



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	Working Party on Structural Measures
to:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability

Delegations will find attached the draft Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability as resulting from the Working Party on Structural Measures on 21 October 2011.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 1083/2006 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 177 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure

¹ OJ L , , p. .

² OJ L , , p. .

Whereas:

- (1) The unprecedented global financial crisis and economic downturn have seriously damaged economic growth and financial stability and provoked a strong deterioration in financial and economic conditions in several Member States. In particular, certain Member States experience serious difficulties or are threatened with such difficulties, notably with problems in their economic growth and financial stability and with a deterioration in their deficit and debt position, also due to the international economic and financial environment.
- (2) Whilst important actions to counterbalance the negative effects of the crisis have already been taken, including amendments of the legislative framework, the impact of the financial crisis on the real economy, the labour market and citizens is being widely felt. Pressure on national financial resources is increasing and further steps should be taken to alleviate that pressure through the maximum and optimal use of the funding from the Structural Funds and the Cohesion Fund.
- (3) Based on Article 122(2) of the Treaty on the Functioning of the European Union (TFEU) providing the possibility of granting Union financial assistance to a Member State in difficulties or seriously threatened with severe difficulties caused by exceptional occurrences beyond its control, Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism³ has established such a mechanism with a view to preserving the financial stability of the Union.
- (4) By Council Implementing Decisions 2011/77/EU of 7 December 2010⁴ and 2011/344/EU of 30 May 2011⁵ Ireland and Portugal were granted such financial assistance.

³ OJ L 118, 12.5.2010, p. 1.

⁴ OJ L 30, 4.2.2011, p. 34.

⁵ OJ L 159, 17.6.2011, p. 88.

- (5) Greece was experiencing serious difficulties with respect to its financial stability already before the entry into force of Regulation (EU) No 407/2010. Therefore financial assistance to Greece could not be based on that Regulation.
- (6) The Intercreditor Agreement and the Loan Facility Agreement concluded for Greece on 8 May 2010 entered into force on 11 May 2010. It foresees that the Intercreditor Agreement shall remain in full force and effect for a three-year programme period as long as there are any amounts outstanding under the Loan Facility Agreement.
- (7) Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments⁶ has established an instrument providing that the Council will grant mutual assistance where a Member State which has not adopted the euro is in difficulties or is seriously threatened with difficulties as regards its balance of payments.
- (8) By Council Decisions 2009/102/EC of 4 November 2008⁷, 2009/290/EC of 20 January 2009⁸ and 2009/459/EC of 6 May 2009⁹ Hungary, Latvia and Romania were granted such financial assistance.
- (9) The period during which the assistance is available to Ireland, Hungary, Latvia, Portugal and Romania is set out in the respective Council Decisions. The period during which assistance was made available to Hungary expired on 4 November 2010.

⁶ OJ L 53, 23.2.2002, p. 1.

⁷ OJ L 37, 6.2.2009, p. 5.

⁸ OJ L 79, 25.3.2009, p. 39.

⁹ OJ L 150, 13.6.2009, p. 8.

- (10) The period during which the assistance under the Inter-creditor Agreement together with the Euro Area Loan Facility Act is available to Greece is different as far as each Member State participating in these instruments is concerned. For the purposes of this Regulation it is necessary that any Member State making a request for benefiting from the derogation under this Regulation clearly specifies in its request the starting date, from which it considers justified that the derogation applies to that Member State in accordance with this Regulation.
- (11) On 11 July 2011, finance ministers of the 17 euro-area Member States signed the Treaty establishing the European Stability Mechanism (ESM). The Treaty follows the European Council decision of 25 March 2011. It is foreseen that by 2013, the ESM will assume the tasks currently fulfilled by the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM). This future mechanism should therefore already be taken into account by this Regulation.
- (12) The European Council conclusions of 23 and 24 June 2011 welcome the Commission's intention to enhance the synergies between the loan programme for Greece and the Union funds, supporting efforts to increase Greece's capacity to absorb Union funds in order to stimulate growth and employment by refocusing on improving competitiveness and employment creation. Moreover, the conclusions welcome and support the preparation by the Commission, together with the Member States, of a comprehensive programme of technical assistance to Greece. This Regulation contributes to these synergy efforts.

- (13) In order to facilitate the management of Union funding, to help accelerate investments in Member States and regions and to improve the availability of funding to implement the cohesion policy it is necessary to allow, in justified cases, temporarily and without prejudice to the 2014-2020 programming period, the increase of interim payments from the Structural Funds as well as from the Cohesion Fund by an amount corresponding to ten percentage points above the actual co-financing rate for each priority axis for Member States which are facing serious difficulties with respect to their financial stability and have requested to benefit from this measure. As a result, the required national counterpart will be reduced accordingly. Due to the temporary nature of the increase and in order to maintain the original co-financing rates as the reference point for calculation of the temporarily increased amounts, the changes resulting from application of the mechanism will not be reflected in the financial plan included in the operational programme. However, operational programmes may need to be updated in order to concentrate the funds on competitiveness, growth and employment and in order to align their targets and objectives with the decrease of total funding available.
- (13a) The Member State requesting to benefit from the derogation under this Regulation, in its request addressed to the Commission, should submit all the information necessary to establish the unavailability of resources for the national counterpart through data on its macroeconomic and fiscal situation; that an increase of payments from the derogation is necessary to safeguard the continuation of the implementation of operational programmes; that the absorption capacity problem persist even if the maximum ceilings applicable to co-financing rates of Annex III are used as well as the reference to the relevant Council Decision or other legal act making the Member State eligible for benefiting from the derogation. It is necessary that the Commission verifies the correctness of the submitted information, therefore, the Commission should have 30 days from the submission of the Member State request to raise any objection in case if any incorrectness is found in the Member State's request. In order to make the derogation effective and operational, it is also necessary to include a presumption that if the Commission does not raise any objection then the Member State request should be considered as justified. However, the Commission should be empowered, by way of implementing acts, to adopt a decision on any objection to the Member State request, in which case, the Commission should give the reasons.

- (14) The rules on calculation of interim payments and the payment of the final balance for operational programmes during the period in which the Member States receive the financial assistance for addressing serious difficulties with respect to their financial stability should be revised accordingly.
- (14a) It is necessary to ensure that there is appropriate reporting on the use of the increased amounts made available to the Member States benefiting from the temporary increase in interim payments under this Regulation.
- (15) After the end of the period during which financial assistance has been made available, evaluations carried out in accordance with Article 48(3) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999¹⁰ might need to inter alia assess whether the reduction of the national co-funding does not lead to a significant departure from the goals initially set. Such evaluation might lead to the revision of the operational programme.
- (16) As the unprecedented crisis affecting international financial markets and the economic downturn which have seriously damaged the financial stability of several Member States necessitates a rapid response in order to counter the effects on the economy as a whole, this Regulation should enter into force as soon as possible and taking into account the exceptional circumstances of the concerned Member States should apply retroactively starting either from the budgetary year of 2010 or from the starting day when the financial assistance was made available depending on the requesting Member State status, for the periods during which the Member States received financial assistance from the Union or from other euro-area Member States in order to address serious difficulties with respect to their financial stability.

¹⁰ OJ L 210, 31.7.2006, p. 25.

- (17) This envisaged temporary increase in interim payments should also be considered in the context of the budgetary restraints facing all Member States, which should be reflected appropriately in the EU budget. In addition, since the main purpose of the mechanism is to address specific current difficulties, its application should be limited in time. Therefore application of the mechanism should start on 1 January 2010 and its duration should be limited until the end of 31 December 2013.
- (18) Regulation (EC) No 1083/2006 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Article 77 of Regulation (EC) No 1083/2006 is replaced by the the following:

"Article 77

Common rules for calculating interim payments and payments of the final balance

1. Interim payments and payments of the final balance shall be calculated by applying the co-financing rate laid down in the decision on the operational programme concerned for each priority axis to the eligible expenditure indicated under that priority axis in each statement of expenditure certified by the certifying authority.
2. By way of derogation from Article 53 (2) and the second sentence of Article 53(4) and from the ceilings set out in Annex III, interim payments and the payment of the final balance shall be increased by an amount corresponding to ten percentage points above the co-financing rate applicable to each priority axis, but not exceeding one hundred percent, to be applied to the amount of eligible expenditure newly declared in each certified statement of expenditure submitted during the period in which a Member State meets one of the following conditions:
 - (a) financial assistance is made available to it under Council Regulation (EC) No 407/2010 establishing a European financial stabilisation mechanism^{*} or, financial assistance is made available by other euro-area Member States before the entry into force of that Regulation;
 - (b) medium-term financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002^{**};

^{*} OJ L 118, 12.5.2010, p.1.

^{**} OJ L 53, 23.2.2002, p. 1

- (c) financial assistance is made available to it in accordance with the Treaty establishing the European Stability Mechanism following its entry into force.
- 3. The derogation, referred to in paragraph 2, shall be granted upon the written request of a Member State meeting one of the conditions mentioned in paragraph 2 (a) - (c) above. The request shall be submitted within two months of the entry into force of this regulation or within two months from the date on which a Member State meets one of the conditions mentioned in paragraph 2 (a) - (c) above.
- 4. In its request submitted to the Commission, the Member State shall justify the necessity of the derogation, referred to in paragraph 2, by providing information necessary to establish:
 - (a) the unavailability of resources for the national counterpart through data on its macroeconomic and fiscal situation; and that an increase of payments referred to in paragraph 2 is necessary to safeguard the continuation of the implementation of operational programmes,
 - (b) that the problems persist even if the maximum ceilings applicable to co-financing rates of Annex III are used.
 - (c) reference to a Council Decision or other legal act, which justifies that the Member State falls under any of the points (a) - (c) of paragraph 2 as well as the concrete starting date from which the financial assistance was made available to the Member State.

The submitted information shall be verified and examined from a justification point of view by the Commission., The Commission shall have 30 days from the day of submission of the request to raise any objection against the correctness of the submitted information. If the Commission does not raise any objection, the Member State request for the derogation, referred to in paragraph 2, shall be considered as justified. However, if the Commission decides to object to the Member State's request, the Commission shall adopt a decision, by means of an implementing act, on this and shall give the reasons.

5. The Member State request shall also detail the intended use of the derogation, referred to in paragraph 2, and give information about complementary measures foreseen in order to concentrate the funds on competitiveness, growth and employment, including, where appropriate, a modification of the operational programmes.
6. The derogation referred to in paragraph 2 shall cease to be valid for statements of expenditure submitted after 31 December 2013.
7. For the purpose of calculating interim payments and the payment of the final balance after the Member State ceases to benefit from the financial assistance referred to in paragraph 2, the Commission shall not take into account the increased amounts paid in accordance with that paragraph.

However, these amounts shall be taken into account for the purpose of Article 79(1).

8. The increased interim payments resulting from the application of Art. 77(2) shall within the shortest period of time be made available to the managing authority and shall only be used for making payments in implementation of the operational programme.
9. In the context of the strategic reporting in accordance with Article 29(1), the Member States shall provide the Commission with appropriate information on the use of the derogation referred to in paragraph 2 showing how the increased amount of support has contributed to promote competitiveness, growth and jobs in the Member State concerned. This information shall be taken into account by the Commission in the preparation of the strategic reporting provided for by Article 30(1).
10. Notwithstanding paragraph 2, the Union contribution through interim payments and payments of the final balance shall not be higher than the public contribution and the maximum amount of assistance from the Funds for each priority axis as laid down in the decision of the Commission approving the operational programme.

11. Paragraphs 2-9 shall not apply to operational programmes under the European territorial cooperation objective."

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

However, it shall apply retroactively to the following Member States: in case of Ireland, Greece and Portugal with effect from the day when the financial assistance was made available to these Member States under Article 77(2), and in case of Hungary, Latvia and Romania from 1 January 2010.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President