DECISIONS

COUNCIL IMPLEMENTING DECISION

of 29 March 2012

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

(2012/224/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism [1], and in particular Article 3(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In line with Article 3(9) of Council Implementing Decision 2011/344/EU [2], the Commission, together with the International Monetary Fund and in liaison with the European Central Bank, has conducted the third review of the Portuguese authorities' progress on the implementation of the agreed measures under the economic and financial adjustment programme (Programme) as well as of their effectiveness and economic and social impact.

(2) The review has found that Portugal's compliance with the conditionality for the fourth quarter of 2011 was satisfactory. In 2011, the general government deficit fell below the target of 5,9 % of GDP and it is now estimated at around 4 % of GDP, albeit by exceptionally resorting to a transfer of about EUR 6 billion (about 3,5 % of GDP) of the banks' pension funds to the State social security system. The 2012 budget is consistent with meeting the deficit target of 4,5 % of GDP in line with the Programme. Policy efforts to support financial system stability continue. Portuguese banks work towards meeting the higher capital requirements as required by the Programme, taking into account the implications of the European Banking Authority's requirement for a new temporary capital buffer for sovereign exposures, the special on-site inspection programme and the transfer of the banks' pension funds to the State social security system. Labour and product market reforms are also progressing: an agreement was reached with social partners on a broad and ambitious labour market reform and a significant revision of the competition legal framework has been submitted to the Parliament which will create conditions for an effective competition enforcement regime. The privatisation programme is being implemented under a new framework law. The energy company EDP and the energy network company REN have been sold. A strategy to restructure state-owned enterprises (SOEs) has been put in place. The legal framework for public procurement is being improved and the modernisation of the legal framework for the housing market is underway. The reform of the judicial system is making good progress.

(3) In the light of these developments, Implementing Decision 2011/344/EU should be amended,

HAS ADOPTED THIS DECISION:

Article 1

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

(1) paragraph 6 is replaced by the following:

'6. Portugal shall adopt the following measures during 2012, in line with specifications in the Memorandum of Understanding:

(a) The measures defined in points (b) and (c), amounting to at least EUR 9,8 billion, shall be included in the 2012 budget. Further measures, notably on the expenditure side, shall be taken to fill any possible gap arising from budgetary developments in 2012. The government shall adopt a supplementary budget in March which will incorporate various elements such as the implications of the transfer of the banks' pension funds to the State social security system, the financial agreement with the RAM, the fiscal impact of the deterioration of the economic outlook, lower interest payments and the strategy for the settlement of arrears. The supplementary budget shall leave the target for the 2012 general government deficit (corresponding to 4,5 % of GDP) unchanged.

[1] OJ L 118, 12.5.2010, p. 1.
[2] OJ L 159, 17.6.2011, p. 88.

(b) Portugal shall aim to reduce expenditure in 2012 by at least EUR 6,8 billion, including by reducing public sector wages and employment; making cuts in pensions; carrying out a comprehensive reorganisation of the central administration, eliminating redundancies and other inefficiencies; reducing transfers to SOEs; reorganising and reducing the number of municipalities and parishes; making cuts in education and health; lowering transfers to regional and local authorities; and reducing capital expenditure and other expenditure as set out in the Programme.

(c) On the revenue side, Portugal shall implement revenue measures totalling around EUR 3 billion, including by broadening VAT bases through reducing exemptions and rearranging the lists of goods and services subject to reduced, intermediate and higher rates; increasing excise taxes; broadening the corporate and personal income tax bases by reducing tax deductions and special regimes; ensuring the convergence of personal income tax deductions applied to pensions and labour income; and changing property taxation by substantially reducing exemptions. These measures shall be complemented by action to fight tax evasion, fraud and informality.

(d) Portugal shall adopt measures to reinforce public finance management. It shall implement the measures provided for in the new Budgetary Framework Law, including setting up a medium-term budgetary framework. The budgetary framework at local and regional levels shall be considerably strengthened, in particular by putting forward the key options for the alignment of the respective financing laws to the requirements of the Budgetary Framework Law. Portugal shall step up the reporting and monitoring of public finances and reinforce budgetary execution rules and procedures. The Portuguese Government shall prepare a strategy for the validation and settlement of arrears. The strategy shall lay out the prioritisation criteria for paying creditors, as well as governance arrangements to ensure a fair and transparent settling process across all sectors. Portugal shall put in place a strengthened legal and institutional framework for assessing fiscal risks prior to engaging in a PPP contract. Similarly, Portugal shall adopt a law to regulate the creation and functioning of SOEs at central, regional and local levels. Portugal shall not engage in any new PPP contract or create an SOE until the reviews and the new legal structure are in place.

(e) Local government administration in Portugal has currently 308 municipalities and 4 259 parishes. Portugal shall develop a consolidation plan to reorganise and significantly reduce the number of such entities. These changes shall come into effect by the beginning of the next local election cycle.

(f) Portugal shall modernise the revenue administration by creating a single entity, reducing the number of municipal offices and addressing remaining bottlenecks in the tax appeal system.

(g) Portugal shall implement the financial arrangement with the RAM.

(h) Portugal shall adopt measures to improve the efficiency and sustainability of SOEs at central, regional and local level. Portugal shall implement a strategy to restructure and reduce the indebtedness of SOEs and to ensure improved conditions for market financing. Portugal shall implement this strategy to reach operational balance at sector level by the end of 2012.

(i) Portugal shall continue implementing the privatisation programme. In particular, in 2012 the public sector shares in GALP, TAP and ANA shall be sold and the privatisation of the freight branch of Comboios de Portugal, Correios de Portugal as well as a number of smaller firms shall be launched. A strategy for Parpública shall be prepared, considering its winding down or consolidation with the general government.

(j) Portugal shall implement legislation to reform the unemployment insurance system, including by reducing the maximum duration of unemployment insurance benefits; placing a cap on unemployment benefits to 2,5 times the social support index; reducing benefits over the period of unemployment; reducing the minimum contributory period; and extending unemployment insurance to certain categories of self-employed.

(k) The Portuguese Government shall prepare a proposal to align the system for severance payments to reduce its level to the Union average of 8-12 days per year of work and create a compensation fund for severance payments;

(l) Regulations on overtime pay shall be eased and flexibility of working time arrangements shall be increased.

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

(n) Active labour market policies shall be strengthened after a review of current practices and the establishment of an agreed action plan.

(o) An action plan shall be prepared to improve the quality of secondary and vocational education and training.

(p) The functioning of the judicial system shall be improved by implementing the measures proposed under the Judicial Reform Map and by conducting an audit of the backlog of cases in order to target measures to eliminate the court backlog and foster alternative dispute settlements.

(q) Portugal shall continue opening up its economy to competition. The Portuguese Government shall take the necessary measures to ensure that obstacles to free movement of capital will not be created by their action and in particular that the Portuguese State or any public body does not conclude, in a shareholder capacity, agreements which may hinder the free movement of capital or influence the management control of companies. Professional services shall be liberalised by improving the professional qualification framework and by eliminating restrictions on regulated professions. In construction and real estate activities, Portugal shall make the requirements for cross-border providers less burdensome and review obstacles to the establishment of services providers.

(r) The competition and regulatory framework shall be improved. Portugal shall reinforce the independence and resources of the main national regulatory authorities; implement the Competition Law with a view to improving the speed and effectiveness of enforcement of competition rules; and make the specialised court for competition, regulation and supervision operational.

(s) In the energy sector, Portugal shall take measures to facilitate market entry and promote the establishment of the Iberian gas market and it shall take further steps towards the full transposition of the Third EU Energy Package. Portugal shall take measures to review the support and compensation schemes for the production of electricity. Portugal shall take measures to reduce excessive rents and eliminate the tariff debt by 2020, focusing on compensation schemes for power guarantee, special regime (renewables — excluding those granted under tender mechanisms — and cogeneration), and the ordinary regime ("CMECs" and "CAEs").

(t) In other network industries, in particular transport, telecommunications and postal services, Portugal shall adopt additional measures to promote competition and flexibility.

(u) Portugal shall adopt the revised public procurement code, thereby contributing to a more competitive business environment and to more efficient public spending.

(v) Portugal shall implement legislation on the housing rental market to further balance the obligations of tenants and landlords, to increase incentives for renovation and to make the market more flexible and dynamic.';

(2) paragraph 8 is amended as follows:

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

'(b) follow closely the plans presented by the banks to reach a Core Tier 1 ratio of 10 % at the latest by the end of 2012. The capital requirements stemming from valuing sovereign debt based on market prices according to the European Banking Authority shall be met in June 2012 together with the capital implications from the special on-site inspections programme and the transfer of the banks' pension funds to the State social security system. If banks cannot reach the capital requirement thresholds on time, they might temporarily require public provision of capital, which for privately-owned banks shall be available through the EUR 12 billion bank solvency support facility established under the Programme;

(c) ensure a balanced and orderly deleveraging of the banking sector, which remains critical to eliminating funding imbalances on a permanent basis. Banks' funding plans aim at reducing the loan-to-deposit ratio to an indicative value of around 120 % by the end of the Programme and potentially reducing reliance on Eurosystem funding for the duration of the Programme. These funding plans shall be reviewed quarterly;';

(b) points (e) and (f) are replaced by the following:

'(e) ensure that the state-owned Caixa Geral de Depósitos (CGD) is streamlined to increase the capital base of its core banking arm as needed. The sale of its insurance arm is expected to take place in 2012 directly to a final buyer and to contribute to meeting that year's additional capital needs, while CGD will continue efforts to divest itself of non-strategic assets. Insofar as these needs cannot be met from internal group sources by the end of June 2012, CGD shall be provided with government capital support from cash buffers outside the bank solvency support facility;

(f) ensure that the proceeds associated with the partial transfer of the banks' pension funds to the State social security system shall be used respecting State aid rules of the Union. The Portuguese Government shall carry out, under strict eligibility criteria, a credit

assignment of up to EUR 3 billion from the banks to the general government, while maintaining the contractual obligations of the debtor;';

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

'(g) develop and implement a more effective strategy for the recovery of the distressed assets of special purpose vehicles with a view to maximising returns for the tax payer within a reasonable timeframe;';

(d) point (i) is replaced by the following:

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

(e) point (j) is deleted.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 29 March 2012.

For the Council
The President
N. WAMMEN