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COUNCIL IMPLEMENTING DECISION
of 30 May 2011
on granting Union financial assistance to Portugal
(2011/344/EU)
(OJ L 159, 17.6.2011, p. 88)

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► <u>M1</u>	Council Implementing Decision 2011/541/EU of 2 September 2011	L 240	8	16.9.2011
► <u>M2</u>	Council Implementing Decision 2011/683/EU of 11 October 2011	L 269	32	14.10.2011
► <u>M3</u>	Council Implementing Decision 2012/92/EU of 14 December 2011	L 46	40	17.2.2012



COUNCIL IMPLEMENTING DECISION
of 30 May 2011
on granting Union financial assistance to Portugal
(2011/344/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism ⁽¹⁾, and in particular Article 3(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Portugal has recently come under increasing pressure in financial markets, creating rising concerns about the sustainability of its public finances. Indeed, the current crisis has had a dramatic impact also on public finances, which ultimately led to a sharp increase in sovereign spreads. Amidst consecutive downgradings by credit rating agencies of Portuguese bonds, the country became unable to refinance itself at rates compatible with long-term fiscal sustainability. In parallel, the banking sector, which is heavily dependent on external financing, particularly within the euro area, was increasingly cut off from market funding.
- (2) In view of this severe economic and financial disturbance caused by exceptional circumstances beyond the control of the government, Portugal officially requested financial assistance from the European Union, the Member States whose currency is the euro, and the International Monetary Fund ('IMF') on 7 April 2011 with a view to supporting a policy programme to restore confidence and enable the return of the economy to sustainable growth, and to safeguarding financial stability in Portugal, the euro area and the Union. On 3 May 2011, an agreement was reached between the Government and the joint Commission/IMF/ECB mission in respect of a comprehensive three-year policy programme for the period up to mid-2014, to be laid down in a Memorandum of Economic and Financial Policies ('MEFP') and a Memorandum of Understanding on Specific Economic Policy Conditionality ('MoU') This policy programme was supported by the two largest opposition parties.

⁽¹⁾ OJ L 118, 12.5.2010, p. 1.

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- (3) This draft economic and financial adjustment programme ('the Programme') submitted by Portugal to the Commission and the Council aims at restoring confidence in the sovereign and in the banking sector and supporting growth and employment. It foresees comprehensive action on three fronts. First, deep and frontloaded structural reforms to boost potential growth, create jobs, and improve competitiveness (including through fiscal devaluation). In particular, the Programme contains reforms of the labour market, the judicial system, network industries, and housing and services sectors, with a view to strengthening the economy's growth potential, improving competitiveness and facilitating economic adjustment. Second, a credible and balanced fiscal consolidation strategy, supported by structural fiscal measures and better fiscal control over Public-Private-Partnerships ('PPPs') and state-owned enterprises ('SOEs'), aiming at putting the gross public debt-to-GDP ratio on a firm downward path in the medium term. The authorities are committed to reducing the deficit to 3 % of GDP by 2013. Third, a financial sector strategy based on recapitalisation and deleveraging, with efforts to safeguard the financial sector against disorderly deleveraging through market-based mechanisms supported by back-up facilities.
- (4) Under the Commission's current projections for nominal GDP growth (- 1,2 % in 2011, - 0,5 % in 2012, 2,5 % in 2013 and 3,9 % in 2014), the fiscal targets are consistent with a path for the debt-to-GDP ratio of 101,7 % in 2011, 107,4 % in 2012, 108,6 % in 2013 and 107,6 % in 2014. The debt-to-GDP ratio would therefore be stabilised in 2013 and be placed on a declining path thereafter, assuming further progress in the reduction of the deficit. Debt dynamics are affected by several below-the-line operations, which are projected to increase the debt-to-GDP ratio by 1¾ percentage points ('pps') of GDP in 2011 and by ¾ pps per year between 2012 and 2014. These include sizeable acquisitions of financial assets, notably for possible bank recapitalisation and financing to SOEs amounting to ½ % of GDP per year between 2011 and 2014. On the other hand, privatisation proceeds totalling around 3 % of GDP up to the year 2013 will support debt reduction efforts.
- (5) The assessment by the Commission, in liaison with the European Central Bank ('ECB') and together with the IMF, is that Portugal needs financing of a total amount of EUR 78 billion (78 000 million) over the period from June 2011 to mid 2014. Notwithstanding the significant fiscal adjustment, the financing gap for the sovereign may amount to EUR 63 billion over the period of the Programme. This assumes no access to the medium- and long-term debt market until the first half of 2013. Portugal is assumed to be able to roll-over part of its existing stock of short-term debt, while the programme also provides for a financing buffer in case of unexpected deviations from the Commission's baseline financing scenario. Portugal is encouraged to maintain and adjust its financial market operations, seeking to develop market access and confidence. The financial sector strategy contained in the programme to restore confidence in the Portuguese banking system on a sustainable basis requires banking groups to bring their core tier 1 capital ratio to 9 % by the end of 2011 and to 10 % by the end of 2012 and to

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maintain it thereafter. The programme contains a banking support scheme of up to EUR 12 billion to provide the necessary capital in case market solutions cannot be found. Actual funding needs may, however, be substantially lower, in particular if market conditions improve significantly and no severe unexpected banking losses materialise during the period of the Programme.

- (6) The Programme would be financed through contributions from external sources. The Union's assistance to Portugal would reach up to EUR 52 billion under the European Financial Stabilisation Mechanism ('EFSM') established by Regulation (EU) No 407/2010 and from contributions from the European Financial Stability Facility. In addition, Portugal has requested a loan of SDR 23,742 billion (equivalent to EUR 26 billion at the exchange rate of 5 May 2011) from the IMF under an Extended Fund Facility. The support from the EFSM needs to be supplied on terms and conditions similar to those of the IMF. The Union financial assistance should be managed by the Commission.
- (7) The Council should review on a regular basis the economic policies implemented by Portugal.
- (8) The specific economic policy conditions agreed with Portugal should be laid down in a Memorandum of Understanding on Specific Economic Policy Conditionality (the 'Memorandum of Understanding'). The detailed financial terms should be laid down in a Loan Facility Agreement.
- (9) The Commission, in liaison with the ECB, should verify at regular intervals that the economic policy conditions attached to the assistance are fulfilled, through missions and regular reporting by the Portuguese authorities.
- (10) Throughout the implementation of the Programme, the Commission should provide additional policy advice and technical assistance in specific areas.
- (11) The operations which the Union financial assistance helps to finance must be compatible with Union policies and comply with Union legislation. Interventions in support of financial institutions must be carried out in accordance with Union rules on competition.

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- (12) The assistance should be provided with a view to supporting the successful implementation of the Programme,

HAS ADOPTED THIS DECISION:

Article 1

▼ M2

1. The Union shall make available to Portugal a loan amounting to a maximum of EUR 26 billion, with a maximum average maturity of 12,5 years. The maturity of individual tranches of the loan may be of up to 30 years.

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2. The financial assistance shall be made available during three years starting from the first day after the entry into force of this Decision.

▼ M1

3. The Union financial assistance shall be made available by the Commission to Portugal in a maximum of 14 instalments. An instalment may be disbursed in one or several tranches. The maturities of the tranches under the first and second instalment may be longer than the maximum average maturity referred to in paragraph 1. In such cases, the maturities of further tranches shall be set so that the maximum average maturity referred to in paragraph 1 be achieved once all instalments have been disbursed.

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4. The first instalment shall be released subject to the entry into force of the Loan Facility Agreement and the Memorandum of Understanding. Any subsequent loan releases shall be conditional upon a favourable review by the Commission, in consultation with the ECB, of Portugal's compliance with the general economic policy conditions as defined by this Decision and the Memorandum of Understanding.

▼ M2

5. Portugal shall pay the cost of funding of the Union for each tranche.

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6. In addition, the costs referred to in Article 7 of Regulation (EU) No 407/2010 shall be charged to Portugal.

7. If required in order to finance the loan, the prudent use of interest rate swaps with counterparties of the highest credit quality and advanced borrowing shall be permitted.

8. The Commission shall decide on the size and release of further instalments. The Commission shall decide on the size of the tranches.

Article 2

1. The assistance shall be managed by the Commission in a manner consistent with Portugal's undertakings.

2. The Commission, in consultation with the ECB, shall agree with the Portuguese authorities the specific economic policy conditions attached to the financial assistance as set out in Article 3. Those conditions shall be laid down in a Memorandum of Understanding to be signed by the Commission and the Portuguese authorities consistent with the undertakings referred to in paragraph 1. The detailed financial terms shall be laid down in a Loan Facility Agreement to be concluded with the Commission.

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3. The Commission, in liaison with the ECB, shall verify at regular intervals (at least quarterly) that the economic policy conditions attached to the assistance are fulfilled, and report to the Economic and Financial Committee before disbursement of each instalment. To this end, the Portuguese authorities shall cooperate in full with the Commission and the ECB, and shall place all the necessary information at their disposal. The Commission shall keep the Economic and Financial Committee informed of possible refinancing of the borrowings, or changes to the financial conditions.

4. Portugal shall adopt and implement additional consolidation measures to ensure macro-financial stability, in case such measures will be necessary during the programme of assistance. The Portuguese authorities shall consult the Commission and the ECB in advance of the adoption of any such additional measures.

Article 3

1. The draft economic and financial adjustment programme (the 'Programme') prepared by the Portuguese authorities is hereby approved.

2. The disbursement of each instalment after the first one shall be made on the basis of a satisfactory implementation of the Programme and, more particularly, the specific economic policy conditions laid down in the Memorandum of Understanding. These shall include, inter alia, the measures provided for in paragraphs 4 to 8 of this Article.

▼M3

3. The general government deficit shall not exceed EUR 10 068 million (equivalent to 5,9 % of GDP based on current projections) in 2011, EUR 7 645 million (4,5 % of GDP) in 2012 and 3,0 % of GDP by 2013 in line with the excessive deficit procedure requirements. For the calculation of this deficit, the possible budgetary costs of bank support measures in the context of the Portuguese Government's financial sector strategy shall not be taken into account. Consolidation shall be achieved by means of high-quality permanent measures and minimising the impact of consolidation on vulnerable groups.

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4. Portugal shall adopt the measures specified in paragraphs 5 to 8 before the end of the indicated year, with exact deadlines for the years 2011-2014 being specified in the Memorandum of Understanding. Portugal shall stand ready to take additional consolidation measures to reduce the deficit to below 3 % of GDP by 2013 in case of deviations from targets.

5. Portugal shall adopt the following measures before the end of 2011, in line with specifications in the Memorandum of Understanding:

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(a) 2011 fiscal deficit target shall be reached by an exceptional measure. Assets acquired as a result of the transfer of banks pensions funds to the State social security system shall not be used in a way detrimental to long-term sustainability of Portuguese public finances.

▼ M3

- (b) Portugal shall adopt measures to reinforce public finance management. Portugal shall implement the measures provided for in the new Budgetary Framework Law, including setting up a medium-term budgetary framework and establishing an independent Fiscal Council. The budgetary framework at local and regional levels shall be considerably strengthened, in particular by putting forward the key options for the alignment of the respective financing laws to the requirements of the Budgetary Framework Law. Portugal shall step up reporting and monitoring of public finances and reinforce budgetary execution rules and procedures. The Portuguese Government shall prepare a strategy for the validation and settlement of arrears which is to present a roadmap setting out how and when the stock of arrears is to be stabilised and explore various options of settling arrears. Regarding Public Private Partnerships (PPPs), the Portuguese Government shall not enter into any new PPPs before the study results on existing PPPs envisaged in the Programme and the legal and institutional reforms proposed become available.

▼ M1

- (c) Portugal shall continue strengthening labour market functioning, notably by taking measures to reform employment protection legislation, wage setting and active labour market policies.

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- (d) In the energy sector, Portugal shall take measures to facilitate entry, promote the establishment of the Iberian gas market and review the support and compensation schemes for the production of electricity. For other network industries, in particular transport, telecommunications and postal services, Portugal shall adopt additional measures to promote competition and flexibility.

▼ M3

- (e) Portugal shall continue opening up the economy to competition. The Portuguese Government shall take the necessary measures to ensure that the Portuguese State or any public body does not conclude, in a shareholder capacity, agreements which may hinder the free movement of capital or influence the management control of companies. The new Privatisation Law shall also be respectful of the principles of free movement of capital and not grant or allow special rights to the State. A revision of competition law shall be undertaken aiming at improving the speed and effectiveness of enforcement of competition rules.

▼ B

- (f) Portugal shall improve practices and rules for public procurement contributing to a more competitive business environment and to more efficient public spending.

▼ M1

- (g) Portugal shall adopt measures to improve the efficiency and sustainability of SOEs at central, regional and local level. Portugal shall prepare a comprehensive SOEs strategy document reviewing the tariff structure and the service provision and a plan

▼ M1

to tighten borrowing requirements as of 2012. Portugal shall implement ongoing plans to reduce operational costs by at least 15 % on average in central government SOEs outside the health sector and prepare an equivalent plan for regional and local government SOEs.

▼ M3

- (h) Portugal shall prepare a financial arrangement with the Autonomous Region of Madeira (RAM) consistent with the Programme. Until the agreement of that arrangement and its implementation in the RAM budget, Portugal shall closely monitor the execution of the RAM budget, shall keep transfers from the State to the RAM government suspended and shall not honour any new commercial or financial debt or guarantees by the RAM government and its SOEs that are not approved by the Ministry of Finance.

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- 6. Portugal shall adopt the following measures during 2012, in line with specifications in the Memorandum of Understanding:

▼ M3

- (a) Portugal shall implement the privatisation programme. In particular, the sale of public sector shares in EDP shall be completed in 2012. In addition, the public sector shares in REN and GALP, and, if market conditions permit, TAP, shall be sold in 2012. A strategy for Parpublica shall be prepared, reconsidering the role of Parpublica as a public company and considering the possibility of winding down the company or consolidating it with the general government. The privatisation plan through 2013 shall also cover Aeroportos de Portugal, the freight branch of Comboios de Portugal, Correios de Portugal and Caixa Seguros, as well as a number of smaller firms.
- (b) The measures defined in points (c) and (d), amounting to at least EUR 8,8 billion, shall be included in the 2012 budget. Further measures, mostly on the expenditure side, shall be taken to fill any possible gap arising from budgetary developments in 2012.
- (c) The budget shall provide for a reduction of expenditure in 2012 of at least EUR 6,7 billion including a reduction in public sector wages and employment; cuts in pensions; a comprehensive reorganisation of the central administration, eliminating duplicities and other inefficiencies; reducing the number of municipalities and parishes; cuts in education and health; lower transfers to regional and local authorities; and reductions in capital expenditure and in other expenditure as set out in the Programme.
- (d) On the revenue side, the budget shall include revenue measures totalling around EUR 2,1 billion in a full year, including by broadening VAT bases through reducing exemptions and rearranging the lists of goods and services subject to reduced, intermediate and higher rates; an increase in excise taxes; broadening the corporate and personal income tax bases by reducing tax

▼ M3

deductions and special regimes; ensuring the convergence of personal income tax deductions applied to pensions and labour income; and changes in property taxation by substantially reducing exemptions. These measures shall be complemented by action to fight tax evasion, fraud and informality.

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- (e) Portugal shall put in place a strengthened legal and institutional framework for assessing fiscal risks prior to engaging in a PPP contract. Similarly, Portugal shall adopt a law to regulate the creation and the functioning of SOEs at the central, regional and local levels. Portugal shall not engage in any new PPP contract or create an SOE until the reviews and the new legal structure are in place.
- (f) Local government administration in Portugal has currently 308 municipalities and 4 259 parishes. Portugal shall develop a consolidation plan to reorganise and significantly reduce the number of such entities. These changes will come into effect by the beginning of the next local election cycle.
- (g) Portugal shall modernise the revenue administration by creating a single entity, reducing the number of municipal offices and addressing remaining bottlenecks in the tax appeal system.
- (h) Portugal shall introduce legislation to reform the unemployment insurance system, including a reduction of the maximum duration of unemployment insurance benefits to 18 months, a cap on unemployment benefits to 2,5 times the social support index, a reduction in benefits over the unemployment spell, a reduction of the minimum contributory period, and an extension to certain categories of self-employed. Active labour market policies shall be strengthened after a review of current practices and an agreed action plan.
- (i) The system of severance payments shall be brought in line with practices in other EU Member States, based on the specification in the Memorandum of Understanding.
- (j) Regulations on overtime pay shall be eased and increased flexibility of working time arrangements introduced in line with the Memorandum of Understanding.

▼ M3

- (k) Portugal shall promote wage developments consistent with the objectives of fostering job creation and improving firms' competitiveness with a view to correcting macroeconomic imbalances. Over the Programme period, any increase in minimum wages shall take place only if justified by economic and labour market developments. Measures shall be taken to address weaknesses in the current wage bargaining schemes, including legislation to redefine the criteria and modalities of the extension of collective agreements and to facilitate firm-level agreements. Until then, the application of extensions shall be suspended.

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- (l) An action plan shall be prepared to improve the quality of secondary and vocational education and training.

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- (m) The functioning of the judicial system shall be improved by implementing the measures proposed under the Judicial Reform Map and by conducting and auditing of the backlog cases in order to target measures to eliminate court backlog and foster alternative dispute settlements.
- (n) The competition framework shall be improved by reinforcing the independence and resources of the national regulator authorities. Professional services shall be liberalised by improving the professional qualification framework and by eliminating restrictions on regulated professions.
- (o) Regulated tariffs in electricity and gas retail markets shall be eliminated.

▼ M3

- (p) Portugal shall adopt measures to ensure the sustainability of the national electricity system leading to the elimination of the tariff debt by 2020 and ensuring it shall stabilise by 2013. These measures shall correct excessive rents and cover all their sources.

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- 7. Portugal shall adopt the following measures during 2013, in line with specifications in the Memorandum of Understanding:

▼ M3

- (a) The 2013 budget shall include fiscal consolidation measures amounting to at least EUR 3,4 billion aiming at a reduction of the general government deficit within the timeframe referred to in Article 3(3).
- (b) The budget shall include revenue measures including in particular further broadening of corporate and personal income tax bases, higher excises taxes and changes in property taxation, yielding close to EUR 0,7 billion of additional revenue.

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- (c) Portugal shall complete the elimination of the court backlog.

▼ M3

- (d) On the expenditure side, the budget shall provide for a reduction of at least EUR 2,7 billion, including reducing expenditures in the central administration, education and health; transfers to local and regional authorities; reduction of the number of employees in the public sector; and lower costs by SOEs.

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- (e) Portugal shall improve the business environment by reducing administrative burden through the extension of simplification reforms (Points of Single Contact and 'Zero Authorisation' projects) to all sectors of the economy; and by alleviating credit constraints of small and medium-sized enterprises, including through the implementation of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions ⁽¹⁾.

8. With a view to restoring confidence in the financial sector, Portugal shall adequately recapitalise its banking sector and ensure an orderly deleveraging process. In that regard, Portugal shall develop and agree with the Commission, the ECB and the IMF a strategy for the future structure and functioning of the Portuguese banking sector so that financial stability is preserved. In particular, Portugal shall:

- (a) advise banks to strengthen their collateral buffers on a sustainable basis and monitor the issuance of the government guaranteed bank bonds, which has been authorised up to EUR 35 billion in line with Union State aid rules;
- (b) follow closely the plans presented by the banks to reach a core Tier 1 ratio of 9 % by end-2011 and 10 % at the latest by end-2012. The capital requirements stemming from valuing sovereign debt based on market prices according to the European Banking Authority shall be met in June 2012 together with the capital implications from the special on-site inspections programme and the transfer of the banks' pension funds to the State social security system. Banks shall present in February 2012 plans on how they intend to reach their capital needs in that year. If banks cannot reach the capital requirement thresholds on time, they might temporarily require public provision of capital, which for privately owned banks shall be available through the EUR 12 billion bank solvency support facility established under the Programme;
- (c) ensure a balanced and orderly deleveraging of the banking sector, which remains critical to eliminating funding imbalances on a permanent basis. Banks' funding plans aim at a reduction in the loan-to-deposit ratio to around 120 % by the end of the Programme and a reduction of the reliance on Eurosystem funding during the duration of the Programme. These funding plans shall be reviewed quarterly, with the next one due before the third Programme review. The Bank of Portugal shall take appropriate action in case of deviations from the banks' funding plans;
- (d) complete the sale of Banco Português de Negócios respecting the Union State aid rules;

⁽¹⁾ OJ L 48, 23.2.2011, p. 1.

▼ M3

- (e) ensure that the state-owned Caixa Geral de Depósitos (CGD) is streamlined to increase the capital base of its core banking arm as needed in 2011 without relying on the sale of its insurance arm. This sale is expected to take place in 2012 directly to a final buyer and to contribute to meeting that year's additional capital needs. Insofar as these needs cannot be met from internal group sources, CGD shall be provided with government capital support outside of the bank solvency support facility;
- (f) ensure that the partial transfer of the banks' pension funds to the State social security system is done under actuarially balanced conditions, as well as respecting Union competition and State aid rules. In order to avoid having to take recourse to the bank solvency support within the Programme financing envelope, the Portuguese Government shall offer banks help to cover the impact of the transfer on capital by using part of the transfer to acquire common equity in the banks. The remainder of the transferred funds shall be deposited in a blocked account until the completion of the third Programme review;
- (g) finalise the legal framework for access to capital from public sources by end-January 2012 consistent with Union State aid rules and in line with the principles laid down in the Memorandum of Understanding;

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- (h) undertake to encourage private investors to maintain their overall exposures on a voluntary basis;

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- (i) ensure that before the third Programme review banks have incorporated the available results of the special on-site inspections programme in the stress test exercise with a 6 % Core Tier 1 threshold;
- (j) complete the legal framework for early intervention, resolution and deposit insurance for banks by end-2011 and by the same deadline the one for corporate and household debt restructuring.

9. In order to ensure the smooth implementation of the Programme's conditionality, and to help to correct imbalances in a sustainable way, the Commission shall provide continued advice and guidance on fiscal, financial market and structural reforms. Within the framework of the assistance to be provided to Portugal, together with the IMF and in liaison with the ECB, it shall periodically review the effectiveness and economic and social impact of the agreed measures, and shall recommend necessary corrections with a view to enhancing growth and job creation, securing the necessary fiscal consolidation and minimising harmful social impacts, particularly on the most vulnerable parts of Portuguese society.

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Article 4

Portugal shall open a special account with the Bank of Portugal for the management of the Union financial assistance.

Article 5

This Decision is addressed to the Portuguese Republic.

Article 6

This Decision shall be published in the *Official Journal of the European Union*.