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THE EUROPEAN PARLIAMENT **THE COUNCIL**

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**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AMENDING COUNCIL REGULATION (EC) No 1198/2006
ON THE EUROPEAN FISHERIES FUND, AS REGARDS CERTAIN PROVISIONS
RELATING TO FINANCIAL MANAGEMENT
FOR CERTAIN MEMBER STATES EXPERIENCING OR THREATENED
WITH SERIOUS DIFFICULTIES WITH RESPECT TO
THEIR FINANCIAL STABILITY**

REGULATION (EU) No …/2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 April 2012

amending Council Regulation (EC) No 1198/2006
on the European Fisheries Fund, as regards certain provisions
relating to financial management 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 43(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure[2],

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[1] OJ C 24, 28.1.2012, p. 84.

[2] Position of the European Parliament of 14 March 2012 (not yet published in the Official Journal) and decision of the Council of 22 March 2012.

Whereas:

(1) The unprecedented global financial crisis and the unprecedented economic downturn have seriously damaged economic growth and financial stability and have provoked a strong deterioration in financial and economic conditions in several Member States. In particular, certain Member States are experiencing or are threatened with serious difficulties, notably problems concerning their economic growth and financial stability and a deterioration in their deficit and debt position, due to the international economic and financial environment.

(2) Whilst important actions to counterbalance the negative effects of the crisis have already been taken, including amendments to the legislative framework, the impact of the financial crisis on the real economy, the labour market and citizens is being widely felt. Pressure on national financial resources is increasing and further steps should be taken to alleviate that pressure through the maximal and optimal use of funding from the European Fisheries Fund.

(3) Pursuant to Article 122(2) of the Treaty on the Functioning of the European Union, which provides for the possibility of granting Union financial assistance to a Member State in difficulties or seriously threatened with severe difficulties caused inter alia by exceptional occurrences beyond its control, Council Regulation (EU) No 407/2010[1] established a European financial stabilisation mechanism, with a view to preserving the financial stability of the Union.

(4) By Council Implementing Decisions 2011/77/EU[2] and 2011/344/EU[3] respectively, Ireland and Portugal were granted such Union financial assistance.

(5) Greece was already experiencing serious difficulties with respect to its financial stability before the entry into force of Regulation (EU) No 407/2010. Financial assistance to Greece could not, therefore, be based on that Regulation.

(6) The Intercreditor Agreement and the Loan Facility Agreement for Greece signed on 8 May 2010 entered into force on 11 May 2010. The Intercreditor Agreement is to remain in full force and effect for a three-year programme period as long as there are any amounts outstanding under the Loan Facility Agreement.

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1 OJ L 118, 12.5.2010, p. 1.
2 OJ L 30, 4.2.2011, p. 34.
3 OJ L 159, 17.6.2011, p. 88.

(7) Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments[1] provides that the Council is to grant mutual assistance where a Member State which has not adopted the euro is in difficulties or is seriously threatened with difficulties as regards its balance of payments.

(8) By Council Decisions 2009/102/EC[2], 2009/290/EC[3] and 2009/459/EC[4] respectively, Hungary, Latvia and Romania were granted such Union financial assistance.

(9) The period during which the financial assistance is available to Ireland, Hungary, Latvia, Portugal and Romania is set out in the relevant Council Decisions. The period during which financial assistance was made available to Hungary expired on 4 November 2010.

(10) The period during which financial assistance under the Intercreditor Agreement and the Loan Facility Agreement is available to Greece is different for each Member State participating in those instruments.

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1 OJ L 53, 23.2.2002, p. 1.
2 OJ L 37, 6.2.2009, p. 5.
3 OJ L 79, 25.3.2009, p. 39.
4 OJ L 150, 13.6.2009, p. 8.

(11) Following the European Council Decision of 25 March 2011, finance ministers of the 17 euro-area Member States signed the Treaty establishing the European Stability Mechanism on 11 July 2011. Following decisions taken by the Heads of State and Government of the euro-area Member States on 21 July and 9 December 2011, the Treaty was modified in order to improve the effectiveness of the mechanism and signed on 2 February 2012. Under this Treaty, the European Stability Mechanism will, by 2013, assume the tasks currently performed by the European Financial Stability Facility and the European Financial Stabilisation Mechanism. This future mechanism should therefore already be taken into account in this Regulation.

(12) 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 the Union funds, and supported efforts to increase Greece's capacity to absorb Union funds, with the aim of stimulating growth and employment by refocusing on improving competitiveness and employment 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 Regulation contributes to such efforts to enhance synergies.

(13) In order to facilitate the management of Union funding, to help accelerate investments in Member States and regions and to increase the impact of funding on the economy, it is necessary to allow, in justified cases, temporarily and without prejudice to the 2014 to 2020 programming period, an increase of interim payments from the European Fisheries Fund by an amount corresponding to ten percentage points above the co-financing rate applicable for each priority axis for Member States that are facing serious difficulties with respect to their financial stability and that have requested to benefit from this measure, resulting in a corresponding reduction in the national counterpart. Due to the temporary nature of that increase, and in order to maintain the original co-financing rates as the reference point for calculation of the temporarily increased amounts, the changes resulting from application of the mechanism should not be reflected in the financial plan included in the operational programmes. However, it should be possible to update operational programmes in order to concentrate the funds on competitiveness, growth and employment, and in order to align their targets and objectives with the decrease in the total funding available.

(14) A Member State making a request to the Commission to benefit from a derogation under this Regulation should submit all the information necessary to enable the Commission to establish, by means of data on the Member State's macroeconomic and fiscal situation, that resources for the national counterpart are not available. It should also show that an increase of payments resulting from the granting of the derogation is necessary to safeguard the continued implementation of operational programmes and that the absorption capacity problems persist even if the maximum ceilings applicable to co-financing rates laid down in Article 53(3) of Council Regulation (EC) No 1198/2006[1] are used.

(15) The Member State making a request to the Commission to benefit from a derogation under this Regulation should also provide the reference to the relevant Council Decision or other legal act pursuant to which it is eligible to benefit from the derogation. It is necessary for the Commission to have an appropriate period, starting from the submission of the Member State's request, in which to verify the correctness of the information submitted and to raise any objections. In order to make the derogation effective and operational, there should be a presumption that such a request is justified if the Commission does not raise an objection. If the Commission objects to the Member State's request, it should adopt, by way of implementing acts, a decision to this effect, stating reasons.

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[1] OJ L 223, 15.8.2006, p. 1.

(16) The rules on the calculation of interim payments and of payments of the final balance for operational programmes during the period in which the Member States receive the Union financial assistance for addressing serious difficulties with respect to their financial stability should be revised accordingly.

(17) It is necessary to ensure that there is appropriate reporting on the use of the increased amounts made available to the Member States benefiting from a temporary increase in interim payments under this Regulation.

(18) After the end of the period during which financial assistance has been made available, it might be necessary for the evaluations carried out in accordance with Article 18(2) of Regulation (EC) No 1198/2006 to assess, inter alia, whether the reduction of the national co-funding leads to a significant departure from the goals that were initially set. Such evaluations might lead to the revision of the operational programme.

(19) As the unprecedented crisis affecting international financial markets and the unprecedented economic downturn, which have seriously damaged the financial stability of several Member States, necessitate a rapid response in order to counter the effects on the economy as a whole, this Regulation should enter into force as soon as possible. Given the exceptional circumstances of the Member States concerned, it should apply retroactively, starting either from the budgetary year of 2010 or from the date on which the financial assistance was made available, depending on the requesting Member State's status, for the periods during which the Member States received financial assistance from the Union or from other euro-area Member States in order to address serious difficulties with respect to their financial stability.

(20) Where a temporary increase in interim payments is envisaged, that temporary increase should also be considered in the context of the budgetary restraints facing all Member States, and those budgetary restraints should be reflected appropriately in the general budget of the European Union. In addition, since the main purpose of the mechanism is to address specific current difficulties, its application should be limited in time. Therefore, the mechanism should start to apply on 1 January 2010 and should operate for a limited period until 31 December 2013.

(21) Regulation (EC) No 1198/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1198/2006 is hereby amended as follows:

(1) Articles 76 and 77 are replaced by the following:

"*Article 76*
Rules for calculating interim payments

1. Interim payments shall be calculated by applying – to the public contribution declared in the statement of expenditure certified by the certifying authority under each priority axis and under each convergence/non-convergence objective – the co-financing rate established under the current financing plan for that priority axis and that objective.

2. By way of derogation from paragraph 1, in response to a specific and properly grounded request by the Member State, an interim payment shall be calculated as the amount of Union assistance paid or due to be paid to the beneficiaries in respect of the priority axis and of the objective. This amount must be specified by the Member State in the statement of expenditure.

3. By way of derogation from Article 53(3), at the request of a Member State, interim payments shall be increased by an amount corresponding to ten percentage points above the co-financing rate applicable to each priority axis, up to a maximum of 100 %, to be applied to the amount of eligible public expenditure newly declared in each certified statement of expenditure submitted during the period in which a Member State fulfils one of the following conditions:

(a) financial assistance is made available to it under Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism*, or is made available to it by other euro-area Member States before the entry into force of that Regulation;

(b) medium-term financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments**;

(c) financial assistance is made available to it in accordance with the Treaty establishing the European Stability Mechanism signed on 2 February 2012.

4. For the purpose of calculating interim payments after the Member State ceases to benefit from the Union financial assistance referred to in paragraph 3, the Commission shall not take into account the increased amounts paid in accordance with that paragraph.

   However, those amounts shall be taken into account for the purpose of Article 79(1).

5. The increased interim payments resulting from the application of paragraph 3 shall be made available within the shortest period of time to the managing authority and shall only be used for making payments in connection with the implementation of the operational programme.

6. In the context of the annual reporting in accordance with Article 67(1), the Member States shall provide the Commission with appropriate information on the use of the derogation referred to in paragraph 3 of this Article, showing how the increase in the amounts of support has contributed to the promotion of competitiveness, growth and jobs in the Member State concerned. This information shall be taken into account by the Commission in the preparation of the annual reporting provided for by Article 68(1).

Article 77

Rules for calculating payments of the balance

1. Payments of the balance shall be limited to whichever of the following two amounts is smaller:

   (a) the amount calculated by applying to the public contribution declared in the final statement of expenditure, certified by the certifying authority under each priority axis and under each convergence/non-convergence objective, the co-financing rate established under the current financing plan for that priority axis and that objective;

   (b) the amount of Union assistance paid or due to be paid to the beneficiaries in respect of each priority axis and for each objective. This amount must be specified by the Member State in the final statement of expenditure certified by the certifying authority in respect of each priority axis and for each objective.

2. By way of derogation from Article 53(3), at the request of a Member State, payments of the final balance shall be increased by an amount corresponding to ten percentage points above the co-financing rate applicable to each priority axis, up to a maximum of 100 %, to be applied to the amount of eligible public expenditure newly declared in each certified statement of expenditure submitted during the period in which a Member State fulfils one of the conditions laid down in points (a), (b) and (c) of Article 76(3).

3. For the purpose of calculating the payment of the final balance after the Member State ceases to benefit from the Union financial assistance referred to in Article 76(3), the Commission shall not take into account the increased amounts paid in accordance with that paragraph.

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* OJ L 118, 12.5.2010, p. 1.

** OJ L 53, 23.2.2002, p. 1.";

(2) the following Article is inserted:

"*Article 77a*

Limit to the Union contribution through interim payments and payments of the balance

1. Notwithstanding Articles 76(3) and 77(2), the Union contribution through interim payments and payments of the final balance shall not be higher than the public contribution and the maximum amount of assistance from the EFF for each priority axis and objective as laid down in the decision of the Commission approving the operational programme.

2. The derogation referred to in Articles 76(3) and 77(2) shall be granted by the Commission upon the written request of a Member State fulfilling one of the conditions laid down in points (a), (b) and (c) of Article 76(3). That request shall be submitted by …[+] or within two months from the date on which a Member State fulfils one of the conditions laid down in points (a), (b) and (c) of Article 76(3).

3. In its request submitted to the Commission, the Member State shall justify the necessity of the derogation referred to in Articles 76(3) and 77(2) by providing information necessary to establish:

(a) by means of data on its macroeconomic and fiscal situation, that resources for the national counterpart are not available;

(b) that an increase of payments referred to in Articles 76(3) and 77(2) is necessary to safeguard the continued implementation of operational programmes;

(c) that problems persist even if the maximum ceilings applicable to co-financing rates of Article 53(3) are used;

[+] OJ: please insert the date - two months after the entry into force of this Regulation.

(d) that it fulfils one of the conditions referred to in points (a), (b) and (c) of Article 76(3) as justified by reference to a Council Decision or other legal act, as well as the actual date from which the financial assistance was made available to the Member State.

The Commission shall verify whether the information submitted justifies granting a derogation. The Commission shall raise any objection as to that information within 30 days from the date of submission of the request. If the Commission decides to object to the Member State's request, it shall, by means of implementing acts, adopt a decision to this effect and shall state reasons.

If the Commission does not raise an objection to the Member State's request, that request shall be deemed to be justified.

4. The Member State's request shall also detail the intended use of the derogation provided for in Articles 76(3) and 77(2), and shall give information about complementary measures envisaged in order to concentrate the funds on competitiveness, growth and employment, including, where appropriate, a modification of operational programmes.

5. The derogation provided for in Articles 76(3) and 77(2) shall not apply to statements of expenditure submitted after 31 December 2013.".

Article 2

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

However, it shall apply retroactively to the following Member States:

(a) in the cases of Ireland, Greece and Portugal, with effect from the date when the financial assistance was made available to those Member States pursuant to Article 76(3);

(b) in the cases of Hungary, Latvia and Romania, with effect from 1 January 2010.

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

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*