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► **C1** COUNCIL IMPLEMENTING DECISION

of 17 May 2011

on granting Union financial assistance to Portugal ◀

(2011/344/EU)

(OJ L 159, 17.6.2011, p. 88)

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► <b><u>M2</u></b>	Council Implementing Decision 2011/683/EU of 11 October 2011	L 269	32	14.10.2011
► <b><u>M3</u></b>	Council Implementing Decision 2012/92/EU of 14 December 2011	L 46	40	17.2.2012
► <b><u>M4</u></b>	Council Implementing Decision 2012/224/EU of 29 March 2012	L 115	21	27.4.2012
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**COUNCIL IMPLEMENTING DECISION**

**of 17 May 2011**

**on granting Union financial assistance to Portugal**

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(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 <sup>(1)</sup>, 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.

<sup>(1)</sup> 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 1¼ 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 maintain it thereafter. The programme contains a banking support scheme of up to EUR 12 billion to provide the necessary capital in case

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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.
- (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.

**▼ B**

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.

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.

**▼B**

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:

**▼M3**

- (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.
- (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

**▼ M3**

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 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

**▼ M3**

commercial or financial debt or guarantees by the RAM government and its SOEs that are not approved by the Ministry of Finance.

**▼ M4**

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

**▼ M5**

(a) The general government deficit shall not exceed 4,5 % of GDP in 2012. Portugal shall continue to closely monitor fiscal developments and assess whether further policy adjustments are necessary to achieve the 2012 target.

**▼ M4**

(b) Portugal shall aim to reduce expenditure in 2012 by at least EUR 6,8 billion, including by reducing public sector wages and employment; making cuts in pensions; carrying out a comprehensive reorganisation of the central administration, eliminating redundancies and other inefficiencies; reducing transfers to SOEs; reorganising and reducing the number of municipalities and parishes; making cuts in education and health; lowering transfers to regional and local authorities; and reducing capital expenditure and other expenditure as set out in the Programme.

(c) On the revenue side, Portugal shall implement revenue measures totalling around EUR 3 billion, including by broadening VAT bases through reducing exemptions and rearranging the lists of goods and services subject to reduced, intermediate and higher rates; increasing excise taxes; broadening the corporate and personal income tax bases by reducing tax deductions and special regimes; ensuring the convergence of personal income tax deductions applied to pensions and labour income; and changing property taxation by substantially reducing exemptions. These measures shall be complemented by action to fight tax evasion, fraud and informality.

**▼ M5**

(d) Portugal shall continue adopting 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. The local and regional budgetary frameworks shall be considerably strengthened, in particular by aligning the respective financing laws with the requirements of the Budgetary Framework Law. Portugal shall step up the reporting and monitoring of public finances and reinforce budgetary execution rules and procedures. The Portuguese Government shall reinforce the implementation of the strategy for the validation and settlement of arrears. That strategy lays out the prioritisation criteria for paying creditors, as well as governance arrangements to ensure a fair and transparent settling process across all sectors. Portugal shall implement the new legal and institutional PPPs framework. Based on the results of a study on PPPs renegotiations, the Portuguese government shall renegotiate the relevant contracts. Portugal shall adopt a law to regulate the creation and the functioning of SOEs at the central, regional and local levels.



**▼ M5**

- (e) Portugal shall reorganise and significantly reduce the number of local government entities. These changes shall come into effect by the beginning of the next local election cycle.
- (f) Portugal shall modernise the revenue administration by completing the implementation of the Autoridade Tributária e Aduaneira, reinforcing the links with the revenue collection units of the Social Security, reducing the number of municipal offices and addressing remaining bottlenecks in the tax appeal system.

**▼ M4**

- (g) Portugal shall implement the financial arrangement with the RAM.

**▼ M5**

- (h) Portugal shall adopt measures to improve the efficiency and sustainability of SOEs at central, regional and local level. Portugal shall implement a strategy to restructure and reduce the indebtedness of SOEs, including Parpública, and to ensure improved conditions for market financing. Portugal shall implement this strategy to reach operational balance at sector level by the end of 2012.
- (i) Portugal shall continue implementing the privatisation programme. The direct sale of the Caixa Geral de Depósitos (CGD) insurance arm, Caixa Seguros, shall take place in 2012. The privatisation process of the national air carrier TAP, of the airport operator ANA — Aeroportos de Portugal, of the freight branch of CP — Comboios de Portugal, CP Carga, and of CTT — Correios de Portugal shall start in 2012 with a view of finalising it in 2013.

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- (k) The Portuguese Government shall submit draft legislation to the Portuguese Parliament to align severance payments with the Union average of 8-12 days per year of work and to create a compensation fund for severance payments.
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**▼ M4**

- (m) 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.

**▼ M4**

- (n) Active labour market policies shall be strengthened after a review of current practices and the establishment of an agreed action plan.

**▼ M5**

- (o) Portugal shall implement the measures set out in its action plan to improve the quality of secondary and vocational education and training.
- (p) The functioning of the judicial system shall be improved by implementing the measures proposed under the Judicial Reform Map and by applying targeted measures to progressively eliminate the court backlog and to foster alternative dispute resolution.

**▼ M4**

- (q) Portugal shall continue opening up its economy to competition. The Portuguese Government shall take the necessary measures to ensure that obstacles to free movement of capital will not be created by their action and in particular 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. Professional services shall be liberalised by improving the professional qualification framework and by eliminating restrictions on regulated professions. In construction and real estate activities, Portugal shall make the requirements for cross-border providers less burdensome and review obstacles to the establishment of services providers.

**▼ M5**

- (r) The competition and regulatory framework shall be improved. Portugal shall reinforce the independence and resources of the main national regulatory authorities; implement the Competition Law with a view to improving the speed and effectiveness of the enforcement of competition rules; and monitor the inflow of new cases and report on the functioning of the specialised court for competition, regulation and supervision.

**▼ M4**

- (s) In the energy sector, Portugal shall take measures to facilitate market entry and promote the establishment of the Iberian gas market and it shall take further steps towards the full transposition of the Third EU Energy Package. Portugal shall take measures to review the support and compensation schemes for the production of electricity. Portugal shall take measures to reduce excessive rents and eliminate the tariff debt by 2020, focusing on compensation schemes for power guarantee, special regime (renewables — excluding those granted under tender mechanisms — and cogeneration), and the ordinary regime ('CMECs' and 'CAEs').

**▼ M4**

- (t) In other network industries, in particular transport, telecommunications and postal services, Portugal shall adopt additional measures to promote competition and flexibility.

**▼ M5****▼ B**

- 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.

**▼ B**

- (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.
- (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 <sup>(1)</sup>.

**▼ M5**

- 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 implement the strategy for the Portuguese banking sector agreed with the Commission, the ECB and the IMF 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;

<sup>(1)</sup> OJ L 48, 23.2.2011, p. 1.

▼ **M5**

- (b) ensure that banks reach the Programme target of the Core Tier 1 ratio of 10 % at the latest by the end of 2012. The capital requirements stemming from valuing sovereign debt based on market prices according to the Union wide recapitalisation exercise coordinated by the European Banking Authority shall be met in June 2012 together with the capital implications resulting from the special on-site inspections programme and the transfer of the banks' pension funds to the State social security system. If banks cannot reach the capital requirement thresholds within the deadlines set, the EUR 12 billion bank solvency support facility established under the Programme shall be made available;
  
- (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 reducing the loan-to-deposit ratio to an indicative value of around 120 % by the end of the Programme and potentially reducing the reliance on Euro-system funding for the duration of the Programme. Those funding plans shall be reviewed quarterly;
  
- (d) ensure that the state-owned CGD is streamlined to increase the capital base of its core banking arm as needed. The sale of its insurance and health arms shall take place before the end of 2012, while the sale of non-strategic equity stakes is ongoing. In so far as these needs cannot be met from internal group sources by the end of June 2012, CGD shall be provided with government capital support from cash buffers outside the bank solvency support facility;
  
- (e) optimise the process for recovering the assets transferred from BPN to the three state-owned special purpose vehicles through the outsourcing to a professional third party of the management of the assets, with a mandate to gradually recover the assets over time. The Portuguese government shall select the party managing the assets through a competitive bidding process and include proper incentives to optimise the recoveries into the mandate;
  
- (f) complete a proposal for encouraging the diversification of financing alternatives to the corporate sector by the end of July 2012;
  
- (g) implement measures to conclude the setting-up of the Resolution Fund with a view to ensuring that it is fully operational by July 2012; adopt the supervisory notices on recovery plans by the end of July 2012; adopt the regulation on resolution plans by the end of October 2012; and adopt the rules applicable to the setting-up and operation of bridge banks in line with Union competition rules by the end of September 2012. Priority shall be given to the review of the recovery and subsequent resolution plans of the banks that are of systemic importance;

**▼ M5**

- (h) establish a framework for financial institutions to engage in out-of-court debt restructuring for households and SMEs.

**▼ M3**

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.

**▼ B***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*.