



HRVATSKI SABOR

KLASA: 022-02/23-01/05

URBROJ: 65-23-02

Zagreb, 20. siječnja 2023.

P.Z. br. 447

**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 Sporazuma o izmjeni 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, Republike Latvije, Republike Litve, Velikog Vojvodstva Luksemburga, Republike 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: 022-03/22-11/82
URBROJ: 50301-05/16-23-3


Zagreb, 20. siječnja 2023.

PREDSJEDNIKU HRVATSKOGA SABORA

PREDMET: Konačni prijedlog zakona o potvrđivanju Sporazuma o izmjeni 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, Republike Latvije, Republike Litve, Velikog Vojvodstva Luksemburga, Republike 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 Sporazuma o izmjeni 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, Republike Latvije, Republike Litve, Velikog Vojvodstva Luksemburga, Republike 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.


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PREDSJEDNIK
mr. sc. Andrej Plenković
ZAGREB
VLADA REPUBLIKE HRVATSKE

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU SPORAZUMA
O IZMJENI UGOVORA O OSNIVANJU EUROPSKOG
STABILIZACIJSKOG MEHANIZMA
IZMEĐU KRALJEVINE BELGIJE, SAVEZNE REPUBLIKE NJEMAČKE,
REPUBLIKE ESTONIJE, IRSKE, HELENSKE REPUBLIKE,
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I. USTAVNA OSNOVA ZA DONOŠENJE ZAKONA

Ustavna osnova za donošenje Zakona o potvrđivanju Sporazuma o izmjeni 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, Republike Latvije, Republike Litve, Velikog Vojvodstva Luksemburga, Republike Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske (u daljnjem tekstu: Sporazum o izmjenama i dopunama Ugovora 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 stupio je na snagu 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 ESM-a, isti stupa na snagu dvadesetog dana nakon polaganja njezine isprave o pristupanju.

S ciljem da se daljnjim razvojem ESM-a jača otpornost i sposobnost europodručja za rješavanje krize, pri čemu se i dalje poštuje pravo Europske unije, na sastanku na vrhu država europodručja održanom 14. prosinca 2018., u uključivom sastavu, šefovi država ili vlada država članica čija je valuta euro, potvrdili su mandat zajedničkog zaštitnog mehanizma za jedinstveni fond za sanaciju koji će biti ojačan, kao i dogovor o uvjetima reforme ESM-a. Na sastanku na vrhu država europodručja 21. lipnja 2019. u uključivom sastavu, šefovi država ili vlada država članica čija je

valuta euro, suglasile su se revidirati Ugovor o osnivanju Europskog stabilizacijskog mehanizma. U okviru reforme ESM-a dogovoreno je: a) da najkasnije do kraja prijelaznog razdoblja treba biti uspostavljen zajednički zaštitni mehanizam za jedinstveni fond za sanaciju; b) poboljšanje djelotvornosti preventivnih instrumenata financijske pomoći za članice ESM-a koje imaju zdrave ekonomske temelje, no mogle bi biti pogođene negativnim šokovima koji su izvan njihove kontrole; c) da se dodatna marža primijeni kada članica ESM-a kojoj je odobrena preventivna financijska pomoć ESM-a ne ispunjava uvjete za tu pomoć nakon što je već povukla sredstva, osim ako je to neispunjavanje posljedica događaja koji su izvan kontrole vlade.

Države članice ESM-a potpisale su 27. siječnja i 8. veljače 2021. Sporazum o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma, a stupa na snagu na dan kada sve potpisnice polože svoje isprave o ratifikaciji, odobrenju ili prihvatu. Od 19 država članica potpisnica Sporazuma, do danas, Savezna Republika Njemačka i Talijanska Republika nisu položile svoje isprave o ratifikaciji, odobrenju ili prihvatu. Države članice Europske unije koje pristupaju Ugovoru o osnivanju Europskog stabilizacijskog mehanizma u skladu s člancima 2. i 44. istog, mogu pristupiti Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma prije stupanja na snagu istog.

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 u 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 Europskog stabilizacijskog mehanizma 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.

Također, Odbor guvernera Europskog stabilizacijskog mehanizma 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 Europskom stabilizacijskom mehanizmu i u Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma.

Kao izravnu posljedicu 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 Ugovoru o osnivanju Europskog stabilizacijskog mehanizma, 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 prilagodabama u Ugovoru o osnivanju Europskog stabilizacijskog mehanizma i Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma.

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

2. Cilj koji se Zakonom želi postići

Cilj koji se želi postići potvrđivanjem Sporazuma o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma je preuzimanje obveze koje iz njega proistječu s ciljem daljnjeg razvoja ESM-a kako bi se jačala otpornost i sposobnost europodručja za rješavanje krize poštujući i dalje pravo Europske unije.

Nakon što Republika Hrvatska položi ispravu o pristupanju Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma, Glavno tajništvo Vijeća Europske unije, kao depozitar Sporazuma o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma, izradit će konsolidiranu verziju Sporazuma na svim jezicima članica ESM-a i hrvatskom jeziku. Nakon što ugovorne stranke potvrde vjerodostojnost teksta Sporazuma o izmjeni 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 Sporazuma o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma.

III. OSNOVNA PITANJA KOJA SE PREDLAŽU UREDITI ZAKONOM

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

Sporazumom o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma države članice europodručja suglasne su daljnjim razvojem ESM-a jačati otpornost i sposobnost europodručja za rješavanje krize kako bi se osigurala financijska stabilnost europodručja. Ugovorom o osnivanju Europskog stabilizacijskog mehanizma i Sporazumom o izmjenama i dopunama Ugovora 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. Sporazum o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma primjenjuje na države članice Europske unije koje pripadaju europodručju.

IV. OCJENA I IZVORI SREDSTAVA POTREBNIH ZA PROVEDBU ZAKONA

Za provedbu Zakona o potvrđivanju Ugovora o osnivanju Europskog stabilizacijskog mehanizma sredstva su osigurana u Državnom proračunu Republike Hrvatske za 2023. godine i projekcijama za 2024. i 2025. godinu u okviru financijskog plana Ministarstva financija. Pristupanje Sporazumu o izmjeni Ugovora o osnivanju Europskog stabilizacijskog mehanizma neće izazvati promjenu fiskalnog učinka.

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 Republike Hrvatske da što skorije okonča svoj unutarnji pravni postupak i postane strankom Sporazuma o izmjenama i dopunama Ugovora o osnivanju Europskog stabilizacijskog mehanizma polaganjem isprave o pristupanju kod depozitara, kako bi Republika Hrvatska bila uključena u donošenje odluka vezano za upravljanje ESM-om, a koje se odnose na pružanje podrške jedinstvenom fondu za sanaciju i jačanje uloge ESM-a u budućim programima gospodarske prilagodbe i zaštite od kriza.

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 može mijenjati ili dopunjavati tekst međunarodnog ugovora, predlaže se ovaj Konačni prijedlog zakona raspraviti i prihvatiti u jednom čitanju.

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Članak 1.

Potvrđuje se Sporazum o izmjeni 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, Republike Latvije, Republike Litve, Velikog Vojvodstva Luksemburga, Republike Malte, Kraljevine Nizozemske, Republike Austrije, Portugalske Republike, Republike Slovenije, Slovačke Republike i Republike Finske, sastavljen u Bruxellesu, 27. siječnja i 8. veljače 2021., u izvorniku na engleskom, estonskom, finskom, francuskom, grčkom, irskom, latvijskom, litavskom, malteškom, nizozemskom, njemačkom, portugalskom, slovačkom, slovenskom, španjolskom, švedskom i talijanskom jeziku.

Članak 2.

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

SPORAZUM
O IZMJENI UGOVORA
O OSNIVANJU EUROPSKOG STABILIZACIJSKOG MEHANIZMA
IZMEĐU KRALJEVINE BELGIJE, SAVEZNE REPUBLIKE NJEMAČKE,
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I REPUBLIKE FINSKE

PREAMBULA

UGOVORNE STRANKE, Kraljevina Belgija, Savezna Republika Njemačka, Republika Estonija, Irska, Helenska Republika, Kraljevina Španjolska, Francuska Republika, Talijanska Republika, Republika Cipar, Republika Latvija, Republika Litva, Veliko Vojvodstvo Luksemburg, Republika Malta, Kraljevina Nizozemska, Republika Austrija, Portugalska Republika, Republika Slovenija, Slovačka Republika i Republika Finska („države članice europodručja” ili „potpisnice”);

UVAŽAVAJUĆI dogovor o osiguravanju financijskih sredstava i pružanju financiranja u okviru zaštitnog mehanizma za korištenje jedinstvenog fonda za sanaciju (SRF), koji je u vlasništvu Jedinstvenog odbora za sanaciju (SRB), osnovanog u skladu s Uredbom (EU) br. 806/2014 Europskog parlamenta i Vijeća od 15. srpnja 2014. o utvrđivanju jedinstvenih pravila i jedinstvenog postupka za sanaciju kreditnih institucija i određenih investicijskih društava u okviru jedinstvenog sanacijskog mehanizma i jedinstvenog fonda za sanaciju te o izmjeni Uredbe (EU) br. 1093/2010¹;

UVAŽAVAJUĆI ključni doprinos Europskog stabilizacijskog mehanizma (ESM) u kriznom upravljanju pružanjem pravovremene i učinkovite pomoći stabilnosti državama članicama europodručja;

DOGOVORIVŠI cjelokupan paket za daljnje jačanje ekonomske i monetarne unije;

¹ SL L 225, 30.7.2014., str. 1.

NASTOJEĆI da se daljnjim razvojem ESM-a jača otpornost i sposobnost europodručja za rješavanje krize, poštujući pritom i dalje pravo Europske unije;

PODSJEĆAJUĆI na činjenicu da su na sastanku na vrhu država europodručja održanom 29. lipnja 2018., u uključivom sastavu, šefovi država ili vlada država članica čija je valuta euro izjavili da će ESM osigurati zajednički zaštitni mehanizam za jedinstveni fond za sanaciju i biti ojačan na temelju elemenata navedenih u pismu predsjednika Euroskupine od 25. lipnja 2018.;

PODSJEĆAJUĆI NADALJE na činjenicu da su na sastanku na vrhu država europodručja održanom 14. prosinca 2018., u uključivom sastavu, šefovi država ili vlada država članica čija je valuta euro potvrdili mandat navedenog zajedničkog zaštitnog mehanizma i dogovor o uvjetima za reformu ESM-a, te da su na sastanku na vrhu država europodručja održanom 21. lipnja 2019., u uključivom sastavu, šefovi država ili vlada država članica čija je valuta euro primili na znanje opći dogovor o reviziji Ugovora o osnivanju Europskog stabilizacijskog mehanizma,

SPORAZUMJELE SU SE KAKO SLIJEDI:

ČLANAK 1

Izmjene Ugovora o osnivanju Europskog stabilizacijskog mehanizma

Ugovor o osnivanju Europskog stabilizacijskog mehanizma mijenja se kako slijedi:

A. Preambula se mijenja kako slijedi:

1. Uvodna izjava 4. zamjenjuje se sljedećim:

„(4) Strogo pridržavanje pravnog okvira Europske unije, integriranog okvira za fiskalni i makroekonomske nadzor, 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.”.

2. Umeću se sljedeće uvodne izjave:

„(5a) Na sastanku na vrhu država europa područja održanom 29. lipnja 2018., u uključivom sastavu, šefovi država ili vlada država članica čija je valuta euro, izjavili su da će ESM osigurati zajednički zaštitni mehanizam za jedinstveni fond za sanaciju (SRF) i biti ojačan na temelju elemenata navedenih u pismu predsjednika Euroskupine od 25. lipnja 2018. Na sastanku na vrhu država europa područja održanom 14. prosinca 2018., u uključivom sastavu, šefovi država ili vlada država članica čija je valuta euro, potvrdili su mandat navedenog zajedničkog zaštitnog mehanizma koji treba osigurati ESM, kao i uvjete reforme ESM-a. Uvjetima reforme ESM-a predviđeno je da će se najkasnije do kraja prijelaznog razdoblja uspostaviti zajednički zaštitni mehanizam za jedinstveni fond za sanaciju. Uvjetima reforme ESM-a predviđeno je i poboljšanje djelotvornosti preventivnih instrumenata financijske pomoći za članice ESM-a koje imaju zdrave ekonomske temelje, no mogle bi biti pogođene negativnim šokovima koji su izvan njihove kontrole. U skladu sa zajedničkim stajalištem o budućoj suradnji Europske komisije i ESM-a, priloženom uvjetima reforme ESM-a u vezi s ocjenom prihvatljivosti u okviru preventivne kreditne linije, ovisno o točnom opsegu kriterija prihvatljivosti, Europska komisija i ESM preuzimaju svoje uloge u skladu s pravom Europske unije, ovim Ugovorom i smjericama ESM-a. Uvjetima reforme ESM-a predviđeno je također da će se dodatna marža primijeniti kada članica ESM-a kojoj je odobrena preventivna financijska pomoć ESM-a ne ispunjava uvjete za tu pomoć nakon što je već povukla sredstva, osim ako je to neispunjavanje posljedica događaja koji su izvan kontrole vlade. Uvjetima reforme ESM-a nadalje se ističe da postojanje uvjeta ostaje temeljno načelo ovog Ugovora i svih instrumenata ESM-a, ali da se točni uvjeti trebaju prilagoditi svakom instrumentu.

(5b) Zajedničkim stajalištem o budućoj suradnji između ESM-a i Europske komisije utvrđuje se sporazum o novim načinima suradnje u okviru programâ financijske pomoći i izvan tog okvira. Europska komisija i ESM imaju zajedničke ciljeve i obavljat će specifične zadatke u vezi s kriznim upravljanjem u europodručju na temelju prava Europske unije i ovog Ugovora. Stoga će te dvije institucije, učinkovitim upravljanjem i nadopunjujući se u svojoj stručnosti, blisko surađivati u donošenju mjera ESM-a za krizno upravljanje kako bi se postigla financijska stabilnost. Europska komisija osigurava usklađenost s pravom Europske unije, posebno s okvirom za koordinaciju ekonomske politike. ESM provodi svoju analizu i procjenu iz perspektive zajmodavca. Zajedničko stajalište o budućoj suradnji bit će u potpunosti uključeno u memorandum o suradnji, kako je navedeno u članku 13. stavku 8., kada izmjene ovog Ugovora stupe na snagu.”.

3. U uvodnoj izjavi 7. dodaje se sljedeća rečenica:

„Članice ESM-a potvrđuju postojeći dijalog između glavnog direktora i Europskog parlamenta.”.

4. U uvodnoj izjavi 8. treća rečenica zamjenjuje se sljedećim:

„Očekuje se da država članica europodručja koja podnese zahtjev za financijsku pomoć ESM-a, kad god je to primjereno podnese sličan zahtjev MMF-u.”.

5. Umeće se sljedeća uvodna izjava:

„(9a) Od država članica Europske unije čija valuta nije euro, a koje blisku surađuju s Europskom središnjom bankom (ESB) u skladu s Uredbom Vijeća (EU) br. 1024/2013 od 15. listopada 2013. o dodjeli određenih zadaća Europskoj središnjoj banci u vezi s politikama bonitetnog nadzora kreditnih institucija* očekuje da osiguraju paralelne kreditne linije za jedinstveni fond za sanaciju uz ESM. Te će države članice sudjelovati u zajedničkom zaštitnom mehanizmu pod jednakim uvjetima („države članice sudionice”). Predstavnici država članica sudionica trebali bi biti pozvani kao promatrači na sastanke Odbora guvernera i Odbora direktora, na kojima će se raspravljati o pitanjima koja se odnose na zajednički zaštitni mehanizam te bi trebali imati jednak pristup informacijama. Trebalo bi uspostaviti odgovarajuće aranžmane za razmjenu informacija i pravovremenu koordinaciju između ESM-a i država članica sudionica. Trebalo bi biti moguće da predstavnici Jedinstvenog odbora za sanaciju (SRB) budu pozvani kao promatrači na *ad hoc* osnovi na sastanke Odbora guvernera i Odbora direktora na kojima će se raspravljati o financiranju u okviru zaštitnog mehanizma.

* SL L 287, 29.10.2013., str. 63.”.

6. Uvodna izjava 10. zamjenjuje se sljedećim:

„(10) Predstavnici vlada država članica Europske unije 20. lipnja 2011. ovlastili su ugovorne stranke ovog Ugovora da od Europske komisije i ESB-a zatraže da obavljaju poslove predviđene ovim Ugovorom. Potvrđuje se da zadaće dodijeljene Europskoj Komisiji i ESB-u ovim Ugovorom ne uključuju ovlasti za donošenje samostalnih odluka i da zadaće koje te dvije institucije izvršavaju na temelju ovog Ugovora, obvezuju isključivo ESM.”.

7. U uvodnoj izjavi 11. dodaju se sljedeće rečenice:

„Nakon uvođenja tih klauzula o zajedničkom djelovanju 1. siječnja 2013., članice ESM-a obvezuju se uvesti klauzule o zajedničkom djelovanju koje omogućuju skupno glasovanje u jednoj fazi („jednofazne klauzule”) do 2022. Detaljna pravna regulativa bit će dogovorena u okviru Gospodarskog i financijskog odbora, pri čemu će se uzeti u obzir nacionalni ustavni zahtjevi, tako da će sve članice ESM-a provesti uključivanje jednofaznih klauzula u nove državne vrijednosne papire iz europodručja na način kojim se osigurava da je njihov pravni učinak isti.”.

8. Umeću se sljedeće uvodne izjave:

„(11a) Na zahtjev članice ESM-a i prema potrebi, ESM može olakšati dijalog između te članice ESM-a i njezinih privatnih investitora na dobrovoljnoj, neformalnoj, neobvezujućoj, privremenoj i povjerljivoj osnovi.

(11b) ESM bi trebao pružiti potporu za stabilnost samo onim članicama ESM-a čiji se dug smatra održivim i čija je sposobnost otplate ESM-u potvrđena. Procjena održivosti duga i sposobnosti otplate provest će se na transparentnoj i predvidljivoj osnovi, pri čemu se dopušta odgovarajuća diskrecija u prosudbi. Takve će procjene provesti Europska komisija u suradnji s ESB-om i ESM-om, te kad god je primjereno i izvedivo, zajedno s MMF-om u skladu s ovim Ugovorom, pravom Europske unije i memorandumom o suradnji sklopljenim na temelju članka 13. stavka 8. Ako suradnja ne dovede do zajedničkog stajališta, Europska komisija provest će opću procjenu održivosti javnosti duga, dok će ESM procijeniti sposobnost dotične članice ESM-a za otplatu ESM-u.”.

9. Uvodna izjava 12. zamjenjuje se sljedećim:

„(12) U iznimnim slučajevima razmotrit će se odgovarajući i razmjerni oblik uključivanja privatnog sektora, u skladu s praksom MMF-a, u slučajevima kada se potpora za stabilnost pruža pod uvjetima koji imaju oblik programa makroekonomske prilagodbe.”.

10. U uvodnoj izjavi 13. dodaje se sljedeća rečenica:

„Zajmovi u okviru zaštitnog mehanizma ESM-a Jedinstvenom odboru za sanaciju imaju status vjerovnika s pravom prvenstva, slično kao i drugi zajmovi ESM-a.”.

11. Uvodna izjava 14. zamjenjuje se sljedećim:

„(14) Države članice europodručja podržat će da ESM te druge države koje u koordinaciji s ESM-om daju bilateralne zajmove imaju jednakovrijedan status vjerovnika, uključujući i u vezi sa zajmovima u okviru zaštitnog mehanizma Jedinostvenom odboru za sanaciju.”.

12. Dodaju se sljedeće uvodne izjave:

„(15a) Članak 2. stavak 3. Ugovora o funkcioniranju Europske unije (UFEU) propisuje da države članice Europske unije koordiniraju svoje ekonomske politike u okviru odredaba UFEU-a. U skladu s člankom 5. stavkom 1. UFEU-a i člankom 121. UFEU-a, države članice Europske unije koordiniraju svoje ekonomske politike unutar Vijeća Europske unije. U skladu s time, ESM ne bi trebao biti usmjeren na koordinaciju ekonomskih politika između članica ESM-a, za što pravo Europske unije predviđa potrebne aranžmane. ESM poštuje ovlasti koje pravo Europske unije daje institucijama i tijelima Unije.

(15b) Članice ESM-a prepoznaju da je brzo i učinkovito donošenje odluka u okviru zaštitnog mehanizma i koordinacija s državama članicama sudionicama koje zajedno s ESM-om sudjeluju financiranju u okviru zaštitnog mehanizma za jedinstveni fond za sanaciju, ključno za osiguravanje djelotvornosti zajedničkog zaštitnog mehanizma i sanacija koje se njime financiraju, što se odražava i u mandatu zajedničkog zaštitnog mehanizma koji su šefovi država ili vlada država članica čija je valuta euro potvrdili 14. prosinca 2018. na sastanku na vrhu država članica europodručja, u uključivom sastavu. U mandatu su predviđeni kriteriji za plaćanje u okviru zaštitnog mehanizma, koji među ostalim uključuju načela krajnje nužde i srednjoročne fiskalne neutralnosti, puno poštovanje Uredbe (EU) br. 806/2014 Europskog parlamenta i Vijeća od 15. srpnja 2014. o utvrđivanju jedinstvenih pravila i jedinstvenog postupka za sanaciju kreditnih institucija i određenih investicijskih društava u okviru jedinstvenog sanacijskog mehanizma i jedinstvenog fonda za sanaciju te o izmjeni Uredbe (EU) br. 1093/2010* i Direktive 2014/59/EU od Europskog parlamenta i Vijeća od 15. svibnja 2014. o uspostavi okvira za oporavak i sanaciju kreditnih institucija i investicijskih društava te o izmjeni Direktive Vijeća 82/891/EEZ i direktiva 2001/24/EZ, 2002/47/EZ, 2004/25/EZ, 2005/56/EZ, 2007/36/EZ, 2011/35/EU, 2012/30/EU i 2013/36/EU, i Uredbi (EU) br. 1093/2010 i (EU) br. 648/2012**, i stabilnost pravnog okvira. Mandat predviđa donošenje odluke ESM-a o korištenju zaštitnog mehanizma, u pravilu, u roku od 12 sati od zahtjeva SRB-a, koji glavni direktor u iznimnim slučajevima može produžiti do 24 sata, osobito u slučaju posebno složenog postupka sanacije, uzimajući pritom u obzir nacionalne ustavne zahtjeve.

* SL L 225, 30.7.2014., str. 1.

** SL L 173, 12.6.2014., str. 190.”.

13. Uvodna izjava 16. zamjenjuje se sljedećim:

„(16) Ovim se Ugovorom priznaje neovisnost glavnog direktora i osoblja ESM-a. Ona bi se trebala izvršavati tako da se, ako je to relevantno i kako je predviđeno ovim Ugovorom, održava usklađenost s pravom Europske unije čiju primjenu nadzire Europska komisija.”.

14. Uvodna izjava 17. zamjenjuje se sljedećim:

„(17) 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. UFEU-a.

(18) ESM će uspostaviti odgovarajuće sustave upozorenja kako bi osigurao da pravodobno prima sve otplate dospjele u okviru potpore za stabilnost ili zaštitnog mehanizma. Nadzor nakon provedbe programa provodit će Europska komisija u suradnji s ESB-om te Vijeće Europske unije unutar okvira utvrđenog u skladu s člancima 121. i 136. UFEU-a.”.

B. Članci se mijenjaju kako slijedi:

15. Članak 3. zamjenjuje se sljedećim:

„ČLANAK 3.

Svrha

1. 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 apsolutno nužno za zaštitu financijske stabilnosti cjelokupnog europodručja i njegovih država članica. Kada mu je to potrebno za unutarnju pripremu i omogućavanje primjerenog i pravodobnog izvršavanja zadaća koje su mu dodijeljene ovim Ugovorom, ESM može pratiti i procjenjivati makroekonomsku i financijsku situaciju svojih članica, uključujući održivost njihova javnog duga, te provesti analizu relevantnih informacija i podataka. U tu svrhu, glavni direktor surađuje s Europskom komisijom i ESB-om kako bi osigurao potpunu usklađenost s okvirom za koordinaciju ekonomske politike predviđenim UFEU-om.
2. ESM može pružiti zaštitni mehanizam SRB-u za jedinstveni fond za sanaciju kao potporu korištenju sanacijskih instrumenata i izvršavanju sanacijskih ovlasti SRB-a, kako je sadržano u pravu Europske unije.
3. 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.

4. Ne dovodeći u pitanje stavak 1., primijenjeni uvjeti moraju biti primjereni odabranom instrumentu financijske pomoći, kako je utvrđeno u ovom Ugovoru.”.

16. U članku 4. stavku 4. prva rečenica zamjenjuje se sljedećim:

„Odstupajući od stavka 3. ovog članka, koristi se postupak hitnog glasovanja ako i Europska 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.”.

17. Članak 5. mijenja se kako slijedi:

(a) u stavku 4. dodaje se sljedeća rečenica:

„Predstavnici država članica sudionica koje zajedno s ESM-om sudjeluju u financiranju u okviru zaštitnog mehanizma za jedinstveni fond za sanaciju također se pozivaju da kao promatrači sudjeluju na sastancima Odbora guvernera na kojima se raspravlja o pitanjima koja se odnose na zajednički zaštitni mehanizam.”;

(b) stavak 6. mijenja se kako slijedi:

i. točka (a) zamjenjuje se sljedećim:

„(a) ukidanju hitnog pričuvnog fonda i prijenosu njegovih sredstava nazad u pričuvni fond i/ili uplaćeni kapital, u skladu s člankom 4. stavkom 4., ukidanju suspenzije primjene članka 18.a stavka 6. prvog podstavka, promjeni glasačke većine potrebne za donošenje odluke o zajmovima i povezanim isplatama u okviru zaštitnog mehanizma u postupku hitnog glasovanja, i o određivanju okolnosti pod kojima se ubuduće treba provesti preispitivanje, u skladu s člankom 18.a stavkom 6. trećim podstavkom;”;

ii. točka (f) zamjenjuje se sljedećim:

„(f) potpori za stabilnost koju pruža ESM, uključujući uvjete ekonomske politike kako je navedeno u memorandumu o razumijevanju iz članka 13. stavka 3. ili kako je navedeno u članku 14. stavku 2., te izboru instrumenata i određivanju financijskih i drugih uvjeta, u skladu s člancima od 12. do 18.;”;

iii. dodaje se sljedeća točka:

„(fa) promjeni kriterija prihvatljivosti za preventivnu financijsku pomoć utvrđenu u Prilogu III. u skladu s člankom 14. stavkom 1.;”;

iv. točka (g) zamjenjuje se sljedećim:

„(g) ovlašćivanju i. glavnog direktora i ii. Europske komisije, zajedno s ESB-om, da pregovaraju o uvjetima ekonomske politike koji se primjenjuju na financijsku pomoć, u skladu s člankom 13. stavkom 3;”;

v. dodaje se sljedeća točka:

„(ga) odobrenju zaštitnog mehanizma, u skladu s člankom 18.a stavkom 1. prvim podstavkom, promjeni kriterija za odobravanje zajmova i isplate u okviru zaštitnog mehanizma iz Priloga IV. u skladu s člankom 18.a stavkom 1. drugim podstavkom, utvrđivanju bilo kojeg elementa iz članka 18.a stavka 1. trećeg podstavka, i o prestanku ili nastavku tog zaštitnog mehanizma u skladu s člankom 18.a stavcima 1. i 8.;”;

vi. točka (h) zamjenjuje se sljedećim:

„(h) promjeni politike cijena i smjernica za određivanje cijena za financijsku pomoć ili zaštitni mehanizam za jedinstveni fond za sanaciju, u skladu s člankom 20.;”;

vii. točka (j) zamjenjuje se sljedećim:

„(j) određivanju pojedinosti o prijenosu potpora EFSF-a u ESM, uključujući stvaranje dodatne tranše odobrenog kapitala, u skladu s člankom 40;”.

18. Članak 6. mijenja se kako slijedi:

(a) u stavku 3. dodaje se sljedeća rečenica:

„Predstavnici država članica sudionica koje, uz ESM, sudjeluju u financiranju u okviru zaštitnog mehanizma za jedinstveni fond za sanaciju također se pozivaju da kao promatrači sudjeluju na sastancima Odbora direktora na kojima se raspravlja o pitanjima koja se odnose na zajednički zaštitni mehanizam.”;

(b) stavak 4. zamjenjuje se sljedećim:

„4. Odbor direktora može pozvati druge osobe, uključujući predstavnike institucija ili organizacija, da sudjeluju na sastancima kao promatrači na *ad hoc* osnovi.”.

19. U članku 7. stavku 4. dodaje se sljedeća rečenica:

„Glavni direktor i osoblje ESM-a odgovorni su samo ESM-u te svoje dužnosti obavljaju potpuno neovisno.”.

20. Članak 12. mijenja se kako slijedi:

(a) umeće se sljedeći stavak:

„1a. ESM može osigurati zaštitni mehanizam za jedinstveni fond za sanaciju, ne dovodeći u pitanje pravo Europske unije i nadležnosti institucija i tijela Europske unije. Zajmovi u okviru zaštitnog mehanizma odobravaju se samo u krajnjoj nuždi i u mjeri u kojoj su srednjoročno fiskalno neutralni.”;

(b) u stavku 3. dodaje se sljedeća rečenica:

„Skupno glasovanje u jednoj fazi primjenjuje se na sve nove državne vrijednosne papire iz europodručja, s dospijecem duljim od jedne godine, izdane 1. siječnja 2022. ili kasnije.”;

(c) dodaje se sljedeći stavak:

„4. Pri izvršavanju zadaća koje su joj dodijeljene ovim Ugovorom, Europska komisija će osigurati da su operacije financijske pomoći koje ESM provodi na temelju ovog Ugovora, ako je to relevantno, u skladu s pravom Europske unije, posebno s mjerama koordinacije ekonomske politike predviđenim UFEU-om.”.

21. Članak 13. mijenja se kako slijedi:

(a) stavak 1. mijenja se kako slijedi:

i. uvodni tekst zamjenjuje se sljedećim:

„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 i. glavnom direktoru i ii. Europskoj komisiji, u suradnji s ESB-om;”;

ii. točka (b) zamjenjuje se sljedećim;

„(b) procjenu održivosti javnog duga i mogućnosti otplate potpore za stabilnost. Ta se procjena provodi na transparentan i predvidljiv način, pri čemu je dopuštena odgovarajuća diskrecija u prosudbi. Očekuje se da se ova procjena provede u suradnji s MMF-om, kad god je to moguće i primjereno;”;

(b) stavak 2. zamjenjuje se sljedećim:

„2. Na temelju zahtjeva članice ESM-a i procjene iz stavka 1. ovoga članka, prijedloga glavnog direktora koji se temelji na tim procjenama i, ako je to primjenjivo, pozitivne procjene iz članka 14. stavaka 1. i 2., Odbor guvernera može odlučiti odobriti, u načelu, potporu za stabilnost dotičnoj članici ESM-a u obliku instrumenta financijske pomoći.”;

(c) u stavku 3. prvi podstavak zamjenjuje se sljedećim:

„3. Ako se donese odluka u skladu sa stavkom 2. u odnosu na bilo što osim u vezi s preventivnom uvjetnom kreditnom linijom, Odbor guvernera ovlašćuje i. glavnog direktora i ii. Europsku komisiju u suradnji s ESB-om, i, kad god je to moguće, zajedno s MMF-om, da u pregovorima s dotičnom članicom ESM-a dogovori memorandum o razumijevanju („MoR”) o pojedinostima uvjeta u vezi s instrumentom financijske pomoći. Sadržaj MoR-a odražava ozbiljnost nedostataka koje treba riješiti i odabrani instrument financijske pomoći. Glavni direktor priprema prijedlog sporazuma o instrumentu financijske pomoći, uključujući financijske i druge uvjete te izbor instrumenata, koji usvaja Odbor guvernera.”;

(d) stavak 4. zamjenjuje se sljedećim:

„4. Europska komisija i glavni direktor potpisuju MoR u ime ESM-a, ako su prethodno ispunjeni uvjeti utvrđeni u stavku 3. te ako ga je odobrio Odbor guvernera.”;

(e) stavak 7. zamjenjuje se sljedećim:

„7. I i. glavni direktor i ii. Europska komisija u suradnji s ESB-om i, kad god je to moguće, zajedno s MMF-om, ovlašteni su pratiti ispunjavanje uvjeta koji se odnose na instrument financijske pomoći.”;

(f) dodaje se sljedeći stavak:

„8. Uz prethodno sporazumno odobrenje Odbora direktora, ESM može sklopiti memorandum o suradnji s Europskom komisijom o pojedinostima uvjeta suradnje između glavnog direktora i Europske komisije u provedbi zadaća koje su im povjerene na temelju stavaka 1.,3. i 7. ovoga članka, kako je navedeno u članku 3. stavku 1.”.

22. Članak 14. zamjenjuje se sljedećim:

„ČLANAK 14.

Preventivna financijska pomoć ESM-a

1. Instrumenti preventivne financijske pomoći ESM-a pružaju potporu članicama ESM-a koje imaju zdrave ekonomske temelje, mogle bi biti pogođene negativnim šokovima koji su izvan njihove kontrole. Odbor guvernera može odlučiti odobriti preventivnu financijsku pomoć članici ESM-a čiji je državni dug održiv u obliku preventivne uvjetne kreditne linije ili u obliku kreditne linije pod proširenim uvjetima u skladu s člankom 12. stavkom 1., ako su ispunjeni kriteriji prihvatljivosti koji se primjenjuju za svaku vrstu takve pomoći kako je navedeno u Prilogu III.

Odbor guvernera može odlučiti promijeniti kriterije prihvatljivosti za preventivnu financijsku pomoć ESM-a i na odgovarajući način izmijeniti Prilog III. Takve izmjene stupaju na snagu nakon što članice ESM-a obavijeste depozitara o završetku svojih nacionalnih postupaka.

2. Uvjeti koji se primjenjuju na preventivnu uvjetnu kreditnu liniju uključuju trajno ispunjavanje kriterija prihvatljivosti iz Priloga III., na što se dotična članica ESM-a obvezuje u svom potpisanom zahtjevu u skladu s člankom 13. stavkom 1. u kojemu su istaknute njene glavne namjere u području politike („pismo namjere”). Po primitku tog pisma namjere, predsjedatelj Odbora guvernera povjerava Europskoj komisiji zadaću procjene jesu li namjere u području politike koje su navedene u pismu namjere u potpunosti u skladu s mjerama koordinacije ekonomske politike predviđene UFEU-om, osobito sa svim aktima prava Europske unije, uključujući sva mišljenja, upozorenja, preporuke ili zaključke upućene dotičnoj članici ESM-a. Odstupajući od članka 13. stavaka 3. i 4., MoR nije predmet pregovora.

3. Uvjeti koji se primjenjuju na kreditnu liniju pod proširenim uvjetima detaljno se navode u MoR-u, u skladu s člankom 13. stavkom 3., i moraju biti usklađeni s kriterijima prihvatljivosti iz Priloga III.

4. Financijski i drugi uvjeti preventivne financijske pomoći ESM-a utvrđuju se u sporazumu o instrumentu preventivne financijske pomoći, koji potpisuje glavni direktor.

5. Odbor direktora donosi detaljne smjernice o načinu provedbe preventivne financijske pomoći ESM-a.

6. Odbor direktora redovito, a najmanje svakih šest mjeseci ili nakon što članica ESM-a prvi put povuče sredstva (putem zajma ili kupnjom na primarnom tržištu), razmatra izvješće u skladu s člankom 13. stavkom 7. Za preventivnu uvjetnu kreditnu liniju izvješćem se provjerava kontinuirano ispunjavanje kriterija prihvatljivosti iz stavka 2. ovoga članka, dok se za kreditnu liniju pod proširenim uvjetima izvješćem provjerava usklađenost s uvjetima u području politike detaljno navedenim u MoR-u. Ako se izvješćem utvrdi da članica ESM-a i dalje ispunjava kriterije prihvatljivosti za preventivnu uvjetnu kreditnu liniju ili uvjete za kreditnu liniju pod proširenim uvjetima, kreditna linija se održava osim ako glavni direktor ili bilo koji direktor zatraži sporazumnu odluku Odbora direktora o tome treba li održavati kreditnu liniju.

7. Ako se izvješćem iz stavka 6. ovoga članka utvrdi da članica ESM-a više ne ispunjava kriterije prihvatljivosti za preventivnu uvjetnu kreditnu liniju ili uvjete za kreditnu liniju pod proširenim uvjetima, pristup kreditnoj liniji prekida se, osim ako Odbor direktora sporazumno odluči zadržati kreditnu liniju. Ako je članica ESM-a već povukla sredstva, primjenjuje se dodatna marža u skladu sa smjericama za određivanje cijena koje donosi Odbor guvernera u skladu s člankom 20. stavkom 2., osim ako Odbor direktora na temelju izvješća procijeni da je neispunjavanje uvjeta posljedica događaja koji su izvan kontrole članice ESM-a. Ako se kreditna linija ne održava, može se zatražiti i odobriti drugi oblik financijske pomoći u skladu s primjenjivim pravilima ovog Ugovora.”.

23. U članku 15. stavak 5. zamjenjuje se sljedećim:

„5. Ako je to primjenjivo, Odbor direktora sporazumno odlučuje, na prijedlog glavnog direktora i nakon što primi izvješće od glavnog direktora i Europske komisije u skladu s člankom 13. stavkom 7., o isplati tranša financijske pomoći nakon plaćanja prve tranše.”.

24. U članku 16. stavak 5. zamjenjuje se sljedećim:

„5. Odbor direktora sporazumno odlučuje, na prijedlog glavnog direktora i nakon što primi izvješće od glavnog direktora i Europske komisije u skladu s člankom 13. stavkom 7., o isplati tranša financijske pomoći nakon plaćanja prve tranše.”.

25. U članku 17. stavak 5. zamjenjuje se sljedećim:

„5. Odbor direktora sporazumno odlučuje, na prijedlog glavnog direktora i nakon što primi izvješće od glavnog direktora i Europske komisije u skladu s člankom 13. stavkom 7., o isplati financijske pomoći državi članici korisnici kroz operacije na primarnom tržištu.”.

26. Umeće se sljedeći članak:

„ČLANAK 18.a

Zaštitni mehanizam

1. Na temelju zahtjeva SRB-a za zaštitni mehanizam i prijedloga glavnog direktora, Odbor guvernera može odlučiti da se SRB-u odobri zaštitni mehanizam koji pokriva sve moguće upotrebe jedinstvenog fonda za sanaciju kako je utvrđeno u pravu Europske unije, podložno odgovarajućim mjerama zaštite.

Kriteriji za odobravanje zajmova i isplate u okviru zaštitnog mehanizma navedeni su u Prilogu IV. Odbor guvernera može odlučiti promijeniti kriterije za odobravanje zajmova i isplate te na odgovarajući način izmijeniti Prilog IV. Te izmjene stupaju na snagu nakon što članice ESM-a obavijeste depozitara o završetku svojih nacionalnih postupaka.

Odbor guvernera određuje ključne financijske i druge uvjete zaštitnog mehanizma, nominalnu gornju granicu i njezine moguće prilagodbe, odredbe o postupku provjere ispunjavanja uvjeta trajnosti pravnog okvira za sanaciju banaka, te o posljedicama za zaštitni mehanizam i njegovu primjenu, kao i uvjete pod kojima Odbor guvernera može odlučiti o prestanku zaštitnog mehanizma, i uvjete i rokove na temelju kojih Odbor guvernera može odlučiti hoće li nastaviti koristiti zaštitni mehanizma u skladu sa stavkom 8.

2. Zaštitni mehanizam ima oblik revolving kreditne linije u okviru koje se mogu dati zajmovi.

3. Detaljni financijski i drugi uvjeti zaštitnog mehanizma utvrđuju se sporazumom o zaštitnom mehanizmu sa SRB-om, koji sporazumno odobrava Odbor direktora i potpisuje glavni direktor.

4. Odbor direktora donosi i redovito razmatra detaljne smjernice o načinima provedbe zaštitnog mehanizma, uključujući postupke koji osiguravaju brzo donošenje odluka na temelju stavka 5.

5. Na temelju zahtjeva SRB-a za zajam, koji sadržava sve relevantne podatke poštujući zahtjeve povjerljivosti u okviru prava Europske unije, prijedloga glavnog direktora i procjene SRB-a o sposobnosti otplate i, ako je relevantno, procjene Europske komisije i ESB-a u skladu sa stavkom 6., Odbor direktora sporazumno odlučuje, uzimajući u obzir kriterije iz Priloga IV., o zajmovima i povezanim isplatama u okviru zaštitnog mehanizma. Odbor direktora može sporazumno odlučiti dodijeliti glavnom direktoru zadaću iz ovog stavka na određeno vrijeme i u određenom iznosu, u skladu s pravilima navedenim u smjernicama koje donosi Odbor direktora.

6. Odstupajući od članka 4. stavka 3., hitni postupak glasovanja koristi se ako Europska komisija i ESB u odvojenim procjenama zaključuju da bi nedonošenje hitne odluke Odbora direktora o zajmovima i povezanim plaćanjima prema zaštitnom mehanizmu na temelju prve rečenice stavka 5. ovoga članka ugrozilo gospodarsku i financijsku održivost europodručja. Donošenje takve sporazumne odluke prema tom hitnom postupku zahtijeva kvalificiranu većinu od 85% danih glasova. Ovaj se stavak ne primjenjuje ako i dok su u tijeku bilo kakvi postupci koji se odnose na trajnost pravnog okvira za sanaciju banaka na temelju stavka 8. ovoga članka i povezane odredbe koje je usvojio Odbor guvernera.

Kada se koristi hitni postupak naveden u prvom podstavku, izvršava se prijenos u pričuvni fond za hitne slučajeve, čime se stvara namjenska pričuva iz koje se pokrivaju rizici koji proizlaze iz zajmova i povezanih plaćanja koji su odobreni u tom hitnom postupku. Odbor direktora može sporazumno odlučiti ukinuti pričuvni fond za hitne slučajeve i prenijeti sredstva tog fonda natrag u pričuvni fond i/ili uplaćeni kapital.

Nakon dva slučaja korištenja ovog hitnog postupka glasovanja, primjena prvog podstavka suspendira se sve dok Odbor guvernera ne odluči ukinuti suspenziju. Kada odlučuje o ukidanju te suspenzije Odbor guvernera preispituje glasačku većinu koja je potrebna za donošenje odluke prema navedenom postupku i utvrđuje okolnosti u kojima se preispitivanje može provesti u budućnosti, te može odlučiti na odgovarajući način izmijeniti ovaj stavak, bez spuštanja praga glasovanja. Takva izmjena stupa na snagu nakon što članice ESM-a obavijeste depozitara o završetku svojih nacionalnih postupaka.

7. ESM uspostavlja odgovarajući sustav upozorenja kako bi osigurao pravovremeni primitak otplate duga u okviru zaštitnog mehanizma.

8. Zaštitni mehanizam i njegova uporaba na temelju ovog članka ovise o ispunjavanju uvjeta trajnosti pravnog okvira za sanaciju banaka. Ako nije ispunjen uvjet trajnosti pravnog okvira za sanaciju banaka, pokreće se sveobuhvatno preispitivanje, a za nastavak zaštitnog mehanizma potrebna je odluka Odbora guvernera. Odbor guvernera, na temelju stavka 1., utvrđuje daljnje odredbe o postupku provjere ispunjavanja uvjeta trajnosti pravnog okvira za sanaciju banaka i o posljedicama za zaštitni mehanizam i njegovu upotrebu.

9. Za potrebe stavka 8. ovoga članka, trajnost pravnog okvira za sanaciju banke uključuje:
 - (a) trajnost, kako je definirana u članku 9. stavku 1. Međuvladinog sporazuma od 21. svibnja 2014. o prijenosu i objedinjavanju doprinosa u jedinstveni fond za sanaciju („Međuvladin sporazum”), pravila iz članka 9. stavka 1. Međuvladinog sporazuma; i
 - (b) trajnost načela i pravila koja se odnose na *bail-in* instrument i okvir za minimalni zahtjev za regulatorni kapital i prihvatljive obveze iz Direktive 2014/59/EU, Uredbe (EU) br. 806/2014 i Uredbe (EU) br. 575/2013 Europskog parlamenta i Vijeće od 26. lipnja 2013. o bonitetnim zahtjevima za kreditne institucije i investicijska društva i o izmjeni Uredbe (EU) br. 648/2012*, u mjeri u kojoj su ta načela i pravila relevantna za očuvanje financijskih sredstava jedinstvenog fonda za sanaciju.

10. U provedbi ovog članka ESM blisko surađuje s državama članicama sudionicama koje zajedno s ESM-om sudjeluju u financiranju u okviru zaštitnog mehanizma za jedinstveni fond za sanaciju.

* SL L 176, 27.6.2013., str. 1.”.

27. U članku 19. naslov se zamjenjuje sljedećim:

„Preispitivanje i izmjene popisa instrumenata financijske pomoći”.

28. U članku 20. stavci 1. i 2. zamjenjuju se sljedećim:

„1. Pri odobravanju potpore za stabilnost ili financiranja u okviru zaštitnog mehanizma za jedinstveni fond za sanaciju, ESM nastoji u potpunosti pokriti svoje troškove financiranja i poslovanja te uključuje odgovarajuću maržu.

2. Za sve instrumente financijske pomoći i financiranje u okviru zaštitnog mehanizma za jedinstveni fond za sanaciju, cijene se detaljno navode u smjernicama za određivanje cijena koje donosi Odbor guvernera.”.

29. U članku 21. stavak 1. zamjenjuje se sljedećim:

„1. Za postizanje svoje svrhe ESM je ovlašten zaduživati se na tržištima kapitala kod banaka, financijskih institucija ili drugih osoba ili institucija.”.

30. U članku 30. stavak 5. zamjenjuje se sljedećim:

„5. Odbor guvernera osigurava pristup godišnjem izvješću nacionalnim parlamentima, vrhovnim revizijskim institucijama članica ESM-a, Europskom revizorskom sudu i Europskom parlamentu.”.

31. U članku 37. dodaje se sljedeći stavak:

„4. Svaki spor između članica ESM-a u vezi s ispunjavanjem uvjeta trajnost pravnog okvira za sanaciju banaka iz članka 18.a može se izravno podnijeti Sudu Europske unije u skladu s postupkom koji je utvrdio Odbor guvernera na temelju članka 18.a stavaka 1. i 8. Presuda Suda Europske unije obvezuje stranke u postupku; ESM je dužan postupiti u skladu s takvom presudom.”.

32. U članku 38. jedini stavak zamjenjuje se sljedećim:

„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, bilo kojom državom članicom Europske unije i bilo kojom međunarodnom organizacijom ili subjektom s posebnim ovlastima u srodnim područjima.”.

33. U članku 40. dodaje se sljedeći stavak:

„4. Ne dovodeći u pitanje članke od 8. do 11. i 39., kako bi se olakšao prijenos iz stavka 2. ovoga članka Odbor guvernera može stvoriti dodatnu tranšu odobrenog temeljnog kapitala, koju upisuju neki ili svi imatelji udjela u EFSF-u razmjerno ključu za doprinose iz Priloga 2. Okvirnog sporazuma o EFSF-u potpisanog 10. lipnja 2010. (kako je izmijenjen). Dodatna tranša sastoji se od kapitala na poziv, nema prava glasa (čak i ako se radi o kapitalu na poziv) te je ograničena najvećim iznosom koji odgovara ukupnom nepodmirenom iznosu glavnice prenesenih zajmova EFSF-a pomnoženom s postotkom koji ne prelazi 165 %. Odbor guvernera određuje način i okolnosti poziva na kapital i uplata u okviru dodatne tranše.

Prijenos iz stavka 2. ne povećava zbroj obveza EFSF-a i ESM-a u usporedbi sa scenarijem u kojemu se taj prijenos ne odvija. Dodatna tranša namijenjena je za potporu prijenosu zajmova EFSF-a i smanjuje se u skladu s otplatom navedenih zajmova.

Odluka Odbora guvernera iz prvog podstavka stupa na snagu nakon što članice ESM-a obavijeste depozitara o završetku svojih nacionalnih postupaka.”.

34. U članku 45. točke 1. i 2. zamjenjuju se sljedećim:

„1. Prilog I.: Ključ za doprinose ESM-u

2. Prilog II.: Upisi odobrenog temeljnog kapitala;
 3. Prilog III.: Kriteriji prihvatljivosti za preventivnu financijsku pomoć ESM-a; i
 4. Prilog IV.: Kriteriji za odobravanje zajmova i isplata u okviru zaštitnog mehanizma.”.
35. Sljedeći tekst dodaje se kao Prilog III.:

„PRILOG III.

Kriteriji prihvatljivosti za preventivnu financijsku pomoć ESM-a

1. Kriteriji u nastavku predstavljaju kriterije prihvatljivosti za preventivnu financijsku pomoć ESM-a i utvrđeni su uzimajući u obzir:
 - (a) izjavu sa sastanka na vrhu država članica europodručja od 14. prosinca 2018. u kojoj su potvrđeni uvjeti reforme ESM-a, i u kojoj se navodi da će se pojasniti preliminarni kriteriji prihvatljivosti kojima se procjenjuje dobro ekonomsko i financijsko poslovanje, te da će instrument kreditne linije pod proširenim uvjetima i dalje biti dostupan kako je predviđeno u važećim smjernicama ESM-a; i

- (b) zajedničko stajalište o budućoj suradnji između Europske komisije i ESM-a, koje je priloženo uvjetima reforme ESM-a te ulogama i odgovornostima institucija kako je predviđeno pravnim okvirom Europske unije.

Nadalje, vodi se računa i o tome da je postupak odobravanja preventivne financijske pomoći ESM-a u skladu s člancima 13. i 14. ovog Ugovora, da Odbor guvernera, u skladu s člankom 14. stavkom 1. ovog Ugovora, može odlučiti odobriti preventivnu financijsku pomoć članici ESM-a čiji je državni dug održiv, i da Odbor direktora donosi detaljne smjernice o načinima provedbe preventivne financijske pomoći ESM-a u skladu s člankom 14. stavkom 5 ovog Ugovora.

2. Kriteriji prihvatljivosti za odobravanje preventivne uvjetne kreditne linije:

Pristup preventivnoj uvjetnoj kreditnoj liniji temelji se na kriterijima prihvatljivosti i ograničen je na članice ESM-a čija ekonomska i financijska situacija imaju čvrste temelje i čiji je državni dug održiv. U pravilu, članice ESM-a trebaju zadovoljiti kvantitativna mjerila i ispunjavati kvalitativne uvjete koji se odnose na nadzor EU-a. Ispunjava li potencijalna korisnica članica ESM-a uvjete za odobravanje preventivne uvjetne kreditne linije procjenjuje se na temelju sljedećih kriterija:

- (a) poštovanje kvantitativnih fiskalnih mjerila. Članica ESM-a ne smije biti u postupku u slučaju prekomjernog deficita i mora ispuniti sljedeća tri mjerila u roku od dvije godine koje prethode podnošenju zahtjeva za preventivnu financijsku pomoć:
- i. deficit opće države ne prelazi 3 % BDP-a;
 - ii. strukturni proračunski saldo opće države na razini je minimalne referente vrijednosti ili iznad referentnih vrijednosti za pojedinu zemlju*;
 - iii. referentna vrijednost duga koja se sastoji od omjera duga opće države i BDP-a ispod 60 % ili smanjenje odstupanja do 60 % u prosjeku za jednu dvadesetinu godišnje u prethodne dvije godine;
- (b) nepostojanje prekomjernih neravnoteža. Članica ESM-a u okviru nadzora EU-a ne bi se trebala identificirati kao država suočena s prekomjernim neravnotežama;
- (c) evidenciju pristupa međunarodnim tržištima kapitala, ako je relevantno, pod razumnim uvjetima;
- (d) održiva vanjska pozicija; i
- (e) nepostojanje ozbiljnih slabosti financijskog sektora koje bi ugrozile financijsku stabilnost članice ESM-a.

3. Kriteriji prihvatljivosti za odobravanje kreditne linije pod proširenim uvjetima

Pristup kreditnoj liniji pod proširenim uvjetima otvoren je za članice ESM-a koje ne ispunjavaju uvjete za preventivnu uvjetnu kreditnu liniju zbog neispunjavanja nekih kriterija prihvatljivosti, ali čija je opća ekonomska i financijska situacija i dalje solidna te čiji je državni dug održiv.

-
- * Minimalna referentna vrijednost je razina strukturne ravnoteže koja osigurava sigurnosnu rezervu u odnosu na prag od 3% iz UFEU-a u normalnim cikličkim uvjetima. Uglavnom se koristi kao jedan od tri ulazna podatka za izračun minimalnog srednjoročnog cilja.”.

36. Sljedeći tekst dodaje se kao Prilog IV.:

„PRILOG IV.

Kriteriji za odobravanje zajmova i isplata u okviru zaštitnog mehanizma

1. Dolje navedeni kriteriji predstavljaju kriterije za odobravanje zajmova i isplata u okviru zaštitnog mehanizma i određeni su uzimajući u obzir:
 - (a) mandat zajedničkog zaštitnog mehanizma za jedinstveni fond za sanaciju koji je potvrđen na sastanku na vrhu država članica europodručja održanom 14. prosinca 2018.;

- (b) uvodnu izjavu 15.b ovog Ugovora u kojoj se podsjeća na mandat zajedničkog zaštitnog mehanizma za jedinstveni fond za sanaciju, koji je potvrđen na sastanku na vrhu država članica europodručja održanom 14. prosinca 2018., u kojem su predviđeni kriteriji za isplatu u okviru zaštitnog mehanizma uključujući, među ostalim, načela krajnje nužde i srednjoročne fiskalne neutralnosti, potpunu usklađenost s Uredbom (EU) br. 806/2014 i Direktivom 2014/59/EU, te trajnost pravnog okvira;
- (c) članak 12. stavak 1.a ovog Ugovora kojim se propisuje da se zajmovi u okviru zaštitnog mehanizma mogu odobriti samo u krajnjoj nuždi i u iznosu u kojem su srednjoročni fiskalno neutralni;
- (d) članak 18.a stavak 8. ovog Ugovora kojim se propisuje da bi zaštitni mehanizma i njegova upotreba morali biti uvjetovani ispunjavanjem uvjeta trajnosti pravnog okvira za sanaciju banaka i da Odbor guvernera, na temelju članka 18.a ovog Ugovora, određuje daljnje odredbe o postupku provjere ispunjavanja tog uvjeta i o posljedicama za zaštitni mehanizam i njegovu upotrebu;
- (e) članak 18.a stavak 5. ovog Ugovora kojim se propisuje da Odbor direktora, uzimajući u obzir kriterije iz ovog Priloga, sporazumno odlučuje o zajmovima i povezanim isplatama u okviru zaštitnog mehanizma,

te s obzirom na to da se postupkom za odobravanje i provedbu zaštitnog mehanizma slijedi članak 18.a ovog Ugovora i da Odbor direktora donosi detaljne smjernice o načinima provedbe zaštitnog mehanizma u skladu s člankom 18.a stavkom 4. ovog Ugovora.

2. Kriteriji za odobravanje zajmova i isplata u okviru zaštitnog mehanizma:
- (a) zaštitni mehanizam koristi se samo u slučaju krajnje nužde. Stoga:
 - i. financijska sredstva iz jedinstvenog fonda za sanaciju koja su dostupna za korištenje u skladu s člankom 76. Uredbe (EU) br. 806/2014 a još nisu dodijeljena mjerama sanacije, iscrpljena su, uključujući i slučajeve u kojima postoje dostupna financijska sredstva u jedinstvenom fondu za sanaciju, ali nisu dovoljna za slučaj sanacije koji se razmatra;
 - ii. naknadni doprinosi nisu dostatni ili nisu odmah dostupni; i
 - iii. SRB nije u mogućnosti zaduživati se pod uvjetima koji su za njega prihvatljivi u skladu s člancima 73. i 74. Uredbe (EU) br. 806/2014;
 - (b) poštuje se načelo srednjoročne fiskalne neutralnosti. Sposobnost SRB-a za otplatu dovoljna je za otplatu svih zajmova odobrenih u okviru zaštitnog mehanizma u srednjoročnom razdoblju;
 - (c) tražena sredstva dostupna su ESM-u. U slučaju gotovinskih isplata, ESM je dobio sredstva pod uvjetima prihvatljivim za ESM ili, u slučaju negotovinskih isplata, vrijednosni papiri su zakonito stvoreni i čuvaju se kod odgovarajućeg depozitarnog društva;

- (d) sve stranke Međuvladinog sporazuma, na čijim se područjima odvija relevantna sanacija, ispunjavaju svoje obveze u vezi s prijenosom doprinosa koji su primljeni od institucija ovlaštenih na njihovom području u jedinstveni fond za sanaciju;
- (e) nema neriješenog slučaja neplaćanja po zaduženjima SRB-a kod ESM-a ili kod bilo kojeg drugog vjerovnika, ili je SRB predstavio plan popravnih mjera za bilo koji tekući slučaj neplaćanja koji Odbor direktora smatra zadovoljavajućim;
- (f) uvjet trajnosti pravnog okvira za sanaciju banaka, kako je definiran u članku 18.a stavku 9. ovog Ugovora, ispunjen je, kako je utvrdio Odbor guvernera, u skladu s člankom 18.a stavcima 1. i 8. ovog Ugovora; i
- (g) relevantna sanacijska shema u potpunosti je usklađena s pravom Europske unije i stupila je na snagu u skladu s pravom Europske unije.”.

ČLANAK 2.

Polaganje

Ovaj Sporazum o izmjeni polaže se kod Glavnog tajništva Vijeća Europske unije („depozitar”), koje svim potpisnicama dostavlja ovjerene preslike.

ČLANAK 3

Konsolidacija

Depozitar priprema pročišćenu inačicu Ugovora o osnivanju Europskog stabilizacijskog mehanizma i šalje je svim potpisnicama.

ČLANAK 4

Ratifikacija, odobrenje ili prihvata

1. Ovaj Sporazum o izmjeni 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 5

Stupanje na snagu i pristupanje

1. Ovaj Sporazum o izmjeni stupa na snagu na dan kada sve potpisnice polože svoje isprave o ratifikaciji, odobrenju ili prihvatu.

2. Prije njegova stupanja na snagu, ovaj Sporazum o izmjeni otvoren je za pristupanje država članica Europske unije koje pristupaju Ugovoru o osnivanju Europskog stabilizacijskog mehanizma u skladu s člancima 2. i 44. tog sporazuma.

Članci 2. i 44. Ugovora o osnivanju Europskog stabilizacijskog mehanizma također se primjenjuju na pristupanju ovom Sporazumu o izmjeni.

Država članica pristupnica podnosi zahtjev za pristupanje ovom Sporazumu o izmjeni istodobno sa zahtjevom za pristupanje Ugovoru o osnivanju Europskog stabilizacijskog mehanizma.

Odobrenje zahtjeva od strane Odbora guvernera sukladno članku 44. Ugovora o osnivanju Europskog stabilizacijskog mehanizma počinje važiti uz istovremeno polaganje isprava o pristupanju i Ugovoru o osnivanju Europskog stabilizacijskog mehanizma i ovom Sporazumu o izmjeni.

Sastavljeno u jednom izvorniku, čiji su tekstovi na engleskom, estonskom, finskom, francuskom, grčkom, irskom, latvijskom, litavskom, malteškom, nizozemskom, njemačkom, portugalskom, slovačkom, slovenskom, španjolskom, švedskom i talijanskom jeziku jednako vjerodostojni.

Sastavljeno u Bruxellesu, dvadesetdevetog dana siječnja i osmog dana veljače dvije tisuće dvadeset i prve godine.

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

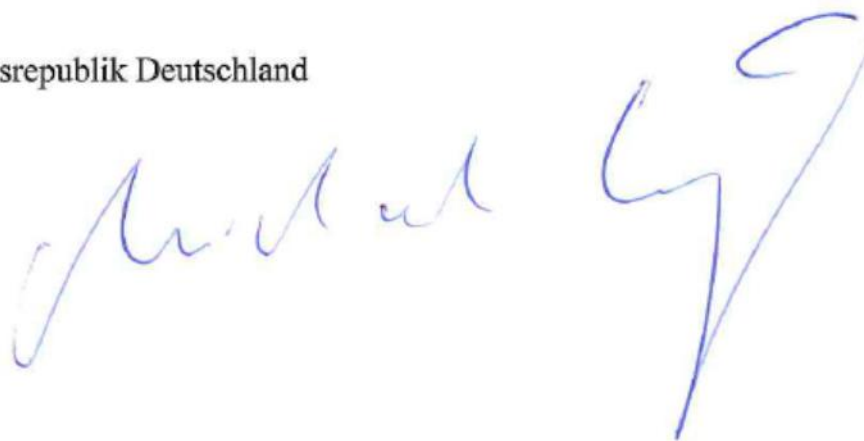


Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

Für die Bundesrepublik Deutschland



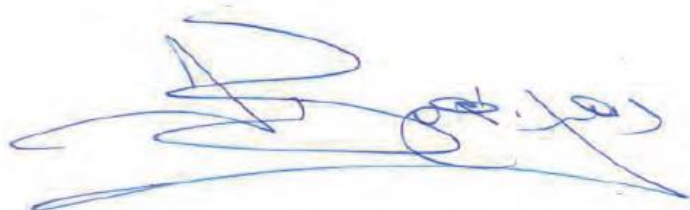
Eesti Vabariigi nimel



Thar cheann Na hÉireann
For Ireland

Jim Hanney

Για την Ελληνική Δημοκρατία



Por el Reino de España

M. de la Cruz A.L.

Pour la République française

Pésc

Per la Repubblica italiana

Για την Κυπριακή Δημοκρατία

Latvijas Republikas vārdā –

Lietuvos Respublikos vardu

Pour le Grand-Duché de Luxembourg

A handwritten signature in blue ink, appearing to be 'G. L.' or similar, with a long horizontal stroke at the end.

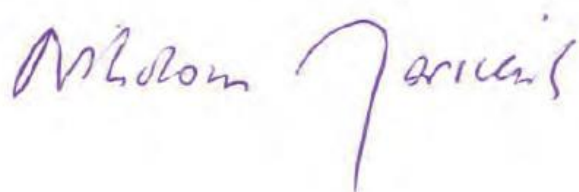
Għar-Repubblika ta' Malta

A handwritten signature in blue ink, appearing to be 'Pauline K...' with a long horizontal stroke at the end.

Voor het Koninkrijk der Nederlanden

A handwritten signature in blue ink, appearing to be 'A. P.' with a long horizontal stroke at the end.

Für die Republik Österreich

A handwritten signature in blue ink, appearing to be 'Adrian J...' with a long horizontal stroke at the end.

Pela República Portuguesa

Nuno Filipe Alves Salvador e Brito

Za Republiko Slovenijo

Lešič

Za Slovenskú republiku

Peter Vanč

Suomen tasavallan puolesta
För Republiken Finland

M. Kiskall

AGREEMENT
AMENDING THE TREATY
ESTABLISHING THE EUROPEAN STABILITY MECHANISM
BETWEEN THE KINGDOM OF BELGIUM, THE FEDERAL REPUBLIC OF GERMANY,
THE REPUBLIC OF ESTONIA, IRELAND, THE HELLENIC REPUBLIC,
THE KINGDOM OF SPAIN, THE FRENCH REPUBLIC,
THE ITALIAN REPUBLIC, THE REPUBLIC OF CYPRUS, THE REPUBLIC OF LATVIA,
THE REPUBLIC OF LITHUANIA, THE GRAND DUCHY OF LUXEMBOURG,
THE REPUBLIC OF 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

PREAMBLE

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 Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of 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 the "Signatories");

RECOGNISING the agreement to mobilise funding and to provide backstop financing for the purposes of the use of the Single Resolution Fund ("SRF"), owned by the Single Resolution Board ("SRB") established in accordance with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010¹;

RECOGNISING the key contribution of the European Stability Mechanism ("ESM") in crisis management by providing timely and effectively stability support to euro area Member States;

HAVING AGREED on a comprehensive package to further strengthen the Economic and Monetary Union;

¹ OJ L 225, 30.7.2014, p. 1.

AIMING at a further development of the ESM to strengthen the resilience and crisis resolution capabilities of the euro area, while continuing to fully respect European Union law;

RECALLING that at the Euro Summit of 29 June 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro stated that the ESM will provide the common backstop to the SRF and be strengthened on the basis of the elements set out in the letter of the President of the Euro Group dated 25 June 2018;

FURTHER RECALLING that at the Euro Summit of 14 December 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro endorsed the terms of reference of said common backstop and a term sheet on the reform of the ESM, and that, at the Euro Summit of 21 June 2019 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro took note of the broad agreement reached on the revision of the Treaty Establishing the European Stability Mechanism,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Amendments to the Treaty Establishing the European Stability Mechanism

The Treaty Establishing the European Stability Mechanism is amended as follows:

A. The preamble is amended as follows:

(1) Recital (4) is replaced by the following:

"(4) Strict observance of the European Union legal framework, the integrated framework for fiscal and 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."

(2) The following recitals are inserted:

"(5a) At the Euro Summit of 29 June 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro stated that the ESM will provide the common backstop to the Single Resolution Fund ('SRF') and be strengthened on the basis of the elements set out in the letter of the President of the Euro Group dated 25 June 2018. At the Euro Summit of 14 December 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro endorsed the terms of reference of said common backstop to be provided by the ESM, as well as a term sheet on the reform of the ESM. The term sheet on the reform of the ESM foresees that at the latest by the end of the transitional period, the common backstop to the SRF will be established. The term sheet on the reform of the ESM also foresees that the effectiveness of precautionary financial assistance instruments will be enhanced for ESM Members with sound economic fundamentals, which could be affected by an adverse shock beyond their control. In line with the joint position on future cooperation between the European Commission and the ESM as annexed to the term sheet on the reform of the ESM regarding the eligibility assessment under the precautionary credit line, depending on the precise scope of the eligibility criteria, the European Commission and the ESM will assume their respective roles in line with the law of the European Union, this Treaty and ESM guidelines. The term sheet on the reform of the ESM also foresees that an additional margin will be applied where an ESM Member having been granted ESM precautionary financial assistance fails to comply with the conditionality attached to it after having drawn funds, unless such non-compliance is due to events beyond the control of the government. The term sheet on the reform of the ESM furthermore highlights that conditionality remains an underlying principle of this Treaty and all ESM instruments, but the exact terms need to be adapted to each instrument.

(5b) The joint position on future cooperation between the ESM and the European Commission sets out the agreement on new modalities of cooperation within and outside financial assistance programmes. The European Commission and the ESM share common objectives and will exercise specific tasks related to crisis management for the euro area on the basis of European Union law and this Treaty. Therefore, the two institutions will work closely together on ESM crisis management measures with an efficient governance in pursuit of financial stability by complementing expertise. The European Commission ensures consistency with European Union law, in particular with the economic policy coordination framework. The ESM performs its analysis and assessment from the perspective of a lender. The joint position on future cooperation will be fully incorporated in a memorandum of cooperation, as set out in Article 13(8), when the amendments to this Treaty enter into force."

(3) In recital (7), the following sentence is added:

"ESM Members acknowledge the current dialogue between the Managing Director and the European Parliament."

(4) In recital (8), the third sentence is replaced by the following:

"A euro area Member State requesting financial assistance from the ESM is expected to address, whenever appropriate, a similar request to the IMF."

(5) The following recital is inserted:

"(9a) Member States of the European Union whose currency is not the euro and which have established a close cooperation with the European Central Bank ('ECB') in accordance with Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions* are expected to provide parallel credit lines for the SRF alongside the ESM. Those Member States will participate in the common backstop on equivalent terms ('Participating Member States'). Representatives of Participating Member States should be invited to attend meetings of the Board of Governors and Board of Directors as observers in which matters regarding the common backstop will be discussed and should have the same access to information. Appropriate arrangements for sharing of information and timely coordination between the ESM and Participating Member States should be established. It should be possible to invite representatives of the Single Resolution Board ('SRB') as observers on an *ad hoc* basis to attend meetings of the Board of Governors and the Board of Directors in which backstop financing will be discussed.

* OJ L 287, 29.10.2013, p. 63."

- (6) Recital (10) is replaced by the following:

"(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 ECB to perform the tasks provided for in this Treaty. It is acknowledged that the duties conferred within this Treaty on the European Commission and the ECB do not entail any powers to make decisions of their own and that the tasks executed by those two institutions on the basis of this Treaty solely commit the ESM."

- (7) In recital (11), the following sentences are added:

"Following the introduction of these CACs as of 1 January 2013, ESM Members commit to introduce CACs providing for single-limb aggregated voting ('single-limb CACs') by 2022. The detailed legal modalities will be agreed within the Economic and Financial Committee, taking into account national constitutional requirements, so that single-limb CACs will be implemented by all ESM Members in new euro area government securities in a way which ensures that their legal impact is identical."

- (8) The following recitals are inserted:

"(11a) Upon request by an ESM Member and where appropriate, the ESM may facilitate the dialogue between that ESM Member and its private investors on a voluntary, informal, non-binding, temporary, and confidential basis."

(11b) The ESM should provide stability support only to ESM Members whose debt is considered sustainable and whose repayment capacity to the ESM is confirmed. The assessment of debt sustainability and repayment capacity will be carried out on a transparent and predictable basis, while allowing for sufficient margin of judgment. Such assessments will be carried out by the European Commission in liaison with the ECB, and the ESM and wherever appropriate and possible together with the IMF in line with this Treaty, European Union law and the memorandum of cooperation entered into pursuant to Article 13(8). Where the collaboration does not yield a common view, the European Commission will make the overall assessment of the sustainability of public debt, while the ESM will assess the capacity of the ESM Member concerned to repay the ESM."

(9) Recital (12) is replaced by the following:

"(12) In exceptional cases, an adequate and proportionate form of private sector involvement, in accordance with IMF practice, shall be considered in cases where stability support is provided accompanied by conditionality in the form of a macro-economic adjustment programme."

(10) In recital (13), the following sentence is added:

"Backstop loans to the SRB by the ESM are to enjoy preferred creditor status in a similar fashion to other ESM loans."

(11) Recital 14 is replaced by the following:

"(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, including in relation to backstop loans to the SRB."

(12) The following recitals are inserted:

"(15a) Article 2(3) of the Treaty on the Functioning of the European Union ('TFEU') sets out that the Member States of the European Union shall coordinate their economic policies within arrangements determined by the TFEU. In accordance with Articles 5(1) TFEU and 121 TFEU the Member States of the European Union are to coordinate their economic policies within the Council of the European Union. Accordingly, the ESM should not serve the purpose of economic policies coordination among ESM Members for which European Union law provides the necessary arrangements. The ESM respects the powers conferred by European Union law on the Union institutions and bodies."

(15b) ESM Members recognise that swift and efficient decision-making under the backstop facility and coordination with Participating Member States participating alongside the ESM in backstop financing for the SRF is critical to ensure the effectiveness of the common backstop and of resolutions financed therewith, as reflected by the terms of reference of the common backstop endorsed by the Heads of State or Government of the Member States whose currency is the euro at the Euro Summit of 14 December 2018 in inclusive format. The terms of reference foresee criteria for disbursements under the backstop facility including inter alia the principles of last resort and fiscal neutrality over the medium term, full compliance with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010* ('SRMR') and with Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012** ('BRRD'), and permanence of the legal framework. The terms of reference foresee a decision by the ESM on the use of the backstop, as a rule, within 12 hours as of the request by the SRB, extendable by the Managing Director to 24 hours in exceptional cases, especially in the case of a particularly complex resolution operation, while respecting national constitutional requirements.

* OJ L 225, 30.7.2014, p. 1.

** OJ L 173, 12.6.2014, p. 190."

(13) Recital 16 is replaced by the following:

"(16) The independence of the Managing Director and staff of the ESM is recognised by this Treaty. It should be exercised in a manner such that, where relevant and as provided for in this Treaty, consistency is preserved with European Union law, whose application is overseen by the European Commission."

(14) Recital 17 is replaced by the following:

"(17) 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 TFEU.

(18) The ESM will establish appropriate warning systems with the aim of ensuring that it receives any repayments due under stability support or the backstop facility in a timely manner. Post-programme surveillance will be carried out by the European Commission in liaison with the ECB, and by the Council of the European Union within the framework laid down pursuant to Articles 121 and 136 TFEU,".

B. The Articles are amended as follows:

(15) Article 3 is replaced by the following:

"ARTICLE 3

Purposes

1. 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. Where relevant in order to internally prepare and enable it to appropriately and in a timely manner pursue the tasks conferred on it by this Treaty, the ESM may follow and assess the macroeconomic and financial situation of its Members including the sustainability of their public debt and carry out analysis of relevant information and data. To this end, the Managing Director shall collaborate with the European Commission and the ECB to ensure full consistency with the framework for economic policy coordination provided for in the TFEU.
2. The ESM may provide the backstop facility to the SRB for the SRF to support the application of the resolution tools and exercise of resolution powers of the SRB as enshrined in European Union law.
3. For these purposes, 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.

4. Without prejudice to paragraph 1, the conditionality applied shall be appropriate to the financial assistance instrument chosen, as laid down in this Treaty."

(16) In Article 4(4), the first sentence is replaced by the following:

"By way of derogation from paragraph 3 of this Article, an emergency voting procedure shall be used where the European 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."

(17) Article 5 is amended as follows:

(a) in paragraph 4, the following sentence is added:

"Representatives of Participating Member States participating alongside the ESM in backstop financing for the SRF shall also be invited to participate, as observers, in the meetings of the Board of Governors when matters regarding the common backstop will be discussed.";

(b) paragraph 6 is amended as follows:

(i) point (a) is replaced by the following:

"(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), to cancel the suspension of the application of the first subparagraph of Article 18a(6), to change the voting majority required for an adoption of a decision on loans and respective disbursements under the backstop facility under the emergency voting procedure and set the circumstances in which a review is to take place in the future, in accordance with the third subparagraph of Article 18a(6);";

(ii) point (f) is replaced by the following:

"(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) or as referred to in Article 14(2), and to establish the choice of instruments and the financial terms and conditions, in accordance with Articles 12 to 18;";

(iii) the following point is inserted:

"(fa) to change the eligibility criteria for precautionary financial assistance set out in Annex III in accordance with Article 14(1);";

(iv) point (g) is replaced by the following:

"(g) to entrust (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together to negotiate the economic policy conditionality attached to financial assistance, in accordance with Article 13(3);";

(v) the following point is inserted:

"(ga) to grant a backstop facility, in accordance with the first subparagraph of Article 18a(1), to change the criteria for the approval of loans and disbursements under the backstop facility set out in Annex IV in accordance with the second subparagraph of Article 18a(1), to determine any of the elements set out in the third subparagraph of Article 18a(1), and to decide on the termination or continuation of such backstop facility in accordance with Article 18a(1) and (8);";

(vi) point (h) is replaced by the following:

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

(vii) point (j) is replaced by the following:

"(j) to establish the modalities of the transfer of EFSF support to the ESM, including the creation of an additional tranche of authorised capital, in accordance with Article 40;".

(18) Article 6 is amended as follows:

(a) in paragraph 3, the following sentence is added:

"Representatives of Participating Member States participating alongside the ESM in backstop financing for the SRF shall also be invited to participate, as observers, in the meetings of the Board of Directors when matters regarding the common backstop will be discussed.";

(b) paragraph 4 is replaced by the following:

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

(19) In Article 7(4), the following sentence is added:

"The Managing Director and the staff of the ESM shall be responsible only to the ESM and shall be completely independent in the performance of their duties.".

(20) Article 12 is amended as follows:

(a) the following paragraph is inserted:

"1a. The ESM may provide the backstop facility for the SRF, without prejudice to European Union law and the competences of European Union institutions and bodies. Loans under the backstop facility shall only be granted as a last resort and to the extent that it is fiscally neutral in the medium term.";

(b) in paragraph 3, the following sentence is added:

"Single-limb aggregated voting shall apply to all new euro area government securities, with maturity above one year, issued on or after 1 January 2022.";

(c) the following paragraph is added:

"4. When exercising the tasks conferred on it in this Treaty, the European Commission will ensure that financial assistance operations provided by the ESM under this Treaty are, where relevant, consistent with European Union law, in particular with the measures of economic policy coordination provided for in the TFEU.".

(21) Article 13 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

"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, both (i) the Managing Director and (ii) the European Commission in liaison with the ECB, shall be entrusted by the Chairperson of the Board of Governors to together discharge the following tasks:";

(ii) point (b) is replaced by the following;

"(b) to assess whether public debt is sustainable and whether stability support can be repaid. This assessment shall be conducted in a transparent and predictable manner while allowing for sufficient margin of judgment. Wherever appropriate and possible, such an assessment is expected to be conducted together with the IMF;";

(b) paragraph 2 is replaced by the following:

"2. On the basis of the request of the ESM Member and the assessments referred to in paragraph 1 of this Article, a proposal by the Managing Director based on these assessments and, where applicable, the positive assessments referred to in Article 14(1) and (2), 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.";

- (c) in paragraph 3, the first subparagraph is replaced by the following:

"3. If a decision pursuant to paragraph 2 is adopted other than with respect to a precautionary conditioned credit line, the Board of Governors shall entrust (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together and, wherever possible, also 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. The Managing Director 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.";

- (d) paragraph 4 is replaced by the following:

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

- (e) paragraph 7 is replaced by the following:

"7. Both (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together and, wherever possible, also together with the IMF, shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.";

(f) the following paragraph is added:

"8. Subject to prior approval by the Board of Directors by mutual agreement, the ESM may enter into a memorandum of cooperation with the European Commission detailing the cooperation between the Managing Director and the European Commission in carrying out the tasks entrusted to them pursuant to paragraphs 1, 3 and 7 of this Article, and referred to in Article 3(1).".

(22) Article 14 is replaced by the following:

"ARTICLE 14

ESM precautionary financial assistance

1. ESM precautionary financial assistance instruments provide support to ESM Members with sound economic fundamentals which could be affected by an adverse shock beyond their control. The Board of Governors may decide to grant precautionary financial assistance to an ESM Member whose government debt is sustainable 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), subject to the fulfilment of eligibility criteria to be applied for each type of such assistance as provided for in Annex III.

The Board of Governors may decide to change the eligibility criteria for ESM precautionary financial assistance and amend Annex III accordingly. Such amendment shall enter into force after the ESM Members have notified the Depositary of the completion of their applicable national procedures.

2. The conditionality attached to a precautionary conditioned credit line shall consist of continuous respect of the eligibility criteria provided for in Annex III to which the ESM Member concerned shall commit in its signed request pursuant to Article 13(1) highlighting its main policy intentions ('Letter of Intent'). On receipt of such a Letter of Intent, the Chairperson of the Board of Governors shall entrust the European Commission with the task of assessing whether the policy intentions included in the Letter of Intent are 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. By way of derogation from Article 13(3) and (4), no MoU shall be negotiated.

3. The conditionality attached to an enhanced conditions credit line shall be detailed in the MoU, in accordance with Article 13(3), and be coherent with the eligibility criteria provided for in Annex III.

4. 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.

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

6. The Board of Directors shall regularly consider, at least every six months or after the ESM Member has drawn funds for the first time (via a loan or a primary market purchase), a report in accordance with Article 13(7). For a precautionary conditioned credit line, the report shall verify continuous respect of the eligibility criteria as referred to in paragraph 2 of this Article, whereas for an enhanced conditions credit line the report shall verify compliance with the policy conditions detailed in the MoU. Where the report concludes that the ESM Member continues to respect the eligibility criteria for the precautionary conditioned credit line or comply with the conditionality attached to the enhanced conditions credit line, the credit line shall be maintained unless the Managing Director or any Director requests a decision of the Board of Directors by mutual agreement whether the credit line should be maintained.

7. If the report pursuant to paragraph 6 of this Article concludes that the ESM Member no longer respects the eligibility criteria for the precautionary conditioned credit line or comply with the conditionality attached to the enhanced conditions credit line, access to the credit line shall be discontinued, unless the Board of Directors decides by mutual agreement to maintain the credit line. If the ESM Member has drawn funds before, an additional margin shall apply in line with the pricing guideline to be adopted by the Board of Governors pursuant to Article 20(2), unless the Board of Directors assesses on the basis of the report that non-compliance is due to events beyond the control of the ESM Member. If the credit line is not maintained, another form of financial assistance may be requested and granted in accordance with the applicable rules under this Treaty."

(23) In Article 15, paragraph 5 is replaced by the following:

"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 Managing Director and the European Commission in accordance with Article 13(7), the disbursement of the tranches of the financial assistance subsequent to the first tranche."

(24) In Article 16, paragraph 5 is replaced by the following:

"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 Managing Director and the European Commission in accordance with Article 13(7), the disbursement of the tranches of the financial assistance subsequent to the first tranche."

(25) In Article 17, paragraph 5 is replaced by the following:

"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 Managing Director and 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."

(26) The following article is inserted:

"ARTICLE 18a

Backstop facility

1. On the basis of a request for a backstop facility by the SRB and of a proposal by the Managing Director, the Board of Governors may decide to grant a backstop facility to the SRB covering all possible uses of the SRF as enshrined in European Union law, subject to adequate safeguards.

The criteria for the approval of loans and disbursements under the backstop facility are provided for in Annex IV. The Board of Governors may decide to change the criteria for the approval of loans and disbursements and amend Annex IV accordingly. Such amendment shall enter into force after the ESM Members have notified the Depositary of the completion of their applicable national procedures.

The Board of Governors shall determine the key financial terms and conditions of the backstop facility, the nominal cap and any adjustments to it, provisions on the procedure for the verification of compliance with the condition of permanence of the legal framework for bank resolution and on the consequences for the backstop facility and its use as well as the conditions upon which the Board of Governors may decide to terminate the backstop facility and the conditions and time limits upon which the Board of Governors may decide to continue the backstop facility pursuant to paragraph 8.

2. The backstop facility shall take the form of a revolving credit line under which loans can be provided.
3. The detailed financial terms and conditions of the backstop facility shall be specified in a backstop facility agreement with the SRB, to be approved by the Board of Directors by mutual agreement and signed by the Managing Director.
4. The Board of Directors shall adopt and regularly review the detailed guidelines on the modalities for implementing the backstop facility, including on procedures ensuring swift adoption of decisions pursuant to paragraph 5.
5. On the basis of a request for a loan by the SRB, containing all relevant information while respecting confidentiality requirements of European Union law, a proposal from the Managing Director and an assessment of the SRB's repayment capacity and, where relevant, the assessments by the European Commission and the ECB pursuant to paragraph 6, the Board of Directors shall decide by mutual agreement, guided by the criteria provided for in Annex IV, on loans and respective disbursements under the backstop facility. The Board of Directors may decide by mutual agreement to delegate to the Managing Director the task provided for in this paragraph for a specified period of time and amount, in line with the rules specified in guidelines adopted by the Board of Directors.

6. By way of derogation from Article 4(3), an emergency voting procedure shall be used where the European Commission and the ECB conclude in separate assessments that a failure to urgently adopt a decision by the Board of Directors on loans and respective disbursements under the backstop facility pursuant to the first sentence of paragraph 5 of this Article would threaten the economic and financial sustainability of the euro area. The adoption of such a decision by mutual agreement under that emergency procedure requires a qualified majority of 85 % of the votes cast. This paragraph does not apply if, and for as long as, any procedures are ongoing concerning the permanence of the legal framework for bank resolution pursuant to paragraph 8 of this Article and related provisions adopted by the Board of Governors.

Where the emergency procedure referred to in the first subparagraph is used, a transfer to an emergency reserve fund is made in order to constitute a dedicated buffer to cover the risks arising from the loans and respective disbursements approved under that emergency procedure. The Board of Directors may decide by mutual agreement to cancel the emergency reserve fund and transfer its content back to the reserve fund and/or paid-in capital.

After two instances of the use of this emergency voting procedure, the application of the first subparagraph shall be suspended until the Board of Governors decides to cancel such suspension. The Board of Governors, when deciding to cancel such suspension, shall review the voting majority required for an adoption of a decision under said procedure and set the circumstances in which a review is to take place in the future, and may decide to amend this paragraph accordingly, without lowering the voting threshold. Such amendment shall enter into force after the ESM Members have notified the Depositary of the completion of their applicable national procedures.

7. The ESM shall establish an appropriate warning system to ensure timely receipt of repayments due under the backstop facility.

8. The backstop facility and its use under this Article shall be contingent upon compliance with the condition of permanence of the legal framework for bank resolution. Where the condition of the permanence of the legal framework for bank resolution is not complied with, a comprehensive review will be initiated and a decision by the Board of Governors shall be required to continue the backstop facility. Further provisions on the procedure for the verification of compliance with the condition of permanence of the legal framework for bank resolution and on the consequences for the backstop facility and its use, shall be determined by the Board of Governors pursuant to paragraph 1.

9. For the purpose of paragraph 8 of this Article, the permanence of the legal framework for bank resolution shall consist of:

- (a) the permanence, as defined in Article 9(1) of the Intergovernmental Agreement of 21 May 2014 on the transfer and mutualisation of contributions to the Single Resolution Fund ('IGA'), of the rules defined in Article 9(1) IGA; and
- (b) the permanence of the principles and rules relating to the bail-in tool and to the framework on the minimum requirement for own funds and eligible liabilities laid down in BRRD, SRMR and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012*, to the extent that these principles and rules are relevant for preserving the financial means of the SRF.

10. In implementing this Article, the ESM shall cooperate closely with Participating Member States participating alongside the ESM in backstop financing for the SRF.

* OJ L 176, 27.6.2013, p. 1."

(27) In Article 19, the title is replaced by the following:

"Review of and amendments to the list of financial assistance instruments".

(28) In Article 20, paragraphs 1 and 2 are replaced by the following:

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

2. For all financial assistance instruments and backstop financing for the SRF, pricing shall be detailed in a pricing guideline, which shall be adopted by the Board of Governors."

(29) In Article 21, paragraph 1 is replaced by the following:

"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 purposes."

(30) In Article 30, paragraph 5 is replaced by the following:

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

(31) In Article 37, the following paragraph is added:

"4. Any dispute between ESM Members concerning the compliance with the condition of the permanence of the legal framework for bank resolution laid down in Article 18a may be directly submitted to the Court of Justice of the European Union in line with the procedure to be determined by the Board of Governors pursuant to Article 18a(1) and (8). The judgment of the Court of Justice of the European Union shall be binding on the parties to the procedure; the ESM shall act in conformity with such judgment."

(32) In Article 38 the sole paragraph is replaced by the following:

"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, any Member State of the European Union and any international organisation or entity having responsibilities in related fields."

(33) In Article 40, the following paragraph is added:

"4. Without prejudice to Articles 8 to 11 and 39, the Board of Governors may, in order to facilitate the transfer referred to in paragraph 2 of this Article, create an additional tranche of authorised capital, to be subscribed by some or all EFSF shareholders in proportion to the contribution key set out in Annex 2 to the EFSF Framework Agreement signed on 10 June 2010 (as amended). The additional tranche shall consist of callable capital, shall have no voting rights (even if such capital is called), and shall be subject to a maximum amount corresponding to the aggregate principal amount outstanding of the EFSF loan facilities transferred multiplied by a percentage no higher than 165 %. The Board of Governors shall determine the manner and circumstances of capital calls and payments under the additional tranche.

The transfer referred to in paragraph 2 shall not increase the sum of EFSF and ESM liabilities compared to a scenario where that transfer does not take place. The additional tranche shall support the transfer of the EFSF loans and shall be reduced in line with the repayment of said loans.

The decision by the Board of Governors under the first subparagraph shall enter into force after ESM Members have notified the Depositary of the completion of their applicable national procedures."

(34) In Article 45, points 1 and 2 are replaced by the following:

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

- 2) Annex II: Subscriptions to the authorised capital stock;
- 3) Annex III: Eligibility criteria for ESM precautionary financial assistance; and
- 4) Annex IV: Criteria for the approval of loans and disbursements under the backstop facility."

(35) The following text is added as Annex III:

"ANNEX III

Eligibility criteria for ESM precautionary financial assistance

1. The criteria below represent the eligibility criteria for ESM precautionary financial assistance and have been determined having regard to:
 - (a) the Euro Summit Statement of 14 December 2018 which endorsed the term sheet on the reform of the ESM, specifying that *ex ante* eligibility criteria assessing sound economic and financial performance will be clarified, and that the enhanced conditions credit line ('ECCL') instrument will continue to be available as foreseen in the current ESM guideline; and

- (b) the joint position on future cooperation between the European Commission and the ESM, as annexed to the term sheet on the reform of the ESM, as well as to the roles and competences of institutions as foreseen in the European Union legal framework.

Furthermore considering that the procedure for granting ESM precautionary financial assistance follows Articles 13 and 14 of this Treaty, and that according to Article 14(1) of this Treaty, the Board of Governors may decide to grant precautionary financial assistance to an ESM Member whose government debt is sustainable, and that the Board of Directors shall adopt the detailed guidelines on the modalities for implementing ESM precautionary financial assistance accordance with Article 14(5) of this Treaty.

2. Eligibility criteria for granting a precautionary conditioned credit line ('PCCL'):

Access to a PCCL shall be based on eligibility criteria and limited to ESM Members where the economic and financial situation is fundamentally strong and whose government debt is sustainable. As a rule, ESM Members need to meet quantitative benchmarks and comply with qualitative conditions related to EU surveillance. An assessment shall be made on whether a potential beneficiary ESM Member qualifies for a PCCL on the basis of the following criteria:

- (a) respect of the quantitative fiscal benchmarks. The ESM Member shall not be under excessive deficit procedure and needs to meet the three following benchmarks in the two years preceding the request for precautionary financial assistance:
 - (i) a general government deficit not exceeding 3 % of GDP;
 - (ii) a general government structural budget balance at or above the country specific minimum benchmark*;
 - (iii) a debt benchmark consisting of a general government debt to GDP ratio below 60 % or a reduction in the differential with respect to 60 % over the previous two years at an average rate of one twentieth per year;
- (b) absence of excessive imbalances. The ESM Member should not be identified as experiencing excessive imbalances under EU surveillance;
- (c) a track record of access to international capital markets, where relevant, on reasonable terms;
- (d) a sustainable external position; and
- (e) absence of severe financial sector vulnerabilities putting at risk the ESM Member's financial stability.

3. Eligibility criteria for granting an ECCL

Access to an ECCL shall be open to ESM Members that are not eligible to the PCCL because of non-compliance with some eligibility criteria but whose general economic and financial situation remains strong and whose government debt is sustainable.

-
- * The minimum benchmark is the level of the structural balance providing a safety margin against the 3 % TFEU threshold under normal cyclical conditions. It is mainly used as one of three inputs into the calculation of the minimum medium-term objective."

(36) The following text is added as Annex IV:

"ANNEX IV

Criteria for the approval of loans and disbursements under the backstop facility

1. The criteria below represent the criteria for the approval of loans and disbursements under the backstop facility and have been determined having regard to:
 - (a) The terms of reference of the common backstop to the SRF endorsed at the Euro Summit of 14 December 2018;

- (b) Recital 15b of this Treaty recalling that terms of reference of the common backstop to the SRF endorsed at the Euro Summit of 14 December 2018 foresee criteria for disbursements under the backstop facility including inter alia the principles of last resort and fiscal neutrality over the medium term, full compliance with SRMR and with BRRD, and permanence of the legal framework;
- (c) Article 12(1a) of this Treaty specifying that loans under the backstop facility shall only be granted as a last resort and to the extent that it is fiscally neutral in the medium term;
- (d) Article 18a(8) of this Treaty specifying that the backstop facility and its use shall be contingent upon compliance with the condition of permanence of the legal framework for bank resolution and that further provisions on the procedure on the verification of compliance with this condition and on the consequences for the backstop facility and its use shall be determined by the Board of Governors pursuant to Article 18a(1) of this Treaty;
- (e) Article 18a(5) of this Treaty specifying that the Board of Directors shall decide by mutual agreement, guided by the criteria provided for in this Annex, on loans and respective disbursements under the backstop facility,

and considering that the procedure for granting and implementing the backstop facility follows Article 18a of this Treaty and that the Board of Directors shall adopt detailed guidelines on the modalities for implementing the backstop facility in accordance with Article 18a(4) of this Treaty.

2. Criteria for the approval of loans and disbursements under the backstop facility:

- (a) Recourse to the backstop facility is of last resort. Therefore:
 - (i) the financial means of the SRF available to be used in accordance with Article 76 of the SRMR that are not already committed to resolution actions are depleted, including the situation where there are financial means available in the SRF, but those are insufficient for the resolution case at hand;
 - (ii) *ex post* contributions are not sufficient or not immediately available; and
 - (iii) the SRB is not able to borrow on terms and conditions considered acceptable by the SRB in accordance with Articles 73 and 74 of the SRMR;
- (b) The principle of fiscal neutrality over the medium term is respected. The repayment capacity of the SRB is sufficient to fully repay the loans granted under the backstop facility over the medium term;
- (c) The requested funds are available to the ESM. In the case of cash disbursements, the ESM has obtained the funds on terms acceptable to the ESM or, in the case of non-cash disbursements, the notes are legally created and held in custody of the applicable security depository;

- (d) All the parties to the IGA, in the territories of which the relevant resolution action takes place, have complied with their obligations to transfer contributions received from the institutions authorised in their territory to the SRF;
- (e) There is no ongoing event of default on borrowings of the SRB from the ESM or from any other creditor, or the SRB has presented a remedy plan in respect of any such ongoing event of default which is satisfactory to the Board of Directors;
- (f) The condition of permanence of the legal framework on bank resolution as defined in Article 18a(9) of this Treaty is complied with, as determined by the Board of Governors pursuant to Article 18a(1) and (8) of this Treaty; and
- (g) The dedicated resolution scheme is fully compliant with European Union law and has entered into force in accordance with European Union law."

ARTICLE 2

Deposit

This Amending Agreement 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 3

Consolidation

The Depositary shall establish a consolidated version of the Treaty Establishing the European Stability Mechanism and communicate it to all the Signatories.

ARTICLE 4

Ratification, approval or acceptance

1. This Amending Agreement 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 5

Entry into force and accession

1. This Amending Agreement shall enter into force on the date when instruments of ratification, approval or acceptance have been deposited by all the Signatories.

2. Before its entry into force, this Amending Agreement shall be open for accession by Member States of the European Union acceding to the Treaty Establishing the European Stability Mechanism in accordance with Articles 2 and 44 thereof.

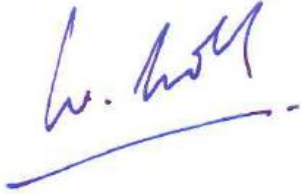
Articles 2 and 44 of the Treaty Establishing the European Stability Mechanism shall also apply to the accession to this Amending Agreement.

The acceding Member State shall be required to submit the application for accession to this Amending Agreement simultaneously with the application for accession to the Treaty Establishing the European Stability Mechanism. The approval of the application by the Board of Governors under Article 44 of the Treaty Establishing the European Stability Mechanism shall take effect upon simultaneous deposit of the instruments of accession to both the Treaty Establishing the European Stability Mechanism and this Amending Agreement.

Done in a single original, whose Dutch, English, Estonian, Finnish, French, German, Greek, Irish, Italian, Latvian, Lithuanian, Maltese, Portuguese, Slovak, Slovenian, Spanish and Swedish texts are equally authentic.

Done at Brussels on the twenty seventh day of January and on the eighth day of February in the year two thousand and twenty one.

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

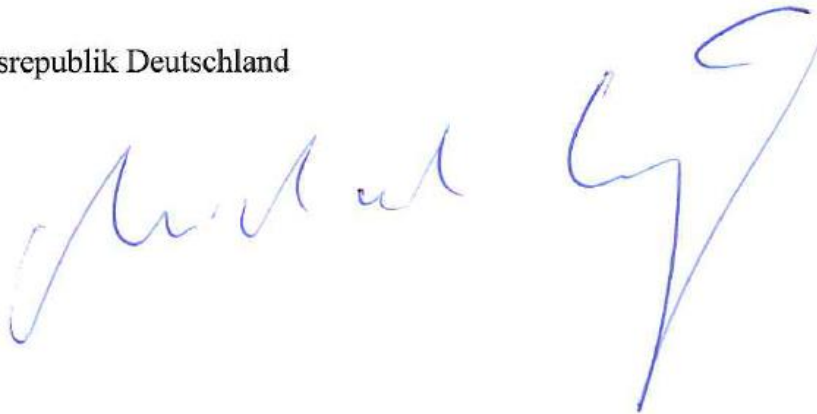


Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

Für die Bundesrepublik Deutschland



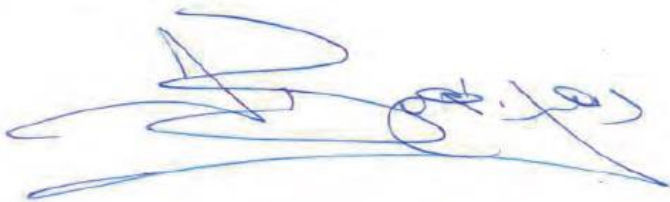
Eesti Vabariigi nimel



Thar cheann Na hÉireann
For Ireland

Tom Hannon

Για την Ελληνική Δημοκρατία



Por el Reino de España

Alfonso Sánchez

Pour la République française

Pesce

Per la Repubblica italiana

Για την Κυπριακή Δημοκρατία

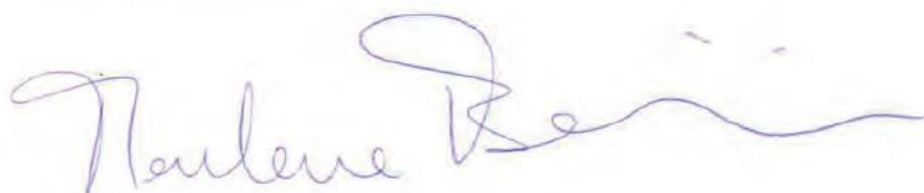
Latvijas Republikas vārdā –

Lietuvos Respublikos vardu

Pour le Grand-Duché de Luxembourg

A handwritten signature in blue ink, appearing to be a stylized name with a long horizontal stroke at the end.

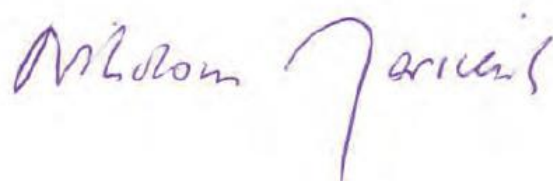
Għar-Repubblika ta' Malta

A handwritten signature in blue ink, written in a cursive style, appearing to be 'Nadine Zammit'.

Voor het Koninkrijk der Nederlanden

A handwritten signature in blue ink, appearing to be 'M. J. J. J.', written in a cursive style with a long horizontal stroke at the bottom.

Für die Republik Österreich

A handwritten signature in blue ink, appearing to be 'Michael J. J.', written in a cursive style.

Pela República Portuguesa

Nuno Filipe Alves Salvador e Brito

Za Republiko Slovenijo

Ležaji

Za Slovenskú republiku

Peter Vang

Suomen tasavallan puolesta
För Republiken Finland

M. Kislall

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 temeljnom 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 stupi 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 Sporazumu iz članka 1. ovoga Zakona kao izravna posljedica pristupanja Republike Hrvatske, kako su odobrene Rezolucijom iz stavka 1. ovoga članka i sadržane su u njezinim odgovarajućim prilozima, na engleskom i na hrvatskom jeziku glase:

Naslovnica

Dodati "REPUBLIKA HRVATSKA" iza "FRANCUSKA REPUBLIKA,"

Ugovorne stranke

Dodati "Republiku Hrvatsku" iza "Francusku Republiku",

Dodatak 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 Sporazuma o izmjeni Ugovora.

Cover page

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

Contracting parties

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

Addendum to the final clause of the Amending Agreement

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 Amending Agreement.

Članak 5.

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

Članak 6.

Na dan stupanja na snagu ovoga Zakona, Sporazum 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 7.

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 Sporazum o izmjeni 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, Republike Latvije, Republike Litve, Velikog Vojvodstva Luksemburga, Republike 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 pristupanju pri Glavnom tajništvu Vijeća Europske unije, kao depozitaru.

Članak 2. sadrži tekst Sporazuma o izmjeni 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 navode 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 Europskog stabilizacijskog mehanizma 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 priložima.

Člankom 5. utvrđuje se da je provedba ovoga Zakona u djelokrugu tijela državne uprave nadležnog za poslove financija.

Člankom 6. utvrđuje se da na dan stupanja na snagu Zakona, Sporazum o izmjeni Ugovora 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 7. uređuje se stupanje na snagu Zakona.

Prilog – Preslika teksta Sporazuma u izvorniku na engleskom jeziku

AGREEMENT
AMENDING THE TREATY
ESTABLISHING THE EUROPEAN STABILITY MECHANISM
BETWEEN THE KINGDOM OF BELGIUM, THE FEDERAL REPUBLIC OF GERMANY,
THE REPUBLIC OF ESTONIA, IRELAND, THE HELLENIC REPUBLIC,
THE KINGDOM OF SPAIN, THE FRENCH REPUBLIC,
THE ITALIAN REPUBLIC, THE REPUBLIC OF CYPRUS, THE REPUBLIC OF LATVIA,
THE REPUBLIC OF LITHUANIA, THE GRAND DUCHY OF LUXEMBOURG,
THE REPUBLIC OF 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

PREAMBLE

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 Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of 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 the "Signatories");

RECOGNISING the agreement to mobilise funding and to provide backstop financing for the purposes of the use of the Single Resolution Fund ("SRF"), owned by the Single Resolution Board ("SRB") established in accordance with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010¹;

RECOGNISING the key contribution of the European Stability Mechanism ("ESM") in crisis management by providing timely and effectively stability support to euro area Member States;

HAVING AGREED on a comprehensive package to further strengthen the Economic and Monetary Union;

¹ OJ L 225, 30.7.2014, p. 1.

AIMING at a further development of the ESM to strengthen the resilience and crisis resolution capabilities of the euro area, while continuing to fully respect European Union law;

RECALLING that at the Euro Summit of 29 June 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro stated that the ESM will provide the common backstop to the SRF and be strengthened on the basis of the elements set out in the letter of the President of the Euro Group dated 25 June 2018;

FURTHER RECALLING that at the Euro Summit of 14 December 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro endorsed the terms of reference of said common backstop and a term sheet on the reform of the ESM, and that, at the Euro Summit of 21 June 2019 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro took note of the broad agreement reached on the revision of the Treaty Establishing the European Stability Mechanism,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Amendments to the Treaty Establishing the European Stability Mechanism

The Treaty Establishing the European Stability Mechanism is amended as follows:

A. The preamble is amended as follows:

(1) Recital (4) is replaced by the following:

"(4) Strict observance of the European Union legal framework, the integrated framework for fiscal and 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."

(2) The following recitals are inserted:

"(5a) At the Euro Summit of 29 June 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro stated that the ESM will provide the common backstop to the Single Resolution Fund ('SRF') and be strengthened on the basis of the elements set out in the letter of the President of the Euro Group dated 25 June 2018. At the Euro Summit of 14 December 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro endorsed the terms of reference of said common backstop to be provided by the ESM, as well as a term sheet on the reform of the ESM. The term sheet on the reform of the ESM foresees that at the latest by the end of the transitional period, the common backstop to the SRF will be established. The term sheet on the reform of the ESM also foresees that the effectiveness of precautionary financial assistance instruments will be enhanced for ESM Members with sound economic fundamentals, which could be affected by an adverse shock beyond their control. In line with the joint position on future cooperation between the European Commission and the ESM as annexed to the term sheet on the reform of the ESM regarding the eligibility assessment under the precautionary credit line, depending on the precise scope of the eligibility criteria, the European Commission and the ESM will assume their respective roles in line with the law of the European Union, this Treaty and ESM guidelines. The term sheet on the reform of the ESM also foresees that an additional margin will be applied where an ESM Member having been granted ESM precautionary financial assistance fails to comply with the conditionality attached to it after having drawn funds, unless such non-compliance is due to events beyond the control of the government. The term sheet on the reform of the ESM furthermore highlights that conditionality remains an underlying principle of this Treaty and all ESM instruments, but the exact terms need to be adapted to each instrument.

(5b) The joint position on future cooperation between the ESM and the European Commission sets out the agreement on new modalities of cooperation within and outside financial assistance programmes. The European Commission and the ESM share common objectives and will exercise specific tasks related to crisis management for the euro area on the basis of European Union law and this Treaty. Therefore, the two institutions will work closely together on ESM crisis management measures with an efficient governance in pursuit of financial stability by complementing expertise. The European Commission ensures consistency with European Union law, in particular with the economic policy coordination framework. The ESM performs its analysis and assessment from the perspective of a lender. The joint position on future cooperation will be fully incorporated in a memorandum of cooperation, as set out in Article 13(8), when the amendments to this Treaty enter into force."

(3) In recital (7), the following sentence is added:

"ESM Members acknowledge the current dialogue between the Managing Director and the European Parliament."

(4) In recital (8), the third sentence is replaced by the following:

"A euro area Member State requesting financial assistance from the ESM is expected to address, whenever appropriate, a similar request to the IMF."

(5) The following recital is inserted:

"(9a) Member States of the European Union whose currency is not the euro and which have established a close cooperation with the European Central Bank ('ECB') in accordance with Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions* are expected to provide parallel credit lines for the SRF alongside the ESM. Those Member States will participate in the common backstop on equivalent terms ('Participating Member States'). Representatives of Participating Member States should be invited to attend meetings of the Board of Governors and Board of Directors as observers in which matters regarding the common backstop will be discussed and should have the same access to information. Appropriate arrangements for sharing of information and timely coordination between the ESM and Participating Member States should be established. It should be possible to invite representatives of the Single Resolution Board ('SRB') as observers on an *ad hoc* basis to attend meetings of the Board of Governors and the Board of Directors in which backstop financing will be discussed.

* OJ L 287, 29.10.2013, p. 63."

(6) Recital (10) is replaced by the following:

"(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 ECB to perform the tasks provided for in this Treaty. It is acknowledged that the duties conferred within this Treaty on the European Commission and the ECB do not entail any powers to make decisions of their own and that the tasks executed by those two institutions on the basis of this Treaty solely commit the ESM."

(7) In recital (11), the following sentences are added:

"Following the introduction of these CACs as of 1 January 2013, ESM Members commit to introduce CACs providing for single-limb aggregated voting ('single-limb CACs') by 2022. The detailed legal modalities will be agreed within the Economic and Financial Committee, taking into account national constitutional requirements, so that single-limb CACs will be implemented by all ESM Members in new euro area government securities in a way which ensures that their legal impact is identical."

(8) The following recitals are inserted:

"(11a) Upon request by an ESM Member and where appropriate, the ESM may facilitate the dialogue between that ESM Member and its private investors on a voluntary, informal, non-binding, temporary, and confidential basis."

(11b) The ESM should provide stability support only to ESM Members whose debt is considered sustainable and whose repayment capacity to the ESM is confirmed. The assessment of debt sustainability and repayment capacity will be carried out on a transparent and predictable basis, while allowing for sufficient margin of judgment. Such assessments will be carried out by the European Commission in liaison with the ECB, and the ESM and wherever appropriate and possible together with the IMF in line with this Treaty, European Union law and the memorandum of cooperation entered into pursuant to Article 13(8). Where the collaboration does not yield a common view, the European Commission will make the overall assessment of the sustainability of public debt, while the ESM will assess the capacity of the ESM Member concerned to repay the ESM."

(9) Recital (12) is replaced by the following:

"(12) In exceptional cases, an adequate and proportionate form of private sector involvement, in accordance with IMF practice, shall be considered in cases where stability support is provided accompanied by conditionality in the form of a macro-economic adjustment programme."

(10) In recital (13), the following sentence is added:

"Backstop loans to the SRB by the ESM are to enjoy preferred creditor status in a similar fashion to other ESM loans."

(11) Recital 14 is replaced by the following:

"(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, including in relation to backstop loans to the SRB."

(12) The following recitals are inserted:

"(15a) Article 2(3) of the Treaty on the Functioning of the European Union ('TFEU') sets out that the Member States of the European Union shall coordinate their economic policies within arrangements determined by the TFEU. In accordance with Articles 5(1) TFEU and 121 TFEU the Member States of the European Union are to coordinate their economic policies within the Council of the European Union. Accordingly, the ESM should not serve the purpose of economic policies coordination among ESM Members for which European Union law provides the necessary arrangements. The ESM respects the powers conferred by European Union law on the Union institutions and bodies.

(15b) ESM Members recognise that swift and efficient decision-making under the backstop facility and coordination with Participating Member States participating alongside the ESM in backstop financing for the SRF is critical to ensure the effectiveness of the common backstop and of resolutions financed therewith, as reflected by the terms of reference of the common backstop endorsed by the Heads of State or Government of the Member States whose currency is the euro at the Euro Summit of 14 December 2018 in inclusive format. The terms of reference foresee criteria for disbursements under the backstop facility including inter alia the principles of last resort and fiscal neutrality over the medium term, full compliance with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010* ('SRMR') and with Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012** ('BRRD'), and permanence of the legal framework. The terms of reference foresee a decision by the ESM on the use of the backstop, as a rule, within 12 hours as of the request by the SRB, extendable by the Managing Director to 24 hours in exceptional cases, especially in the case of a particularly complex resolution operation, while respecting national constitutional requirements.

* OJ L 225, 30.7.2014, p. 1.

** OJ L 173, 12.6.2014, p. 190."

(13) Recital 16 is replaced by the following:

"(16) The independence of the Managing Director and staff of the ESM is recognised by this Treaty. It should be exercised in a manner such that, where relevant and as provided for in this Treaty, consistency is preserved with European Union law, whose application is overseen by the European Commission."

(14) Recital 17 is replaced by the following:

"(17) 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 TFEU.

(18) The ESM will establish appropriate warning systems with the aim of ensuring that it receives any repayments due under stability support or the backstop facility in a timely manner. Post-programme surveillance will be carried out by the European Commission in liaison with the ECB, and by the Council of the European Union within the framework laid down pursuant to Articles 121 and 136 TFEU,".

B. The Articles are amended as follows:

(15) Article 3 is replaced by the following:

"ARTICLE 3

Purposes

1. 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. Where relevant in order to internally prepare and enable it to appropriately and in a timely manner pursue the tasks conferred on it by this Treaty, the ESM may follow and assess the macroeconomic and financial situation of its Members including the sustainability of their public debt and carry out analysis of relevant information and data. To this end, the Managing Director shall collaborate with the European Commission and the ECB to ensure full consistency with the framework for economic policy coordination provided for in the TFEU.
2. The ESM may provide the backstop facility to the SRB for the SRF to support the application of the resolution tools and exercise of resolution powers of the SRB as enshrined in European Union law.
3. For these purposes, 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.

4. Without prejudice to paragraph 1, the conditionality applied shall be appropriate to the financial assistance instrument chosen, as laid down in this Treaty."

(16) In Article 4(4), the first sentence is replaced by the following:

"By way of derogation from paragraph 3 of this Article, an emergency voting procedure shall be used where the European 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."

(17) Article 5 is amended as follows:

(a) in paragraph 4, the following sentence is added:

"Representatives of Participating Member States participating alongside the ESM in backstop financing for the SRF shall also be invited to participate, as observers, in the meetings of the Board of Governors when matters regarding the common backstop will be discussed.";

(b) paragraph 6 is amended as follows:

(i) point (a) is replaced by the following:

"(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), to cancel the suspension of the application of the first subparagraph of Article 18a(6), to change the voting majority required for an adoption of a decision on loans and respective disbursements under the backstop facility under the emergency voting procedure and set the circumstances in which a review is to take place in the future, in accordance with the third subparagraph of Article 18a(6);";

(ii) point (f) is replaced by the following:

"(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) or as referred to in Article 14(2), and to establish the choice of instruments and the financial terms and conditions, in accordance with Articles 12 to 18;";

(iii) the following point is inserted:

"(fa) to change the eligibility criteria for precautionary financial assistance set out in Annex III in accordance with Article 14(1);";

(iv) point (g) is replaced by the following:

"(g) to entrust (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together to negotiate the economic policy conditionality attached to financial assistance, in accordance with Article 13(3);";

(v) the following point is inserted:

"(ga) to grant a backstop facility, in accordance with the first subparagraph of Article 18a(1), to change the criteria for the approval of loans and disbursements under the backstop facility set out in Annex IV in accordance with the second subparagraph of Article 18a(1), to determine any of the elements set out in the third subparagraph of Article 18a(1), and to decide on the termination or continuation of such backstop facility in accordance with Article 18a(1) and (8);";

(vi) point (h) is replaced by the following:

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

(vii) point (j) is replaced by the following:

"(j) to establish the modalities of the transfer of EFSF support to the ESM, including the creation of an additional tranche of authorised capital, in accordance with Article 40;".

(18) Article 6 is amended as follows:

(a) in paragraph 3, the following sentence is added:

"Representatives of Participating Member States participating alongside the ESM in backstop financing for the SRF shall also be invited to participate, as observers, in the meetings of the Board of Directors when matters regarding the common backstop will be discussed.";

(b) paragraph 4 is replaced by the following:

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

(19) In Article 7(4), the following sentence is added:

"The Managing Director and the staff of the ESM shall be responsible only to the ESM and shall be completely independent in the performance of their duties.".

(20) Article 12 is amended as follows:

(a) the following paragraph is inserted:

"1a. The ESM may provide the backstop facility for the SRF, without prejudice to European Union law and the competences of European Union institutions and bodies. Loans under the backstop facility shall only be granted as a last resort and to the extent that it is fiscally neutral in the medium term.";

(b) in paragraph 3, the following sentence is added:

"Single-limb aggregated voting shall apply to all new euro area government securities, with maturity above one year, issued on or after 1 January 2022.";

(c) the following paragraph is added:

"4. When exercising the tasks conferred on it in this Treaty, the European Commission will ensure that financial assistance operations provided by the ESM under this Treaty are, where relevant, consistent with European Union law, in particular with the measures of economic policy coordination provided for in the TFEU.".

(21) Article 13 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

"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, both (i) the Managing Director and (ii) the European Commission in liaison with the ECB, shall be entrusted by the Chairperson of the Board of Governors to together discharge the following tasks:";

(ii) point (b) is replaced by the following;

"(b) to assess whether public debt is sustainable and whether stability support can be repaid. This assessment shall be conducted in a transparent and predictable manner while allowing for sufficient margin of judgment. Wherever appropriate and possible, such an assessment is expected to be conducted together with the IMF;";

(b) paragraph 2 is replaced by the following:

"2. On the basis of the request of the ESM Member and the assessments referred to in paragraph 1 of this Article, a proposal by the Managing Director based on these assessments and, where applicable, the positive assessments referred to in Article 14(1) and (2), 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.";

(c) in paragraph 3, the first subparagraph is replaced by the following:

"3. If a decision pursuant to paragraph 2 is adopted other than with respect to a precautionary conditioned credit line, the Board of Governors shall entrust (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together and, wherever possible, also 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. The Managing Director 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.";

(d) paragraph 4 is replaced by the following:

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

(e) paragraph 7 is replaced by the following:

"7. Both (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together and, wherever possible, also together with the IMF, shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.";

(f) the following paragraph is added:

"8. Subject to prior approval by the Board of Directors by mutual agreement, the ESM may enter into a memorandum of cooperation with the European Commission detailing the cooperation between the Managing Director and the European Commission in carrying out the tasks entrusted to them pursuant to paragraphs 1, 3 and 7 of this Article, and referred to in Article 3(1)."

(22) Article 14 is replaced by the following:

"ARTICLE 14

ESM precautionary financial assistance

1. ESM precautionary financial assistance instruments provide support to ESM Members with sound economic fundamentals which could be affected by an adverse shock beyond their control. The Board of Governors may decide to grant precautionary financial assistance to an ESM Member whose government debt is sustainable 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), subject to the fulfilment of eligibility criteria to be applied for each type of such assistance as provided for in Annex III.

The Board of Governors may decide to change the eligibility criteria for ESM precautionary financial assistance and amend Annex III accordingly. Such amendment shall enter into force after the ESM Members have notified the Depository of the completion of their applicable national procedures.

2. The conditionality attached to a precautionary conditioned credit line shall consist of continuous respect of the eligibility criteria provided for in Annex III to which the ESM Member concerned shall commit in its signed request pursuant to Article 13(1) highlighting its main policy intentions ('Letter of Intent'). On receipt of such a Letter of Intent, the Chairperson of the Board of Governors shall entrust the European Commission with the task of assessing whether the policy intentions included in the Letter of Intent are 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. By way of derogation from Article 13(3) and (4), no MoU shall be negotiated.

3. The conditionality attached to an enhanced conditions credit line shall be detailed in the MoU, in accordance with Article 13(3), and be coherent with the eligibility criteria provided for in Annex III.

4. 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.

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

6. The Board of Directors shall regularly consider, at least every six months or after the ESM Member has drawn funds for the first time (via a loan or a primary market purchase), a report in accordance with Article 13(7). For a precautionary conditioned credit line, the report shall verify continuous respect of the eligibility criteria as referred to in paragraph 2 of this Article, whereas for an enhanced conditions credit line the report shall verify compliance with the policy conditions detailed in the MoU. Where the report concludes that the ESM Member continues to respect the eligibility criteria for the precautionary conditioned credit line or comply with the conditionality attached to the enhanced conditions credit line, the credit line shall be maintained unless the Managing Director or any Director requests a decision of the Board of Directors by mutual agreement whether the credit line should be maintained.

7. If the report pursuant to paragraph 6 of this Article concludes that the ESM Member no longer respects the eligibility criteria for the precautionary conditioned credit line or comply with the conditionality attached to the enhanced conditions credit line, access to the credit line shall be discontinued, unless the Board of Directors decides by mutual agreement to maintain the credit line. If the ESM Member has drawn funds before, an additional margin shall apply in line with the pricing guideline to be adopted by the Board of Governors pursuant to Article 20(2), unless the Board of Directors assesses on the basis of the report that non-compliance is due to events beyond the control of the ESM Member. If the credit line is not maintained, another form of financial assistance may be requested and granted in accordance with the applicable rules under this Treaty."

(23) In Article 15, paragraph 5 is replaced by the following:

"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 Managing Director and the European Commission in accordance with Article 13(7), the disbursement of the tranches of the financial assistance subsequent to the first tranche."

(24) In Article 16, paragraph 5 is replaced by the following:

"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 Managing Director and the European Commission in accordance with Article 13(7), the disbursement of the tranches of the financial assistance subsequent to the first tranche."

(25) In Article 17, paragraph 5 is replaced by the following:

"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 Managing Director and 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."

(26) The following article is inserted:

"ARTICLE 18a

Backstop facility

1. On the basis of a request for a backstop facility by the SRB and of a proposal by the Managing Director, the Board of Governors may decide to grant a backstop facility to the SRB covering all possible uses of the SRF as enshrined in European Union law, subject to adequate safeguards.

The criteria for the approval of loans and disbursements under the backstop facility are provided for in Annex IV. The Board of Governors may decide to change the criteria for the approval of loans and disbursements and amend Annex IV accordingly. Such amendment shall enter into force after the ESM Members have notified the Depositary of the completion of their applicable national procedures.

The Board of Governors shall determine the key financial terms and conditions of the backstop facility, the nominal cap and any adjustments to it, provisions on the procedure for the verification of compliance with the condition of permanence of the legal framework for bank resolution and on the consequences for the backstop facility and its use as well as the conditions upon which the Board of Governors may decide to terminate the backstop facility and the conditions and time limits upon which the Board of Governors may decide to continue the backstop facility pursuant to paragraph 8.

2. The backstop facility shall take the form of a revolving credit line under which loans can be provided.
3. The detailed financial terms and conditions of the backstop facility shall be specified in a backstop facility agreement with the SRB, to be approved by the Board of Directors by mutual agreement and signed by the Managing Director.
4. The Board of Directors shall adopt and regularly review the detailed guidelines on the modalities for implementing the backstop facility, including on procedures ensuring swift adoption of decisions pursuant to paragraph 5.
5. On the basis of a request for a loan by the SRB, containing all relevant information while respecting confidentiality requirements of European Union law, a proposal from the Managing Director and an assessment of the SRB's repayment capacity and, where relevant, the assessments by the European Commission and the ECB pursuant to paragraph 6, the Board of Directors shall decide by mutual agreement, guided by the criteria provided for in Annex IV, on loans and respective disbursements under the backstop facility. The Board of Directors may decide by mutual agreement to delegate to the Managing Director the task provided for in this paragraph for a specified period of time and amount, in line with the rules specified in guidelines adopted by the Board of Directors.

6. By way of derogation from Article 4(3), an emergency voting procedure shall be used where the European Commission and the ECB conclude in separate assessments that a failure to urgently adopt a decision by the Board of Directors on loans and respective disbursements under the backstop facility pursuant to the first sentence of paragraph 5 of this Article would threaten the economic and financial sustainability of the euro area. The adoption of such a decision by mutual agreement under that emergency procedure requires a qualified majority of 85 % of the votes cast. This paragraph does not apply if, and for as long as, any procedures are ongoing concerning the permanence of the legal framework for bank resolution pursuant to paragraph 8 of this Article and related provisions adopted by the Board of Governors.

Where the emergency procedure referred to in the first subparagraph is used, a transfer to an emergency reserve fund is made in order to constitute a dedicated buffer to cover the risks arising from the loans and respective disbursements approved under that emergency procedure. The Board of Directors may decide by mutual agreement to cancel the emergency reserve fund and transfer its content back to the reserve fund and/or paid-in capital.

After two instances of the use of this emergency voting procedure, the application of the first subparagraph shall be suspended until the Board of Governors decides to cancel such suspension. The Board of Governors, when deciding to cancel such suspension, shall review the voting majority required for an adoption of a decision under said procedure and set the circumstances in which a review is to take place in the future, and may decide to amend this paragraph accordingly, without lowering the voting threshold. Such amendment shall enter into force after the ESM Members have notified the Depositary of the completion of their applicable national procedures.

7. The ESM shall establish an appropriate warning system to ensure timely receipt of repayments due under the backstop facility.
8. The backstop facility and its use under this Article shall be contingent upon compliance with the condition of permanence of the legal framework for bank resolution. Where the condition of the permanence of the legal framework for bank resolution is not complied with, a comprehensive review will be initiated and a decision by the Board of Governors shall be required to continue the backstop facility. Further provisions on the procedure for the verification of compliance with the condition of permanence of the legal framework for bank resolution and on the consequences for the backstop facility and its use, shall be determined by the Board of Governors pursuant to paragraph 1.
9. For the purpose of paragraph 8 of this Article, the permanence of the legal framework for bank resolution shall consist of:
 - (a) the permanence, as defined in Article 9(1) of the Intergovernmental Agreement of 21 May 2014 on the transfer and mutualisation of contributions to the Single Resolution Fund ('IGA'), of the rules defined in Article 9(1) IGA; and
 - (b) the permanence of the principles and rules relating to the bail-in tool and to the framework on the minimum requirement for own funds and eligible liabilities laid down in BRRD, SRMR and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012*, to the extent that these principles and rules are relevant for preserving the financial means of the SRF.

10. In implementing this Article, the ESM shall cooperate closely with Participating Member States participating alongside the ESM in backstop financing for the SRF.

* OJ L 176, 27.6.2013, p. 1."

(27) In Article 19, the title is replaced by the following:

"Review of and amendments to the list of financial assistance instruments".

(28) In Article 20, paragraphs 1 and 2 are replaced by the following:

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

2. For all financial assistance instruments and backstop financing for the SRF, pricing shall be detailed in a pricing guideline, which shall be adopted by the Board of Governors."

(29) In Article 21, paragraph 1 is replaced by the following:

"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 purposes."

(30) In Article 30, paragraph 5 is replaced by the following:

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

(31) In Article 37, the following paragraph is added:

"4. Any dispute between ESM Members concerning the compliance with the condition of the permanence of the legal framework for bank resolution laid down in Article 18a may be directly submitted to the Court of Justice of the European Union in line with the procedure to be determined by the Board of Governors pursuant to Article 18a(1) and (8). The judgment of the Court of Justice of the European Union shall be binding on the parties to the procedure; the ESM shall act in conformity with such judgment."

(32) In Article 38 the sole paragraph is replaced by the following:

"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, any Member State of the European Union and any international organisation or entity having responsibilities in related fields."

(33) In Article 40, the following paragraph is added:

"4. Without prejudice to Articles 8 to 11 and 39, the Board of Governors may, in order to facilitate the transfer referred to in paragraph 2 of this Article, create an additional tranche of authorised capital, to be subscribed by some or all EFSF shareholders in proportion to the contribution key set out in Annex 2 to the EFSF Framework Agreement signed on 10 June 2010 (as amended). The additional tranche shall consist of callable capital, shall have no voting rights (even if such capital is called), and shall be subject to a maximum amount corresponding to the aggregate principal amount outstanding of the EFSF loan facilities transferred multiplied by a percentage no higher than 165 %. The Board of Governors shall determine the manner and circumstances of capital calls and payments under the additional tranche.

The transfer referred to in paragraph 2 shall not increase the sum of EFSF and ESM liabilities compared to a scenario where that transfer does not take place. The additional tranche shall support the transfer of the EFSF loans and shall be reduced in line with the repayment of said loans.

The decision by the Board of Governors under the first subparagraph shall enter into force after ESM Members have notified the Depositary of the completion of their applicable national procedures."

(34) In Article 45, points 1 and 2 are replaced by the following:

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

- 2) Annex II: Subscriptions to the authorised capital stock;
- 3) Annex III: Eligibility criteria for ESM precautionary financial assistance; and
- 4) Annex IV: Criteria for the approval of loans and disbursements under the backstop facility."

(35) The following text is added as Annex III:

"ANNEX III

Eligibility criteria for ESM precautionary financial assistance

1. The criteria below represent the eligibility criteria for ESM precautionary financial assistance and have been determined having regard to:
 - (a) the Euro Summit Statement of 14 December 2018 which endorsed the term sheet on the reform of the ESM, specifying that *ex ante* eligibility criteria assessing sound economic and financial performance will be clarified, and that the enhanced conditions credit line ('ECCL') instrument will continue to be available as foreseen in the current ESM guideline; and

- (b) the joint position on future cooperation between the European Commission and the ESM, as annexed to the term sheet on the reform of the ESM, as well as to the roles and competences of institutions as foreseen in the European Union legal framework.

Furthermore considering that the procedure for granting ESM precautionary financial assistance follows Articles 13 and 14 of this Treaty, and that according to Article 14(1) of this Treaty, the Board of Governors may decide to grant precautionary financial assistance to an ESM Member whose government debt is sustainable, and that the Board of Directors shall adopt the detailed guidelines on the modalities for implementing ESM precautionary financial assistance accordance with Article 14(5) of this Treaty.

2. Eligibility criteria for granting a precautionary conditioned credit line ('PCCL'):

Access to a PCCL shall be based on eligibility criteria and limited to ESM Members where the economic and financial situation is fundamentally strong and whose government debt is sustainable. As a rule, ESM Members need to meet quantitative benchmarks and comply with qualitative conditions related to EU surveillance. An assessment shall be made on whether a potential beneficiary ESM Member qualifies for a PCCL on the basis of the following criteria:

- (a) respect of the quantitative fiscal benchmarks. The ESM Member shall not be under excessive deficit procedure and needs to meet the three following benchmarks in the two years preceding the request for precautionary financial assistance:
 - (i) a general government deficit not exceeding 3 % of GDP;
 - (ii) a general government structural budget balance at or above the country specific minimum benchmark*;
 - (iii) a debt benchmark consisting of a general government debt to GDP ratio below 60 % or a reduction in the differential with respect to 60 % over the previous two years at an average rate of one twentieth per year;
- (b) absence of excessive imbalances. The ESM Member should not be identified as experiencing excessive imbalances under EU surveillance;
- (c) a track record of access to international capital markets, where relevant, on reasonable terms;
- (d) a sustainable external position; and
- (e) absence of severe financial sector vulnerabilities putting at risk the ESM Member's financial stability.

3. Eligibility criteria for granting an ECCL

Access to an ECCL shall be open to ESM Members that are not eligible to the PCCL because of non-compliance with some eligibility criteria but whose general economic and financial situation remains strong and whose government debt is sustainable.

-
- * The minimum benchmark is the level of the structural balance providing a safety margin against the 3 % TFEU threshold under normal cyclical conditions. It is mainly used as one of three inputs into the calculation of the minimum medium-term objective."

(36) The following text is added as Annex IV:

"ANNEX IV

Criteria for the approval of loans and disbursements under the backstop facility

1. The criteria below represent the criteria for the approval of loans and disbursements under the backstop facility and have been determined having regard to:
 - (a) The terms of reference of the common backstop to the SRF endorsed at the Euro Summit of 14 December 2018;

- (b) Recital 15b of this Treaty recalling that terms of reference of the common backstop to the SRF endorsed at the Euro Summit of 14 December 2018 foresee criteria for disbursements under the backstop facility including inter alia the principles of last resort and fiscal neutrality over the medium term, full compliance with SRMR and with BRRD, and permanence of the legal framework;
- (c) Article 12(1a) of this Treaty specifying that loans under the backstop facility shall only be granted as a last resort and to the extent that it is fiscally neutral in the medium term;
- (d) Article 18a(8) of this Treaty specifying that the backstop facility and its use shall be contingent upon compliance with the condition of permanence of the legal framework for bank resolution and that further provisions on the procedure on the verification of compliance with this condition and on the consequences for the backstop facility and its use shall be determined by the Board of Governors pursuant to Article 18a(1) of this Treaty;
- (e) Article 18a(5) of this Treaty specifying that the Board of Directors shall decide by mutual agreement, guided by the criteria provided for in this Annex, on loans and respective disbursements under the backstop facility,

and considering that the procedure for granting and implementing the backstop facility follows Article 18a of this Treaty and that the Board of Directors shall adopt detailed guidelines on the modalities for implementing the backstop facility in accordance with Article 18a(4) of this Treaty.

2. Criteria for the approval of loans and disbursements under the backstop facility:
- (a) Recourse to the backstop facility is of last resort. Therefore:
 - (i) the financial means of the SRF available to be used in accordance with Article 76 of the SRMR that are not already committed to resolution actions are depleted, including the situation where there are financial means available in the SRF, but those are insufficient for the resolution case at hand;
 - (ii) *ex post* contributions are not sufficient or not immediately available; and
 - (iii) the SRB is not able to borrow on terms and conditions considered acceptable by the SRB in accordance with Articles 73 and 74 of the SRMR;
 - (b) The principle of fiscal neutrality over the medium term is respected. The repayment capacity of the SRB is sufficient to fully repay the loans granted under the backstop facility over the medium term;
 - (c) The requested funds are available to the ESM. In the case of cash disbursements, the ESM has obtained the funds on terms acceptable to the ESM or, in the case of non-cash disbursements, the notes are legally created and held in custody of the applicable security depository;

- (d) All the parties to the IGA, in the territories of which the relevant resolution action takes place, have complied with their obligations to transfer contributions received from the institutions authorised in their territory to the SRF;
- (e) There is no ongoing event of default on borrowings of the SRB from the ESM or from any other creditor, or the SRB has presented a remedy plan in respect of any such ongoing event of default which is satisfactory to the Board of Directors;
- (f) The condition of permanence of the legal framework on bank resolution as defined in Article 18a(9) of this Treaty is complied with, as determined by the Board of Governors pursuant to Article 18a(1) and (8) of this Treaty; and
- (g) The dedicated resolution scheme is fully compliant with European Union law and has entered into force in accordance with European Union law."

ARTICLE 2

Deposit

This Amending Agreement 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 3

Consolidation

The Depositary shall establish a consolidated version of the Treaty Establishing the European Stability Mechanism and communicate it to all the Signatories.

ARTICLE 4

Ratification, approval or acceptance

1. This Amending Agreement 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 5

Entry into force and accession

1. This Amending Agreement shall enter into force on the date when instruments of ratification, approval or acceptance have been deposited by all the Signatories.

2. Before its entry into force, this Amending Agreement shall be open for accession by Member States of the European Union acceding to the Treaty Establishing the European Stability Mechanism in accordance with Articles 2 and 44 thereof.

Articles 2 and 44 of the Treaty Establishing the European Stability Mechanism shall also apply to the accession to this Amending Agreement.

The acceding Member State shall be required to submit the application for accession to this Amending Agreement simultaneously with the application for accession to the Treaty Establishing the European Stability Mechanism. The approval of the application by the Board of Governors under Article 44 of the Treaty Establishing the European Stability Mechanism shall take effect upon simultaneous deposit of the instruments of accession to both the Treaty Establishing the European Stability Mechanism and this Amending Agreement.

Done in a single original, whose Dutch, English, Estonian, Finnish, French, German, Greek, Irish, Italian, Latvian, Lithuanian, Maltese, Portuguese, Slovak, Slovenian, Spanish and Swedish texts are equally authentic.

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

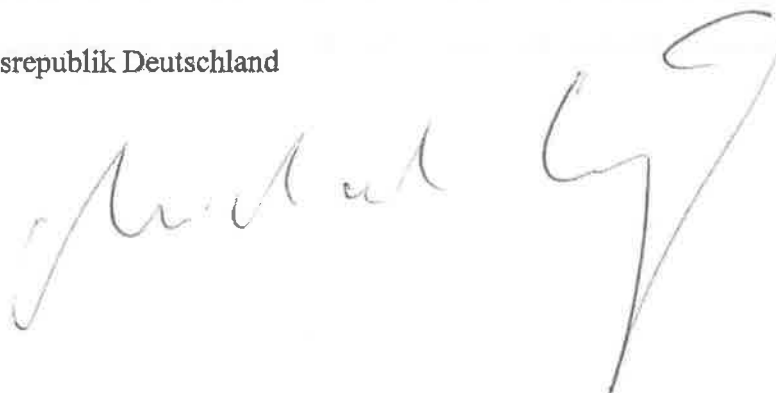


Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

Für die Bundesrepublik Deutschland



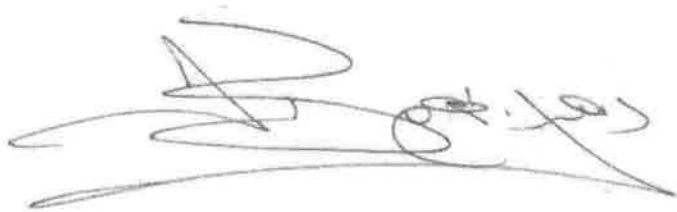
Eesti Vabariigi nimel



Thar cheann Na hÉireann
For Ireland

Sam Hanny

Για την Ελληνική Δημοκρατία



Por el Reino de España

Alfonso de Sotomayor A.A.

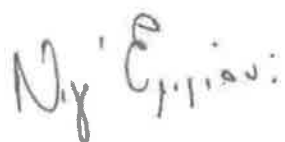
Pour la République française

Pésc

Per la Repubblica italiana



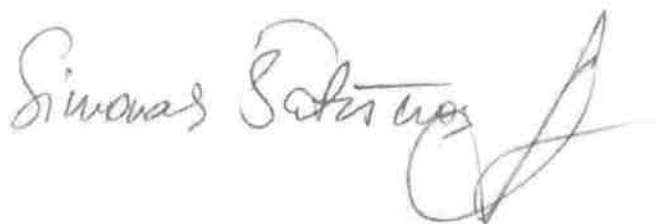
Για την Κυπριακή Δημοκρατία



Latvijas Republikas vārdā –



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg

A handwritten signature in black ink, appearing to be a stylized monogram or initials.

Ghar-Repubblika ta' Malta

A handwritten signature in black ink, written in a cursive style, possibly reading "Pauline Kain".

Voor het Koninkrijk der Nederlanden

A handwritten signature in black ink, written in a cursive style, possibly reading "M. Faal".

Für die Republik Österreich

A handwritten signature in black ink, written in a cursive style, possibly reading "Mladen Jovicic".

Pela República Portuguesa

Mano Felipe Alves Salvador e Brito

Za Republiko Slovenijo

Leto/i

Za Slovenskú republiku

Peter Vang

Suomen tasavallan puolesta
För Republiken Finland

M. Ristolainen