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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 479/2009

of 25 May 2009

on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community

(Codified version)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Central Bank ⁽²⁾,

Whereas:

(1) 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 ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality the said Regulation should be codified.

(2) The definitions of 'government', 'deficit' and 'investment' are laid down in the Protocol on the excessive deficit procedure by reference to the European System of Integrated Economic Accounts (ESA), replaced by the European system of national and regional accounts in the Community (adopted by Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system

of national and regional accounts in the Community and hereinafter referred to as 'ESA 95') ⁽⁵⁾. Precise definitions referring to the classification codes of ESA 95 are required. Those definitions may be subject to revision in the context of the necessary harmonisation of national statistics or for other reasons. Any revision of ESA will be decided by the Council in accordance with the rules on competence and procedure laid down in the Treaty.

(3) Under ESA 95, interest flows under swap contracts and forward rate agreements (FRAs) are to be classified in the financial account and require specific treatment for the data transmitted under the excessive deficit procedure.

(4) The definition of 'debt' laid down in the Protocol on the excessive deficit procedure needs to be amplified by a reference to the classification codes of ESA 95.

(5) In the case of financial derivatives, as defined in ESA 95, there is no nominal value identical to that for other debt instruments. Therefore, it is necessary that financial derivatives are not included with the liabilities making up government debt for the purposes of the Protocol on the excessive deficit procedure. For liabilities which are subject to agreements fixing the exchange rate, this rate should be taken into account in the conversion into national currency.

(6) ESA 95 provides a detailed definition of gross domestic product at current market prices, which is appropriate for the calculation of the ratios of government deficit to gross domestic product and of government debt to gross domestic product referred to in Article 104 of the Treaty.

⁽¹⁾ Opinion of 21 October 2008 (not yet published in the Official Journal).

⁽²⁾ OJ C 88, 9.4.2008, p. 1.

⁽³⁾ OJ L 332, 31.12.1993, p. 7.

⁽⁴⁾ See Annex I.

⁽⁵⁾ OJ L 310, 30.11.1996, p. 1.

- (7) Consolidated government interest expenditure is an important indicator for monitoring the budgetary situation in the Member States. Interest expenditure is intrinsically linked to government debt. Government debt to be reported to the Commission by the Member States has to be consolidated within the government sector. The levels of government debt and of interest expenditure should be made mutually consistent. The methodology of ESA 95 (point 1.58) recognises that, for certain kinds of analysis, consolidated aggregates are more significant than overall gross figures.
- (8) Pursuant to the terms of the Protocol on the excessive deficit procedure, the Commission is required to provide the statistical data to be used in that procedure.
- (9) The role of the Commission, as statistical authority, in that context is specifically exercised by Eurostat, on behalf of the Commission. As the Commission department responsible for carrying out the tasks devolving on the Commission as regards the production of Community statistics, Eurostat is required to execute its tasks in accordance with the principles of impartiality, reliability, relevance, cost-effectiveness, statistical confidentiality and transparency, as laid down in Commission Decision 97/281/EC of 21 April 1997 on the role of Eurostat as regards the production of Community statistics⁽¹⁾. The implementation by the national and Community statistical authorities of the Recommendation of the Commission of 25 May 2005 on the independence, integrity and accountability of the national and Community authorities should enhance the principle of professional independence, adequacy of resources and quality of statistical data.
- (10) Eurostat is responsible, on behalf of the Commission, for assessing the quality of the data and for providing the data to be used within the context of the excessive deficit procedure, in accordance with Commission Decision 97/281/EC.
- (11) A permanent dialogue should be established between the Commission and the Member States' statistical authorities in order to ensure the quality both of the data reported by Member States and of the underlying government sector accounts compiled in accordance with ESA 95.
- (12) Detailed rules are required to organise prompt and regular reporting by the Member States to the Commission (Eurostat) of their planned and actual deficits and of the levels of their debt.
- (13) Pursuant to Article 104c(2) and (3) of the Treaty, the Commission is to monitor the development of the

budgetary situation and of the stock of government debt in the Member States and to examine compliance with budgetary discipline on the basis of criteria relating to government deficit and government debt. If a Member State does not fulfil the requirements under one or both criteria, it is necessary for the Commission to take into account all relevant factors. The Commission has to examine whether there is a risk of an excessive deficit in a Member State,

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS

Article 1

1. For the purposes of the Protocol on the excessive deficit procedure and of this Regulation, the terms given in paragraphs 2 to 6 are defined according to the European system of national and regional accounts in the Community (hereinafter referred to as ESA 95), adopted by Regulation (EC) No 2223/96. The codes in brackets refer to ESA 95.

2. 'Government' means the sector of 'general government' (S.13), that is 'central government' (S.1311), 'state government' (S.1312), 'local government' (S.1313) and 'social security funds' (S.1314), to the exclusion of commercial operations, as defined in ESA 95.

The exclusion of commercial operations means that the sector of 'general government' (S.13) comprises only institutional units producing non-market services as their main activity.

3. 'Government deficit (surplus)' means the net borrowing (net lending) (EDP B.9) of the sector of 'general government' (S.13), as defined in ESA 95. The interest comprised in the government deficit is the interest (EDP D.41), as defined in ESA 95.

4. 'Government investment' means the gross fixed capital formation (P.51) of the sector of 'general government' (S.13), as defined in ESA 95.

5. 'Government debt' means the total gross debt at nominal value outstanding at the end of the year of the sector of 'general government' (S.13), with the exception of those liabilities the corresponding financial assets of which are held by the sector of 'general government' (S.13).

Government debt is constituted by the liabilities of general government in the following categories: currency and deposits (AF.2); securities other than shares, excluding financial derivatives (AF.33) and loans (AF.4), as defined in ESA 95.

⁽¹⁾ OJ L 112, 29.4.1997, p. 56.

The nominal value of a liability outstanding at the end of the year is the face value.

The nominal value of an index-linked liability corresponds to its face value adjusted by the index-related change in the value of the principal accrued to the end of the year.

Liabilities denominated in a foreign currency, or exchanged from one foreign currency through contractual agreements to one or more other foreign currencies shall be converted into the other foreign currencies at the rate agreed on in those contracts and shall be converted into the national currency on the basis of the representative market exchange rate prevailing on the last working day of each year.

Liabilities denominated in the national currency and exchanged through contractual agreements to a foreign currency shall be converted into the foreign currency at the rate agreed on in those contracts and shall be converted into the national currency on the basis of the representative market exchange rate prevailing on the last working day of each year.

Liabilities denominated in a foreign currency and exchanged through contractual agreements to the national currency shall be converted into the national currency at the rate agreed on in those contracts.

6. 'Gross domestic product' means gross domestic product at current market prices (GDP mp) (B.1*g), as defined in ESA 95.

Article 2

1. 'Planned government deficit and government debt level figures' means the figures established for the current year by the Member States. They shall be the most recent official forecasts, taking into account the most recent budgetary decisions and economic developments and prospects. They should be produced in as short a time as possible before the reporting deadline.

2. 'Actual government deficit and government debt level figures' means estimated, provisional, half-finalised or final results for a past year. The planned data together with the actual data shall form a consistent time series as far as the definitions and concepts are concerned.

CHAPTER II

RULES AND COVERAGE OF REPORTING

Article 3

1. Member States shall report to the Commission (Eurostat) their planned and actual government deficits and levels of government debt twice a year, the first time before 1 April of

the current year (year n) and the second time before 1 October of year n .

Member States shall inform the Commission (Eurostat) which national authorities are responsible for the excessive deficit procedure reporting.

2. Before 1 April of year n , Member States shall:

(a) report to the Commission (Eurostat) their planned government deficit for year n , an up-to-date estimate of their actual government deficit for year $n-1$ and their actual government deficits for years $n-2$, $n-3$ and $n-4$;

(b) simultaneously provide the Commission (Eurostat) with their planned data for year n and the actual data for years $n-1$, $n-2$, $n-3$ and $n-4$ of their corresponding public accounts budget deficits in accordance with the definition which is given most prominence nationally and with the figures which explain the transition between the public accounts budget deficit and their government deficit for the sub-sector S.1311;

(c) simultaneously provide the Commission (Eurostat) with their actual data for years $n-1$, $n-2$, $n-3$ and $n-4$ of their corresponding working balances and with the figures which explain the transition between the working balances of each government sub-sector and their government deficit for the sub-sectors S.1312, S.1313 and S.1314;

(d) report to the Commission (Eurostat) their planned level of government debt at the end of year n and their levels of actual government debt at the end of years $n-1$, $n-2$, $n-3$ and $n-4$;

(e) simultaneously provide the Commission (Eurostat), for years $n-1$, $n-2$, $n-3$ and $n-4$, with the figures which explain the contribution of the government deficit and other factors relevant to the variation in the level of their government debt by sub-sector.

3. Before 1 October of year n , Member States shall report to the Commission (Eurostat) their:

(a) updated planned government deficit for year n and their actual government deficits for years $n-1$, $n-2$, $n-3$ and $n-4$ and shall comply with the requirements of points (b) and (c) of paragraph 2;

(b) updated planned level of government debt at the end of year n and their levels of actual government debt at the end of years $n-1$, $n-2$, $n-3$ and $n-4$, and shall comply with the requirements of paragraph 2(e).

4. The figures for the planned government deficit reported to the Commission (Eurostat) in accordance with paragraphs 2 and 3 shall be expressed in national currency and in budget years.

The figures for actual government deficit and actual government debt level reported to the Commission (Eurostat) in accordance with paragraphs 2 and 3 shall be expressed in national currency and in calendar years, with the exception of the up-to-date estimates for year $n-1$, which may be expressed in budget years.

Where the budget year differs from the calendar year, Member States shall also report to the Commission (Eurostat) their figures for actual government deficit and actual government debt level in budget years for the two budget years preceding the current budget year.

Article 4

Member States shall, in accordance with the procedure laid down in Article 3(1), (2) and (3), provide the Commission (Eurostat) with the figures for their government investment expenditure and interest expenditure (consolidated).

Article 5

Member States shall provide the Commission (Eurostat) with a forecast of their gross domestic product for year n and the actual amount of their gross domestic product for years $n-1$, $n-2$, $n-3$ and $n-4$, under the same timing conditions as those indicated in Article 3(1).

Article 6

1. Member States shall inform the Commission (Eurostat), as soon as it becomes available, of any major revision in their actual and planned government deficit and debt figures already reported.

2. Major revisions in the actual deficit and debt figures already reported shall be properly documented. In any case, revisions which result in the reference values as specified in the Protocol on the excessive deficit procedure being exceeded, or revisions which mean that a Member State's data no longer exceed the reference values, shall be reported and properly documented.

Article 7

Member States shall make public the actual deficit and debt data and other data for past years reported to the Commission (Eurostat) in accordance with Articles 3 to 6.

CHAPTER III

QUALITY OF DATA

Article 8

1. The Commission (Eurostat) shall regularly assess the quality both of actual data reported by Member States and of the underlying government sector accounts compiled according to ESA 95 (hereinafter referred to as government accounts). Quality of actual data means compliance with accounting rules, completeness, reliability, timeliness, and consistency of the statistical data. The assessment will focus on areas specified in the inventories of Member States such as the delimitation of the government sector, the classification of government transactions and liabilities, and the time of recording.

2. Member States shall provide the Commission (Eurostat), as promptly as possible, with the relevant statistical information requested for the needs of the data quality assessment, without prejudice to the provisions relating to statistical confidentiality of Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics ⁽¹⁾.

'Statistical information' referred to in the first subparagraph shall be limited to the information strictly necessary to check the compliance to ESA rules. In particular, statistical information means:

- (a) data from national accounts;
- (b) inventories;
- (c) EDP notification tables;
- (d) additional questionnaires and clarification related to the notifications.

The format of the questionnaires shall be defined by the Commission (Eurostat) after consultation of the Committee on Monetary, Financial and Balance of Payments Statistics (hereinafter referred to as CMFB).

3. The Commission (Eurostat) shall report regularly to the European Parliament and to the Council on the quality of the actual data reported by Member States. The report shall address the overall assessment of the actual data reported by Member States as regards to the compliance with accounting rules, completeness, reliability, timeliness, and consistency of the data.

Article 9

1. Member States shall provide the Commission (Eurostat) with a detailed inventory of the methods, procedures and sources used to compile actual deficit and debt data and the underlying government accounts.

⁽¹⁾ OJ L 52, 22.2.1997, p. 1.

2. The inventories shall be prepared in accordance with guidelines adopted by the Commission (Eurostat) after consultation of CMFB.

3. The inventories shall be updated following revisions in the methods, procedures and sources adopted by Member States to compile their statistical data.

4. Member States shall make their inventories public.

5. The issues referred to in paragraphs 1, 2 and 3 may be addressed in the visits mentioned in Article 11.

Article 10

1. In the event of a doubt regarding the correct implementation of the ESA 95 accounting rules, the Member State concerned shall request clarification from the Commission (Eurostat). The Commission (Eurostat) shall promptly examine the issue and communicate its clarification to the Member State concerned and, when appropriate, to the CMFB.

2. For cases which are either complex or of general interest in the view of the Commission or the Member State concerned, the Commission (Eurostat) shall take a decision after consultation of the CMFB. The Commission (Eurostat) shall make decisions public, together with the opinion of the CMFB, without prejudice to the provisions relating to statistical confidentiality of Regulation (EC) No 322/97.

Article 11

1. The Commission (Eurostat) shall ensure a permanent dialogue with Member States' statistical authorities. To this end, the Commission (Eurostat) shall carry out in all Member States regular dialogue visits, as well as possible methodological visits.

2. The dialogue visits are designed to review reported data, to examine methodological issues, to discuss statistical processes and sources described in the inventories, and to assess compliance with the accounting rules. The dialogue visits shall be used to identify risks or potential problems about the quality of the reported data.

3. The methodological visits shall not go beyond the purely statistical domain. This shall be reflected in the composition of the delegations referred to in Article 12.

The methodological visits are designed to monitor the processes and the government accounts which justify the reported actual data and to draw detailed conclusions as to the quality of reported data, as defined in Article 8(1).

The methodological visits shall only be undertaken in cases where substantial risks or potential problems with the quality of the data are identified, especially as they relate to the methods, concepts and classification applied to the data, which Member States are obliged to report.

4. When organising dialogue and methodological visits, the Commission (Eurostat) shall transmit its provisional findings to the Member States concerned for comments.

Article 12

1. When carrying out methodological visits in Member States, the Commission (Eurostat) may request the assistance of national accounts experts, proposed by other Member States on a voluntary basis, and of officials from other Commission departments.

The list of national accounts experts from whom the Commission (Eurostat) may request assistance, shall be constituted on the basis of proposals sent to the Commission (Eurostat) by the national authorities responsible for the excessive deficit reporting.

2. Member States shall take all necessary measures to facilitate the methodological visits. Those visits should be confined to the national authorities involved in the excessive deficit procedure reporting. Member States shall, however, ensure that their services which are directly or indirectly involved in the production of government accounts and debt, and where necessary their national authorities which have a functional responsibility for the control of the public accounts, provide the Commission officials or other experts referred to in paragraph 1 with the assistance necessary to carry out their duties, including making documents available to justify the reported actual deficit and debt data and the underlying government accounts. Confidential records of the national statistical system shall only be provided to the Commission (Eurostat).

Without prejudice to the general obligation of the Member States to take all measures required to facilitate the methodological visits, the interlocutors of the Commission (Eurostat) for the methodological visits referred to in the first subparagraph are, in each Member State, the services responsible for the excessive deficit procedure reporting.

3. The Commission (Eurostat) shall ensure that officials and experts participating in these visits meet every guarantee as regards technical competence, professional independence and observance of confidentiality.

Article 13

The Commission (Eurostat) shall report to the Economic and Financial Committee on the findings of dialogue and methodological visits, including any comments on these findings made by the Member State concerned. Those reports, along with any comments made by the Member State concerned, after having been transmitted to the Economic and Financial Committee, shall be made public, without prejudice to the provisions concerning statistical confidentiality in Regulation (EC) No 322/97.

CHAPTER IV

PROVISION OF DATA BY THE COMMISSION**(EUROSTAT)***Article 14*

1. The Commission (Eurostat) shall provide the actual government deficit and debt data for the application of the Protocol on the excessive deficit procedure, within three weeks after the reporting deadlines referred to in Article 3(1) or after revisions as referred to in Article 6(1). That provision of data shall be effected through publication.

2. The Commission (Eurostat) shall not delay the provision of the actual government deficit and debt data of Member States where a Member State has not reported its own data.

Article 15

1. The Commission (Eurostat) may express a reservation on the quality of the actual data reported by the Member States. No later than three working days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the President of the Economic and Financial Committee the reservation it intends to express and make public. Where the issue is resolved after publication of the data and the reservation, withdrawal of the reservation shall be made public immediately thereafter.

2. The Commission (Eurostat) may amend actual data reported by Member States and provide the amended data and a justification of the amendment where there is evidence that actual data reported by Member States do not comply with the requirements of Article 8(1). No later than three working

days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the President of the Economic and Financial Committee the amended data and the justification for the amendment.

CHAPTER V

GENERAL PROVISIONS*Article 16*

1. Member States shall ensure that the actual data reported to the Commission (Eurostat) are provided in accordance with the principles established by Article 10 of Regulation (EC) No 322/97. In this regard, the responsibility of the national statistical authorities is to ensure the compliance of reported data with Article 1 of this Regulation and the underlying ESA 95 accounting rules.

2. Member States shall take all appropriate measures to ensure that officials responsible for the reporting of the actual data to the Commission (Eurostat) and of the underlying government accounts act in accordance with the principles established by Article 10 of Regulation (EC) No 322/97.

Article 17

In the event of a revision of ESA 95 or of an amendment to its methodology decided on by the European Parliament and the Council or the Commission in accordance with the rules of competence and procedure laid down in the Treaty and in Regulation (EC) No 2223/96, the Commission shall introduce the new references to ESA 95 into Articles 1 and 3 of this Regulation.

Article 18

Regulation (EC) No 3605/93 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and be read in accordance with the correlation table set out in Annex II.

Article 19

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 25 May 2009.

For the Council
The President
J. ŠEBESTA

ANNEX I

Repealed Regulation with list of its successive amendments

Council Regulation (EC) No 3605/93	(OJ L 332, 31.12.1993, p. 7).
Council Regulation (EC) No 475/2000	(OJ L 58, 3.3.2000, p. 1).
Commission Regulation (EC) No 351/2002	(OJ L 55, 26.2.2002, p. 23).
Council Regulation (EC) No 2103/2005	(OJ L 337, 22.12.2005, p. 1).

ANNEX II

CORRELATION TABLE

Regulation (EC) No 3605/93	This Regulation
Section 1	Chapter I
Article 1(1) to (5)	Article 1(1) to (5)
Article 2	Article 1(6)
Article 3	Article 2
Section 2	Chapter II
Article 4(1)	Article 3(1)
Article 4(2), first to fifth indents	Article 3(2), points (a) to (e)
Article 4(3), first and second indents	Article 3(3), points (a) and (b)
Article 4(4)	Article 3(4)
Article 5	Article 4
Article 6	Article 5
Article 7	Article 6
Article 8	Article 7
Section 2a	Chapter III
Article 8a(1)	Article 8(1)
Article 8a(2), first subparagraph	Article 8(2), first subparagraph
Article 8a(2), second subparagraph, first to fourth indents	Article 8(2), second subparagraph, points (a) to (d)
Article 8a(2), third subparagraph	Article 8(2), third subparagraph
Article 8a(3)	Article 8(3)
Article 8b	Article 9
Article 8c	Article 10
Article 8d, first paragraph, first and second sentences	Article 11(1)
Article 8d, first paragraph, third sentence	Article 11(3), third subparagraph
Article 8d, second paragraph, first and second sentences	Article 11(2)
Article 8d, second paragraph, third sentence	Article 11(3), second subparagraph
Article 8d, second paragraph, fourth and fifth sentences	Article 11(3), first subparagraph
Article 8d, third paragraph	Article 11(4)
Article 8e	Article 12
Article 8f	Article 13
Section 2b	Chapter IV
Article 8g	Article 14
Article 8h	Article 15
Section 2c	Chapter V

Regulation (EC) No 3605/93	This Regulation
Article 8i	Article 16
Article 8j	Article 17
—	Article 18
—	Article 19
—	Annex I
—	Annex II