



HRVATSKI SABOR

KLASA: 022-02/23-01/04

URBROJ: 65-23-02

Zagreb, 20. siječnja 2023.

P.Z. br. 446

**ZASTUPNICAMA I ZASTUPNICIMA
HRVATSKOGA SABORA**

**PREDSJEDNICAMA I PREDSJEDNICIMA
RADNIH TIJELA**

Na temelju članaka 178. i 192., a u vezi s člankom 207.a Poslovnika Hrvatskoga sabora u prilogu upućujem *Konačni prijedlog zakona o potvrđivanju Ugovora o osnivanju Europskog stabilizacijskog mehanizma između Kraljevine Belgije, Savezne Republike Njemačke, Republike Estonije, Irske, Helenske Republike, Kraljevine Španjolske, Francuske Republike, Talijanske Republike, Republike Cipra, Velikog Vojvodstva Luksemburga, Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske*, koji je predsjedniku Hrvatskoga sabora podnijela Vlada Republike Hrvatske, aktom od 20. siječnja 2023. godine.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila ministra financija dr. sc. Marka Primorca i državne tajnike Zdravka Zrinušića, Stipu Župana i Stjepana Čuraja.

PREDSJEDNIK

Gordan Jandroković



VLADA REPUBLIKE HRVATSKE

KLASA: 022-03/22-11/81

URBROJ: 50301-05/16-23-3

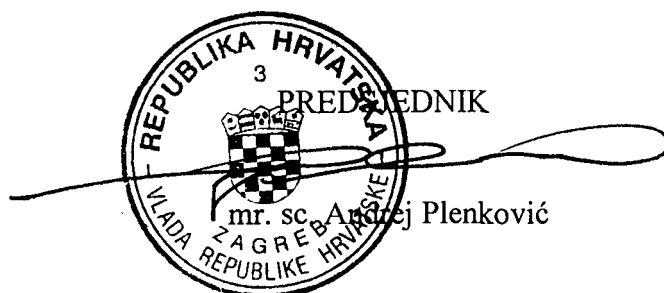
Zagreb, 20. siječnja 2023.

PREDSJEDNIKU HRVATSKOGA SABORA

PREDMET: Konačni prijedlog zakona o potvrđivanju Ugovora o osnivanju Europskog stabilizacijskog mehanizma između Kraljevine Belgije, Savezne Republike Njemačke, Republike Estonije, Irske, Helenske Republike, Kraljevine Španjolske, Francuske Republike, Talijanske Republike, Republike Cipra, Velikog Vojvodstva Luksemburga, Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske

Na temelju članka 85. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske) i članka 207.a Poslovnika Hrvatskoga sabora („Narodne novine“, br. 81/13., 113/16., 69/17., 29/18., 53/20., 119/20. – Odluka Ustavnog suda Republike Hrvatske i 123/20.), Vlada Republike Hrvatske podnosi Konačni prijedlog zakona o potvrđivanju Ugovora o osnivanju Europskog stabilizacijskog mehanizma između Kraljevine Belgije, Savezne Republike Njemačke, Republike Estonije, Irske, Helenske Republike, Kraljevine Španjolske, Francuske Republike, Talijanske Republike, Republike Cipra, Velikog Vojvodstva Luksemburga, Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila ministra financija dr. sc. Marka Primorca i državne tajnike Zdravka Zrinušića, Stipu Župana i Stjepana Čuraja.



**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU UGOVORA O
OSNIVANJU EUROPSKOG STABILIZACIJSKOG MEHANIZMA
IZMEĐU KRALJEVINE BELGIJE, SAVEZNE REPUBLIKE NJEMAČKE,
REPUBLIKE ESTONIJE, IRSKE, HELENSKE REPUBLIKE,
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**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU UGOVORA O
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SLOVAČKE REPUBLIKE I REPUBLIKE FINSKE**

I. USTAVNA OSNOVA ZA DONOŠENJE ZAKONA

Ustavna osnova za donošenje Zakona o potvrđivanju Ugovora o osnivanju Europskog stabilizacijskog mehanizma između Kraljevine Belgije, Savezne Republike Njemačke, Republike Estonije, Irske, Helenske Republike, Kraljevine Španjolske, Francuske Republike, Talijanske Republike, Republike Cipra, Velikog Vojvodstva Luksemburga, Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske (u daljnjem tekstu: Ugovor o osnivanju Europskog stabilizacijskog mehanizma) sadržana je u odredbi članka 140. stavka 1. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske).

**II. OCJENA STANJA I OSNOVNA PITANJA KOJA SE UREĐUJU ZAKONOM TE
POSLJEDICE KOJE ĆE DONOŠENJEM ZAKONA PROISTEĆI**

1. Ocjena stanja

Pristupanjem Europskoj uniji 1. srpnja 2013. Republika Hrvatska je prihvatila obvezu prilagodbe svog nacionalnog zakonodavstva zakonodavstvu Europske unije.

Ugovor o osnivanju Europskog stabilizacijskog mehanizma sastavljen je u Bruxellesu 2. veljače 2012. u jednom izvorniku, a na snagu je stupio na dan kada su potpisnice položile svoje isprave o ratifikaciji, odobrenju ili prihvatu. Članstvo u Europskom stabilizacijskom mehanizmu (u daljnjem tekstu: ESM) otvoreno je i drugim članicama Europske unije koje pristupaju Ugovoru o osnivanju Europskog stabilizacijskog mehanizma na temelju zahtjeva za članstvo koji dotična država članica Europske unije podnese ESM-u, nakon stupanja na snagu odluke Vijeća Europske unije donesene u skladu s člankom 140. stavka 2. Ugovora o funkcioniranju Europske unije o ukidanju njihovog odstupanja od uvođenja eura. Za svaku državu koja pristupa Ugovoru o osnivanju Europskog stabilizacijskog mehanizma, isti stupa na snagu dvadesetog dana nakon polaganja njezine isprave o pristupanju.

Dioničari ESM-a isključivo su države europodručja. Svaka članica ESM-a sudjeluje u kapitalu ESM-a na temelju odgovarajućeg udjela svake države u ukupnom stanovništvu Europske unije i bruto domaćem proizvodu.

ESM ima temeljni kapital od gotovo 705 milijardi eura, a kojeg sačinjava više od 80 milijardi eura uplaćenog kapitala (*eng. paid in capital*) koji su osigurale članice ESM-a i približno 624 milijarde eura kapitala na poziv (*eng. callable capital*). Uplaćeni kapital podupire financijsku snagu i visoku kreditnu sposobnost ESM-a kao izdavatelja obveznica i mjenica i ne koristi se u aktivnostima financijske pomoći državama članicama.

U skladu s člankom 42. Ugovora o osnivanju Europskog stabilizacijskog mehanizma, članice ESM-a čiji je bruto domaći proizvod (u daljnjem tekstu: BDP) po stanovniku (po tržišnim cijenama u eurima u godini koja neposredno prethodi njihovom pristupanju ESM-u) iznosi manje od 75% prosječnog BDP-a po stanovniku Europske unije prema tržišnim cijenama, mogu koristiti olakšicu u obliku privremene korekcije ključa za doprinose tijekom razdoblja od 12 godina nakon datuma usvajanja eura. Tijekom tog razdoblja, početni upisani kapitala članice ESM-a koja koristi korekcije je niži, što dovodi do privremeno nižeg uplaćenog kapitalnog doprinosa.

Vijeće za ekonomske i financijske poslove Europske unije je 12. srpnja 2022. usvojilo: uredbu kojom se utvrdio definitivni tečaj konverzije kune u euro; odluku o prihvaćanju eura u Republici Hrvatskoj te dopunu uredbe u kojoj će se popisu 19 članica europodručja dodati Republika Hrvatska kao 20. članica. Usvajanjem navedenih pravnih akata Republika Hrvatska je ispunila sve uvjete kako bi postala dio europodručja 1. siječnja 2023. te se očekuje da će pristupiti ESM-u u prvom kvartalu 2023. godine.

U skladu s Odlukom Vlade Republike Hrvatske o prihvaćanju pisma kojim se iskazuje interes i podnosi zahtjev za ostvarivanje članstva Republike Hrvatske ESM-u od 28. srpnja 2022., ministar financija, dr. sc. Marko Primorac, uputio je ESM-u Pismo o iskazu interesa i zahtjev za ostvarivanje članstva Republike Hrvatske u ESM-u.

Odbor guvernera ESM-a je 5. prosinca 2022. usvojio Rezoluciju br. 3 „Odobrenje zahtjeva za pristupanje Republike Hrvatske i detaljnih tehničkih uvjeta s time u vezi“ kojom se odobrava: a) zahtjev za pristupanje Republike Hrvatske u ESM i b) utvrđuju detaljni tehnički uvjeti pristupanja Republike Hrvatske. Pristupanjem ESM-u, Republika Hrvatska upisat će ukupni kapital u iznosu od 3.695.000.000,00 eura (od čega je uplaćeni kapital 422.290.000,00 eura, a kapital na poziv 3.272.710.000,00 eura). U skladu s člankom 41. Ugovora o osnivanju Europskog stabilizacijskog mehanizma, Republika Hrvatska će iznos uplaćenog kapitala od 422.290.000,00 eura plaćati u pet godišnjih rata. Nakon isteka privremene korekcije ključa dana 1. siječnja 2035., Republika Hrvatska će dodatno upisati kapital u iznosu od 2.038.900.000,00 eura (od čega je uplaćeni kapital 233.010.000,00 eura, a kapital na poziv 1.805.890.000,00 eura). Republika Hrvatska će iznos od 233.010.000,00 eura uplaćenog kapitala platiti u jednoj rati u mjesecu koji slijedi nakon isteka privremene korekcije.

Također, Odbor guvernera ESM-a je 5. prosinca 2022. usvojio i Rezoluciju br. 4 „Odobrenje prilagodbi koje će se učiniti u Ugovoru kao izravna posljedica pristupanja Republike Hrvatske“ kojom se odobravaju prilagodbe koje će se učiniti u Ugovoru o osnivanju Europskog stabilizacijskog mehanizma kao izravna posljedica pristupanja Republike Hrvatske ESM-u i u Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma.

Iznos za koji će se povećati odobreni temeljni kapital nakon pristupanja Republike Hrvatske bit će iznos koji će biti izračunat u skladu s člankom 42. stavkom 2. Ugovora o osnivanju Europskog stabilizacijskog mehanizma i koji će prvotno upisati Republika Hrvatska, a po završetku privremene korekcije za Republiku Hrvatsku, donijet će se daljnja odluka o povećanju temeljnog kapitala za iznos koji predstavlja razliku između doprinosa Republike Hrvatske izračunatog bez uzimanja u obzir privremene korekcije i iznosa koji je inicijalno upisala.

Kao izravna posljedica pristupanja Republike Hrvatske učinit će se prilagodbe u Ugovoru o osnivanju Europskog stabilizacijskog mehanizma i Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma na 17 autentičnih jezika Ugovora i Sporazuma i na hrvatskom jeziku, a koje stupaju na snagu za sve članice ESM-a dvadesetog dana od dana polaganja isprave o

pristupanju Republike Hrvatske, uz uvjet da je isprava o pristupanju Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma položena istovremeno.

Glavni direktor Europskog stabilizacijskog mehanizma obavijestit će Glavno tajništvo Europske unije o prilagodbama u Ugovoru o osnivanju Europskog stabilizacijskog mehanizma i Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma.

U skladu s člankom 11. stavkom 4. Ugovora o osnivanju Europskog stabilizacijskog mehanizma, ESM ključ za doprinos prilagodit će se prilikom pristupanja nove članice ESM-u ili na kraju razdoblja privremene korekcija neke od država članica ESM-a. Takva se prilagodba temelji na ključu za doprinos kapitalu Europske središnje banke koji će u to vrijeme biti na snazi. Prilagodba ESM ključa za doprinos primjenjivati će se u istom omjeru na uplaćene dionice i dionice na poziv. Iznosi koji će odgovarati dodatnom upisu uplaćenih dionica, određene članice ESM-a trebat će platiti bez odgode nakon datuma stupanja na snagu izmjena koje treba izvršiti u Prilozima I. i II. Ugovora o osnivanju Europskog stabilizacijskog mehanizma nakon takve prilagodbe.

Donošenjem i stupanjem na snagu Zakona o potvrđivanju Ugovora o osnivanju Europskog stabilizacijskog mehanizma ispunjavaju se uvjeti za pristupanje Republike Hrvatske ovome Ugovoru.

2. Cilj koji se Zakonom želi postići

Cilj koji se želi postići potvrđivanjem Ugovora o osnivanju Europskog stabilizacijskog mehanizma je preuzimanje obveze koje iz njega proistječu s ciljem osiguranja financijske stabilnosti europodručja.

Članstvo u ESM-u omogućit će Republici Hrvatskoj i sudjelovanje u upravljanju ESM-om. Republika Hrvatska će stoga imenovat svog guvernera i zamjenika guvernera u ESM-u u roku dva tjedna od stupanja na snagu Ugovora o osnivanju Europskog stabilizacijskog mehanizma, a guverner će imenovati direktora i zamjenika direktora u roku od dva mjeseca od stupanja na snagu Ugovora o osnivanju Europskog stabilizacijskog mehanizma. Guverner je član vlade članice ESM-a odgovoran za financije. Direktor i zamjenik direktora imenuju se iz redova visokostručnih ljudi iz područja gospodarstva i financija.

Nakon što Republika Hrvatska položi ispravu o pristupu Ugovoru o osnivanju Europskog stabilizacijskog mehanizma, Glavno tajništvo Vijeća Europske unije, kao depozitar Ugovora o osnivanju Europskog stabilizacijskog mehanizma, izradit će konsolidiranu verziju Ugovora na svim jezicima članica ESM-a. Nakon što ugovorne stranke potvrde vjerodostojnost teksta Ugovora o osnivanju Europskog stabilizacijskog mehanizma na hrvatskom jeziku kao jednom od službenih jezika institucija Europske unije, on se pohranjuje u arhivu depozitara kao vjerodostojan tekst Ugovora o osnivanju Europskog stabilizacijskog mehanizma.

III. OSNOVNA PITANJA KOJA SE PREDLAŽU UREDITI ZAKONOM

Ovim Zakonom potvrđuje se Ugovor o osnivanju Europskog stabilizacijskog mehanizma kako bi njegove odredbe u smislu članka 141. Ustava Republike Hrvatske postale dio unutarnjeg pravnog poretka Republike Hrvatske.

Ugovorom o osnivanju Europskog stabilizacijskog mehanizma države članice europodručja suglasne su osigurati financijsku stabilnost europodručja. Ugovorom o osnivanju Europskog stabilizacijskog mehanizma se propisuje prikupljanje financijskih sredstava i pružanje potpore za

stabilnost pod strogim uvjetima, koji odgovaraju odabranim instrumentima financijske pomoći, u korist članova ESM-a koji imaju ozbiljne financijske poteškoće ili im takve poteškoće prijete, ako je to apsolutno neophodno za zaštitu financijske stabilnosti cjelokupnog europodručja i njegovih država članica. ESM ima pravo prikupljati sredstva izdavanjem financijskih instrumenata ili sklapanjem financijskih ili drugih ugovora ili aranžmana s članicama ESM-a, financijskim institucijama ili trećim stranama. Ugovorom o osnivanju Europskog stabilizacijskog mehanizma se nadalje uređuju sljedeći elementi: upravljanje, kapital, poslovanje, financijsko upravljanje, opće odredbe, prijelazni aranžman te završne odredbe. Ugovor o osnivanju Europskog stabilizacijskog mehanizma se primjenjuje na države članice Europske unije koje pripadaju europodručju.

IV. OCJENA I IZVORI SREDSTAVA POTREBNIH ZA PROVEDBU ZAKONA

Sredstva za plaćanje obveza za uplaćeni kapital osigurana su u Državnom proračunu Republike Hrvatske za 2023. godinu i projekcijama za 2024. i 2025. godinu u okviru financijskog plana Ministarstva financija. Potrebna sredstva za plaćanje preostalih rata uplaćenog kapitala planirati prilikom izrade državnog proračuna za naredne godine.

V. ZAKONI KOJIMA SE POTVRĐUJU MEĐUNARODNI UGOVORI

Temelj za donošenje ovoga Zakona nalazi se u članku 207.a Poslovnika Hrvatskoga sabora („Narodne novine“, br. 81/13., 113/16., 69/17., 29/18., 53/20., 119/20. – Odluka Ustavnog suda Republike Hrvatske i 123/20.), prema kojem se zakoni kojima se, u skladu s Ustavom Republike Hrvatske, potvrđuju međunarodni ugovori donose u pravilu u jednom čitanju, a postupak donošenja pokreće se podnošenjem konačnog prijedloga zakona o potvrđivanju međunarodnog ugovora.

Uzimajući u obzir razloge navedene u točki II. i III. Konačnog prijedloga zakona, ocjenjuje se da postoji interes da Republika Hrvatska što skorije okonča svoj unutarnji pravni postupak i postane strankom Ugovora o osnivanju Europskog stabilizacijskog mehanizma polaganjem isprave o pristupanju kod depozitara, kako bi Republika Hrvatska bila uključena u donošenje odluka vezanih za upravljanje ESM-om u cilju osiguranja financijske stabilnosti europodručja.

S obzirom na prirodu postupka potvrđivanja međunarodnih ugovora, kojim država i formalno izražava spremnost da bude vezana već sklopljenim međunarodnim ugovorom, kao i na činjenicu da se u ovoj fazi postupka ne mogu vršiti izmjene ili dopune teksta međunarodnog ugovora, predlaže se ovaj Konačni prijedlog zakona raspraviti i prihvatiti u jednom čitanju.

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IZMEĐU KRALJEVINE BELGIJE, SAVEZNE REPUBLIKE NJEMAČKE,
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Članak 1.

Potvrđuje se Ugovor o osnivanju Europskog stabilizacijskog mehanizma između Kraljevine Belgije, Savezne Republike Njemačke, Republike Estonije, Irske, Helenske Republike, Kraljevine Španjolske, Francuske Republike, Talijanske Republike, Republike Cipra, Velikog Vojvodstva Luksemburga, Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske, sastavljen u Bruxellesu, 2. veljače 2012., u izvorniku na engleskom, estonskom, finskom, francuskom, njemačkom, grčkom, irskom, talijanskom, malteškom, nizozemskom, portugalskom, slovačkom, slovenskom, španjolskom i švedskom jeziku.

Članak 2.

Tekst Ugovora iz članka 1. ovoga Zakona, u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik, glasi:

UGOVOR

O OSNIVANJU EUROPSKOG STABILIZACIJSKOG MEHANIZMA
IZMEĐU KRALJEVINE BELGIJE, SAVEZNE REPUBLIKE NJEMAČKE,
REPUBLIKE ESTONIJE, IRSKE, HELENSKE REPUBLIKE,
KRALJEVINE ŠPANJOLSKE, FRANCUSKE REPUBLIKE,
TALIJANSKE REPUBLIKE, REPUBLIKE CIPRA,
VELIKOG VOJVODSTVA LUKSEMBURGA, MALTE,
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UGOVORNE STRANKE, Kraljevina Belgija, Savezna Republika Njemačka, Republika Estonija, Irska, Helenska Republika, Kraljevina Španjolska, Francuska Republika, Talijanska Republika, Republika Cipar, Veliko Vojvodstvo Luksemburg, Malta, Kraljevina Nizozemska, Republika Austrija, Portugalska Republika, Republika Slovenija, Slovačka Republika i Republika Finska („države članice europodručja” ili „članice ESM-a”);

PREDANE osiguravanju financijske stabilnost europodručja;

PODSJEĆAJUĆI na zaključke Europskog vijeća od 25. ožujka 2011. o osnivanju europskog stabilizacijskog mehanizma;

BUDUĆI DA:

- (1) Europsko vijeće postiglo je 17. prosinca 2010. dogovor o potrebi da države članice europodručja uspostave trajni stabilizacijski mehanizam. Taj Europski stabilizacijski mehanizam (ESM) preuzet će zadaće koje trenutačno ispunjavaju Europski fond za financijsku stabilnost (EFSF) i Mehanizam za europsku financijsku stabilnost (EFSM), a odnose se na pružanje financijske pomoći državama članicama europodručja, kada je to potrebno.
- (2) Europsko vijeće donijelo je 25. ožujka 2011. Odluku 2011/199/EU o izmjeni članka 136. Ugovora o funkcioniranju Europske unije u vezi sa stabilizacijskim mehanizmom za države članice čija je valuta euro¹ dodajući sljedeći stavak članku 136.: „Države članice čija je valuta euro mogu uspostaviti stabilizacijski mehanizam koji će se aktivirati ako je to nužno za zaštitu stabilnosti europodručja u cjelini. Dodjeljivanje financijske pomoći u okviru mehanizma podlijevat će strogim uvjetima.”.
- (3) S ciljem povećanja djelotvornosti financijske pomoći i sprečavanja opasnosti od širenja financijskih problema, šefovi država ili vlada država članica čija je valuta euro postigli su 21. srpnja 2011. dogovor o tome da će „povećati fleksibilnost [ESM-a] povezano s odgovarajućim uvjetima”.

¹ SL L 91, 6.4.2011., str.1.

- (4) Strogo pridržavanje okvira Europske unije, integriranog makroekonomskog nadzora, posebno Pakta o stabilnosti i rastu, okvira za makroekonomske neravnoteže i pravila Europske unije u vezi s gospodarskim upravljanjem, trebalo bi ostati prva linija obrane od kriza povjerenja koje utječu na stabilnost europodručja.
- (5) Šefovi država ili vlada država članica čija je valuta euro postigli su 9. prosinca 2011. dogovor o kretanju u smjeru jače ekonomske unije, uključujući novi fiskalni ugovor i pojačanu koordinaciju ekonomskih politika koji se trebaju provesti putem međunarodnog sporazuma, Ugovora o stabilnosti, koordinaciji i upravljanju u ekonomskoj i monetarnoj uniji (TSCG). TSCG će pomoći u razvoju bolje koordinacije unutar europodručja s ciljem osiguravanja trajnog, zdravog i snažnog upravljanja javnim financijama, čime se rješava jedan od glavnih izvora financijske nestabilnosti. Ovaj Ugovor i TSCG komplementarni su u promicanju fiskalne odgovornosti i solidarnosti unutar ekonomske i monetarne unije. Potvrđuje se i usuglašava da će dodjela financijske pomoći u okviru novih programa ESM-a biti uvjetovana, od 1. ožujka 2013., ratifikacijom TSCG-a od strane dotične članice ESM-a te, nakon isteka razdoblja za prijenos iz članka 3. stavka 2. TSCG-a, ispunjavanjem zahtjeva iz tog članka.

- (6) Zbog snažne međusobne povezanosti unutar europodručja, ozbiljni rizici za financijsku stabilnost država članica čija je valuta euro mogu ugroziti financijsku stabilnost cjelokupnog europodručja. ESM stoga može pružiti potporu za stabilnost pod strogim uvjetima, primjerenim odabranom instrumentu financijske pomoći ako je to nužno za zaštitu financijske stabilnosti cjelokupnog europodručja i njegovih država članica. Početni maksimalni opseg zajmova ESM-a iznosi 500 milijardi eura, uključujući postojeću potporu EFSF-a za stabilnost. Međutim, primjerenost konsolidiranog maksimalnog opsega zajmova ESM-a i EFSF-a ponovo će se procijeniti prije stupanja na snagu ovog Ugovora. Ako se to pokaže primjerenim, Odbor guvernera ESM-a povećat će ga u skladu s člankom 10., nakon stupanja na snagu ovog Ugovora.
- (7) Sve države članice europodručja postat će članice ESM-a. Država članica Europske unije, koja se pridružuje europodručju trebala bi postati članica ESM-a sa svim pravima i obvezama, u skladu s pravima i obvezama ugovornih stranaka.
- (8) ESM će vrlo blisko surađivati s Međunarodnim monetarnim fondom (MMF) u pružanju potpore za stabilnost. Zahtijevat će se aktivno sudjelovanje MMF-a, i u tehničkom i u financijskom smislu. Očekuje se da država članica europodručja koja podnese zahtjev za financijsku pomoć ESM-a, kad god je to moguće podnese sličan zahtjev MMF-u.

- (9) Države članice Europske unije čija valuta nije euro („države članice koje nisu u europodručju”) koje na ad hoc osnovi sudjeluju zajedno s ESM-om u operaciji potpore za stabilnost država članica europodručja, bit će pozvane da kao promatrači sudjeluju na sastancima ESM-a kada će se raspravljati o toj potpori za stabilnost i njezinu praćenju. Pravovremeno će dobiti pristup svim informacijama i s njima će se o tome savjetovati.
- (10) Predstavnici vlada država članica Europske unije ovlastile su 20. lipnja 2011. ugovorne stranke ovog Ugovora da zatraže od Europske komisije i Europske središnje banke (ESB) da obavljaju poslove predviđene ovim Ugovorom.
- (11) U svojoj izjavi od 28. studenoga 2010., Euroskupina je navela da će opći uvjeti svih novih državnih obveznica iz europodručja uključivati standardizirane i identične klauzule o zajedničkom djelovanju radi održavanja likvidnosti tržišta. Na zahtjev Europskog vijeća od 25. ožujka 2011., Gospodarski i financijski odbor dovršio je detaljnu pravnu regulativu za uključivanje tih klauzula o zajedničkom djelovanju u državne vrijednosne papire iz europodručja.
- (12) U skladu s praksom MMF-a, u iznimnim slučajevima razmotrit će se odgovarajući i razmjerni oblik uključivanja privatnog sektora u slučajevima kada se potpora za stabilnost pruža uz uvjete u obliku programa makroekonomske prilagodbe.

- (13) ESM će, poput MMF-a, pružiti potporu za stabilnost članici ESM-a ako je njezin redoviti pristup tržišnom financiranju ograničen ili postoji rizik da će biti ograničen. U skladu s time, šefovi država ili vlada izjavili su da će zajmovi ESM-a imati sličan status vjerovnika s pravom prvenstva kao i zajmovi MMF-a, pri čemu MMF ima status vjerovnika s pravom prvenstva u odnosu na ESM. Taj će status početi proizvoditi učinke od datuma stupanja na snagu ovog Ugovora. Ako je financijska pomoć ESM-a u obliku zajmova ESM-a uslijedila nakon europskog programa financijske pomoći koji je postojao na dan potpisivanja ovog Ugovora, ESM će imati isto prvenstvo kao i svi ostali zajmovi i obveze članice ESM-a korisnice, s izuzetkom zajmova MMF-a.
- (14) Države članice europodručja poduprijet će da ESM i druge države koje, uz koordinaciju s ESM-om, daju bilateralne zajmove imaju jednakovrijedan status vjerovnika.
- (15) Uvjeti davanja zajmova ESM-a za države članice na koje se primjenjuje program makroekonomske prilagodbe, uključujući one iz članka 40. ovoga Ugovora, pokrivaju troškove financiranja i poslovanja ESM-a, i trebali bi biti u skladu s uvjetima davanja zajmova iz sporazumâ o instrumentima financijske pomoći, koji su potpisani između EFSF-a, Irske i Središnje banke Irske, s jedne strane, i EFSF-a, Portugalske Republike i Banco de Portugal, s druge strane.

- (16) Sporovi koji se odnose na tumačenje i primjenu ovog Ugovora koji nastanu između ugovornih stranaka ili između ugovornih stranaka i ESM-a trebali bi se podnositi nadležnom Sudu Europske unije, u skladu s člankom 273. Ugovora o funkcioniranju Europske unije (UFEU).
- (17) Nadzor nakon provedbe programa provodit će Europska komisija i Vijeće Europske unije u skladu s okvirom utvrđenim u člancima 121. i 136. UFEU-a,

SPORAZUMJELE SU SE KAKO SLIJEDI:

POGLAVLJE 1

ČLANSTVO I SVRHA

ČLANAK 1.

Osnivanje i članovi

1. Ugovorne stranke ovim Ugovorom među sobom osnivaju međunarodnu financijsku instituciju pod nazivom „Europski stabilizacijski mehanizam” (ESM).
2. Ugovorne stranke članice su ESM-a.

ČLANAK 2.

Nove članice

1. Članstvo u ESM-u otvoreno je i drugim državama članicama Europske unije od stupanja na snagu odluke Vijeća Europske unije donesene u skladu s člankom 140. stavkom 2. UFEU-a o prestanku njihova odstupanja od uvođenja eura.

2. Nove članice ESM-a primaju se pod istim uvjetima kao i postojeće članice ESM-a, u skladu s člankom 44.
3. Nova članica koja pristupa ESM-u nakon njegova osnivanja dobiva određeni broj udjela u ESM-u u zamjenu za svoj doprinos u kapitalu, izračunan u skladu s ključem za doprinose iz članka 11.

ČLANAK 3.

Svrha

Svrha je ESM-a prikupljanje financijskih sredstava i pružanje potpore za stabilnost pod strogim uvjetima, koji odgovaraju odabranom instrumentu financijske pomoći, u korist članova ESM-a koji imaju ozbiljne financijske poteškoće ili im takve poteškoće prijete, ako je to nužno za zaštitu financijske stabilnosti cjelokupnog europodručja i njegovih država članica. U tu svrhu ESM ima pravo prikupljati sredstva izdavanjem financijskih instrumenata ili sklapanjem financijskih ili drugih ugovora ili aranžmana s članicama ESM-a, financijskim institucijama ili ostalim trećim stranama.

POGLAVLJE 2

UPRAVLJANJE

ČLANAK 4.

Struktura i pravila glasovanja

1. ESM ima Odbor guvernera i Odbor direktora te glavnog direktora i ostalo osoblje koje se smatra potrebnim.
2. Odluke Odbora guvernera i Odbora direktora donose se sporazumno, kvalificiranom ili običnom većinom kako je predviđeno ovim Ugovorom. Za sve odluke mora biti postignut kvorum od 2/3 članica s pravom glasa, koje predstavljaju najmanje 2/3 glasačkih prava.
3. Za sporazumno donošenje odluke potrebna je jednoglasnost članica koje sudjeluju u glasovanju. Suzdržani glasovi ne sprječavaju sporazumno donošenje odluke.

4. Odstupajući od stavka 3., koristi se postupak hitnog glasovanja ako i Komisija i ESB utvrde da bi nedonošenje hitne odluke potrebne za odobrenje ili provedbu financijske pomoći, kako je utvrđeno u člancima od 13. do 18., ugrozilo ekonomsku i financijsku održivost europodručja. Za sporazumno donošenje odluke Odbora guvernera iz članka 5. stavka 6. točaka (f) i (g) i Odbora direktora u skladu s tim hitnim postupkom potrebna je kvalificirana većina od 85% danih glasova.

Kada se koristi hitni postupak iz prvog podstavka, sredstva iz pričuvnog fonda i/ili uplaćenog kapitala prenose se u hitni pričuvni fond, čime se stvara namjenska pričuva iz koje se pokrivaju rizici koji proizlaze iz financijske potpore odobrene u skladu s navedenim hitnim postupkom. Odbor guvernera može odlučiti ukinuti hitni pričuvni fond i prenijeti njegova sredstva natrag u pričuvni fond i/ili uplaćeni kapital.

5. Za donošenje odluke kvalificiranom većinom potrebno je 80% danih glasova.

6. Za donošenje odluke običnom većinom potrebna je većina danih glasova.

7. Glasачka prava svake članice ESM-a, koja ostvaruje njezin predstavnik ili njegov zamjenik u Odboru guvernera ili Odboru direktora, jednaka su broju udjela koji su joj dodijeljeni u odobrenom temeljnom kapitalu ESM-a, kako je navedeno u Prilogu II.

8. Ako bilo koja članica ESM-a ne plati bilo koji dio dospjelog iznosa u pogledu svojih obveza u vezi s uplaćenim udjelima ili pozivima na uplatu kapitala iz članaka 8., 9. i 10. ili u vezi s povratom financijske pomoći iz članka 16. ili 17., ta članica ESM-a ne može koristiti svoje glasačko pravo sve dok ne ispuni svoje obveze. U skladu s time preračunava se i prag za glasovanje.

ČLANAK 5.

Odbor guvernera

1. Svaka članica ESM-a imenuje guvernera i njegovu zamjenika. To se imenovanje može opozvati u bilo kojem trenutku. Guverner je član vlade članice ESM-a odgovoran za financije. Zamjenik guvernera ima sve ovlasti djelovati u ime guvernera kada on nije prisutan.

2. Odbor guvernera odlučuje da njime predsjedaju predsjednik Euroskupine, kako je navedeno u Protokolu (br. 14) o Euroskupini priloženom Ugovoru o Europskoj uniji i UFEU-u, ili izabire predsjedatelja i zamjenika predsjedatelja između svojih članova na razdoblje od dvije godine. Predsjedatelj i zamjenik predsjedatelja mogu biti ponovno birani. Ako imenovana osoba prestane obnašati funkciju koja je potrebna za guvernera, bez odgađanja se održava novi izbor.

3. Član Europske komisije zadužen za ekonomska i monetarna pitanja, predsjednik ESB-a i predsjednik Euroskupine (ako nije predsjedatelj ili guverner) mogu sudjelovati na sastancima Odbora guvernera kao promatrači.
4. Predstavnici država članica koje nisu u europodručju, a koji, uz ESM, sudjeluju na *ad hoc* osnovi u operaciji potpore za stabilnost za državu članicu europodručja također se pozivaju da kao promatrači sudjeluju na sastancima Odbora guvernera na kojima se raspravlja o potpori za stabilnost i praćenju te potpore.
5. Odbor guvernera može pozvati druge osobe, uključujući predstavnike institucija ili organizacija kao što je MMF, da prisustvuju sastancima kao promatrači na *ad hoc* osnovi.
6. Odbor guvernera sporazumno odlučuje o:
 - (a) ukidanju hitnog pričuvnog fonda i prijenosu njegovih sredstava nazad u pričuvni fond i/ili uplaćeni kapital, u skladu s člankom 4. stavkom 4.;
 - (b) izdavanju novih udjela pod uvjetima različitim od nominalne vrijednosti, u skladu s člankom 8. stavkom 2.;
 - (c) pozivanju na uplatu kapitala, u skladu s člankom 9. stavkom 1.;

- (d) promjeni odobrenog temeljnog kapitala i prilagodbi maksimalnog opsega zajmova ESM-a, u skladu s člankom 10. stavkom 1.;
- (e) uzimanju u obzir mogućeg ažuriranja ključa za upis kapitala ESB-a, u skladu s člankom 11. stavkom 3., i izmjenama Priloga I. u skladu s člankom 11. stavkom 6.;
- (f) potpori za stabilnost koju pruža ESM, uključujući uvjete ekonomske politike kako je navedeno u memorandumu o razumijevanju iz članka 13. stavka 3., te izboru instrumenata i određivanju financijskih i drugih uvjeta, u skladu s člancima od 12. do 18.;
- (g) davanju ovlaštenja Europskoj komisiji da u pregovorima, zajedno s ESB-om, dogovori uvjete ekonomske politike koji se primjenjuju na svaku financijsku pomoć, u skladu s člankom 13. stavkom 3.;
- (h) promjeni politike cijena i smjernica za određivanje cijena za financijsku pomoć, u skladu s člankom 20.;
- (i) izmjeni popisa instrumenata financijske pomoći koje ESM može koristiti, u skladu s člankom 19.;

- (j) određivanju pojedinosti o prijenosu potpora EFSF-a u ESM, u skladu s člankom 40.;
- (k) odobravanju zahtjeva novih članica za članstvo u ESM-u, u skladu s člankom 44.;
- (l) prilagodbi ovog Ugovora kao izravne posljedice pristupanja novih članica, uključujući promjene u raspodjeli kapitala među članicama ESM-a i izračun takve raspodjele kao izravne posljedice pristupanja nove članice ESM-u, u skladu s člankom 44.; i
- (m) delegiranju zadaća navedenih u ovom članku na Odbor direktora.

7. Odbor guvernera kvalificiranom većinom odlučuje o:

- (a) utvrđivanju detaljnih tehničkih uvjeta za pristupanje nove članice ESM-u, u skladu s člankom 44.;
- (b) tome hoće li njime predsjedati predsjednik Euroskupine ili će kvalificiranom većinom birati predsjedatelja i zamjenika predsjedatelja Odbora guvernera, u skladu sa stavkom 2.;

- (c) usvajanju statuta ESM-a i poslovnika koji se primjenjuje na Odbor guvernera i Odbor direktora (uključujući pravo osnivanja odbora i pomoćnih tijela), u skladu sa stavkom 9.;
- (d) utvrđivanju popisa aktivnosti koje nisu spojive s dužnostima direktora ili zamjenika direktora, u skladu s člankom 6. stavkom 8.;
- (e) imenovanju glavnog direktora i prestanku njegove dužnosti, u skladu s člankom 7.;
- (f) osnivanju drugih fondova, u skladu s člankom 24.;
- (g) mjerama koje treba poduzeti za povrat duga od članice ESM-a, u skladu s člankom 25. stavcima 2. i 3.;
- (h) odobrenju godišnje računovodstvene dokumentacije ESM-a, u skladu s člankom 27. stavkom 1.;
- (i) imenovanju članova Odbora revizora, u skladu s člankom 30. stavkom 1.;
- (j) odobrenju vanjskih revizora, u skladu s člankom 29.;
- (k) odricanju od imuniteta predsjedatelja Odbora guvernera, guvernera, zamjenika guvernera, direktora, zamjenika direktora ili glavnog direktora, u skladu s člankom 35. stavkom 2.;

- (l) određivanju sustava oporezivanja koji se primjenjuje na osoblje ESM-a, u skladu s člankom 36. stavkom 5.;
 - (m) sporu, u skladu s člankom 37. stavkom 2.; i
 - (n) svim drugim potrebnim odlukama koje nisu izričito predviđene ovim Ugovorom.
8. Predsjedatelj saziva i predsjedava sastancima Odbora guvernera. Kada je predsjedatelj odsutan, tim sastancima predsjedava zamjenik predsjedatelja.
9. Odbor guvernera donosi svoj poslovnik i statut ESM-a.

ČLANAK 6.

Odbor direktora

1. Svaki guverner imenuje jednog direktora i jednog zamjenika direktora iz redova visokostručnih ljudi iz područja gospodarstva i financija. Ta se imenovanja mogu opozvati u bilo kojem trenutku. Zamjenik direktora ima sve ovlasti djelovati u ime direktora kada on nije prisutan.

2. Član Europske komisije zadužen za ekonomska i monetarna pitanja i predsjednik ESB-a mogu imenovati svaki po jednog promatrača.
3. Predstavnici država članica izvan europodručja koji, uz ESM, sudjeluju na *ad hoc* osnovi u operaciji financijske pomoći državama članicama europodručja također su pozvani da sudjeluju, kao promatrači, na sastancima Odbora direktora na kojima se raspravlja o financijskoj pomoći i praćenju te pomoći.
4. Odbor guvernera može pozvati druge osobe, uključujući predstavnike institucija ili organizacija, da sudjeluju na sastancima kao promatrači na *ad hoc* osnovi.
5. Odbor direktora donosi odluke kvalificiranom većinom, osim ako je drukčije navedeno u ovom Ugovoru. Odluke koje se donose na temelju ovlasti koje je Odbor guvernera delegirao donose se u skladu s relevantnim pravilima glasovanja utvrđenima u članku 5. stavcima 6. i 7.
6. Ne dovodeći u pitanje ovlasti Odbora guvernera utvrđene u članku 5., Odbor direktora osigurava da se ESM-om upravlja u skladu s ovim Ugovorom i statutom ESM-a koji je usvojio Odbor guvernera. Donosi odluke kako je predviđeno ovim Ugovorom ili prema ovlastima koje je delegirao Odbor guvernera.

7. Svako upražnjeno mjesto u Odboru direktora odmah se popunjava u skladu sa stavkom 1.
8. Odbor guvernera utvrđuje koje su aktivnosti nespojive sa zadaćama direktora ili zamjenika direktora, statutom ESM-a i poslovníkom Odbora direktora.

ČLANAK 7.

Glavni direktor

1. Glavnog direktora imenuje Odbor guvernera među kandidatima koji imaju državljanstvo članice ESM-a, relevantno međunarodno iskustvo i visoku razinu stručnosti u gospodarskim i financijskim pitanjima. Dok obnaša tu dužnost, glavni direktor ne može biti guverner ni direktor, niti zamjenik guvernera ili direktora.
2. Mandat glavnog direktora traje pet godina. On može jedanput biti ponovo biran. Glavni direktor prestaje obnašati dužnost kada tako odluči Odbor guvernera.

3. Glavni direktor predsjedava sastancima Odbora direktora i sudjeluje na sastancima Odbora guvernera.
4. Glavni direktor voditelj je osoblja ESM-a. Odgovoran je za organizaciju, zapošljavanje i otpuštanje osoblja u skladu s pravilnikom o osoblju koji donosi Odbor direktora.
5. Glavni direktor pravni je zastupnik ESM-a i, pod vodstvom Odbora direktora, brine o svakodnevnom poslovanju ESM-a.

POGLAVLJE 3

KAPITAL

ČLANAK 8.

Odobreni temeljni kapital

1. Odobreni temeljni kapital iznosi 700 milijardi eura. Podijeljen je na sedam milijuna udjela s nominalnom vrijednošću od 100 000 eura po udjelu, koji su dostupni za upis prema prvotnom ključu za doprinose navedenom u članku 11. i izračunanom u Prilogu I.

2. Odobreni temeljni kapital podijeljen je na uplaćene udjele i udjele na poziv. Početna ukupna nominalna vrijednost uplaćenih udjela iznosi 80 milijardi eura. Udjeli inicijalno upisanog odobrenog temeljnog kapitala izdaju se po nominalnoj vrijednosti. Ostali udjeli izdaju se po nominalnoj vrijednosti, osim ako ih Odbor guvernera odluči izdati u posebnim okolnostima pod drugim uvjetima.
3. Dionice odobrenog temeljnog kapitala ne smiju biti opterećene ili založene ni na koji način i nisu prenosive, osim kada se prenose u svrhu provedbe prilagodbi ključa za doprinose predviđenih u članku 11. u mjeri u kojoj je to potrebno da bi raspodjela udjela odgovarala prilagođenom ključu.
4. Članice ESM-a neopozivo se i bezuvjetno obvezuju uplatiti svoj doprinos u odobreni temeljni kapital, u skladu s njihovim ključem za doprinose iz Priloga I. Dužne su pravovremeno ispuniti sve pozive na uplatu kapitala u skladu s uvjetima utvrđenima u ovom Ugovoru.

5. Odgovornost svake članice ESM-a u svim je okolnostima ograničena njezinim udjelom u odobrenom temeljnom kapitalu prema njegovoj cijeni izdanja. Niti jedna članica ESM-a ne odgovara, zbog svog članstva, za obveze ESM-a. Ako bilo koja članica ESM-a postane prihvatljiva za financijsku pomoć ESM-ili je primi, to ne utječe na obvezu članice ESM-a da doprinese odobrenom temeljnom kapitalu u skladu s ovim Ugovorom.

ČLANAK 9.

Poziv na uplatu kapitala

1. Odbor guvernera može u bilo kojem trenutku pozvati na uplatu odobrenog neuplaćenog kapitala i odrediti odgovarajuće vremensko razdoblje unutar kojeg ga članice ESM-a plaćaju.
2. Odbor direktora može odlukom koja se donosi jednostavnom većinom pozvati na uplatu odobrenog neuplaćenog kapitala radi ponovne uspostave razine uplaćenog kapitala ako se, zbog preuzimanja gubitaka, iznos potonjeg kapitala smanji ispod razine utvrđene u članku 8. stavku 2., koju Odbor guvernera može izmijeniti u skladu s postupkom iz članka 10., i odrediti odgovarajuće vremensko razdoblje unutar kojeg ga članice ESM-a plaćaju.

3. Glavni direktor pravodobno poziva na uplatu odobrenog neuplaćenog temeljnog kapitala, ako je potrebno kako bi ESM ispunio svoje redovne ili druge obveze plaćanja prema svojim vjerovnicima. Glavni direktor obavješćuje Odbor direktora i Odbor guvernera o svakom takvom pozivu. Kada se utvrdi mogući nedostatak sredstava ESM-a, glavni direktor poziva na jednu ili više uplata kapitala što je prije moguće kako bi se osiguralo da ESM ima dovoljno sredstava za plaćanja vjerovnicima u cijelosti na datum dospijeca. Članice ESM-a obvezuju se neopozivo i bezuvjetno izvršiti uplatu po bilo kojem pozivu na uplatu kapitala koji glavni direktor od njih potražuje na temelju ovog stavka, a takvo potraživanje mora biti plaćeno u roku od sedam dana od primitka.

4. Odbor direktora donosi detaljne uvjete koji se primjenjuju na pozive na uplatu kapitala u skladu s ovim člankom.

ČLANAK 10.

Izmjene u odobrenom temeljnom kapitalu

1. Odbor guvernera redovito i najmanje svakih pet godina preispituje maksimalni opseg zajmova i primjerenost odobrenog temeljnog kapitala ESM-a. Može odlučiti promijeniti odobreni temeljni kapital i u skladu s time izmijeniti članak 8. i Prilog II. Takva odluka stupa na snagu nakon što članice ESM-a obavijeste depozitara da su dovršeni njihovi primjenjivi nacionalni postupci. Novi udjeli dodjeljuju se članicama ESM-a prema ključu za doprinose predviđenom u članku 11. i Prilogu I.

2. Odbor direktora donosi detaljne uvjete primjenjive na sve ili neke promjene kapitala na temelju stavka 1.

3. Nakon što država članica Europske unije postane nova članica ESM-a, odobreni temeljni kapital ESM-a automatski se povećava množenjem relevantnih iznosa koji su u tom trenutku na snazi s omjerom, unutar prilagođenog ključa za doprinose iz članka 11., između pondera nove članice ESM-a i pondera postojećih članica ESM-a.

ČLANAK 11.

Ključ za doprinose

1. Ključ za doprinose u svrhu upisa odobrenog temeljnog kapitala ESM-a, podložno stavcima 2. i 3., temelji se na ključu prema kojem nacionalne središnje banke članica ESM-a upisuju kapital ESB-a u skladu s člankom 29. Protokola (br. 4) o Statutu Europskog sustava središnjih banaka i Europske središnje banke („Statut ESCB-a”) koji je priložen Ugovoru o Europskoj uniji i UFEU-u.

2. Ključ za doprinose u svrhu upisa odobrenog temeljnog kapitala ESM-a naveden je u Prilogu I.

3. Ključ za doprinos u svrhu upisa odobrenog temeljnog kapitala ESM-a prilagođava se kada:
 - (a) država članica Europske unije postane nova članica ESM-a, a odobreni temeljni kapital ESM-a automatski se poveća, kako je navedeno u članku 10. stavku 3.; ili
 - (b) završi dvanaestogodišnja privremena korekcija koja se primjenjuje na članice ESM-a u skladu s člankom 42.
4. Odbor guvernera može odlučiti uzeti u obzir sva ažuriranja ključa za upis kapitala ESB-a iz stavka 1. kada se ključ za doprinos prilagodi u skladu sa stavkom 3. ili kada se promijeni odobreni temeljni kapital, kako je predviđeno člankom 10. stavkom 1.
5. Kada se ključ za doprinos u svrhu upisa odobrenog temeljnog kapitala ESM-a prilagodi, članice ESM-a prenose odobreni temeljni kapital među sobom u mjeri u kojoj je to potrebno kako bi se osiguralo da raspodjela odobrenog temeljnog kapitala odgovara prilagođenom ključu.
6. Kod svake prilagodbe iz ovog članka, odlukom Odbora guvernera mijenja se Prilog I.
7. Odbor guvernera poduzima sve druge mjere potrebne za primjenu ovog članka.

POGLAVLJE 4

POSLOVANJE

Članak 12.

Načela

1. ESM može pružiti potporu za stabilnost članici ESM-a pod strogim uvjetima koji odgovaraju odabranom instrumentu financijske pomoći ako je to nužno za zaštitu financijske stabilnosti europodručja kao cjeline i njegovih država članica. Takvi uvjeti mogu varirati od programa makroekonomske prilagodbe do trajnog pridržavanja unaprijed utvrđenih uvjeta prihvatljivosti.
2. Ne dovodeći u pitanje članak 19., potpora za stabilnost ESM-a može se odobriti putem instrumenata predviđenih u člancima od 14. do 18.
3. Od 1. siječnja 2013. klauzule o zajedničkom djelovanju uključuju se, na način kojim se osigurava njihov isti pravni učinak, u sve nove državne vrijednosne papire iz europodručja, s rokom dospjeća dužim od jedne godine.

ČLANAK 13.

Postupak odobravanja potpore za stabilnost

1. Članica ESM-a može uputiti zahtjev za potporu za stabilnost predsjedatelju Odbora guvernera. U zahtjevu se navodi jedan ili više instrumenata financijske pomoći koji se trebaju razmotriti. Po primitku takvog zahtjeva, predsjedatelj Odbora guvernera dodjeljuje sljedeće zadaće Europskoj komisiji, u suradnji s ESB-om:
 - (a) procjenu rizika za financijsku stabilnost europodručja kao cjeline ili njegovih država članica, osim ako je ESB već dostavio analizu u skladu s člankom 18. stavkom 2.;
 - (b) procjenu održivosti javnog duga. Očekuje se da se ova procjena provede u suradnji s MMF-om, kad god je to moguće i primjereno;
 - (c) procjenu stvarnih ili potencijalnih potreba dotične članice ESM-a za financijskim sredstvima.
2. Na temelju zahtjeva članice ESM-a i procjene iz stavka 1., Odbor guvernera može odlučiti odobriti, u načelu, potporu za stabilnost dotičnoj članici ESM-a u obliku instrumenta financijske pomoći.

3. Ako se donese odluka u skladu sa stavkom 2., Odbor guvernera ovlašćuje Europsku komisiju da – u suradnji s ESB-om i, kad god je to moguće, zajedno s MMF-om – u pregovorima s dotičnom članicom ESM-a dogovori memorandum o razumijevanju („MoR”) s pojedinostima o uvjetima vezanim za instrument financijske pomoći. Sadržaj MoR-a odražava ozbiljnost nedostataka koje treba riješiti i odabrani instrument financijske pomoći. Istodobno, glavni direktor ESM-a priprema prijedlog sporazuma o instrumentu financijske pomoći, uključujući financijske i druge uvjete te izbor instrumenata, koji usvaja Odbor guvernera.

MoR mora biti u potpunosti u skladu s mjerama koordinacije ekonomske politike iz UFEU-a, osobito sa svim aktima prava Europske unije, uključujući sva mišljenja, upozorenja, preporuke ili zaključke upućene dotičnoj članici ESM-a.

4. Europska komisija potpisuje MoR u ime ESM-a, ako su prethodno ispunjeni uvjeti utvrđeni u stavku 3. te ako ga je odobrilo Odbor guvernera.

5. Odbor direktora odobrava sporazum o instrumentu financijske pomoći u kojemu se detaljno navode financijski aspekti potpore za stabilnost koja se odobrava i, ako je primjenjivo, isplata prve tranše pomoći.

6. ESM uspostavlja odgovarajući sustav upozorenja kako bi osigurao da pravodobno primi sve otplate duga članice ESM-a u okviru potpore za stabilnost.

7. Europska komisija – u suradnji s ESB-om i, kad god je to moguće, zajedno s MMF-om – ovlaštena je pratiti ispunjavanje uvjeta koji se odnose na instrument financijske pomoći.

ČLANAK 14.

Preventivna financijska pomoć ESM-a

1. Odbor guvernera može odlučiti odobriti preventivnu financijsku pomoć u obliku preventivne uvjetne kreditne linije ili u obliku kreditne linije pod proširenim uvjetima u skladu s člankom 12. stavkom 1.
2. Uvjeti primjenjivi na preventivnu financijsku pomoć ESM-a detaljno se utvrđuju u MoR-u, u skladu s člankom 13. stavkom 3.
3. Financijski uvjeti preventivne financijske pomoći ESM-a utvrđuju se u sporazumu o instrumentu preventivne financijske pomoći, koji potpisuje glavni direktor.

4. Odbor direktora donosi detaljne smjernice o načinima provedbe preventivne financijske pomoći ESM-a.
5. Odbor direktora sporazumno odlučuje o prijedlogu glavnog direktora i nakon što primi izvješće Europske komisije u skladu s člankom 13. stavkom 7., o tome treba li se kreditna linija nastaviti održavati.
6. Nakon što članica ESM-a prvi put povuče sredstva (putem zajma ili kupnje na primarnom tržištu), Odbor direktora sporazumno odlučuje na prijedlog glavnog direktora i na temelju procjene koju je provela Europska komisija, u suradnji s ESB-om, je li kreditna linija i dalje dostatna ili je potreban drugi oblik financijske pomoći.

ČLANAK 15.

Financijska pomoć za dokapitalizaciju financijskih institucija članice ESM-a

1. Odbor guvernera može odlučiti odobriti financijsku pomoć u obliku zajmova članici ESM-a u posebne svrhe dokapitalizacije financijskih institucija te članice ESM-a.

2. Uvjeti koji se primjenjuju na financijsku pomoć za dokapitalizaciju financijskih institucija članice ESM-a detaljno se utvrđuju u MoR-u, u skladu s člankom 13. stavkom 3.
3. Ne dovodeći u pitanje članke 107. i 108. UFEU-a, financijski uvjeti koji se primjenjuju na financijsku pomoć za dokapitalizaciju financijskih institucija članice ESM-a utvrđuju se u sporazumu o instrumentu financijske pomoći koji potpisuje glavni direktor.
4. Odbor direktora donosi detaljne smjernice o načinu provedbe financijske pomoći za dokapitalizaciju financijskih institucija članice ESM-a.
5. Ako je to primjenjivo, Odbor direktora sporazumno odlučuje, na prijedlog glavnog direktora i nakon što primi izvješće Europske komisije u skladu s člankom 13. stavkom 7., o isplati tranša financijske pomoći nakon plaćanja prve tranše.

ČLANAK 16.

Zajmovi ESM-a

1. Odbor guvernera može odlučiti odobriti financijsku pomoć u obliku zajma članici ESM-a, u skladu s člankom 12.
2. Uvjeti koji se primjenjuju na zajmove ESM-a navedeni su u programu makroekonomske prilagodbe utvrđenom u MoR-u, u skladu s člankom 13. stavkom 3.
3. Financijski i drugi uvjeti svakog zajma ESM-a utvrđuju se u sporazumu o instrumentu financijske pomoći koji potpisuje glavni direktor.
4. Odbor direktora donosi detaljne smjernice o načinima provedbe zajmova ESM-a.
5. Odbor direktora sporazumno odlučuje, na prijedlog glavnog direktora i nakon što primi izvješće Europske komisije u skladu s člankom 13. stavkom 7., o isplati tranša financijske pomoći nakon plaćanja prve tranše.

ČLANAK 17.

Instrument potpore na primarnom tržištu

1. Odbor guvernera može odlučiti kupiti obveznice članice ESM-a na primarnom tržištu, u skladu s člankom 12. i s ciljem povećanja troškovne isplativosti financijske pomoći.
2. Uvjeti koji se primjenjuju na instrument potpore na primarnom tržištu detaljno se utvrđuju u MoR-u, u skladu s člankom 13. stavkom 3.
3. Financijski i drugi uvjeti za kupnju obveznica utvrđuju se u sporazumu o instrumentu financijske pomoći, koji potpisuje glavni direktor.
4. Odbor direktora donosi detaljne smjernice o načinu provedbe instrumenta potpore na primarnom tržištu.
5. Odbor direktora sporazumno odlučuje, na prijedlog glavnog direktora i nakon što primi izvješće Europske komisije u skladu s člankom 13. stavkom 7., o isplati financijske pomoći državi članici korisnici kroz operacije na primarnom tržištu.

ČLANAK 18.

Instrumenti potpore na sekundarnom tržištu

1. Odbor guvernera može odlučiti o operacijama na sekundarnom tržištu u vezi s obveznicama članice ESM-a, u skladu s člankom 12. stavkom 1.
2. Odluke o intervencijama na sekundarnom tržištu s ciljem sprječavanja širenja problema donose se na temelju analize ESB-a koja prepoznaje postojanje izvanrednih okolnosti na financijskom tržištu i rizika za financijsku stabilnost.
3. Uvjeti koji se primjenjuju na instrument potpore na sekundarnom tržištu detaljno se utvrđuju u MoR-u, u skladu s člankom 13. stavkom 3.
4. Financijski i drugi uvjeti pod kojima se obavljaju operacije na sekundarnom tržištu utvrđuju se u sporazumu o instrumentu financijske pomoći koji potpisuje glavni direktor.
5. Odbor direktora donosi detaljne smjernice o načinima provedbe instrumenta potpore na sekundarnom tržištu.
6. Odbor direktora sporazumno odlučuje, na prijedlog glavnog direktora, o početku operacija na sekundarnom tržištu.

ČLANAK 19.

Preispitivanje popisa instrumenata financijske pomoći

Odbor guvernera može preispitati popis instrumenata financijske pomoći predviđenih u člancima od 14. do 18. i odlučiti izmijeniti ga.

ČLANAK 20.

Politika određivanja cijena

1. Pri odobravanju potpore za stabilnost, ESM nastoji u potpunosti pokriti svoje troškove financiranja i poslovanja te uključuje odgovarajuću maržu.
2. Za sve instrumente financijske pomoći, cijene se detaljno navode u smjernicama za određivanje cijena koje donosi Odbor guvernera.
3. Odbor guvernera može preispitati politiku određivanja cijena.

ČLANAK 21.

Poslovi zaduživanja

1. Radi ostvarivanja svoje svrhe, ESM je ovlašten zaduživati na tržištima kapitala kod banaka, financijskih institucija ili drugih osoba ili institucija.
2. Pojediniosti o zaduživanju utvrđuje glavni direktor, u skladu s detaljnim smjericama koje donosi Odbor direktora.
3. ESM koristi odgovarajuće alate za upravljanje rizikom, koje redovito preispituje Odbor direktora.

POGLAVLJE 5

FINANCIJSKO UPRAVLJANJE

ČLANAK 22.

Investicijska politika

1. Glavni direktor provodi razboritu investicijsku politiku ESM-a, u skladu sa smjericama koje donosi i redovito preispituje Odbor direktora, kako bi se osigurala najveća kreditna sposobnost ESM-a. ESM ima pravo koristiti dio povrata svog investicijskog portfelja za pokrivanje svojih operativnih i administrativnih troškova.

2. Operacije ESM-a moraju biti u skladu s načelima dobrog financijskog upravljanja i upravljanja rizicima.

ČLANAK 23.

Politika dividendi

1. Odbor direktora može jednostavnom većinom odlučiti isplatiti dividendu članicama ESM-a ako iznos uplaćenog kapitala i imovine pričuvnog fonda premaši razinu potrebnu da ESM održi svoju sposobnost davanja zajmova, a prihod od ulaganja nije potreban za osiguranje plaćanja obveza prema vjerovnicima. Dividende se raspoređuju razmjerno doprinosima u uplaćeni kapital, uzimajući u obzir moguću prijevremenu uplatu iz članka 41. stavka 3.
2. Sve dok ESM ne pruža financijsku pomoć nijednoj od svojih članica, prihod od uloženog uplaćenog kapitala ESM-a, nakon odbitka operativnih troškova, vraća se članicama ESM-a prema njihovim doprinosima u uplaćeni kapital, pod uvjetom da je ciljani stvarni kapacitet davanja zajmova u potpunosti dostupan.
3. Glavni direktor provodi politiku dividendi ESM-a u skladu sa smjernicama koje donosi Odbor direktora.

ČLANAK 24.

Pričuvni fond i drugi fondovi

1. Odbor guvernera uspostavlja pričuvni fond i, prema potrebi, druge fondove.
2. Ne dovodeći u pitanje članak 23., neto prihod od operacija ESM-a i prihod od financijskih sankcija koje plaćaju članice ESM-a u okviru postupka multilateralnog nadzora, postupka u slučaju prekomjernog deficita i postupka u slučaju makroekonomskih neravnoteža, utvrđenih na temelju UFEU-u, prenosi se u pričuvni fond.
3. Sredstva pričuvnog fonda ulažu se u skladu sa smjernicama koje donosi Odbor direktora.
4. Odbor direktora, prema potrebi, donosi pravila za osnivanje, upravljanje i korištenje drugih fondova.

ČLANAK 25.

Pokriće gubitaka

1. Gubici koji nastanu od operacija ESM-a naplaćuju se:
 - (a) prvo, od pričuvnog fonda;
 - (b) drugo, od uplaćenog kapitala; i
 - (c) na kraju, od odgovarajućeg iznosa odobrenog neuplaćenog kapitala, na čiju se uplatu poziva u skladu s člankom 9. stavkom 3.

2. Ako članica ESM-a ne izvrši traženu uplatu na poziv na uplatu kapitala u skladu s člankom 9. stavcima 2. ili 3., svim članicama ESM-a upućuje se izmijenjeni poziv na uplatu višeg iznosa kapitala kako bi se osiguralo da ESM primi puni iznos potrebnog uplaćenog kapitala. Odbor guvernera odlučuje o odgovarajućim radnjama kako bi se osiguralo da dotična članica ESM-a podmiri svoj dug prema ESM-u u razumnom roku. Odbor guvernera ima pravo zahtijevati plaćanje zateznih kamata na dospjeli iznos.

3. Kada članica ESM-a podmiri svoj dug prema ESM-u, kako je navedeno u stavku 2., višak kapitala vraća se preostalim članicama ESM-a u skladu s pravilima koja donosi Odbor guvernera.

ČLANAK 26.

Proračun

Odbor direktora svake godine odobrava proračun ESM-a.

ČLANAK 27.

Godišnja računovodstvena dokumentacija

1. Odbor guvernera odobrava godišnju računovodstvenu dokumentaciju ESM-a.
2. ESM objavljuje godišnje izvješće koje sadržava revidiranu računovodstvenu dokumentaciju, a svaka tri mjeseca šalje članicama ESM-a sažeti izvještaj o financijskom stanju i račun dobiti i gubitka koji prikazuje rezultate operacija.

ČLANAK 28.

Unutarnja revizija

Funkcija unutarnje revizije uspostavlja se prema međunarodnim standardima.

ČLANAK 29.

Vanjska revizija

Računovodstvenu dokumentaciju ESM-a revidiraju neovisni vanjski revizori koje je odobrio Odbor guvernera, i oni su odgovorni za ovjeravanje godišnje računovodstvene dokumentacije. Vanjski revizori ovlašteni su pregledati sve knjige i računovodstvenu dokumentaciju ESM-a i dobiti sveobuhvatne informacije o njegovim transakcijama.

ČLANAK 30.

Odbor revizora

1. Odbor revizora sastoji se od pet članova koje imenuje Odbor guvernera na temelju njihove kompetencije u području revizije i financija, a uključuje dva člana iz vrhovnih revizijskih institucija članica ESM-a – koji se izmjenjuju prema načelu rotacije - i jednog člana iz Europskog revizorskog suda.

2. Članovi Odbora revizora neovisni su. Ne smiju tražiti ni prihvaćati upute od upravljačkih tijela ESM-a, članica ESM-a ili bilo kojeg drugog javnog ili privatnog tijela.
3. Odbor revizora obavlja nezavisne revizije. Pregledava računovodstvenu dokumentaciju ESM-a i provjerava ispravnost poslovnih računa i bilance stanja. Ima neograničen pristup svim dokumentima ESM-a koji su mu potrebni za obavljanje njegovih zadaća.
4. Odbor revizora može u bilo kojem trenutku obavijestiti Odbor direktora o svojim nalazima. Jednom godišnje sastavlja izvješće koje podnosi Odboru guvernera.
5. Odbor guvernera osigurava pristup godišnjem izvješću nacionalnim parlamentima, vrhovnim revizijskim institucijama članica ESM-a i Europskom revizorskom sudu.
6. Sva pitanja u vezi s ovim člankom pobliže se uređuju statutom ESM-a.

POGLAVLJE 6

OPĆE ODREDBE

ČLANAK 31.

Lokacija

1. Sjedište i glavni ured ESM-a su u Luksemburgu.
2. ESM može osnovati ured za vezu u Bruxellesu.

ČLANAK 32.

Pravni status, povlastice i imuniteti

1. Kako bi se omogućilo ESM-u da ispuni svoju svrhu, na državnom području svake od članica ESM-a dodjeljuje mu se pravni status te povlastice i imuniteti utvrđeni u ovom članku. ESM traži priznanje svog pravnog statusa i svojih povlastica i imuniteta na drugim područjima na kojima obavlja funkcije ili ima imovinu.

2. ESM ima punu pravnu osobnost; ima neograničenu pravnu i poslovnu sposobnost za:
 - (a) stjecanje i raspolaganje pokretnom i nepokretnom imovinom;
 - (b) sklapanje ugovora;
 - (c) sudjelovanje u sudskom postupku kao stranka; i
 - (d) sklapanje sporazuma o sjedištu i/ili protokola, ako je potrebno, kako bi se osiguralo da su njegov pravni status i njegove povlastice i imuniteti priznati i korišteni.

3. ESM, njegova imovina, instrumenti financiranja i sredstva, gdje god se nalazili i tko god ih držao, uživaju imunitet od bilo kojeg oblika sudskog postupka, osim ako se ESM izričito odrekne imuniteta u svrhu bilo kojeg postupka ili u skladu s uvjetima bilo kojeg ugovora, uključujući dokumentaciju instrumenata financiranja.

4. Imovina, instrumenti financiranja i sredstva ESM-a, bez obzira na to gdje se nalazila i tko god ih držao, uživaju imunitet od pretrage, konfiskacije, oduzimanja, izvlaštenja ili bilo kojeg drugog oblika izvršnog, sudskog, upravnog ili zakonskog oduzimanja, zapljene ili ovrhe.

5. Arhiva ESM-a i svi dokumenti koji pripadaju ESM-u ili ih ESM čuva, nepovredivi su.

6. Prostorije ESM-a nepovredive su.
7. Svaka članica ESM-a i svaka država koja je priznala pravni status, povlastice i imunitete ESM-a postupat će sa službenom komunikacijom ESM-a na isti način kao i sa službenom komunikacijom članice ESM-a.
8. U mjeri u kojoj je to potrebno za obavljanje aktivnosti predviđenih ovim Ugovorom, na bilo koju imovinu, instrumente financiranja i sredstva ESM-a ne primjenjuju se nikakva ograničenja, propisi, kontrole i moratoriji.
9. ESM je izuzet od svake obveze ishodaženja dozvole ili licencije kao kreditna institucija, pružatelj investicijskih usluga ili drugi ovlaštenu subjekt s licencijom ili regulirani subjekt u skladu sa zakonima svake članice ESM-a.

ČLANAK 33.

Osoblje ESM-a

Odbor direktora utvrđuje uvjete zapošljavanja glavnog direktora i ostalih članova osoblja ESM-a.

ČLANAK 34.

Poslovna tajna

Sadašnji ili bivši članovi Odbora guvernera i Odbora direktora te bilo koje druge osobe koje rade ili su radile za ESM ili su u vezi s ESM-om, ne smiju otkrivati informacije koje podliježu obvezi čuvanja poslovne tajne. Informacije koje podliježu obvezi čuvanja poslovne tajne ne smiju se otkrivati ni nakon prestanka njihovih dužnosti.

ČLANAK 35.

Imuniteti osoba

1. U interesu ESM-a, predsjedatelj Odbora guvernera, guverneri, zamjenici guvernera, direktori, zamjenici direktora, kao i glavni direktor i ostali članovi osoblja uživaju imunitet od sudskih postupaka za svoje radnje koje su izvršili u obavljanju svojih službenih dužnosti te nepovredivost u pogledu svojih službenih isprava i dokumenata.

2. Odbor guvernera može se odreći, u mjeri i pod uvjetima koje odredi, bilo kakvog imuniteta dodijeljenog ovim člankom predsjedatelju Odbora guvernera, guverneru, zamjeniku guvernera, direktoru, zamjeniku direktora ili glavnom direktoru.
3. Glavni direktor može se odreći bilo kojeg takvog imuniteta u odnosu na bilo kojeg člana osoblja ESM-a osim u odnosu na sebe.
4. Svaka članica ESM-a odmah poduzima mjere u okviru vlastitog prava koje su potrebne da ovaj članak stupi na snagu i o tome obavješćuje ESM.

ČLANAK 36.

Izuzeće od oporezivanja

1. U okviru svojih službenih aktivnosti, ESM, njegova sredstva, prihod, imovina te operacije i transakcije odobrene ovim Ugovorom, izuzeti su od svih izravnih poreza.
2. Članice ESM-a poduzimaju, kad god je to moguće, odgovarajuće mjere za izuzeće ili povrat iznosa neizravnih poreza ili poreza na promet koji su uključeni u cijenu pokretne ili nepokretne imovine, ako ESM, za svoje službene potrebe, obavlja veće nabave, čija cijena uključuje takve poreze.

3. Izuzeće se ne odobrava za poreze i pristojbe koji predstavljaju naknade za pružanje javnih usluga.
4. Roba koju ESM uvozi i koja je potrebna za obavljanje njegovih službenih aktivnosti oslobođena je svih uvoznih carina i poreza te svih uvoznih zabrana i ograničenja.
5. Osoblje ESM-a podliježe, u korist ESM-a, plaćanju unutarnjeg poreza na plaće i naknade koje isplaćuje ESM, u skladu s pravilima koja donosi Odbor guvernera. Od datuma početka primjene tog poreza, te plaće i naknade oslobođene su nacionalnog poreza na dohodak.
6. Nikakav porez ne nameće se na bilo koju obvezu ili vrijednosnicu koju je izdao ESM, uključujući sve kamate ili dividende, bez obzira na to tko ih drži:
 - (a) kada takav porez diskriminira takvu obvezu ili jamstvo isključivo zbog njihova podrijetla; ili
 - (b) ako je jedina pravna osnova za takvo oporezivanje mjesto ili valuta izdavanja predviđenog plaćanja ili stvarnog plaćanja, ili mjesto bilo kojeg ureda ESM-a ili mjesta njegova poslovanja.

ČLANAK 37.

Tumačenje i rješavanje sporova

1. Sva pitanja tumačenja ili primjene odredaba ovog Ugovora i statuta ESM-a koja se pojave između bilo koje članice ESM-a i ESM-a, ili između članica ESM-a, upućuju se Odboru direktora na donošenje odluke.
2. Odbor guvernera odlučuje o svim sporovima koji nastanu između članice ESM-a i ESM-a, ili između članova ESM-a, u vezi s tumačenjem i primjenom ovog Ugovora, uključujući sve sporove o usklađenosti odluka koje je ESM donio s ovim Ugovorom. Pravo glasa člana (članova) Odbora guvernera dotične (dotičnih) članice (članica) ESM-a suspendira se kada Odbor guvernera glasuje o takvoj odluci, a glasački prag potreban za donošenje te odluke, ponovno se izračunava u skladu s tim.
3. Ako članica ESM-a osporava odluku iz stavka 2., spor se podnosi Sudu Europske unije. Presuda Suda Europske unije obvezujuća je za stranke u postupku, koje su dužne poduzeti potrebne mjere za izvršenje presude u roku koji Sud odredi.

ČLANAK 38.

Međunarodna suradnja

Kako bi ostvario svoju svrhu ESM ima pravo surađivati, u skladu s odredbama ovog Ugovora, s MMF-om, bilo kojom državom koja pruža financijsku pomoć članici ESM-a na ad hoc osnovi i bilo kojom međunarodnom organizacijom ili subjektom s posebnim ovlastima u srodnim područjima.

POGLAVLJE 7

PRIJELAZNI ARANŽMANI

ČLANAK 39.

Povezanost sa zajmovima EFSF-a

Tijekom prijelaznog razdoblja od stupanja na snagu ovog Ugovora do potpunog okončanja EFSF-a, ukupni zajmovi ESM-a i EFSF-a ne smiju premašiti 500 milijardi eura, ne dovodeći u pitanje redovito preispitivanje primjerenosti najvećeg opsega zajmova u skladu s člankom 10. Odbor donosi detaljne smjernice za izračun budućeg kreditnog kapaciteta kako bi osigurao da ukupna gornja granica zajmova nije premašena.

ČLANAK 40.

Prijenos potpora EFSF-a

1. Odstupajući od članka 13., Odbor guvernera može odlučiti da ESM preuzima obveze EFSF-a za pružanje financijske pomoći članici ESM-a, koje je EFSF prihvatio sporazumom s tom članicom, ako se te obveze odnose na neisplaćene i nefinancirane dijelove zajmova.
2. ESM može, uz ovlaštenje Odbora guvernera, steći prava i preuzeti obveze EFSF-a, posebno u pogledu svih ili dijela njegovih prava i obveza u odnosu na postojeće zajmove ili u vezi s njima.
3. Odbor guvernera donosi pojedinosti potrebne za provedbu prijenosa obveza s EFSF-a na ESM, kako je navedeno u stavku 1., i bilo kojeg prijenosa prava i obveza kako je opisano u stavku 2.

ČLANAK 41.

Plaćanje početnog kapitala

1. Ne dovodeći u pitanje stavak 2., uplata iznosa uplaćenih udjela u iznosu koji svaka članica ESM-a upisuje na početku, izvršava se u pet godišnjih rata u iznosu od 20 % ukupnog iznosa. Prvu ratu plaća svaka članica ESM-a u roku od petnaest dana od dana stupanja na snagu ovog Ugovora. Preostale četiri rate plaćaju se na prvu, drugu, treću i četvrtu godišnjicu uplate prve rate.
2. Tijekom petogodišnjeg razdoblja u kojem se kapital plaća u ratama, članice ESM-a ubrzavaju uplate uplaćenih dionica, pravodobno prije datuma izdavanja, kako bi održale omjer od najmanje 15% između uplaćenog kapitala i iznosa postojećih izdanja ESM-a, te osigurale minimalni ukupni kreditni kapacitet ESM-a i EFSF-a od 500 milijardi eura.
3. Članica ESM-a može odlučiti izvršiti prijevremenu uplatu svojeg udjela u uplaćenom kapitalu.

ČLANAK 42.

Privremena korekcija ključa za doprinose

1. Članice ESM-a početno upisuju odobreni temeljni kapital na temelju prvotnog ključa za doprinose iz Priloga I. Privremena korekcija u ovom prvotnom ključu za doprinose primjenjuje se tijekom razdoblja od dvanaest godina nakon datuma usvajanja eura od strane dotične članice ESM-a.

2. Ako bruto domaći proizvod (BDP) po stanovniku nove članice ESM-a po tržišnim cijenama u eurima u godini koja neposredno prethodi njezinu pristupanju ESM-u iznosi manje od 75 % prosječnog BDP-a po stanovniku Europske unije prema tržišnim cijenama, tada se njezin ključ za upis kapitala u svrhu odobrenog temeljnog kapitala ESM-a, utvrđen u skladu s člankom 10., privremeno korigira i jednak je zbroju:

- (a) 25 % postotnog udjela nacionalne središnje banke te članice ESM-a u kapitalu ESB-a, određenog u skladu s člankom 29. Statuta ESSB-a; i
- (b) 75 % postotnog udjela te članice ESM-a u bruto nacionalnom dohotku (BND) europodručja po tržišnim cijenama u eurima u godini koja neposredno prethodi njezinu pristupanju ESM-u.

Postoci iz točkaka (a) i (b) zaokružuju se naviše ili naniže na najbliži višekratnik od 0,0001 postotnog boda. Primjenjuju se statistički podaci koje objavljuje Eurostat.

3. Privremena korekcija iz stavka 2. primjenjuje se tijekom razdoblja od dvanaest godina od datuma usvajanja eura od strane dotične članice ESM-a.

4. Kao rezultat privremene korekcije ključa, odgovarajući udio udjela dodijeljenih članici ESM-a u skladu sa stavkom 2. raspodjeljuje se među članicama ESM-a koje ne podliježu privremenoj korekciji na temelju svog udjela u ESB-u, utvrđenih u skladu s člankom 29. Statuta ESSB-a, a koje postoje neposredno prije izdavanja dionica članici koja pristupa ESM-u.

ČLANAK 43.

Prva imenovanja

1. Svaka članica ESM-a imenuje svojeg guvernera i zamjenika guvernera u roku od dva tjedna od stupanja na snagu ovog Ugovora.

2. Odbor guvernera imenuje glavnog direktora, a svaki guverner imenuje direktora i zamjenika direktora u roku od dva mjeseca od stupanja na snagu ovog Ugovora.

POGLAVLJE 8

ZAVRŠNE ODREDBE

ČLANAK 44.

Pristupanje

Ovaj je Ugovor otvoren za pristupanje drugih država članica Europske unije u skladu s člankom 2. na temelju zahtjeva za članstvo koji dotična država članica Europske unije podnosi ESM-u, nakon što Vijeće Europske unije donese odluku o ukidanju odstupanja od uvođenja eura, u skladu člankom 140. stavkom 2. UFEU-a. Odbor guvernera odobrava zahtjev za pristupanje nove članice ESM-a i povezane detaljne tehničke uvjete i prilagodbe ovog Ugovora kao izravne posljedice pristupanja. Nakon što Odbor guvernera odobri zahtjev za članstvo, nove članice ESM-a pristupaju nakon polaganja svojih isprava o pristupanju kod depozitara, koji o tome obavješćuje ostale članice ESM-a.

ČLANAK 45.

Prilozi

Sljedeći prilozi sastavni su dio ovog Ugovora:

- 1) Prilog I.: Ključ za doprinose ESM-u; i
- 2) Prilog II.: Upisi odobrenog temeljnog kapitala.

ČLANAK 46.

Polaganje

Ovaj Ugovor polaže se kod Glavnog tajništva Vijeća Europske unije („depozitar“), koje svim potpisnicima dostavlja ovjerene preslike.

ČLANAK 47.

Ratifikacija, odobrenje ili prihvata

1. Ovaj Ugovor podliježe ratifikaciji, odobrenju ili prihvatu. Isprave o ratifikaciji, odobrenju ili prihvatu polažu se kod depozitara.
2. Depozitar obavješćuje ostale potpisnice o svakom polaganju i njegovu datumu.

ČLANAK 48.

Stupanje na snagu

1. Ovaj Ugovor stupa na snagu na dan kada potpisnice čiji početni upisi iznose najmanje 90% ukupnih upisa navedenih u Prilogu II. deponiraju svoje isprave o ratifikaciji, odobrenju ili prihvatu. Popis članica ESM-a prema potrebi se prilagođava; ključ iz Priloga I. tada se ponovno izračunava te se na odgovarajući način umanjuje ukupni odobreni temeljni kapital iz članka 8. stavka 1. i Priloga II. i ukupna početna nominalna vrijednost uplaćenih udjela iz članka 8. stavka 2.

2. Ovaj Ugovor stupa na snagu za svaku potpisnicu koja naknadno položi svoju ispravu o ratifikaciji, odobrenju ili prihvatu, dan nakon datuma polaganja.

3. Za svaku državu koja pristupi ovom Ugovoru u skladu s člankom 44., ovaj Ugovor stupa na snagu dvadesetog dana nakon polaganja njezine isprave o pristupanju.

Sastavljeno u Bruxellesu, drugog dana veljače dvije tisuće dvanaeste godine, u jednom izvorniku, čiji su engleski, estonski, finski, francuski, njemački, grčki, irski, talijanski, malteški, nizozemski, portugalski, slovački, slovenski, španjolski i švedski tekstovi jednako vjerodostojni, i koji se polažu u arhiv depozitara koji šalje propisno ovjerenu kopiju svakoj od ugovornih stranaka.

Voor het Koninkrijk België
Pour le Royaume de Belgique
Für das Königreich Belgien

Dirk Wouters

Für die Bundesrepublik Deutschland

Dirk Gamm

Eesti Vabariigi nimel

J. J. J.

Thar cheann Na hÉireann
For Ireland

Paul McGuinness

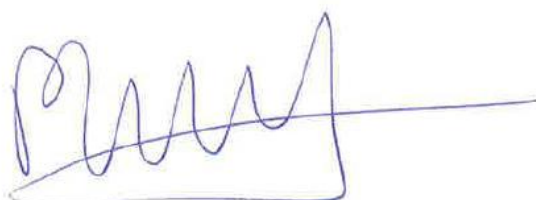
Για την Ελληνική Δημοκρατία



Por el Reino de España

2.2


Pour la République française



Per la Repubblica italiana



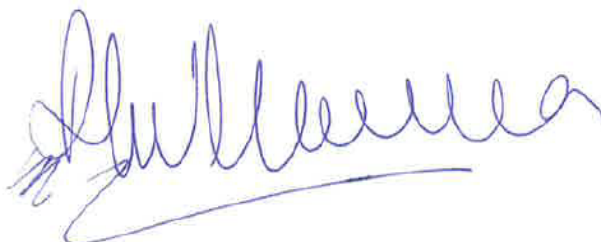
Για την Κυπριακή Δημοκρατία

A handwritten signature in blue ink, consisting of a large, stylized initial 'C' followed by several loops and a long horizontal stroke.

Pour le Grand-Duché de Luxembourg

A handwritten signature in blue ink, starting with a large 'L' and followed by several loops and a long horizontal stroke.

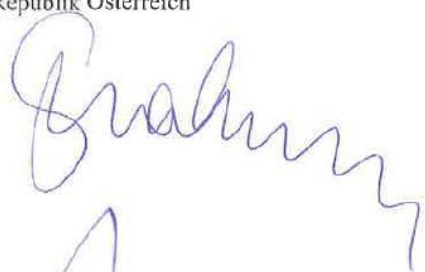
Għal Malta

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Voor het Koninkrijk der Nederlanden

A handwritten signature in blue ink, starting with a large 'R' and followed by several loops and a long horizontal stroke.

Für die Republik Österreich



Pela República Portuguesa



Za Republiko Slovenijo



Za Slovenskú republiku



Suomen tasavallan puolesta
För Republiken Finland



Ključ za doprinos ESM-u

Članica ESM-a	ESM ključ (%)
Kraljevina Belgija	3,4771
Savezna Republika Njemačka	27,1464
Republika Estonija	0,1860
Irska	1,5922
Helenska Republika	2,8167
Kraljevina Španjolska	11,9037
Francuska Republika	20,3859
Talijanska Republika	17,9137
Republika Cipar	0,1962
Veliko Vojvodstvo Luksemburg	0,2504
Malta	0,0731
Kraljevina Nizozemska	5,7170
Republika Austrija	2,7834
Portugalska Republika	2,5092
Republika Slovenija	0,4276
Slovačka Republika	0,8240
Republika Finska	1,7974
Ukupno	100,0

Upisi odobrenog temeljnog kapitala

Članica ESM-a	Broj udjela	Upis kapitala (EUR)
Kraljevina Belgija	243 397	24 339 700 000
Savezna Republika Njemačka	1 900 248	190 024 800 000
Republika Estonija	13 020	1 302 000 000
Irska	111 454	11 145 400 000
Helenska Republika	197 169	19 716 900 000
Kraljevina Španjolska	833 259	83 325 900 000
Francuska Republika	1 427 013	142 701 300 000
Talijanska Republika	1 253 959	125 395 900 000
Republika Cipar	13 734	1 373 400 000
Veliko Vojvodstvo Luksemburg	17 528	1 752 800 000
Malta	5 117	511 700 000
Kraljevina Nizozemska	400 190	40 019 000 000
Republika Austrija	194 838	19 483 800 000
Portugalska Republika	175 644	17 564 400 000
Republika Slovenija	29 932	2 993 200 000
Slovačka Republika	57 680	5 768 000 000
Republika Finska	125 818	12 581 800 000
Ukupno	7 000 000	700 000 000 000

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 euro¹ 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".

¹ OJ L 91, 6.4.2011, p. 1.

- (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 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.

Voor het Koninkrijk België
Pour le Royaume de Belgique
Für das Königreich Belgien

A handwritten signature in blue ink that reads "Dirk Wouters". The signature is written in a cursive style with a long horizontal stroke at the end.

Für die Bundesrepublik Deutschland

A handwritten signature in blue ink that reads "Peter Grimm". The signature is written in a cursive style with a long horizontal stroke at the end.

Eesti Vabariigi nimel

A handwritten signature in blue ink that reads "J. J. J.". The signature is written in a cursive style with a long horizontal stroke at the end.

Thar cheann Na hÉireann
For Ireland

A handwritten signature in blue ink that reads "Pádraig Kirby". The signature is written in a cursive style with a long horizontal stroke at the end.

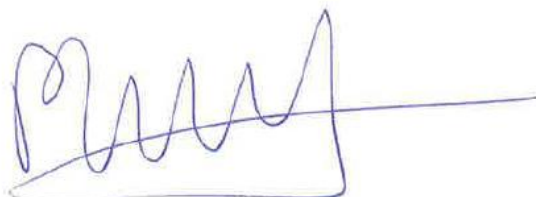
Για την Ελληνική Δημοκρατία



Por el Reino de España

2.2


Pour la République française



Per la Repubblica italiana



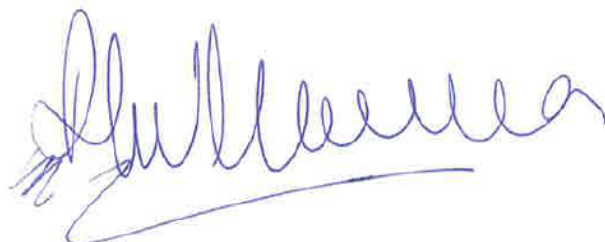
Για την Κυπριακή Δημοκρατία

A handwritten signature in blue ink, consisting of a large, stylized initial 'C' followed by several loops and a long horizontal stroke.

Pour le Grand-Duché de Luxembourg

A handwritten signature in blue ink, featuring a large, stylized initial 'L' followed by several loops and a long horizontal stroke.

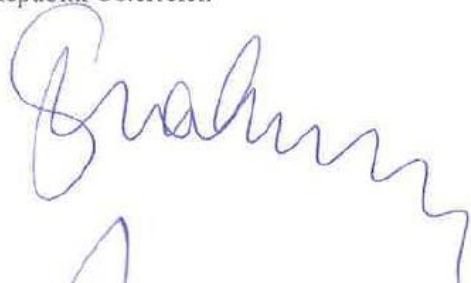
Għal Malta

A handwritten signature in blue ink, consisting of a large, stylized initial 'M' followed by several loops and a long horizontal stroke.

Voor het Koninkrijk der Nederlanden

A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by several loops and a long horizontal stroke.

Für die Republik Österreich



Pela República Portuguesa



Za Republiko Slovenijo



Za Slovenskú republiku



Suomen tasavallan puolesta
För Republiken Finland



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

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

Članak 3.

Republika Hrvatska prihvaća Rezoluciju br. 3 „Odobrenje zahtjeva za pristupanje Republike Hrvatske i detaljnih tehničkih uvjeta s tim u vezi“ Odbora guvernera Europskog stabilizacijskog mehanizma usvojenju 5. prosinca 2022.

Detaljni tehnički uvjeti pristupanja Republike Hrvatske su sljedeći:

1. Pravna stečevina Europskog stabilizacijskog mehanizma (ESM)

Republika Hrvatska pristupa Europskom stabilizacijskom mehanizmu u postojećem obliku na dan pristupanja. Sve rezolucije i odluke ESM-a koje su na snazi obvezuju Republiku Hrvatsku njezinim pristupanjem.

2. Privremena korekcija vezana za Republiku Hrvatsku

Republika Hrvatska ima pravo na privremenu korekciju koja se izračunava u skladu s člankom 42. stavkom 2. Ugovora o osnivanju Europskog stabilizacijskog mehanizma („Ugovor“).

Zbog privremene korekcije, Republika Hrvatska će uplatiti inicijalni doprinos u odobreni temeljni kapital upisom uplaćenih dionica i dionica na poziv.

U skladu s člankom 42. stavkom 3. Ugovora, razdoblje privremene korekcije za Republiku Hrvatsku prestaje 1. siječnja 2035.

Nakon isteka njezine privremene korekcije, a radi ispunjavanja obveze punog doprinosa u odobrenom temeljom kapitalu, Republika Hrvatska će izvršiti daljnju uplatu upisom uplaćenih dionica i dionica na poziv. S tim u vezi treba uzeti u obzir da su iznosi u točkama 3. te 6. u nastavku izračunati pod pretpostavkom da ni odobreni temeljni kapital ni omjer između uplaćenih dionica i dionica na poziv nisu promijenjeni između datuma stupanja na snagu Ugovora za Republiku Hrvatsku i datuma završetka privremene korekcije za Republiku Hrvatsku. Ako bi se iznos odobrenog temeljnog kapitala ili omjer između uplaćenih dionica i dionica na poziv promijenio prije završetka privremene korekcije za Republiku Hrvatsku što bi utjecalo na kapitalni doprinos Republike Hrvatske, tada će se navedeni iznosi ponovno izračunati.

3. Doprinos Republike Hrvatske ESM ključu i odobrenom temeljnom kapitalu

Doprinos Republike Hrvatske ESM ključu početno će iznositi 0,5215%. Taj se postotak zaokružuje na četiri decimale.

Inicijalni upis kapitala od 3.695.000.000,00 eura od strane Republike Hrvatske odgovara 36.950 udjela u kapitalu, od kojih je 4.222,9 uplaćenih dionica i 32.727,1 dionica na poziv.

Nakon isteka privremene korekcije, Republika Hrvatska će dodatno doprinijeti temeljnom kapitalu u iznosu od 2.038.900.000,00 eura upisom 2.330,1 uplaćenih dionica i 18.058,9 dionica na poziv.

Republika Hrvatska će tada imati upisano temeljnog kapitala u iznosu od 5.733.900.000,00 eura što odgovara 57.339 udjela u kapitalu, od kojih je 6.553 uplaćenih dionica i 50.786 dionica na poziv.

4. Polaganje isprave o pristupanju

U skladu s člankom 44. Ugovora, Republika Hrvatska će položiti svoju ispravu o pristupanju, pozivajući se na sadašnje uvjete pristupanja, zajedno s aktom kojim potvrđuje da dijeli tumačenje sadržano u „Deklaraciji o Europskom stabilizacijskom mehanizmu”, sastavljenoj u Bruxellesu 27. rujna 2012., kod depozitara, koji će o tome obavijestiti ESM i ostale članice ESM-a.

U skladu s člankom 5. stavkom 2. Sporazuma o izmjeni Ugovora („Sporazum o izmjeni“), Republika Hrvatska će položiti ispravu o pristupanju Sporazumu o izmjeni Ugovora istovremeno s polaganjem isprave o pristupanju Ugovoru, što je, u skladu s člankom 44. Ugovora, uvjet za odobrenje zahtjeva Republike Hrvatske za pristupanje Europskom stabilizacijskom mehanizmu.

5. Stupanje na snagu Ugovora za Republiku Hrvatsku

U skladu s člankom 48. stavkom 3. Ugovora i člankom 5. stavkom 2. Sporazuma o izmjeni, Ugovor stupa na snagu za Republiku Hrvatsku dvadesetog dana od dana polaganja njezine isprave o pristupanju, uz uvjet da se istovremeno položi i isprava o pristupanju Sporazuma o izmjeni.

Depozitar će izraditi konsolidiranu verziju svih različitih vjerodostojnih tekstova Ugovora i Sporazuma o izmjeni te ih poslati ESM-u i članicama ESM-a.

6. Uplata uplaćenog kapitala

U skladu s člankom 41. stavkom 1. Ugovora, plaćanje uplaćenih dionica u iznosu koji je inicijalno upisala svaka članica ESM-a izvršava se u pet godišnjih rata u iznosu od 20% ukupnog iznosa. Republika Hrvatska će inicijalno upisati 422.290.000,00 eura uplaćenog kapitala, što odgovara 4.222,9 uplaćenih dionica, a plaćanje će izvršiti u pet godišnjih rata od 20% toga iznosa. Prvu ratu uplatiti će se u roku od petnaest dana nakon što pristupanje Ugovoru stupa na snagu, a preostale četiri rate uplatiti će se na prvu, drugu, treću i četvrtu godišnjicu uplate prve rate.

Republika Hrvatska će nakon isteka privremene korekcije izvršiti uplatu uplaćenog kapitala u iznosu od 233.010.000,00 eura u jednoj rati u mjesecu nakon isteka privremene korekcije.

Članak 4.

Republika Hrvatska prihvaća Rezoluciju br. 4 „Odobrenje prilagodbi koje će se učiniti u Ugovoru kao izravna posljedica pristupanja Republike Hrvatske“ Odbora guvernera Europskog stabilizacijskog mehanizma usvojenu 5. prosinca 2022.

Tekst prilagodbi koje će se učiniti u Ugovoru kao izravna posljedica pristupanja Republike Hrvatske kako su odobrene Rezolucijom iz stavka 1. ovoga članka i sadržane su u njezinim odgovarajućim prilogima, na engleskom i na hrvatskom jeziku glase:

Naslovnica

Dodati „REPUBLIKA HRVATSKA“ iza „FRANCUSKA REPUBLIKA“,

Ugovorne stranke

Dodati „Republiku Hrvatsku“ iza „Republiku Francusku“,

Članak 8. stavak 1. Ugovora

Zamijeniti „704 798,7“ sa „708 493,7“

Zamijeniti "sedam milijuna četrdeset sedam tisuća devetsto osamdeset sedam" sa "sedam milijuna osamdeset četiri tisuće devetsto trideset sedam"

Članak 8. stavak 2. Ugovora

Zamijeniti „80 548,4“ sa „80 970,7“

Dodati završnoj odredbi Ugovora

Dodati „Pristupanjem Republike Hrvatske, hrvatski tekst će biti jednako vjerodostojan, te će biti položen u arhivu depozitara koji šalje propisno ovjerenu presliku svakoj od ugovornih stranaka.“ nakon zadnjeg stavka završne odredbe Ugovora.

Prilog I

Zamijeniti trenutnu tablicu sljedećom tablicom:

“Članica ESM-a	ESM ključ (%)
Kraljevina Belgija	3,4250
Savezna Republika Njemačka	26,7402
Republika Estonija	0,2527
Irska	1,5684
Helenska Republika	2,7745
Kraljevina Španjolska	11,7256
Francuska Republika	20,0809
Republika Hrvatska	0,5215
Talijanska Republika	17,6457
Republika Cipar	0,1933
Republika Latvija	0,2732
Republika Litva	0,4042
Veliko Vojvodstvo Luksemburg	0,2467
Malta	0,0892
Kraljevina Nizozemska	5,6315
Republika Austrija	2,7418
Portugalska Republika	2,4716
Republika Slovenija	0,4643
Republika Slovačka	0,9791
Republika Finska	1,7706
Ukupno	100,0”

Prilog II

“Članica ESM-a	Broj udjela	Upis kapitala (EUR)
Kraljevina Belgija	242 662	24 266 200 000
Savezna Republika Njemačka	1 894 528	189 452 800 000
Republika Estonija	17 907	1 790 700 000
Irska	111 117	11 111 700 000
Helenska Republika	196 573	19 657 300 000
Kraljevina Španjolska	830 750	83 075 000 000
Francuska Republika	1 422 720	142 272 000 000
Republika Hrvatska	36 950	3 695 000 000
Talijanska Republika	1 250 187	125 018 700 000
Republika Cipar	13 696	1 369 600 000
Republika Latvija	19 353	1 935 300 000
Republika Litva	28 634	2 863 400 000
Veliko Vojvodstvo Luksemburg	17 477	1 747 700 000
Malta	6 323	632 300 000
Kraljevina Nizozemska	398 988	39 898 800 000
Republika Austrija	194 252	19 425 200 000
Portugalska Republika	175 114	17 511 400 000
Republika Slovenija	32 894	3 289 400 000
Republika Slovačka	69 369	6 936 900 000
Republika Finska	125 443	12 544 300 000
Ukupno	7 084 937	708 493 700 000”

Cover page

Add “THE REPUBLIC OF CROATIA,” following “THE FRENCH REPUBLIC,”

Contracting parties

Add “the Republic of Croatia,” following “the French Republic,”

Article 8(1) of the Treaty

Replace “704 798.7” with “708 493.7”

Replace “seven million forty-seven thousand nine hundred and eighty-seven” with “seven million eighty-four thousand nine hundred and thirty-seven”

Article 8(2) of the Treaty

Replace “80 548.4” with “80 970.7”

Addendum to the final clause of the Treaty

Add “Upon accession of the Republic of Croatia, the Croatian text shall be equally authentic, which shall be deposited in the archives of the Depository which shall transmit a duly certified copy to each of the Contracting Parties.” following the last paragraph of the final clause of the Treaty.

Annex I

Replace current table with following table:

“ESM Member	ESM key (%)
Kingdom of Belgium	3.4250
Federal Republic of Germany	26.7402
Republic of Estonia	0.2527
Ireland	1.5684
Hellenic Republic	2.7745
Kingdom of Spain	11.7256
French Republic	20.0809
Republic of Croatia	0.5215
Italian Republic	17.6457
Republic of Cyprus	0.1933
Republic of Latvia	0.2732
Republic of Lithuania	0.4042
Grand Duchy of Luxembourg	0.2467
Malta	0.0892
Kingdom of the Netherlands	5.6315
Republic of Austria	2.7418
Portuguese Republic	2.4716
Republic of Slovenia	0.4643
Slovak Republic	0.9791
Republic of Finland	1.7706
Total	100.0”

Annex II

Replace current table with following table:

“ESM Member	Number of shares	Capital subscription (EUR)
Kingdom of Belgium	242 662	24 266 200 000
Federal Republic of Germany	1 894 528	189 452 800 000
Republic of Estonia	17 907	1 790 700 000
Ireland	111 117	11 111 700 000
Hellenic Republic	196 573	19 657 300 000
Kingdom of Spain	830 750	83 075 000 000
French Republic	1 422 720	142 272 000 000
Republic of Croatia	36 950	3 695 000 000
Italian Republic	1 250 187	125 018 700 000
Republic of Cyprus	13 696	1 369 600 000
Republic of Latvia	19 353	1 935 300 000
Republic of Lithuania	28 634	2 863 400 000
Grand Duchy of Luxembourg	17 477	1 747 700 000
Malta	6 323	632 300 000
Kingdom of the Netherlands	398 988	39 898 800 000

Republic of Austria	194 252	19 425 200 000
Portuguese Republic	175 114	17 511 400 000
Republic of Slovenia	32 894	3 289 400 000
Slovak Republic	69 369	6 936 900 000
Republic of Finland	125 443	12 544 300 000
Total	7 084 937	708 493 700 000

Članak 5.

U skladu s Rezolucijom br. 3 Prilogom 3 točkom 4., prilikom polaganja svoje isprave o pristupanju, Republika Hrvatska potvrdit će kako dijeli tumačenje sadržano u Deklaraciji o Europskom stabilizacijskom mehanizmu, koja je kao interpretativna izjava uz Ugovor iz članka 1. ovoga Zakona sastavljena u Bruxellesu 27. rujna 2012., a čiji tekst na engleskom jeziku i prijevodu na hrvatski jezik glasi:

Deklaracija

Predstavnici stranaka Ugovora o osnivanju Europskog stabilizacijskog mehanizma (ESM) potpisanog 2. veljače 2012., na sastanku održanom u Bruxellesu 27. rujna 2012., suglasili su se oko sljedeće interpretativne izjave:

„Članak 8. stavak 5. Ugovora o osnivanju Europskog stabilizacijskog mehanizma („Ugovor“) ograničava sve obveze plaćanja članica ESM-a prema Ugovoru na način da se nijedna odredba Ugovora ne može tumačiti tako da dovodi do plaćanja obveza većim od odobrenog temeljnog kapitala koji odgovara svakoj članici ESM-a, kako je navedeno u Prilogu II. Ugovora, bez prethodnog pristanka predstavnika svake članice i obveznog poštivanja nacionalnih postupaka.

Članak 32. stavak 5., članak 34. i članak 35. stavak 1. Ugovora ne sprječavaju davanje sveobuhvatnih informacija nacionalnim parlamentima, kako je predviđeno nacionalnim propisima.

Gore navedeni elementi čine bitnu osnovu za pristanak država ugovornica da budu vezane odredbama Ugovora.“

Declaration

The representatives of the parties to the Treaty establishing the European Stability Mechanism (ESM) signed on 2 February 2012, meeting in Brussels on 27 September 2012, agree on the following interpretative declaration:

„Article 8(5) of the Treaty Establishing the European Stability Mechanism ("the Treaty") limits all payment liabilities of the ESM Members under the Treaty in the sense that no provision of the Treaty may be interpreted as leading to payment obligations higher than the portion of the authorized capital stock corresponding to each ESM Member, as specified in Annex II of the Treaty, without prior agreement of each Member's representative and due regard to national procedures.

Article 32(5), Article 34 and Article 35(1) of the Treaty do not prevent providing comprehensive information to the national parliaments, as foreseen by national regulation.

The above mentioned elements constitute an essential basis for the consent of the contracting States to be bound by the provisions of the Treaty."

Članak 6.

Sredstva za plaćanje obveza za uplaćeni kapital osigurana su u Državnom proračunu Republike Hrvatske za 2023. godinu i projekcijama za 2024. i 2025. godinu okviru financijskog plana Ministarstva financija. Sredstva potrebna za plaćanje preostalih rata uplaćenog kapitala planirat će se prilikom izrade državnog proračuna za naredna razdoblja.

Članak 7.

Provedba ovoga Zakona u djelokrugu je tijela državne uprave nadležnog za financije.

Članak 8.

Na dan stupanja na snagu ovoga Zakona, Ugovor iz članka 1. ovoga Zakona nije na snazi u odnosu na Republiku Hrvatsku te će se podaci o njegovom stupanju na snagu objaviti sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora („Narodne novine“, broj 28/96.).

Članak 9.

Ovaj Zakon stupa na snagu osmoga dana od dana objave u „Narodnim novinama“.

O B R A Z L O Ž E N J E

Člankom 1. utvrđuje se da Hrvatski sabor potvrđuje Ugovor o osnivanju Europskog stabilizacijskog mehanizma između Kraljevine Belgije, Savezne Republike Njemačke, Republike Estonije, Irske, Helenske Republike, Kraljevine Španjolske, Francuske Republike, Talijanske Republike, Republike Cipra, Velikog Vojvodstva Luksemburga, Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske, čime se, sukladno odredbi članka 140. stavka 1. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske) i članka 18. Zakona o sklapanju i izvršavanju međunarodnih ugovora („Narodne novine“, broj 28/96.), iskazuje formalni pristanak Republike Hrvatske da bude vezana njegovim odredbama, na temelju čega će ovaj pristanak biti iskazan i na međunarodnoj razini polaganjem isprave o pristupu pri Glavnom tajništvu Vijeća Europske unije, kao depozitaru.

Članak 2. sadrži tekst Ugovora o osnivanju Europskog stabilizacijskog mehanizma u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik.

Člankom 3. utvrđuje se da Republika Hrvatska prihvaća Rezoluciju br. 3 „Odobrenje zahtjeva za pristupanje Republike Hrvatske i detaljnih tehničkih uvjeta s tim u vezi“, Odbora guvernera Europskog stabilizacijskog mehanizma usvojenu 5. prosinca 2022. te se objavljuju detaljni tehnički uvjeti pristupanja Republike Hrvatske

Člankom 4. utvrđuje se da Republika Hrvatska prihvaća Rezoluciju br. 4 „Odobrenje prilagodbi koje će se učiniti u Ugovoru kao izravna posljedica pristupanja Republike Hrvatske“ Odbora guvernera usvojenu 5. prosinca 2022., te se objavljuje tekst prilagodbi, na engleskom i na hrvatskom jeziku, kako su odobrene Rezolucijom i sadržane su u njezinim odgovarajućim prilogima.

Člankom 5. utvrđuje se da će Republika Hrvatska, u skladu s Rezolucijom br. 3 Prilogom 3 točkom 4, prilikom polaganja svoje isprave o pristupanju, potvrditi kako dijeli tumačenje sadržano u Deklaraciji o Europskom stabilizacijskom mehanizmu, koja je kao interpretativna izjava uz Ugovor, sastavljena u Bruxellesu 27. rujna 2012. te se navodi tekst navedene Deklaracije na engleskom jeziku i u prijevodu na hrvatski jezik.

Člankom 6. utvrđuje se da je Republika Hrvatska u Državnom proračunu za 2023. godinu i projekcijama za 2024. i 2025. godinu u okviru financijskog plana Ministarstva financija osigurala sredstva za plaćanje obveza za uplaćeni kapital, te da će sredstva potrebna za plaćanje preostalih rata uplaćenog kapitala planirati prilikom izrade državnog proračuna za naredne godine.

Člankom 7. utvrđuje se da je provedba ovoga Zakona u djelokrugu tijela državne uprave nadležnog za poslove financija.

Člankom 8. utvrđuje se da na dan stupanja na snagu Zakona, Ugovor o osnivanju Europskog stabilizacijskog mehanizma nije na snazi u odnosu na Republiku Hrvatsku, te da će se podaci o njegovom stupanju na snagu objaviti sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

Člankom 9. uređuje se stupanje na snagu Zakona.

Prilog – Preslika teksta Ugovora u izvorniku na engleskom jeziku

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 euro¹ 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".

¹ OJ L 91, 6.4.2011, p. 1.

- (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 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 Depository 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.

Voor het Koninkrijk België
Pour le Royaume de Belgique
Für das Königreich Belgien

Dirk Wouters

Für die Bundesrepublik Deutschland

Dirk Gamm

Eesti Vabariigi nimel

J. J. J.

Thar cheann Na hÉireann
For Ireland

Paul McGuinness

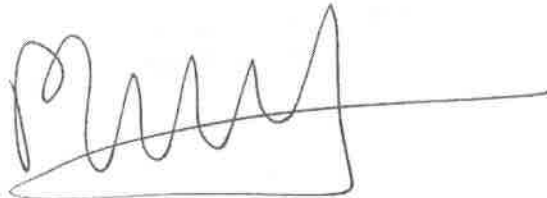
Για την Ελληνική Δημοκρατία



Por el Reino de España

Α. Ζ.
A. J. J. J. J.

Pour la République française



Per la Repubblica italiana



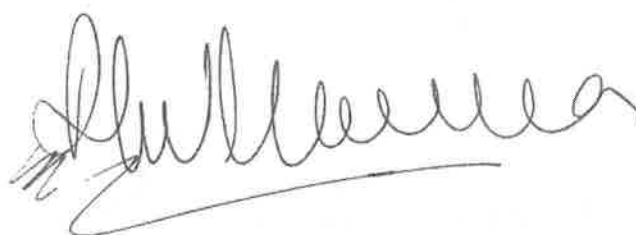
Για την Κυπριακή Δημοκρατία



Pour le Grand-Duché de Luxembourg



Għal Malta



Voor het Koninkrijk der Nederlanden



Für die Republik Österreich



Pela República Portuguesa



Za Republiko Slovenijo



Za Slovenskú republiku



Suomen tasavallan puolesta
För Republiken Finland



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

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