EUROPEAN
COMMISSION

Brussels, 22.2.2017
COM(2017) 93 final

2017/0044 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

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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 3 May 2016, the Commission launched an investigation related to the manipulation of statistics in Austria.

The preliminary findings of the investigation related to manipulation of statistics in Austria were sent to Austria for its observations on 20 December 2016, as required by Article 6 of Commission Delegated Decision 2012/678. The Commission invited Austria to submit written observations on the preliminary findings by 19 January 2017. Austria provided its written observations on 25 January 2017.

On 22 February 2017, the Commission adopted its Report on the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011[2] (the Report), taking into account the observations of Austria.

The Report concludes that the Landesrechnungshof (LRH), the State Office and the State Government of Land Salzburg, i.e. entities within the general government sector of the Republic of Austria, were seriously negligent in not ensuring appropriate compilation controls and reporting procedures. Thereby those entities facilitated the fact that the Budget Unit of the State Office of Land Salzburg could misrepresent and conceal financial transactions, leading to the misrepresentation in 2012 and 2013 of Austria's debt data regarding years 2008-2012[3] to Eurostat, i.e. after the entry into force of Regulation (EU) 1173/2011.

Moreover, the Report concluded that Statistics Austria (hereinafter "STAT") was aware of the possibility of misrepresentation of the accounts of Land Salzburg since, at least, 6 December 2012, but that it only informed the Commission (Eurostat) accordingly on 10 October 2013.

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 debt data which took place when Austria reported the incorrect data to Eurostat in March and September 2012 and March and September 2013, and thus after the entry into force of the Regulation on 13 December 2011.

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1. OJ L 306, 23.11.2011, p. 1.
2. COM(2017) 94 final.
3. Namely the aggregated number of reported years for the reporting in 2012 (for years 2008-2011) and in 2013 (for years 2009-2012), following the formula that data provided in year n concern years n-1, n-2, n-3 and n-4.

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[4], the Commission shall 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 Delegated Decision 2012/678/EU, the reference amount is 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 for the year 2012 reported by the Republic of Austria in the April 2014 EDP Notification amounted to EUR 1 192 million. The reference amount thus equals EUR 59.6 million.

Taking into account the criteria set out in Article 14(3)(d) of Delegated Decision 2012/678/EU, the point of departure is that the reference amount shall 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 highest magnitude detected, as mentioned above, was of EUR 1 192 million in 2012. Moreover, the last notification in which the relevant misrepresentation occurred was the October 2013 EDP notification, covering years 2009 to 2012. However, in view of the fact that Regulation (EU) No 1173/2011 only entered into force on 13 December 2011 and that no sanctions were foreseen for misrepresentation of government deficit and debt data prior to that date, only the misrepresentation for years 2011 and 2012, as misreported in the 2012 and the 2013 EDP notifications respectively, are of relevance. In this sense, the **reference amount shall be multiplied by two, amounting to EUR 119.2 million**.

Taking into account the criteria set out in Article 14(3)(a) of Delegated Decision 2012/678/EU, the Commission in its report concludes that the misrepresentation of data did not have a significant impact on the functioning of the strengthened economic governance of the Union, due to the limited impact on the debt of the Republic of Austria as a whole. In this sense, the Commission considers that in view of the concrete circumstances, the Republic of Austria **could be granted a reduction of the fine** on this account.

Taking into account the criteria set out in Article 14(3)(b) of 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 in an EDP context (see in particular section 4 of the Report). Therefore, **no modulation is applied** on this account under the concrete circumstances.

Taking into account the criteria set out in Article 14(3)(c) of Delegated Decision 2012/678/EU, the Report concludes that the misrepresentation of data was facilitated by the fact, that three entities of the general government sector of the Republic of Austria were seriously negligent in not ensuring appropriate compilation controls and reporting procedures (see in particular sections 3 and 4 of the Report). Nevertheless, the Commission does not consider this to be a concerted action by those entities and hence the Republic of Austria **could be granted a reduction of the fine** on this account under the concrete circumstances.

Taking into account the criteria set out in Article 14(3)(e) of Delegated Decision 2012/678/EU, the Report concludes that STAT and all entities concerned have shown a high

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

degree of cooperation in the course of the investigation. In this respect, the Commission has had some regard to its practice in the area of competition, where fines may be reduced significantly on account of cooperation with the Commission in the course of an investigation.

Nevertheless, it has been ascertained that STAT, even if it was fully and directly informed by the State Office, at least since 22 January 2013, that misrepresentation had occurred in the accounts of Land Salzburg, failed to immediately inform the Commission (Eurostat) of these facts. This element would normally justify an increase in the amount of the fine. As a combined result of the two above elements, the Commission considers that the Republic of Austria **could still be granted a certain reduction of the fine** on this account.

Overall, the Commission recommends to the Council that the fine to be imposed on the Republic of Austria is set to EUR 29.8 million, corresponding to 25 % of the double 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 Republic of Austria. The recommended fine does not exceed 0.2 % of the GDP of Austria in 2015.

3. Conclusion and recommendation

In conclusion, the Commission Report finds that three entities within the general government sector of the Republic of Austria were seriously negligent in not ensuring appropriate compilation controls and reporting procedures, and that one sub-entity of one of those entities misrepresented and concealed financial transactions, leading to an incorrect reporting of deficit and debt data to Eurostat in 2012 and 2013, regarding years 2008-2012, 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 29.8 million be imposed on the Republic of Austria.

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Proposal for a

COUNCIL IMPLEMENTING DECISION

imposing a fine on Austria for 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 area[5], 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[6],

Having regard to the Commission's report on the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 adopted on 22 February 2017[7],

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 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 Delegated Decision 2012/678. Austria provided its written observations on the preliminary findings on 25 January 2017.

(4) 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, taking into account the observations provided by Austria.

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5 OJ L 306, 23.11.2011, p. 1.

6 OJ L 306, 6.11.2012, p. 21.

7 COM(2017) 94 final.

(5) In its report, the Commission concludes that the Landesrechnungshof (LRH) and State Office and State Government of Land Salzburg, i.e. entities within the general government sector of the Republic of Austria, were seriously negligent in not ensuring appropriate compilation controls and reporting procedures. Thereby those entities facilitated the fact that the Budget Unit of the State Office of Land Salzburg could misrepresent and conceal financial transactions, leading to the misrepresentation in 2012 and 2013 of Austria's debt data regarding years 2008-2012 to Eurostat, i.e. after the entry into force of Regulation (EU) 1173/2011. Moreover, it concluded that Statistics Austria (hereinafter "STAT") was aware of the possibility of misrepresentation of the accounts of Land Salzburg since, at least, 6 December 2012 but that it only informed the Commission (Eurostat) accordingly on 10 October 2013.

(6) The amount of the fine shall not exceed 0,2% of the gross domestic product of Austria in 2015.

(7) 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 the Republic of Austria for the April 2014 EDP notification amounted to EUR 1 192 million. The reference amount shall thus be set at EUR 59.6 million.

(8) Taking into account the criteria set out in Article 14(3)(d) of 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 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 concludes that the last notification in which the relevant misrepresentation occurred was the October 2013 EDP notification covering the years 2009-2012. The misrepresentation for years 2011 and 2012, as misreported in the 2012 and the 2013 EDP notifications respectively, are of relevance in the context of the Regulation. These elements justify the amount of the fine to be increased.

(9) Taking into account the criteria set out in Article 14(3)(a) of Delegated Decision 2012/678/EU, the Commission in its report has concluded that the misrepresentation of data did not have significant impact on the functioning of the strengthened economic governance of the Union, due to the limited impact on the debt of the Republic of Austria as a whole. These elements justify a reduction of the amount of the fine.

(10) Taking into account the criteria set out in Article 14(3)(b) of Delegated Decision 2012/678/EU, the Commission in its report indicates that the misrepresentation was the result of serious negligence. The Report does not conclude that the misrepresentation was intentional in an EDP context. No modulation should be applied to the amount of the fine in this respect.

(11) Taking into account the criteria set out in Article 14(3)(c) of Delegated Decision 2012/678/EU, the Commission in its report concludes that the misrepresentation of data was facilitated by the fact that three entities of the general government sector of the Republic of Austria were seriously negligent in 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.

(12) Taking into account the criteria set out in Article 14(3)(e) of Delegated Decision 2012/678/EU, the Commission in its report concludes 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 occured in the accounts of Land Salzburg. This element would normally justify an increase in the amount of the fine. Considering the combined effect of the elements justifying a reduction against the elements justifying an increase, a certain reduction should still be applied to the amount of the fine.

(13) In view of these circumstances, the fine to be imposed on Austria should be set at EUR 29.8 million,

HAS ADOPTED THIS DECISION:

Article 1

A fine of EUR 29.8 million is imposed on Austria for the misrepresentation, by serious negligence of three government entities, of government debt data, 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