



Council of the European Union
General Secretariat

Brussels, 30 August 2023

Interinstitutional files:
2023/0137 (CNS)

WK 10762/2023 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party of Financial Counsellors
Subject:	EGR - Technical suggestions from the Presidency related to various articles of the regulation on speeding up and clarifying the implementation of the excessive deficit procedure

On behalf of the Presidency and in preparation for the meeting of 1 September 2023, please find enclosed technical suggestions related to various articles from the proposal amending the regulation 1067/97 on speeding up and clarifying the implementation of the excessive deficit procedure (the corrective arm of the Stability and Growth Pact)

This document includes some technical draft suggestions to be considered by delegates in order to steer the debate in the Financial Counsellors Working Party. Due to the multiple cross-references in the proposal, these suggestions may imply changes in other articles or recitals, which could be amended in due time. As a rule, deletion or addition of provisions will not result in a change in the numeration of previous or subsequent articles in the drafts presented to the working party.

In the interest of clarity, drafting suggestions have been made in red on the basis of the consolidated text, in bold, that would result from the Commission Proposal.

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

To be discussed in FiCo on 1 September

	Block	Articles
1 September <i>Council Regulation on speeding up and clarifying the implementation of the excessive deficit procedure.</i>	Definitions and Assessment	1; 2(6); 2(7)
	Economic Dialogue	2a;
	Procedure for establishing an excessive deficit	3(1); 3(2); 3(3)
	Decision on effective action	4; 6; 7
	Abeyance and Monitoring	9; 10; 10a(1); 10a(3)-(5)
	Sanctions	11; 12; 14; 15; 16
	Transitional and Final Provisions	17; 17a; 17b; 18; Annex

SECTION 1 – DEFINITIONS AND ASSESSMENTS

Article 1

1. This Regulation lays down the provisions for speeding up and clarifying the **implementation of the** excessive deficit procedure. The objective of the excessive deficit procedure is to deter excessive government deficits and, if they occur, to further prompt their correction, where compliance with the budgetary discipline is examined on the basis of the government deficit and government debt criteria.
2. For the purposes of this Regulation, **the following definitions apply:**
 - (a) **‘participating Member States’** ~~shall mean~~ those Member States whose currency is the euro;
 - (b) [...]
 - (c) **‘technical trajectory’** ~~means the net expenditure trajectory put forward by the Commission in accordance with~~ **as defined in Regulation (EU) [on the preventive arm];**
 - (d) **‘net expenditure path’** ~~means the multi-annual trajectory for net expenditure of a Member State as set by the Council in accordance with~~ **as defined in Regulation (EU) [on the preventive arm];**
 - (e) **‘control account’** ~~means a record of a Member State’s cumulated deviations of the actual net expenditure from the net expenditure path~~ **as defined in Regulation (EU) [on the preventive arm]**

Article 2

[...]

6. If the Council, acting under Article 126(6) TFEU, decides that an excessive deficit exists in a Member State, the Council and the Commission shall, in the subsequent procedural steps of that Article of the TFEU, take into account the relevant factors referred to in paragraph 3 of this Article, as they affect the situation of the Member State concerned, including as specified in ~~Article 3(5) and~~ Article 5(2) of this Regulation, in particular in establishing a deadline for the correction of the excessive deficit and eventually extending that deadline. However, those relevant factors shall not be taken into account for the decision of the Council under Article 126(12) TFEU on the abrogation of some or all of its decisions under ~~paragraphs 6 to 9 and 11 of~~ Article 126**(6) to (9) and (11)** TFEU

~~7. In the case of Member States where the excess of the deficit over the reference value reflects the implementation of a pension reform introducing a multi-pillar system that includes a mandatory, fully funded pillar, the Council and the Commission shall also consider the cost of the reform when assessing developments of deficit figures in excessive deficit procedures as long as the deficit does not significantly exceed a level that can be considered close to the reference value, and the debt ratio does not exceed the reference value, provided that overall fiscal~~

sustainability is maintained. The net cost shall be taken into account also for the decision of the Council under Article 126(12) TFEU on the abrogation of some or all of its decisions under paragraphs 6 to 9 and 11 of Article 126 TFEU, if the deficit has declined substantially and continuously and has reached a level that comes close to the reference value.

SECTION 1A – ECONOMIC DIALOGUE

Article 2a

1. In order to enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup, to appear before the committee to discuss Council decisions under Article 126(6) TFEU, Council recommendations under Article 126(7) TFEU, notices under Article 126(9) TFEU, or Council decisions under Article 126(11) TFEU.

The Council is, as a rule, expected to follow the recommendations and proposals of the Commission or explain its position publicly.

The competent committee of the European Parliament may offer the opportunity to the Member State concerned by such decisions, recommendations or notices to participate in an exchange of views.

2. The Council and the Commission shall regularly inform the European Parliament of the application of this Regulation.

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 126(3) TFEU, the Economic and Financial Committee shall formulate an opinion in accordance with Article 126(4) TFEU. The opinion of the Economic and Financial Committee shall be made public.
2. Taking fully into account the opinion referred to in paragraph 1 of this Article, the Commission, if it considers that an excessive deficit exists, shall address an opinion and a proposal to the Council in accordance with paragraphs 5 and 6 of Article 126(5) and (6) TFEU and shall inform the European Parliament thereof.
3. The Council shall decide on the existence of an excessive deficit in accordance with Article 126(6) TFEU, as a rule within four months of the reporting dates established in Article 3(2) and (3) of Regulation (EC) No 479/2009. 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 126(7) TFEU. The Council shall make its decisions and recommendations public.

[...]

Article 4

~~1. Any decision by the Council under Article 126(8) TFEU to make public its recommendations where it is established that no effective action has been taken, shall be taken immediately after the expiry of the deadline set in accordance with Article 3(4) of this Regulation.~~

1. The Council, when considering whether effective action has been taken in response to its recommendations made in accordance with Article 126(7) TFEU, shall base its decision on the report submitted by the Member State concerned in accordance with Article 3(4a~~5~~) of this Regulation and its implementation, as well as on any other publicly announced and sufficiently detailed decisions by the government of the Member State concerned.

Where the Council establishes, in accordance with Article 126(8) TFEU, that the Member State concerned has failed to take effective action, it shall report to the European Council accordingly.

2. Any decision by the Council under Article 126(8) TFEU to make public its recommendations where it is established that no effective action has been taken, shall be taken immediately after the expiry of the deadline set in accordance with Article 3(4) of this Regulation.

Article 6

1. The Council, when considering whether effective action has been taken in response to its notice made in accordance with Article 126(9) TFEU, shall base its decision on the report submitted by the Member State concerned in accordance with Article 5(1a) of this Regulation and its implementation, as well as on any other publicly announced and sufficiently detailed decisions by the government of the Member State concerned. The outcome of the surveillance mission carried out by the Commission in accordance with Article 10a of this Regulation shall be taken into account.

2. Where the conditions to apply Article 126(11) TFEU are met, the Council shall impose sanctions in accordance with that Article. Any such decision shall be taken no later than four months after the Council decision under Article 126(9) TFEU giving notice to the participating Member State concerned to take measures.

Article 7

If a participating Member State fails to act in compliance with the successive acts of the Council in accordance with Article 126(7) and (9) TFEU, the decision of the Council under Article 126(11) TFEU to impose sanctions shall be taken as a rule within 16 months

of the reporting dates established in Article 3(2) and (3) of Regulation (EC) No 479/2009. Where Article 3(5) or Article 5(2) of this Regulation is applied, the 16-month deadline shall be adjusted accordingly. An expedited procedure shall be used in the case of a deliberately planned deficit which the Council decides is excessive.

Article 9

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

(a) if **where** the Member State concerned acts in compliance with recommendations made in accordance with Article 126(7) **TFEU**,

(b) if **where** the participating Member State concerned acts in compliance with notices given in accordance with Article 126(9) **TFEU**.

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(2) 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.

Article 10

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

- by the Member State concerned in response to recommendations made under Article 126(7) **TFEU**;

- by the participating Member State concerned in response to notices given under Article 126(9) **TFEU**.

2. If **Where** 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 126(9) **TFEU** or Article 126(11) **TFEU** respectively.

3. If **Where** actual data pursuant to Regulation (EC) No 479/2009 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 126(7) **TFEU** or notices issued under Article 126(9) **TFEU**, the Council shall immediately take a decision under Article 126(9) **TFEU** or Article 126(11) **TFEU** respectively.

Article 10a

1. The Commission shall ensure a permanent dialogue with authorities of the Member States in accordance with the objectives of this Regulation. To that end, the Commission shall, in particular, carry out missions for the purpose of the assessment of the actual economic situation in the Member State and the identification of any risks or difficulties in complying with the objectives of this Regulation **and allow an exchange with other relevant stakeholders,** ~~including the national independent fiscal institutions.~~

2. [...]

3. The Commission may invite representatives of the European Central Bank, if appropriate, to participate in surveillance missions in a Member State whose currency is the euro or which is participating in the Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union (⁶) (ERM II).

4. The Commission shall report to the Council on the outcome of the mission referred to in paragraph 2 and may decide to make its findings public.

5. When organising surveillance missions referred to in paragraph 2, the Commission shall transmit its provisional findings to the Member States concerned for comments.

Article 11

Whenever the Council decides under Article 126(11) TFEU to impose sanctions on a participating Member State, a fine shall, as a rule, be required. The Council may decide to supplement such a fine by the other measures provided for in Article 126(11) TFEU.

Article 12

1. The amount of the fine shall ~~comprise a fixed component equal to 0,2% of GDP, and a variable component~~ **amount to up to 0,05% of the latest estimate of the previous year's GDP for a 6-month period and be paid every 6 months until the Council assesses that the Member State concerned has taken effective action in response** ~~The variable component shall amount to one tenth of the absolute value of the difference between the balance as a percentage of GDP in the preceding year and either the reference value for government balance or, if non-compliance with budgetary discipline includes the debt criterion, the government balance as a percentage of GDP that should have been achieved in the same year according to the notice issued under Article 126(9) TFEU.~~

2. In each-year **6-month period** following that in which a fine is imposed, 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 126(9) TFEU. In this **semi**-annual assessment the Council shall decide, in accordance with Article 126(11) TFEU, to intensify the sanctions, unless the participating Member State concerned has complied with the Council's notice. ~~If the Council decides to impose an additional fine, it shall be~~

~~calculated in the same way as for the variable component of the fine referred to in paragraph 1.~~

3. ~~No single~~ **The cumulated amount of the fines** referred to in paragraphs 1 and 2 shall **not** exceed 0,5 % of GDP.

Article 14

1. In accordance with Article 126(12) **TFEU**, the Council shall abrogate the sanctions referred to in ~~the first and second indents of Article 126(11),~~ **first and second indent, TFEU** 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 126(12) **TFEU**, 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 12 of this Regulation will not be reimbursed to the participating Member State concerned.

Article 16

The fines referred to in Article 12 shall constitute other revenue, as referred to in Article 311 TFEU, and shall be assigned to the EU budget. ~~European Financial Stability Facility. When the participating Member States create another stability mechanism to provide financial assistance in order to safeguard the stability of the euro area as a whole, the amount of those fines shall be assigned to that mechanism.~~

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 17a

1. By ~~14 December 2014~~ **31 December 2030** and every five years thereafter, the Commission shall **prepare** ~~publish~~ a report on the application of this Regulation, **accompanied, where appropriate, by a proposal to amend this Regulation. The Commission shall make that report public.**

2. The ~~That~~ report **referred to in paragraph 1** shall ~~evaluate~~ **review at least**, ~~inter alia:~~

- (a) the effectiveness of this Regulation, **including with regards to the prevention of excessive deficits as well as the avoidance of pro-cyclical fiscal policies;**

- (b) the progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU.

~~2. Where appropriate, the report referred to in paragraph 1 shall be accompanied by a proposal for amendments to this Regulation.~~

3. The report shall be forwarded to the European Parliament and to the Council.

Article 17b

The Council, on a recommendation from the Commission, shall adopt a revised recommendation under Article 126(7) TFEU or a revised notice under Article 126(9) TFEU to Member States subject to a recommendation under Article 126(7) TFEU or to a notice under Article 126(9) TFEU on [date of entry into force of amending Regulation], and that have taken effective action.

It shall adopt the revised recommendation or notice together with the adoption of the recommendation pursuant to Article 16 of Regulation (EU) [on the preventive arm] setting the net expenditure path.

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.