CHAPTER 523

PARTICIPATION AND GRANTING OF FINANCIAL STABILITY SUPPORT UNDER THE EUROPEAN STABILITY MECHANISM ACT

To authorize the participation within the European Stability Mechanism and to grant financial stability support by issuing financial instruments or by entering into financial or other agreements or arrangements with Members of the European Stability Mechanism, financial institutions or other third parties.

17th July, 2012*

ACT XII of 2012.

1. The short title of this Act is the Participation and Granting of Financial Stability Support under the European Stability Mechanism Act. Short title.

2. In this Act, unless the context otherwise requires: Interpretation.

"European Financial Stability Facility" has the meaning assigned to it by article 2 of the Participation and Guarantees under the European Financial Stability Facility Act; Cap. 505.

"European Financial Stabilisation Mechanism" means the financial assistance granted to Members States which experienced or are threatened with a severe economic or financial disturbance in terms of Council Regulation (EU) No. 407/2010 of 11 May 2010 establishing a European Financial Stabilisation Mechanism;

"European Stability Mechanism" means the permanent stability mechanism, established by the European Council on the 17 December 2010 to assume the tasks fulfilled by the European Financial Stability Facility and the European Financial Stabilisation Mechanism to provide, where needed, financial assistance to the Members of the European Stability Mechanism, in accordance with the decision annexed as Schedule 1 and which shall take the form of an intergovernmental organization under public international law, to be located in Luxembourg, as established by a decision of the European Council on the 25 March 2011, which decision is annexed as Schedule 2;

"Malta" meaning assigned to it by article 124 of the Constitution of Malta;

"Members of the European Stability Mechanism" means the Euro Area Member States of the European Union and such other Member State of the European Union that has joined the European Stability Mechanism following the adoption by the Council of the European Union of the decision to abrogate its derogation from adopting the euro in accordance with Article 140(2) of the Treaty on the Functioning of the European Union;

*see article 1(2) of this Act as originally promulgated, and Legal Notice 232 of 2012.

"Minister" means the Minister responsible for Finance or his representative delegate in writing to exercise any of his functions under this Act;

"Stability support" shall mean the financial support granted by the Board of Governors of the European Stability Mechanism, as implemented by the Board of Directors of the same European Stability Mechanism, to a Member of the European Stability Mechanism for the purpose of sub-article (2) of article 3 of this Act, through precautionary financial assistance in the form of a precautionary conditioned credit line or in the form of an enhanced conditions credit line, loans, loans to a Member of the European Stability Mechanism for the specific purpose of re-capitalising the financial institutions of that Member of the European Stability Mechanism, the purchase of bonds on the primary market with the objective of maximizing the cost efficiency of the financial assistance, and operations on the secondary bond market, in terms of article 14 to 18 of the Treaty;

"the Treaty" means the treaty establishing the European Stability Mechanism between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, The Hellenic Republic, The Kingdom of Spain, The French Republic, The Italian Republic, The Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, The Kingdom of the Netherlands, the Republic of Austria, The Portuguese Republic, the Republic of Slovenia, The Slovak Republic and the Republic of Finland, as approved by the Council of the European Union, signed on the 2 February 2012, annexed as Schedule 3.

Authority to participate in the European Stability Mechanism.

3. (1) Subject to the provisions of this Act, the Government of Malta shall participate in the European Stability Mechanism as a shareholder in the authorized share capital, Governor and an alternate Governor within the Board of Governors, and as Director and alternate Director on the Board of Directors, in accordance with the terms and conditions set out in the Treaty, as may be amended from time to time, for the purposes identified under sub-article (2).

(2) The European Stability Mechanism shall provide stability support under strict conditions, appropriate to the financial assistance instrument chosen, to a Member of the European Stability Mechanism which is experiencing or is threatened by severe financial problems, which support is indispensable to safeguard the financial stability of the euro area as a whole and of its Members States.*

Ratification of Treaty.

4. The Government of Malta is hereby authorised to ratify the Treaty while depositing a letter dated 3 July 2012 issued by the European Commission annexed as Schedule 4 stating the Government's understanding that where the Treaty refers to the financial stabiltiy of the Euro Area as a whole and of its Member States, this should be interpreted to mean the Euro Area as a whole or one of its Member States in isolation, whatever its size.

*Art. 12: Principles

Granting of financial stability assistance beyond article 3.

5. Any participation and stability assistance granted by the Government of Malta beyond the purpose specified under sub-article (2) of Article 3, may only be done in such a manner and for such purpose as the House of Representatives may by resolution determine.

Bye-Laws.

6. (1) The Minister may participate in the formulation of Bye-Laws for the better carrying out of any obligations under the Treaty.

(2) The Minister may make regulations to implement the Bye-Laws adopted by the European Stability Mechanism under the Treaty.

Public Accounts Committee.

7. The persons appointed by the Government of Malta to represent it on the governing and administrative organs of the European Stability Mechanism shall appear at least once a year and preferably during the month of March before the Public Accounts Committee or before another committee of the House of Representatives which from time to time may be tasked with the economic and financial scrutiny of Government for the purpose of rendering account of the workings of that Mechanism and of the European Financial Stability Facility insofar as this is in conformity with their duties and with the obligations of Malta.

SCHEDULE 1

European Council Decision of the 17 December 2010

(Article 2)

Throughout the crisis, we have taken decisive action to preserve financial stability and promote the return to sustainable growth. We will continue to do so and the EU and the euro area will emerge stronger from the crisis.

Growth prospects are strengthening and the fundamentals of the European economy are sound. The temporary stability tools put in place earlier this year have proved their utility, but the crisis has demonstrated that there can be no complacency. This is why we agreed today on the text of a limited amendment to the Treaty on the establishment of a future permanent mechanism to safeguard the financial stability of the euro area as a whole. This amendment should enter into force on 1 January 2013. We also reiterated our commitment to reach agreement on the legislative proposals on economic governance by the end of June 2011 with the aim of strengthening the economic pillar of the Economic and Monetary Union and to continue to implement the Europe 2020 strategy.

I. ECONOMIC POLICY

1. The European Council welcomed the report presented by its President following up on its conclusions of 28 and 29 October 2010. It agreed that the Treaty should be amended in order for a permanent mechanism to be established by the Member States of the euro area to safeguard the financial stability of the euro area as whole (European Stability Mechanism). This mechanism will replace the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM), which will remain in force until June 2013. As this mechanism is designed to safeguard the financial stability of the euro area as a whole, the European Council agreed that Article 122(2) TFEU will no longer be needed for such purposes. Heads of State or Government therefore agreed that it should not be used for such purposes.

2. The European Council agreed on the text of the draft Decision amending the TFEU set out in Annex I. It decided to immediately launch the simplified revision procedure provided for in Article 48(6) TEU. The consultation of the institutions concerned should be concluded in time to allow the formal adoption of the Decision in March 2011, completion of national approval procedures by the end of 2012, and entry into force on 1 January 2013.

3. The European Council also called for Finance Ministers of the euro area and the Commission to finalise work on the intergovernmental arrangement setting up the future mechanism by March 2011, integrating the general features set out in the Eurogroup statement of 28 November 2010, which the European Council endorsed (Annex II). The mechanism will be activated by mutual agreement of the euro area Member States in the case of risk to the stability of the euro area as a whole.

4. Member States whose currency is not the euro will, if they so wish, be involved in this work. They may decide to participate in operations conducted by the mechanism on an *ad hoc* basis.

5. The European Council called for the acceleration of the work on the six legislative proposals on economic governance, building on the recommendations of the Task Force endorsed last October and keeping a high level of ambition, so that they can be adopted by June 2011. It welcomed the Council's report on the treatment of systemic pension reform under the Stability and Growth Pact and called for the report to be reflected in the specifications on the implementation of the reformed

SGP.

6. Recalling its conclusions of October 2010, the European Council looked forward to the Commission's intention to make proposals for the new multiannual financial framework by June 2011 and invited the institutions to cooperate in order to facilitate its timely adoption.

7. The new Europe 2020 strategy for jobs and growth will continue to guide the Union and the Member States in responding to the crisis and promoting the delivery of structural reforms. The European Council welcomed the progress achieved since the launch of the strategy, as shown in the report presented by the Presidency.

8. The European Council welcomed the Statement by the Heads of State or Government of the euro area and the EU institutions (Annex III).

II. OTHER ISSUES

9. The European Council welcomed the first progress report presented by the High Representative on the European Union's relations with its strategic partners. On this basis, the European Council invited the High Representative, in close cooperation with the Commission and the Foreign Affairs Council, to take this work forward in line with its conclusions of September 2010, setting out common European interests and identifying all possible leverages to achieve them. The European Council will take stock of progress once a year and, where necessary, set orientations. The launch of the EEAS and its coordinating role provide a valuable opportunity to step up this work.

10. The European Council endorsed the Council's conclusions of 14 December 2010 on enlargement and agreed to give Montenegro the status of candidate country.

11. The European Council condemned the violence perpetrated since the second round of the presidential election in Côte d'Ivoire, in particular the recourse to violence against civilians on 16 December. It called firmly on all the parties to act with restraint. It recalled the availability expressed by the International Criminal Court to prosecute the persons responsible for such acts. It called on all Ivorian leaders, both civilian and military, who have not yet done so to place themselves under the authority of the democratically elected President, Mr°Alassan Ouattara. It confirmed the determination of the EU to take targeted restrictive measures against those who would continue to obstruct the respect of the sovereign will expressed by the Ivorian people.

12. The European Council welcomed the successful outcome of the COP-16 in Cancun as an important step forward in global efforts to reach the agreed objective of staying below 2°C increase in global temperatures, and noted with satisfaction the successful implementation of the strategy it agreed in March.

ANNEX I

DRAFT EUROPEAN COUNCIL DECISION
of …
amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, and in particular Article 48(6) thereof,

Having regard to the proposal for revising Article 136 of the Treaty on the Functioning of the European Union submitted to the European Council by the Belgian Government on 16 December 2010,

[Having regard to the opinion of the European Parliament,[1]]

[Having regard to the opinion of the European Commission,[2]]

[After obtaining the opinion of the European Central Bank,[3]]

---

[1] Opinion of … (not yet published in the Official Journal).

[2] Opinion of … (not yet published in the Official Journal).

[3] Opinion of … (not yet published in the Official Journal).

Whereas:

(1) Article 48(6) of the Treaty on European Union (TEU) allows the European Council, acting by unanimity after consulting the European Parliament, the Commission and, in certain cases, the European Central Bank, to adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union (TFEU). Such a decision may not increase the competences conferred on the Union in the Treaties and its entry into force is conditional upon its subsequent approval by the Member States in accordance with their respective constitutional requirements.

(2) At the meeting of the European Council of 28 and 29 October 2010, the Heads of State or Government agreed on the need for Member States to establish a permanent crisis mechanism to safeguard the financial stability of the euro area as a whole and invited the President of the European Council to undertake consultations with the members of the European Council on a limited treaty change required to that effect.

(3) On 16 December 2010, the Belgian Government submitted, in accordance with Article 48(6), first subparagraph, of the TEU, a proposal for revising Article 136 of the TFEU by adding a paragraph under which the Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole and stating that the granting of any required financial assistance under the mechanism will be made subject to strict conditionality. At the same time, the European Council adopted conclusions about the future stability mechanism (paragraphs 1 to 4).

(4) The stability mechanism will provide the necessary tool for dealing with such cases of risk to the financial stability of the euro area as a whole as have been experienced in 2010, and hence help preserve the economic and financial stability of the Union itself. At its meeting of 16 December 2010, the European Council agreed that, as this mechanism is designed to safeguard the financial stability of the euro area as whole, Article 122(2) of the TFEU will no longer be needed for such purposes. The Heads of State or Government therefore agreed that it should not be used for such purposes.

(5) On 16 December 2010, the European Council decided to consult, in accordance with Article 48(6), second subparagraph, of the TEU, the European Parliament and the Commission, on the proposal. It also decided to consult the European Central Bank. [On […dates…], the European Parliament, the Commission and the European Central Bank, respectively, adopted opinions on the proposal.]

(6) The amendment concerns a provision contained in Part Three of the TFEU and it does not increase the competences conferred on the Union in the Treaties,

HAS ADOPTED THIS DECISION:

Article 1

The following paragraph shall be added to Article 136 of the Treaty on the Functioning of the European Union:

> "3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

Article 2

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the approval of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on 1 January 2013, provided that all the notifications referred to in the first paragraph have been received, or, failing that, on the first day of the month following receipt of the last of the notifications referred to in the first paragraph.

Article 3

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

Done at,

For the European Council

The President

ANNEX II

GENERAL FEATURES OF THE FUTURE MECHANISM

EUROGROUP STATEMENT OF 28 NOVEMBER 2010

"The recent events have demonstrated that financial distress in one Member State can rapidly threaten macro-financial stability of the EU as a whole through various contagion channels. This is particularly true for the euro area where the economies, and the financial sectors in particular, are closely intertwined.

Throughout the current crisis, euro area Member States have demonstrated their determination to take decisive and coordinated action to safeguard financial stability in the euro area as a whole, if needed and return growth to a sustainable path.

In particular, the European Financial Stability Facility (EFSF) has been set up to provide for swift and effective liquidity assistance, together with the European Financial Stabilisation Mechanism (EFSM) and the International Monetary Fund, and on the basis of stringent programmes of economic and fiscal policy adjustments to be implemented by the affected Member State and ensuring debt sustainability.

On 28 - 29 October the European Council agreed on the need to set up a permanent crisis mechanism to safeguard the financial stability of the euro area as a whole. Eurogroup Ministers agreed that this European Stability Mechanism (ESM) will be based on the European Financial Stability Facility capable of providing financial assistance packages to euro area Member States under strict conditionality functioning according to the rules of the current EFSF.

The ESM will complement the new framework of reinforced economic governance, aiming at an effective and rigorous economic surveillance, which will focus on prevention and will substantially reduce the probability of a crisis arising in the future.

Rules will be adapted to provide for a case by case participation of private sector creditors, fully consistent with IMF policies. In all cases, in order to protect taxpayers' money, and to send a clear signal to private creditors that their claims are subordinated to those of the official sector, an ESM loan will enjoy preferred creditor status, junior only to the IMF loan.

Assistance provided to a euro area Member State will be based on a stringent programme of economic and fiscal adjustment and on a rigorous debt sustainability analysis conducted by the European Commission and the IMF, in liaison with the ECB.

On this basis, the Eurogroup Ministers will take a unanimous decision on providing assistance.

For countries considered solvent, on the basis of the debt sustainability analysis conducted by the Commission and the IMF, in liaison with the ECB, the private sector creditors would be encouraged to maintain their exposure according to international rules and fully in line with the IMF practices.

In the unexpected event that a country would appear to be insolvent , the Member State has to negotiate a comprehensive restructuring plan with its private sector creditors, in line with IMF practices with a view to restoring debt sustainability. If debt sustainability can be reached through these measures, the ESM may provide liquidity assistance.

In order to facilitate this process, standardized and identical collective action clauses (CACs) will be included, in such a way as to preserve market liquidity, in the terms and conditions of all new euro area government bonds starting in June 2013.

Those CACs would be consistent with those common under UK and US law after the G10 report on CACs, including aggregation clauses allowing all debt securities issued by a Member State to be considered together in negotiations. This would enable the creditors to pass a qualified majority decision agreeing a legally binding change to the terms of payment (standstill, extension of the maturity, interest-rate cut and/or haircut) in the event that the debtor is unable to pay.

Member States will strive to lengthen the maturities of their new bond emissions in the mediumterm to avoid refinancing peaks.

The overall effectiveness of this framework will be evaluated in 2016 by the Commission, in liaison with the ECB.

We restate that any private sector involvement based on these terms and conditions would not be effective before mid-2013.

President of the European Council Herman Van Rompuy has indicated that his proposal on limited treaty change to the European Council at its next meeting will reflect today's decision."

ANNEX III

STATEMENT BY THE HEADS OF STATE OR GOVERNMENT OF THE EURO AREA AND THE EU INSTITUTIONS

The Heads of State or Government of the euro area and the EU institutions have made it clear, as set out below, that they stand ready to do whatever is required to ensure the stability of the euro area as a whole. The euro is and will remain a central part of European integration. In particular, the Heads called for determined action in the following areas:

a) **Fully implementing existing programmes**: we welcome the impressive progress made in implementing the Greek programme and the agreed adjustment programme for Ireland, including the adoption of the 2011 budget.

b) **Keeping up fiscal responsibility**: we are all committed to strictly implementing the budgetary policy recommendations, fully respecting the fiscal targets for 2010 and 2011, and to correcting excessive deficits within the agreed deadlines.

c) **Stepping up growth-enhancing structural reforms**: we are determined to accelerate structural reforms to enhance growth.

d) **Strengthening the Stability and Growth Pact and implementing a new macrosurveillance framework** from summer 2011.

e) **Ensuring the availability of adequate financial support through the EFSF pending the entry into force of the permanent mechanism**: we note that only a very limited amount has been committed from the EFSF to support the Irish programme.

f) **Further strengthening of the financial system** both as regards the regulatory and supervisory frameworks and conducting new stress tests in the banking sector.

g) **Expressing full support for ECB action**: we support the ECB in its independent responsibility to ensure price stability, solidly anchor inflation expectations and thereby contribute to financial stability of the euro area. We are committed to ensuring the financial independence of the central banks of the Eurosystem.

Elements of this strategy will be further developed in the coming months as a comprehensive response to any challenges, as part of our new economic governance.

SCHEDULE 2

European Council Decision of the 25 March 2011

(Article 2)

Over recent months, Europe has gone through a serious financial crisis. Although economic recovery in Europe is now on track, risks remain and we must continue our determined action. We adopted today a comprehensive package of measures which should allow us to turn the corner of the financial crisis and continue our path towards sustainable growth. This package will strengthen the economic governance of the European Union and ensure the lasting stability of the euro area as a whole. We also agreed robust action at the EU level to stimulate growth by strengthening the Single Market, reducing the overall burden of regulation and promoting trade with third countries. We discussed the grave situation in Libya, expressing our satisfaction after the adoption of UNSCR 1973 and underlining our determination to contribute to its implementation. Regarding the Southern Neighbourhood, we reiterated our determination to develop a new partnership with the region and called for a rapid implementation of the orientations set on 11 March 2011; we agreed on first concrete steps to support the countries of the Southern Neighbourhood in the short term. Finally, we discussed the lessons to be drawn from the events that occurred in Japan, notably as regards nuclear safety.

I. ECONOMIC POLICY

1. The European Council today adopted a comprehensive package of measures to respond to the crisis, preserve financial stability and lay the ground for smart, sustainable, socially inclusive and job-creating growth. This will strengthen the economic governance and competitiveness of the euro area and of the European Union.

Implementing the European Semester: Europe 2020, fiscal consolidation and structural reform

2. Within the new framework of the European semester, the European Council endorsed the priorities for fiscal consolidation and structural reform.* It underscored the need to give priority to restoring sound budgets and fiscal sustainability, reducing unemployment through labour market reforms and making new efforts to enhance growth. All Member States will translate these priorities into concrete measures to be included in their Stability or Convergence Programmes and National Reform Programmes. On this basis, the Commission will present its proposals for country-specific opinions and recommendations in good time for their adoption before the June European Council.

3. In particular, Member States will present multi-annual consolidation plans including specific deficit, revenue and expenditure targets, the strategy envisaged to reach these targets and a timeline for its implementation. Fiscal policies for 2012 should aim to restore confidence by bringing debt trends back onto a sustainable path and ensuring that deficits are brought back below 3% of GDP in the timeframe agreed upon by the Council. This requires in most cases an annual structural adjustment well above 0.5% of GDP. Consolidation should be frontloaded in Member States facing very large structural deficits or very high or rapidly increasing levels of public debt.

4. Fiscal consolidation efforts must be complemented by growth-enhancing structural reforms. To that end, Member States emphasise their commitment to the

*In line with the Council's conclusions of 15 February and 7 March 2011 and further to the Commission's Annual Growth Survey. See also the Presidency's synthesis report of 16 March 2011.

Europe 2020 Strategy. In particular, they will implement measures in order to:

- make work more attractive;
- help the unemployed get back to work;
- combat poverty and promote social inclusion;
- invest in education and training;
- balance security and flexibility;
- reform pension systems;
- attract private capital to finance growth;
- boost research and innovation;
- and allow cost-effective access to energy and step up energy efficiency policies.

5. Member States will set out the main measures required to move towards the Europe 2020 headline targets as agreed in June 2010. They will also present policy measures to correct harmful and persistent macroeconomic imbalances and improve competitiveness.

6. In implementing these policies, and in order to ensure wide ownership, close cooperation will be maintained with the European Parliament and other EU institutions and advisory bodies (ESC, CoR), with the full involvement of national parliaments, social partners, regions and other stakeholders.

7. The Single Market has a key role to play in delivering growth and employment and promote competitiveness. The European Council welcomes the Commission's intention to present the Single Market Act and invites the European Parliament and the Council to adopt by the end of 2012 a first set of priority measures to bring a new impetus to the Single Market. Particular emphasis should be laid on measures which create growth and jobs and bring tangible results to citizens and businesses. Emphasis should also be put on completing the Digital Single Market. The overall regulatory burden, in particular for SMEs, should be reduced at both European and national levels. The Commission will report on this issue by the summer. The European Council also welcomed the intention of the Commission to propose ways of exempting micro-enterprises from certain future regulations. On the basis of the Commission's communication "Towards a better functioning single market for services", the European Council calls on Member States to fully implement the services Directive and on the Commission and Member States to take further actions where necessary to improve the internal market for services.

8. The external dimension of the Single Market is also important and the focus should be on promoting free, fair and open trade, with a focus on concluding the WTO Doha Round and Free Trade Agreements in 2011 in line with the conclusions of the 16 September 2010 European Council. Work should be rapidly taken forward, following the Commission report setting out priorities for dismantling barriers to trade in third countries.

Strengthening governance

9. The package of six legislative proposals on economic governance is key to ensuring enhanced fiscal discipline and avoiding excessive macroeconomic imbalances. It includes a reform of the Stability and Growth Pact aimed at enhancing the surveillance of fiscal policies and applying enforcement measures more consistently and at an earlier stage, new provisions on national fiscal frameworks and a new surveillance of macroeconomic imbalances.

10. The European Council welcomes the general approach reached on the

proposals in the Council, opening the way for negotiations with the European Parliament. It called for work to be taken forward with a view to their adoption in June 2011.

Providing a new quality of economic policy coordination: the Euro Plus Pact

11. The Euro Plus Pact as agreed by the euro area Heads of State or government and joined by Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (see Annex I) will further strengthen the economic pillar of EMU and achieve a new quality of economic policy coordination, with the objective of improving competitiveness and thereby leading to a higher degree of convergence reinforcing our social market economy. The Pact remains open for other Member States to join. The Pact will fully respect the integrity of the Single Market.

12. The Member States that have signed up to the Pact are committed, on the basis of the indicators and principles it contains, to announce a set of concrete actions to be achieved within the next twelve months. A number of Member States have already announced first commitments. All participating Member States will present their commitments as soon as possible and in any event in time for their inclusion in their Stability or Convergence Programmes and National Reform Programmes to be submitted in April and for their assessment at the June European Council.

Restoring the health of the banking sector

13. The European Banking Authority and relevant authorities are carrying out stress tests. The European Council underlines the importance of the peer review process to be conducted in close cooperation with national supervisors, the European Systemic Risk Board, the Commission and the European Central Bank in order to increase the consistency and quality of the results. A high level of disclosure for banks will be ensured, including on sovereign debt holdings.

14. Member States will prepare, ahead of the publication of the results, specific and ambitious strategies for the restructuring of vulnerable institutions, including private sector solutions (direct financing from the market or asset sales) but also a solid framework in line with State aid rules for the provision of government support in case of need.

15. As agreed by the European Council in June 2010, the introduction of a global financial transaction tax should be explored and developed further. The European Council notes the intention of the Commission to produce a report on taxation of the financial sector by autumn 2011 at the latest.

Strengthening the stability mechanisms of the euro area

16. Recalling the importance of ensuring financial stability in the euro area, the European Council adopted the decision amending the TFEU with regard to the setting up of the European Stability Mechanism. It calls for the rapid launch of national approval procedures with a view to its entry into force on 1 January 2013.

17. The European Council welcomes the decisions taken by the euro area Heads of State or government on 11 March and endorses the features of the ESM (see Annex II). The preparation of the ESM treaty and the amendments to the EFSF agreement, to ensure its EUR 440 billion effective lending capacity, will be finalised so as to allow signature of both agreements at the same time before the end of June 2011.

II. LIBYA / SOUTHERN NEIGHBOURHOOD

18. The European Council discussed the situation in Libya and endorsed the

conclusions adopted by the Foreign Affairs Council on 21 March. Recalling its March 11 Declaration, the European Council expressed its satisfaction after the adoption of UN Security Council Resolution 1973, which expresses the principle of the responsibility to protect, and underlined its determination to contribute to its implementation. It also welcomed the Paris Summit of 19 March as a decisive contribution to its implementation. It condemned the continued defiance by the Libyan regime of UN Security Council Resolutions 1970 and 1973, and the violent and brutal repression the regime continues to inflict upon its own citizens. It noted that the actions taken in conformity with the mandate from the Security Council significantly contributed to protecting civilians and civilian-populated areas under threat of attack and helped to save lives of civilians. When the civilian populations are safe and secure from the threat of attack and the objectives of UNSCR 1973 are met, military operations will come to an end.

The European Council emphasised the key role of Arab countries, and particularly the Arab League, in actively supporting the implementation of UNSCR 1973, and in finding a political solution to the crisis.

19. In line with UNSCR 1973, the European Union, together with the League of Arab States, the United Nations and the African Union, will intensify its efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people. The European Council reiterated its call on Colonel Kadhafi to relinquish power immediately in order to allow Libya to rapidly embark on an orderly and Libyan-led transition to democracy through a broadbased dialogue, also taking into consideration the need to ensure Libya's sovereignty and territorial integrity. The EU stands ready to help foster this dialogue, including with the National Transition Council, and to assist a new Libya economically and in the building of its new institutions, in cooperation with the United Nations, the Arab League, the African Union and others.

20. The European Union has acted swiftly to implement the sanctions imposed by UNSC resolutions 1970 and 1973, including the designation of additional persons and entities in the EU autonomous list of persons and entities subject to restrictive measures. The European Union stands ready to initiate and adopt further sanctions, including measures to ensure that oil and gas revenues do not reach the Kadhafi regime. Member States will take similar proposals to the UNSC.

21. The humanitarian situation in Libya and on its borders remains a source of serious concern. The EU will continue to provide humanitarian assistance to all those affected, in close cooperation with all the humanitarian agencies and NGOs involved. The EU has stepped up and will continue its planning on support for humanitarian assistance / civil protection operations, including by maritime means.

22. The European Council noted with satisfaction the smooth conduct of the referendum on constitutional amendments held in Egypt on 19 March as a significant step towards a more open and democratic political system.

23. Noting that the situation in each country is different, the European Council expressed its utmost concern at the situation in Syria, Yemen and Bahrain, strongly condemned the escalation of violence and the use of force against demonstrators, and urged all parties concerned to engage in meaningful and constructive dialogue without delay or preconditions. It endorsed the conclusions adopted by the Foreign Affairs Council on 21 March.

24. Work should be rapidly taken forward to develop a new partnership with the region, in line with the European Council's declaration of 11 March 2011. This partnership will be founded on deeper economic integration, broader market access and closer political cooperation, and will follow a differentiated and performance-

based approach. As first steps in the implementation of the 11 March package, and on the basis of the joint Commission/High Representative communication, the European Council calls for rapid progress to be made along the following lines:

- the EU and its Member States will step up their humanitarian assistance;
- ongoing aid programmes in the Southern Mediterranean countries will be screened and refocused, where possible in dialogue with the countries concerned;
- the ceiling for EIB operations for Mediterranean countries undertaking political reform should be increased by EUR 1 billion, without reducing operations in the EU's Eastern neighbours;
- EBRD shareholders should consider the possible extension of the Bank's activities to countries in the Southern Neighbourhood;
- the proposals on pan-Euro-Mediterranean rules of origin should be adopted without delay and the Commission is invited to present proposals on further means to enhance trade and foreign direct investment in the region in the short, medium and long term.

25. The European Council welcomes the recent visit of the Presidency and the Commission to Egypt as part of a first phase of consultations to promote a comprehensive approach to migration between the countries of the Southern Neighbourhood region and the European Union. In this context the European Council invites the Commission to present its proposals on the Global Approach to Migration as well as on the Mobility Partnership well in advance of the June European Council.

26. The European Council also looks forward to the presentation by the Commission of a Plan for the development of capacities to manage migration and refugee flows in advance of the June European Council. Agreement should be reached by June 2011 on the regulation enhancing the capabilities of Frontex. In the meantime the Commission will make additional resources available in support to the agency's 2011 Hermes and Poseidon operations and Member States are invited to provide further human and technical resources. The EU and its Member States stand ready to demonstrate their concrete solidarity to Member States most directly concerned by migratory movements and provide the necessary support as the situation evolves.

III. JAPAN

27. The European Union will support Japan as it strives to overcome the challenges it faces after the earthquake and the tsunami that struck it with such tragic consequences.

28. Following an initial request from the Japanese government, it is mobilising relief supplies for the affected population. It stands ready to provide further support if requested. More generally, the EU is interested in developing its cooperation with Japan on disaster relief.

29. The European Union commends the swift and decisive action taken by the Japanese authorities in response to disorder on financial markets. It welcomes the action taken by the G7 on the yen. It stands ready to cooperate fully with Japan to address the economic and financial consequences of these events, including in the framework of the G8 and the G20.

30. Looking to the future, the European Council reiterates the strategic importance of the EU/Japan relationship. The forthcoming summit must be used to strengthen this relationship and bring forward our common agenda, including

through the potential launch of negotiations for a free trade agreement on the basis that Japan is willing to tackle inter alia the issue of non-tariff barriers and restrictions on public procurement.

31. In this connection, the European Council stresses the need to fully draw the lessons from these events, and to provide all necessary information to the public. Recalling that the energy mix is the competence of Member States, it calls for work to be taken forward as a matter of priority on the following aspects:

- the safety of all EU nuclear plants should be reviewed, on the basis of a comprehensive and transparent risk and safety assessment ("stress tests"); the European Nuclear Safety Regulatory Group (ENSREG) and the Commission are invited to develop as soon as possible the scope and modalities of these tests in a coordinated framework in the light of lessons learned from the accident in Japan and with the full involvement of Member States, making full use of available expertise (notably from the Western European Nuclear Regulators Association); the assessments will be conducted by independent national authorities and through peer review; their outcome and any necessary subsequent measures that will be taken should be shared with the Commission and within the ENSREG and should be made public; the European Council will assess initial findings by the end of 2011, on the basis of a report from the Commission;
- the priority of ensuring the safety of nuclear plants obviously cannot stop at our borders; the EU will request that similar "stress tests" be carried out in the neighbouring countries and worldwide, regarding both existing and planned plants; in this regard full use should be made of relevant international organisations;
- the highest standards for nuclear safety should be implemented and continuously improved in the EU and promoted internationally;
- the Commission will review the existing legal and regulatory framework for the safety of nuclear installations and will propose by the end of 2011 any improvements that may be necessary. Member States should ensure the full implementation of the Directive on the safety of nuclear installations. The proposed Directive on the management of spent fuel and radioactive waste should be adopted as soon as possible. The Commission is invited to reflect on how to promote nuclear safety in neighbouring countries;
- consequences for the world and for the EU need to be closely monitored, paying particular attention to the volatility of energy and commodity prices, in particular in the context of the G20.

ANNEX I

THE EURO PLUS PACT

STRONGER ECONOMIC POLICY COORDINATION FOR COMPETITIVENESS AND CONVERGENCE

This Pact has been agreed by the euro area Heads of State or government and joined by Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania to strengthen the economic pillar of the monetary union, achieve a new quality of economic policy coordination, improve competitiveness, thereby leading to a higher degree of convergence. This Pact focuses primarily on areas that fall under national competence and are key for increasing competitiveness and avoiding harmful imbalances. Competitiveness is essential to help the EU grow faster and more sustainably in the medium and long term, to produce higher levels of income for citizens, and to preserve our social models. Other Member States are invited to participate on a voluntary basis.

This renewed effort for stronger economic policy coordination for competitiveness and convergence rests on ***four guiding rules***:

a. It will be ***in line with and strengthen the existing economic governance*** in the EU, while providing added value. It will be consistent with and build on existing instruments (Europe 2020, European Semester, Integrated Guidelines, Stability and Growth Pact and new macroeconomic surveillance framework). It will involve a special effort going beyond what already exists and include concrete commitments and actions that are more ambitious than those already agreed, and accompanied with a timetable for implementation. These new commitments will thereafter be included in the National Reform and Stability Programmes and be subject to the regular surveillance framework, with a strong central role for the Commission in the monitoring of the implementation of the commitments, and the involvement of all the relevant formations of the Council and the Eurogroup. The European Parliament will play its full role in line with its competences. Social partners will be fully involved at the EU level through the Tripartite Social Summit.

b. It will be focused, action oriented, and cover ***priority policy areas that are essential for fostering competitiveness and convergence***. It will concentrate on actions where the competence lies with the Member States. In the chosen policy areas ***common objectives will be agreed upon at the Heads of State or Government level. Participating Member States will pursue these objectives with their own policy-mix, taking into account their specific challenges***.

c. ***Each year, concrete national commitments will be undertaken by each Head of State or Government***. In doing so, Member States will take into account best practices and benchmark against the best performers, within Europe and vis-à-vis other strategic partners.

   The implementation of commitments and progress towards the common policy objectives will be ***monitored politically by the Heads of State or Government*** of the euro area and participating countries on a yearly basis, on the basis of a report by the Commission. In addition, Member States commit to consult their partners on each major economic reform having potential spill-over effects before its adoption.

d. Participating Member States are fully committed to the completion of

the Single Market which is key to enhancing the competitiveness in the EU and the euro area. This process will be fully in line with the treaty. ***The Pact will fully respect the integrity of the Single Market***.

Our goals

Participating Member States undertake to take all necessary measures to pursue the following objectives:

- Foster competitiveness
- Foster employment
- Contribute further to the sustainability of public finances
- Reinforce financial stability

Each participating Member State will present the specific measures it will take to reach these goals. If a Member State can show that action is not needed on one or the other areas, it will not include it. The choice of the specific policy actions necessary to achieve the common objectives ***remains the responsibility of each country, but particular attention will be paid to the set of possible measures mentioned below***.

Concrete policy commitments and monitoring

Progress towards the common objectives above will be politically monitored by the Heads of State or Government on the basis of a series of indicators covering competitiveness, employment, fiscal sustainability and financial stability. Countries facing major challenges in any of these areas will be identified and will have to commit to addressing these challenges in a given timeframe.

a. Foster competitiveness

Progress will be assessed on the basis of wage and productivity developments and competitiveness adjustment needs. To assess whether wages are evolving in line with productivity, unit labour costs (ULC) will be monitored over a period of time, by comparing with developments in other euro area countries and in the main comparable trading partners. For each country, ULCs will be assessed for the economy as a whole and for each major sector (manufacturing; services; as well as tradable and non-tradable sectors). Large and sustained increases may lead to the erosion of competitiveness, especially if combined with a widening current account deficit and declining market shares for exports. Action to raise competitiveness is required in both all countries, but particular attention will be paid to those facing major challenges in this respect. To ensure that growth is balanced and widespread in the whole euro area, specific instruments and common initiatives will be envisaged to foster productivity in regions lagging behind.

Each country will be responsible for the specific policy actions it chooses to foster competitiveness, but the following reforms will be given particular attention:

(i) respecting national traditions of social dialogue and industrial relations, measures to ensure costs developments in line with productivity, such as:

- review the wage setting arrangements, and, where necessary, the degree of centralisation in the bargaining process, and the indexation mechanisms, while maintaining the autonomy of the social partners in the collective bargaining process;
- ensure that wages settlements in the public sector support the competitiveness efforts in the private sector (bearing in mind the important signalling effect of public sector wages).

(ii) measures to increase productivity, such as:

- further opening of sheltered sectors by measures taken at the national level to remove unjustified restrictions on professional services and the retail sector, to foster competition and efficiency, in full respect of the Community acquis;
- specific efforts to improve education systems and promote R&D, innovation and infrastructure;
- measures to improve the business environment, particularly for SMEs, notably by removing red tape and improving the regulatory framework (e.g. bankruptcy laws, commercial code).

b. Foster employment

A well functioning labour market is key for the competitiveness of the euro area. Progress will be assessed on the basis of the following indicators: long term and youth unemployment rates, and labour participation rates.

Each country will be responsible for the specific policy actions it chooses to foster employment, but the following reforms will be given particular attention:

- labour market reforms to promote "flexicurity", reduce undeclared work and increase labour participation;
- life long learning;
- tax reforms, such as lowering taxes on labour to make work pay while preserving overall tax revenues, and taking measures to facilitate the participation of second earners in the work force.

c. Enhance the sustainability of public finances

In order to secure the full implementation of the Stability and Growth Pact, the highest attention will be paid to:

- Sustainability of pensions, health care and social benefits

This will be assessed notably on the basis of the sustainability gap indicators*. These indicators measure whether debt levels are sustainable based on current policies, notably pensions schemes, health care and benefit systems, and taking into account demographic factors.

Reforms necessary to ensure the sustainability and adequacy of pensions and social benefits could include:

- aligning the pension system to the national demographic situation, for example by aligning the effective retirement age with life expectancy or by increasing participation rates;
- limiting early retirement schemes and using targeted incentives to employ older workers (notably in the age tranche above 55).

- National fiscal rules

Participating Member States commit to translating EU fiscal rules as set out in the Stability and Growth Pact into national legislation. Member States will retain the choice of the specific national legal vehicle to be used, but will make sure that it has a sufficiently strong binding and durable nature (e.g. constitution or framework law). The exact formulation of the rule will also be decided by each country (e.g. it could take the form of a "debt brake", rule related to the primary balance or an expenditure rule), but it should ensure fiscal discipline at both national and sub-national levels.

*The sustainability gap are indicators agreed by the Commission and Member States to assess fiscal sustainability.

The Commission will have the opportunity, in full respect of the prerogatives of national parliaments, to be consulted on the precise fiscal rule before its adoption so as to ensure it is compatible with, and supportive of, the EU rules.

d. Reinforce financial stability

A strong financial sector is key for the overall stability of the euro area. A comprehensive reform of the EU framework for financial sector supervision and regulation has been launched.

In this context, Member States commit to putting in place national legislation for banking resolution, in full respect of the Community acquis. Strict bank stress tests, coordinated at EU level, will be undertaken on a regular basis. In addition, the President of the ESRB and the President of the Eurogroup will be invited to regularly inform Heads of State or Government on issues related to macro-financial stability and macroeconomic developments in the euro area requiring specific action. In particular, for each Member State, the level of private debt for banks, households and non-financial firms will be closely monitored.

In addition to the issues mentioned above, attention will be paid to **tax policy coordination**.

Direct taxation remains a national competence. Pragmatic coordination of tax policies is a necessary element of a stronger economic policy coordination in the euro area to support fiscal consolidation and economic growth. In this context, Member States commit to engage in structured discussions on tax policy issues, notably to ensure the exchange of best practices, avoidance of harmful practices and proposals to fight against fraud and tax evasion.

Developing a common corporate tax base could be a revenue neutral way forward to ensure consistency among national tax systems while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European businesses.

The Commission has presented a legislative proposal on a common consolidated corporate tax base.

Concrete yearly commitments

In order to demonstrate a real commitment for change and ensure the necessary political impetus to reach our common objectives, each year participating Member States will agree at the highest level on a set of concrete actions to be achieved within 12 months. The selection of the specific policy measures to be implemented will remain the responsibility of each country, but the choice will be guided by considering in particular the issues mentioned above. These commitments will also be reflected in the National Reform Programmes and Stability Programmes submitted each year which will be assessed by the Commission, the Council, and the Eurogroup in the context of the European Semester.

ANNEX II

Term Sheet on the ESM

The European Council has decided to add to Article 136 of the Treaty the following paragraph:

"The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality".

Further to this decision, the European Council has agreed on the need for euro-area Member States to establish a permanent stability mechanism: the European Stability Mechanism (ESM). The ESM will be activated by mutual agreement*, if indispensable to safeguarding the financial stability of the euro area as a whole. The ESM will assume the role of the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM) in providing external financial assistance to euro-area Member States after June 2013.

Access to ESM financial assistance will be provided on the basis of strict policy conditionality under a macro-economic adjustment programme and a rigorous analysis of public-debt sustainability, which will be conducted by the Commission together with the IMF and in liaison with the ECB. The beneficiary Member State will be required to put in place an appropriate form of private-sector involvement, according to the specific circumstances and in a manner fully consistent with IMF practices.

The ESM will have an effective lending capacity of € 500 billion#. The adequacy of the lending capacity will be reviewed on a regular basis and at least every five years. The ESM will seek to supplement its lending capacity through the participation of the IMF in financial assistance operations, while non-euro area Member States may also participate on an *ad hoc* basis.

The remainder of this term sheet sets out the key structural features of the ESM:

Institutional form

The ESM will be established by a treaty among the euro-area Member States as an intergovernmental organisation under public international law and will be located in Luxembourg. The statute of the ESM will be set out in an annex to the treaty.

Function and funding strategy

The function of the ESM will be to mobilise funding and provide financial assistance, under strict conditionality, to the benefit of euro-area Member States, which are experiencing or are threatened by severe financing problems, in order to safeguard the financial stability of the euro area as a whole.

The Member States of the euro area will give to the ESM the financial sanctions received under the Stability and Growth Pact and the Macroeconomic Imbalances procedures. Such sanctions will form part of the paid-in capital.

The ESM will use an appropriate funding strategy so as to ensure access to broad funding sources and enable it to extend financial assistance packages to Member States under all market conditions. Any associated risk will be contained through

*A decision taken by mutual agreement is a decision taken by unanimity of the Member States participating to the vote, i.e. abstentions do not prevent the decision from being adopted.
#During the transition from EFSF to ESM, the combined lending capacity will not exceed this amount.

adequate asset and liability management.

Governance

The ESM will have a Board of Governors consisting of the Ministers of Finance of the euro-area Member States (as voting members), with the European Commissioner for Economic and Monetary Affairs and the President of the ECB as observers. The Board of Governors will elect a Chairperson from among its voting members.

The Board of Governors will be the highest decision-making body of the ESM and will take the following major decisions by mutual agreement:

- the granting of financial assistance;
- the terms and conditions of financial assistance;
- the lending capacity of the ESM;
- changes to the menu of instruments.

All other decisions by the Board of Governors will be taken by qualified majority, unless stated otherwise.

The ESM will have a Board of Directors, which will carry out specific tasks as delegated by the Board of Governors. Each euro-area Member state will appoint one Director and one alternate Director. In addition, the Commission and the ECB will each nominate an observer and an alternate to the Board of Directors. All decisions by the Board of Directors will be taken by qualified majority, unless otherwise stated.

Voting weights within the Board of Governors and the Board of Directors will be proportional to the Member States' respective subscriptions to the capital of the ESM. A qualified majority is defined as 80 percent of the votes.

The Board of Governors will appoint a Managing Director responsible for the day-to-day management of the ESM. The Managing Director will chair the Board of Directors.

Capital structure

The ESM will aim to obtain and maintain the highest credit rating from the major credit rating agencies.

The ESM will have a total subscribed capital of € 700 billion. Of this amount, € 80 billion will be in the form of paid-in capital provided by the euro-area Member States being phased in from July 2013 in five equal annual instalments. In addition, the ESM will also dispose of a combination of committed callable capital and of guarantees from euro area Member States to a total amount of € 620 billion. During the transitional phase from 2013 to 2017, Member States commit to accelerate, in the unlikely event that this is needed, the provision of appropriate instruments in order to maintain a minimum 15 percent ratio between paid-in capital and the outstanding amount of ESM issuances.

The contribution key of each Member State in the total subscribed capital of the ESM will be based on the paid-in capital key of the ECB as annexed. By ratifying the Treaty establishing the ESM, Member States legally commit to provide their contribution to the total subscribed capital.

The Board of Governors will decide by mutual agreement when adapting the amount of total subscribed capital or when calling capital, except in the specific cases described below. First, the Board of Directors can decide, by simple majority, to restore -by calling in capital- the level of paid-in capital in the event that the amount of paid-in capital is reduced by the absorption of losses*. Second, an on-demand guarantee procedure will be put in place that allows calling in capital automatically from the shareholders of the ESM if needed to avoid a payment shortfall to the creditors of the ESM. The liability of each shareholder will in all circumstances be limited to its share in the subscribed capital.

Any contribution to subscribed capital by a Member State# joining the ESM after July 2013 will be made according to the same terms applied for the original contributions. The practical implications for the overall amount of subscribed capital and the distribution of capital among the Member States will be decided by the Board of Governors by mutual agreement.

As long as the ESM has not been activated and provided that the effective lending capacity is not less than 500 billion, the proceeds from the investment of the ESM paid-in capital will be returned to the Member States, after deductions for operational costs. Following the first activation of the ESM, the proceeds from the investment of ESM capital and financial assistance activity will be retained within the ESM. However, in the event that paid-in capital exceeds the level required to maintain the lending capacity of the ESM, the Board of Directors can decide, by simple majority to distribute a dividend to the euro-area Member States based on the contribution key.

Instruments

If indispensable to safeguard the stability of the euro area as a whole, in line with the amendment to Article 136 of the Treaty, the ESM will provide financial assistance subject to strict conditionality under a macro-economic adjustment programme, commensurate with the severity of the imbalances of the Member State. It will be provided through loans. However, it may intervene, as an exception, in debt primary markets on the basis of a macro-economic adjustment programme with strict conditionality and if agreed by the Board of Governors by mutual agreement.

- ESM stability support (ESS)

The ESM can grant short-term or medium term stability support to a euro-area Member State, which is experiencing severe financing problems. Access to an ESS will imply a macroeconomic adjustment programme with adequate policy conditionality commensurate with the severity of the underlying imbalances in the beneficiary Member State. The length of the programme and maturity of the loans will depend on the nature of the imbalances and the prospects of the beneficiary Member States regaining access to financial markets within the time that ESM resources are available.

Primary market support facility

The ESM can purchase the bonds of a Member State, which is experiencing severe financing problems, on the primary market, with the objective of maximizing the cost efficiency of the support. Conditions and modalities under which bond purchasing would be conducted will be specified in the Decision on the terms and conditions of financial assistance.

*The vote of the Member State whose default is at the origin of the loss to be covered is suspended for this decision.
#As a consequence of joining the euro area, a Member State shall become a member of the ESM with full rights and obligations.

The Board of Governors may review the instruments at the ESM's disposal and may decide to make changes to the menu of instruments.

IMF involvement

The ESM will cooperate very closely with the IMF in providing financial assistance*. In all circumstances, active participation of the IMF will be sought, both on the technical and the financial level. The debt sustainability analysis will be jointly conducted by the Commission and the IMF, in liaison with the ECB. The policy conditions attached to a joint ESM/IMF assistance will be negotiated jointly by the Commission and the IMF, in liaison with the ECB.

Activation of financial assistance, programme monitoring and follow-up

Financial assistance from the ESM will in all cases be activated on a request from a Member State to the other Members States of the euro area. The Eurogroup will inform the Council that a request for activation of support has been made. On receipt of such a request, the Board of Governors will ask the Commission to assess, in liaison with the ECB, the existence of a risk to the financial stability of the euro area as a whole and to undertake a rigorous analysis of the sustainability of the public debt of the Member State concerned, together with the IMF and in liaison with the ECB. The subsequent steps in the activation of ESM financial assistance will be as follows:

- If an ESS is requested, the Commission, together with the IMF and in liaison with the ECB, will assess the actual financing needs of the beneficiary Member State and the nature of the required private sector involvement, which should be consistent with IMF practices.
- On the basis of this assessment, the Board of Governors will mandate the Commission to negotiate, together with the IMF and in liaison with the ECB, a macro-economic adjustment programme with the Member State concerned, detailed in a MoU.
- The Commission will propose to the Council a decision endorsing the macro-economic adjustment programme. The Board of Governors will decide on the granting of financial assistance and the terms and conditions under which assistance is provided. When the programme has been adopted by the Council, the Commission will sign the MoU on behalf of the euro area Member States subject to prior mutual agreement by the Board of Governors. The Board of Directors will then approve the financial assistance agreement which would contain the technical aspects of the financial assistance to be provided.
- The Commission, together with the IMF and in liaison with the ECB, will be responsible for monitoring compliance with the policy conditionality required by a macroeconomic adjustment programme. It will report to the Council and to the Board of Directors. On the basis of this report, the Board of Directors will decide by mutual agreement on the disbursement of the new tranches of the loan.
- After discussion in the Board of Governors, the Council can decide, on a proposal by the Commission, to implement post-programme surveillance, which can be maintained for as long as a specified amount of the financial assistance has not been repaid.

*It is however understood that any IMF involvement will be consistent with its mandate under the Articles of Agreement and by applicable decision and policies of the IMF Board.

Consistency with the EU multilateral surveillance framework

Approval by the EU Member States will be sought to allow the euro-area Member States to task the Commission, together with the IMF and in liaison with the ECB, the analysis of the debt sustainability of the Member State requesting financial support, the preparation of the adjustment programme accompanying the financial assistance, as well as with the monitoring of its implementation.

While the Board of Governors has the autonomy to decide on the existence and modalities of financial assistance under an intergovernmental framework, the policy conditionality established under an enhanced surveillance or a macroeconomic adjustment programme should be consistent with the EU surveillance framework and must guarantee the respect of EU procedures. To this end, the Commission intends to propose a Regulation clarifying the necessary procedural steps under Article 136 of the Treaty in order to enshrine the policy conditionality in Council decisions and ensure consistency with the EU multilateral surveillance framework. The Council and the Commission will inform the European Parliament on a regular basis about the establishment and the operations of the ESM.

Pricing

The Board of Governors will decide on the pricing structure for financial assistance to a beneficiary Member State.

The ESM will be able to lend at a fixed or variable rate. The pricing of the ESM will be in line with IMF pricing principles and, while remaining above the funding costs of ESM, will include an adequate mark up for risks.

The following pricing structure will apply to ESM loans:

1) ESM funding cost
2) A charge of 200 bps applied on the entire loans
3) A surcharge of 100 bps for loan amounts outstanding after 3 years

For fixed rate loans with maturities above 3 years, the margin will be a weighted average of the charge of 200 bps for the first 3 years and 200 bps plus 100 bps for the following years.

The pricing structure will be defined in the pricing policy of the ESM, which will be reviewed periodically.

Private sector involvement

1. <u>Modalities for involving the private sector</u>

An adequate and proportionate form of private-sector involvement will be expected on a case by case basis where financial assistance is received by the beneficiary State. The nature and extent of this involvement will be determined on a case-by-case basis and will depend on the outcome of a debt sustainability analysis, in line with IMF practice*, and on potential implications for euro-area financial stability.

(a) If, on the basis of a sustainability analysis, it is concluded that a macro-economic adjustment programme can realistically restore the public debt to a sustainable path, the beneficiary Member State will take initiatives aimed at encouraging the main private investors to maintain their exposures (e.g. a "Vienna

*In line with the IMF, debt is considered sustainable when a borrower is expected to be able to continue servicing its debts without an unrealistically large correction to its income and expenditure. This judgement determines the availability and the appropriate scale of financing.

Initiative" approach). The Commission, the IMF, the ECB and the EBA will be closely involved in monitoring the implementation of such initiatives.

(b) If, on the basis of a sustainability analysis, it is concluded that a macro-economic programme cannot realistically restore the public debt to a sustainable path, the beneficiary Member State will be required to engage in active negotiations in good faith with its creditors to secure their direct involvement in restoring debt sustainability. The granting of the financial assistance will be contingent on the Member State having a credible plan and demonstrating sufficient commitment to ensure adequate and proportionate private sector involvement. Progress in the implementation of the plan will be monitored under the programme and will be taken into account in the decision on disbursements.

In negotiating with creditors, the beneficiary Member State will adhere to the following principles:

- *Proportionality*: the Member State will seek solutions proportionate to its debt sustainability problem.
- *Transparency*: the Member State concerned will engage in an open dialogue with creditors and share relevant information with them on a timely basis.
- *Fairness*: the Member State will consult creditors on the design of any rescheduling or restructuring of public debt with a view to reaching negotiated solutions. Measures reducing the net present value of the debt will be considered only when other options are unlikely to deliver the expected results.
- *Cross-border co-ordination*: the risk of contagion and potential spill over effects on other Member States and third countries will be duly taken into account in the design of measures to involve the private sector. The measures taken will be accompanied with a proper communication by the Member State concerned aimed at preserving the financial stability of the Euro Area as a whole.

2. Collective Action Clauses

Collective Action Clauses (CACs) will be included in all new euro area government securities, with maturity above one year, from July 2013. The objective of such CACs will be to facilitate agreement between the sovereign and its private-sector creditors in the context of private sector involvement. The inclusion of CACs in a bond will not imply a higher probability of default or of debt restructuring relating to that bond. Accordingly, the creditor status of sovereign debt will not be affected by the inclusion of CACs.

The main features of the CACs will be consistent with those commonly used in the US and the UK markets since the G10 report on CACs. CACs will be introduced in a way which preserves a level playing field among euro area Member States. This implies the use of **identical and standardised clauses** for all euro area Member States, harmonised in the terms and conditions of securities issued by the Members States. Their basis will be **consistent with the CACs that are common in New York and English law**.

CACs will include an **aggregation clause**, enabling a super majority of bondholders across multiple bond issues subject to such a clause and subject to the law of a single jurisdiction to include a majority action clause where the needed majority of creditors for the restructuration would not be attained within a single bond issue. **Appropriate representation** will be put in place. Most important issues - the reserve matters - (e.g. key payment terms, conversion or exchange of bonds)

will be decided with a larger **majority** than non-reserve matters. Appropriate **quorum** requirements will apply. Changes agreed by the relevant majorities are binding on all bondholders.

An appropriate **disenfranchisement** clause will apply to ensure a proper voting process. Appropriate clauses to prevent disruptive legal action will be considered.

CACs will be introduced in a standardised manner, which ensures that their legal impact is identical in all euro-area jurisdictions and so preserves a level playing field among euro-area Member States. The euro area Member States will adopt the necessary measures to give effect to the CACs.

Euro area Member States will be allowed to continue to "tap" outstanding debt without CACs under pre-determined conditions after June 2013 in order to preserve the necessary liquidity of old bonds and to give sufficient time to euro area Member States to create, in an orderly fashion, new bonds on all benchmark maturities. The detailed legal arrangements for including CACs in euro-area government securities will be decided on the basis of work to be undertaken by the EFC Sub-Committee on EU Sovereign Debt Markets, following appropriate consultation with market participants and other stakeholders, and be finalised by the end of 2011.

3. Preferred Creditor Status of the ESM

Like the IMF, the ESM will provide financial assistance to a Member State when its regular access to market financing is impaired. Reflecting this, Heads of State or Government have stated that the ESM will enjoy preferred creditor status in a similar fashion to the IMF, while accepting preferred creditor status of IMF over ESM.

This shall be effective as of 1 July 2013 without prejudice to the terms and conditions of any other agreement provided under the EFSF and the Greek facility.

Transitional arrangements between EFSF and ESM

As originally foreseen, the EFSF will remain in place after June 2013 so as to administer the outstanding bonds. It will remain operational until it has received full payment of the financing granted to the Member States and has repaid its liabilities under the financial instruments issued and any obligations to reimburse guarantors. Undisbursed and unfunded portions of existing loan facilities should be transferred to the ESM (e.g. payment and financing of instalments that would become due only after the entry into force of ESM). The consolidated EFSF and ESM lending shall not exceed € 500 bn.

To ensure a smooth transition from the EFSF to the ESM, the CEO of the EFSF will be tasked with the practical preparation of the establishment of the ESM. He will regularly report on the progress made to the Eurogroup Working Group.

Participation of the non euro area Member States

Non euro area Member States can participate on an *ad hoc* basis alongside the ESM in financial assistance operations for euro area Member States. If non-euro area Member States participate in such operations, they will be represented in the relevant meetings of the ESM boards that will decide on the granting and the monitoring of the assistance. They will have access to all relevant information in a timely manner and be appropriately consulted. The euro area Member States will support equivalent creditor status of the ESM and that of other Member States lending bilaterally alongside the ESM.

Dispute settlement

If a dispute arises between a euro area Member State and the ESM in connection with the interpretation and application of the treaty establishing the ESM, the Board

of Governors will decide on this dispute. If the Member State contests this decision, such dispute shall be submitted to the European Court of Justice in accordance with Art. 273 TFEU.

With regard to the relationship between the ESM and third parties, the applicable governing law and jurisdiction will be dealt with by the legal and contractual documentation which will then be put in place between the ESM and those third parties.

Annex: ESM contribution key based on the ECB key

Country	ISO	ESM key
Austria	AT	2,783
Belgium	BE	3,477
Cyprus	CY	0,196
Estonia	EE	0,186
Finland	FI	1,797
France	FR	20,386
Germany	DE	27,146
Greece	EL	2,817
Ireland	IE	1,592
Italy	IT	17,914
Luxembourg	LU	0,250
Malta	MT	0,073
Netherlands	NL	5,717
Portugal	PT	2,509
Slovakia	SK	0,824
Slovenia	SI	0,428
Spain	ES	11,904
Total	EA17	100,0

Notes: The ESM key is based on the ECB capital contribution key.

Member States with a GDP per capita of less than 75% of the EU average will benefit from a temporary correction for a period of 12 years after their entry in the euro area.

This temporary correction will be three quarters of the difference between GNI and ECB capital shares (effectively comprising of 75% of GNI share and 25% of ECB capital share) as follows: ESM share = ECB key share - 0,75*(ECB key share - GNI share)

The downwards compensation on those countries is redistributed among all the other countries according to their ECB key share.

GNI and GDP per capita in 2010.

Sources: ECB, Ameco and DG ECFIN calculations.

SCHEDULE 3

The Treaty Establishing the European Stability Mechanism

(Article 2)

TREATY
ESTABLISHING THE EUROPEAN STABILITY MECHANISM
BETWEEN THE KINGDOM OF BELGIUM, THE FEDERAL REPUBLIC OF GERMANY, THE REPUBLIC OF ESTONIA, IRELAND, THE HELLENIC REPUBLIC, THE KINGDOM OF SPAIN, THE FRENCH REPUBLIC, THE ITALIAN REPUBLIC, THE REPUBLIC OF CYPRUS, THE GRAND DUCHY OF LUXEMBOURG, MALTA, THE KINGDOM OF THE NETHERLANDS, THE REPUBLIC OF AUSTRIA, THE PORTUGUESE REPUBLIC, THE REPUBLIC OF SLOVENIA, THE SLOVAK REPUBLIC AND THE REPUBLIC OF FINLAND

THE CONTRACTING PARTIES, the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland (the "euro area Member States" or "ESM Members");

COMMITTED TO ensuring the financial stability of the euro area;

RECALLING the Conclusions of the European Council adopted on 25 March 2011 on the establishment of a European stability mechanism;

WHEREAS:

(1) The European Council agreed on 17 December 2010 on the need for euro area Member States to establish a permanent stability mechanism. This European Stability Mechanism ("ESM") will assume the tasks currently fulfilled by the European Financial Stability Facility ("EFSF") and the European Financial Stabilisation Mechanism ("EFSM") in providing, where needed, financial assistance to euro area Member States.

(2) On 25 March 2011, the European Council adopted Decision 2011/199/EU amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro* adding the following paragraph to Article 136: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality".

(3) With a view to increasing the effectiveness of the financial assistance and to prevent the risk of financial contagion, the Heads of State or Government of the Member States whose currency is the euro agreed on 21 July 2011 to "increase [the] flexibility [of the ESM] linked to appropriate conditionality".

(4) Strict observance of the European Union framework, the integrated macro-economic surveillance, in particular the Stability and Growth Pact, the macroeconomic imbalances framework and the economic governance rules of the European Union, should remain the first line of defence against confidence crises affecting the stability of the euro area.

(5) On 9 December 2011 the Heads of State or Government of the Member

*OJ L 91, 6.4.2011, p. 1.

States whose currency is the euro agreed to move towards a stronger economic union including a new fiscal compact and strengthened economic policy coordination to be implemented through an international agreement, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union ("TSCG"). The TSCG will help develop a closer coordination within the euro area with a view to ensuring a lasting, sound and robust management of public finances and thus addresses one of the main sources of financial instability. This Treaty and the TSCG are complementary in fostering fiscal responsibility and solidarity within the economic and monetary union. It is acknowledged and agreed that the granting of financial assistance in the framework of new programmes under the ESM will be conditional, as of 1 March 2013, on the ratification of the TSCG by the ESM Member concerned and, upon expiration of the transposition period referred to in Article 3(2) TSCG on compliance with the requirements of that article.

(6) Given the strong interrelation within the euro area, severe risks to the financial stability of Member States whose currency is the euro may put at risk the financial stability of the euro area as a whole. The ESM may therefore provide stability support on the basis of a strict conditionality, appropriate to the financial assistance instrument chosen if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. The initial maximum lending volume of the ESM is set at EUR 500 000 million, including the outstanding EFSF stability support. The adequacy of the consolidated ESM and EFSF maximum lending volume will, however, be reassessed prior to the entry into force of this Treaty. If appropriate, it will be increased by the Board of Governors of the ESM, in accordance with Article 10, upon entry into force of this Treaty.

(7) All euro area Member States will become ESM Members. As a consequence of joining the euro area, a Member State of the European Union should become an ESM Member with full rights and obligations, in line with those of the Contracting Parties.

(8) The ESM will cooperate very closely with the International Monetary Fund ("IMF") in providing stability support. The active participation of the IMF will be sought, both at technical and financial level. A euro area Member State requesting financial assistance from the ESM is expected to address, wherever possible, a similar request to the IMF.

(9) Member States of the European Union whose currency is not the euro ("non euro area Member States") participating on an *ad hoc* basis alongside the ESM in a stability support operation for euro area Member States will be invited to participate, as observers, in the ESM meetings when this stability support and its monitoring will be discussed. They will have access to all information in a timely manner and be properly consulted.

(10) On 20 June 2011, the representatives of the Governments of the Member States of the European Union authorised the Contracting Parties of this Treaty to request the European Commission and the European Central Bank ("ECB") to perform the tasks provided for in this Treaty.

(11) In its statement of 28 November 2010, the Euro Group stated that standardised and identical Collective Action Clauses ("CACs") will be included, in such a way as to preserve market liquidity, in the terms and conditions of all new euro area government bonds. As requested by the European Council on 25 March 2011, the detailed legal arrangements for including CACs in euro area government securities were finalised by the Economic and Financial Committee.

(12) In accordance with IMF practice, in exceptional cases an adequate and proportionate form of private sector involvement shall be considered in cases where

stability support is provided accompanied by conditionality in the form of a macro-economic adjustment programme.

(13) Like the IMF, the ESM will provide stability support to an ESM Member when its regular access to market financing is impaired or is at risk of being impaired. Reflecting this, Heads of State or Government have stated that the ESM loans will enjoy preferred creditor status in a similar fashion to those of the IMF, while accepting preferred creditor status of the IMF over the ESM. This status will be effective as of the date of entry into force of this Treaty. In the event of ESM financial assistance in the form of ESM loans following a European financial assistance programme existing at the time of the signature of this Treaty, the ESM will enjoy the same seniority as all other loans and obligations of the beneficiary ESM Member, with the exception of the IMF loans.

(14) The euro area Member States will support equivalent creditor status of the ESM and that of other States lending bilaterally in coordination with the ESM.

(15) ESM lending conditions for Member States subject to a macroeconomic adjustment programme, including those referred to in Article 40 of this Treaty, shall cover the financing and operating costs of the ESM and should be consistent with the lending conditions of the Financial Assistance Facility Agreements signed between the EFSF, Ireland and the Central Bank of Ireland on the one hand and the EFSF, the Portuguese Republic and Banco de Portugal on the other.

(16) Disputes concerning the interpretation and application of this Treaty arising between the Contracting Parties or between the Contracting Parties and the ESM should be submitted to the jurisdiction of the Court of Justice of the European Union, in accordance with Article 273 of the Treaty on the Functioning of the European Union ("TFEU").

(17) Post-programme surveillance will be carried out by the European Commission and by the Council of the European Union within the framework laid down in Articles 121 and 136 TFEU,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

MEMBERSHIP AND PURPOSE

ARTICLE 1

Establishment and members

1. By this Treaty, the Contracting Parties establish among themselves an international financial institution, to be named the "European Stability Mechanism" ("ESM").

2. The Contracting Parties are ESM Members.

ARTICLE 2

New members

1. Membership in the ESM shall be open to the other Member States of the European Union as from the entry into force of the decision of the Council of the European Union taken in accordance with Article 140(2) TFEU to abrogate their derogation from adopting the euro.

2. New ESM Members shall be admitted on the same terms and conditions as existing ESM Members, in accordance with Article 44.

3. A new member acceding to the ESM after its establishment shall receive

shares in the ESM in exchange for its capital contribution, calculated in accordance with the contribution key provided for in Article 11.

ARTICLE 3

Purpose

The purpose of the ESM shall be to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. For this purpose, the ESM shall be entitled to raise funds by issuing financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties.

CHAPTER 2

GOVERNANCE

ARTICLE 4

Structure and voting rules

1. The ESM shall have a Board of Governors and a Board of Directors, as well as a Managing Director and other dedicated staff as may be considered necessary.

2. The decisions of the Board of Governors and the Board of Directors shall be taken by mutual agreement, qualified majority or simple majority as specified in this Treaty. In respect of all decisions, a quorum of 2/3 of the members with voting rights representing at least 2/3 of the voting rights must be present.

3. The adoption of a decision by mutual agreement requires the unanimity of the members participating in the vote. Abstentions do not prevent the adoption of a decision by mutual agreement.

4. By way of derogation from paragraph 3, an emergency voting procedure shall be used where the Commission and the ECB both conclude that a failure to urgently adopt a decision to grant or implement financial assistance, as defined in Articles 13 to 18, would threaten the economic and financial sustainability of the euro area. The adoption of a decision by mutual agreement by the Board of Governors referred to in points (f) and (g) of Article 5(6) and the Board of Directors under that emergency procedure requires a qualified majority of 85% of the votes cast.

Where the emergency procedure referred to in the first subparagraph is used, a transfer from the reserve fund and/or the paid-in capital to an emergency reserve fund is made in order to constitute a dedicated buffer to cover the risks arising from the financial support granted under that emergency procedure. The Board of Governors may decide to cancel the emergency reserve fund and transfer its content back to the reserve fund and/or paid-in capital.

5. The adoption of a decision by qualified majority requires 80 % of the votes cast.

6. The adoption of a decision by simple majority requires a majority of the votes cast.

7. The voting rights of each ESM Member, as exercised by its appointee or by the latter's representative on the Board of Governors or Board of Directors, shall be equal to the number of shares allocated to it in the authorised capital stock of the ESM as set out in Annex II.

8. If any ESM Member fails to pay any part of the amount due in respect of its obligations in relation to paid-in shares or calls of capital under Articles 8, 9 and 10, or in relation to the reimbursement of the financial assistance under Article 16 or 17, such ESM Member shall be unable, for so long as such failure continues, to exercise any of its voting rights. The voting thresholds shall be recalculated accordingly.

ARTICLE 5

Board of Governors

1. Each ESM Member shall appoint a Governor and an alternate Governor. Such appointments are revocable at any time. The Governor shall be a member of the government of that ESM Member who has responsibility for finance. The alternate Governor shall have full power to act on behalf of the Governor when the latter is not present.

2. The Board of Governors shall decide either to be chaired by the President of the Euro Group, as referred to in Protocol (No 14) on the Euro Group annexed to the Treaty on the European Union and to the TFEU or to elect a Chairperson and a Vice-Chairperson from among its members for a term of two years. The Chairperson and the Vice-Chairperson may be re-elected. A new election shall be organised without delay if the incumbent no longer holds the function needed for being designated Governor.

3. The Member of the European Commission in charge of economic and monetary affairs and the President of the ECB, as well as the President of the Euro Group (if he or she is not the Chairperson or a Governor) may participate in the meetings of the Board of Governors as observers.

4. Representatives of non-euro area Member States participating on an *ad hoc* basis alongside the ESM in a stability support operation for a euro area Member State shall also be invited to participate, as observers, in the meetings of the Board of Governors when this stability support and its monitoring will be discussed.

5. Other persons, including representatives of institutions or organisations, such as the IMF, may be invited by the Board of Governors to attend meetings as observers on an *ad hoc* basis.

6. The Board of Governors shall take the following decisions by mutual agreement:

(a) to cancel the emergency reserve fund and transfer its content back to the reserve fund and/or paid-in capital, in accordance with Article 4(4);

(b) to issue new shares on terms other than at par, in accordance with Article 8(2);

(c) to make the capital calls, in accordance with Article 9(1);

(d) to change the authorised capital stock and adapt the maximum lending volume of the ESM, in accordance with Article 10(1);

(e) to take into account a possible update of the key for the subscription of the ECB capital, in accordance with Article 11(3), and the changes to be made to Annex I in accordance with Article 11(6);

(f) to provide stability support by the ESM, including the economic policy conditionality as stated in the memorandum of understanding referred to in Article 13(3), and to establish the choice of instruments and the financial terms and conditions, in accordance with Articles 12 to 18;

(g) to give a mandate to the European Commission to negotiate, in liaison

with the ECB, the economic policy conditionality attached to each financial assistance, in accordance with Article 13(3);

(h) to change the pricing policy and pricing guideline for financial assistance, in accordance with Article 20;

(i) to change the list of financial assistance instruments that may be used by the ESM, in accordance with Article 19;

(j) to establish the modalities of the transfer of EFSF support to the ESM, in accordance with Article 40;

(k) to approve the application for membership of the ESM by new members, referred to in Article 44;

(l) to make adaptations to this Treaty as a direct consequence of the accession of new members, including changes to be made to the distribution of capital among ESM Members and the calculation of such a distribution as a direct consequence of the accession of a new member to the ESM, in accordance with Article 44; and

(m) to delegate to the Board of Directors the tasks listed in this Article.

7. The Board of Governors shall take the following decisions by qualified majority:

(a) to set out the detailed technical terms of accession of a new member to the ESM, in accordance with Article 44;

(b) whether to be chaired by the President of the Euro Group or to elect, by qualified majority, the Chairperson and Vice-Chairperson of the Board of Governors, in accordance with paragraph 2;

(c) to set out by-laws of the ESM and the rules of procedure applicable to the Board of Governors and Board of Directors (including the right to establish committees and subsidiary bodies), in accordance with paragraph 9;

(d) to determine the list of activities incompatible with the duties of a Director or an alternate Director, in accordance with Article 6(8);

(e) to appoint and to end the term of office of the Managing Director, in accordance with Article 7;

(f) to establish other funds, in accordance with Article 24;

(g) on the actions to be taken for recovering a debt from an ESM Member, in accordance with Article 25(2) and (3);

(h) to approve the annual accounts of the ESM, in accordance with Article 27(1);

(i) to appoint the members of the Board of Auditors, in accordance with Article 30(1);

(j) to approve the external auditors, in accordance with Article 29;

(k) to waive the immunity of the Chairperson of the Board of Governors, a Governor, alternate Governor, Director, alternate Director or the Managing Director, in accordance with Article 35(2);

(l) to determine the taxation regime applicable to the ESM staff, in accordance with Article 36(5);

(m) on a dispute, in accordance with Article 37(2); and

(n) any other necessary decision not explicitly provided for by this Treaty.

8. The Chairperson shall convene and preside over the meetings of the Board of Governors. The Vice-Chairperson shall preside over these meetings when the Chairperson is unable to participate.

9. The Board of Governors shall adopt their rules of procedure and the by-laws of the ESM.

ARTICLE 6

Board of Directors

1. Each Governor shall appoint one Director and one alternate Director from among people of high competence in economic and financial matters. Such appointments shall be revocable at any time. The alternate Directors shall have full power to act on behalf of the Director when the latter is not present.

2. The Member of the European Commission in charge of economic and monetary affairs and the President of the ECB may appoint one observer each.

3. Representatives of non-euro area Member States participating on an *ad hoc* basis alongside the ESM in a financial assistance operation for a euro area Member State shall also be invited to participate, as observers, in the meetings of the Board of Directors when this financial assistance and its monitoring will be discussed.

4. Other persons, including representatives of institutions or organisations, may be invited by the Board of Governors to attend meetings as observers on an *ad hoc* basis.

5. The Board of Directors shall take decisions by qualified majority, unless otherwise stated in this Treaty. Decisions to be taken on the basis of powers delegated by the Board of Governors shall be adopted in accordance with the relevant voting rules set in Article 5(6) and (7).

6. Without prejudice to the powers of the Board of Governors as set out in Article 5, the Board of Directors shall ensure that the ESM is run in accordance with this Treaty and the by-laws of the ESM adopted by the Board of Governors. It shall take decisions as provided for in this Treaty or which are delegated to it by the Board of Governors.

7. Any vacancy in the Board of Directors shall be immediately filled in accordance with paragraph 1.

8. The Board of Governors shall lay down what activities are incompatible with the duties of a Director or an alternate Director, the by-laws of the ESM and rules of procedure of the Board of Directors

ARTICLE 7

Managing Director

1. The Managing Director shall be appointed by the Board of Governors from among candidates having the nationality of an ESM Member, relevant international experience and a high level of competence in economic and financial matters. Whilst holding office, the Managing Director may not be a Governor or Director or an alternate of either.

2. The term of office of the Managing Director shall be five years. He or she may be re-appointed once. The Managing Director shall, however, cease to hold office when the Board of Governors so decides.

3. The Managing Director shall chair the meetings of the Board of Directors and shall participate in the meetings of the Board of Governors.

4. The Managing Director shall be chief of the staff of the ESM. He or she shall be responsible for organising, appointing and dismissing staff in accordance with staff rules to be adopted by the Board of Directors.

5. The Managing Director shall be the legal representative of the ESM and shall conduct, under the direction of the Board of Directors, the current business of the ESM.

CHAPTER 3

CAPITAL

ARTICLE 8

Authorised capital stock

1. The authorised capital stock shall be EUR 700 000 million. It shall be divided into seven million shares, having a nominal value of EUR 100 000 each, which shall be available for subscription according to the initial contribution key provided for in Article 11 and calculated in Annex I.

2. The authorised capital stock shall be divided into paid-in shares and callable shares. The initial total aggregate nominal value of paid-in shares shall be EUR 80 000 million. Shares of authorised capital stock initially subscribed shall be issued at par. Other shares shall be issued at par, unless the Board of Governors decides to issue them in special circumstances on other terms.

3. Shares of authorised capital stock shall not be encumbered or pledged in any manner whatsoever and they shall not be transferable, with the exception of transfers for the purposes of implementing adjustments of the contribution key provided for in Article 11 to the extent necessary to ensure that the distribution of shares corresponds to the adjusted key.

4. ESM Members hereby irrevocably and unconditionally undertake to provide their contribution to the authorised capital stock, in accordance with their contribution key in Annex I. They shall meet all capital calls on a timely basis in accordance with the terms set out in this Treaty.

5. The liability of each ESM Member shall be limited, in all circumstances, to its portion of the authorised capital stock at its issue price. No ESM Member shall be liable, by reason of its membership, for obligations of the ESM. The obligations of ESM Members to contribute to the authorised capital stock in accordance with this Treaty are not affected if any such ESM Member becomes eligible for, or is receiving, financial assistance from the ESM.

ARTICLE 9

Capital calls

1. The Board of Governors may call in authorised unpaid capital at any time and set an appropriate period of time for its payment by the ESM Members.

2. The Board of Directors may call in authorised unpaid capital by simple majority decision to restore the level of paid-in capital if the amount of the latter is reduced by the absorption of losses below the level established in Article 8(2), as may be amended by the Board of Governors following the procedure provided for in Article 10, and set an appropriate period of time for its payment by the ESM Members.

3. The Managing Director shall call authorised unpaid capital in a timely manner if needed to avoid the ESM being in default of any scheduled or other payment obligation due to ESM creditors. The Managing Director shall inform the

Board of Directors and the Board of Governors of any such call. When a potential shortfall in ESM funds is detected, the Managing Director shall make such capital call(s) as soon as possible with a view to ensuring that the ESM shall have sufficient funds to meet payments due to creditors in full on their due date. ESM Members hereby irrevocably and unconditionally undertake to pay on demand any capital call made on them by the Managing Director pursuant to this paragraph, such demand to be paid within seven days of receipt.

4. The Board of Directors shall adopt the detailed terms and conditions which shall apply to calls on capital pursuant to this Article.

ARTICLE 10

Changes in authorised capital stock

1. The Board of Governors shall review regularly and at least every five years the maximum lending volume and the adequacy of the authorised capital stock of the ESM. It may decide to change the authorised capital stock and amend Article 8 and Annex II accordingly. Such decision shall enter into force after the ESM Members have notified the Depositary of the completion of their applicable national procedures. The new shares shall be allocated to the ESM Members according to the contribution key provided for in Article 11 and in Annex I.

2. The Board of Directors shall adopt the detailed terms and conditions which shall apply to all or any capital changes made under paragraph 1.

3. Upon a Member State of the European Union becoming a new ESM Member, the authorised capital stock of the ESM shall be automatically increased by multiplying the respective amounts then prevailing by the ratio, within the adjusted contribution key provided for in Article 11, between the weighting of the new ESM Member and the weighting of the existing ESM Members.

ARTICLE 11

Contribution key

1. The contribution key for subscribing to ESM authorised capital stock shall, subject to paragraphs 2 and 3, be based on the key for subscription, by the national central banks of ESM Members, of the ECB's capital pursuant to Article 29 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (the "ESCB Statute") annexed to the Treaty on European Union and to the TFEU.

2. The contribution key for the subscription of the ESM authorised capital stock is specified in Annex I.

3. The contribution key for the subscription of the ESM authorised capital stock shall be adjusted when:

(a) a Member State of the European Union becomes a new ESM Member and the ESM's authorised capital stock automatically increases, as specified in Article 10(3); or

(b) the twelve year temporary correction applicable to an ESM Member established in accordance with Article 42 ends.

4. The Board of Governors may decide to take into account possible updates to the key for the subscription of the ECB's capital referred to in paragraph 1 when the contribution key is adjusted in accordance with paragraph 3 or when there is a change in the authorised capital stock, as specified in Article 10(1).

5. When the contribution key for the subscription of the ESM authorised

capital stock is adjusted, the ESM Members shall transfer among themselves authorised capital stock to the extent necessary to ensure that the distribution of authorised capital stock corresponds to the adjusted key.

6. Annex I shall be amended upon decision by the Board of Governors upon any adjustment referred to in this Article.

7. The Board of Directors shall take all other measures necessary for the application of this Article.

CHAPTER 4

OPERATIONS

ARTICLE 12

Principles

1. If indispensable to safeguard the financial stability of the euro area as a whole and of its Member States, the ESM may provide stability support to an ESM Member subject to strict conditionality, appropriate to the financial assistance instrument chosen. Such conditionality may range from a macro-economic adjustment programme to continuous respect of pre-established eligibility conditions.

2. Without prejudice to Article 19, ESM stability support may be granted through the instruments provided for in Articles 14 to 18.

3. Collective action clauses shall be included, as of 1 January 2013, in all new euro area government securities, with maturity above one year, in a way which ensures that their legal impact is identical.

ARTICLE 13

Procedure for granting stability support

1. An ESM Member may address a request for stability support to the Chairperson of the Board of Governors. Such a request shall indicate the financial assistance instrument(s) to be considered. On receipt of such a request, the Chairperson of the Board of Governors shall entrust the European Commission, in liaison with the ECB, with the following tasks:

(a) to assess the existence of a risk to the financial stability of the euro area as a whole or of its Member States, unless the ECB has already submitted an analysis under Article 18(2);

(b) to assess whether public debt is sustainable. Wherever appropriate and possible, such an assessment is expected to be conducted together with the IMF;

(c) to assess the actual or potential financing needs of the ESM Member concerned.

2. On the basis of the request of the ESM Member and the assessment referred to in paragraph 1, the Board of Governors may decide to grant, in principle, stability support to the ESM Member concerned in the form of a financial assistance facility.

3. If a decision pursuant to paragraph 2 is adopted, the Board of Governors shall entrust the European Commission - in liaison with the ECB and, wherever possible, together with the IMF - with the task of negotiating, with the ESM Member concerned, a memorandum of understanding (an "MoU") detailing the conditionality attached to the financial assistance facility. The content of the MoU shall reflect the severity of the weaknesses to be addressed and the financial assistance instrument chosen. In parallel, the Managing Director of the ESM shall prepare a proposal for a

financial assistance facility agreement, including the financial terms and conditions and the choice of instruments, to be adopted by the Board of Governors.

The MoU shall be fully consistent with the measures of economic policy coordination provided for in the TFEU, in particular with any act of European Union law, including any opinion, warning, recommendation or decision addressed to the ESM Member concerned.

4. The European Commission shall sign the MoU on behalf of the ESM, subject to prior compliance with the conditions set out in paragraph 3 and approval by the Board of Governors.

5. The Board of Directors shall approve the financial assistance facility agreement detailing the financial aspects of the stability support to be granted and, where applicable, the disbursement of the first tranche of the assistance.

6. The ESM shall establish an appropriate warning system to ensure that it receives any repayments due by the ESM Member under the stability support in a timely manner.

7. The European Commission - in liaison with the ECB and, wherever possible, together with the IMF - shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.

ARTICLE 14

ESM precautionary financial assistance

1. The Board of Governors may decide to grant precautionary financial assistance in the form of a precautionary conditioned credit line or in the form of an enhanced conditions credit line in accordance with Article 12(1).

2. The conditionality attached to the ESM precautionary financial assistance shall be detailed in the MoU, in accordance with Article 13(3).

3. The financial terms and conditions of the ESM precautionary financial assistance shall be specified in a precautionary financial assistance facility agreement, to be signed by the Managing Director.

4. The Board of Directors shall adopt the detailed guidelines on the modalities for implementing the ESM precautionary financial assistance.

5. The Board of Directors shall decide by mutual agreement on a proposal from the Managing Director and after having received a report from the European Commission in accordance with Article 13(7), whether the credit line should be maintained.

6. After the ESM Member has drawn funds for the first time (via a loan or a primary market purchase), the Board of Directors shall decide by mutual agreement on a proposal from the Managing Director and based on an assessment conducted by the European Commission, in liaison with the ECB, whether the credit line continues to be adequate or whether another form of financial assistance is needed.

ARTICLE 15

Financial assistance for the re-capitalisation of financial institutions of an ESM Member

1. The Board of Governors may decide to grant financial assistance through loans to an ESM Member for the specific purpose of re-capitalising the financial institutions of that ESM Member.

2. The conditionality attached to financial assistance for the re-capitalisation

of an ESM Member's financial institutions shall be detailed in the MoU, in accordance with Article 13(3).

3. Without prejudice to Articles 107 and 108 TFEU, the financial terms and conditions of financial assistance for the re-capitalisation of an ESM Member's financial institutions shall be specified in a financial assistance facility agreement, to be signed by the Managing Director.

4. The Board of Directors shall adopt the detailed guidelines on the modalities for implementing financial assistance for the re-capitalisation of an ESM Member's financial institutions.

5. Where applicable, the Board of Directors shall decide by mutual agreement, on a proposal from the Managing Director and after having received a report from the European Commission in accordance with Article 13(7), the disbursement of the tranches of the financial assistance subsequent to the first tranche.

ARTICLE 16

ESM loans

1. The Board of Governors may decide to grant financial assistance in the form of a loan to an ESM Member, in accordance with Article 12.

2. The conditionality attached to the ESM loans shall be contained in a macro-economic adjustment programme detailed in the MoU, in accordance with Article 13(3).

3. The financial terms and conditions of each ESM loan shall be specified in a financial assistance facility agreement, to be signed by the Managing Director.

4. The Board of Directors shall adopt the detailed guidelines on the modalities for implementing ESM loans.

5. The Board of Directors shall decide by mutual agreement, on a proposal from the Managing Director and after having received a report from the European Commission in accordance with Article 13(7), the disbursement of the tranches of the financial assistance subsequent to the first tranche.

ARTICLE 17

Primary market support facility

1. The Board of Governors may decide to arrange for the purchase of bonds of an ESM Member on the primary market, in accordance with Article 12 and with the objective of maximising the cost efficiency of the financial assistance.

2. The conditionality attached to the primary market support facility shall be detailed in the MoU, in accordance with Article 13(3).

3. The financial terms and conditions under which the bond purchase is conducted shall be specified in a financial assistance facility agreement, to be signed by the Managing Director.

4. The Board of Directors shall adopt the detailed guidelines on the modalities for implementing the primary market support facility.

5. The Board of Directors shall decide by mutual agreement, on a proposal from the Managing Director and after having received a report from the European Commission in accordance with Article 13(7), the disbursement of financial assistance to a beneficiary Member State through operations on the primary market.

ARTICLE 18

Secondary market support facility

1. The Board of Governors may decide to arrange for operations on the secondary market in relation to the bonds of an ESM Member in accordance with Article 12(1).

2. Decisions on interventions on the secondary market to address contagion shall be taken on the basis of an analysis of the ECB recognising the existence of exceptional financial market circumstances and risks to financial stability.

3. The conditionality attached to the secondary market support facility shall be detailed in the MoU, in accordance with Article 13(3).

4. The financial terms and conditions under which the secondary market operations are to be conducted shall be specified in a financial assistance facility agreement, to be signed by the Managing Director.

5. The Board of Directors shall adopt the detailed guidelines on the modalities for implementing the secondary market support facility.

6. The Board of Directors shall decide by mutual agreement, on a proposal from the Managing Director, to initiate operations on the secondary market.

ARTICLE 19

Review of the list of financial assistance instruments

The Board of Governors may review the list of financial assistance instruments provided for in Articles 14 to 18 and decide to make changes to it.

ARTICLE 20

Pricing policy

1. When granting stability support, the ESM shall aim to fully cover its financing and operating costs and shall include an appropriate margin.

2. For all financial assistance instruments, pricing shall be detailed in a pricing guideline, which shall be adopted by the Board of Governors.

3. The pricing policy may be reviewed by the Board of Governors.

ARTICLE 21

Borrowing operations

1. The ESM shall be empowered to borrow on the capital markets from banks, financial institutions or other persons or institutions for the performance of its purpose.

2. The modalities of the borrowing operations shall be determined by the Managing Director, in accordance with detailed guidelines to be adopted by the Board of Directors.

3. The ESM shall use appropriate risk management tools, which shall be reviewed regularly by the Board of Directors.

CHAPTER 5

FINANCIAL MANAGEMENT

ARTICLE 22

Investment policy

1. The Managing Director shall implement a prudent investment policy for the ESM, so as to ensure its highest creditworthiness, in accordance with guidelines to

be adopted and reviewed regularly by the Board of Directors. The ESM shall be entitled to use part of the return on its investment portfolio to cover its operating and administrative costs.

2. The operations of the ESM shall comply with the principles of sound financial and risk management.

ARTICLE 23

Dividend policy

1. The Board of Directors may decide, by simple majority, to distribute a dividend to the ESM Members where the amount of paid-in capital and the reserve fund exceed the level required for the ESM to maintain its lending capacity and where proceeds from the investment are not required to avoid a payment shortfall to creditors. Dividends are distributed pro rata to the contributions to the paid-in capital, taking into account the possible acceleration referred to in Article 41(3).

2. As long as the ESM has not provided financial assistance to one of its members, the proceeds from the investment of the ESM paid-in capital shall be returned to the ESM Members according to their respective contributions to the paid-in capital, after deductions for operational costs, provided that the targeted effective lending capacity is fully available.

3. The Managing Director shall implement the dividend policy for the ESM in accordance with guidelines to be adopted by the Board of Directors.

ARTICLE 24

Reserve and other funds

1. The Board of Governors shall establish a reserve fund and, where appropriate, other funds.

2. Without prejudice to Article 23, the net income generated by the ESM operations and the proceeds of the financial sanctions received from the ESM Members under the multilateral surveillance procedure, the excessive deficit procedure and the macro-economic imbalances procedure established under the TFEU shall be put aside in a reserve fund.

3. The resources of the reserve fund shall be invested in accordance with guidelines to be adopted by the Board of Directors.

4. The Board of Directors shall adopt such rules as may be required for the establishment, administration and use of other funds.

ARTICLE 25

Coverage of losses

1. Losses arising in the ESM operations shall be charged:

(a) firstly, against the reserve fund;

(b) secondly, against the paid-in capital; and

(c) lastly, against an appropriate amount of the authorised unpaid capital, which shall be called in accordance with Article 9(3).

2. If an ESM Member fails to meet the required payment under a capital call made pursuant to Article 9(2) or (3), a revised increased capital call shall be made to all ESM Members with a view to ensuring that the ESM receives the total amount of paid-in capital needed. The Board of Governors shall decide an appropriate course of action for ensuring that the ESM Member concerned settles its debt to the ESM within a reasonable period of time. The Board of Governors shall be entitled to

require the payment of default interest on the overdue amount.

3. When an ESM Member settles its debt to the ESM, as referred to in paragraph 2, the excess capital shall be returned to the other ESM Members in accordance with rules to be adopted by the Board of Governors.

ARTICLE 26

Budget

The Board of Directors shall approve the ESM budget annually.

ARTICLE 27

Annual accounts

1. The Board of Governors shall approve the annual accounts of the ESM.

2. The ESM shall publish an annual report containing an audited statement of its accounts and shall circulate to ESM Members a quarterly summary statement of its financial position and a profit and loss statement showing the results of its operations.

ARTICLE 28

Internal Audit

An internal audit function shall be established according to international standards.

ARTICLE 29

External audit

The accounts of the ESM shall be audited by independent external auditors approved by the Board of Governors and responsible for certifying the annual financial statements. The external auditors shall have full power to examine all books and accounts of the ESM and obtain full information about its transactions.

ARTICLE 30

Board of Auditors

1. The Board of Auditors shall consist of five members appointed by the Board of Governors for their competence in auditing and financial matters and shall include two members from the supreme audit institutions of the ESM Members - with a rotation between the latter - and one from the European Court of Auditors.

2. The members of the Board of Auditors shall be independent. They shall neither seek nor take instructions from the ESM governing bodies, the ESM Members or any other public or private body.

3. The Board of Auditors shall draw up independent audits. It shall inspect the ESM accounts and verify that the operational accounts and balance sheet are in order. It shall have full access to any document of the ESM needed for the implementation of its tasks.

4. The Board of Auditors may inform the Board of Directors at any time of its findings. It shall, on an annual basis, draw up a report to be submitted to the Board of Governors.

5. The Board of Governors shall make the annual report accessible to the national parliaments and supreme audit institutions of the ESM Members and to the European Court of Auditors.

6. Any matter relating to this Article shall be detailed in the by-laws of the

ESM.

CHAPTER 6
GENERAL PROVISIONS

ARTICLE 31
Location

1. The ESM shall have its seat and principal office in Luxembourg.

2. The ESM may establish a liaison office in Brussels.

ARTICLE 32
Legal status, privileges and immunities

1. To enable the ESM to fulfil its purpose, the legal status and the privileges and immunities set out in this Article shall be accorded to the ESM in the territory of each ESM Member. The ESM shall endeavour to obtain recognition of its legal status and of its privileges and immunities in other territories in which it performs functions or holds assets.

2. The ESM shall have full legal personality; it shall have full legal capacity to:

(a) acquire and dispose of movable and immovable property;

(b) contract;

(c) be a party to legal proceedings; and

(d) enter into a headquarter agreement and/or protocols as necessary for ensuring that its legal status and its privileges and immunities are recognised and enforced.

3. The ESM, its property, funding and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that the ESM expressly waives its immunity for the purpose of any proceedings or by the terms of any contract, including the documentation of the funding instruments.

4. The property, funding and assets of the ESM shall, wherever located and by whomsoever held, be immune from search, requisition, confiscation, expropriation or any other form of seizure, taking or foreclosure by executive, judicial, administrative or legislative action.

5. The archives of the ESM and all documents belonging to the ESM or held by it, shall be inviolable.

6. The premises of the ESM shall be inviolable.

7. The official communications of the ESM shall be accorded by each ESM Member and by each state which has recognised the legal status and the privileges and immunities of the ESM, the same treatment as it accords to the official communications of an ESM Member.

8. To the extent necessary to carry out the activities provided for in this Treaty, all property, funding and assets of the ESM shall be free from restrictions, regulations, controls and moratoria of any nature.

9. The ESM shall be exempted from any requirement to be authorised or licensed as a credit institution, investment services provider or other authorised licensed or regulated entity under the laws of each ESM Member.

ARTICLE 33

Staff of the ESM

The Board of Directors shall lay down the conditions of employment of the Managing Director and other staff of the ESM.

ARTICLE 34

Professional secrecy

The Members or former Members of the Board of Governors and of the Board of Directors and any other persons who work or have worked for or in connection with the ESM shall not disclose information that is subject to professional secrecy. They shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

ARTICLE 35

Immunities of persons

1. In the interest of the ESM, the Chairperson of the Board of Governors, Governors, alternate Governors, Directors, alternate Directors, as well as the Managing Director and other staff members shall be immune from legal proceedings with respect to acts performed by them in their official capacity and shall enjoy inviolability in respect of their official papers and documents.

2. The Board of Governors may waive to such extent and upon such conditions as it determines any of the immunities conferred under this Article in respect of the Chairperson of the Board of Governors, a Governor, an alternate Governor, a Director, an alternate Director or the Managing Director.

3. The Managing Director may waive any such immunity in respect of any member of the staff of the ESM other than himself or herself.

4. Each ESM Member shall promptly take the action necessary for the purposes of giving effect to this Article in the terms of its own law and shall inform the ESM accordingly.

ARTICLE 36

Exemption from taxation

1. Within the scope of its official activities, the ESM, its assets, income, property and its operations and transactions authorised by this Treaty shall be exempt from all direct taxes.

2. The ESM Members shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property where the ESM makes, for its official use, substantial purchases, the price of which includes taxes of this kind.

3. No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

4. Goods imported by the ESM and necessary for the exercise of its official activities shall be exempt from all import duties and taxes and from all import prohibitions and restrictions.

5. Staff of the ESM shall be subject to an internal tax for the benefit of the ESM on salaries and emoluments paid by the ESM, subject to rules to be adopted by the Board of Governors. From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax.

6. No taxation of any kind shall be levied on any obligation or security issued by the ESM including any interest or dividend thereon by whomsoever held:

(a) which discriminates against such obligation or security solely because of its origin; or

(b) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the ESM.

ARTICLE 37

Interpretation and dispute settlement

1. Any question of interpretation or application of the provisions of this Treaty and the by-laws of the ESM arising between any ESM Member and the ESM, or between ESM Members, shall be submitted to the Board of Directors for its decision.

2. The Board of Governors shall decide on any dispute arising between an ESM Member and the ESM, or between ESM Members, in connection with the interpretation and application of this Treaty, including any dispute about the compatibility of the decisions adopted by the ESM with this Treaty. The votes of the member(s) of the Board of Governors of the ESM Member(s) concerned shall be suspended when the Board of Governors votes on such decision and the voting threshold needed for the adoption of that decision shall be recalculated accordingly.

3. If an ESM Member contests the decision referred to in paragraph 2, the dispute shall be submitted to the Court of Justice of the European Union. The judgement of the Court of Justice of the European Union shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgment within a period to be decided by said Court.

ARTICLE 38

International cooperation

The ESM shall be entitled, for the furtherance of its purposes, to cooperate, within the terms of this Treaty, with the IMF, any State which provides financial assistance to an ESM Member on an *ad hoc* basis and any international organisation or entity having specialised responsibilities in related fields.

CHAPTER 7

TRANSITIONAL ARRANGEMENTS

ARTICLE 39

Relation with EFSF lending

During the transitional phase spanning the period from the entry into force of this Treaty until the complete run-down of the EFSF, the consolidated ESM and EFSF lending shall not exceed EUR 500 000 million, without prejudice to the regular review of the adequacy of the maximum lending volume in accordance with Article 10. The Board of Directors shall adopt detailed guidelines on the calculation of the forward commitment capacity to ensure that the consolidated lending ceiling is not breached.

ARTICLE 40

Transfer of EFSF supports

1. By way of derogation from Article 13, the Board of Governors may decide that the EFSF commitments to provide financial assistance to an ESM Member under its agreement with that member shall be assumed by the ESM as far as such

commitments relate to undisbursed and unfunded parts of loan facilities.

2. The ESM may, if authorised by its Board of Governors, acquire the rights and assume the obligations of the EFSF, in particular in respect of all or part of its outstanding rights and obligations under, and related to, its existing loan facilities.

3. The Board of Governors shall adopt the detailed modalities necessary to give effect to the transfer of the obligations from the EFSF to the ESM, as referred to in paragraph 1 and any transfer of rights and obligations as described in paragraph 2.

ARTICLE 41

Payment of the initial capital

1. Without prejudice to paragraph 2, payment of paid-in shares of the amount initially subscribed by each ESM Member shall be made in five annual instalments of 20% each of the total amount. The first instalment shall be paid by each ESM Member within fifteen days of the date of entry into force of this Treaty. The remaining four instalments shall each be payable on the first, second, third and fourth anniversary of the payment date of the first instalment.

2. During the five-year period of capital payment by instalments, ESM Members shall accelerate the payment of paid-in shares, in a timely manner prior to the issuance date, in order to maintain a minimum 15% ratio between paid-in capital and the outstanding amount of ESM issuances and guarantee a minimum combined lending capacity of the ESM and of the EFSF of EUR 500 000 million.

3. An ESM Member may decide to accelerate the payment of its share of paid-in capital.

ARTICLE 42

Temporary correction of the contribution key

1. At inception, the ESM Members shall subscribe the authorised capital stock on the basis of the initial contribution key as specified in Annex I. The temporary correction included in this initial contribution key shall apply for a period of twelve years after the date of adoption of the euro by the ESM Member concerned.

2. If a new ESM Member's gross domestic product (GDP) per capita at market prices in euro in the year immediately preceding its accession to the ESM is less than 75 % of the European Union average GDP per capita at market prices, then its contribution key for subscribing to ESM authorised capital stock, determined in accordance with Article 10, shall benefit from a temporary correction and equal the sum of:

(a) 25% of the percentage share in the ECB capital of the national central bank of that ESM Member, determined in accordance with Article 29 of the ESCB Statute; and

(b) 75% of that ESM Member's percentage share in the gross national income (GNI) at market prices in euro of the euro area in the year immediately preceding its accession to the ESM.

The percentages referred to in points (a) and (b) shall be rounded up or down to the nearest multiple of 0,0001 percentage points. The statistical terms shall be those published by Eurostat.

3. The temporary correction referred to in paragraph 2 shall apply for a period of twelve years from the date of adoption of the euro by the ESM Member concerned.

4. As a result of the temporary correction of the key, the relevant proportion of

shares allocated to an ESM Member pursuant to paragraph 2 shall be reallocated amongst the ESM Members not benefiting from a temporary correction on the basis of their shareholding in the ECB, determined in accordance with Article 29 of the ESCB Statute, subsisting immediately prior to the issue of shares to the acceding ESM Member.

ARTICLE 43

First appointments

1. Each ESM Member shall designate its Governor and alternate Governor within the two weeks of the entry into force of this Treaty.

2. The Board of Governors shall appoint the Managing Director and each Governor shall appoint a Director and an alternate Director within the two months of the entry into force of this Treaty.

CHAPTER 8

FINAL PROVISIONS

ARTICLE 44

Accession

This Treaty shall be open for accession by other Member States of the European Union in accordance with Article 2 upon application for membership that any such Member State of the European Union shall file with the ESM after the adoption by the Council of the European Union of the decision to abrogate its derogation from adopting the euro in accordance with Article 140(2) TFEU. The Board of Governors shall approve the application for accession of the new ESM Member and the detailed technical terms related thereto, as well as the adaptations to be made to this Treaty as a direct consequence of the accession. Following the approval of the application for membership by the Board of Governors, new ESM Members shall accede upon the deposit of the instruments of accession with the Depositary, who shall notify other ESM Members thereof.

ARTICLE 45

Annexes

The following Annexes to this Treaty shall constitute an integral part thereof:

1) Annex I: Contribution key of the ESM; and

2) Annex II: Subscriptions to the authorised capital stock.

ARTICLE 46

Deposit

This Treaty shall be deposited with the General Secretariat of the Council of the European Union ("the Depositary"), which shall communicate certified copies to all the signatories.

ARTICLE 47

Ratification, approval or acceptance

1. This Treaty shall be subject to ratification, approval or acceptance by the signatories. Instruments of ratification, approval or acceptance shall be deposited with the Depositary.

2. The Depositary shall notify the other signatories of each deposit and the date thereof.

ARTICLE 48

Entry into force

1. This Treaty shall enter into force on the date when instruments of ratification, approval or acceptance have been deposited by signatories whose initial subscriptions represent no less than 90% of the total subscriptions set forth in Annex II. Where appropriate, the list of ESM Members shall be adjusted; the key in Annex I shall then be recalculated and the total authorised capital stock in Article 8(1) and Annex II and the initial total aggregated nominal value of paid-in shares in Article 8(2) shall be reduced accordingly.

2. For each signatory which thereafter deposits its instrument of ratification, approval or acceptance, this Treaty shall enter into force on the day following the date of deposit.

3. For each State which accedes to this Treaty in accordance with Article 44, this Treaty shall enter into force on the twentieth day following the deposit of its instrument of accession.

Done at Brussels on the second day of February in the year two thousand and twelve in a single original, whose Dutch, English, Estonian, Finnish, French, German, Greek, Irish, Italian, Maltese, Portuguese, Slovak, Slovenian, Spanish and Swedish texts are equally authentic, which shall be deposited in the archives of the Depositary which shall transmit a duly certified copy to each of the Contracting Parties.

ANNEX I

Contribution Key of the ESM

ESM Member	**ESM key (%)**
Kingdom of Belgium	3,4771
Federal Republic of Germany	27,1464
Republic of Estonia	0,1860
Ireland	1,5922
Hellenic Republic	2,8167
Kingdom of Spain	11,9037
French Republic	20,3859
Italian Republic	17,9137
Republic of Cyprus	0,1962
Grand Duchy of Luxembourg	0,2504
Malta	0,0731
Kingdom of the Netherlands	5,7170
Republic of Austria	2,7834
Portuguese Republic	2,5092
Republic of Slovenia	0,4276
Slovak Republic	0,8240
Republic of Finland	1,7974
Total	**100,0**

ANNEX II

Subscriptions to the authorised capital stock

ESM Member	**Number of shares**	**Capital subscription (EUR)**
Kingdom of Belgium	243 397	24 339 700 000
Federal Republic of Germany	1 900 248	190 024 800 000
Republic of Estonia	13 020	1 302 000 000
Ireland	111 454	11 145 400 000
Hellenic Republic	197 169	19 716 900 000
Kingdom of Spain	833 259	83 325 900 000
French Republic	1 427 013	142 701 300 000
Italian Republic	1 253 959	125 395 900 000
Republic of Cyprus	13 734	1 373 400 000
Grand Duchy of Luxembourg	17 528	1 752 800 000
Malta	5 117	511 700 000
Kingdom of the Netherlands	400 190	40 019 000 000
Republic of Austria	194 838	19 483 800 000
Portuguese Republic	175 644	17 564 400 000
Republic of Slovenia	29 932	2 993 200 000
Slovak Republic	57 680	5 768 000 000
Republic of Finland	125 818	12 581 800 000
Total	**7 000 000**	**700 000 000 000**

SCHEDULE 4

(Article 4)

EUROPEAN COMMISSION
DIRECTORATE GENERAL
ECONOMIC AND FINANCIAL AFFAIRS
Financial stability and monetary affairs
Financial institutions and stability mechanisms
The Head of Unit

DG ECFIN
03 07 2012
arca 803554

Brussels, 3 July 2012

Interpretation of Article 3 of the ESM Treaty

The Commission services have drafted and negotiated the text of the ESM Treaty (in liaison with the EFSF) and are therefore in a position to explain its content and rationale.

The references in several sections of the Treaty (Article 3, 12 and 13) to the need that the financial stability of the 'euro area as a whole and of its Member States' is at stake to warrant an intervention from the ESM is to be interpreted as allowing ESM actions both in case of difficulties affecting the euro area as a whole or one of its Member States in isolation, whatever its size.

This wording aims specifically at allowing the coverage by the ESM of countries like Malta, whose case has been repeatedly mentioned in the discussions.

Benjamin Angel

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111