

## Legislation

English edition

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## I

(Acts whose publication is obligatory)

## COUNCIL REGULATION (EC) No 3603/93

of 13 December 1993

specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104b (2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Whereas Articles 104 and 104b (1) of the Treaty are directly applicable; whereas the terms featuring in Articles 104 and 104b (1) may be specified, if necessary;

Whereas the terms 'overdraft facilities' and 'other types of credit facility' used in Article 104 of the Treaty should be defined, particularly with reference to the treatment of claims existing at 1 January 1994;

Whereas it is desirable that the national central banks participating in the third stage of Economic and Monetary Union should enter such Union having on their balance sheets claims negotiable under market conditions, in particular to give the required flexibility to the monetary policy of the European System of Central Banks and to permit a standard contribution from the various national central banks participating in monetary union to the monetary income to be distributed among them;

Whereas the central banks which, after 1 January 1994, still hold claims against the public sector which are non-negotiable or are subject to conditions which are not market conditions should be authorized subsequently to convert such claims into negotiable *fixed-maturity* securities under market conditions;

Whereas paragraph 11 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that the

Government of the United Kingdom may maintain its 'ways and means' facility with the Bank of England if and so long as the United Kingdom does not move to the third stage; whereas it is appropriate to make provision for the conversion of the amount of this facility into marketable debt at a fixed maturity and on market terms if the United Kingdom moves to stage three of EMU;

Whereas the Protocol on Portugal lays down that 'Portugal is hereby authorized to maintain the facility afforded to the Autonomous Regions of the Azores and Madeira to benefit from an interest-free credit facility with the Banco de Portugal under the terms established by existing Portuguese law'; and that 'Portugal commits itself to pursue its best endeavours in order to put an end to the abovementioned facility as soon as possible';

Whereas Member States must take appropriate measures to ensure that the prohibitions referred to in Article 104 of the Treaty are applied effectively and fully; whereas, in particular, purchases made on the secondary market must not be used to circumvent the objective of that Article;

Whereas, within the limits laid down in this Regulation, the direct acquisition by the central bank of one Member State of marketable debt instruments issued by the public sector of another Member State does not help to shield the public sector from the discipline of market mechanisms where such purchases are conducted for the sole purpose of managing foreign exchange reserves;

Whereas, notwithstanding the role assigned to the Commission pursuant to Article 169 of the Treaty, it is for the European Monetary Institute and, thereafter, for the European Central Bank, pursuant to Articles 109f (9) and 180 of the Treaty, to ensure that national central banks honour the obligations laid down by the Treaty;

Whereas intra-day credits by the central banks may assist the smooth operation of payment systems; whereas, therefore, intra-day credits in the public sector are compatible with the objectives of Article 104 of the

<sup>(1)</sup> OJ No C 324, 1. 12. 1993, p. 5; and

OJ No C 340, 17. 12. 1993, p. 3.

<sup>(2)</sup> OJ No C 329, 6. 12. 1993 and Decision of 2 December 1993 (not yet published in the Official Journal).

Treaty, provided that no extension to the following day is possible;

Whereas the function of fiscal agent exercised by the central banks should not be impeded; whereas, even if clearing by the central banks of cheques issued by third parties for the public sector's account may occasionally involve a credit, Article 104 of the Treaty should not be regarded as prohibiting such operations, provided that they do not result overall in a credit for the public sector;

Whereas the holding by the central banks of coins issued by the public sector and credited to the public sector constitutes an interest-free form of credit for the public sector; whereas, however, if only limited amounts are involved, this practice does not interfere with the principle of Article 104 of the Treaty; whereas, therefore, in view of the difficulties which would arise from total prohibition of this form of credit, it may be permitted within the limits laid down in this Regulation;

Whereas, following unification, the Federal Republic of Germany has particular difficulty in complying with the limit set on such assets; whereas it is appropriate in those circumstances to authorize a higher percentage for a limited period;

Whereas the financing by the central banks of obligations falling upon the public sector *vis-à-vis* the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up within the Community results in foreign claims which have all the characteristics of reserve assets; whereas it is, therefore, appropriate to authorize them;

Whereas public undertakings are covered by the prohibition in Articles 104 and 104b (1); whereas they are defined in Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings <sup>(1)</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. For the purposes of Article 104 of the Treaty:

- (a) 'overdraft facilities' means any provision of funds to the public sector resulting or likely to result in a debit balance;
- (b) 'other type of credit facility' means:
  - (i) any claim against the public sector existing at 1 January 1994, except for fixed-maturity claims acquired before that date;

<sup>(1)</sup> OJ No L 195, 29. 7. 1980, p. 35. Directive as last amended by Directive 93/84/EEC (OJ No L 254, 12. 10. 1993, p. 16).

(ii) any financing of the public sector's obligations *vis-à-vis* third parties;

(iii) without prejudice to Article 104 (2) of the Treaty, any transaction with the public sector resulting or likely to result in a claim against that sector.

2. The following shall not be regarded as 'debt instruments' within the meaning of Article 104 of the Treaty: securities acquired from the public sector to ensure the conversion into negotiable fixed-maturity securities under market conditions of:

- fixed-maturity claims acquired before 1 January 1994 which are not negotiable or not under market conditions, provided that the maturity of the securities is not subsequent to that of the aforementioned claims;
- the amount of the 'ways and means' facility maintained by the United Kingdom Government with the Bank of England until the date, if any, on which the United Kingdom moves to stage three of EMU.

#### Article 2

1. During stage two of EMU, purchases by the national central bank of one Member State of marketable debt instruments issued by the public sector of another Member State shall not be considered direct purchases within the meaning of Article 104 of the Treaty, provided that such purchases are conducted for the sole purpose of managing foreign exchange reserves.

2. During stage three of EMU, the following purchases conducted for the sole purpose of managing foreign exchange reserves shall not be considered direct purchases within the meaning of Article 104 of the Treaty:

- purchases by the national central bank of a Member State not participating in stage three of EMU, from the public sector of another Member State, of marketable debt instruments of the latter,
- purchases by the European Central Bank or the national central bank of a Member State participating in stage three of EMU, from the public sector of a Member State not participating in stage three, of marketable debt instruments of the latter.

#### Article 3

For the purposes of this Regulation, 'public sector' means Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States.

'National central banks' means the central banks of the Member States and the Luxembourg Monetary Institute.

#### Article 4

Intra-day credits by the European Central Bank or the national banks to the public sector shall not be considered as a credit facility within the meaning of Article 104 of the Treaty, provided that they remain limited to the day and that no extension is possible.

#### Article 5

Where the European Central Bank or the national central banks receive from the public sector, for collection, cheques issued by third parties and credit the public sector's account before the drawee bank has been debited, this operation shall not be considered as a credit facility within the meaning of Article 104 of the Treaty if a fixed period of time corresponding to the normal period for the collection of cheques by the central bank of the Member State concerned has elapsed since receipt of the cheque, provided that any float which may arise is exceptional, is of a small amount and averages out in the short term.

#### Article 6

The holding by the European Central Bank or the national central banks of coins issued by the public sector and credited to the public sector shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty where the amount of these assets remains at less than 10% of the coins in circulation.

Until 31 December 1996, this figure shall be 15% for Germany.

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

Done at Brussels, 13 December 1993.

#### Article 7

The financing by the European Central Bank or the national central banks of obligations falling upon the public sector *vis-à-vis* the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up by Regulation (EEC) No 1969/88 <sup>(1)</sup> shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty.

#### Article 8

1. For the purposes of Articles 104 and 104b (1) of the Treaty, 'public undertaking' shall be defined as any undertaking over which the State or other regional or local authorities may directly or indirectly exercise a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. For the purposes of Articles 104 and 104b (1) of the Treaty, the European Central Bank and the national central banks do not form part of the public sector.

#### Article 9

This Regulation shall enter into force on 1 January 1994.

For the Council

The President

Ph. MAYSTADT

<sup>(1)</sup> Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments (OJ No L 178, 8. 7. 1988, p. 1).

## COUNCIL REGULATION (EC) No 3604/93

of 13 December 1993

specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104a (2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Whereas the prohibition of privileged access to financial institutions, as laid down in Article 104a of the Treaty, forms an essential element of the submission of the public sector in its financing operations to the discipline of the market mechanism and so makes a contribution to the strengthening of budgetary discipline; whereas, moreover, it places the Member States on an equal footing as regards public sector access to financial institutions;

Whereas the Council must specify definitions for the application of such prohibition;

Whereas the Member States and the Community must act with due regard for the principle of an open market economy in which there is free competition;

Whereas, in particular, this Regulation cannot affect the methods for organizing markets complying with that principle;

Whereas this Regulation does not seek to interfere with any operation of public financial institutions complying with the same principle;

Whereas Article 104a of the Treaty prohibits measures establishing privileged access; whereas the types of acts concerned by this prohibition should be specified; whereas the commitments freely made by financial institutions in the framework of contractual relations unquestionably cannot be affected;

Whereas the same Article provides that prudential considerations may justify departure from the principle of this prohibition; whereas laws, regulations or administrative actions may not, however, under the cover of prudential consideration, be used to establish disguised privileged access;

Whereas public undertakings are covered by the same prohibition; whereas they are defined in Commission

Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between the Member States and public undertakings <sup>(3)</sup>;

Whereas, for reasons of monetary policy, financial institutions and, in particular, credit institutions may be obliged to hold claims against the European Central Bank and/or national central banks;

Whereas the European Central Bank and national central banks may not, as public authorities, take measures establishing privileged access; whereas the rules on mobilization or pledging of debt instruments enacted by the European Central Bank or by national central banks must not be used as a means of circumventing the prohibition of privileged access;

Whereas, in order to avoid any circumvention of the prohibition, the definitions in Community law of the various types of financial institution should be supplemented by a reference to those institutions engaging in financial activities which have not yet been harmonized at Community level, such as, for instance, branches of third-country establishments, holding and factoring companies, uncoordinated undertakings for collective investment in transferable securities (UCITS), institutions for retirement provision, etc.,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. For the purposes of Article 104a of the Treaty, 'any measure establishing privileged access' shall be defined as any law, regulation or any other binding legal instrument adopted in the exercise of public authority which:

— obliges financial institutions to acquire or to hold liabilities of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States (hereinafter referred to as 'public sector'), or

<sup>(1)</sup> OJ No C 324, 1. 12. 1993, p. 7; and  
OJ No C 340, 17. 12. 1993, p. 6.

<sup>(2)</sup> OJ No C 329, 6. 12. 1993 and Decision of 2 December 1993 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No L 195, 29. 7. 1980, p. 35. Directive as last amended by Directive 93/84/EEC (OJ No L 254, 12. 10. 1993, p. 16).

— confers tax advantages which may benefit only financial institutions or financial advantages which do not comply with the principles of a market economy, in order to encourage the acquiring or the holding by those institutions of such liabilities.

2. Privileged access shall not be regarded as being established by those measures which give rise to:

— obligations for funding social housing under special terms such as, *inter alia*, an obligation to centralize funds with public financial institutions, when the funding terms prevailing for the public sector are identical to those for funding of the same nature granted to private borrowers for the same purposes,

— the obligation to centralize funds with a public credit institution, in so far as such a constraint is an integral part, as at 1 January 1994, of the organization of a particular network of credit institutions or of specific savings arrangements designed for households and intended to provide the whole of the network or the specific arrangements with financial security. The use of such centralized funds must be determined by the management bodies of the public credit institution concerned and comply with the principle of a market economy where there is free competition,

— obligations to finance the repair of disaster damage, provided that the conditions for financing repairs are not more favourable when damage is sustained by the public sector than when it is sustained by the private sector.

#### Article 2

For the purposes of Article 104a of the Treaty, 'prudential considerations' shall be those which underlie national laws, regulations or administrative actions based on, or consistent with, EC law and designed to promote the soundness of financial institutions so as to strengthen the stability of the financial system as a whole and the protection of the customers of those institutions.

#### Article 3

1. For the purposes of Article 104a of the Treaty, 'public undertaking' shall be defined as any undertaking over which the State or other regional or local authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence on the part of the State or other regional or local authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. Without prejudice to their obligation as public authorities not to take measures establishing privileged access within the meaning of Article 104a of the Treaty, the European Central Bank and the national central banks shall not, for the purposes of this Article, be considered as forming part of the public sector.

3. 'National central banks' means the central banks of the Member States and the Luxembourg Monetary Institute.

#### Article 4

1. For the purposes of Article 104a of the Treaty, 'financial institutions' means:

- credit institutions as defined in the first indent of Article 1 of Directive 77/780/EEC <sup>(1)</sup>,
- insurance undertakings as defined in Article 1, point (a) of Directive 92/49/EEC <sup>(2)</sup>,
- assurance undertakings as defined in Article 1, point (a) of Directive 92/96/EEC <sup>(3)</sup>,
- UCITS as defined in Article 1 (2) of Directive 85/611/EEC <sup>(4)</sup>,
- investment firms as defined in Article 1 (2) of Directive 93/22/EEC <sup>(5)</sup>,

<sup>(1)</sup> Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions (OJ No L 322, 17. 12. 1977, p. 30). Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

<sup>(2)</sup> Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance (third Directive on insurance other than life insurance) (OJ No L 228, 11. 8. 1992, p. 1).

<sup>(3)</sup> Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (third Directive on life insurance) (OJ No L 360, 9. 12. 1992, p. 1).

<sup>(4)</sup> Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31. 12. 1985, p. 3). Directive as amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

<sup>(5)</sup> Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ No L 141, 11. 6. 1993, p. 27).

- other undertakings the activities of which are similar to those of the undertakings referred to in the previous indents or the principal activity of which is to acquire holdings of financial assets or to transform financial claims.
2. The following institutions do not form part of the financial institutions defined in paragraph 1:
- the European Central Bank and national central banks,
  - post office financial services when they form part of the general government sector defined in accordance

- with the European System of Integrated Economic Accounts or when their main activity is to act as the financial agent of government, and
- the institutions which are part of the general government sector defined in accordance with the European System of Integrated Economic Accounts or the liabilities of which correspond completely to a public debt.

*Article 5*

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels, 13 December 1993.

*For the Council*  
*The President*  
Ph. MAYSTADT

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## 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 104c (14) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas the definitions of 'government', 'deficit' and 'investment' are laid down in the Protocol on the excessive deficit procedure by reference to the European System of Integrated Economic Accounts (ESA) <sup>(3)</sup>; whereas precise definitions referring to the classification codes of ESA are required; whereas these definitions may be subject to revision in the context of the necessary harmonization of national statistics or for other reasons; whereas any revision of ESA will be decided by the Council in accordance with the rules on competence and procedure laid down in the Treaty;

Whereas the definition of 'debt' laid down in the Protocol on the excessive deficit procedure needs to be amplified by a reference to the classification codes of ESA;

Whereas Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices <sup>(4)</sup> provides an adequate, detailed definition of gross domestic product at market prices;

Whereas, pursuant to the terms of the Protocol on the excessive deficit procedure, the Commission is required to provide the statistical data to be used in that procedure;

Whereas detailed rules are required to organize the prompt and regular reporting by the Member States to the Commission of their planned and actual deficits and of the levels of their debt;

Whereas, pursuant to Article 104c (2) and (3) of the Treaty, the Commission is to monitor the development of the budgetary situation and of the stock of government debt in the Member States and to examine compliance with budgetary discipline on the basis of criteria relating to government deficit and government debt; whereas, if a Member State does not fulfil the requirements under one or both criteria, the Commission must take into account all relevant factors; whereas the Commission has to examine whether there is a risk of an excessive deficit in a Member State,

HAS ADOPTED THIS REGULATION:

## SECTION 1

## Definitions

*Article 1*

1. For the purposes of the Protocol on the excessive deficit procedure and of this Regulation, the terms given in the following paragraphs are defined according to the European System of Integrated Economic Accounts (ESA). The codes in brackets refer to ESA, second edition.

2. 'Government' means the sector of general government (S60), that is central government (S61), local government (S62) and social security funds (S63), to the exclusion of commercial operations, as defined in ESA.

The exclusion of commercial operations means that the sector of general government (S60) comprises only institutional units producing non-market services as their main activity.

3. 'Government deficit (surplus)' means the net borrowing (net lending) (N5) of the sector of general government (S60), as defined in ESA. The interest comprised in the government deficit is the sum of interest (R41), as defined in ESA.

4. 'Government investment' means the gross fixed capital formation (P41) of the sector of general government (S60), as defined in ESA.

5. 'Government debt' means the total gross debt at nominal value outstanding at the end of the year of the sector of general government (S60), with the exception of those liabilities the corresponding financial assets of which are held by the sector of general government (S60).

<sup>(1)</sup> OJ No C 324, 1. 12. 1993, p. 8; and OJ No C 340, 17. 12. 1993, p. 8.

<sup>(2)</sup> OJ No C 329, 6. 12. 1993.

<sup>(3)</sup> Statistical Office of the European Communities, *European System of Integrated Economic Accounts (ESA)*, second edition.

<sup>(4)</sup> OJ No L 49, 21. 2. 1989, p. 26.

Government debt is constituted by the liabilities of general government in the following categories: currency and deposits (F20 and F30), bills and short-term bonds (F40), long-term bonds (F50), other short-term loans (F79) and other medium and long-term loans (F89) as defined in ESA.

The nominal value of a liability outstanding at the end of the year is the face value.

The nominal value of an index-linked liability corresponds to its face value adjusted by the index-related capital uplift accrued to the end of the year.

Liabilities denominated in foreign currencies shall be converted into the national currency at the representative market exchange rate prevailing on the last working day of each year.

#### Article 2

Gross domestic product means gross domestic product at market prices (GDP mp), as defined in Article 2 of Directive 89/130/EEC, Euratom.

#### Article 3

1. Planned government deficit figures mean the figures established for the current year by the Member States consistent with the most recent decisions of their budgetary authorities.

2. Actual government deficit and government debt level figures mean estimated, provisional, half-finalized or final results for a past year.

### SECTION 2

#### Rules and coverage of reporting

#### Article 4

1. As from the beginning of 1994, Member States shall report to the Commission their planned and actual government deficits and levels of government debt twice a year, the first time before 1 March of the current year (year n) and the second time before 1 September of year n.

2. Before 1 March of year n, Member States:

- shall report to the Commission their planned government deficit for year n, an up-to-date estimate of their actual government deficit for year n-1 and their actual government deficits for years n-2, n-3 and n-4,
- shall simultaneously provide the Commission for years n, n-1 and n-2 with their corresponding public accounts budget deficits according to the definition

which is given most prominence nationally and with the figures which explain the transition between this public accounts budget deficit and their government deficit. The figures explaining this transition which are provided to the Commission shall include, in particular, the figures for net borrowing of the subsectors S61, S62 and S63,

- shall report to the Commission their estimate of the level of actual government debt at the end of year n-1 and their levels of actual government debt for years n-2, n-3 and n-4,

- shall simultaneously provide the Commission for years n-1 and n-2 with the figures which explain the contributions of their government deficit and the other relevant factors contributing to the variation in the level of their government debt.

3. Before 1 September of year n, Member States shall report to the Commission:

- their updated planned government deficit for year n and their actual government deficits for years n-1, n-2, n-3 and n-4 and shall comply with the requirements of the second indent of paragraph 2,

- their actual level of government debt for years n-1, n-2, n-3 and n-4, and shall comply with the requirements of the fourth indent of paragraph 2.

4. The figures for the planned government deficit reported to the Commission in accordance with paragraphs 2 and 3 shall be expressed in national currency and in budget years.

The figures for actual government deficit and actual government debt level reported to the Commission in accordance with paragraphs 2 and 3 shall be expressed in national currency and in calendar years, with the exception of the up-to-date estimates for year n-1, which may be expressed in budget years.

Where the budget year differs from the calendar year, Member States shall also report to the Commission their figures for actual government deficit and actual government debt level in budget years for the two budget years preceding the current budget year.

#### Article 5

Member States shall, in accordance with the procedure laid down in Article 4 (1), (2) and (3), provide the Commission with the figures for their government investment expenditure and interest expenditure.

#### Article 6

Member States shall provide the Commission with a forecast of their gross domestic product for year n and

the actual amount of their gross domestic product for years n-1, n-2, n-3 and n-4, under the same timing conditions as those indicated in Article 4 (1).

*Article 7*

In the event of a revision of ESA to be decided on by the Council in accordance with the rules on competence and

procedure laid down in the Treaty, the Commission shall introduce the new references to ESA into Articles 1 and 4.

*Article 8*

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels, 22 November 1993.

*For the Council*

*The President*

Ph. MAYSTADT

## COUNCIL REGULATION (Euratom, ECSC, EC) No 3606/93

of 22 November 1993

modifying Regulation (EEC, Euratom, ECSC) No 260/68 which lays down the conditions and procedure for applying the tax for the benefit of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THE FOLLOWING REGULATION:

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Articles 13 and 23 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas it is appropriate to extend the application of the tax for the benefit of the European Communities, on the terms and in accordance with the procedure laid down in Regulation (EEC, Euratom, ECSC) No 260/68 <sup>(3)</sup>, to the salaries, wages and emoluments of the President and Members of the Council of the European Monetary Institute and the staff of that Institute,

*Article 1*

The following Article is added to Regulation (EEC, Euratom, ECSC) No 260/68:

*'Article 12a*

This Regulation shall apply to the President of the European Monetary Institute, to all other Members of the Council of the Institute, to members of its staff and to recipients of the pensions paid by the Institute who are included in the categories determined by the Council pursuant to the first paragraph of Article 16 of the Protocol on Privileges and Immunities, with regard to salaries, wages and emoluments and to disability, retirement and survivor's pensions paid by the Institute.'

*Article 2*

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

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

Done at Brussels, 22 November 1993.

*For the Council*  
*The President*  
Ph. MAYSTADT

<sup>(1)</sup> OJ No C 324, 1. 12. 1993, p. 13.

<sup>(2)</sup> OJ No C 329, 6. 12. 1993.

<sup>(3)</sup> OJ No L 56, 4. 3. 1968, p. 8. Regulation as last amended by Regulation (EEC, Euratom, ECSC) No 3761/92 (OJ No L 383, 29. 12. 1992, p. 1).

COUNCIL REGULATION (ECSC, EC, Euratom) No 3607/93  
of 13 November 1993

amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Articles 16 and 23 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Court of Auditors,

Having regard to the opinion of the Court of Justice,

Whereas it is appropriate to extend to the European Monetary Institute the application of Council Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply <sup>(3)</sup>, in order to ensure that the members of the staff of the European Monetary Institute, in view of their duties and responsibilities and of their particular situation, benefit from the same privileges, immunities and facilities,

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

Done at Brussels, 13 December 1993.

HAS ADOPTED THIS REGULATION:

*Article 1*

The following Article is added to Regulation (Euratom, ECSC, EEC) No 549/69;

*'Article 4a*

Without prejudice to Article 23 of the Protocol on Privileges and Immunities of the European Communities with regard to the members of the Council of the European Monetary Institute, the privileges and immunities provided for in Article 12, in the second paragraph of Article 13 and in Article 14 of the Protocol shall apply under the same conditions and within the same limits as those laid down in Articles 1, 2 and 3 of this Regulation to:

- staff of the European Monetary Institute;
- persons receiving disability, retirement or survivor's pensions paid by the European Monetary Institute.'

*Article 2*

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

*For the Council*  
*The President*  
Ph. MAYSTADT

<sup>(1)</sup> OJ No C 324, 1. 12. 1993, p. 14.

<sup>(2)</sup> Opinion delivered on 2 December 1993 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No L 74, 27. 3. 1969, p. 1. Regulation as last amended by Regulation (ECSC, EEC, Euratom) No 3520/85 (OJ No L 335, 13. 12. 1985, p. 60).

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 22 November 1993

on the statistical data to be used for the determination of the key for the financial resources of the European Monetary Institute

(93/716/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 16.1 and 16.2 of the Protocol on the Statute of the European Monetary Institute annexed thereto,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Committee of Governors,

Having regard to the opinion of the Monetary Committee,

Whereas the European Monetary Institute, hereinafter referred to as 'the EMI', will be established on 1 January 1994;

Whereas the EMI will be endowed with its own resources;

Whereas the size of the resources of the EMI will be determined by the Council of the EMI;

Whereas the resources of the EMI will be provided out of contributions by national central banks in accordance with the key referred to in Article 16.2 of the Protocol on the Statute of the EMI;

Whereas the key for the financial resources of the EMI will be determined before the start of the second stage;

Whereas the statistical data to be used for the determination of the key will be provided by the Commission in accordance with the rules adopted by the Council;

Whereas the rules adopted by the Council in this Decision do not constitute a precedent for other legal acts which the Council could adopt in other areas;

Whereas the nature of and sources for the data to be used and the method of calculation of the key must be defined;

Whereas Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of gross national product at market prices <sup>(3)</sup> introduces a procedure for the adoption by Member States of data on the gross domestic product at market prices; whereas the Member States must take all the necessary steps to ensure that that data is transmitted to the Commission,

HAS DECIDED AS FOLLOWS:

*Article 1*

The statistical data to be used for the determination of the key for the contributions by the national central banks to the financial resources of the EMI shall be provided by the Commission in accordance with the rules laid down in the following Articles.

*Article 2*

Population and gross domestic product at market prices, hereinafter referred to as 'GDP mp', shall be defined

<sup>(1)</sup> OJ No C 324, 1. 12. 1993, p. 11; and

OJ No C 340, 17. 12. 1993, p. 11.

<sup>(2)</sup> OJ No C 329, 6. 12. 1993.

<sup>(3)</sup> OJ No L 49, 21. 2. 1989, p. 26.

according to the European System of Integrated Economic Accounts (ESA) in force. GDP mp shall mean GDP mp as defined in Article 2 of Directive 89/130/EEC, Euratom.

*Article 3*

The data on population shall be taken for the year 1992. The mean of the total population over the course of the year shall be used in accordance with the ESA recommendation.

*Article 4*

The data on GDP mp shall be taken for each of the years 1987 to 1991. The data on GDP mp for each Member State shall be expressed in the national currency at current prices.

*Article 5*

The data on population shall be collected by the Commission (Eurostat) from Member States.

*Article 6*

The data on GDP mp for the years 1988 to 1991 shall result from the application of Directive 89/130/EEC, Euratom. The data for 1987 shall be collected by the Commission (Eurostat) from Member States, which shall make them consistent with the 1988 to 1991 data on GDP mp.

*Article 7*

1. The share of a Member State in the population of the Community shall be its share in the sum of the population of the Member States, expressed as a percentage.

2. The GDP mp data for each year and each Member State expressed in national currencies shall be converted

into figures expressed in ecus. The exchange rate used for this purpose shall be the average of the exchange rates for all working days in a year. The daily exchange rate shall be the rate calculated by the Commission and published in the 'C' series of the *Official Journal of the European Communities*.

3. The share of a Member State in GDP mp of the Community shall be its share in the sum of GDP mp of the Member State over five years, expressed as a percentage.

*Article 8*

The weighting of a national central bank in the key shall be the arithmetic mean of the shares of the Member State concerned in the population and in the GDP mp of the Community.

*Article 9*

The various steps of calculation shall use sufficient digits to ensure their accuracy. The weighting of national central banks in the key shall be expressed to four decimal places.

*Article 10*

The data referred to in this Decision shall be communicated by the Commission to the Committee of Governors of the Central Banks of the Member States before 1 January 1994.

Done at Brussels, 22 November 1993.

*For the Council*  
*The President*  
Ph. MAYSTADT

## COUNCIL DECISION

of 22 November 1993

on the consultation of the European Monetary Institute by the authorities of the Member States on draft legislative provisions

(93/717/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community, and in particular Article 109 (6) thereof, and Article 5.3 of the Protocol on the Statute of the European Monetary Institute annexed to this Treaty,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Committee of Governors,

Whereas the European Monetary Institute, hereafter referred to as 'the EMI', is to be established on 1 January 1994;

Whereas the Treaty stipulates that the authorities of the Member States shall consult the EMI on any draft legislative provision within its field of competence; whereas it is for the Council to set the limits and the conditions of such consultation;

Whereas this obligation on the authorities of the Member States to consult the EMI shall not prejudice the responsibility of national authorities for the matters which are the subject of such provisions;

Whereas this Decision does not concern decisions taken by national authorities in the context of the implementation of monetary policy;

Whereas consultation of the EMI must not unduly lengthen procedures for adopting legislative provisions in the Member States; whereas the time limits within which the EMI must deliver its opinion must, nevertheless, enable it to examine the texts referred to it with the required care; whereas, in duly justified cases of extreme urgency, for example on account of market sensitivity, Member States may set a time limit of less than one month; whereas, in these cases particularly, dialogue between the national authorities and the EMI should enable the interests of both to be taken into account,

*Article 1*

1. The authorities of the Member States shall consult the EMI on any draft legislative provision within its field of competence pursuant to Article 109f of the Treaty and in particular on:

- currency legislation, the status of the ecu and means of payment,
- the status and powers of national central banks and the instruments of monetary policy,
- the collection, compilation and dissemination of monetary, financial, banking and balance of payments statistics,
- clearing and payment systems, in particular for cross-border transactions,
- rules applicable to financial institutions in so far as they influence the stability of financial institutions and markets.

2. The EMI shall, immediately on receipt of any draft legislative provision, notify the consulting authority whether, in its opinion, such provision is within its field of competence.

*Article 2*

1. 'Draft legislative provisions' shall mean any such provisions which are legally binding and of general applicability in the territory of a Member State, which lay down rules for an indefinite number of cases and which are addressed to an indefinite number of natural or legal persons.

2. Draft legislative provisions within the meaning of paragraph 1 shall not include draft provisions the exclusive purpose of which is the transposition of Community directives into the law of Member States.

*Article 3*

Each Member State shall take the measures necessary to ensure effective compliance with this Decision. To that end, it shall ensure that the EMI is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to have the EMI's opinion before taking its decision on the substance and that the opinion received from the EMI is brought to the

<sup>(1)</sup> OJ No C 324, 1. 12. 1993, p. 12; and

OJ No C 340, 17. 12. 1993, p. 12.

<sup>(2)</sup> OJ No C 329, 6. 12. 1993.

knowledge of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions concerned.

*Article 4*

The authorities of the Member States preparing a legislative provision may, if they consider it necessary, set the EMI a time limit for the submission of its opinion which may not be less than one month from the date on which the President of the EMI receives notification to this effect, save in case of extreme urgency. Upon expiry of the time limit, the absence of an opinion shall not prevent further action. Should the opinion of the EMI be received after the time limit, the Member States shall,

nevertheless, ensure that it is brought to the knowledge of the authorities referred to in Article 3.

*Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 22 November 1993.

*For the Council*  
*The President*  
Ph. MAYSTADT