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Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Decision No 574/2007/EC with a view to increasing the co-financing rate of the  
External Borders Fund for certain Member States experiencing or threatened with  
serious difficulties with respect to their financial stability**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- Reasons and objectives

The sustained financial and economic crisis is stepping up the pressure on national financial resources as Member States reduce their budgets. In this context, ensuring the smooth implementation of programmes adopted under the four Funds established as part of the General Programme on ‘Solidarity and Management of Migration Flows’ (hereinafter referred to as ‘the Funds’), is of particular importance as a means of injecting funds into the economy.

Nonetheless, implementation of the programmes is often challenging as a result of liquidity problems caused by budget constraints that often lead to severe cutbacks in expenditures, consequently augmenting problems during a period of sustained crisis. This is the case in particular for those Member States which have been most affected by the current crisis and have received financial assistance under a programme from the European Financial Stabilisation Mechanism (EFSM), the European Financial Stability Facility (EFSF) or bilateral loans for the euro countries or from the Balance of Payments (BoP) mechanism for non-euro countries. To date, six countries — including Greece, which also received financial assistance before the establishment of EFSM via bilateral loans — have requested financial assistance under the various support mechanisms and have agreed with the Commission on a macro-economic adjustment programme. These six countries are Hungary, Romania, Latvia (under the BoP), Portugal, Greece and Ireland (under the EFSM/EFSF/bilaterally). It should be noted that the programme for Hungary expired in 2010 while the programme for Latvia expired in early 2012.

To ensure that Member States benefiting from a financial support mechanism (or any other Member States which may be concerned by such assistance in the future) continue to implement the programmes adopted under the Funds and disburse funds to projects, this proposal contains provisions that would allow the Commission to increase the Union co-financing rate for these countries, for the period during which they benefit from financial assistance provided by one of the support mechanisms under any funding instruments. This will provide additional financial resources to the Member States and will make it easier to continue implementing the programmes on the ground.

- **General context**

There can be no doubt that the deepening financial crisis in some Member States is having a substantial effect on the real economy given among other things, the amount of accumulated debt and the difficulties encountered by governments wishing to borrow money from the market at sustainable costs.

The Commission has been very active in putting forward proposals for the best way to react to the current financial crisis and its socio-economic consequences. Its three proposals for these issues have been adopted. The first revises Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund with a view to increasing the amount of the Union contribution which is disbursed through interim payments and payments of the final balance by up to 10 percentage points above the current limits (Regulation (EU) No 1311/2011 of 13 December

2011). The second proposal revises Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development with a view to increasing the Fund's contribution rate up to 95% in the regions eligible under Convergence objectives, the outermost regions and the smaller Aegean Islands and up to 85% in other regions (Regulation (EU) No 1312/2011 of 19 December 2011). The third revises Regulation (EC) No 1198/2006 on the European Fisheries Fund allowing for an increased amount of Union contribution to be disbursed through interim payments and payments of the final balance by up to 10 percentage points above the current limits (Regulation (EU) No 387/2012 of 19 April 2012).

- **Provisions in force in the policy sphere of the proposal**

Article 16 of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' provides that the Union co-financing rate for supported actions does not in principle exceed 50%. Article 16 also provides that this Union co-financing rate may be increased to 75% if the Member State in question is covered by the Cohesion Fund or if the action addresses specific priorities identified in the strategic guidelines.

- **Consistency with other policies and objectives of the Union**

The proposal is consistent with other proposals and initiatives adopted by the European Commission as a response to the financial crisis.

## **2. RESULTS OF CONSULTATIONS OF INTERESTED PARTIES AND IMPACT ASSESSMENTS**

- **Consultation of interested parties**

There was no consultation of external stakeholders.

- **Procurement and use of expertise**

Use of external expertise has not been necessary.

- **Impact analysis**

The proposal will allow the Commission to apply higher co-financing rates for the countries benefiting from one of the support mechanisms.

There is no need for additional budget as the annual national allocation from the Funds for the countries and the programmes over the 2007-2013 programming period will not change.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposal**

It is proposed to modify Article 16 of Decision No 574/2007/EC of the European Parliament and of the Council to allow the Union co-financing rate applicable to the External Borders

Fund programmes of the Member States concerned to be increased by 20 percentage points, provided they are benefiting from one of the support mechanisms.

Once a decision granting financial assistance to a Member State under one of the support mechanisms has been taken, the Member State may submit to the Commission either a draft annual programme or a draft revised annual programme applying the increased Union co-financing rate.

To be entitled to apply the increased Union co-financing rate, a Member State must benefit from one of the support mechanisms at the time of submitting its draft annual programme or draft revised annual programme. However, once an action of a specific annual programme has been co-financed at the increased Union co-financing rate, it remains so until the end of the eligibility period of the related annual programme whether or not the Member State still benefits from one of the support mechanisms.

- **Legal basis**

The legal basis is Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’. Based on the principle of shared management between the Commission and the Member States, this Decision includes provisions for the programming process as well as arrangements for programme management (including financial management), monitoring, financial control and evaluation of projects.

- **Subsidiarity principle**

The proposal complies within the subsidiarity principle to the extent that it seeks to provide increased support through the Funds for certain Member States undergoing serious difficulties notably with respect to their economic and financial stability and faced with a deterioration in their deficit and debt positions or slowed economic growth, reflecting structural domestic challenges and the international economic and financial environment. In this context, it is necessary to establish, at European Union level, a temporary mechanism which allows the European Union to co-finance certified expenditure under the Funds, using a higher co-financing rate.

- **Proportionality principle**

The proposal conforms to the proportionality principle:

This proposal is indeed proportionate since it goes a long way in providing increased support from the Funds to Member States that are in difficulties or seriously threatened with severe difficulties caused by exceptional occurrences beyond their control and falling under the conditions of Council Regulation (EU) No 407/2010 (establishing the European Financial Stabilisation Mechanism (EFSM)), or receiving, for those same reasons, financial assistance from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM), or in difficulties or seriously threatened with difficulties as regards their balance of payments and falling under the conditions of Council Regulation (EC) No 332/2002. This would also apply to Greece, which received financial assistance under a particular agreement established outside the support mechanisms under an Intercreditor Agreement and the Euro Area Loan Facility Act.

- **Choice of instrument**

Proposed instrument: Decision.

Other instruments would not be appropriate for the following reasons:

The Commission has explored the scope for manoeuvre provided by the legal framework and considers it necessary, in the light of experience gained so far, to propose amendments to the Decision. The objective of this revision is to make the co-financing of actions easier, thereby accelerating both their implementation and the impact of such investments on the real economy.

#### **4. BUDGETARY IMPLICATION**

There is no impact on commitment appropriations since no modifications are proposed to the maximum amounts of the Funds' financing provided for in the annual programmes for the programming period 2007-2013.

The proposal shows the European Commission's willingness to assist the Member States in their efforts to deal with the financial crisis. The amendments will provide the Member States concerned with the necessary funds necessary to support projects and economic recovery.

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Decision No 574/2007/EC with a view to increasing the co-financing rate of the External Borders Fund 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 77(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007<sup>1</sup> establishes the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ and provides for different Union co-financing rates for actions supported by the Fund.
- (2) The unprecedented global financial crisis and economic downturn have seriously damaged economic growth and financial stability, provoking a marked deterioration in financial, economic and social conditions in several Member States. Some Member States are experiencing serious difficulties or are threatened with such difficulties, particularly with respect to their financial and economic stability, leading to deterioration in their deficit and debt positions and threatening economic growth heightened by the international economic and financial environment.
- (3) While important actions to counterbalance the negative effects of the crisis have already been taken, the impact of the financial crisis on the real economy, the labour market and society at large is being widely felt. Pressure on national financial resources is increasing and further steps should be taken rapidly to alleviate that pressure through the maximal and optimal use of Union funding.
- (4) Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States’ balances of payments<sup>2</sup> provides that the Council is to grant medium-term financial assistance where a

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<sup>1</sup> OJ L 144, 6.6.2007, p. 22.

<sup>2</sup> OJ L 53, 23.2.2002, p. 1.

Member State which has not adopted the euro is in difficulties or is seriously threatened with difficulties as regards its balance of payments.

- (5) Romania was granted such financial assistance by Council Decision 2009/459/EC<sup>3</sup>.
- (6) On 9 May 2010 the Council adopted a comprehensive package of measures, including (a) a Council Regulation establishing the European Financial Stabilisation Mechanism<sup>4</sup> based on Article 122(2) of the Treaty, and (b) the European Financial Stability Facility to provide financial support to euro-area Member States in difficulties caused by exceptional circumstances beyond such euro-area Member States' control with the aim being to safeguard the financial stability of the euro area as a whole as well as its Member States.
- (7) Ireland and Portugal were granted financial assistance by the European Financial Stabilisation Mechanism under Council Implementing Decisions No 2011/77/EU<sup>5</sup> and No 2011/344/EU<sup>6</sup> respectively. They have also received funds from the European Financial Stability Facility.
- (8) The Intercreditor Agreement and the Loan Facility Agreement for Greece, concluded on 8 May 2010, entered into force on 11 May 2010. On 12 March 2012, the finance ministers of the 17 euro-area Member States interrupted this first programme and approved a second programme of financial assistance for Greece. It was decided that the financial vehicle for this second programme would be the European Financial Stability Facility, which would also disburse the remaining amount to be contributed by the euro area under the first programme.
- (9) On 2 February 2012, the finance ministers of the 17 euro-area Member States signed the Treaty establishing the European Stability Mechanism. Under that Treaty, which follows European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro<sup>7</sup>, the European Stability Mechanism will become the primary provider of financial assistance to euro-area Member States as of its entry into force in mid-2012. Thus, this Decision should already take the European Stability Mechanism into account.
- (10) In its conclusions of 23 and 24 June 2011 the European Council welcomed the Commission's intention to enhance the synergies between the loan programme for Greece and Union funds and supported efforts to increase Greece's capacity to absorb Union funds in order to stimulate growth and employment by refocusing on improving competitiveness and job creation. Moreover, it welcomed and supported the preparation by the Commission, together with the Member States, of a comprehensive programme of technical assistance to Greece. This amendment to Decision No 574/2007/EC contributes to such efforts to enhance synergies.

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<sup>3</sup> OJ L 150, 13.6.2009, p. 8. Decision as last amended by Council Decision 2010/183/EU (OJ L 83, 30.3.2010, p. 19).

<sup>4</sup> OJ L 118, 12.5.2010, p. 1.

<sup>5</sup> OJ L 30, 4.2.2011, p. 34.

<sup>6</sup> OJ L 159, 17.6.2011, p. 88.

<sup>7</sup> OJ L 91, 6.4.2011, p. 1.

- (11) In view of the exceptional circumstances, Regulation (EU) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund was amended by Regulation (EU) No 1311/2011 to allow for an increase in the co-financing rate applied under the Structural Funds and the Cohesion Fund for Member States which are facing serious difficulties with respect to their financial stability<sup>8</sup>. A similar approach was adopted towards those same Member States in the framework of the European Agricultural Fund for Rural Development (Regulation (EU) No 1312/2011 amending Regulation (EC) No 1698/2005)<sup>9</sup> and in the framework of the European Fisheries Fund (Regulation (EU) No 387/2012 amending Council Regulation (EC) No 1198/2006)<sup>10</sup>. Likewise, those Member States should be supported in the framework of the four Funds established as part of the General Programme on 'Solidarity and Management of Migration Flows', namely the External Borders Fund, the European Return Fund, the European Refugee Fund and the European Fund for the Integration of third-country nationals (hereinafter referred to as 'the Funds') established for the period 2007-2013.
- (12) The Funds are key tools for helping Member States tackle important challenges in the area of migration, asylum and external borders such as the development of a comprehensive Union immigration policy to enhance the competitiveness and social cohesion of the Union and the creation of a Common European Asylum System.
- (13) To make European Union funding easier to manage in the area of migration, asylum and external borders and to improve the availability of funding for the Member States to implement their annual programmes under the Funds, it is necessary, on a temporary basis and without prejudice to the 2014-2020 programming period, to arrange for an increase in the Union co-financing rate under the Funds by an amount corresponding to twenty percentage points above the co-financing rates currently applicable, for Member States experiencing serious difficulties with respect to their financial stability. This means that the Funds annual national allocation in accordance with the basic acts will remain unchanged while national co-financing will be reduced accordingly. Ongoing annual programmes will need to be revised to reflect the changes resulting from the application of the increased Union co-financing rate.
- (14) Any Member State seeking to benefit from the increased co-financing rate should provide the Commission with a written statement together with its draft annual programme or draft revised annual programme. In its statement, the Member State concerned should provide a reference to the relevant Council Decision or to any relevant decision making it eligible to benefit from the increased Union co-financing rate.
- (15) The unprecedented crisis affecting international financial markets and the economic downturn have seriously damaged the financial stability of several Member States. As a rapid response is necessary to counter the effects on the economy as a whole, this Decision should enter into force as soon as possible.
- (16) Decision No 574/2007/EC should therefore be amended accordingly. When reference is made to Article 16 of Decision No 574/2007/EC or to the percentage of Union

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<sup>8</sup> OJ L 337, 20.12.2011, p. 5.

<sup>9</sup> OJ L 339, 21.12.2011, p. 1.

<sup>10</sup> OJ L 129, 16.5.2012, p. 7.



contribution provided therein, this should be construed as a reference to the revised Article 16 and to the — possibly increased — percentage of the Union contribution.

- (17) As regards Iceland and Norway, this Decision constitutes a development of the Schengen *acquis* which falls within the areas referred to in Article 1, Points A and B of Council Decision No 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*<sup>11</sup>.
- (18) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, Points A and B of Council Decision No 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement<sup>12</sup>.
- (19) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, Points A and B of Council Decision No 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU on the conclusion, on behalf of the Union, of the Protocol<sup>13</sup>.
- (20) Under the Protocol on the position of Denmark, annexed to the treaty on European Union and the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, with the exception of 'measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas'. This Decision builds on the Schengen *acquis*, and under Article 4 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* under the Provisions of Title V of Part Three of the Treaty on the Functioning of the European Union whether it will implement this Decision in its national law.
- (21) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great

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<sup>11</sup> OJ L 176, 10.7.1999, p. 31.

<sup>12</sup> OJ L 53, 27.2.2008, p. 1.

<sup>13</sup> OJ L 160, 18.6.2011, p. 19.

Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* and the subsequent Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (22) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning the request of Ireland to take part in some of the provisions of the Schengen *acquis*. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

HAVE ADOPTED THIS DECISION:

#### *Article 1*

In Article 16 of Decision No 574/2007/EC, paragraph 4 is replaced by the following:

‘4. The Union contribution to supported projects, as regards actions implemented in the Member States under Article 4 shall not exceed 50 % of the total cost of a specific action.

This may be increased to 75 % for projects addressing specific priorities identified in the strategic guidelines referred to in Article 20.

The Union contribution shall be increased to 75 % in the Member States covered by the Cohesion Fund.

The Union contribution may be increased by 20 percentage points provided that the Member State concerned meets one of the following conditions at the time of submission of its draft annual programme in accordance with Article 23(3) of this Decision or draft revised annual programme in accordance with Article 23 of Commission Decision 2008/456/EC\*:

- (a) medium-term financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002\*\*;
- (b) financial assistance is made available to it in accordance with Council Regulation (EU) No 407/2010\*\*\* or financial assistance is made available to it by other euro area Member States before the entry into force of that Regulation;
- (c) financial assistance is made available to it in accordance with the intergovernmental agreement reached establishing the European Financial Stability Facility or the Treaty establishing the European Stability Mechanism.

The Member State concerned shall submit a written statement to the Commission together with its draft annual programme or draft revised annual programme confirming that it meets one of the conditions referred to in points (a), (b) or (c) of the fourth subparagraph.

A project co-financed at the increased rate may remain so whether or not one of the conditions referred to in points (a), (b) or (c) of the fourth subparagraph is still met in the course of the implementation of the related annual programme.

\* OJ L 167, 27.6.2008, p. 1.

\*\* OJ L 53, 23.2.2002, p. 1.

\*\*\* OJ L 118, 12.5.2010, p. 1.’

### *Article 2*

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

### *Article 3*

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*