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COUNCIL REGULATION (EC) No 1467/97

of 7 July 1997

on speeding up and clarifying the implementation of the excessive deficit procedure

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COUNCIL REGULATION (EC) No 1467/97

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on speeding up and clarifying the implementation of the excessive deficit procedure

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second subparagraph of Article ►M1 104 ◄ (14) thereof,

Having regard to the proposal from the Commission [1],

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

Having regard to the opinion of the European Monetary Institute,

(1) Whereas it is necessary to speed up and to clarify the excessive deficit procedure set out in Article ►M1 104 ◄ of the Treaty in order to deter excessive general government deficits and, if they occur, to further their prompt correction; whereas the provisions of this Regulation, which are to the above effect and adopted under Article ►M1 104 ◄ (14) second subparagraph, constitute, together with those of Protocol (No 5) to the Treaty, a new integrated set of rules for the application of Article ►M1 104 ◄;

(2) Whereas the Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation;

(3) Whereas the Stability and Growth Pact consists of this Regulation, of Council Regulation (EC) No 1466/97 [3] which aims to strengthen the surveillance of budgetary positions and the surveillance and coordination of economic policies and of the Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact [4], in which, in accordance with Article ►M1 4 ◄ of the Treaty on European Union, firm political guidelines are issued in order to implement the manner and in particular to adhere to the medium term objective for budgetary positions of close to balance or in surplus, to which all Member States are committed, and to take the corrective budgetary action they deem necessary to meet the objectives of their stability and convergence programmes, whenever they have information indicating actual or expected significant divergence from the medium-term budgetary objective;

(4) Whereas in stage three of Economic and Monetary Union (EMU) the Member States are, according to Article ►M1 104 ◄ of the Treaty, under a clear Treaty obligation to avoid excessive government deficits; whereas under Article 5 of Protocol (No 11) to the Treaty, paragraphs 1, 9 and 11 of Article ►M1 104 ◄ do not apply to the United Kingdom unless it moves to the third stage; whereas the obligation under Article ►M1 116 ◄ (4) to endeavour to avoid excessive deficits will continue to apply to the United Kingdom;

(5) Whereas Denmark, referring to paragraph 1 of Protocol (No 12) to the Treaty has notified, in the context of the Edinburgh decision of 12 December 1992, that it will not participate in the third stage; whereas, therefore, in accordance with paragraph 2 of the said Protocol, paragraphs 9 and 11 of Article ►M1 104 ◄ shall not apply to Denmark;

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[1] OJ No C 368, 6. 12. 1996, p. 12.
[2] OJ No C 380, 16. 12. 1996, p. 29.
[3] See p. 1 of this Official Journal.
[4] OJ No C 236, 2. 8. 1997, p. 1.

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(6) Whereas in stage three of EMU Member States remain responsible for their national budgetary policies, subject to the provisions of the Treaty; whereas the Member States will take the necessary measures in order to meet their responsibilities in accordance with the provisions of the Treaty;

(7) Whereas adherence to the medium-term objective of budgetary positions close to balance or in surplus to which all Member States are committed, contributes to the creation of the appropriate conditions for price stability and for sustained growth conducive to employment creation in all Member States and will allow them to deal with normal cyclical fluctuations while keeping the government deficit within the 3 % of GDP reference value;

(8) Whereas for EMU to function properly, it is necessary that convergence of economic and budgetary performances of Member States which have adopted the single currency, hereafter referred to as 'participating Member States', proves stable and durable; whereas budgetary discipline is necessary in stage three of EMU to safeguard price stability;

(9) Whereas according to Article 109k (3) Articles ►M1 104 ◄ (9) and (11) only apply to participating Member States;

(10) Whereas it is necessary to define the concept of an exceptional and temporary excess over the reference value as referred to in Article ►M1 104 ◄ (2) (a); whereas the Council should in this context, *inter alia*, take account of the pluriannual budgetary forecasts provided by the Commission;

(11) Whereas a Commission report in accordance with Article ►M1 104 ◄ (3) is also to take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State;

(12) Whereas there is a need to establish deadlines for the implementation of the excessive deficit procedure in order to ensure its expeditious and effective implementation; whereas it is necessary in this context to take account of the fact that the budgetary year of the United Kingdom does not coincide with the calendar year;

(13) Whereas there is a need to specify how the sanctions provided for in Article ►M1 104 ◄ could be imposed in order to ensure the effective implementation of the excessive deficit procedure;

(14) Whereas reinforced surveillance under the Council Regulation (EC) No 1466/97 together with the Commission's monitoring of budgetary positions in accordance with paragraph 2 of Article ►M1 104 ◄ should facilitate the effective and rapid implementation of the excessive deficit procedure;

(15) Whereas in the light of the above, in the event that a participating Member State fails to take effective action to correct an excessive deficit, an overall maximum period of ten months from the reporting date of the figures indicating the existence of an excessive deficit until the decision to impose sanctions, if necessary, seems both feasible and appropriate in order to exert pressure on the participating Member State concerned to take such action; in this event, and if the procedure starts in March, this would lead to sanctions being imposed within the calendar year in which the procedure had been started;

(16) Whereas the Council recommendation for the correction of an excessive deficit or the later steps of the excessive deficit procedure, should have been anticipated by the Member State concerned, which would have had an early warning; whereas the seriousness of an excessive deficit in stage three should call for urgent action from all those involved;

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(17) Whereas it is appropriate to hold the excessive deficit procedure in abeyance if the Member State concerned takes appropriate action in response to a recommendation under Article ►M1 104 ◄ (7) or a notice issued under Article ►M1 104 ◄ (9) in order to provide an incentive to Member States to act accordingly; whereas the time period during which the procedure would be held in abeyance should not be included in the maximum period of ten months between the reporting date indicating the existence of an excessive deficit and the imposition of sanctions; whereas it is appropriate to resume the procedure immediately if the envisaged action is not being implemented or if the implemented action is proving to be inadequate;

(18) Whereas, in order to ensure that the excessive deficit procedure has a sufficient deterrent effect, a non-interest-bearing deposit of an appropriate size should be required from the participating Member State concerned, whenever the Council decides to impose a sanction;

(19) Whereas the definition of sanctions on a prescribed scale is conducive to legal certainty; whereas it is appropriate to relate the amount of the deposit to the GDP of the participating Member State concerned;

(20) Whereas, whenever the imposition of a non-interest-bearing deposit does not induce the participating Member State concerned to correct its excessive deficit in due time, it is appropriate to intensify the sanctions; whereas it is then appropriate to transform the deposit into a fine;

(21) Whereas appropriate action by the participating Member State concerned in order to correct its excessive deficit is the first step towards abrogation of sanctions; whereas significant progress in correcting the excessive deficit should allow for the lifting of sanctions in accordance with paragraph 12 of Article ►M1 104 ◄; whereas the abrogation of all outstanding sanctions should only occur once the excessive deficit has been totally corrected;

(22) Whereas 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 ([1]) contains detailed rules for the reporting of budgetary data by Member States;

(23) Whereas, according to Article ►M1 117 ◄ (8), where the Treaty provides for a consultative role for the European Central Bank (ECB), references to the ECB shall be read as referring to the European Monetary Institute before the establishment of the ECB,

HAS ADOPTED THIS REGULATION:

SECTION 1

DEFINITIONS AND ASSESSMENTS

Article 1

1. This Regulation sets out the provisions to speed up and clarify the excessive deficit procedure, having as its objective to deter excessive general government deficits and, if they occur, to further their prompt correction.

2. For the purpose of this Regulation 'participating Member States' shall mean those Member States which adopt the single currency in accordance with the Treaty and 'non-participating Member States' shall mean those which have not adopted the single currency.

([1]) OJ No L 332, 31. 12. 1993, p. 7.

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Article 2

1. The excess of a government deficit over the reference value shall be considered exceptional and temporary, in accordance with Article ►**M1** 104 ◄ (2) (a), second indent, when resulting from an unusual event outside the control of the Member State concerned and which has a major impact on the financial position of the general government, or when resulting from a severe economic downturn.

In addition, the excess over the reference value shall be considered temporary if budgetary forecasts as provided by the Commission indicate that the deficit will fall below the reference value following the end of the unusual event or the severe economic downturn.

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2. The Commission and the Council, when assessing and deciding upon the existence of an excessive deficit in accordance with Article 104(3) to (6) of the Treaty, may consider an excess over the reference value resulting from a severe economic downturn as exceptional in the sense of the second indent of Article 104(2)(a) if the excess over the reference value results from a negative annual GDP volume growth rate or from an accumulated loss of output during a protracted period of very low annual GDP volume growth relative to its potential.

3. The Commission, when preparing a report under Article 104(3) of the Treaty shall take into account all relevant factors as indicated in that Article. The report shall appropriately reflect developments in the medium-term economic position (in particular potential growth, prevailing cyclical conditions, the implementation of policies in the context of the Lisbon agenda and policies to foster research and development and innovation) and developments in the medium-term budgetary position (in particular, fiscal consolidation efforts in 'good times', debt sustainability, public investment and the overall quality of public finances). Furthermore, the Commission shall give due consideration to any other factors which, in the opinion of the Member State concerned, are relevant in order to comprehensively assess in qualitative terms the excess over the reference value and which the Member State has put forward to the Commission and to the Council. In that context, special consideration shall be given to budgetary efforts towards increasing or maintaining at a high level financial contributions to fostering international solidarity and to achieving European policy goals, notably the unification of Europe if it has a detrimental effect on the growth and fiscal burden of a Member State. A balanced overall assessment shall encompass all these factors.

4. If the double condition of the overarching principle — that, before the relevant factors mentioned in paragraph 3 are taken into account, the general government deficit remains close to the reference value and its excess over the reference value is temporary — is fully met, these factors shall also be taken into account in the steps leading to the decision on the existence of an excessive deficit, foreseen in paragraphs 4, 5 and 6 of Article 104 of the Treaty. The balanced overall assessment to be made by the Council shall encompass all these factors.

5. The Commission and the Council, in all budgetary assessments in the framework of the excessive deficit procedure, shall give due consideration to the implementation of pension reforms introducing a multi-pillar system that includes a mandatory, fully funded pillar.

6. If the Council has decided, on the basis of Article 104(6) of the Treaty, that an excessive deficit exists in a Member State, the Commission and the Council shall take into account the relevant factors mentioned in paragraph 3 also in the subsequent procedural steps of Article 104, including as specified in Articles 3(5) and 5(2) of this Regulation. However those relevant factors shall not be taken into account for the decision of the Council under Article 104(12) of the Treaty on the abrogation of some or all of its decisions under paragraphs 6 to 9 and 11 of Article 104.

7. In the case of Member States where the deficit exceeds the reference value, while remaining close to it, and where this excess reflects the implementation of a pension reform introducing a multi-pillar system

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that includes a mandatory, fully funded pillar, the Commission and the Council shall also consider the cost of the reform to the publicly managed pillar when assessing developments in EDP deficit figures. For that purpose, consideration shall be given to the net cost of the reform on a linear degressive basis for a transitory period of five years. This net cost shall be taken into account also for the decision of the Council under Article 104(12) of the Treaty on the abrogation of some or all of its decisions under paragraphs 6 to 9 and 11 of Article 104, if the deficit has declined substantially and continuously and has reached a level that comes close to the reference value.

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SECTION 2

SPEEDING UP THE EXCESSIVE DEFICIT PROCEDURE

Article 3

1. Within two weeks of the adoption by the Commission of a report issued in accordance with Article ►M1 104 ◄ (3), the Economic and Financial Committee shall formulate an opinion in accordance with Article ►M1 104 ◄ (4).

2. Taking fully into account the opinion referred to in paragraph 1, the Commission, if it considers that an excessive deficit exists, shall address an opinion and a recommendation to the Council in accordance with Article ►M1 104 ◄ (5) and (6).

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3. The Council shall decide on the existence of an excessive deficit in accordance with Article 104(6) of the Treaty, as a rule within four months of the reporting dates established in Article 4(2) and (3) of Regulation (EC) No 3605/93. When it decides that an excessive deficit exists, the Council shall at the same time make recommendations to the Member State concerned in accordance with Article 104(7) of the Treaty.

4. The Council recommendation made in accordance with Article 104(7) of the Treaty shall establish a deadline of six months at most for effective action to be taken by the Member State concerned. The Council recommendation shall also establish a deadline for the correction of the excessive deficit, which should be completed in the year following its identification unless there are special circumstances. In the recommendation, the Council shall request that the Member State achieves a minimum annual improvement of at least 0,5 % of GDP as a benchmark, in its cyclically adjusted balance net of one-off and temporary measures, in order to ensure the correction of the excessive deficit within the deadline set in the recommendation.

5. If effective action has been taken in compliance with a recommendation under Article 104(7) and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that recommendation, the Council may decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 104(7). The revised recommendation, taking into account the relevant factors mentioned in Article 2(3) of this Regulation, may notably extend the deadline for the correction of the excessive deficit by one year. The Council shall assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its recommendation.

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Article 4

1. Any Council decision to make public its recommendations, where it is established that no effective action has been taken in accordance with Article ►M1 104 ◄ (8), shall be taken immediately after the expiry of the deadline set in accordance with Article 3 (4) of this Regulation.

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2. The Council, when considering whether effective action has been taken in response to its recommendations made in accordance with Article ►M1 104 ◄ (7), shall base its decision on publicly announced decisions by the Government of the Member State concerned.

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Article 5

1. Any Council decision to give notice to the participating Member State concerned to take measures for the deficit reduction in accordance with Article 104(9) of the Treaty shall be taken within two months of the Council decision establishing that no effective action has been taken in accordance with Article 104(8). In the notice, the Council shall request that the Member State achieves a minimum annual improvement of at least 0,5 % of GDP as a benchmark, in its cyclically adjusted balance net of one-off and temporary measures, in order to ensure the correction of the excessive deficit within the deadline set in the notice.

2. If effective action has been taken in compliance with a notice under Article 104(9) of the Treaty and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that notice, the Council may decide, on a recommendation from the Commission, to adopt a revised notice under Article 104(9) of the Treaty. The revised notice, taking into account the relevant factors mentioned in Article 2(3) of this Regulation, may notably extend the deadline for the correction of the excessive deficit by one year. The Council shall assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its notice.

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Article 6

Where the conditions to apply Article ►M1 104 ◄ (11) are met, the Council shall impose sanctions in accordance with Article ►M1 104 ◄ (11). Any such decision shall be taken no later than ►M1 four months ◄ after the Council decision giving notice to the participating Member State concerned to take measures in accordance with Article ►M1 104 ◄ (9).

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Article 7

If a participating Member State fails to act in compliance with the successive decisions of the Council in accordance with Article 104(7) and (9) of the Treaty, the decision of the Council to impose sanctions, in accordance with Article 104(11), shall be taken as a rule within sixteen months of the reporting dates established in Article 4(2) and (3) of Regulation (EC) No 3605/93. In case Article 3(5) or 5(2) of this Regulation is applied, the sixteen-month deadline is amended accordingly. An expedited procedure shall be used in the case of a deliberately planned deficit which the Council decides is excessive.

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Article 8

Any Council decision to intensify sanctions, in accordance with Article ►M1 104 ◄ (11), other than the conversion of deposits into fines under Article 14 of this Regulation, shall be taken no later than two months after the reporting dates pursuant to Regulation (EC) No 3605/93. Any Council decision to abrogate some or all of its decisions in accordance with Article ►M1 104 ◄ (12) shall be taken as soon as possible and in any case no later than two months after the reporting dates pursuant to Regulation (EC) No 3605/93.

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SECTION 3

ABEYANCE AND MONITORING

Article 9

1. The excessive deficit procedure shall be held in abeyance:

— if the Member State concerned acts in compliance with recommendations made in accordance with Article ►M1 104 ◄ (7),

— if the participating Member State concerned acts in compliance with notices given in accordance with Article ►M1 104 ◄ (9).

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2. The period during which the procedure is held in abeyance shall be included neither in the period referred to in Article 6 nor in the period referred to in Article 7 of this Regulation.

3. Following the expiry of the period referred to in the first sentence of Article 3(4) and following the expiry of the period referred to in the second sentence of Article 6 of this Regulation, the Commission shall inform the Council if it considers that the measures taken seem sufficient to ensure adequate progress towards the correction of the excessive deficit within the time limits set by the Council, provided that they are fully implemented and that economic developments are in line with forecasts. The Commission statement shall be made public.

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Article 10

1. The Commission and the Council shall monitor the implementation of action taken:

— by the Member State concerned in response to recommendations made under Article ►M1 104 ◄ (7),

— by the participating Member State concerned in response to notices given under Article ►M1 104 ◄ (9).

2. If action by a participating Member State is not being implemented or, in the Council's view, is proving to be inadequate, the Council shall immediately take a decision under Article ►M1 104 ◄ (9) or Article ►M1 104 ◄ (11) respectively.

3. If actual data pursuant to Regulation (EC) No 3605/93 indicate that an excessive deficit has not been corrected by a participating Member State within the time limits specified either in recommendations issued under Article ►M1 104 ◄ (7) or notices issued under Article ►M1 104 ◄ (9), the Council shall immediately take a decision under Article ►M1 104 ◄ (9) or Article ►M1 104 ◄ (11) respectively.

SECTION 4

SANCTIONS

Article 11

Whenever the Council decides to apply sanctions to a participating Member State in accordance with Article ►M1 104 ◄ (11), a non-interest-bearing deposit shall, as a rule, be required. The Council may decide to supplement this deposit by the measures provided for in the first and second indents of Article ►M1 104 ◄ (11).

Article 12

1. When the excessive deficit results from non-compliance with the criterion relating to the government deficit ration in Article ►M1 104 ◄ (2) (a), the amount of the first deposit shall comprise a fixed component equal to 0,2 % of GDP, and a variable component equal to one tenth of the difference between the deficit as a percentage of GDP in the preceding year and the reference value of 3 % of GDP.

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2. Each following year, until the decision on the existence of an excessive deficit is abrogated, the Council shall assess whether the participating Member State concerned has taken effective action in response to the Council notice in accordance with Article ►M1 104 ◄ (9). In this annual assessment the Council shall decide, in accordance with Article ►M1 104 ◄ (11), and without prejudice to Article 13 of this Regulation, to intensify the sanctions, unless the participating Member State concerned has complied with the Council notice. If an additional deposit is decided, it shall be equal to one tenth of the difference between the deficit as a percentage of GDP in the preceding year and the reference value of 3 % of GDP.

3. Any single deposit referred to in paragraphs 1 and 2 shall not exceed the upper limit of 0,5 % of GDP.

Article 13

A deposit shall, as a rule, be converted by the Council, in accordance with Article ►M1 104 ◄ (11), into a fine if two years after the decision to require the participating Member State concerned to make a deposit, the excessive deficit has in the view of the Council not been corrected.

Article 14

1. In accordance with Article ►M1 104 ◄ (12), the Council shall abrogate the sanctions referred to in the first and second indents of Article ►M1 104 ◄ (11) depending on the significance of the progress made by the participating Member State concerned in correcting the excessive deficit.

Article 15

In accordance with Article ►M1 104 ◄ (12), the Council shall abrogate all outstanding sanctions if the decision on the existence of an excessive deficit is abrogated. Fines imposed in accordance with Article 13 of this Regulation will not be reimbursed to the participating Member State concerned.

Article 16

Deposits referred to in Articles 11 and 12 of this Regulation shall be lodged with the Commission. Interest on the deposits, and the fines referred to in Article 13 of this Regulation constitute other revenue referred to in Article ►M1 269 ◄ of the Treaty and shall be distributed among participating Member States without a deficit that is excessive as determined in accordance with Article ►M1 104 ◄ (6) in proportion to their share in the total GNP of the eligible Member States.

SECTION 5

TRANSITIONAL AND FINAL PROVISIONS

Article 17

For the purpose of this Regulation and for as long as the United Kingdom has a budgetary year which is not a calendar year, the provisions of sections 2, 3 and 4 of this Regulation shall be applied to the United Kingdom in accordance with the Annex.

Article 18

This Regulation shall enter into force on 1 January 1999.

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

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ANNEX

TIME LIMITS APPLICABLE TO THE UNITED KINGDOM

1. In order to ensure equal treatment of all Member States, the Council, when taking decisions in Sections 2, 3 and 4 of this Regulation, shall have regard to the different budgetary year of the United Kingdom, with a view to taking decisions with regard to the United Kingdom at a point in its budgetary year similar to that at which decisions have been or will be taken in the case of other Member States.
2. The provisions specified in Column I shall be substituted by the provisions specified in Column II.

Column I	Column II
‘as a rule, within four months of the reporting dates established in Article 4 (2) and (3) of Council Regulation (EC) No 3605/93’ (Article 3(3))	‘as a rule, within six months after the end of the budgetary year in which the deficit occurred’
‘the year following its identification’ (Article 3(4))	‘the budgetary year following its identification’
‘as a rule, within sixteen months of reporting dates established in Article 4 (2) and (3) of Regulation (EC) No 3605/93’ (Article 7)	‘as a rule, within eighteen months from the end of the budgetary year in which the deficit occurred’
‘the preceding year’ (Article 12(1))	‘the preceding budgetary year’