

COUNCIL REGULATION (EU) No 1177/2011

of 8 November 2011

amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second subparagraph of Article 126(14) 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 Parliament ⁽¹⁾,

Having regard to the opinion of the European Central Bank ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The coordination of the economic policies of the Member States within the Union, as provided for by the Treaty on the Functioning of the European Union (TFEU), should entail compliance with the guiding principles of stable prices, sound public finances and monetary conditions, and a sustainable balance of payments.
- (2) The Stability and Growth Pact (SGP) initially consisted of Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies ⁽³⁾, Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure ⁽⁴⁾ and the Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact ⁽⁵⁾. Regulations (EC) No 1466/97 and (EC) No 1467/97 were amended by Regulations (EC) No 1055/2005 ⁽⁶⁾ and (EC) No

1056/2005 ⁽⁷⁾ respectively. In addition, the Council Report of 20 March 2005 on 'Improving the implementation of the Stability and Growth Pact' ⁽⁸⁾ was adopted.

- (3) The SGP is based on the objective of sound and sustainable government finances as a means of strengthening the conditions for price stability and for strong sustainable growth underpinned by financial stability, thereby supporting the achievement of the Union's objectives for sustainable growth and employment.
- (4) Experience gained and mistakes made during the first decade of the economic and monetary union show a need for improved economic governance in the Union, which should be built on stronger national ownership of commonly agreed rules and policies and on a more robust framework at the level of the Union for the surveillance of national economic policies.
- (5) The common framework for economic governance needs to be enhanced, including improved budgetary surveillance, in line with the high degree of integration between Member States' economies within the Union, and particularly within the euro area.
- (6) The improved economic governance framework should rely on several interlinked and coherent policies for sustainable growth and jobs, in particular a Union strategy for growth and jobs, with particular focus on developing and strengthening the internal market, fostering international trade and competitiveness, a European Semester for strengthened coordination of economic and budgetary policies, an effective framework for preventing and correcting excessive government deficits (the SGP), a robust framework for preventing and correcting macroeconomic imbalances, minimum requirements for national budgetary frameworks, and enhanced financial market regulation and supervision, including macroprudential supervision by the European Systemic Risk Board.
- (7) Achieving and maintaining a dynamic internal market should be considered an element of the proper and smooth functioning of the economic and monetary union.

⁽¹⁾ European Parliament opinion of 28 September 2011 (not yet published in the Official Journal).

⁽²⁾ OJ C 150, 20.5.2011, p. 1.

⁽³⁾ OJ L 209, 2.8.1997, p. 1.

⁽⁴⁾ OJ L 209, 2.8.1997, p. 6.

⁽⁵⁾ OJ C 236, 2.8.1997, p. 1.

⁽⁶⁾ Council Regulation (EC) No 1055/2005 of 27 June 2005 amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 174, 7.7.2005, p. 1).

⁽⁷⁾ Council Regulation (EC) No 1056/2005 of 27 June 2005 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 174, 7.7.2005, p. 5).

⁽⁸⁾ See document 7423/3/05 on <http://www.consilium.europa.eu/documents.aspx?lang=en>

- (8) The SGP and the complete economic governance framework should complement and support the Union strategy for growth and jobs. The interlinks between different strands should not provide for exemptions from the provisions of the SGP.
- (9) The strengthening of economic governance should include a closer and more timely involvement of the European Parliament and the national parliaments. While recognising that the counterparts of the European Parliament in the framework of this dialogue are the relevant institutions of the Union and their representatives, the competent committee of the European Parliament may offer an opportunity to participate in an exchange of views to a Member State to which the Council has addressed a decision under Article 126(6) TFEU, a recommendation under Article 126(7) TFEU, a notice under Article 126(9) TFEU or a decision under Article 126(11) TFEU. The Member State's participation in such an exchange of views is voluntary.
- (10) The Commission should have a stronger role in the enhanced surveillance procedure as regards assessments that are specific to each Member State, monitoring, on-site missions, recommendations and warnings.
- (11) The Council and the Commission should, when applying this Regulation, take into account, as appropriate, all relevant factors and the economic and budgetary situation of the Member States concerned.
- (12) The rules on budgetary discipline should be strengthened, in particular by giving a more prominent role to the level and evolution of debt and to overall sustainability. The mechanisms to ensure compliance with, and enforcement of, those rules should also be strengthened.
- (13) Implementing the existing excessive deficit procedure on the basis of both the deficit criterion and the debt criterion requires a numerical benchmark, which takes into account the business cycle, against which to assess whether the ratio of the government debt to gross domestic product (GDP) is sufficiently diminishing and is approaching the reference value at a satisfactory pace.
- A transitional period should be introduced in order to allow Member States subject to an excessive deficit procedure at the date of adoption of this Regulation to adapt their policies to the numerical benchmark for debt reduction. This should also apply to Member States which are subject to a Union or International Monetary Fund adjustment programme.
- (14) Non-compliance with the numerical benchmark for debt reduction should not be sufficient to establish the existence of an excessive deficit, which should take into account the whole range of relevant factors covered by the Commission's report under Article 126(3) TFEU. In particular, the assessment of the effect of the cycle and the composition of the stock-flow adjustment on debt developments may be sufficient to avoid that the existence of an excessive deficit be established on the basis of the debt criterion.
- (15) In establishing the existence of an excessive deficit based on the deficit criterion and the steps leading to it, there is a need to take into account the whole range of relevant factors covered by the Commission's report under Article 126(3) TFEU if the ratio of government debt to GDP does not exceed the reference value.
- (16) In taking into account systemic pension reforms among the relevant factors, the central consideration should be whether those reforms enhance the long-term sustainability of the overall pension system, while not increasing the risks to the medium-term budgetary position.
- (17) The Commission's report under Article 126(3) TFEU should consider appropriately the quality of the national budgetary framework, as that plays a crucial role in supporting fiscal consolidation and sustainable public finances. That consideration should include the minimum requirements as laid down in Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States⁽¹⁾ and other agreed desirable requirements for fiscal discipline.
- (18) In order to support the monitoring of compliance with Council recommendations and notices for the correction of situations of excessive deficit, there is a need that these specify annual budgetary targets consistent with the required fiscal improvement in cyclically adjusted terms, net of one-off and temporary measures. In that context, the 0,5 % of GDP annual benchmark should be understood as an annual average.
- (19) The assessment of effective action will benefit from taking compliance with general government expenditure targets as a reference, in conjunction with the implementation of planned specific revenue measures.
- (20) In assessing the case for an extension of the deadline for correcting the excessive deficit, particular consideration should be given to severe economic downturns in the euro area or in the Union as a whole, provided that this does not endanger fiscal sustainability in the medium term.

⁽¹⁾ See page 41 of this Official Journal

- (21) It is appropriate to step up the application of the financial sanctions provided for in Article 126(11) TFEU so that they constitute a real incentive for compliance with the notices under Article 126(9) TFEU.
- (22) In order to ensure compliance with the fiscal surveillance framework of the Union for Member States whose currency is the euro, rules-based sanctions should be designed on the basis of Article 136 TFEU, ensuring fair, timely and effective mechanisms for compliance with the SGP.
- (23) Fines referred to in this Regulation shall constitute other revenue, as referred to in Article 311 TFEU, and should be assigned to stability mechanisms to provide financial assistance, created by Member States whose currency is the euro in order to safeguard the stability of the euro area as a whole.
- (24) References contained in Regulation (EC) No 1467/97 should take account of the new Article numbering of the Treaty on the Functioning of the European Union and to the replacement of Council Regulation (EC) No 3605/93 ⁽¹⁾ by Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community ⁽²⁾.
- (25) Regulation (EC) No 1467/97 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1467/97 is hereby amended as follows:

- (1) Article 1 is replaced by the following:

'Article 1

1. This Regulation lays down the provisions for speeding up and clarifying the excessive deficit procedure. The objective of the excessive deficit procedure is to deter excessive government deficits and, if they occur, to further prompt their correction, where compliance with the budgetary discipline is examined on the basis of the government deficit and government debt criteria.

2. For the purposes of this Regulation, "participating Member States" shall mean those Member States whose currency is the euro.;

⁽¹⁾ Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (OJ L 332, 31.12.1993, p. 7).

⁽²⁾ OJ L 145, 10.6.2009, p. 1.

- (2) Article 2 is amended as follows:

- (a) in paragraph 1, the first subparagraph is replaced by the following:

'1. The excess of a government deficit over the reference value shall be considered exceptional, in accordance with the second indent of point (a) of Article 126(2) of the Treaty on the Functioning of the European Union (TFEU), when resulting from an unusual event outside the control of the Member State concerned and with a major impact on the financial position of general government, or when resulting from a severe economic downturn.;

- (b) the following paragraph is inserted:

'1a. When it exceeds the reference value, the ratio of the government debt to gross domestic product (GDP) shall be considered sufficiently diminishing and approaching the reference value at a satisfactory pace in accordance with point (b) of Article 126(2) TFEU if the differential with respect to the reference value has decreased over the previous three years at an average rate of one twentieth per year as a benchmark, based on changes over the last three years for which the data is available.

The requirement under the debt criterion shall also be considered to be fulfilled if the budgetary forecasts of the Commission indicate that the required reduction in the differential will occur over the three-year period encompassing the two years following the final year for which the data is available. For a Member State that is subject to an excessive deficit procedure on 8 November 2011 and for a period of three years from the correction of the excessive deficit, the requirement under the debt criterion shall be considered fulfilled if the Member State concerned makes sufficient progress towards compliance as assessed in the opinion adopted by the Council on its stability or convergence programme.

In implementing the debt ratio adjustment benchmark, account shall be taken of the influence of the cycle on the pace of debt reduction.;

- (c) paragraphs 3 to 7 are replaced by the following:

'3. The Commission, when preparing a report under Article 126(3) TFEU, shall take into account all relevant factors as indicated in that Article, in so far as they significantly affect the assessment of

compliance with the deficit and debt criteria by the Member State concerned. The report shall reflect, as appropriate:

- (a) the developments in the medium-term economic position, in particular potential growth, including the various contributions provided by labour, capital accumulation and total factor productivity, cyclical developments, and the private sector net savings position;
- (b) the developments in the medium-term budgetary positions, including, in particular, the record of adjustment towards the medium-term budgetary objective, the level of the primary balance and developments in primary expenditure, both current and capital, the implementation of policies in the context of the prevention and correction of excessive macroeconomic imbalances, the implementation of policies in the context of the common growth strategy of the Union, and the overall quality of public finances, in particular the effectiveness of national budgetary frameworks;
- (c) the developments in the medium-term government debt position, its dynamics and sustainability, including, in particular, risk factors including the maturity structure and currency denomination of the debt, stock-flow adjustment and its composition, accumulated reserves and other financial assets, guarantees, in particular those linked to the financial sector, and any implicit liabilities related to ageing and private debt, to the extent that it may represent a contingent implicit liability for the government.

The Commission shall give due and express consideration to any other factors which, in the opinion of the Member State concerned, are relevant in order to comprehensively assess compliance with deficit and debt criteria and which the Member State has put forward to the Council and the Commission. In that context, particular consideration shall be given to financial contributions to fostering international solidarity and achieving the policy goals of the Union, the debt incurred in the form of bilateral and multilateral support between Member States in the context of safeguarding financial stability, and the debt related to financial stabilisation operations during major financial disturbances.

4. The Council and the Commission shall make a balanced overall assessment of all the relevant factors, specifically, the extent to which they affect the assessment of compliance with the deficit and/or the debt criteria as aggravating or mitigating factors. When assessing compliance on the basis of the deficit criterion, if the ratio of the government debt to GDP exceeds the reference value, those factors shall be taken into account in the steps leading to the decision on the

existence of an excessive deficit provided for in paragraphs 4, 5 and 6 of Article 126 TFEU only if the double condition of the overarching principle — that, before these relevant factors are taken into account, the general government deficit remains close to the reference value and its excess over the reference value is temporary — is fully met.

However, those factors shall be taken into account in the steps leading to the decision on the existence of an excessive deficit when assessing compliance on the basis of the debt criterion.

5. When assessing compliance with the deficit and debt criterion and in the subsequent steps of the excessive deficit procedure, the Council and the Commission shall give due consideration to the implementation of pension reforms introducing a multi-pillar system that includes a mandatory, fully funded pillar and the net cost of the publicly managed pillar. In particular, consideration shall be given to the features of the overall pension system created by the reform, namely whether it promotes long-term sustainability while not increasing risks for the medium-term budgetary position.

6. If the Council, acting under Article 126(6) TFEU, decides that an excessive deficit exists in a Member State, the Council and the Commission shall, in the subsequent procedural steps of that Article of the TFEU, take into account the relevant factors referred to in paragraph 3 of this Article, as they affect the situation of the Member State concerned, including as specified in Article 3(5) and Article 5(2) of this Regulation, in particular in establishing a deadline for the correction of the excessive deficit and eventually extending that deadline. However, those relevant factors shall not be taken into account for the decision of the Council under Article 126(12) TFEU on the abrogation of some or all of its decisions under paragraphs 6 to 9 and 11 of Article 126 TFEU.

7. In the case of Member States where the excess of the deficit over the reference value reflects the implementation of a pension reform introducing a multi-pillar system that includes a mandatory, fully funded pillar, the Council and the Commission shall also consider the cost of the reform when assessing developments of deficit figures in excessive deficit procedures as long as the deficit does not significantly exceed a level that can be considered close to the reference value, and the debt ratio does not exceed the reference value, provided that overall fiscal sustainability is maintained. The net cost shall be taken into account also for the decision of the Council under Article 126(12) TFEU on the abrogation of some or all of its decisions under paragraphs 6 to 9 and 11 of Article 126 TFEU, if the deficit has declined substantially and continuously and has reached a level that comes close to the reference value.;

(3) the following section is inserted:

'SECTION 1A

ECONOMIC DIALOGUE

Article 2a

1. In order to enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup, to appear before the committee to discuss Council decisions under Article 126(6) TFEU, Council recommendations under Article 126(7) TFEU, notices under Article 126(9) TFEU, or Council decisions under Article 126(11) TFEU.

The Council is, as a rule, expected to follow the recommendations and proposals of the Commission or explain its position publicly.

The competent committee of the European Parliament may offer the opportunity to the Member State concerned by such decisions, recommendations or notices to participate in an exchange of views.

2. The Council and the Commission shall regularly inform the European Parliament of the application of this Regulation.;

(4) Article 3 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Taking fully into account the opinion referred to in paragraph 1, the Commission, if it considers that an excessive deficit exists, shall address an opinion and a proposal to the Council in accordance with paragraphs 5 and 6 of Article 126 TFEU and shall inform the European Parliament thereof.;

(b) in paragraph 3, the reference to 'Article 4(2) and (3) of Regulation (EC) No 3605/93' is replaced by a reference to 'Article 3(2) and (3) of Regulation (EC) No 479/2009';

(c) paragraphs 4 and 5 are replaced by the following:

'4. The Council recommendation made in accordance with Article 126(7) TFEU shall establish a maximum deadline of six months for effective action to be taken by the Member State concerned. When

warranted by the seriousness of the situation, the deadline for effective action may be three months. The Council recommendation shall also establish a deadline for the correction of the excessive deficit, which shall be completed in the year following its identification unless there are special circumstances. In its recommendation, the Council shall request that the Member State achieve annual budgetary targets which, on the basis of the forecast underpinning the recommendation, are consistent with a minimum annual improvement of at least 0,5 % of GDP as a benchmark, in its cyclically adjusted balance net of one-off and temporary measures, in order to ensure the correction of the excessive deficit within the deadline set in the recommendation.

4a. Within the deadline provided for in paragraph 4, the Member State concerned shall report to the Council and the Commission on action taken in response to the Council's recommendation under Article 126(7) TFEU. The report shall include the targets for government expenditure and revenue and for the discretionary measures on both the expenditure and the revenue side consistent with the Council's recommendation, as well as information on the measures taken and the nature of those envisaged to achieve the targets. The Member State shall make the report public.

5. If effective action has been taken in compliance with a recommendation under Article 126(7) TFEU and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that recommendation, the Council may decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 126(7) TFEU. The revised recommendation, taking into account the relevant factors referred to in Article 2(3) of this Regulation may, in particular, extend the deadline for the correction of the excessive deficit by one year as a rule. The Council shall assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its recommendation. In the case of a severe economic downturn in the euro area or in the Union as a whole, the Council may also decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 126(7) TFEU provided that this does not endanger fiscal sustainability in the medium term.;

(5) in Article 4, paragraphs 1 and 2 are replaced by the following:

'1. Any decision by the Council under Article 126(8) TFEU to make public its recommendations where it is established that no effective action has been taken, shall be taken immediately after the expiry of the deadline set in accordance with Article 3(4) of this Regulation.

2. The Council, when considering whether effective action has been taken in response to its recommendations made in accordance with Article 126(7) TFEU, shall base its decision on the report submitted by the Member State concerned in accordance with Article 3(4a) of this Regulation and its implementation, as well as on any other publicly announced decisions by the government of the Member State concerned.

Where the Council establishes, in accordance with Article 126(8) TFEU, that the Member State concerned has failed to take effective action, it shall report to the European Council accordingly.;

(6) in Article 5, paragraphs 1 and 2 are replaced by the following:

‘1. Any Council decision to give notice to the participating Member State concerned to take measures for the deficit reduction in accordance with Article 126(9) TFEU shall be taken within two months of the Council decision under Article 126(8) TFEU establishing that no effective action has been taken. In the notice, the Council shall request that the Member State achieve annual budgetary targets which, on the basis of the forecast underpinning the notice, are consistent with a minimum annual improvement of at least 0,5 % of GDP as a benchmark, in its cyclically adjusted balance net of one-off and temporary measures, in order to ensure the correction of the excessive deficit within the deadline set in the notice. The Council shall also indicate measures conducive to the achievement of those targets.

1a. Following a Council notice under Article 126(9) TFEU, the Member State concerned shall report to the Council and the Commission on action taken in response thereto. The report shall include the targets for the government expenditure and revenue and for the discretionary measures on both the expenditure and the revenue side, as well as information on the actions being taken in response to the specific Council recommendations so as to allow the Council to take, if necessary, a decision in accordance with Article 6(2) of this Regulation. The Member State shall make the report public.

2. If effective action has been taken in compliance with a notice under Article 126(9) TFEU and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that notice, the Council may decide, on a recommendation from the Commission, to adopt a revised notice under Article 126(9) TFEU. The revised notice, taking into account the relevant factors referred to in Article 2(3) of this Regulation may, in particular, extend the deadline for the correction of the excessive deficit by one year as a rule. The Council shall assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its notice. In the case of a severe economic downturn in the euro area or in the Union as a whole, the Council may also decide, on a recommendation from the Commission, to adopt a revised notice under Article 126(9) TFEU, on condition that this does not endanger fiscal sustainability in the medium term.’;

2. If effective action has been taken in compliance with a notice under Article 126(9) TFEU and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that notice, the Council may decide, on a recommendation from the Commission, to adopt a revised notice under Article 126(9) TFEU. The revised notice, taking into account the relevant factors referred to in Article 2(3) of this Regulation may, in particular, extend the deadline for the correction of the excessive deficit by one year as a rule. The Council shall assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its notice. In the case of a severe economic downturn in the euro area or in the Union as a whole, the Council may also decide, on a recommendation from the Commission, to adopt a revised notice under Article 126(9) TFEU, on condition that this does not endanger fiscal sustainability in the medium term.’;

(7) Articles 6 to 8 are replaced by the following:

‘Article 6

1. The Council, when considering whether effective action has been taken in response to its notice made in accordance with Article 126(9) TFEU, shall base its decision on the report submitted by the Member State concerned in accordance with Article 5(1a) of this Regulation and its implementation, as well as on any other publicly announced decisions by the government of the Member State concerned. The outcome of the surveillance mission carried out by the Commission in accordance with Article 10a of this Regulation shall be taken into account.

2. Where the conditions to apply Article 126(11) TFEU are met, the Council shall impose sanctions in accordance with that Article. Any such decision shall be taken no later than four months after the Council decision under Article 126(9) TFEU giving notice to the participating Member State concerned to take measures.

Article 7

If a participating Member State fails to act in compliance with the successive acts of the Council in accordance with Article 126(7) and (9) TFEU, the decision of the Council under Article 126(11) TFEU to impose sanctions shall be taken as a rule within 16 months of the reporting dates established in Article 3(2) and (3) of Regulation (EC) No 479/2009. Where Article 3(5) or Article 5(2) of this Regulation is applied, the 16-month deadline shall be adjusted accordingly. 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 under Article 126(11) TFEU to intensify sanctions shall be taken no later than two months after the reporting dates pursuant to Regulation (EC) No 479/2009. Any Council decision under Article 126(12) TFEU to abrogate some or all of its decisions shall be taken as soon as possible and in any event no later than two months after the reporting dates pursuant to Regulation (EC) No 479/2009.;

(8) in Article 9(3), the reference to ‘Article 6’ is replaced by a reference to ‘Article 6(2)’;

- (9) Article 10 is amended as follows:
- (a) the introductory words of paragraph 1 are replaced by the following:
- ‘1. The Council and the Commission shall regularly monitor the implementation of action taken.’;
- (b) in paragraph 3, the reference to ‘Regulation (EC) No 3605/93’ is replaced by a reference to ‘Regulation (EC) No 479/2009’;
- (10) the following Article is inserted:
- ‘Article 10a*
1. The Commission shall ensure a permanent dialogue with authorities of the Member States in accordance with the objectives of this Regulation. To that end, the Commission shall, in particular, carry out missions for the purpose of the assessment of the actual economic situation in the Member State and the identification of any risks or difficulties in complying with the objectives of this Regulation.
2. Enhanced surveillance may be undertaken for Member States which are the subject of recommendations and notices issued following a decision pursuant to Article 126(8) TFEU and decisions under Article 126(11) TFEU for the purposes of on-site monitoring. The Member States concerned shall provide all necessary information for the preparation and the conduct of the mission.
3. The Commission may invite representatives of the European Central Bank, if appropriate, to participate in surveillance missions in a Member State whose currency is the euro or which is participating in the Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union (*) (ERM II).
4. The Commission shall report to the Council on the outcome of the mission referred to in paragraph 2 and may decide to make its findings public.
5. When organising surveillance missions referred to in paragraph 2, the Commission shall transmit its provisional findings to the Member States concerned for comments.’
- (11) Articles 11 and 12 are replaced by the following:
- ‘Article 11*
- Whenever the Council decides under Article 126(11) TFEU to impose sanctions on a participating Member State, a fine shall, as a rule, be required. The Council may decide to supplement such a fine by the other measures provided for in Article 126(11) TFEU.
- Article 12*
1. The amount of the fine shall comprise a fixed component equal to 0,2 % of GDP, and a variable component. The variable component shall amount to one tenth of the absolute value of the difference between the balance as a percentage of GDP in the preceding year and either the reference value for government balance or, if non-compliance with budgetary discipline includes the debt criterion, the government balance as a percentage of GDP that should have been achieved in the same year according to the notice issued under Article 126(9) TFEU.
2. In each year following that in which a fine is imposed, until the decision on the existence of an excessive deficit is abrogated, the Council shall assess whether the participating Member State concerned has taken effective action in response to the Council notice in accordance with Article 126(9) TFEU. In this annual assessment the Council shall decide, in accordance with Article 126(11) TFEU, to intensify the sanctions, unless the participating Member State concerned has complied with the Council’s notice. If the Council decides to impose an additional fine, it shall be calculated in the same way as for the variable component of the fine referred to in paragraph 1.
3. No single fine referred to in paragraphs 1 and 2 shall exceed 0,5 % of GDP.’;
- (12) Article 13 is hereby deleted and the reference to it in Article 15 is replaced by a reference to ‘Article 12’;
- (13) Article 16 is replaced by the following:
- ‘Article 16*
- The fines referred to in Article 12 shall constitute other revenue, as referred to in Article 311 TFEU, and shall be assigned to the European Financial Stability Facility. When the participating Member States create another stability mechanism to provide financial assistance in order to safeguard the stability of the euro area as a whole, the amount of those fines shall be assigned to that mechanism.’;

(*) OJ C 73, 25.3.2006, p. 21.’

(14) the following Article is inserted:

Article 17a

1. By 14 December 2014 and every five years thereafter, the Commission shall publish a report on the application of this Regulation.

That report shall evaluate, inter alia:

- (a) the effectiveness of this Regulation;
- (b) the progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU.

2. Where appropriate, the report referred to in paragraph 1 shall be accompanied by a proposal for amendments to this Regulation.

3. The report shall be forwarded to the European Parliament and to the Council.;

(15) throughout Regulation (EC) No 1467/97, all references to 'Article 104 of the Treaty' are replaced by references to 'Article 126 TFEU';

(16) in point 2 of the Annex, the references in Column I to 'Article 4(2) and (3) of Council Regulation (EC) No 3605/93' are replaced by references to 'Article 3(2) and (3) of Council Regulation (EC) No 479/2009'.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 8 November 2011.

For the Council
The President
J. VINCENT-ROSTOWSKI
