DECISIONS

COUNCIL IMPLEMENTING DECISION

of 21 June 2013

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

(2013/323/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) Upon a request by Portugal, the Council granted financial assistance to it on 17 May 2011 (Council Implementing Decision 2011/344/EU [2]) in support of a strong economic and financial reform programme ("Programme") aiming at restoring confidence, enabling the return of the economy to sustainable growth, and safeguarding financial stability in Portugal, the euro area and the Union.

(2) In line with Article 3(10) of Implementing Decision 2011/344/EU, the Commission, together with the International Monetary Fund (IMF) and in liaison with the European Central Bank (ECB), conducted the seventh review of the Portuguese authorities' progress on the implementation of the agreed measures under the Programme between 25 February and 14 March. Subsequently, between 14 and 17 April 2013 and between 8 and 11 May 2013, an additional assessment of some fiscal measures was carried out.

(3) An extension of the maximum average maturity of the Union loans would be beneficial as it would support Portugal's efforts to regain full market access and to successfully exit the Programme. In order to take full benefit from the extension of the maximum average maturity of the Union loan, the Commission should be authorised to extend the maturity of instalments and tranches.

(4) Real gross domestic product (GDP) fell by 3,2 % in 2012 after an unexpectedly large contraction of economic activity and employment in the final quarter of the year. These developments required a downward revision of the economic outlook: real GDP is now forecast to contract by 2,3 % in 2013 due to the more negative carry-over from 2012, stronger contraction in domestic consumption on the back of higher than previously anticipated unemployment, and a weaker outlook for external demand. The economic recovery is also forecast to be more muted than previously expected with real GDP forecast to bottom out in the second half of the year and to grow in 2014 at an annual average rate of 0,6 %. Real GDP growth in 2015 is expected to reach 1,5 %. The unemployment rate is expected to peak at 18½ % of the labour force in 2014.

(5) The general government deficit reached 6,4 % of GDP in 2012, which is above the Programme target of 5 % of GDP. The headline deficit was affected by a number of large one-off operations, the budgetary impact of which was not known at the previous review. The operations include the capital injection into the state-owned bank CGD (0,5 % of GDP), the re-routing through the Government of the conversion into equity of shareholder loans of Parpública to SAGESTAMO, two companies outside the general government perimeter (0,5 % of GDP), and the impairments associated with the transfer of assets from BPN (0,1 % of GDP). In addition, following advice by Eurostat, the revenues from the sale of the operating concession for the major airports in Portugal were treated as equity withdrawal and hence not impacting the general government balance, contrary to what the Government had provided for in the budget (0,7 % of GDP). Excluding the impact of these one-off factors from the headline balance, the general government deficit would have amounted to 4,7 % of GDP, below the target. Confining the deficit to this level was challenging as the macro-economically driven underperformance of revenues had to be compensated by higher-than-budgeted savings, in particular in the public wage bill, intermediate consumption and appropriations for new investment projects.

(6) Overall, the fiscal effort in 2012, measured by the improvement in the structural balance, reached 2,4 % of GDP and is in line with the Council Recommendation of 9 October 2012 with a view to bringing an end to the situation of an excessive government deficit in Portugal. The improvement in the structural primary balance was even higher at 2,7 % of GDP.

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

(7) Following the developments in 2012, the new 2013 budgetary baseline assumes that revenue shortfalls and increased social transfers in kind are carried over whereas a large part of the expenditure savings in the last quarter of 2012 are considered non-permanent, leading to a negative carry-over of about 0,4 % of GDP in 2013. Furthermore, the significant deterioration in the macro-economic outlook in 2013 lowered the budgetary baseline by another 0,5 % of GDP. In view of these developments, the budgetary targets as specified at the fifth review of the Programme (4,5 % of GDP in 2013 and 2,5 % of GDP in 2014) are no longer feasible. As the deviation is assessed to be essentially outside the control of the Government, a revision of the budgetary adjustment seems appropriate.

(8) The deficit targets have therefore been adjusted to 5,5 % of GDP in 2013, 4,0 % of GDP in 2014 and 2,5 % of GDP in 2015. This fiscal path has been recalibrated so as to maintain a structural primary adjustment of close to 9 % over the period 2011-2015, while allowing the operation of automatic stabilisers and taking into consideration financing and debt constraints as well as the social costs of the adjustment. Even under the revised targets a sizable amount of consolidation measures of 3,5 % of GDP in 2013 and 2 % of GDP in 2014 will be necessary. A range of structural spending and revenue measures underpin the envisaged adjustment over the Programme period. The consolidation path is expected to continue beyond the Programme period so as to bring the deficit clearly below the 3 % threshold by 2015.

(9) The 2013 budget law included discretionary measures of a structural nature worth slightly more than 3 % of GDP, after accounting for the reinstatement of one of the two bonus payments for public workers and 1,1 times the two bonus payments for pensioners which had been cut in 2012. On 5 April 2013, however, the Constitutional Court ruled against some of the 2013 budget provisions, including the remaining cut of one bonus payment for public workers, 0,9 times of the bonus payment for pensioners, and a new surcharge on unemployment and sick leave benefits, thereby creating a budgetary gap of 0,8 % of GDP. To close this gap and to underpin the required fiscal adjustment in 2014 and 2015, the Government adopted, in the course of April and May, a package of permanent expenditure-reducing measures with a cumulative yield of EUR 4,7 billion or 2,8 % of GDP over 2013-2014, of which measures worth 0,8 % of GDP are frontloaded into 2013. In 2014, the balance between revenue- and expenditure-based consolidation will be re-established.

(10) Also, as a consequence of the full reinstatement of the two bonus payments for public workers and pensioners, revenue increases account for more than two thirds of the overall fiscal consolidation effort in 2013 while expenditure cuts account for less than one third, contrary to original intention to focus the consolidation on expenditure.

(11) In 2013, revenue measures include a restructuring of the personal income tax; a surcharge of 3,5 % on the part of taxable income exceeding the minimum wage; a solidarity surcharge on the highest levels of income; the broadening of the tax base and other revenue-raising changes in corporate taxation; higher excises on tobacco, alcohol and natural gas; a broadening of the property tax base after the revaluation of properties and an extraordinary solidarity contribution on pensions to cope with ageing-related sustainability challenges. On the expenditure side, the measures envisage a sizeable reduction in the public-sector wage bill by optimising the allocation of resources and resizing the public-sector work force and by reducing over-time payments, fringe benefits and compensations during extraordinary leave. Other expenditure-saving measures include the continuation of rationalisation efforts in the health sector; the streamlining of social benefits and better targeting of social support; the reduction of intermediate consumption across line ministries; and savings from the renegotiation of public-private partnership (PPP) contracts and from further restructuring efforts in state-owned enterprises (SOE). Some of the envisaged savings will result from a frontloading of the measures which have been devised in the framework of the public expenditure review.

(12) Whilst the measures mentioned above are of a permanent nature, the Government will also adopt non-permanent measures including *inter alia* through the transfer of Cohesion Fund resources from less mature projects to more advanced ones, and a further reduction in capital expenditure (Polis programme).

(13) On top of the consolidation measures included in the supplementary budget, all other legislative changes and legislative proposals required to implement the reforms linked to the public expenditure review will be adopted by the Government or submitted to the Parliament, as the case may be, by the end of the legislative session in mid-July 2013.

(14) For 2014, the fiscal adjustment will proceed on the basis of the public expenditure review which the Government has undertaken over the past months and includes permanent expenditure-reducing measures of 2 % of GDP in 2014. The main impact of the public expenditure review measures will be along three main axes: (1) reduction of the public-sector wage bill; (2) reduction of pension benefits; and (3) sectoral expenditure cuts across line ministries and programmes. The public expenditure review measures are part of a wider effort to

reform the state with the objective of increasing equity and efficiency in the provision of social transfers and public services. The reduction in the wage bill in 2014 aims at reducing the size of the public-sector work force while shifting its composition towards higher-skilled employees, aligning the public-sector work rules with those of the private sector and making the remuneration policy more transparent and merit-based. Specific reforms include the transformation of the special mobility scheme into a requalification programme, aligning public-sector working hours with those in the private sector (i.e. increase in the working week from 35 to 40 hours), introduction of a "bank of hours", reduction in holiday entitlements, the implementation of a voluntary redundancy scheme (which is estimated to generate one-time upfront cost of about 0,3 % of GDP) and the introduction of a single wage and supplement scale. A comprehensive pension reform will generate another important part of the savings and will be based on equity principles and income progressivity, thereby protecting the lowest pensions. Specifically, the reforms will aim at reducing the current differences between the civil servants' system (CGA) and the general system, increasing the statutory retirement age by changes to the demographic sustainability factor and introducing, if strictly needed, a progressive sustainability contribution. Finally, savings in intermediate consumption and expenditure programmes across line ministries will be stepped up.

(15) In view of political and legal risks in the implementation process, some of the public expenditure review measures may be replaced by others of equivalent size and quality during the ongoing consultation process with social and political partners.

(16) The budgetary adjustment process is flanked by a range of fiscal structural measures to enhance control over government expenditure and improve revenue collection. In particular, a comprehensive reform of the budgetary framework, including at central, regional and local government levels, is bringing it in line with best practices in budgetary procedures and management. The Budgetary Framework Law was amended to incorporate the reinforced Union fiscal governance framework, by transposing the requirements set out in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union and in the economic governance package known as the "six-Pack". The new commitment control system is showing results but implementation needs to be monitored closely to ensure that commitments are in line with funding. Reforms in the public administration will continue with an important rationalisation of public employment and public entities. Progress in the reform agenda of the revenue administration continues and the authorities are enhancing monitoring and strengthening revenue compliance. The renegotiation of PPPs has started and significant savings are projected for 2013 and beyond. SOEs reached operational balance on average by the end of 2012 and additional efficiency seeking reforms are foreseen to further improve the results. Reforms in the health care sector are producing significant savings and implementation is continuing broadly in line with targets.

(17) Under the Commission's current projections for nominal GDP growth (– 1,0 % in 2013, 1,6 % in 2014 and 3,3 % in 2015) and the general government deficit of 5,5 % of GDP in 2013, 4,0 % of GDP in 2014 and 2,5 % of GDP in 2015, the debt-to-GDP ratio is expected to develop as follows: 122,9 % of GDP in 2013, 124,2 % of GDP in 2014 and 123,1 % of GDP in 2015. Hence, the debt-to-GDP ratio would be placed on a downward path after 2014, assuming further progress in the reduction of the deficit. Debt dynamics are affected by several below-the-line operations, including sizeable acquisitions of financial assets, in particular for possible bank recapitalisation and financing to SOEs and differences between accrued and cash interest payments.

(18) In 2012, the bank capital augmentation exercise was completed and allowed the participating banks to meet the European Banking Authority regulatory capital buffers as well as the end-of-year target for 2012 of a Core Tier 1 ratio of 10 %, which was fulfilled by mid-2012. The indicative loan-to-deposit target of 120 % by 2014 is likely to be met, with some banks already below this threshold by end-2012. Efforts to diversify the sources of funding for the corporate sector are being strengthened. The scope for improving the performance and governance of existing government-sponsored credit lines is being assessed. The banks' recovery plans are being analysed and resolution plans prepared.

(19) Further progress has been made in implementing growth- and competitiveness-enhancing structural reforms. In addition to strengthening active labour market policies, the authorities have adopted a comprehensive labour market reform. With a view to promoting labour market flexibility and job creation, the new legal framework reduces severance payments, eases condition of fair dismissals, increases working time flexibility, enlarges possibilities for bargaining at firm level and revises the unemployment insurance benefits system to increase incentives for a rapid return to work, while guaranteeing a sufficient level of protection. The implementation of the action plans on secondary school and vocational training is overall progressing as scheduled.

(20) The implementation of Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market [1] aiming at reducing barriers to entry and boosting competition and economic activity, by facilitating access for new entrants to the market in the different economic regimes, is proceeding at good pace. A framework law to set the main principles of the functioning of the most important national regulatory authorities, including their endowment with strong independence and autonomy is to be submitted to the Parliament. Significant progress has been made in the transposition of the Third Energy Package and the electricity tariff debt reduction to ensure the sustainability of the system is on-going. Licensing procedures and other administrative burdens are being simplified in different economic sectors such as environment and territorial planning, agriculture and rural development, industry, tourism, and geology.

(21) A comprehensive reform of the housing rental market has entered into force in November 2012 which should make the housing market more dynamic. Reforms of the judicial system are advancing according to the agreed schedule. Progress has been achieved on the reduction of backlog cases and on broader reforms such as the geographical reorganisation of the court districts and the reform of the Code of Civil Procedure.

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

HAS ADOPTED THIS DECISION:

Article 1

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

(1) Article 1 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. The Union shall make available to Portugal a loan amounting to a maximum of EUR 26 billion, with a maximum average maturity of 19,5 years. The maturity of individual tranches of the loan facility may be of up to 30 years.';

(b) The following paragraph is added:

'9. At the request of Portugal, the Commission may extend the maturity of an instalment or a tranche, provided that the maximum average maturity as set out in paragraph 1 is respected. The Commission may refinance all or part of its borrowing for that purpose. Any amounts borrowed in advance shall be kept on an account with the ECB that the Commission has opened for the administration of the financial assistance.'

(2) Article 3 is amended as follows:

(a) Paragraphs 3 and 4 are replaced by the following:

'3. The general government deficit shall not exceed 5,9 % of GDP in 2011, 5,0 % of GDP in 2012, 5,5 % of GDP in 2013 and 4 % of GDP in 2014. For the calculation of this deficit, the possible budgetary costs of bank support measures in the context of the Government's financial sector strategy shall not be taken into account. The budgetary consolidation shall be achieved by means of high-quality permanent measures and minimising the impact of consolidation on vulnerable groups.

4. Portugal shall adopt the measures specified in paragraphs 5 to 8 before the end of the indicated year, with exact deadlines for the years 2011-2014 being specified in the Memorandum of Understanding. Portugal shall stand ready to take additional consolidation measures to achieve the deficit targets throughout the Programme period.';

(b) Paragraphs 7 to 9 are replaced by the following:

'7. Portugal shall adopt the following measures during 2013, in line with specifications in the Memorandum of Understanding:

(a) The general government deficit shall not exceed 5,5 % of GDP in 2013. The consolidation measures included in the 2013 budget, including in the supplementary budget submitted to the Parliament by end-May, shall be implemented throughout the year. Revenue-raising measures shall include a reform of the personal income tax that simplifies the tax structure, broadens the tax base through the elimination of some tax benefits and increases the average tax rate, while preserving progressivity; a broadening of the corporate income tax base; an increase in excise taxes and in recurrent property taxation and a extraordinary solidarity contribution on pensions. Expenditure-saving measures shall include a rationalisation of public administration, education, healthcare and social benefits; a reduction of the wage bill by decreasing permanent and temporary staff and reducing overtime pay; a lowering of operational and capital expenditures by SOEs; renegotiations of contracts with PPPs; and cutbacks in intermediate consumption across line ministries;

(b) Some of the measures resulting from the public expenditure review shall be frontloaded to 2013. These mainly consist in a further reduction in public employment through the transformation of the special mobility scheme into a requalification programme, the convergence of public and private sector working rules, especially by

[1] OJ L 376, 27.12.2006, p. 36.

increasing the public-sector working week from 35 to 40 hours; the increase of public employees' contributions to the special health insurance schemes and the reduction of fringe benefits. Rationalisation efforts across line ministries shall be deepened beyond the original budget plans and social spending shall be further streamlined. In addition, the above-mentioned permanent measures shall be complemented by temporary measures, to be replaced by permanent ones in 2014, consisting in the transfer of Cohesion Fund resources from less-mature projects to more advanced ones and a further reduction in capital expenditure (Polis programme);

(c) On top of the consolidation measures included in the supplementary budget, all other legislative changes and legislative proposals required to implement the reforms linked to the public expenditure review shall be adopted by the Government or submitted to the Parliament, as the case may be, by the end of the legislative session in mid-July 2013;

(d) Portugal shall continue implementing its privatisation programme;

(e) Portugal shall coordinate the exchange of information across levels of government to facilitate revenue forecasting for the 2014 budgets of the Autonomous Regions and the local authorities;

(f) Portugal shall deepen the use of shared services in public administration;

(g) Portugal shall reduce the number of local branches of line ministries (e.g. tax, social security, justice) by merging them into the 'Lojas do Cidadão' (administration and utilities single points of contact) and developing further the e-administration over the duration of the Programme;

(h) Portugal shall continue the reorganisation and rationalisation of the hospital network through specialisation, concentration and downsizing of hospital services, joint management and joint operation of hospitals and shall finalise the implementation of the action plan by the end of 2013;

(i) With the support of internationally-renowned experts and following the adoption of the amendments to Law 6/2006 on New Urban Lease and the decree law which simplifies the administrative procedure for renovation, Portugal shall undertake a comprehensive review of the functioning of the housing market;

(j) Portugal shall develop a nationwide land registration system to allow a more equal distribution of benefits and costs in the execution of urban planning;

(k) Portugal shall implement the measures set out in its action plans to improve the quality of secondary and vocational education and training, in particular the management tool to analyse, monitor and assess the results and impacts of education and training policies shall be made fully operational and the professional schools of reference shall be established;

(l) Portugal shall complete the adoption of the outstanding sectorial amendments necessary to fully implement Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market (*);

(m) Portugal shall implement targeted measures to achieve a steady reduction of the backlogged enforcement cases with a view to resolving the backlog of court cases;

(n) the Government shall submit to the Parliament a framework law on the main national regulatory authorities in order to guarantee their full independence and financial, administrative and management autonomy;

(o) Portugal shall improve the business environment by completing pending reforms on the reduction of administrative burden (fully operational Point of Single Contact provided for by Directive 2006/123/EC and 'Zero Authorisation' projects) and by carrying out further simplification of existing licensing procedures, regulations and other administrative burdens in the economy which are a major obstacle for the development of economic activities;

(p) Portugal shall complete the reform of the ports' governance system, including the overhaul of port operation concessions;

(q) Portugal shall implement the measures enhancing the functioning of the transport system;

(r) Portugal shall implement the measures eliminating the energy tariff debt and fully transpose the Third EU Energy Package;

(s) Portugal shall ensure that the new legal and institutional PPP framework is applied and the PPP road contracts continue to be renegotiated in line with the strategic plan presented by the Government and with the regulatory framework revision, in order to obtain substantial fiscal gains, particularly in 2013;

(t) Portugal shall continue to focus on measures to combat tax fraud and evasion and strengthen taxpayers' compliance;

(u) Portugal shall introduce adjustments to the severance payments regime in accordance with the provisions of the Memorandum of Understanding;

(v) 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;

(w) Portugal shall continue to improve the effectiveness of its active labour market policies in line with the results of the assessment report and the action plan to improve the functioning of the public employment services.

8. The general government deficit shall not exceed 4,0 % of GDP in 2014. To achieve this objective Portugal shall implement the expenditure-reducing measures that were prepared in the framework of the public expenditure review. Overall, the amount of these measures shall add up to 2 % of GDP in 2014 and shall include the reduction in the wage bill aimed at reducing the size of the public-sector work force while changing its composition towards higher-skilled employees; further convergence of public and private sector work rules, i.e. increase in working hours, introduction of a bank of hours, reduction in holiday entitlements; the implementation of a voluntary redundancy scheme and the introduction of a single wage and supplement scale; a reduction of the current differences between the civil servants' pension regime (CGA) and the general pension system; an increase in the statutory retirement age; and, if strictly needed, a progressive sustainability contribution on pensions. Furthermore, savings in intermediate consumption and expenditure programmes across line ministries shall be stepped up. Some of the measures may be partly or fully replaced by others of equivalent size and quality.

9. With a view to restoring confidence in the financial sector, Portugal shall aim to maintain an adequate level of capital in its banking sector and ensure an orderly deleveraging process in compliance with the deadlines set in the Memorandum of Understanding. In that regard, Portugal shall implement the strategy for the Portuguese banking sector agreed with the Commission, the ECB and the IMF so that financial stability is preserved. In particular, Portugal shall:

(a) advise banks to strengthen their collateral buffers on a sustainable basis;

(b) ensure a balanced and orderly deleveraging of the banking sector, which remains critical in permanently eliminating funding imbalances and reducing the reliance on Eurosystem funding in the medium-term. Banks funding and capital plans shall be reviewed quarterly;

(c) encourage the diversification of financing alternatives for the corporate sector, and in particular the SMEs, through an array of measures aiming at improving their access to the capital markets and export credit insurance;

(d) continue to streamline the state-owned CGD group;

(e) optimise the process for recovering the assets transferred from BPN to the three state-owned special purpose vehicles through the outsourcing to a professional third party of the management of the assets, with a mandate to gradually recover the assets over time; select the party managing the credits through the ongoing competitive bidding process and include adequate incentives to maximise the recoveries and minimise operational costs into the mandate; and ensure timely disposal of the subsidiaries and the assets in the other two state-owned special purpose vehicles;

(f) on the basis of the set of preliminary proposals to encourage the diversification of financing alternatives to the corporate sector presented, develop and implement solutions that provide financing alternatives to traditional bank credit for the corporate sector; assess the effectiveness of government-sponsored export credit insurance schemes with a view to taking appropriate measures compatible with Union law to promote exports;

(g) analyse banks' recovery plans and issue guidelines to the system on recovery plans and prepare resolution plans on the basis of the reports submitted by the banks; ensure that the initial and annual funding arrangements for the Resolution Fund are settled; and prioritise, in the implementation of the recovery and resolution plans of banks, those banks that are of systemic importance;

(h) implement the framework for financial institutions to engage in out-of-court debt restructuring for households, smooth the application for restructuring of corporate debt, and implement an action plan to raise public awareness of the restructuring tools;

(i) prepare quarterly reports on the implementation of the new restructuring tools and conduct a survey of insolvency stakeholders to inquire about the appropriateness of the existing debt restructuring tools and possible gaps or bottlenecks, explore alternatives to increase the successful recovery of companies adhering to the PER (the Special Revitalisation Procedure, for companies in serious financial distress) and the SIREVE (the Companies' Recovery System through Extrajudicial Agreements, for companies in difficult economic situation or imminent or actual insolvency);

(j) assess the scope for improving the performance and governance of existing government-sponsored credit lines, establish a quarterly monitoring and reporting mechanism on the allocation of the government sponsored credit lines aimed at facilitating access to finance to SMEs; conduct an external audit of the National Guarantee System.

(*) OJ L 376, 27.12.2006, p. 36.'

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Luxembourg, 21 June 2013.

For the Council
The President
M. NOONAN