



COMMISSION OF THE EUROPEAN COMMUNITIES

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96/0248 (CNS)

Amended proposal for a
COUNCIL REGULATION (EC)
on speeding up and clarifying the implementation of the excessive deficit procedure

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

The amended Commission proposals for Council Regulations on *the strengthening of the surveillance and coordination of budgetary policies* and on *speeding up and clarifying the implementation of the excessive deficit procedure* form part of the Stability and Growth Pact. They are revised versions of the proposals earlier adopted by the Commission on 16 October 1996 in COM(96)496 final. They include the amendments proposed by the European Parliament which have been accepted by the Commission and the agreements reached in the European Council in Dublin in December 1996. The first proposed Regulation also now includes the proposals of the Commission on non-participating Member States and their convergence programmes, in response to the invitation from the Dublin European Council. Both texts further incorporate a number of drafting changes agreed by the Commission in the light of the ongoing discussions in the Council Working Group on EMU which has been examining the proposals.

The Commission is presenting these proposals now in advance of the informal Ecofin Council at Noordwijk in April and with a view to final agreement on the stability and growth pact at the Amsterdam European Council in June.

**Amended proposal for a
COUNCIL REGULATION (EC)**

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on speeding up and clarifying the implementation of the excessive deficit procedure

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular the second subparagraph of Article 104c, paragraph 14, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Monetary Institute,

(1) Whereas for economic and monetary union to function smoothly, it is necessary not only that the convergence criteria be fulfilled, but also that economic and fiscal performances prove stable and durable; whereas the maintenance of sound budgetary positions in the Member States contributes in the medium and long term to the creation of the appropriate conditions for the sustained growth of output and employment; whereas budgetary discipline will be required in the third stage of economic and monetary union to safeguard monetary stability;

(2) Whereas national budgetary policies need to be set so as to create room for manoeuvre in adapting to exceptional and cyclical disturbances and so as to avoid excessive deficits; whereas it is necessary to define the concept of an exceptional and temporary excess over the reference value when resulting from an unusual event or a severe economic downturn as referred to in Article 104c(2);

(3) Whereas the Protocol N° 5 on the excessive deficit procedure contains provisions relating to the implementation of the procedure foreseen in Article 104c; whereas further implementing provisions are necessary; whereas, according to the second subparagraph of Article 104c(14), the Council shall adopt the appropriate provisions to that effect; whereas the provisions of this Regulation together with those of the Protocol constitute a new integrated set of rules;

(4) Whereas in accordance with Article 109k(3) of the Treaty, paragraphs 9 and 11 of Article 104c shall not apply to the Member States with a derogation; whereas in accordance with paragraph 2 of Protocol No. 12 on certain provisions relating to Denmark, paragraphs 9 and 11 of Article 104c shall not apply to Denmark as long as it has not withdrawn the notification made in the context of the Edinburgh decision of 12 December 1992, that it will not participate in the third stage; whereas paragraph 2 of Protocol No. 11 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that, inter alia, paragraph 5 of that said Protocol shall have effect if the United Kingdom notifies that Council that it does not intend to move to the third stage; whereas paragraph 5 stipulates that, inter alia, paragraphs 1, 9 and 11 of Article 104c of the Treaty shall not apply to the United Kingdom;

(5) Whereas there is a need to establish definitions and deadlines for the application of the excessive deficit procedure in order to ensure its expeditious and effective application; whereas there is a need to specify how the sanctions foreseen in Article 104c of the Treaty could, on an annual basis, be imposed on Member States which persistently fail to correct an excessive deficit situation in order to ensure the effective application of the excessive deficit procedure;

(6) Whereas the present regulation forms part of the *stability and growth pact* for ensuring budgetary discipline in stage three of EMU; whereas the pact includes two main elements (i) strengthening the surveillance and coordination of budgetary policies and (ii) speeding up and clarifying the implementation of the excessive deficit procedure; whereas the first of these elements provides an early warning system in which divergences from Member States medium-term budgetary paths are identified and recommendations made by the Council to take corrective action well before a deficit position becomes excessive;

(7) Whereas the rules for such a strengthening of the surveillance and coordination of budgetary policies have been laid down in Council Regulation [...];

(8) Whereas the reinforced surveillance in the terms of Regulation [...] together with the Commission's monitoring of budgetary positions in accordance with paragraph 2 of article 104c should facilitate the effective and rapid implementation of the excessive deficit procedure;

(9) Whereas, in the light of the above, an overall maximum period of ten months from the reporting date or any other activation of the procedure until, if necessary, the imposition of sanctions seems both feasible and appropriate in order to exert pressure on the Member State to implement corrective measures; in the event of a procedure starting in March this could lead to sanctions being imposed within the calendar year in which the procedure has been started;

(10) Whereas the Council recommendation for the correction of an excessive deficit or the later steps of the excessive deficit procedure should have been anticipated by the Member State concerned, which will have had an early warning and thus a long period to prepare corrective measures. Whereas the seriousness of moving into excessive deficit in stage three should call for urgent action from all those involved;

(11) Whereas when acting with a view to correct the excessive deficit the government of the Member State concerned will, if required by national law, take measures associating the national parliament; whereas the excessive deficit procedure should enable parliaments to play their full role; whereas the national decision-making process in accordance with article 3 of the Protocol n° 5, should not, as such, hinder the expeditious implementation of the excessive deficit procedure;

(12) Whereas it is appropriate to establish deadlines in the Council recommendation under Article 104c(7) for the taking of effective action by the Member State concerned and for the correction of the excessive deficit;

(13) Whereas the aim of the excessive deficit procedure is to provide incentives to Member States to take corrective action and in that case the procedure should be held in abeyance; whereas the procedure shall immediately be resumed if the action is not being implemented or is proving to be inadequate;

(14) Whereas it is considered that, in order to ensure that the excessive deficit procedure has a sufficient deterrent effect, a non-interest-bearing deposit of appropriate size should be required from the Member State concerned when the Council decides to impose a sanction; whereas the excessive deficit procedure is an annual procedure and sanctions could therefore be imposed on an annual basis;

(15) Whereas the definition of sanctions on a prescribed scale removes uncertainties and would thus allow those involved in the procedure to have full information about it; whereas it is appropriate to relate the amount of the deposit to the GDP of the Member State concerned; whereas it is appropriate that the deposit should consist of a fixed component and a variable component proportional to the excess of the deficit over the 3% of GDP reference value; whereas it is also appropriate to fix a maximum annual amount, as a percent of GDP, to the sanctions for the latter not to have counterproductive effects;

(16) Whereas in the event that the constitution of a non-interest-bearing deposit does not induce the Member State concerned to correct its excessive deficit within two years of the decision to impose a deposit, then it is appropriate to intensify the sanctions; whereas it is therefore appropriate to transform the deposit into a fine;

(17) Whereas significant progress in correcting the excessive deficit should allow for some lifting of sanctions in accordance with paragraph 12 of article 104c; whereas the abrogation of all outstanding sanctions should only occur once the excessive deficit has been fully corrected;

(18) Whereas Council Regulation EC n° 3605/93 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community¹ sets detailed rules for the reporting of budgetary data by the Member States;

(19) Whereas, according to Article 109f(8), where the Treaty provides for a consultative role for the European Central Bank (ECB), references to the ECB shall be read as referring to the European Monetary Institute before the establishment of the ECB,

HAS ADOPTED THIS REGULATION:

SECTION 1

Definitions

Article 1

This Regulation sets out the provisions to speed up and clarify the excessive deficit procedure, having the objective to deter excessive general government deficits and, if they occur, to correct them promptly.

Article 2

1. The excess of a government deficit over the reference value shall be considered exceptional and temporary, in accordance with Article 104c(2a) 2nd indent, when resulting from an unusual event outside the control of the relevant Member State and which has a major impact on the financial position of the general government, or when resulting from a severe economic downturn. In addition, if the unusual event or the severe economic downturn has come to an end or if it is forecast that it will come to an end in the calendar year following the year in which the deficit exceeds the reference value, budgetary forecasts provided by the Commission must indicate that the deficit would fall below the reference value in this same following year.

¹ OJ n° L 332, 31.12.93, p.7.

2. The Commission when preparing a report under Article 104c(3) shall consider, as a rule, an excess of the reference value resulting from an economic downturn to be exceptional only if there is an annual fall of real GDP of at least 2%.
3. The Council when deciding, according to Article 104c(6), whether an excessive deficit exists shall in its overall assessment take into account any observations made by the Member State concerned showing that an annual fall of real GDP of less than 2% is nevertheless exceptional in light of further supporting evidence, in particular on the abruptness of the downturn or on the accumulated loss of output relative to past trends.

SECTION 2

Speeding up the excessive deficit procedure

Article 3

1. Within two weeks of the adoption by the Commission of a report issued in accordance with Article 104c(3), the Economic and Financial Committee shall formulate an opinion in accordance with Article 104c(4).
2. The Commission, taking fully into account the opinion referred to in paragraph 1 and if it considers that an excessive deficit exists, shall address an opinion and a recommendation to the Council for a decision.
3. The Council shall decide on the existence of an excessive deficit in accordance with Article 104c(6), within three months of the reporting dates established in Articles 4.2 and 4.3 of Council Regulation EC/3605/93. Where it decides on the existence of an excessive deficit in accordance with Article 104c(6) the Council at the same time shall issue recommendations to the Member State concerned in accordance with Article 104c(7).
4. The Council recommendation issued in accordance with Article 104c(7) shall establish a deadline for effective action to be taken by the Member State concerned and a deadline for the correction of the excessive deficit, which should be completed in the year following the identification of an excessive deficit unless special circumstances are given.

Article 4

1. Any Council decision to make its recommendations public having established that no effective action has been taken in accordance with Article 104c(8) shall be taken within four months of the decision on the existence of an excessive deficit in accordance with Article 104c(6) and the issuing of recommendations in accordance with Article 104c(7).
2. The Council, when considering whether effective action has been taken in response to its recommendations issued in accordance with Article 104c(7), shall base its assessment on publicly announced decisions by the Government of the Member State concerned. If these publicly announced decisions are not legally enforced, or if the budgetary impact of these decisions is substantially weakened during the adoption process, then the Council shall resume the excessive deficit procedure immediately.

Article 5

Any Council decision to give notice to the Member State to take measures for the deficit reduction in accordance with Article 104c(9) shall be taken within one month of the Council decision that no effective action has been taken in accordance with Article 104c(8).

Article 6

If a Member State fails to act in compliance with the successive decisions of the Council under Articles 104c(7) and Article 104c(9), the Council shall, in accordance with Article 104c(11), decide to impose sanctions. Subject to the provisions in Article 9 of this regulation, any such decision shall be taken no later than two months after the Council decision to give notice to the Member State to take measures in accordance with Article 104c(9).

Article 7

Subject to the provisions in Article 9 of this regulation, the decision of the Council to impose sanctions, shall be taken within ten months of the reporting date of the figures confirming the existence of an excessive deficit. An expedited procedure shall be used in the case of a deliberately planned deficit which the Council decides is excessive.

Article 8

Any Council decision to intensify sanctions (other than the imposition of fines dealt with in Article 13 of this Regulation) in accordance with Article 104c(11), or to abrogate some or all of its decisions in accordance with Article 104c(12), shall be taken no later than two months after the reporting dates pursuant to Council Regulation EC/3605/93.

SECTION 3

Abeysance and monitoring

Article 9

The excessive deficit procedure shall be held in abeyance if a Member State takes effective action in response to a recommendation under Article 104c(7) or a notice issued under Article 104c(9).

Article 10

1. The Commission and the Council shall monitor the implementation of action taken by Member States in response to recommendations issued under Article 104c(7) and notices issued under Article 104c(9). If action is not being implemented, or in the Council's view is ineffective thereby weakening its budgetary impact, the Council shall, as a rule, proceed immediately to a decision under Article 104c(9) or Article 104c(11) respectively.
2. If actual data indicate that an excessive deficit has not been corrected within the time-limits specified either in recommendations issued under Article 104c(7) or notices issued under Article 104c(9), the Council shall, as a rule, proceed immediately to a decision under Article 104c(9) or Article 104c(11) respectively.

SECTION 4

Sanctions

Article 11

Whenever the Council decides to apply sanctions to a Member State in accordance with Article 104c(11), a non-interest-bearing deposit shall, as a rule, be required. The Council may decide to supplement this deposit by the measures foreseen in the first and second indents of Article 104c(11).

Article 12

The amount of the deposit shall comprise a fixed component equal to 0.2% of GDP, and a variable component equal to one tenth of the difference between the deficit as a percentage of GDP and the reference value in the year preceding the decision to impose sanctions. An upper limit of 0.5% of GDP is set for the annual amount of deposits.

Article 13

If the excessive deficit in the view of the Council has not been corrected, a deposit, as a rule, shall be converted to a fine two years after the decision to impose that deposit in accordance with Article 104c(11), without prejudice to Article 9 of this Regulation.

Article 14

In accordance with Article 104c(12), the Council may decide to abrogate some or all the sanctions defined in the first and second indents of Article 104c(11) to the extent that the Member State is making significant, though not yet sufficient progress in correcting the excessive deficit.

Article 15

In accordance with Article 104c(12), the Council shall abrogate all outstanding sanctions if the decision on the existence of an excessive deficit is abrogated. Fines imposed in accordance with Article 13 of this Regulation shall not be returned to the Member State concerned.

Article 16

Deposits as specified in Article 12 of this Regulation shall be lodged with the Commission. Interest on the deposits and fines specified in Article 13 of this Regulation constitute resources of the general budget of the European Communities.

Article 17

This Regulation shall enter into force on 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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