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COUNCIL REGULATION (EC) No 332/2002

of 18 February 2002

establishing a facility providing medium-term financial assistance for Member States' balances of payments

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COUNCIL REGULATION (EC) No 332/2002

of 18 February 2002

establishing a facility providing medium-term financial assistance for Member States' balances of payments

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission, presented following consultation with the Economic and Financial Committee ([1]),

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

Having regard to the opinion of the European Central Bank ([3]),

Whereas:

(1) The second subparagraph of Article 119(1) and Article 119(2) of the Treaty provide that, acting on a recommendation from the Commission made after consulting the Economic and Financial Committee, the Council will grant mutual assistance where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments. Article 119 does not define the instrument to be used for granting the mutual assistance envisaged.

(2) 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.

(3) Each loan to a Member State should be linked to the adoption by that Member State of economic policy measures designed to re-establish or ensure a sustainable balance of payments situation and to adapt it to the gravity of the balance of payments situation in that State and to the way in which it develops.

(4) Appropriate procedures and instruments should be provided for in advance to enable the Community and Member States to ensure that, if required, financial medium-term assistance is provided quickly, especially where circumstances call for immediate action.

(5) In order to finance assistance that has been granted, the Community needs to be able to use its creditworthiness to borrow resources that will be placed at the disposal of the Member States concerned in the form of loans. 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.

(6) To this end, a single facility providing medium-term financial assistance for Member States' balances of payments was established by Council Regulation (EEC) No 1969/88 ([4]).

(7) Since 1 January 1999 the Member States participating in the single currency no longer qualify for medium-term financial assistance. However, the financial assistance facility should be

([1]) OJ C 180 E, 26.6.2001, p. 199.
([2]) Opinion delivered on 6 September 2001 (not yet published in the Official Journal).
([3]) OJ C 151, 22.5.2001, p. 18.
([4]) OJ L 178, 8.7.1988, p. 1. Regulation as amended by the 1994 Act of Accession.

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retained in order to meet not only the potential needs of the present Member States which have not adopted the euro but also the needs of new Member States until such time as they adopt the euro.

(8) The introduction of the single currency has led to a substantial reduction in the number of Member States eligible for the instrument. A downwards revision of the present ceiling of EUR 16 billion is therefore justified. The loan ceiling should, though, be kept at a sufficiently high level in order to satisfy properly the simultaneous needs of several Member States. A reduction in the loan ceiling from EUR 16 billion to EUR 12 billion seems apt to meet this need and also to take account of forthcoming enlargements of the European Union.

(9) The glaring imbalance between the number of potential beneficiaries of the loans during the third stage of economic and monetary union and the number of countries capable of financing them makes it difficult to maintain direct financing of loans granted by all the other Member States. These loans should therefore be financed exclusively by way of recourse to capital markets and financial institutions, these having now attained a stage of development and maturity which should enable them to undertake such financing.

(10) The arrangements for using the facility should also be clarified in the light of experience gained and account should be taken of the development of international financial markets and of the technical possibilities and constraints inherent in recourse to these sources of financing.

(11) It is for the Council to decide whether to grant a loan or appropriate financing facility, its average duration, its total amount and the amounts of the successive instalments. However, the characteristics of the instalments, duration and type of interest rate, should be fixed by common agreement between the beneficiary Member State and the Commission. If the Commission takes the view that the loan characteristics desired by that Member State result in financing that is incompatible with the technical constraints imposed by capital markets or financial institutions, it must be able to propose alternative financing arrangements.

(12) In order to finance loans granted under this Regulation, the Commission should be authorised to contract on behalf of the European Community borrowings on capital markets or from financial institutions.

(13) The financial assistance facility established by Regulation (EEC) No 1969/88 should be adapted accordingly. In the interests of clarity, that Regulation should be replaced.

(14) For the adoption of this Regulation, which provides for the granting of Community loans financed exclusively with funds raised on the capital markets and not by the other Member States, the Treaty provides no powers other than those of Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

1. A Community medium-term financial assistance facility 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 shall be established. Only Member States which have not adopted the euro may benefit from this Community facility.

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The outstanding amount of loans to be granted to Member States under this facility shall be limited to EUR 25 billion in principal.

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

Article 2

Where a Member State which has not adopted the euro proposes to call upon sources of financing outside the Community which are subject to economic policy conditions, it shall first consult the Commission and the other Member States in order to examine, among other things, the possibilities available under the Community medium-term financial assistance facility. Such consultations shall be held within the Economic and Financial Committee, in accordance with Article 119 of the Treaty.

Article 3

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

(a) the Commission, acting pursuant to Article 119 of the Treaty in agreement with the Member State seeking Community financing;

(b) 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 adjustment or back-up programme presented in support of its application, shall decide, as a rule during the same meeting:

(a) whether to grant a loan or appropriate financing facility, its amount and its average duration;

(b) the economic policy conditions attaching to the medium-term financial assistance with a view to re-establishing or ensuring a sustainable balance of payments situation;

(c) the techniques for disbursing the loan or financing facility, the release or drawing-down of which shall, as a rule, be by successive instalments, the release of each instalment being subject to verification of the results achieved in implementing the programme in terms of the objectives set.

Article 4

In cases where restrictions on capital movements are introduced or reintroduced pursuant to Article 120 of the Treaty during the period of the financial assistance, its conditions and arrangements shall be re-examined pursuant to Article 119 of the Treaty.

Article 5

The Commission shall take the necessary measures to verify at regular intervals, in collaboration with the Economic and Financial 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

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findings of such verification, the Commission, after the Economic and Financial Committee has delivered an opinion, shall decide on the release of further instalments.

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

Article 6

Loans granted as medium-term financial assistance may be granted as consolidation of support made available by the European Central Bank under the very short-term financing facility.

Article 7

1. The borrowing and lending operations referred to in Article 1 shall be carried out in euro. They shall use the same value date and shall not involve the Community in the transformation of maturities, in any interest rate risk, or in any other commercial risk.

The characteristics of the successive instalments released by the Community under the financial assistance facility shall be negotiated between the Member State and the Commission. Where the Commission takes the view that the characteristics desired by the Member State will lead to Community financing that runs counter to the technical constraints imposed by financial markets or is such as to tarnish the reputation of the Community as a borrower on those same markets, it has the right to withhold its agreement and propose an alternative solution.

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 loan, 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 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 Economic and Financial Committee shall be kept informed of developments in the operations referred to in the first subparagraph of paragraph 2.

Article 8

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

Article 9

The European Central Bank shall make the necessary arrangements for the administration of the loans.

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

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Article 10

Every three years the Council shall examine, on the basis of a report from the Commission and after the Economic and Financial Committee has delivered an opinion, whether the facility established still meets, in its principle, arrangements and ceiling, the need which led to its creation.

Article 11

Regulation (EEC) No 1969/88 is hereby repealed.

Article 12

This Regulation shall enter into force on the day following that of 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.