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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3603/93

of 13 December 1993

specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104b (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Whereas Articles 104 and 104b (1) of the Treaty are directly applicable; whereas the terms featuring in Articles 104 and 104b (1) may be specified, if necessary;

Whereas the terms 'overdraft facilities' and 'other types of credit facility' used in Article 104 of the Treaty should be defined, particularly with reference to the treatment of claims existing at 1 January 1994;

Whereas it is desirable that the national central banks participating in the third stage of Economic and Monetary Union should enter such Union having on their balance sheets claims negotiable under market conditions, in particular to give the required flexibility to the monetary policy of the European System of Central Banks and to permit a standard contribution from the various national central banks participating in monetary union to the monetary income to be distributed among them;

Whereas the central banks which, after 1 January 1994, still hold claims against the public sector which are non-negotiable or are subject to conditions which are not market conditions should be authorized subsequently to convert such claims into negotiable *fixed-maturity* securities under market conditions;

Whereas paragraph 11 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that the

Government of the United Kingdom may maintain its 'ways and means' facility with the Bank of England if and so long as the United Kingdom does not move to the third stage; whereas it is appropriate to make provision for the conversion of the amount of this facility into marketable debt at a fixed maturity and on market terms if the United Kingdom moves to stage three of EMU;

Whereas the Protocol on Portugal lays down that 'Portugal is hereby authorized to maintain the facility afforded to the Autonomous Regions of the Azores and Madeira to benefit from an interest-free credit facility with the Banco de Portugal under the terms established by existing Portuguese law'; and that 'Portugal commits itself to pursue its best endeavours in order to put an end to the abovementioned facility as soon as possible';

Whereas Member States must take appropriate measures to ensure that the prohibitions referred to in Article 104 of the Treaty are applied effectively and fully; whereas, in particular, purchases made on the secondary market must not be used to circumvent the objective of that Article;

Whereas, within the limits laid down in this Regulation, the direct acquisition by the central bank of one Member State of marketable debt instruments issued by the public sector of another Member State does not help to shield the public sector from the discipline of market mechanisms where such purchases are conducted for the sole purpose of managing foreign exchange reserves;

Whereas, notwithstanding the role assigned to the Commission pursuant to Article 169 of the Treaty, it is for the European Monetary Institute and, thereafter, for the European Central Bank, pursuant to Articles 109f (9) and 180 of the Treaty, to ensure that national central banks honour the obligations laid down by the Treaty;

Whereas intra-day credits by the central banks may assist the smooth operation of payment systems; whereas, therefore, intra-day credits in the public sector are compatible with the objectives of Article 104 of the

⁽¹⁾ OJ No C 324, 1. 12. 1993, p. 5; and

OJ No C 340, 17. 12. 1993, p. 3.

⁽²⁾ OJ No C 329, 6. 12. 1993 and Decision of 2 December 1993 (not yet published in the Official Journal).

Treaty, provided that no extension to the following day is possible;

Whereas the function of fiscal agent exercised by the central banks should not be impeded; whereas, even if clearing by the central banks of cheques issued by third parties for the public sector's account may occasionally involve a credit, Article 104 of the Treaty should not be regarded as prohibiting such operations, provided that they do not result overall in a credit for the public sector;

Whereas the holding by the central banks of coins issued by the public sector and credited to the public sector constitutes an interest-free form of credit for the public sector; whereas, however, if only limited amounts are involved, this practice does not interfere with the principle of Article 104 of the Treaty; whereas, therefore, in view of the difficulties which would arise from total prohibition of this form of credit, it may be permitted within the limits laid down in this Regulation;

Whereas, following unification, the Federal Republic of Germany has particular difficulty in complying with the limit set on such assets; whereas it is appropriate in those circumstances to authorize a higher percentage for a limited period;

Whereas the financing by the central banks of obligations falling upon the public sector *vis-à-vis* the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up within the Community results in foreign claims which have all the characteristics of reserve assets; whereas it is, therefore, appropriate to authorize them;

Whereas public undertakings are covered by the prohibition in Articles 104 and 104b (1); whereas they are defined in Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of Article 104 of the Treaty:

- (a) 'overdraft facilities' means any provision of funds to the public sector resulting or likely to result in a debit balance;
- (b) 'other type of credit facility' means:
 - (i) any claim against the public sector existing at 1 January 1994, except for fixed-maturity claims acquired before that date;

⁽¹⁾ OJ No L 195, 29. 7. 1980, p. 35. Directive as last amended by Directive 93/84/EEC (OJ No L 254, 12. 10. 1993, p. 16).

- (ii) any financing of the public sector's obligations *vis-à-vis* third parties;

- (iii) without prejudice to Article 104 (2) of the Treaty, any transaction with the public sector resulting or likely to result in a claim against that sector.

2. The following shall not be regarded as 'debt instruments' within the meaning of Article 104 of the Treaty: securities acquired from the public sector to ensure the conversion into negotiable fixed-maturity securities under market conditions of:

- fixed-maturity claims acquired before 1 January 1994 which are not negotiable or not under market conditions, provided that the maturity of the securities is not subsequent to that of the aforementioned claims;
- the amount of the 'ways and means' facility maintained by the United Kingdom Government with the Bank of England until the date, if any, on which the United Kingdom moves to stage three of EMU.

Article 2

1. During stage two of EMU, purchases by the national central bank of one Member State of marketable debt instruments issued by the public sector of another Member State shall not be considered direct purchases within the meaning of Article 104 of the Treaty, provided that such purchases are conducted for the sole purpose of managing foreign exchange reserves.

2. During stage three of EMU, the following purchases conducted for the sole purpose of managing foreign exchange reserves shall not be considered direct purchases within the meaning of Article 104 of the Treaty:

- purchases by the national central bank of a Member State not participating in stage three of EMU, from the public sector of another Member State, of marketable debt instruments of the latter,
- purchases by the European Central Bank or the national central bank of a Member State participating in stage three of EMU, from the public sector of a Member State not participating in stage three, of marketable debt instruments of the latter.

Article 3

For the purposes of this Regulation, 'public sector' means Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States.

'National central banks' means the central banks of the Member States and the Luxembourg Monetary Institute.

Article 4

Intra-day credits by the European Central Bank or the national banks to the public sector shall not be considered as a credit facility within the meaning of Article 104 of the Treaty, provided that they remain limited to the day and that no extension is possible.

Article 5

Where the European Central Bank or the national central banks receive from the public sector, for collection, cheques issued by third parties and credit the public sector's account before the drawee bank has been debited, this operation shall not be considered as a credit facility within the meaning of Article 104 of the Treaty if a fixed period of time corresponding to the normal period for the collection of cheques by the central bank of the Member State concerned has elapsed since receipt of the cheque, provided that any float which may arise is exceptional, is of a small amount and averages out in the short term.

Article 6

The holding by the European Central Bank or the national central banks of coins issued by the public sector and credited to the public sector shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty where the amount of these assets remains at less than 10% of the coins in circulation.

Until 31 December 1996, this figure shall be 15% for Germany.

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

Done at Brussels, 13 December 1993.

Article 7

The financing by the European Central Bank or the national central banks of obligations falling upon the public sector *vis-à-vis* the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up by Regulation (EEC) No 1969/88 ⁽¹⁾ shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty.

Article 8

1. For the purposes of Articles 104 and 104b (1) of the Treaty, 'public undertaking' shall be defined as any undertaking over which the State or other regional or local authorities may directly or indirectly exercise a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. For the purposes of Articles 104 and 104b (1) of the Treaty, the European Central Bank and the national central banks do not form part of the public sector.

Article 9

This Regulation shall enter into force on 1 January 1994.

For the Council

The President

Ph. MAYSTADT

⁽¹⁾ Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments (OJ No L 178, 8. 7. 1988, p. 1).