

DECISIONS

COUNCIL IMPLEMENTING DECISION

of 14 December 2011

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

(2012/92/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) Upon a request by Portugal, the Council granted financial assistance to it (Council Implementing Decision 2011/344/EU ⁽²⁾) in support of a strong economic and financial adjustment programme (Programme) aiming at restoring confidence, enabling the return of the economy to sustainable growth, and safeguarding financial stability in Portugal, the euro area and the Union.

(2) Under the Commission's current projections for nominal Gross Domestic Product (GDP) growth (– 0,6 % in 2011, – 1,9 % in 2012, 1,9 % in 2013 and 3,9 % in 2014), the fiscal adjustment path is in line with the Council Recommendation to Portugal of 2 December 2009 with a view to bringing an end to the situation of an excessive government deficit, pursuant to Article 126(7) of the Treaty, and consistent with a path for the debt-to-GDP ratio of 107,2 % in 2011, 116,2 % in 2012, 118,1 % in 2013 and 116 % in 2014. The debt-to-GDP ratio would therefore be stabilised in 2013 and be placed on a declining path thereafter, assuming further progress in the reduction of the deficit. Debt dynamics are affected by several below-the-line operations, including sizeable acquisitions of financial assets, in particular for possible bank recapitalisation and financing to state-owned enterprises (SOEs) and differences between accrued and cash interest payments.

(3) The quarterly quantitative performance criterion on the general government cash balance for the second quarter of 2011 was met and preliminary data suggest that this was also the case in the third quarter of 2011. However, with the information available as of early November, on a European Systems of Accounts (ESA95) basis, a budgetary gap of around 1,5 % of GDP is projected for 2011 as a whole. Part of this fiscal gap had been ascertained by August, in particular due to current expenditure overruns, lower-than-projected current non-tax revenue and higher-than-budgeted capital spending. The Portuguese Government had taken some measures to narrow this gap, namely a one-time surcharge in personal income tax and an increase in the VAT rate for natural gas and electricity, which was brought forward to 1 October 2011 from 2012. But these measures were not sufficient to close the fiscal gap, particularly as further slippages have been identified more recently, including higher interest payment, lower-than-projected capital revenue and sales of real estate. The Portuguese Government is seeking an agreement with the banks on a partial transfer of their pension funds to the State social security system, to be undertaken in full compliance with the Union State aid rules, and to be used exceptionally to meet the deficit target of 5,9 % of GDP in 2011. The Portuguese Government agreed not to rely on further transfers of pension funds to meet the Programme targets for the coming years.

(4) Progress is being made to strengthen public financial management through improved reporting and monitoring, and reforming the budgetary framework in line with the recommendations from Commission services and International Monetary Fund (IMF) staff.

(5) The stock of arrears should be significantly reduced over the Programme period. To this end, a strategy for the validation and settlement of arrears for the entities inside the general government as well as for SOEs classified outside the general government should be prepared. In this strategy, a roadmap should be provided which sets out how and when the stock of arrears should be stabilised. Moreover, various options of settling arrears should be explored, providing appropriate incentive mechanisms including the potential of rebates for early settlements and rewarding entities that no longer accumulate new arrears.

⁽¹⁾ OJ L 118, 12.5.2010, p. 1.

⁽²⁾ OJ L 159, 17.6.2011, p. 88.

- (6) Given the significant drag that the Autonomous Region of Madeira has exerted on Portuguese public finances, the Portuguese Government should prepare a financial arrangement with that region with a view to containing the high level of fiscal risks still remaining. The arrangement should be designed in line with the Programme and comprise, among others, a debt sustainability analysis.
- (7) Portuguese banks are to work towards meeting the higher capital requirements as stipulated by the Programme, taking also into account the implications deriving from the European Banking Authority-led exercise based on the valuation of sovereign exposures according to end-September market prices, the special on-site inspection programme and the transfer of banks' pension funds to the State social security system. A legal framework, the purpose of which is to provide temporary public support to banks, is under preparation. A balanced and orderly deleveraging of the banking sector remains critical, while safeguarding adequate credit for the productive sectors of the economy. The sale of Banco Português de Negócios is in its final stage although the transaction still needs clearance from the Union competition authorities. Progress has also been made to strengthen the supervisory and regulatory framework, including via technical assistance.
- (8) Progress in labour and product market reforms is essential to restore competitiveness and raise the growth potential. Labour market reforms to align the protection and rights under fixed and open-ended contracts and to establish an employer-financed fund for paying out workers' severance entitlements are advancing. The privatisation programme is being implemented under the new framework law for privatisation. A deep and urgent restructuring of SOEs is at the top of the Portuguese Government's agenda. Further progress is needed to lower entry barriers to the sheltered sectors with a view to fostering competition and reduce excessive rents. Structural reforms should be implemented decisively and closely monitored.
- (9) Notwithstanding the relatively large first and second disbursements, the Portuguese Government's cash position remains under strain. This is explained by increasing financing needs from SOEs, a sharp increase in households' redemption of savings certificates, and persisting financial market stress.
- (10) In light of these developments, Implementing Decision 2011/344/EU should be amended,

(1) paragraph 3 is replaced by the following:

'3. The general government deficit shall not exceed EUR 10 068 million (equivalent to 5,9 % of GDP based on current projections) in 2011, EUR 7 645 million (4,5 % of GDP) in 2012 and 3,0 % of GDP by 2013 in line with the excessive deficit procedure requirements. For the calculation of this deficit, the possible budgetary costs of bank support measures in the context of the Portuguese Government's financial sector strategy shall not be taken into account. Consolidation shall be achieved by means of high-quality permanent measures and minimising the impact of consolidation on vulnerable groups;'

(2) paragraph 5 is amended as follows:

(a) points (a) and (b) are replaced by the following:

'(a) 2011 fiscal deficit target shall be reached by an exceptional measure. Assets acquired as a result of the transfer of banks pensions funds to the State social security system shall not be used in a way detrimental to long-term sustainability of Portuguese public finances;

(b) Portugal shall adopt 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 and establishing an independent Fiscal Council. The budgetary framework at local and regional levels shall be considerably strengthened, in particular by putting forward the key options for the alignment of the respective financing laws to the requirements of the Budgetary Framework Law. Portugal shall step up reporting and monitoring of public finances and reinforce budgetary execution rules and procedures. The Portuguese Government shall prepare a strategy for the validation and settlement of arrears which is to present a roadmap setting out how and when the stock of arrears is to be stabilised and explore various options of settling arrears. Regarding Public Private Partnerships (PPPs), the Portuguese Government shall not enter into any new PPPs before the study results on existing PPPs envisaged in the Programme and the legal and institutional reforms proposed become available;'

HAS ADOPTED THIS DECISION:

Article 1

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

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

'(e) Portugal shall continue opening up the economy to competition. The Portuguese Government shall take

the necessary measures to ensure that the Portuguese State or any public body does not conclude, in a shareholder capacity, agreements which may hinder the free movement of capital or influence the management control of companies. The new Privatisation Law shall also be respectful of the principles of free movement of capital and not grant or allow special rights to the State. A revision of competition law shall be undertaken aiming at improving the speed and effectiveness of enforcement of competition rules;;

(c) point (h) is replaced by the following:

‘(h) Portugal shall prepare a financial arrangement with the Autonomous Region of Madeira (RAM) consistent with the Programme. Until the agreement of that arrangement and its implementation in the RAM budget, Portugal shall closely monitor the execution of the RAM budget, shall keep transfers from the State to the RAM government suspended and shall not honour any new commercial or financial debt or guarantees by the RAM government and its SOEs that are not approved by the Ministry of Finance.’;

(3) paragraph 6 is amended as follows:

(a) points (a) to (d) are replaced by the following:

‘(a) Portugal shall implement the privatisation programme. In particular, the sale of public sector shares in EDP shall be completed in 2012. In addition, the public sector shares in REN and GALP, and, if market conditions permit, TAP, shall be sold in 2012. A strategy for Parpublica shall be prepared, reconsidering the role of Parpublica as a public company and considering the possibility of winding down the company or consolidating it with the general government. The privatisation plan through 2013 shall also cover Aeroportos de Portugal, the freight branch of Comboios de Portugal, Correios de Portugal and Caixa Seguros, as well as a number of smaller firms;

(b) the measures defined in points (c) and (d), amounting to at least EUR 8,8 billion, shall be included in the 2012 budget. Further measures, mostly on the expenditure side, shall be taken to fill any possible gap arising from budgetary developments in 2012;

(c) the budget shall provide for a reduction of expenditure in 2012 of at least EUR 6,7 billion including a reduction in public sector wages and employment; cuts in pensions; a comprehensive reorganisation of the central administration, eliminating duplicities and other inefficiencies; reducing the number of municipalities and parishes; cuts in education and health; lower transfers to regional and local authorities; and

reductions in capital expenditure and in other expenditure as set out in the Programme;

(d) on the revenue side, the budget shall include revenue measures totalling around EUR 2,1 billion in a full year, including by broadening VAT bases through reducing exemptions and rearranging the lists of goods and services subject to reduced, intermediate and higher rates; an increase in excise taxes; broadening the corporate and personal income tax bases by reducing tax deductions and special regimes; ensuring the convergence of personal income tax deductions applied to pensions and labour income; and changes in property taxation by substantially reducing exemptions. These measures shall be complemented by action to fight tax evasion, fraud and informality;;

(b) points (k) and (l) are replaced by the following:

‘(k) Portugal shall promote wage developments consistent with the objectives of fostering job creation and improving firms’ competitiveness with a view to correcting macroeconomic imbalances. Over the Programme period, any increase in minimum wages shall take place only if justified by economic and labour market developments. Measures shall be taken to address weaknesses in the current wage bargaining schemes, including legislation to redefine the criteria and modalities of the extension of collective agreements and to facilitate firm-level agreements. Until then, the application of extensions shall be suspended;

(l) an action plan shall be prepared to improve the quality of secondary and vocational education and training;;

(c) the following point is added:

‘(p) Portugal shall adopt measures to ensure the sustainability of the national electricity system leading to the elimination of the tariff debt by 2020 and ensuring it shall stabilise by 2013. These measures shall correct excessive rents and cover all their sources.’;

(4) paragraph 7 is amended as follows:

(a) points (a) and (b) are replaced by the following:

‘(a) the 2013 budget shall include fiscal consolidation measures amounting to at least EUR 3,4 billion aiming at a reduction of the general government deficit within the timeframe referred to in Article 3(3);

(b) the budget shall include revenue measures including in particular further broadening of corporate and personal income tax bases, higher excises taxes and changes in property taxation, yielding close to EUR 0,7 billion of additional revenue;;

(b) the following points are added:

- ‘(d) on the expenditure side, the budget shall provide for a reduction of at least EUR 2,7 billion, including reducing expenditures in the central administration, education and health; transfers to local and regional authorities; reduction of the number of employees in the public sector; and lower costs by SOEs;
- (e) Portugal shall improve the business environment by reducing administrative burden through the extension of simplification reforms (Points of Single Contact and ‘Zero Authorisation’ projects) to all sectors of the economy; and by alleviating credit constraints of small and medium-sized enterprises, including through the implementation of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (*).

(*) OJ L 48, 23.2.2011, p. 1.;

(5) paragraph 8 is amended as follows:

(a) the introductory wording 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 develop and agree with the Commission, the ECB and the IMF a strategy for the future structure and functioning of the Portuguese banking sector so that financial stability is preserved. In particular, Portugal shall:’

(b) points (a) to (g) are replaced by the following:

‘(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) follow closely the plans presented by the banks to reach a core Tier 1 ratio of 9 % by end-2011 and 10 % at the latest by end-2012. The capital requirements stemming from valuing sovereign debt based on market prices according to the European Banking Authority shall be met in June 2012 together with the capital implications from the special on-site inspections programme and the transfer of the banks’ pension funds to the State social security system. Banks shall present in February 2012 plans on how they intend to reach their capital needs in that year. If banks cannot

reach the capital requirement thresholds on time, they might temporarily require public provision of capital, which for privately owned banks shall be available through the EUR 12 billion bank solvency support facility established under the Programme;

(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 a reduction in the loan-to-deposit ratio to around 120 % by the end of the Programme and a reduction of the reliance on Eurosystem funding during the duration of the Programme. These funding plans shall be reviewed quarterly, with the next one due before the third Programme review. The Bank of Portugal shall take appropriate action in case of deviations from the banks’ funding plans;

(d) complete the sale of Banco Português de Negócios respecting the Union State aid rules;

(e) ensure that the state-owned Caixa Geral de Depósitos (CGD) is streamlined to increase the capital base of its core banking arm as needed in 2011 without relying on the sale of its insurance arm. This sale is expected to take place in 2012 directly to a final buyer and to contribute to meeting that year’s additional capital needs. Insofar as these needs cannot be met from internal group sources, CGD shall be provided with government capital support outside of the bank solvency support facility;

(f) ensure that the partial transfer of the banks’ pension funds to the State social security system is done under actuarially balanced conditions, as well as respecting Union competition and State aid rules. In order to avoid having to take recourse to the bank solvency support within the Programme financing envelope, the Portuguese Government shall offer banks help to cover the impact of the transfer on capital by using part of the transfer to acquire common equity in the banks. The remainder of the transferred funds shall be deposited in a blocked account until the completion of the third Programme review;

(g) finalise the legal framework for access to capital from public sources by end-January 2012 consistent with Union State aid rules and in line with the principles laid down in the Memorandum of Understanding;’

(c) the following points are added:

‘(i) ensure that before the third Programme review banks have incorporated the available results of the special on-site inspections programme in the stress test exercise with a 6 % Core Tier 1 threshold;

- (j) complete the legal framework for early intervention, resolution and deposit insurance for banks by end-2011 and by the same deadline the one for corporate and household debt restructuring.’;

necessary fiscal consolidation and minimising harmful social impacts, particularly on the most vulnerable parts of Portuguese society.’.

- (6) paragraph 9 is replaced by the following:

‘9. In order to ensure the smooth implementation of the Programme’s conditionality, and to help to correct imbalances in a sustainable way, the Commission shall provide continued advice and guidance on fiscal, financial market and structural reforms. Within the framework of the assistance to be provided to Portugal, together with the IMF and in liaison with the ECB, it shall periodically review the effectiveness and economic and social impact of the agreed measures, and shall recommend necessary corrections with a view to enhancing growth and job creation, securing the

Article 2
This Decision is addressed to the Portuguese Republic.

Done at Brussels, 14 December 2011.

For the Council
The President
M. DOWGIELEWICZ