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COUNCIL IMPLEMENTING DECISION 2017/...

of ...

imposing a fine on Austria for the manipulation of debt data in Land Salzburg

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 area¹, and in particular Article 8(1) thereof,

Having regard to the recommendation from the European Commission,

¹ OJ L 306, 23.11.2011, p. 1.

Whereas:

- (1) Article 126(1) of the Treaty on the Functioning of the European Union (TFEU) requires Member States to avoid excessive government deficits.
- (2) Data on Government deficits and debt that are relevant to the application of Articles 121 and 126 TFEU and to the application of Protocol No 12 on the excessive deficit procedure annexed to the Treaty on European Union and to the TFEU, are essential inputs to economic policy coordination in the Union.
- (3) In order to 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.
- (4) On 3 May 2016, the Commission launched an investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011. The preliminary findings of the investigation were sent to Austria for its observations on 20 December 2016, as required by Commission Delegated Decision 2012/678/EU¹. Austria provided its written observations on the preliminary findings on 25 January 2017.

¹ 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 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area (OJ L 306, 6.11.2012, p. 21).

- (5) On 22 February 2017, the Commission adopted a report on the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area, taking into account the observations provided by Austria.
- (6) In its report, the Commission concluded that the State Court of Audit (*Landesrechnungshof* - LRH) and State Office of Land Salzburg (*Amt der Salzburger Landesregierung*) and State Government of Land Salzburg (*Salzburger Landesregierung*), which are entities within the general government sector of Austria, were seriously negligent in not ensuring appropriate compilation controls and reporting procedures. Because of this, those entities facilitated the fact that the Budget Unit of the State Office of Land Salzburg could misrepresent and conceal financial transactions. This in turn resulted in Austria's debt data for the years 2008-2012 being misrepresented to Eurostat in 2012 and 2013, i.e. after the entry into force of Regulation (EU) No 1173/2011. Moreover, the Commission concluded that Statistics Austria (*Statistik Austria* - STAT) was aware of the possibility that Land Salzburg misrepresented its accounts since at least 6 December 2012, but that it only informed the Commission (Eurostat) of this fact on 10 October 2013.
- (7) The amount of the fine shall not exceed 0,2 % of the gross domestic product of Austria in 2015.

- (8) The reference amount of the fine to be imposed shall be equal to 5 % of the larger impact of misrepresentation of the general government debt of Austria for the relevant years covered by the notification in the context of the excessive deficit procedure (EDP). The revision to the debt reported by Austria for the April 2014 EDP notification amounted to EUR 1 192 million. The reference amount for the fine should thus be set at EUR 59,6 million.
- (9) Taking into account the criteria set out in point (d) of Article 14(3) of Delegated Decision 2012/678/EU, the Commission concluded in its report that the relevant actions of the Member State on which a fine may be based are 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 concluded that the last notification in which the relevant misrepresentation occurred was the October 2013 EDP notification that covered the years 2009-2012. The misrepresentations for years 2011 and 2012, contained in the 2012 and the 2013 EDP notifications, respectively, are of relevance in the context of that Regulation because they justify increasing the amount of the fine.
- (10) Taking into account the criteria set out in point (a) of Article 14(3) of Delegated Decision 2012/678/EU, the Commission concluded in its report that the misrepresentation of data did not significantly impact the functioning of the strengthened economic governance of the Union, because of its limited impact on the debt of Austria as a whole. These elements justify a reduction of the amount of the fine.

- (11) Taking into account the criteria set out in point (b) of Article 14(3) of Delegated Decision 2012/678/EU, the Commission concluded in its report that the misrepresentation was the result of serious negligence. The Commission did not conclude in its report that the misrepresentation was intentional in an EDP context. No modulation should be applied to the amount of the fine in this respect.
- (12) Taking into account the criteria set out in point (c) of Article 14(3) of Delegated Decision 2012/678/EU, the Commission concluded in its report that the misrepresentation of data was facilitated by the fact that three entities of the general government sector of Austria were seriously negligent by not ensuring appropriate compilation controls and reporting procedures. Nevertheless, the Commission does not consider this to be a concerted action by those entities. These elements justify a reduction of the amount of the fine.

- (13) Taking into account the criteria set out in Article 14(3)(e) of Delegated Decision 2012/678/EU, the Commission in its report concluded that STAT and all entities concerned have shown a high degree of cooperation in the course of the investigation. This element would normally justify a reduction of the amount of the fine. Nevertheless, it has been ascertained that, under the principle of due diligence, STAT could and should have had a more prompt and pro-active role in informing the Commission (Eurostat) that misreporting had occurred in the accounts of Land Salzburg. This element would normally justify an increase in the amount of the fine. However, this conclusion should be qualified by the high complexity of the factual situation which led to the misreporting, involving losses from financial derivatives and the associated technical difficulties associated to their understanding and elaboration and which should be taken into account when assessing the degree of diligence shown by the authorities of the Member State concerned. Considering the combined effect of the elements justifying a reduction – the high degree of cooperation shown in the course of the investigation as well as the difficulties ensuing from the high complexity of the facts – against the elements justifying an increase, a reduction should still be applied to the amount of the fine.
- (14) The Commission recommends that the fine to be imposed on Austria should be set at EUR 29,8 million. In view of these circumstances, the fine should be set at EUR 26,82 million,

HAS ADOPTED THIS DECISION:

Article 1

A fine of EUR 26,82 million is imposed on Austria for the misrepresentation of government debt data due to the serious negligence of three government entities as set out in the report of the European Commission on the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels,

For the Council
The President
