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Recommendation for a

COUNCIL DECISION

imposing a fine on Spain for manipulation of deficit data in the Autonomous Community of Valencia

EXPLANATORY MEMORANDUM

1. BACKGROUND TO THE RECOMMENDATION

According to Article 126(1) of the Treaty on the Functioning of the European Union (TFEU), Member States shall avoid excessive government deficits. Government deficit and debt data relevant for the application of Articles 121 TFEU and 126 TFEU, or for the application of the Protocol on the excessive deficit procedure annexed to the Treaties, is an essential input to economic policy coordination in the Union.

Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area[1] sets out a system of sanctions for enhancing the enforcement of budgetary surveillance in the euro area. In this context, in order to deter against the misrepresentation, whether intentional or due to serious negligence, of government deficit and debt data, Article 8(1) of the Regulation provides that the Council, acting upon a recommendation by the Commission, may decide to impose a fine on the Member State responsible.

Article 8(3) of Regulation (EU) No 1173/2011 empowers the Commission, when it finds that there are serious indications of facts liable to constitute a misrepresentation of government deficit and debt data, to conduct all investigations necessary. On 11 July 2014, the Commission launched an investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011.

The preliminary findings of the investigation related to manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011 were sent to Spain for its observations on 19 February 2015, as required by Article 6 of Commission Delegated Decision 2012/678. The Commission invited Spain to submit written observations on the preliminary findings by 19 March 2015. Spain provided its written observations on 24 March 2015.

On [xx] May 2015, the Commission adopted its Report on the investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011[2] (the Report), taking into account the observations of Spain.

The Report concludes that an entity within the general government sector of the Kingdom of Spain, the Regional Audit Office of the Autonomous Community of Valencia (IGGV), was seriously negligent concerning the non-recording of health expenditure and the non-respect of the accrual principle in national accounts (ESA 95), leading to an incorrect reporting of the government deficit data of Spain to Eurostat in March 2012. Moreover, it concluded that the non-recording of expenditure was not rectified in spite of publicly available information on the existence and extent of the problem in the reporting of the Regional Court of Auditors.

The conditions set out in Article 8(1) of Regulation (EU) No 1173/2011 for recommending that the Council impose a fine on the Member State are present, as regards the misrepresentation of deficit data which took place when Spain reported the incorrect data to Eurostat in March 2012, and thus after the entry into force of the Regulation on 13 December 2011. Pursuant to Article 8(2) of the Regulation, the amount of the fine shall not exceed 0,2% of the latest gross domestic product (GDP) of the Member States concerned.

[1] OJ L 306, 23.11.2011, p. 1.

[2] […]

2. CALCULATION OF THE FINE

According to Article 14 of Commission Delegated Decision 2012/678/EU of 29 June 2012 on investigations and fines related to the manipulation of statistics as referred to in Regulation (EU) No 1173/2011[3], the Commission should ensure that the fine to be recommended is effective, proportionate and dissuasive. The fine is established using a two-step methodology. First, the Commission determines the reference amount. Second, it may modulate that reference amount upwards or downwards taking into account the specific circumstances of the case.

According to Article 14(2) of Commission Delegated Decision 2012/678/EU, the reference amount of the fine to be imposed is equal to 5 % of the larger impact of misrepresentation of the general government deficit of Spain for the relevant years covered by the notification in the context of the excessive deficit procedure (EDP). The revision to the expenditure reported by the Kingdom of Spain for the April 2012 EDP notification, corresponding to the unpaid (mainly) health expenditure, amounted to EUR 1.893 billion. The reference amount thus equals EUR 94.65 million.

Taking into account the criteria set out in Article 14(3)(a) of Commission Delegated Decision 2012/678/EU, the Report concludes that the misrepresentation of data had no significant impact on the functioning of the strengthened economic governance of the Union, due to the limited impact on the deficit of the Kingdom of Spain as a whole. Moreover, taking into account that the reporting of the correct figures followed shortly after the publication of the incorrect deficit data for Spain in April 2012, allowing the revision of the deficit data for Spain to take place still in 2012, the Commission considers that in view of the concrete circumstances, the Kingdom of Spain **could be granted a reduction of the fine** on this account.

Taking into account the criteria set out in Article 14(3)(b) of Commission Delegated Decision 2012/678/EU, the Report indicates that the misrepresentation was the result of serious negligence. The Report does not conclude that the misrepresentation was intentional and no modulation is applied on this account under the concrete circumstances.

Taking into account the criteria set out in Article 14(3)(c) of Commission Delegated Decision 2012/678/EU, the Report concludes that the misrepresentation of data was essentially the work of one entity within the general government sector of the Kingdom of Spain (see in particular section 3 of the Report). The Commission considers that the Kingdom of Spain **could be granted a reduction of the fine** on this account under the concrete circumstances.

Although the Report also concludes that information on the existence and extent of the problem was publicly available over a number of years in the reporting of the Regional Court of Auditors, this circumstance has not been taken into account in view of an upwards modulation of the fine, since for the bigger part of the period investigated, i.e. until the entry into force of Regulation (EU) No 1173/2011 on 13 December 2011, no sanctions were foreseen for Member States' misrepresentation of government deficit and debt data.

Taking into account the criteria set out in Article 14(3)(d) of Commission Delegated Decision 2012/678/EU the point of departure is that the reference amount should be the highest magnitude detected, multiplied by the number of years, across the four years of the last notification, in which the relevant misrepresentation occurred. The investigation disclosed misrepresentation of general government deficit data for Spain for a number of years going back to as early as 1988 (see in particular section 2.3 and 3 of the Report). However, in view of the fact that Regulation (EU) No 1173/2011 only entered into force on 13 December 2011

[3] OJ L 306, 6.11.2012, p. 21.

and that no sanctions were foreseen for misrepresentation of government deficit and debt data prior to that date, no modulation is applied on this account under the concrete circumstances.

Taking into account the criteria set out in Article 14(3)(e) of Commission Delegated Decision 2012/678/EU, the Report concludes that the Spanish statistical authorities and all entities concerned have shown a high degree of cooperation in the course of the investigation, providing to the Commission the information requested as necessary for the investigation (see in particular section 3 of the Report). The Commission considers that the Kingdom of Spain **could be granted a reduction of the fine** on this account under the concrete circumstances. In this respect, the Commission has had some regard to its practice in the area of competition, where fines may be reduced by up to 50% on account of cooperation with the Commission in the course of an investigation.

Overall, taking into account the cooperation of the Kingdom of Spain in the course of the investigation, as well as the further mitigating circumstances in the concrete case as mentioned above, the Commission recommends to the Council that the fine to be imposed on Spain is set to EUR 18.93 million, corresponding to 20% of the reference amount.

Article 8(2) of Regulation (EU) No 1173/2011 provides that the total amount of the fine should not exceed 0.2 % of the latest gross domestic product (GDP) of the Kingdom of Spain. The recommended fine does not exceed 0.2 % of the GDP of Spain in 2014.

3. CONCLUSION AND RECOMMENDATION

In conclusion, the Commission Report finds that an entity (IGGV) within the general government sector of the Kingdom of Spain was seriously negligent concerning the non-recording of health expenditure (and the non-respect of the accrual principle) in national accounts (ESA 95), leading to an incorrect reporting of deficit data to Eurostat in 2012, i.e. after the entry into force of Regulation (EU) 1173/2011. Based on these findings, the Commission recommends to the Council that a fine in the amount of EUR 18.93 million be imposed on the Kingdom of Spain.

Recommendation for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union,

Having regard to Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area[4], and in particular Article 8(1) thereof,

Having regard to Commission Delegated Decision 2012/678/EU of 29 June 2012 on investigations and fines related to the manipulation of statistics as referred to in Regulation (EU) No 1173/2011[5],

Having regard to the Commission's report on the investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011 adopted on [xx] May 2015[6],

Having regard to the recommendation from the Commission,

Whereas:

(1) According to Article 126(1) of the Treaty on the Functioning of the European Union (TFEU), Member States shall avoid excessive government deficits. Government deficit and debt data relevant for the application of Articles 121 TFEU and 126 TFEU, or for the application of the Protocol on the excessive deficit procedure annexed to the Treaties, is an essential input to economic policy coordination in the Union.

(2) In order to for enhance the enforcement of budgetary surveillance in the euro area, and to deter against the misrepresentation, whether intentional or due to serious negligence, of government deficit and debt data, the Council, acting upon a recommendation by the Commission, may decide to impose a fine on the Member State responsible.

(3) On 11 July 2014, the Commission launched an investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011. The preliminary findings of the investigation were sent to Spain for its observations on 19 February 2015, as required by Commission Delegated Decision 2012/678. Spain provided its written observations on the preliminary findings on 24 March 2015.

(4) On [xx] May 2015, the Commission adopted a report on the investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011, taking into account the observations provided by Spain.

4 OJ L 306, 23.11.2011, p. 1.
5 OJ L 306, 6.11.2012, p. 21.
6 […]

(5) In its report, the Commission concludes that an entity within the general government sector of Spain, the Regional Audit Office of the Autonomous Community of Valencia, was seriously negligent concerning the non-recording of health expenditure and the non-respect of the accrual principle in national accounts, leading to an incorrect reporting of the government deficit data of Spain to the Commission (Eurostat) in March 2012. Based on the findings of the Commission, it is warranted to conclude that a misrepresentation of deficit data by serious negligence took place when Spain reported the incorrect figures to Eurostat in March 2012. These elements justify the imposition of a fine.

(6) The amount of the fine shall not exceed 0,2% of the gross domestic product of Spain in 2014.

(7) The reference amount of the fine to be imposed should be equal to 5 % of the larger impact of misrepresentation of the general government deficit of Spain for the relevant years covered by the notification in the context of the excessive deficit procedure (EDP). The revision to the expenditure reported by the Kingdom of Spain for the April 2012 EDP notification amounted to EUR 1.893 billion. The reference amount should thus be set at EUR 94.65 million.

(8) Taking into account the criteria set out in Article 14(3)(a) of Commission Delegated Decision 2012/678/EU, the Commission's report concludes that the misrepresentation of data had no significant impact on the functioning of the strengthened economic governance of the Union, due to the limited impact on the deficit of the Kingdom of Spain as a whole. Moreover, it concludes that the reporting of the correct figures followed shortly after the publication of the incorrect deficit data for Spain in April 2012, allowing the revision of the deficit data for Spain to take place still in 2012. These elements justify a reduction of the amount of the fine.

(9) Taking into account the criteria set out in Article 14(3)(b) of Commission Delegated Decision 2012/678/EU, the Commission's report concludes that the misrepresentation was the result of serious negligence. No modulation should be applied to the amount of the fine in this respect.

(10) Taking into account the criteria set out in Article 14(3)(c) of Commission Delegated Decision 2012/678/EU, the Commission's report concludes that the misrepresentation of data was essentially the work of one entity within the general government sector of the Spain. These elements justify a reduction of the amount of the fine.

(11) Taking into account the criteria set out in Article 14(3)(d) of Commission Delegated Decision 2012/678/EU, the Commission's report concludes that the relevant actions of the Member State on which a fine may be based is those which took place in the period from 13 December 2011, when Regulation (EU) No 1173/2011 entered into force, until the launch of the investigation. It also concludes that the incorrectly reported deficit data were corrected in connection with the October 2012 EDP notification. No modulation should be applied to the amount of the fine on account of the duration of the misrepresentation.

(12) Taking into account the criteria set out in Article 14(3)(e) of Commission Delegated Decision 2012/678/EU, the Commission report concludes that the Spanish statistical authorities and all entities concerned have shown a high degree of cooperation in the course of the investigation. These elements justify a reduction of the amount of the fine.

(13) In view of these circumstances, the fine to be imposed on Spain should be set at EUR 18,93 million,

HAS ADOPTED THIS DECISION:

Article 1

A fine of EUR 18,93 million is imposed on Spain for the misrepresentation, by serious negligence, of government deficit data, as set out in the report of the European Commission on the investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011.

Article 2

This Decision is adressed to the Kingdom of Spain.

Done at Brussels,

For the Council
The President