II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2015/1360

of 4 August 2015

amending Regulation (EU) No 407/2010 establishing a European financial stabilisation mechanism

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The level of monetary and economic integration within the euro area has increased over the last years and any financial assistance to be granted to a Member State whose currency is the euro and which faces serious financial difficulties would be beneficial for the financial stability of the euro area as a whole.

(2) Moreover, since the establishment of the European financial stabilisation mechanism (EFSM), by European Council Decision 2011/199/EU [1] a new paragraph was added to Article 136 of the Treaty, clarifying under which conditions Member States whose currency is the euro may establish a stability mechanism for the euro area. The European Stability Mechanism (ESM) was set up by the Member States whose currency is the euro as the main stability mechanism for the euro area.

(3) The EFSM can provide Union financial assistance to all Member States, when the conditions laid down in Article 122(2) of the Treaty and in Council Regulation (EU) No 407/2010 [2] are met. However, the risks attached to a situation where a Member State loses market access differ fundamentally, depending on whether that Member State is part of the euro area. The potential negative spillover effects are considerably higher for the euro area, where having a Member State in financial difficulties could create risks for the financial stability of the euro area as a whole.

(4) The financial instrument to be used for providing financial assistance to a Member State whose currency is the euro should be, as a rule, the ESM in accordance with its agreed rules. However, there may be exceptional situations where practical, procedural or financial reasons call for use of the EFSM, generally before or alongside ESM financial assistance. Those situations warrant the transposition of the principle of reinforced solidarity between Member States whose currency is the euro, which is needed for the good functioning of a monetary union, to the financial assistance mechanism operated under Union law.

(5) In such circumstances, the granting of new Union financial assistance to a Member State whose currency is the euro should be made conditional upon the establishment of arrangements which would ensure that Member States whose currency is not the euro are fully compensated in the event of non-payment under the EFSM Facility, which results in the use of resources within the general budget of the Union and/or the Commission

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(1) European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ L 91, 6.4.2011, p. 1).

(2) Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

making a demand for additional resources from the Member States whose currency is not the euro. Appropriate arrangements should also be put in place so as to ensure the absence of overcompensation of Member States whose currency is not the euro, when instruments to protect the general budget of the Union, including the recovery of debt, where necessary by offsetting amounts receivable and payments over time, are activated.

(6) EFSM loans are guaranteed by the general budget of the Union. In case of default under such a loan, the Commission can call additional funds in excess of the Union's assets taking into account any surplus cash balances, to service the Union's debt. Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council [1] and its detailed rules provide for instruments to protect the general budget of the Union including the recovery of debt, where necessary by offsetting amounts receivable and payments over time. The Commission will apply those instruments.

(7) Any use of the EFSM for the purpose of safeguarding the financial stability of a Member State whose currency is the euro will be made conditional upon arrangements being in place which ensure that no financial liability will be incurred by the Member States whose currency is not the euro. That principle was endorsed on 17 July 2015 in a Joint Declaration by the Commission and the Council on the use of the EFSM.

(8) Regulation (EU) No 407/2010 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 3 of Regulation (EU) No 407/2010, the following paragraph is inserted:

'2a. Where the beneficiary Member State is a Member State whose currency is the euro, the granting of Union financial assistance shall be conditional upon the enactment of legally binding provisions, with a dedicated arrangement for that purpose having been put in place prior to disbursement, guaranteeing that the Member States whose currency is not the euro are immediately and fully compensated for any liability they may incur as a result of any failure by the beneficiary Member State to repay the financial assistance in accordance with its terms.

Appropriate arrangements shall also be put in place so as to ensure the absence of overcompensation of Member States whose currency is not the euro, when instruments to protect the general budget of the Union, including the recovery of debt, where necessary by offsetting amounts receivable and payments over time, are activated.'.

Article 2

This Regulation shall enter into force on the day following that of 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, 4 August 2015.

For the Council

The President

J. ASSELBORN

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[1] 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).