COUNCIL IMPLEMENTING DECISION

of 10 July 2012

amending Implementing Decision 2011/344/EU on granting Union financial assistance to Portugal

(2012/409/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism [1], and in particular Article 3(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In line with Article 3(9) of Council Implementing Decision 2011/344/EU [2], the Commission, together with the International Monetary Fund (IMF) and in liaison with the European Central Bank (ECB), has conducted the fourth review of the Portuguese authorities' progress on the implementation of the agreed measures under the economic and financial adjustment programme (Programme) as well as of their effectiveness and economic and social impact.

(2) The review has found that Portugal's compliance with the conditionality for the first quarter of 2012 was satisfactory. In 2011, the general government deficit was 4,2 % of GDP. The fiscal target for 2012 of 4,5 % of GDP remains within reach. The rebalancing of the economy has continued at a swift pace and exports have outperformed expectations and more than offset weaker domestic demand. However, risks to the fiscal objectives related to the rebalancing of the macroeconomic outlook have started to materialise, with the growth composition tilting more strongly towards net exports and away from domestic demand and in view of the substantial worsening of the labour market situation. Progress has been made with reforms to raise the long-term growth potential of the economy. Reform of the labour market aimed at removing rigidities and improving productivity has already been legislated for and need to be sustained. Severance payments should be aligned with the Union average and a fund to finance part of severance payments should be created. A proposal to revise the mechanism for extending collective agreements is under preparation. Policy efforts to support financial system stability continue. The sale of Banco Português de Negócios (BPN) has been concluded and the management of the special purpose vehicles should be optimised to maximise the recovery of the assets transferred from BPN.

The deleveraging of the financial sector is evolving in an orderly fashion. The recapitalisation of the banking system is on target to ensure by June 2012 a minimum Core Tier 1 capital ratio of 9 %, including the European Banking Authority requirements and the capital needs related to the partial transfer of pension funds and special on-site inspections. The early intervention, resolution and deposit insurance framework has been strengthened and the Portuguese authorities are asked to prepare the implementing measures. Product market reforms, in particular in sheltered services, are essential to restore competitiveness and promote growth and employment. The Portuguese government is implementing a strategy to restructure state-owned enterprises (SOEs) to reduce their indebtedness and to insure improved conditions for market financing. A study to assess the costs and benefits of renegotiating any public-private partnerships (PPPs) or concession contracts to reduce the government financial obligations is being prepared by an international auditing firm. The Portuguese government is committed to ensuring an effective competition enforcement regime. Housing market regulations are being modernised with a view to promoting geographical mobility and the reform of the judicial system is making good progress. The privatisation programme is being implemented under the new framework law.

(3) In the light of these developments, Implementing Decision 2011/344/EU should be amended,

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Implementing Decision 2011/344/EU is hereby amended as follows:

(1) paragraph 6 is amended as follows:

(a) point (a) is replaced by the following:

'(a) The general government deficit shall not exceed 4,5 % of GDP in 2012. Portugal shall continue to closely monitor fiscal developments and assess whether further policy adjustments are necessary to achieve the 2012 target;';

(b) points (d), (e) and (f) are replaced by the following:

'(d) Portugal shall continue adopting measures to reinforce public finance management. Portugal shall implement the measures provided for in the new Budgetary Framework Law, including setting up a medium-term budgetary framework. The local and regional budgetary frameworks shall be considerably strengthened, in particular by aligning the respective financing laws with the requirements of the Budgetary Framework Law. Portugal shall step up the reporting and monitoring

[1] OJ L 118, 12.5.2010, p. 1.
[2] OJ L 159, 17.6.2011, p. 88.

of public finances and reinforce budgetary execution rules and procedures. The Portuguese Government shall reinforce the implementation of the strategy for the validation and settlement of arrears. That strategy lays out the prioritisation criteria for paying creditors, as well as governance arrangements to ensure a fair and transparent settling process across all sectors. Portugal shall implement the new legal and institutional PPPs framework. Based on the results of a study on PPPs renegotiations, the Portuguese government shall renegotiate the relevant contracts. Portugal shall adopt a law to regulate the creation and the functioning of SOEs at the central, regional and local levels;

(e) Portugal shall reorganise and significantly reduce the number of local government entities. These changes shall come into effect by the beginning of the next local election cycle;

(f) Portugal shall modernise the revenue administration by completing the implementation of the Autoridade Tributária e Aduaneira, reinforcing the links with the revenue collection units of the Social Security, reducing the number of municipal offices and addressing remaining bottlenecks in the tax appeal system;';

(c) points (h) and (i) are replaced by the following:

'(h) Portugal shall adopt measures to improve the efficiency and sustainability of SOEs at central, regional and local level. Portugal shall implement a strategy to restructure and reduce the indebtedness of SOEs, including Parpública, and to ensure improved conditions for market financing. Portugal shall implement this strategy to reach operational balance at sector level by the end of 2012;

(i) Portugal shall continue implementing the privatisation programme. The direct sale of the Caixa Geral de Depósitos (CGD) insurance arm, Caixa Seguros, shall take place in 2012. The privatisation process of the national air carrier TAP, of the airport operator ANA — Aeroportos de Portugal, of the freight branch of CP — Comboios de Portugal, CP Carga, and of CTT — Correios de Portugal shall start in 2012 with a view of finalising it in 2013;';

(d) point (j) is deleted;

(e) point (k) is replaced by the following:

'(k) The Portuguese Government shall submit draft legislation to the Portuguese Parliament to align severance payments with the Union average of 8-12 days per year of work and to create a compensation fund for severance payments;';

(f) point (l) is deleted;

(g) point (o) is replaced by the following:

'(o) Portugal shall implement the measures set out in its action plan to improve the quality of secondary and vocational education and training;';

(h) points (p) and (r) are replaced by the following:

'(p) The functioning of the judicial system shall be improved by implementing the measures proposed under the Judicial Reform Map and by applying targeted measures to progressively eliminate the court backlog and to foster alternative dispute resolution;

(r) The competition and regulatory framework shall be improved. Portugal shall reinforce the independence and resources of the main national regulatory authorities; implement the Competition Law with a view to improving the speed and effectiveness of the enforcement of competition rules; and monitor the inflow of new cases and report on the functioning of the specialised court for competition, regulation and supervision;';

(i) points (u) and (v) are deleted;

(2) paragraph 8 is replaced by the following:

'8. With a view to restoring confidence in the financial sector, Portugal shall adequately recapitalise its banking sector and ensure an orderly deleveraging process. In that regard, Portugal shall implement the strategy for the Portuguese banking sector agreed with the Commission, the ECB and the IMF so that financial stability is preserved. In particular, Portugal shall:

(a) advise banks to strengthen their collateral buffers on a sustainable basis and monitor the issuance of the government guaranteed bank bonds, which has been authorised up to EUR 35 billion in line with Union State aid rules;

(b) ensure that banks reach the Programme target of the Core Tier 1 ratio of 10 % at the latest by the end of 2012. The capital requirements stemming from valuing sovereign debt based on market prices according to the Union wide recapitalisation exercise coordinated by the European Banking Authority shall be met in June 2012 together with the capital implications resulting from the special on-site inspections programme and the transfer of the banks' pension funds to the State social security system. If banks cannot reach the capital requirement thresholds within the deadlines set, the EUR 12 billion bank solvency support facility established under the Programme shall be made available;

(c) ensure a balanced and orderly deleveraging of the banking sector, which remains critical to eliminating funding imbalances on a permanent basis. Banks' funding plans aim at reducing the loan-to-deposit ratio to an indicative value of around 120 % by the end of the Programme and potentially reducing the reliance on Eurosystem funding for the duration of the Programme. Those funding plans shall be reviewed quarterly;

(d) ensure that the state-owned CGD is streamlined to increase the capital base of its core banking arm as needed. The sale of its insurance and health arms shall take place before the end of 2012, while the sale of non-strategic equity stakes is ongoing. In so far as these needs cannot be met from internal group sources by the end of June 2012, CGD shall be provided with government capital support from cash buffers outside the bank solvency support facility;

(e) optimise the process for recovering the assets transferred from BPN to the three state-owned special purpose vehicles through the outsourcing to a professional third party of the management of the assets, with a mandate to gradually recover the assets over time. The Portuguese government shall select the party managing the assets through a competitive bidding process and include proper incentives to optimise the recoveries into the mandate;

(f) complete a proposal for encouraging the diversification of financing alternatives to the corporate sector by the end of July 2012;

(g) implement measures to conclude the setting-up of the Resolution Fund with a view to ensuring that it is fully operational by July 2012; adopt the supervisory notices on recovery plans by the end of July 2012; adopt the regulation on resolution plans by the end of October 2012; and adopt the rules applicable to the setting-up and operation of bridge banks in line with Union competition rules by the end of September 2012. Priority shall be given to the review of the recovery and subsequent resolution plans of the banks that are of systemic importance;

(h) establish a framework for financial institutions to engage in out-of-court debt restructuring for households and SMEs.'.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 10 July 2012.

For the Council

The President

V. SHIARLY