content without the rightholders' authorisation under certain conditions in order to achieve certain policy objectives.
- (3) Persons who are blind, visually impaired or otherwise print-disabled continue to face many barriers to accessing books and other printed material which are protected by copyright and related rights. Taking into consideration the rights of blind, visually impaired or otherwise print-disabled persons as recognised in the Charter of Fundamental Rights of the European Union (the 'Charter') and the United Nations Convention on the Rights of Persons with Disabilities (the 'UNCRPD'), measures should be taken to increase the availability of books and other printed material in accessible formats, and to improve their circulation in the internal market.

<sup>(1)</sup> OJ C 125, 21.4.2017, p. 27.

<sup>(2)</sup> Position of the European Parliament of 6 July 2017 (not yet published in the Official Journal) and decision of the Council of 17 July 2017.

<sup>(3)</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

<sup>(4)</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

<sup>(5)</sup> Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28).

<sup>(6)</sup> Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16).

<sup>(7)</sup> Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5).

- (4) The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the 'Marrakesh Treaty') was signed on behalf of the Union on 30 April 2014 <sup>(1)</sup>. Its aim is to improve the availability and cross-border exchange of certain works and other protected subject matter in accessible formats for persons who are blind, visually impaired or otherwise print-disabled. The Marrakesh Treaty requires contracting parties to provide for exceptions or limitations to copyright and related rights for the making and dissemination of copies, in accessible formats, of certain works and other protected subject matter, and for the cross-border exchange of those copies. The conclusion of the Marrakesh Treaty by the Union requires the adaptation of Union law by establishing a mandatory and harmonised exception for uses, works and beneficiary persons covered by that treaty.
- (5) According to Opinion 3/15 of the Court of Justice of the European Union <sup>(2)</sup>, the exceptions or limitations to copyright and related rights for the making and dissemination of copies, in accessible formats, of certain works and other subject matter, provided for by the Marrakesh Treaty, have to be implemented within the field harmonised by Directive 2001/29/EC.
- (6) This Directive implements the obligations that the Union has to meet under the Marrakesh Treaty in a harmonised manner, with a view to ensuring that the corresponding measures are applied consistently throughout the internal market. This Directive should therefore provide for a mandatory exception to the rights that are harmonised by Union law and are relevant for the uses and works covered by the Marrakesh Treaty. Such rights include, in particular, the rights of reproduction, communication to the public, making available to the public, distribution and lending, as provided for in Directives 2001/29/EC, 2006/115/EC and 2009/24/EC, as well as the corresponding rights provided for in Directive 96/9/EC. As the scope of the exceptions or limitations required by the Marrakesh Treaty also includes works in audio form, like audiobooks, the mandatory exception provided for under this Directive should also apply to related rights.
- (7) This Directive concerns persons who are blind, persons who have a visual impairment which cannot be improved so as to give them visual function substantially equivalent to that of a person who has no such impairment, persons who have a perceptual or reading disability, including dyslexia or any other learning disability preventing them from reading printed works to substantially the same degree as persons without such disability, and persons who are unable, due to a physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, insofar as, as a result of such impairments or disabilities, those persons are unable to read printed works to substantially the same degree as persons without such impairments or disabilities. This Directive therefore aims to improve the availability of books, including e-books, journals, newspapers, magazines and other kinds of writing, notation, including sheet music, and other printed material, including in audio form, whether digital or analogue, online or offline, in formats that make those works and other subject matter accessible to those persons to substantially the same degree as to persons without such impairment or disability. Accessible formats include, for example, Braille, large print, adapted e-books, audio books and radio broadcasts.
- (8) The mandatory exception provided for in this Directive should limit the right of reproduction so as to allow for any act that is necessary in order to make changes to or convert or adapt a work or other subject matter in such a way as to produce an accessible format copy that makes it possible for beneficiary persons to access that work or other subject matter. This includes providing the necessary means to navigate information in an accessible format copy. It also includes changes that might be required in cases in which the format of a work or of other subject matter is already accessible to certain beneficiary persons while it might not be accessible to other beneficiary persons, due to different impairments or disabilities, or the different degree of such impairments or disabilities.
- (9) The permitted uses laid down in this Directive should include the making of accessible format copies by either beneficiary persons or authorised entities serving their needs, whether those authorised entities be public or private organisations, in particular libraries, educational establishments and other non-profit organisations, that serve persons with a print disability as one of their primary activities, institutional obligations or as part of their public interest missions. The uses laid down in this Directive should also include the making of accessible format

<sup>(1)</sup> Council Decision 2014/221/EU of 14 April 2014 on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (OJ L 115, 17.4.2014, p. 1).

<sup>(2)</sup> Opinion of the Court of Justice of 14 February 2017, 3/15, ECLI:EU:C:2017:114, paragraph 112.

copies, for the exclusive use of beneficiary persons, by a natural person who does so on behalf of a beneficiary person or who assists the beneficiary person making such copies. Accessible format copies should only be made of works or other subject matter to which beneficiary persons or authorised entities have lawful access. Member States should ensure that any contractual provision which seeks to prevent or limit the application of the exception in any way is void of legal effect.

- (10) The exception provided for in this Directive should allow authorised entities to make and disseminate, online and offline within the Union, accessible format copies of works or other subject matter covered by this Directive. This Directive should not impose an obligation on authorised entities to make and disseminate such copies.
- (11) It should be possible for accessible format copies made in one Member State to be available in all Member States, in order to ensure their greater availability across the internal market. This would reduce the demand for duplication of work in producing accessible format copies of one and the same work or other subject matter across the Union, thus generating savings and efficiency gains. This Directive should therefore ensure that accessible format copies made by authorised entities in any Member State can be circulated and accessed by beneficiary persons and authorised entities throughout the Union. In order to foster such cross-border exchange and to facilitate authorised entities' mutual identification and cooperation, the voluntary sharing of information regarding the names and contact details of authorised entities established in the Union, including websites if available, should be encouraged. Member States should therefore provide the information received from authorised entities to the Commission. This should not imply an obligation for Member States to check the completeness and accuracy of such information or its compliance with their national law transposing this Directive. Such information should be made available online by the Commission on a central information access point at Union level. This would also assist authorised entities, as well as beneficiary persons and rightholders in contacting authorised entities to receive further information, in line with the provisions set out in this Directive and in Regulation (EU) 2017/1563 of the European Parliament and of the Council<sup>(1)</sup>. The aforementioned central information access point should be complementary to the information access point to be established by the International Bureau of the World Intellectual Property Organisation (WIPO), as provided for in the Marrakesh Treaty, aiming to facilitate the identification of, and cooperation among, authorised entities at international level.
- (12) In order to improve the availability of accessible format copies and to prevent the unauthorised dissemination of works or other subject matter, authorised entities which engage in the distribution, communication to the public or making available to the public of accessible format copies should comply with certain obligations.
- (13) Authorisation or recognition requirements that Member States may apply to authorised entities, such as those relating to the provision of services of a general nature to beneficiary persons, should not have the effect of preventing entities that are covered by the definition of authorised entity under this Directive from undertaking the uses allowed under this Directive.
- (14) In view of the specific nature of the exception provided for under this Directive, its specific scope and the need for legal certainty for its beneficiaries, Member States should not be allowed to impose additional requirements for the application of the exception, such as the prior verification of the commercial availability of works in accessible formats, other than those laid down in this Directive. Member States should only be allowed to provide for compensation schemes regarding the permitted uses of works or other subject matter by authorised entities. In order to avoid burdens for beneficiary persons, prevent barriers to the cross-border dissemination of accessible format copies and excessive requirements on authorised entities, it is important that the possibility for Member States to provide for such compensation schemes be limited. Consequently, compensation schemes should not require payments by beneficiary persons. They should only apply to uses by authorised entities established in the territory of the Member State providing for such a scheme, and they should not require payments by authorised entities established in other Member States or third countries that are parties to the Marrakesh Treaty. Member States should ensure that there are not more burdensome requirements for the cross-border exchange of accessible format copies under such compensation schemes than for non-cross border situations, including with regard to the form and possible level of compensation. When determining the level of compensation, due account should be taken of the non-profit nature of the activities of authorised entities, of the

<sup>(1)</sup> Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled (see page 1 of this Official Journal).

public interest objectives pursued by this Directive, of the interests of beneficiaries of the exception, of the possible harm to rightholders and of the need to ensure cross-border dissemination of accessible format copies. Account should also be taken of the particular circumstances of each case, resulting from the making of a particular accessible format copy. Where the harm to a rightholder is minimal, no obligation for payment of compensation should arise.

- (15) It is essential that any processing of personal data under this Directive respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter, and it is imperative that any such processing also be in compliance with Directives 95/46/EC <sup>(1)</sup> and 2002/58/EC <sup>(2)</sup> of the European Parliament and of the Council, which govern the processing of personal data, as may be carried out by authorised entities within the framework of this Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States.
- (16) The UNCRPD, to which the Union is a party, guarantees persons with disabilities the right of access to information and education and the right to participate in cultural, economic and social life, on an equal basis with others. The UNCRPD requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
- (17) Under the Charter, all forms of discrimination, including on grounds of disability, are prohibited and the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community is recognised and respected by the Union.
- (18) With the adoption of this Directive, the Union aims to ensure that beneficiary persons have access to books and other printed material in accessible formats across the internal market. Accordingly, this Directive is an essential first step in improving access to works for persons with disabilities.
- (19) The Commission should assess the situation regarding the availability in accessible formats of works and other subject matter other than those covered by this Directive, as well as the availability of works and other subject matter in accessible formats for persons with other disabilities. It is important that the Commission review the situation in that regard closely. Changes to the scope of this Directive could be considered, if necessary, on the basis of a report presented by the Commission.
- (20) Member States should be allowed to continue to provide for an exception or limitation for the benefit of persons with a disability in cases which are not covered by this Directive, in particular as regards works and other subject matter and disabilities other than those covered by this Directive, pursuant to point (b) of Article 5(3) of Directive 2001/29/EC. This Directive does not prevent Member States from providing for exceptions or limitations to rights that are not harmonised in the copyright framework of the Union.
- (21) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter and the UNCRPD. This Directive should be interpreted and applied in accordance with those rights and principles.
- (22) The Marrakesh Treaty imposes certain obligations regarding the exchange of accessible format copies between the Union and third countries that are parties to that Treaty. The measures taken by the Union to fulfil those obligations are contained in Regulation (EU) 2017/1563 which should be read in conjunction with this Directive.

<sup>(1)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31). That Directive will be repealed and replaced, with effect from 25 May 2018, by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(2)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- (23) Since the objective of this Directive, namely to improve access in the Union to works and other subject matter protected by copyright and related rights for persons who are blind, visually impaired or otherwise print-disabled, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and 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 that objective.
- (24) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents <sup>(1)</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

### **Subject matter and scope**

This Directive aims to further harmonise Union law applicable to copyright and related rights in the framework of the internal market, by establishing rules on the use of certain works and other subject matter without the authorisation of the rightholder, for the benefit of persons who are blind, visually impaired or otherwise print-disabled.

#### *Article 2*

### **Definitions**

For the purposes of this Directive the following definitions apply:

- (1) 'work or other subject matter' means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks and in digital format, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;
- (2) 'beneficiary person' means, regardless of any other disabilities, a person who:
- (a) is blind;
  - (b) has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment;
  - (c) has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability; or
  - (d) is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading.
- (3) 'accessible format copy' means a copy of a work or other subject matter in an alternative manner or form that gives a beneficiary person access to the work or other subject matter, including allowing such person to have access as feasibly and comfortably as a person without any of the impairments or disabilities referred to in point 2;
- (4) 'authorised entity' means an entity that is authorised or recognised by a Member State to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a public institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities, institutional obligations or as part of its public-interest missions.

<sup>(1)</sup> OJ C 369, 17.12.2011, p. 14.

*Article 3***Permitted uses**

1. Member States shall provide for an exception to the effect that no authorisation of the rightholder of any copyright or related right in a work or other subject matter is required pursuant to Articles 5 and 7 of Directive 96/9/EC, Articles 2, 3 and 4 of Directive 2001/29/EC, Article 1(1), Article 8(2) and (3) and Article 9 of Directive 2006/115/EC and Article 4 of Directive 2009/24/EC for any act necessary for:
  - (a) a beneficiary person, or a person acting on their behalf, to make an accessible format copy of a work or other subject matter to which the beneficiary person has lawful access for the exclusive use of the beneficiary person; and
  - (b) an authorised entity to make an accessible format copy of a work or other subject matter to which it has lawful access, or to communicate, make available, distribute or lend an accessible format copy to a beneficiary person or another authorised entity on a non-profit basis for the purpose of exclusive use by a beneficiary person.
2. Member States shall ensure that each accessible format copy respects the integrity of the work or other subject matter, with due consideration given to the changes required to make the work or other subject matter accessible in the alternative format.
3. The exception provided for in paragraph 1 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.
4. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exception provided for in paragraph 1 of this Article.
5. Member States shall ensure that the exception provided for in paragraph 1 cannot be overridden by contract.
6. Member States may provide that uses permitted under this Directive, if undertaken by authorised entities established in their territory, be subject to compensation schemes within the limits provided for in this Directive.

*Article 4***Accessible format copies in the internal market**

Member States shall ensure that an authorised entity established in their territory may carry out the acts referred to in point (b) of Article 3(1) for a beneficiary person or another authorised entity established in any Member State. Member States shall also ensure that a beneficiary person or an authorised entity established in their territory may obtain or may have access to an accessible format copy from an authorised entity established in any Member State.

*Article 5***Obligations of authorised entities**

1. Member States shall provide that an authorised entity established in their territory carrying out the acts referred to in Article 4 establishes and follows its own practices to ensure that it:
  - (a) distributes, communicates and makes available accessible format copies only to beneficiary persons or other authorised entities;
  - (b) takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available to the public of accessible format copies;
  - (c) demonstrates due care in, and maintains records of, its handling of works or other subject matter and of accessible format copies thereof; and
  - (d) publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations laid down in points (a) to (c).

Member States shall ensure that the practices referred to in the first subparagraph are established and followed in full respect of the rules applicable to the processing of personal data of beneficiary persons referred to in Article 7.

2. Member States shall ensure that an authorised entity established in their territory carrying out the acts referred to in Article 4 provides the following information in an accessible way, on request, to beneficiary persons, other authorised entities or rightholders:

- (a) the list of works or other subject matter for which it has accessible format copies and the available formats; and
- (b) the name and contact details of the authorised entities with which it has engaged in the exchange of accessible format copies pursuant to Article 4.

#### *Article 6*

### **Transparency and exchange of information**

1. Member States shall encourage authorised entities established in their territory carrying out the acts referred to in Article 4 of this Directive and Articles 3 and 4 of Regulation (EU) 2017/1563 to communicate to them, on a voluntary basis, their names and contact details.

2. Member States shall provide the information they have received pursuant to paragraph 1 to the Commission. The Commission shall make such information publicly available online on a central information access point and keep it up to date.

#### *Article 7*

### **Protection of personal data**

The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

#### *Article 8*

### **Amendment to Directive 2001/29/EC**

In Article 5(3) of Directive 2001/29/EC, point (b) is replaced by the following:

‘(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability, without prejudice to the obligations of Member States under Directive (EU) 2017/1564 of the European Parliament and of the Council (\*);

(\*) Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 242, 20.9.2017, p. 6).’

#### *Article 9*

### **Report**

By 11 October 2020, the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee on the availability, in accessible formats, of works and other subject matter other than those defined in point 1 of Article 2 for beneficiary persons, and of works and other subject matter for persons with disabilities other than those referred to in point 2 of Article 2, in the internal market. The report shall take into account developments concerning relevant technology and shall contain an assessment of the appropriateness of broadening the scope of this Directive in order to improve access to other types of works and other subject matter and to improve access for persons with disabilities other than those covered by this Directive.

*Article 10***Review**

1. By 11 October 2023, the Commission shall carry out an evaluation of this Directive and present the main findings in a report to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by proposals for amending this Directive. Such evaluation shall include an assessment of the impact of compensation schemes, provided for by Member States pursuant to Article 3(6), on the availability of accessible format copies for beneficiary persons and on their cross-border exchange. The Commission's report shall take into account the views of relevant civil society actors and of non-governmental organisations, including organisations representing persons with disabilities and those representing older persons.
2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1 of this Article and the preparation of the report referred to in Article 9.
3. A Member State that has valid reasons to consider that the implementation of this Directive has had a significant negative impact on the commercial availability of works or other subject matter in accessible formats for beneficiary persons may bring the matter to the attention of the Commission providing all relevant evidence. The Commission shall take that evidence into account when drawing up the report referred to in paragraph 1.

*Article 11***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 October 2018. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a 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 12***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 13***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 13 September 2017.

*For the European Parliament*  
*The President*  
A. TAJANI

*For the Council*  
*The President*  
M. MAASIKAS



# DECISIONS

## DECISION (EU) 2017/1565 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 September 2017

### on providing macro-financial assistance to the Republic of Moldova

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 <sup>(1)</sup>,

Whereas:

- (1) Relations between the European Union (the 'Union') and the Republic of Moldova continue to develop within the framework of the European Neighbourhood Policy (ENP) and the Eastern Partnership. The Republic of Moldova joined the Eastern Partnership in 2009, which was followed by the negotiation of an Association Agreement between the Union and the Republic of Moldova. This agreement <sup>(2)</sup> (the 'Association Agreement'), which includes the gradual introduction of a Deep and Comprehensive Free Trade Area (DCFTA), was signed on 27 June 2014 and entered into force on 1 July 2016.
- (2) The economy of the Republic of Moldova has been affected significantly by the political instability experienced in the period between the elections of November 2014 and January 2016, as well as by a banking fraud scandal, weak economic activity in the region, and import bans imposed by Russia. That situation contributed to producing a recession, a growing trade deficit and a significant decline of the foreign exchange reserves over the last year.
- (3) Following the appointment in early 2016 of a new government and of a new governor of the National Bank of Moldova, the authorities have demonstrated a renewed commitment to moving forward with necessary political reforms and to addressing the country's governance challenges in the financial sector and in the area of public finance management.
- (4) In support of the new reform path, a Roadmap for Priority Reforms was agreed between the Union and the Republic of Moldova following the Foreign Affairs Council Conclusions of 15 February 2016. There has been substantial progress with the implementation of this Roadmap by the Republic of Moldova.
- (5) In a context of political transition and economic difficulties, the authorities of the Republic of Moldova and the International Monetary Fund (IMF) agreed, in July 2016, on a three-year Extended Credit Facility and Extended Fund Facility (ECF/EFF) arrangement in the amount of USD 178,7 million. That arrangement was approved by the IMF Board on 7 November 2016. Under this IMF programme the authorities of the Republic of Moldova are expected to make swift improvements in financial sector governance and supervision, to strengthen policies that ensure macroeconomic and financial stability, and to foster sustainable and inclusive growth.
- (6) In view of the worsening economic situation and outlook, the Republic of Moldova requested complementary macro-financial assistance from the Union in August 2015 and reiterated that request in March 2016.

<sup>(1)</sup> Position of the European Parliament of 4 July 2017 (not yet published in the Official Journal) and Decision of the Council of 17 July 2017.

<sup>(2)</sup> Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (OJ L 260, 30.8.2014, p. 4).

- (7) The Union's indicative allocation for the Republic of Moldova under the European Neighbourhood Instrument (ENI) is EUR 610-746 million, including budgetary support and technical assistance. However, budget support disbursements from the Union were suspended in early 2015 and their resumption was made conditional on the approval of a new IMF programme and all budget support conditions being fulfilled.
- (8) Given that the Republic of Moldova is a country covered by the ENP, it should be considered to be eligible to receive macro-financial assistance from the Union.
- (9) The Union's macro-financial assistance should be an exceptional financial instrument of untied and undesignated balance-of-payments support, which aims at addressing the beneficiary's immediate external financing needs and should underpin the implementation of a policy programme containing strong immediate adjustment and structural reform measures designed to improve the balance-of-payments position in the short term.
- (10) Given that there is still a significant residual external financing gap in the Republic of Moldova's balance of payments over and above the resources provided by IMF and other multilateral institutions, the Union macro-financial assistance to be provided to the Republic of Moldova is, under the current exceptional circumstances, considered to be an appropriate response to the Republic of Moldova's request for support to the economic stabilisation, in conjunction with the IMF programme. The Union's macro-financial assistance would support the economic stabilisation and the structural reform agenda of the Republic of Moldova, supplementing resources made available under the IMF's financial arrangement.
- (11) The Union's macro-financial assistance should aim to support the restoration of a sustainable external financing situation for the Republic of Moldova, contributing to the greater political and macroeconomic stability of the country, the strengthening of economic and financial governance, including a thorough, result-oriented investigation into bank fraud, good energy governance and the political independence of the judiciary.
- (12) The Union's macro-financial assistance is expected to go hand-in-hand with the implementation of disbursements of budget support operations under the ENI.
- (13) The determination of the amount of the Union's macro-financial assistance is based on a complete quantitative assessment of the Republic of Moldova'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 Republic of Moldova and the added value of the overall Union involvement.
- (14) Taking into consideration the Republic of Moldova'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 and objectives of the different areas of external action, with the measures taken in respect of those areas, and with other relevant Union policies.
- (16) The Union's macro-financial assistance should support the Union's external policy towards the Republic of Moldova. 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.
- (17) The Union's macro-financial assistance should support the Republic of Moldova's commitment to values shared with the Union, including democracy, the rule of law, good governance, an accountable, transparent and merit-based civil service, an independent judiciary, respect for human rights, the freedom, independence and pluralism of the media, sustainable development and poverty reduction, as well as its commitment to the principles of open, rules-based and fair trade.

- (18) A pre-condition for granting the Union's macro-financial assistance and for the disbursement of each of the three instalments should be that the Republic of Moldova 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 the public finance management systems, ensure an effective fight against corruption and money laundering, reinforce the governance and supervision of the financial and banking sector in the Republic of Moldova, improve the governance of the energy sector and promote structural reforms aimed at supporting sustainable and inclusive growth, employment creation, a good business climate and fiscal consolidation. The Union's macro-financial assistance to the Republic of Moldova should also include measures to support the implementation of the Association Agreement, including the DCFTA. To ensure that specific objectives can be properly assessed, they need to be set out in a verifiable and measurable manner. Both the fulfilment of the precondition and the achievement of those objectives should be regularly monitored by the Commission and the EEAS. If the precondition and the objectives are not met or if the aims and principles of the Association Agreement are generally disregarded, the Commission should temporarily suspend or cancel the disbursement of the Union's macro-financial assistance.
- (19) In order to ensure that the Union's financial interests linked to the Union's macro-financial assistance are protected efficiently, the Republic of Moldova should implement appropriate measures relating to the prevention of, and fight against, fraud, corruption and any other irregularities linked to the assistance. The Republic of Moldova should regularly inform the Commission about the implementation of the macro-financial assistance on the basis of full disclosure and strict compliance with the Union's financial rules. In addition, provision should be made for the Commission to carry out checks and for the European 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 (as budgetary authority).
- (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 multiannual 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 Council <sup>(1)</sup>.
- (24) The Union's macro-financial assistance should be subject to conditions, to be laid down in a Memorandum of Understanding. Such conditions should be linked to the disbursement of each of the three instalments. In order to ensure uniform conditions of implementation and for reasons of efficiency, the Commission should be empowered to negotiate such conditions with the authorities of the Republic of Moldova 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 Republic of Moldova, the examination procedure should apply to the adoption of the Memorandum of Understanding, and to any reduction, suspension or cancellation of the assistance,

HAVE ADOPTED THIS DECISION:

#### Article 1

1. The Union shall make macro-financial assistance of a maximum amount of EUR 100 million available to the Republic of Moldova ('the Union's macro-financial assistance'), with a view to supporting the Republic of Moldova's

<sup>(1)</sup> 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).

economic stabilisation and a substantive reform agenda. Of that maximum amount, up to EUR 60 million shall be provided in the form of loans and up to EUR 40 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. The assistance shall contribute to covering the Republic of Moldova's balance of payments needs as identified in the IMF programme.

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 Republic of Moldova. The loans shall have a maximum average 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 Republic of Moldova, and with the key principles and objectives of economic reforms set out in the Association Agreement, including the DCFTA, agreed under the ENI.

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 and a half years, starting from the first day after the entry into force of the Memorandum of Understanding referred to in Article 3(1).

5. If the financing needs of the Republic of Moldova 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 examination procedure referred to in Article 7(2), shall reduce the amount of the assistance or suspend or cancel it.

#### *Article 2*

1. A pre-condition for granting the Union's macro-financial assistance shall be that the Republic of Moldova respects effective democratic mechanisms — including a multi-party parliamentary system — and the rule of law, and guarantees respect for human rights.

2. The Commission and the EEAS shall monitor the fulfilment of the pre-condition set out in paragraph 1 throughout the life cycle of the Union's macro-financial assistance.

3. Paragraphs 1 and 2 of this Article shall be applied in accordance with Council Decision 2010/427/EU <sup>(1)</sup>.

#### *Article 3*

1. The Commission, in accordance with the examination procedure referred to in Article 7(2), shall agree with the authorities of the Republic of Moldova 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 macroeconomic adjustment and structural reform programmes implemented by the Republic of Moldova with the support of the IMF.

2. The conditions referred to in paragraph 1 shall aim, in particular, at enhancing the efficiency, transparency and accountability of the public finance management systems in the Republic of Moldova, including for the use of the Union's macro-financial assistance. 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 Loan Agreement and a Grant Agreement to be concluded between the Commission and the authorities of the Republic of Moldova.

<sup>(1)</sup> 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).

4. The Commission shall verify, at regular intervals, that the conditions referred to in Article 4(3) continue to be met, including whether the economic policies of the Republic of Moldova 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 referred to in paragraph 3, the Union's macro-financial assistance shall be made available by the Commission in three 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 480/2009 <sup>(1)</sup>.

3. The Commission shall decide on the release of the instalments subject to the fulfilment of all of the following conditions:

(a) the pre-condition 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 satisfactory implementation of the economic policy and financial conditions agreed in the Memorandum of Understanding.

4. The release of the second instalment shall not, in principle, take place earlier than three months after the release of the first instalment. The release of the third instalment shall not, in principle, take place earlier than three months after the release of the second instalment.

5. Where the conditions referred to 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.

6. The Union's macro-financial assistance shall be disbursed to the National Bank of the Republic of Moldova. Subject to the 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 Ministry of Finance of the Republic of Moldova 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 risk, or to any other commercial risk.

2. Where the circumstances permit, and if the Republic of Moldova 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 Republic of Moldova 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 Republic of Moldova.

5. The Commission shall inform the European Parliament and the Council of developments in the operations referred to in paragraphs 2 and 3.

<sup>(1)</sup> 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).

*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 Council <sup>(1)</sup> and Commission Delegated Regulation (EU) No 1268/2012 <sup>(2)</sup>.
2. The implementation of the Union's macro-financial assistance shall be under direct management.
3. The Loan Agreement and the Grant Agreement to be agreed with the authorities of the Republic of Moldova shall contain provisions:
  - (a) ensuring that the Republic of Moldova 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;
  - (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 2988/95 <sup>(3)</sup>, Council Regulation (Euratom, EC) No 2185/96 <sup>(4)</sup> and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(5)</sup>;
  - (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 early repayment of the loan and/or to full repayment of the grant where it has been established that, in relation to the management of the Union's macro-financial assistance, the Republic of Moldova has engaged in any act of fraud or corruption or any other illegal activity detrimental to the financial interests of the Union.
4. Before the implementation of the Union's macro-financial assistance, the Commission shall assess, by means of an operational assessment, the soundness of financial arrangements of the Republic of Moldova, the administrative procedures, and the internal and external control mechanisms which are relevant to the 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 5 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 Republic of Moldova, as well as progress made in implementing the policy measures referred to in Article 3(1);

<sup>(1)</sup> 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).

<sup>(2)</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

<sup>(3)</sup> 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).

<sup>(4)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>(5)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

(c) indicate the connection between the economic policy conditions laid down in the Memorandum of Understanding, the Republic of Moldova's ongoing 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 Strasbourg, 13 September 2017.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

M. MAASIKAS

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