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(Acts whose publication is obligatory)

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 108 and 235 thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Monetary Committee (1),

Having regard to the opinion of the European Parliament (2),

Whereas Article 108 of the Treaty provides for the granting of mutual assistance, to be decided by the Council on a recommendation from the Commission, to a Member State in difficulties or seriously threatened with difficulties as regards its balance of payments; whereas the resolution of the European Council of 5 December 1978 on the establishment of the European Monetary System (EMS) and related matters confirmed the need for a Community facility for medium-term financial assistance for balances of payments;

Whereas it should be possible for the operation of lending to a Member State to take place soon enough to encourage that Member State to adopt, in good time in a situation where orderly exchange rate conditions prevail, economic policy measures likely to prevent the occurrence of an acute balance-of-payments crisis and to support its efforts towards convergence;

Whereas each loan to a Member State must be linked to the adoption, by that Member State, of economic policy measures designed to re-establish or to ensure a sustainable balance of payments situation and adapted to the gravity of the balance of payments situation in that State and to the way in which it develops;

Whereas appropriate procedures and instruments should be provided for in advance to enable the Community and Member States to ensure that, if required, medium-term financial support is provided quickly, especially where circumstances call for immediate action;

Whereas, in order to finance support granted, the Community needs to be able to use its credit-worthiness to borrow resources that will be placed at the disposal of the Member States concerned in the form of loans; whereas operations of this kind are necessary to the achievement of the objectives of the Community as defined in the Treaty, especially the harmonious development of economic activities in the Community as a whole; whereas the Treaty has not provided the necessary powers, other than those of Article 235;

Whereas by Decision 71/143/EEC (3), as last amended by Decision 86/656/EEC (4), the Council set up machinery for providing medium-term financial assistance which was initially valid for a period of four years from 1 January 1972; whereas this machinery has since been renewed and extended, on the last occasion for two years until 31 December 1988 by Decision 86/656/EEC; whereas this machinery provides for the Member States to grant medium-term loans, within certain limits, to one or more Member States experiencing balance of payments difficulties;

Whereas, by Regulation (EEC) No 682/81 (5), as amended by Regulation (EEC) No 1131/85 (6), the Council adjusted a Community loan mechanism designed to support the balances of payments of the Member States; whereas this mechanism provides for the Community to contract loans, according to needs and within the limits set on outstanding borrowing, in order to on-lend the proceeds to one or more Member States experiencing balance of payments difficulties;

Whereas the Community loan mechanism has demonstrated its effectiveness; whereas its general design and the arrangements for implementing it still meet the needs of the Community; whereas, in view of the Community's borrowing capacity and of the conditions available to it for borrowing from financial institutions or on capital markets, the mechanism could constitute the main form of mutual assistance provided for under Article 108 of the Treaty; whereas the ceiling on amounts outstanding under the mechanism should be adjusted accordingly;

(1) OJ No C 26, 1. 2. 1988, p. 13.
(2) Opinion delivered on 17 June 1988 (not yet published in the Official Journal).
(3) OJ No L 73, 27. 3. 1971, p. 15.
(4) OJ No L 382, 31. 12. 1986, p. 28.
(5) OJ No L 73, 19. 3. 1981, p. 1.
(6) OJ No L 118, 1. 5. 1985, p. 59.

Whereas, however, it is appropriate that the financing obligations on Member States under the machinery for medium-term financial assistance remain in force until the final stage of the European Monetary System so as to ensure that system's cohesion and stability, irrespective of the conditions prevailing on international capital markets; whereas the present procedures for exempting a Member State from contributing or for mobilizing Member States' claims should, nevertheless, be simplified;

Whereas it is appropriate to merge medium-term financial assistance and the Community loan mechanism into a single facility for medium-term financial support,

HAS ADOPTED THIS REGULATION:

Article 1

1. A Community facility providing medium-term financial support shall be established, enabling loans to be granted to one or more Member States which are experiencing, or are seriously threatened with, difficulties in their balance of current payments or capital movements.

The outstanding amount of loans to be granted to Member States under this facility shall be limited to 16 000 million ECU in principal.

2. To this end, in accordance with a decision adopted by the Council pursuant to Article 3 and after consulting the Monetary Committee, the Commission shall be empowered, on behalf of the European Economic Community, to contract loans on the capital markets or with financial institutions.

The outstanding amount of loans so granted to Member States shall be limited to 14 000 million ECU in principal.

3. If conditions available on capital markets or with financial institutions are unsatisfactory or if the amount available under the ceiling referred to in paragraph 2 is insufficient, Community loans shall be financed in full or in part by the other Member States whose contributions in principal may not exceed the ceilings specified in the Annex.

Article 2

Where a Member State proposes to call upon sources of financing, outside the Community, which are subject to economic policy requirements, it shall first consult the Commission and the other Member States in order to examine, among other things, the possibilities available under the Community facility for medium-term financial support. Such consultations shall be held within the Monetary Committee.

Article 3

1. The medium-term financial support facility may be implemented by the Council on the initiative:

— of the Commission acting pursuant to Article 108 of the Treaty in agreement with the Member State seeking Community financing,

— of a Member State experiencing, or seriously threatened with, difficulties as regards its balance of current payments or capital movements.

2. The Council, after examining the situation in the Member State seeking medium-term financial assistance and the recovery or back-up programme presented in support of its application, shall decide, as a rule during the same meeting:

— whether to grant a loan or appropriate financing facility, its amount and its average duration,

— the economic policy conditions attached to the medium-term financial assistance with a view to re-establishing or ensuring a sustainable balance-of-payments situation,

— the techniques for disbursing the loan or financing facility the release or drawings of which shall as a rule be by successive instalments, the liberalization of each instalment being subject to verification of the results achieved in implementing the programme, in terms of the objectives set.

3. Any full or partial financing of medium-term financial assistance by recourse to the Member States shall be decided on by the Council. In that event the Council, in addition to taking the decisions referred to in paragraph 2, shall decide on the size of the contributions of these States and on the financial conditions attaching to the credits they make available in that connection. The Council may exempt from contributing any Member State which maintains that difficulties exist or can be foreseen as regards its balance of payments.

Article 4

In cases where restrictions on capital movements are introduced or re-introduced pursuant to Article 109 of the Treaty during the term of the financial assistance, its conditions and arrangements shall be re-examined pursuant to Article 108 of the Treaty.

Article 5

The Commission shall take the necessary measures to verify at regular intervals, in collaboration with the Monetary Committee, that the economic policy of the Member State in receipt of a Community loan accords with the adjustment

or back-up programme and with any other conditions laid down by the Council pursuant to Article 3. To this end, the Member State shall place all the necessary information at the disposal of the Commission. On the basis of the findings of such verification, the Commission, after the Monetary Committee has delivered an opinion, shall decide on the release of further instalments.

The Council shall decide on any adjustment to be made to the initial economic policy conditions.

Article 6

1. Loans granted as medium-term financial support may be granted as consolidation of short-term monetary support made available by the central banks of the Member States.

2. At the request of the beneficiary Member State, the loans referred to in paragraph 1 may carry the option of early repayment.

Article 7

1. The borrowing and lending operations referred to in Article 1 shall be carried out using the same value date and must not involve the Community in the transformation of maturities, in any exchange or interest-rate risk, or in any other commerical risk.

When the borrowings are expressed, payable or repayable in the currency of a Member State, they may be concluded only after consultation with the competent authorities of that State.

Where a Member State receives a loan carrying an early repayment clause and decides to exercise this option, the Commission shall take the necessary steps.

2. At the request of the debtor Member State and where circumstances permit an improvement in the interest rate on the loans, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions.

Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average duration of the borrowing concerned or increasing the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing or restructuring.

3. The costs incurred by the Community in concluding and carrying out each operation shall be borne by the beneficiary Member State.

4. The Monetary Committee shall be kept informed of developments in the operations referred to in the third subparagraph of paragraph 1 and the first subparagraph of paragraph 2.

Article 8

1. If one or more Member States that are creditors under the facility referred to in Article 1 experience difficulties as regards their balance of payments and/or a sudden decline in their foreign currency reserves, they may request mobilization of their claims. The Council, having due regard to the circumstances, shall decide to mobilize such claims, in particular in accordance with one of the following procedures, or a suitable combination thereof:

— by refinancing from Community borrowings from financial institutions or on capital markets under the conditions laid down in Article 7,

— by a transfer of the claim to other creditor Member States,

— by early repayment in full or in part by the debtor Member State or States.

2. Where refinancing takes place in accordance with paragraph 1, the debtor Member State shall agree that its debt, originally denominated in one currency, shall be replaced by a debt denominated in the currency used for the refinancing. Where applicable, the debtor Member State shall bear any additional cost resulting from an alternation in the interest rate and the costs incurred by the Community in concluding and carrying out the operation.

3. Any creditor Member State may arrange with one or more other Member States for the partial or total transfer of its claims. Member States concerned shall notify the Commission and Monetary Committee of the transfer.

4. Any Member State that is a creditor in respect of a loan carrying an early repayment clause shall take the requisite steps where the debtor Member State decides to invoke this option. The Member States concerned shall notify the Commission and the Monetary Committee of the operation.

Article 9

For the application of the ceilings referred to in Article 1, the loan operation shall be recorded at the exchange rate of the day on which they are concluded. The repayment operations shall be recorded at the exchange rate of the day on which the corresponding loan was concluded.

Article 10

The Council shall adopt the decisions referred to in Articles 3, 5 and 8, acting by qualified majority on a proposal from the Commission, made after consulting the Monetary Committee on the matter.

Article 11

The European Monetary Cooperation Fund shall make the necessary arrangements for the administration of the loans.

The funds shall be paid only for the purposes indicated in Article 1.

Article 12

Before 31 December 1992, the Council shall examine, on the basis of a report from the Commission, after the Monetary Committee has delivered an opinion and after consulting the European Parliament, whether the facility established still meets, in its principle, arrangements and ceiling, the need which led to its creation.

Article 13

1. Regulation (EEC) No 682/81 and Decision 71/143/EEC are hereby repealed.

2. Amounts not yet repaid under outstanding Community loan operations concluded pursuant to Regulation (EEC) No 682/81 before the date of entry into force of this Regulation shall count against the ceiling referred to in Article 1 (2) at their initial value in ECUs.

3. References to the instruments repealed by virtue of paragraph 1 shall be deemed to be references to this Regulation.

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

Done at Luxembourg, 24 June 1988.

For the Council

The President

M. BANGEMANN

ANNEX

The ceilings for outstanding loans provided for in Article 1 (3) shall be as follows:

Member State	Million ECU	% total
Belgium	875	6,28
Denmark	407	2,92
Germany	2 715	19,50
Greece	235	1,69
Spain	1 132	8,13
France	2 715	19,50
Ireland	158	1,13
Italy	1 810	13,00
Luxembourg	31	0,22
Netherlands	905	6,50
Portugal	227	1,63
United Kingdom	2 715	19,50
Total	13 925	100,00