Council Regulation (EC) No 431/2009 of 18 May 2009 amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments

COUNCIL REGULATION (EC) No 431/2009

of 18 May 2009

amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission, submitted following consultation with the Economic and Financial Committee,

Having regard to the opinion of the European Parliament[(1)],

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

Whereas:

(1) The scope and intensity of the international financial crisis affects the potential demand for Community medium-term financial assistance in the Member States outside the euro area and calls for a significant raising of the ceiling for the outstanding amount of loans to be granted to Member States laid down in Council Regulation (EC) No 332/2002[(3)] from EUR 25 billion to EUR 50 billion.

(2) In the light of recent experience gained in the functioning of medium-term financial assistance, the tasks and responsibilities of the Commission and of the Member States concerned with the implementation of Regulation (EC) No 332/2002 should be clarified. In addition, the conditions for granting the financial assistance should be set out in detail in a Memorandum of Understanding to be concluded between the Commission and the Member State concerned.

(3) The rules guiding some aspects of the financial management of Community financial assistance should be clarified. For operational reasons, the Member State concerned should be asked to place the financial assistance received in a special account with its National Central Bank and to transfer the amounts due to an account with the European Central Bank a few days prior to their due dates.

(4) Sound management of the Community financial assistance received is of paramount importance. Therefore, without prejudice to Article 27 of the Statute of the European System of Central Banks and of the European Central Bank, this Regulation should provide for the possibility for the European Court of Auditors and the European Anti-Fraud Office, when they deem necessary, to carry out controls in the Member State

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 431/2009. (See end of Document for details)*

receiving Community medium-term financial assistance, as already provided for in the existing loan agreements.

(5) Regulation (EC) No 332/2002 should therefore be amended accordingly.

(6) This Regulation should apply immediately to all new loan agreements and to the existing loan agreements if and when they are revised,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 332/2002 is hereby amended as follows:

1. in Article 1(1), the second subparagraph shall be replaced by the following:

> The outstanding amount of loans to be granted to Member States under this facility shall be limited to EUR 50 billion in principal.;

2. Article 3(2) shall be replaced by the following:

2. The Member State seeking medium-term financial assistance shall discuss with the Commission an assessment of its financial needs and submit a draft adjustment programme to the Commission and the Economic and Financial Committee. The Council, after examining the situation in the Member State concerned and the adjustment programme presented in support of its application, shall decide, as a rule during the same meeting:
   - a whether to grant a loan or appropriate financing facility, its amount and its average duration;
   - b the economic policy conditions attached to the medium-term financial assistance with a view to re-establishing or ensuring a sustainable balance of payments situation;
   - c the techniques for disbursing the loan or financing facility, the release or drawing-down of which shall, as a rule, be by successive instalments, the release of each instalment being subject to verification of the results achieved in implementing the programme in terms of the objectives set.;

3. the following Article shall be inserted:

Article 3a

The Commission and the Member State concerned shall conclude a Memorandum of Understanding setting out in detail the conditions laid down by the Council pursuant to Article 3. The Commission shall communicate the Memorandum of Understanding to the European Parliament and the Council.;

4. Article 5 shall be replaced by the following:

Article 5

The Commission shall take the necessary measures to verify at regular intervals, in collaboration with the Economic and Financial Committee that the economic policy of the Member State in receipt of a Community loan complies with the adjustment programme, any other conditions laid down by the Council pursuant to Article 3 and the Memorandum of Understanding referred to in Article 3a. To this end, the Member State shall make all the necessary information available to the Commission and fully cooperate with the latter. On the basis of the findings of such verification, the