



European
Commission

Economic & Monetary Union

Main Legal Texts
& Policy Documents
for Further Strengthening of
the Economic and Monetary Union
2018

Part 1
The Economic and Monetary Union today

LEGAL TEXTS



Economic and
Financial Affairs

This compilation, issued by the European Commission, brings together **core legal texts** on the EMU and the euro.

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European Commission
Directorate-General for Economic and Financial Affairs

Economic and Monetary Union

Main Legal Texts and Policy Documents
for Further Strengthening of the Economic and Monetary Union

2018

PART 1: The Economic and Monetary Union today



PREFACE



The introduction of the single currency on 1 January 1999 is a key event in the history of the European Union. Following successive enlargements, the euro area currently numbers 19 EU Member States. More than 340 million people now live in a single currency area.

The establishment of the Economic and Monetary Union (EMU) has, *inter alia*, required an intense legislative activity to lay the institutional foundations and set the rules governing the behaviour of euro area members. This compilation, issued by the European Commission, brings together the core legal texts on the EMU and the euro.

EMU is an evolving construct, and the European Commission and the participating Member States have taken important steps to strengthen the EMU edifice in response to the lessons learned during the financial and euro-area crises. In this edition of the publication, we have included legislative texts underpinning the functioning of the Single Supervisory Mechanism, the Single Resolution Board and the European Stability Mechanism as important institutional developments to strengthen EMU and deliver the financial stability needed for it to operate successfully.

We have also included the full set of recent Commission proposals for deepening the architecture of the EMU as well as selected policy documents that shed important light on the motives and ambitions that have driven our efforts.

The increased scope of the publication has entailed its expansion into a 2-volume hard-copy version, reflecting the intense activity of the European institutions to safeguard and promote our common currency. We hope that this comprehensive collection of texts will be a valuable reference point for all practitioners following the progress of our single currency.



Marco Buti
Director-General
DG Economic and Financial Affairs
European Commission



Martin Selmayr
Secretary-General
European Commission

INTRODUCTORY NOTE

The present document provides a single source for the existing corpus of legal texts that underpin the Economic and Monetary Union. The first part of this document therefore brings together in one publication the relevant provisions of the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, legislation that has been adopted by the Council and the European Parliament, key ECB decisions and relevant intergovernmental agreements signed by the Member States whose currency is the euro.

Regarding secondary Union legislation which has been amended, and in order to facilitate the reading of the texts, this publication includes where possible the consolidated versions. Consolidation entails the integration of the basic legal instrument, its amendments and corrections in a single non-official document. However, the basic legal acts with amendments and corrections remain the only legally binding texts.

The financial and economic crisis that hit Europe in 2008 revealed the need for further strengthening of the Economic and Monetary Union edifice. The second part of this document contains the main policy documents and legislative proposals that map out the path towards an even stronger and more resilient Economic and Monetary Union. This section comprises documents that frame the general direction of travel (the 5 Presidents' Report and the European Commission's Reflection Paper on the deepening of the Economic and Monetary Union). It also contains the full package of reform proposals for the Economic and Monetary Union brought forward by the European Commission since December 2017.

In putting this compilation together, it was necessary to be selective and leave aside several other texts which are relevant for the functioning and completion of the Economic and Monetary Union. This is the case, for example, for the legal provisions governing the practical aspects of the single currency. Moreover, given the focus on provisions governing the architecture and functioning of the Economic and Monetary Union, this publication does not encompass the significant body of legislation and specific policy documents relating to the Banking Union apart from the institutional legislation on the Single Supervisory Mechanism and the Single Resolution Mechanism.

This is a text produced for documentary purposes, for which the institutions of the European Union cannot be held liable.

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PART 1:

The Economic and Monetary Union today

1. FOUNDATIONS

1.1. EXTRACT FROM THE TREATY ON EUROPEAN UNION

TITLE I - COMMON PROVISIONS

Article 3

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

1.2. EXTRACTS FROM THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

1.2.1. Articles from the TFEU

PART THREE

UNION POLICIES AND INTERNAL ACTIONS

TITLE VIII

ECONOMIC AND MONETARY POLICY

Article 119

1. For the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2. Concurrently with the foregoing, and as provided in the Treaties and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.

3. These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

CHAPTER 1 ECONOMIC POLICY

Article 120

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union, as defined in Article 3 of the Treaty on European Union, and in the context of the broad guidelines referred to in Article 121(2). The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.

Article 121

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 120.

2. The Council shall, on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Union.

On the basis of this conclusion, the Council shall adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Union as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member

State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council may, on a proposal from the Commission, decide to make its recommendations public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 238(3)(a).

5. The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

6. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, may adopt detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4.

Article 122

1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

Article 123

1. Overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

Article 124

Any measure, not based on prudential considerations, establishing privileged access by Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.

Article 125

1. The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. The Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Articles 123 and 124 and in this Article.

Article 126

1. Member States shall avoid excessive government deficits.

2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

- (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:
 - either the ratio has declined substantially and continuously and reached a level that comes close to the reference value,
 - or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;

- (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to the Treaties.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Economic and Financial Committee shall formulate an opinion on the report of the Commission.

5. If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Member State concerned and shall inform the Council accordingly.

6. The Council shall, on a proposal from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

7. Where the Council decides, in accordance with paragraph 6, that an excessive deficit exists, it shall adopt, without undue delay, on a recommendation from the Commission, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. The rights to bring actions provided for in Articles 258 and 259 may not be exercised within the framework of paragraphs 1 to 9 of this Article.

11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

- to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,
- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,
- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Union until the excessive deficit has, in the view of the Council, been corrected,
- to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the decisions taken.

12. The Council shall abrogate some or all of its decisions or recommendations referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.

13. When taking the decisions or recommendations referred to in paragraphs 8, 9, 11 and 12, the Council shall act on a recommendation from the Commission.

When the Council adopts the measures referred to in paragraphs 6 to 9, 11 and 12, it shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 238(3)(a).

14. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure annexed to the Treaties.

The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Central Bank, adopt the appropriate provisions which shall then replace the said Protocol.

Subject to the other provisions of this paragraph, the Council shall, on a proposal from the Commission and after consulting the European Parliament, lay down detailed rules and definitions for the application of the provisions of the said Protocol.

CHAPTER 2 MONETARY POLICY

Article 127

1. The primary objective of the European System of Central Banks (hereinafter referred to as "the ESCB") shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.

2. The basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union,
- to conduct foreign-exchange operations consistent with the provisions of Article 219,
- to hold and manage the official foreign reserves of the Member States,
- to promote the smooth operation of payment systems.

3. The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

4. The European Central Bank shall be consulted:

- on any proposed Union act in its fields of competence,
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 129(4).

The European Central Bank may submit opinions to the appropriate Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

6. The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article 128

1. The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.

2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue. The Council, on a proposal from the Commission and after consulting the European Parliament and the European Central Bank, may adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union.

Article 129

1. The ESCB shall be governed by the decision-making bodies of the European Central Bank which shall be the Governing Council and the Executive Board.

2. The Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as "the Statute of the ESCB and of the ECB") is laid down in a Protocol annexed to the Treaties.

3. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB and of the ECB may be amended by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure. They shall act either on a recommendation from the European Central Bank and after consulting the Commission or on a proposal from the Commission and after consulting the European Central Bank.

4. The Council, either on a proposal from the Commission and after consulting the European Parliament and the European Central Bank or on a recommendation from the European Central Bank and after consulting the European Parliament and the

Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB and of the ECB.

Article 130

When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

Article 131

Each Member State shall ensure that its national legislation including the statutes of its national central bank is compatible with the Treaties and the Statute of the ESCB and of the ECB.

Article 132

1. In order to carry out the tasks entrusted to the ESCB, the European Central Bank shall, in accordance with the provisions of the Treaties and under the conditions laid down in the Statute of the ESCB and of the ECB:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and of the ECB in cases which shall be laid down in the acts of the Council referred to in Article 129(4),
- take decisions necessary for carrying out the tasks entrusted to the ESCB under the Treaties and the Statute of the ESCB and of the ECB,
- make recommendations and deliver opinions.

2. The European Central Bank may decide to publish its decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 129(4), the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 133

Without prejudice to the powers of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency. Such measures shall be adopted after consultation of the European Central Bank.

CHAPTER 3
INSTITUTIONAL PROVISIONS

Article 134

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, an Economic and Financial Committee is hereby set up.

2. The Economic and Financial Committee shall have the following tasks:

- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,
- to keep under review the economic and financial situation of the Member States and of the Union and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions,
- without prejudice to Article 240, to contribute to the preparation of the work of the Council referred to in Articles 66, 75, 121(2), (3), (4) and (6), 122, 124, 125, 126, 127(6), 128(2), 129(3) and (4), 138, 140(2) and (3), 143, 144(2) and (3), and in Article 219, and to carry out other advisory and preparatory tasks assigned to it by the Council,
- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of the Treaties and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the European Central Bank shall each appoint no more than two members of the Committee.

3. The Council shall, on a proposal from the Commission and after consulting the European Central Bank and the Committee referred to in this Article, lay down detailed

provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.

4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Article 139, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

Article 135

For matters within the scope of Articles 121(4), 126 with the exception of paragraph 14, 138, 140(1), 140(2), first subparagraph, 140(3) and 219, the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

CHAPTER 4

PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO

Article 136

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific to those Member States whose currency is the euro:

- (a) to strengthen the coordination and surveillance of their budgetary discipline;
- (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).

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

Article 137

Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.

Article 138

1. In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

2. The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

3. For the measures referred to in paragraphs 1 and 2, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).

CHAPTER 5

TRANSITIONAL PROVISIONS

Article 139

1. Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as "Member States with a derogation".

2. The following provisions of the Treaties shall not apply to Member States with a derogation:

- (a) adoption of the parts of the broad economic policy guidelines which concern the euro area generally (Article 121(2));
- (b) coercive means of remedying excessive deficits (Article 126(9) and (11));
- (c) the objectives and tasks of the ESCB (Article 127(1) to (3) and (5));
- (d) issue of the euro (Article 128);
- (e) acts of the European Central Bank (Article 132);

- (f) measures governing the use of the euro (Article 133);
- (g) monetary agreements and other measures relating to exchange-rate policy (Article 219);
- (h) appointment of members of the Executive Board of the European Central Bank (Article 283(2));
- (i) decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article 138(1));
- (j) measures to ensure unified representation within the international financial institutions and conferences (Article 138(2)).

In the Articles referred to in points (a) to (j), "Member States" shall therefore mean Member States whose currency is the euro.

3. Under Chapter IX of the Statute of the ESCB and of the ECB, Member States with a derogation and their national central banks are excluded from rights and obligations within the ESCB.

4. The voting rights of members of the Council representing Member States with a derogation shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in paragraph 2, and in the following instances:

- (a) recommendations made to those Member States whose currency is the euro in the framework of multilateral surveillance, including on stability programmes and warnings (Article 121(4));
- (b) measures relating to excessive deficits concerning those Member States whose currency is the euro (Article 126(6), (7), (8), (12) and (13)).

A qualified majority of the other members of the Council shall be defined in accordance with Article 238(3)(a).

Article 140

1. At least once every two years, or at the request of a Member State with a derogation, the Commission and the European Central Bank shall report to the Council on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between the national legislation of each of these Member States, including the statutes of its national central bank, and Articles 130 and 131 and the Statute of the ESCB and of the ECB. The reports shall also

examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

- the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability,
- the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 126(6),
- the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the euro,
- the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism being reflected in the long-term interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to the Treaties. The reports of the Commission and the European Central Bank shall also take account of the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

2. After consulting the European Parliament and after discussion in the European Council, the Council shall, on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in paragraph 1, and abrogate the derogations of the Member States concerned.

The Council shall act having received a recommendation of a qualified majority of those among its members representing Member States whose currency is the euro. These members shall act within six months of the Council receiving the Commission's proposal.

The qualified majority of the said members, as referred to in the second subparagraph, shall be defined in accordance with Article 238(3)(a).

3. If it is decided, in accordance with the procedure set out in paragraph 2, to abrogate a derogation, the Council shall, acting with the unanimity of the Member States whose currency is the euro and the Member State concerned, on a proposal from the Commission and after consulting the European Central Bank, irrevocably fix the rate at which the euro shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the euro as the single currency in the Member State concerned.

Article 141

1. If and as long as there are Member States with a derogation, and without prejudice to Article 129(1), the General Council of the European Central Bank referred to in Article 44 of the Statute of the ESCB and of the ECB shall be constituted as a third decision-making body of the European Central Bank.

2. If and as long as there are Member States with a derogation, the European Central Bank shall, as regards those Member States:

- strengthen cooperation between the national central banks,
- strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability,
- monitor the functioning of the exchange-rate mechanism,
- hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets,
- carry out the former tasks of the European Monetary Cooperation Fund which had subsequently been taken over by the European Monetary Institute.

Article 142

Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the exchange-rate mechanism.

Article 143

1. Where a Member State with a derogation is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the internal market or the implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of the Treaties. The Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State with a derogation and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Economic and Financial Committee, recommend to the Council the granting of mutual assistance and appropriate methods therefor.

The Commission shall keep the Council regularly informed of the situation and of how it is developing.

2. The Council shall grant such mutual assistance; it shall adopt directives or decisions laying down the conditions and details of such assistance, which may take such forms as:

- (a) a concerted approach to or within any other international organisations to which Member States with a derogation may have recourse;
- (b) measures needed to avoid deflection of trade where the Member State with a derogation which is in difficulties maintains or reintroduces quantitative restrictions against third countries;
- (c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the Member State with a derogation which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council.

Article 144

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 143(2) is not immediately taken, a Member State with a derogation may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 143.

3. After the Commission has delivered a recommendation and the Economic and Financial Committee has been consulted, the Council may decide that the Member State concerned shall amend, suspend or abolish the protective measures referred to above.

PART FIVE
THE UNION'S EXTERNAL ACTION
TITLE V
INTERNATIONAL AGREEMENTS

Article 219

1. By way of derogation from Article 218, the Council, either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure provided for in paragraph 3.

The Council may, either on a recommendation from the European Central Bank or on a recommendation from the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the euro central rates.

2. In the absence of an exchange-rate system in relation to one or more currencies of third States as referred to in paragraph 1, the Council, either on a recommendation from the Commission and after consulting the European Central Bank or on a recommendation from the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

3. By way of derogation from Article 218, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more third States or international organisations, the Council, on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.

4. Without prejudice to Union competence and Union agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

PART SIX
INSTITUTIONAL AND FINANCIAL PROVISIONS

TITLE I
INSTITUTIONAL PROVISIONS

CHAPTER 1
THE INSTITUTIONS

SECTION 6
THE EUROPEAN CENTRAL BANK

Article 282

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB). The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.
2. The ESCB shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.
3. The European Central Bank shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.
4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with Articles 127 to 133, with Article 138, and with the conditions laid down in the Statute of the ESCB and of the ECB. In accordance with these same Articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.
5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

Article 283

1. The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States whose currency is the euro.

2. The Executive Board shall comprise the President, the Vice-President and four other members.

The President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

Article 284

1. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.

2. The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

CHAPTER 4 THE EUROPEAN INVESTMENT BANK

Article 308

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol annexed to the Treaties. The Council acting unanimously in accordance with a special legislative procedure, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or on a proposal from the Commission and after consulting the European Parliament and the European Investment Bank, may amend the Statute of the Bank.

Article 309

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the establishment or functioning of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union Financial Instruments.

1.2.2. Protocols annexed to the Treaties

PROTOCOL (NO 4)

ON THE STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND OF THE EUROPEAN CENTRAL BANK

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European System of Central Banks and of the European Central Bank provided for in the second paragraph of Article 129 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

CHAPTER I

THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 1

The European System of Central Banks

In accordance with Article 282(1) of the Treaty on the Functioning of the European Union, the European Central Bank (ECB) and the national central banks shall constitute the European System of Central Banks (ESCB). The ECB and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.

The ESCB and the ECB shall perform their tasks and carry on their activities in accordance with the provisions of the Treaties and of this Statute.

CHAPTER II

OBJECTIVES AND TASKS OF THE ESCB

Article 2

Objectives

In accordance with Article 127(1) and Article 282(2) of the Treaty on the Functioning of the European Union, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the

general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119 of the Treaty on the Functioning of the European Union.

Article 3

Tasks

3.1. In accordance with Article 127(2) of the Treaty on the Functioning of the European Union, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union;
- to conduct foreign-exchange operations consistent with the provisions of Article 219 of that Treaty;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.

3.2. In accordance with Article 127(3) of the Treaty on the Functioning of the European Union, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 127(5) of the Treaty on the Functioning of the European Union, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 4

Advisory functions

In accordance with Article 127(4) of the Treaty on the Functioning of the European Union:

- (a) the ECB shall be consulted:
- on any proposed Union act in its fields of competence;
 - by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41;

- (b) the ECB may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.

Article 5

Collection of statistical information

5.1. In order to undertake the tasks of the ESCB, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes it shall cooperate with the Union institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organisations.

5.2. The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3. The ECB shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence.

5.4. The Council, in accordance with the procedure laid down in Article 41, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6

International cooperation

6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.

6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

6.3. Articles 6.1 and 6.2 shall be without prejudice to Article 138 of the Treaty on the Functioning of the European Union.

CHAPTER III

ORGANISATION OF THE ESCB

Article 7

Independence

In accordance with Article 130 of the Treaty on the Functioning of the European Union, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and this Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

Article 8

General principle

The ESCB shall be governed by the decision-making bodies of the ECB.

Article 9

The European Central Bank

9.1. The ECB which, in accordance with Article 282(3) of the Treaty on the Functioning of the European Union, shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.2. The ECB shall ensure that the tasks conferred upon the ESCB under Article 127(2), (3) and (5) of the Treaty on the Functioning of the European Union are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.

9.3. In accordance with Article 129(1) of the Treaty on the Functioning of the European Union, the decision making bodies of the ECB shall be the Governing Council and the Executive Board.

*Article 10***The Governing Council**

10.1. In accordance with Article 283(1) of the Treaty on the Functioning of the European Union, the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks of the Member States whose currency is the euro.

10.2. Each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:

- as from the date on which the number of governors exceeds 15, until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights,
- as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the above criteria. The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights,
- within each group, the governors shall have their voting rights for equal amounts of time,
- for the calculation of the shares in the aggregate gross domestic product at market prices Article 29.2 shall apply. The total aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the Union at the time of the calculation,

- whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29.3, or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the above principles,
- the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the above principles and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

The right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.

The provisions of the previous paragraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under Articles 10.3, 40.2 and 40.3.

Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote.

In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

10.3. For any decisions to be taken under Articles 28, 29, 30, 32 and 33, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. The weights of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two thirds of the subscribed capital of the ECB and represent at least half of the shareholders. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

10.4. The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.

10.5. The Governing Council shall meet at least 10 times a year.

*Article 11***The Executive Board**

11.1. In accordance with the first subparagraph of Article 283(2) of the Treaty on the Functioning of the European Union, the Executive Board shall comprise the President, the Vice-President and four other members.

The members shall perform their duties on a full-time basis. No member shall engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Governing Council.

11.2. In accordance with the second subparagraph of Article 283(2) of the Treaty on the Functioning of the European Union, the President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

11.3. The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be the subject of contracts with the ECB and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

11.4. If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Governing Council or the Executive Board, compulsorily retire him.

11.5. Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements shall be specified in the Rules of Procedure referred to in Article 12.3.

11.6. The Executive Board shall be responsible for the current business of the ECB.

11.7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2.

Article 12

Responsibilities of the decision-making bodies

12.1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under these Treaties and this Statute. The Governing Council shall formulate the monetary policy of the Union including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and shall establish the necessary guidelines for their implementation.

The Executive Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. In doing so the Executive Board shall give the necessary instructions to national central banks. In addition the Executive Board may have certain powers delegated to it where the Governing Council so decides.

To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB.

12.2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.

12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

12.4. The Governing Council shall exercise the advisory functions referred to in Article 4.

12.5. The Governing Council shall take the decisions referred to in Article 6.

Article 13

The President

13.1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the ECB.

13.2. Without prejudice to Article 38, the President or his nominee shall represent the ECB externally.

Article 14

National central banks

14.1. In accordance with Article 131 of the Treaty on the Functioning of the European Union, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with these Treaties and this Statute.

14.2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council on grounds of infringement of these Treaties or of any rule of law relating to their application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB.

Article 15

Reporting commitments

15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.

15.2. A consolidated financial statement of the ESCB shall be published each week.

15.3. In accordance with Article 284(3) of the Treaty on the Functioning of the European Union, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.

15.4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

Article 16

Banknotes

In accordance with Article 128(1) of the Treaty on the Functioning of the European Union, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Union.

The ECB shall respect as far as possible existing practices regarding the issue and design of banknotes.

CHAPTER IV

MONETARY FUNCTIONS AND OPERATIONS OF THE ESCB

Article 17

Accounts with the ECB and the national central banks

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets, including book entry securities, as collateral.

Article 18

Open market and credit operations

18.1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may:

- operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in euro or other currencies, as well as precious metals;
- conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

18.2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks, including for the announcement of conditions under which they stand ready to enter into such transactions.

Article 19

Minimum reserves

19.1. Subject to Article 2, the ECB may require credit institutions established in Member States to hold minimum reserve on accounts with the ECB and national central banks in pursuance of monetary policy objectives. Regulations concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

19.2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 41, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of non-compliance.

Article 20

Other instruments of monetary control

The Governing Council may, by a majority of two thirds of the votes cast, decide upon the use of such other operational methods of monetary control as it sees fit, respecting Article 2.

The Council shall, in accordance with the procedure laid down in Article 41, define the scope of such methods if they impose obligations on third parties.

Article 21

Operations with public entities

21.1. In accordance with Article 123 of the Treaty on the Functioning of the European Union, overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

21.2. The ECB and national central banks may act as fiscal agents for the entities referred to in Article 21.1.

21.3. The provisions of this Article shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

Article 22

Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries.

Article 23

External operations

The ECB and national central banks may:

- establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;
- acquire and sell spot and forward all types of foreign exchange assets and precious metals; the term "foreign exchange asset" shall include securities and all other assets in the currency of any country or units of account and in whatever form held;
- hold and manage the assets referred to in this Article;
- conduct all types of banking transactions in relations with third countries and international organisations, including borrowing and lending operations.

Article 24

Other operations

In addition to operations arising from their tasks, the ECB and national central banks may enter into operations for their administrative purposes or for their staff.

CHAPTER V

PRUDENTIAL SUPERVISION

Article 25

Prudential supervision

25.1. The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

25.2. In accordance with any regulation of the Council under Article 127(6) of the Treaty on the Functioning of the European Union, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

CHAPTER VI FINANCIAL PROVISIONS OF THE ESCB

Article 26

Financial accounts

26.1. The financial year of the ECB and national central banks shall begin on the first day of January and end on the last day of December.

26.2. The annual accounts of the ECB shall be drawn up by the Executive Board, in accordance with the principles established by the Governing Council. The accounts shall be approved by the Governing Council and shall thereafter be published.

26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the ESCB, comprising those assets and liabilities of the national central banks that fall within the ESCB.

26.4. For the application of this Article, the Governing Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

Article 27

Auditing

27.1. The accounts of the ECB and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors shall have full power to examine all books and accounts of the ECB and national central banks and obtain full information about their transactions.

27.2. The provisions of Article 287 of the Treaty on the Functioning of the European Union shall only apply to an examination of the operational efficiency of the management of the ECB.

Article 28

Capital of the ECB

28.1. The capital of the ECB shall be euro 5,000 million. The capital may be increased by such amounts as may be decided by the Governing Council acting by the qualified

majority provided for in Article 10.3, within the limits and under the conditions set by the Council under the procedure laid down in Article 41.

28.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key established in accordance with Article 29.

28.3. The Governing Council, acting by the qualified majority provided for in Article 10.3, shall determine the extent to which and the form in which the capital shall be paid up.

28.4. Subject to Article 28.5, the shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached.

28.5. If the key referred to in Article 29 is adjusted, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the adjusted key. The Governing Council shall determine the terms and conditions of such transfers.

Article 29

Key for capital subscription

29.1. The key for subscription of the ECB's capital, fixed for the first time in 1998 when the ESCB was established, shall be determined by assigning to each national central bank a weighting in this key equal to the sum of:

- 50 % of the share of its respective Member State in the population of the Union in the penultimate year preceding the establishment of the ESCB;
- 50 % of the share of its respective Member State in the gross domestic product at market prices of the Union as recorded in the last five years preceding the penultimate year before the establishment of the ESCB.

The percentages shall be rounded up or down to the nearest multiple of 0,0001 percentage points.

29.2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules adopted by the Council under the procedure provided for in Article 41.

29.3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the ESCB by analogy with the provisions laid down in Article 29.1. The adjusted key shall apply with effect from the first day of the following year.

29.4. The Governing Council shall take all other measures necessary for the application of this Article.

Article 30

Transfer of foreign reserve assets to the ECB

30.1. Without prejudice to Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, euro, IMF reserve positions and SDRs, up to an amount equivalent to euro 50,000 million. The Governing Council shall decide upon the proportion to be called up by the ECB following its establishment and the amounts called up at later dates. The ECB shall have the full right to hold and manage the foreign reserves that are transferred to it and to use them for the purposes set out in this Statute.

30.2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the ECB.

30.3. Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Governing Council shall determine the denomination and remuneration of such claims.

30.4. Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB, in accordance with Article 30.2, within the limits and under the conditions set by the Council in accordance with the procedure laid down in Article 41.

30.5. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.

30.6. The Governing Council shall take all other measures necessary for the application of this Article.

Article 31

Foreign reserve assets held by national central banks

31.1. The national central banks shall be allowed to perform transactions in fulfilment of their obligations towards international organisations in accordance with Article 23.

31.2. All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30, and Member States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of Article 31.3, be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Union.

31.3. The Governing Council shall issue guidelines with a view to facilitating such operations.

Article 32

Allocation of monetary income of national central banks

32.1. The income accruing to the national central banks in the performance of the ESCB's monetary policy function (hereinafter referred to as "monetary income") shall be allocated at the end of each financial year in accordance with the provisions of this Article.

32.2. The amount of each national central bank's monetary income shall be equal to its annual income derived from its assets held against notes in circulation and deposit liabilities to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

32.3. If, after the introduction of the euro, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from Article 32.2, monetary income shall be measured according to an alternative method for a period of not more than five years.

32.4. The amount of each national central bank's monetary income shall be reduced by an amount equivalent to any interest paid by that central bank on its deposit liabilities to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of banknotes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the ESCB. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council; these amounts may be offset against the national central banks' monetary income.

32.5. The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their paid up shares in the capital of the ECB, subject to any decision taken by the Governing Council pursuant to Article 33.2.

32.6. The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the ECB in accordance with guidelines established by the Governing Council.

32.7. The Governing Council shall take all other measures necessary for the application of this Article.

Article 33

Allocation of net profits and losses of the ECB

33.1. The net profit of the ECB shall be transferred in the following order:

- (a) an amount to be determined by the Governing Council, which may not exceed 20 % of the net profit, shall be transferred to the general reserve fund subject to a limit equal to 100 % of the capital;
- (b) the remaining net profit shall be distributed to the shareholders of the ECB in proportion to their paid-up shares.

33.2. In the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5.

CHAPTER VII

GENERAL PROVISIONS

Article 34

Legal acts

34.1. In accordance with Article 132 of the Treaty on the Functioning of the European Union, the ECB shall:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 or 25.2 and in cases which shall be laid down in the acts of the Council referred to in Article 41;
- take decisions necessary for carrying out the tasks entrusted to the ESCB under these Treaties and this Statute;
- make recommendations and deliver opinions.

34.2. The ECB may decide to publish its decisions, recommendations and opinions.

34.3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 41, the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 35

Judicial control and related matters

35.1. The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice of the European Union in the cases and under the conditions laid down in the Treaty on the Functioning of the European Union. The ECB may institute proceedings in the cases and under the conditions laid down in the Treaties.

35.2. Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred upon the Court of Justice of the European Union.

35.3. The ECB shall be subject to the liability regime provided for in Article 340 of the Treaty on the Functioning of the European Union. The national central banks shall be liable according to their respective national laws.

35.4. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.5. A decision of the ECB to bring an action before the Court of Justice of the European Union shall be taken by the Governing Council.

35.6. The Court of Justice of the European Union shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under the Treaties and this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under the Treaties and this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice of the European Union.

Article 36

Staff

36.1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

36.2. The Court of Justice of the European Union shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.

*Article 37***Professional secrecy**

37.1. Members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

37.2. Persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such legislation.

*Article 38***Signatories**

The ECB shall be legally committed to third parties by the President or by two members of the Executive Board or by the signatures of two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

*Article 39***Privileges and immunities**

The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union.

CHAPTER VIII

AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION

*Article 40***Simplified amendment procedure**

40.1. In accordance with Article 129(3) of the Treaty on the Functioning of the European Union, Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of this Statute may be amended by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure either on a recommendation from the ECB and after consulting the Commission, or on a proposal from the Commission and after consulting the ECB.

40.2. Article 10.2 may be amended by a decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.

40.3. A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

Article 41

Complementary legislation

In accordance with Article 129(4) of the Treaty on the Functioning of the European Union, the Council, either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this Statute.

CHAPTER IX

TRANSITIONAL AND OTHER PROVISIONS FOR THE ESCB

Article 42

General provisions

42.1. A derogation as referred to in Article 139 of the Treaty on the Functioning of the European Union shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9.2, 12.1, 14.3, 16, 18, 19, 20, 22, 23, 26.2, 27, 30, 31, 32, 33, 34, and 49.

42.2. The central banks of Member States with a derogation as specified in Article 139(1) of the Treaty on the Functioning of the European Union shall retain their powers in the field of monetary policy according to national law.

42.3. In accordance with Article 139 of the Treaty on the Functioning of the European Union, "Member States" shall be read as "Member States whose currency is the euro" in the following Articles of this Statute: 3, 11.2 and 19.

42.4. "National central banks" shall be read as "central banks of Member States whose currency is the euro" in the following Articles of this Statute: 9.2, 10.2, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 49.

42.5. "Shareholders" shall be read as "central banks of Member States whose currency is the euro" in Articles 10.3 and 33.1.

42.6. "Subscribed capital of the ECB" shall be read as "capital of the ECB subscribed by the central banks of Member States whose currency is the euro" in Articles 10.3 and 30.2.

*Article 43***Transitional tasks of the ECB**

The ECB shall take over the former tasks of the EMI referred to in Article 141(2) of the Treaty on the Functioning of the European Union which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro.

The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article 140 of the Treaty on the Functioning of the European Union.

*Article 44***The General Council of the ECB**

44.1. Without prejudice to Article 129(1) of the Treaty on the Functioning of the European Union, the General Council shall be constituted as a third decision-making body of the ECB.

44.2. The General Council shall comprise the President and Vice-President of the ECB and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.

44.3. The responsibilities of the General Council are listed in full in Article 46 of this Statute.

*Article 45***Rules of Procedure of the General Council**

45.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.

45.2. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the General Council.

45.3. The President shall prepare the meetings of the General Council.

45.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.

45.5. The Secretariat of the General Council shall be provided by the ECB.

Article 46

Responsibilities of the General Council

46.1. The General Council shall:

- perform the tasks referred to in Article 43;
- contribute to the advisory functions referred to in Articles 4 and 25.1.

46.2. The General Council shall contribute to:

- the collection of statistical information as referred to in Article 5;
- the reporting activities of the ECB as referred to in Article 15;
- the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4;
- the taking of all other measures necessary for the application of Article 29 as referred to in Article 29.4;
- the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36.

46.3. The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the euro as referred to in Article 140(3) of the Treaty on the Functioning of the European Union.

46.4. The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

Article 47

Transitional provisions for the capital of the ECB

In accordance with Article 29.1, each national central bank shall be assigned a weighting in the key for subscription of the ECB's capital. By way of derogation from Article 28.3, central banks of Member States with a derogation shall not pay up their subscribed capital unless the General Council, acting by a majority representing at least two thirds of the subscribed capital of the ECB and at least half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the ECB.

*Article 48***Deferred payment of capital, reserves and provisions of the ECB**

48.1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the ECB to the same extent as the central banks of other Member States whose currency is the euro, and shall transfer to the ECB foreign reserve assets in accordance with Article 30.1. The sum to be transferred shall be determined by multiplying the euro value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB in accordance with Article 30.1, by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.

48.2. In addition to the payment to be made in accordance with Article 48.1, the central bank concerned shall contribute to the reserves of the ECB, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the ECB, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.

48.3. Upon one or more countries becoming Member States and their respective national central banks becoming part of the ESCB, the subscribed capital of the ECB and the limit on the amount of foreign reserve assets that may be transferred to the ECB shall be automatically increased. The increase shall be determined by multiplying the respective amounts then prevailing by the ratio, within the expanded capital key, between the weighting of the entering national central banks concerned and the weighting of the national central banks already members of the ESCB. Each national central bank's weighting in the capital key shall be calculated by analogy with Article 29.1 and in compliance with Article 29.2. The reference periods to be used for the statistical data shall be identical to those applied for the latest quinquennial adjustment of the weightings under Article 29.3.

*Article 49***Exchange of banknotes in the currencies of the Member States**

Following the irrevocable fixing of exchange rates in accordance with Article 140 of the Treaty on the Functioning of the European Union, the Governing Council shall take the necessary measures to ensure that banknotes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

Article 50

Applicability of the transitional provisions

If and as long as there are Member States with a derogation, Articles 42 to 47 shall be applicable.

PROTOCOL (NO 5)
ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Investment Bank provided for in Article 308 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The European Investment Bank established by Article 308 of the Treaty on the Functioning of the European Union (hereinafter called the "Bank") is hereby constituted; it shall perform its functions and carry on its activities in accordance with the provisions of the Treaties and of this Statute.

Article 2

The task of the Bank shall be that defined in Article 309 of the Treaty on the Functioning of the European Union.

Article 3

In accordance with Article 308 of the Treaty on the Functioning of the European Union, the Bank's members shall be the Member States.

Article 4

1. The capital of the Bank shall be EUR 232,392,989,000, subscribed by the Member States as follows:

Germany	37,578,019,000
France	37,578,019,000
Italy	37,578,019,000
United Kingdom	37,578,019,000
Spain	22,546,811,500

Belgium	10,416,365,500
Netherlands	10,416,365,500
Sweden	6,910,226,000
Denmark	5,274,105,000
Austria	5,170,732,500
Poland	4,810,160,500
Finland	2,970,783,000
Greece	2,825,416,500
Portugal	1,820,820,000
Czech Republic	1,774,990,500
Hungary	1,679,222,000
Ireland	1,318,525,000
Romania	1,217,626,000
Slovakia	604,206,500
Slovenia	560,951,500
Bulgaria	410,217,500
Lithuania	351,981,000
Luxembourg	263,707,000
Cyprus	258,583,500
Latvia	214,805,000
Estonia	165,882,000
Malta	98,429,500

The Member States shall be liable only up to the amount of their share of the capital subscribed and not paid up.

2. The admission of a new member shall entail an increase in the subscribed capital corresponding to the capital brought in by the new member.
3. The Board of Governors may, acting unanimously, decide to increase the subscribed capital.

4. The share of a member in the subscribed capital may not be transferred, pledged or attached.

Article 5

1. The subscribed capital shall be paid in by Member States to the extent of 5 % on average of the amounts laid down in Article 4(1).

2. In the event of an increase in the subscribed capital, the Board of Governors, acting unanimously, shall fix the percentage to be paid up and the arrangements for payment. Cash payments shall be made exclusively in euro.

3. The Board of Directors may require payment of the balance of the subscribed capital, to such extent as may be required for the Bank to meet its obligations.

Each Member State shall make this payment in proportion to its share of the subscribed capital.

Article 6

The Bank shall be directed and managed by a Board of Governors, a Board of Directors and a Management Committee.

Article 7

1. The Board of Governors shall consist of the ministers designated by the Member States.

2. The Board of Governors shall lay down general directives for the credit policy of the Bank, in accordance with the Union's objectives. The Board of Governors shall ensure that these directives are implemented.

3. The Board of Governors shall in addition:

- (a) decide whether to increase the subscribed capital in accordance with Article 4(3) and Article 5(2);
- (b) for the purposes of Article 9(1), determine the principles applicable to financing operations undertaken within the framework of the Bank's task;
- (c) exercise the powers provided in Articles 9 and 11 in respect of the appointment and the compulsory retirement of the members of the Board of Directors and of the Management Committee, and those powers provided in the second subparagraph of Article 11(1);

- (d) take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the territories of the Member States in accordance with Article 16(1);
- (e) approve the annual report of the Board of Directors;
- (f) approve the annual balance sheet and profit and loss account;
- (g) exercise the other powers and functions conferred by this Statute;
- (h) approve the rules of procedure of the Bank.

4. Within the framework of the Treaty and this Statute, the Board of Governors shall be competent to take, acting unanimously, any decisions concerning the suspension of the operations of the Bank and, should the event arise, its liquidation.

Article 8

Save as otherwise provided in this Statute, decisions of the Board of Governors shall be taken by a majority of its members. This majority must represent at least 50 % of the subscribed capital.

A qualified majority shall require eighteen votes in favour and 68 % of the subscribed capital.

Abstentions by members present in person or represented shall not prevent the adoption of decisions requiring unanimity.

Article 9

1. The Board of Directors shall take decisions in respect of granting finance, in particular in the form of loans and guarantees, and raising loans; it shall fix the interest rates on loans granted and the commission and other charges. It may, on the basis of a decision taken by a qualified majority, delegate some of its functions to the Management Committee. It shall determine the terms and conditions for such delegation and shall supervise its execution.

The Board of Directors shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the provisions of the Treaties and of this Statute and with the general directives laid down by the Board of Governors.

At the end of the financial year the Board of Directors shall submit a report to the Board of Governors and shall publish it when approved.

2. The Board of Directors shall consist of twenty-eight directors and eighteen alternate directors.

The directors shall be appointed by the Board of Governors for five years, one nominated by each Member State, and one nominated by the Commission.

The alternate directors shall be appointed by the Board of Governors for five years as shown below:

- two alternates nominated by the Federal Republic of Germany,
- two alternates nominated by the French Republic,
- two alternates nominated by the Italian Republic,
- two alternates nominated by the United Kingdom of Great Britain and Northern Ireland,
- one alternate nominated by common accord of the Kingdom of Spain and the Portuguese Republic,
- one alternate nominated by common accord of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,
- two alternates nominated by common accord of the Kingdom of Denmark, the Hellenic Republic, Ireland and Romania,
- two alternates nominated by common accord of the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,
- three alternates nominated by common accord of the Republic of Bulgaria, the Czech Republic, the Republic of Cyprus, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,
- one alternate nominated by the Commission.

The Board of Directors shall co-opt six non-voting experts: three as members and three as alternates.

The appointments of the directors and the alternates shall be renewable.

The Rules of Procedure shall lay down arrangements for participating in the meetings of the Board of Directors and the provisions applicable to alternates and co-opted experts.

The President of the Management Committee or, in his absence, one of the Vice-Presidents, shall preside over meetings of the Board of Directors but shall not vote.

Members of the Board of Directors shall be chosen from persons whose independence and competence are beyond doubt; they shall be responsible only to the Bank.

3. A director may be compulsorily retired by the Board of Governors only if he no longer fulfils the conditions required for the performance of his duties; the Board must act by a qualified majority.

If the annual report is not approved, the Board of Directors shall resign.

4. Any vacancy arising as a result of death, voluntary resignation, compulsory retirement or collective resignation shall be filled in accordance with paragraph 2. A member shall be replaced for the remainder of his term of office, save where the entire Board of Directors is being replaced.

5. The Board of Governors shall determine the remuneration of members of the Board of Directors. The Board of Governors shall lay down what activities are incompatible with the duties of a director or an alternate.

Article 10

1. Each director shall have one vote on the Board of Directors. He may delegate his vote in all cases, according to procedures to be laid down in the Rules of Procedure of the Bank.

2. Save as otherwise provided in this Statute, decisions of the Board of Directors shall be taken by at least one third of the members entitled to vote representing at least fifty per cent of the subscribed capital. A qualified majority shall require eighteen votes in favour and sixty-eight per cent of the subscribed capital. The rules of procedure of the Bank shall lay down the quorum required for the decisions of the Board of Directors to be valid.

Article 11

1. The Management Committee shall consist of a President and eight Vice-Presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors.

Their appointments shall be renewable. The Board of Governors, acting unanimously, may vary the number of members on the Management Committee.

2. On a proposal from the Board of Directors adopted by a qualified majority, the Board of Governors may, acting in its turn by a qualified majority, compulsorily retire a member of the Management Committee.

3. The Management Committee shall be responsible for the current business of the Bank, under the authority of the President and the supervision of the Board of Directors.

It shall prepare the decisions of the Board of Directors, in particular decisions on the raising of loans and the granting of finance, in particular in the form of loans and guarantees; it shall ensure that these decisions are implemented.

4. The Management Committee shall act by a majority when delivering opinions on proposals for raising loans or granting of finance, in particular in the form of loans and guarantees.

5. The Board of Governors shall determine the remuneration of members of the Management Committee and shall lay down what activities are incompatible with their duties.

6. The President or, if he is prevented, a Vice-President shall represent the Bank in judicial and other matters.

7. The staff of the Bank shall be under the authority of the President. They shall be engaged and discharged by him. In the selection of staff, account shall be taken not only of personal ability and qualifications but also of an equitable representation of nationals of Member States. The Rules of Procedure shall determine which organ is competent to adopt the provisions applicable to staff.

8. The Management Committee and the staff of the Bank shall be responsible only to the Bank and shall be completely independent in the performance of their duties.

Article 12

1. A Committee consisting of six members, appointed on the grounds of their competence by the Board of Governors, shall verify that the activities of the Bank conform to best banking practice and shall be responsible for the auditing of its accounts.

2. The Committee referred to in paragraph 1 shall annually ascertain that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it shall verify that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedure.

3. The Committee referred to in paragraph 1 shall confirm that the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank in respect of its assets and liabilities, and of the results of its operations and its cash flows for the financial year under review.

4. The Rules of Procedure shall specify the qualifications required of the members of the Committee and lay down the terms and conditions for the Committee's activity.

Article 13

The Bank shall deal with each Member State through the authority designated by that State. In the conduct of financial operations the Bank shall have recourse to the national central bank of the Member State concerned or to other financial institutions approved by that State.

Article 14

1. The Bank shall cooperate with all international organisations active in fields similar to its own.
2. The Bank shall seek to establish all appropriate contacts in the interests of cooperation with banking and financial institutions in the countries to which its operations extend.

Article 15

At the request of a Member State or of the Commission, or on its own initiative, the Board of Governors shall, in accordance with the same provisions as governed their adoption, interpret or supplement the directives laid down by it under Article 7 of this Statute.

Article 16

1. Within the framework of the task set out in Article 309 of the Treaty on the Functioning of the European Union, the Bank shall grant finance, in particular in the form of loans and guarantees to its members or to private or public undertakings for investments to be carried out in the territories of Member States, to the extent that funds are not available from other sources on reasonable terms.

However, by decision of the Board of Governors, acting by a qualified majority on a proposal from the Board of Directors, the Bank may grant financing for investment to be carried out, in whole or in part, outside the territories of Member States.

2. As far as possible, loans shall be granted only on condition that other sources of finance are also used.
3. When granting a loan to an undertaking or to a body other than a Member State, the Bank shall make the loan conditional either on a guarantee from the Member State in whose territory the investment will be carried out or on other adequate guarantees, or on the financial strength of the debtor.

Furthermore, in accordance with the principles established by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of projects provided for in Article 309 of the Treaty on the Functioning of the European Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions of any financing operation presenting a specific risk profile and thus considered to be a special activity.

4. The Bank may guarantee loans contracted by public or private undertakings or other bodies for the purpose of carrying out projects provided for in Article 309 of the Treaty on the Functioning of the European Union.

5. The aggregate amount outstanding at any time of loans and guarantees granted by the Bank shall not exceed 250 % of its subscribed capital, reserves, non-allocated provisions and profit and loss account surplus. The latter aggregate amount shall be reduced by an amount equal to the amount subscribed (whether or not paid in) for any equity participation of the Bank.

The amount of the Bank's disbursed equity participations shall not exceed at any time an amount corresponding to the total of its paid-in subscribed capital, reserves, non-allocated provisions and profit and loss account surplus.

By way of exception, the special activities of the Bank, as decided by the Board of Governors and the Board of Directors in accordance with paragraph 3, will have a specific allocation of reserve.

This paragraph shall also apply to the consolidated accounts of the Bank.

6. The Bank shall protect itself against exchange risks by including in contracts for loans and guarantees such clauses as it considers appropriate.

Article 17

1. Interest rates on loans to be granted by the Bank and commission and other charges shall be adjusted to conditions prevailing on the capital market and shall be calculated in such a way that the income therefrom shall enable the Bank to meet its obligations, to cover its expenses and risks and to build up a reserve fund as provided for in Article 22.

2. The Bank shall not grant any reduction in interest rates. Where a reduction in the interest rate appears desirable in view of the nature of the investment to be financed, the Member State concerned or some other agency may grant aid towards the payment of interest to the extent that this is compatible with Article 107 of the Treaty on the Functioning of the European Union.

Article 18

In its financing operations, the Bank shall observe the following principles:

1. It shall ensure that its funds are employed as rationally as possible in the interests of the Union.

It may grant loans or guarantees only:

- (a) where, in the case of investments by undertakings in the production sector, interest and amortisation payments are covered out of operating profits or, in the case of other investments, either by a commitment entered into by the State in which the investment is made or by some other means; and
- (b) where the execution of the investment contributes to an increase in economic productivity in general and promotes the attainment of the internal market.

2. It shall neither acquire any interest in an undertaking nor assume any responsibility in its management unless this is required to safeguard the rights of the Bank in ensuring recovery of funds lent.

However, in accordance with the principles determined by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of operations provided for in Article 309 of the Treaty on the Functioning of the European Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions for taking an equity participation in a commercial undertaking, normally as a complement to a loan or a guarantee, in so far as this is required to finance an investment or programme.

3. It may dispose of its claims on the capital market and may, to this end, require its debtors to issue bonds or other securities.

4. Neither the Bank nor the Member States shall impose conditions requiring funds lent by the Bank to be spent within a specified Member State.

5. The Bank may make its loans conditional on international invitations to tender being arranged.

6. The Bank shall not finance, in whole or in part, any investment opposed by the Member State in whose territory it is to be carried out.

7. As a complement to its lending activity, the Bank may provide technical assistance services in accordance with the terms and conditions laid down by the Board of Governors, acting by a qualified majority, and in compliance with this Statute.

Article 19

1. Any undertaking or public or private entity may apply directly to the Bank for financing. Applications to the Bank may also be made either through the Commission or through the Member State on whose territory the investment will be carried out.

2. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the investment will be carried out. Applications made through a Member State shall be submitted to the Commission for an opinion. Applications made direct by an undertaking shall be submitted to the Member State concerned and to the Commission.

The Member State concerned and the Commission shall deliver their opinions within two months. If no reply is received within this period, the Bank may assume that there is no objection to the investment in question.

3. The Board of Directors shall rule on financing operations submitted to it by the Management Committee.

4. The Management Committee shall examine whether financing operations submitted to it comply with the provisions of this Statute, in particular with Articles 16 and 18. Where the Management Committee is in favour of the financing operation, it shall submit the corresponding proposal to the Board of Directors; the Committee may make its favourable opinion subject to such conditions, as it considers essential. Where the Management Committee is against granting the finance, it shall submit the relevant documents together with its opinion to the Board of Directors.

5. Where the Management Committee delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous.

6. Where the Commission delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous, the director nominated by the Commission abstaining.

7. Where both the Management Committee and the Commission deliver an unfavourable opinion, the Board of Directors may not grant the finance.

8. In the event that a financing operation relating to an approved investment has to be restructured in order to safeguard the Bank's rights and interests, the Management Committee shall take without delay the emergency measures which it deems necessary, subject to immediate reporting thereon to the Board of Directors.

Article 20

1. The Bank shall borrow on the capital markets the funds necessary for the performance of its tasks.

2. The Bank may borrow on the capital markets of the Member States in accordance with the legal provisions applying to those markets.

The competent authorities of a Member State with a derogation within the meaning of Article 139(1) of the Treaty on the Functioning of the European Union may oppose this only if there is reason to fear serious disturbances on the capital market of that State.

Article 21

1. The Bank may employ any available funds which it does not immediately require to meet its obligations in the following ways:

- (a) it may invest on the money markets;
- (b) it may, subject to the provisions of Article 18(2), buy and sell securities;
- (c) it may carry out any other financial operation linked with its objectives.

2. Without prejudice to the provisions of Article 23, the Bank shall not, in managing its investments, engage in any currency arbitrage not directly required to carry out its lending operations or fulfil commitments arising out of loans raised or guarantees granted by it.

3. The Bank shall, in the fields covered by this Article, act in agreement with the competent authorities or with the national central bank of the Member State concerned.

Article 22

1. A reserve fund of up to 10 % of the subscribed capital shall be built up progressively. If the state of the liabilities of the Bank should so justify, the Board of Directors may decide to set aside additional reserves. Until such time as the reserve fund has been fully built up, it shall be fed by:

- (a) interest received on loans granted by the Bank out of sums to be paid up by the Member States pursuant to Article 5;
- (b) interest received on loans granted by the Bank out of funds derived from repayment of the loans referred to in (a);

to the extent that this income is not required to meet the obligations of the Bank or to cover its expenses.

2. The resources of the reserve fund shall be so invested as to be available at any time to meet the purpose of the fund.

Article 23

1. The Bank shall at all times be entitled to transfer its assets in the currency of a Member State whose currency is not the euro in order to carry out financial operations corresponding to the task set out in Article 309 of the Treaty on the Functioning of the European Union, taking into account the provisions of Article 21 of this Statute. The Bank shall, as far as possible, avoid making such transfers if it has cash or liquid assets in the currency required.
2. The Bank may not convert its assets in the currency of a Member State whose currency is not the euro into the currency of a third country without the agreement of the Member State concerned.
3. The Bank may freely dispose of that part of its capital which is paid up and of any currency borrowed on markets outside the Union.
4. The Member States undertake to make available to the debtors of the Bank the currency needed to repay the capital and pay the interest on loans or commission on guarantees granted by the Bank for investments to be carried out in their territory.

Article 24

If a Member State fails to meet the obligations of membership arising from this Statute, in particular the obligation to pay its share of the subscribed capital or to service its borrowings, the granting of loans or guarantees to that Member State or its nationals may be suspended by a decision of the Board of Governors, acting by a qualified majority.

Such decision shall not release either the State or its nationals from their obligations towards the Bank.

Article 25

1. If the Board of Governors decides to suspend the operations of the Bank, all its activities shall cease forthwith, except those required to ensure the due realisation, protection and preservation of its assets and the settlement of its liabilities.
2. In the event of liquidation, the Board of Governors shall appoint the liquidators and give them instructions for carrying out the liquidation. It shall ensure that the rights of the members of staff are safeguarded.

Article 26

1. In each of the Member States, the Bank shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.

2. The property of the Bank shall be exempt from all forms of requisition or expropriation.

Article 27

Disputes between the Bank on the one hand, and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the European Union. The Bank may provide for arbitration in any contract.

The Bank shall have an address for service in each Member State. It may, however, in any contract, specify a particular address for service.

The property and assets of the Bank shall not be liable to attachment or to seizure by way of execution except by decision of a court.

Article 28

1. The Board of Governors may, acting unanimously, decide to establish subsidiaries or other entities, which shall have legal personality and financial autonomy.

2. The Board of Governors shall establish the Statutes of the bodies referred to in paragraph 1. The Statutes shall define, in particular, their objectives, structure, capital, membership, the location of their seat, their financial resources, means of intervention and auditing arrangements, as well as their relationship with the organs of the Bank.

3. The Bank shall be entitled to participate in the management of these bodies and contribute to their subscribed capital up to the amount determined by the Board of Governors, acting unanimously.

4. The Protocol on the privileges and immunities of the European Union shall apply to the bodies referred to in paragraph 1 in so far as they are incorporated under the law of the Union, to the members of their organs in the performance of their duties as such and to their staff, under the same terms and conditions as those applicable to the Bank.

Those dividends, capital gains or other forms of revenue stemming from such bodies to which the members, other than the European Union and the Bank, are entitled, shall however remain subject to the fiscal provisions of the applicable legislation.

5. The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning measures adopted by organs of a body incorporated under Union law. Proceedings against such measures may be instituted by any member of such a body in its capacity as such or by Member States under the conditions laid down in Article 263 of the Treaty on the Functioning of the European Union.

6. The Board of Governors may, acting unanimously, decide to admit the staff of bodies incorporated under Union law to joint schemes with the Bank, in compliance with the respective internal procedures.

PROTOCOL (NO 12)
ON THE EXCESSIVE DEFICIT PROCEDURE

THE HIGH CONTRACTING PARTIES,

DESIRING TO lay down the details of the excessive deficit procedure referred to in Article 126 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The reference values referred to in Article 126(2) of the Treaty on the Functioning of the European Union are:

- 3 % for the ratio of the planned or actual government deficit to gross domestic product at market prices;
- 60 % for the ratio of government debt to gross domestic product at market prices.

Article 2

In Article 126 of the said Treaty and in this Protocol:

- "government" means general government, that is central government, regional or local government and social security funds, to the exclusion of commercial operations, as defined in the European System of Integrated Economic Accounts;
- "deficit" means net borrowing as defined in the European System of Integrated Economic Accounts;
- "investment" means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;

- "debt" means total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government as defined in the first indent.

Article 3

In order to ensure the effectiveness of the excessive deficit procedure, the governments of the Member States shall be responsible under this procedure for the deficits of general government as defined in the first indent of Article 2. The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from these Treaties. The Member States shall report their planned and actual deficits and the levels of their debt promptly and regularly to the Commission.

Article 4

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

PROTOCOL (NO 13)

ON THE CONVERGENCE CRITERIA

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the convergence criteria which shall guide the Union in taking decisions to end the derogations of those Member States with a derogation, referred to in Article 140 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The criterion on price stability referred to in the first indent of Article 140(1) of the Treaty on the Functioning of the European Union shall mean that a Member State has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1 ½ percentage points that of, at most, the three best performing Member States in terms of price stability. Inflation shall be measured by means of the consumer price index on a comparable basis taking into account differences in national definitions.

Article 2

The criterion on the government budgetary position referred to in the second indent of Article 140(1) of the said Treaty shall mean that at the time of the examination the Member State is not the subject of a Council decision under Article 126(6) of the said Treaty that an excessive deficit exists.

Article 3

The criterion on participation in the Exchange Rate mechanism of the European Monetary System referred to in the third indent of Article 140(1) of the said Treaty shall mean that a Member State has respected the normal fluctuation margins provided for by the exchange-rate mechanism on the European Monetary System without severe tensions for at least the last two years before the examination. In particular, the Member State shall not have devalued its currency's bilateral central rate against the euro on its own initiative for the same period.

Article 4

The criterion on the convergence of interest rates referred to in the fourth indent of Article 140(1) of the said Treaty shall mean that, observed over a period of one year before the examination, a Member State has had an average nominal long-term interest rate that does not exceed by more than two percentage points that of, at most, the three best performing Member States in terms of price stability. Interest rates shall be measured on the basis of long-term government bonds or comparable securities, taking into account differences in national definitions.

Article 5

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

Article 6

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the ECB and the Economic and Financial Committee, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article 140(1) of the said Treaty, which shall then replace this Protocol.

PROTOCOL (NO 14)
ON THE EURO GROUP

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

PROTOCOL (NO 15)
**ON CERTAIN PROVISIONS RELATING TO THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND**

THE HIGH CONTRACTING PARTIES,

RECOGNISING that the United Kingdom shall not be obliged or committed to adopt the euro without a separate decision to do so by its government and parliament,

GIVEN that on 16 October 1996 and 30 October 1997 the United Kingdom government notified the Council of its intention not to participate in the third stage of economic and monetary union,

NOTING the practice of the government of the United Kingdom to fund its borrowing requirement by the sale of debt to the private sector,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

1. Unless the United Kingdom notifies the Council that it intends to adopt the euro, it shall be under no obligation to do so.

2. In view of the notice given to the Council by the United Kingdom government on 16 October 1996 and 30 October 1997, paragraphs 3 to 8 and 10 shall apply to the United Kingdom.

3. The United Kingdom shall retain its powers in the field of monetary policy according to national law.

4. Articles 119, second paragraph, 126(1), (9) and (11), 127(1) to (5), 128, 130, 131, 132, 133, 138, 140(3), 219, 282(2), with the exception of the first and last sentences thereof, 282(5), and 283 of the Treaty on the Functioning of the European Union shall not apply to the United Kingdom. The same applies to Article 121(2) of this Treaty as regards the adoption of the parts of the broad economic policy guidelines which concern the euro area generally. In these provisions references to the Union or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

5. The United Kingdom shall endeavour to avoid an excessive government deficit.

Articles 143 and 144 of the Treaty on the Functioning of the European Union shall continue to apply to the United Kingdom. Articles 134(4) and 142 shall apply to the United Kingdom as if it had a derogation.

6. The voting rights of the United Kingdom shall be suspended in respect of acts of the Council referred to in the Articles listed in paragraph 4 and in the instances referred to in the first subparagraph of Article 139(4) of the Treaty on the Functioning of the European Union. For this purpose the second subparagraph of Article 139(4) of the Treaty shall apply.

The United Kingdom shall also have no right to participate in the appointment of the President, the Vice-President and the other members of the Executive Board of the ECB under the second subparagraph of Article 283(2) of the said Treaty.

7. Articles 3, 4, 6, 7, 9.2, 10.1, 10.3, 11.2, 12.1, 14, 16, 18 to 20, 22, 23, 26, 27, 30 to 34 and 49 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank ("the Statute") shall not apply to the United Kingdom.

In those Articles, references to the Union or the Member States shall not include the United Kingdom and references to national central banks or shareholders shall not include the Bank of England.

References in Articles 10.3 and 30.2 of the Statute to "subscribed capital of the ECB" shall not include capital subscribed by the Bank of England.

8. Article 141(1) of the Treaty on the Functioning of the European Union and Articles 43 to 47 of the Statute shall have effect, whether or not there is any Member State with a derogation, subject to the following amendments:

- (a) References in Article 43 to the tasks of the ECB and the EMI shall include those tasks that still need to be performed in the third stage owing to any decision of the United Kingdom not to adopt the euro.
- (b) In addition to the tasks referred to in Article 46, the ECB shall also give advice in relation to and contribute to the preparation of any decision of the Council with regard to the United Kingdom taken in accordance with paragraphs 9(a) and 9(c).
- (c) The Bank of England shall pay up its subscription to the capital of the ECB as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.

9. The United Kingdom may notify the Council at any time of its intention to adopt the euro. In that event:

- (a) The United Kingdom shall have the right to adopt the euro provided only that it satisfies the necessary conditions. The Council, acting at the request of the United Kingdom and under the conditions and in accordance with the procedure laid down in Article 140(1) and (2) of the Treaty on the Functioning of the European Union, shall decide whether it fulfils the necessary conditions.
- (b) The Bank of England shall pay up its subscribed capital, transfer to the ECB foreign reserve assets and contribute to its reserves on the same basis as the national central bank of a Member State whose derogation has been abrogated.
- (c) The Council, acting under the conditions and in accordance with the procedure laid down in Article 140(3) of the said Treaty, shall take all other necessary decisions to enable the United Kingdom to adopt the euro.

If the United Kingdom adopts the euro pursuant to the provisions of this Protocol, paragraphs 3 to 8 shall cease to have effect.

10. Notwithstanding Article 123 of the Treaty on the Functioning of the European Union and Article 21.1 of the Statute, the Government of the United Kingdom may maintain its "ways and means" facility with the Bank of England if and so long as the United Kingdom does not adopt the euro.

PROTOCOL (NO 16)
ON CERTAIN PROVISIONS RELATING TO DENMARK

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to Denmark renouncing its exemption,

GIVEN THAT, on 3 November 1993, the Danish Government notified the Council of its intention not to participate in the third stage of economic and monetary union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

1. In view of the notice given to the Council by the Danish Government on 3 November 1993, Denmark shall have an exemption. The effect of the exemption shall be that all Articles and provisions of the Treaties and the Statute of the ESCB referring to a derogation shall be applicable to Denmark.
2. As for the abrogation of the exemption, the procedure referred to in Article 140 shall only be initiated at the request of Denmark.
3. In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.

1.2.3. Declarations annexed to the Treaties

DECLARATION 30

ON ARTICLE 126 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

With regard to Article 126, the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States.

The Conference confirms that a rule-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and Union level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Treaties and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is to gradually achieve a budgetary surplus in good times which creates the necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all

necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective. This Declaration does not prejudge the future debate on the Stability and Growth Pact.

1.3. SECONDARY LEGISLATION

COUNCIL REGULATION (EC) NO 3603/93

of 13 December 1993

specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104b (2) thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Whereas Articles 104 and 104b (1) of the Treaty are directly applicable; whereas the terms featuring in Articles 104 and 104b (1) may be specified, if necessary;

Whereas the terms 'overdraft facilities' and 'other types of credit facility' used in Article 104 of the Treaty should be defined, particularly with reference to the treatment of claims existing at 1 January 1994;

Whereas it is desirable that the national central banks participating in the third stage of Economic and Monetary Union should enter such Union having on their balance sheets claims negotiable under market conditions, in particular to give the required flexibility to the monetary policy of the European System of Central Banks and to permit a standard contribution from the various national central banks participating in monetary union to the monetary income to be distributed among them;

Whereas the central banks which, after 1 January 1994, still hold claims against the public sector which are non-negotiable or are subject to conditions which are not market conditions should be authorized subsequently to convert such claims into negotiable fixed-maturity securities under market conditions;

Whereas paragraph 11 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that the Government of the United Kingdom may maintain its 'ways and means' facility with the Bank of England if and so long as the United Kingdom does not move to the third stage; whereas it is appropriate to make provision for the conversion of the amount of this facility into marketable debt at a fixed maturity and on market terms if the United Kingdom moves to stage three of EMU;

Whereas the Protocol on Portugal lays down that 'Portugal is hereby authorized to maintain the facility afforded to the Autonomous Regions of the Azores and Madeira to benefit from an interest-free credit facility with the Banco de Portugal under the terms established by existing Portuguese law'; and that 'Portugal commits itself to pursue its best endeavours in order to put an end to the abovementioned facility as soon as possible';

Whereas Member States must take appropriate measures to ensure that the prohibitions referred to in Article 104 of the Treaty are applied effectively and fully; whereas, in particular, purchases made on the secondary market must not be used to circumvent the objective of that Article;

Whereas, within the limits laid down in this Regulation, the direct acquisition by the central bank of one Member State of marketable debt instruments issued by the public sector of another Member State does not help to shield the public sector from the discipline of market mechanisms where such purchases are conducted for the sole purpose of managing foreign exchange reserves;

Whereas, notwithstanding the role assigned to the Commission pursuant to Article 169 of the Treaty, it is for the European Monetary Institute and, thereafter, for the European Central Bank, pursuant to Articles 109f (9) and 180 of the Treaty, to ensure that national central banks honour the obligations laid down by the Treaty;

Whereas intra-day credits by the central banks may assist the smooth operation of payment systems; whereas, therefore, intra-day credits in the public sector are compatible with the objectives of Article 104 of the Treaty, provided that no extension to the following day is possible;

Whereas the function of fiscal agent exercised by the central banks should not be impeded; whereas, even if clearing by the central banks of cheques issued by third parties for the public sector's account may occasionally involve a credit, Article 104 of the Treaty should not be regarded as prohibiting such operations, provided that they do not result overall in a credit for the public sector;

Whereas the holding by the central banks of coins issued by the public sector and credited to the public sector constitutes an interest-free form of credit for the public sector; whereas, however, if only limited amounts are involved, this practice does not interfere with the principle of Article 104 of the Treaty; whereas, therefore, in view of the difficulties which would arise from total prohibition of this form of credit, it may be permitted within the limits laid down in this Regulation;

Whereas, following unification, the Federal Republic of Germany has particular difficulty in complying with the limit set on such assets; whereas it is appropriate in those circumstances to authorize a higher percentage for a limited period;

Whereas the financing by the central banks of obligations falling upon the public sector vis-à-vis the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up within the Community results in foreign claims which have all the characteristics of reserve assets; whereas it is, therefore, appropriate to authorize them;

Whereas public undertakings are covered by the prohibition in Articles 104 and 104b (1); whereas they are defined in Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (3),

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of Article 104 of the Treaty:

- (a) 'overdraft facilities' means any provision of funds to the public sector resulting or likely to result in a debit balance;
- (b) 'other type of credit facility' means:
 - i) any claim against the public sector existing at 1 January 1994, except for fixed-maturity claims acquired before that date;
 - ii) any financing of the public sector's obligations vis-à-vis third parties;
 - iii) without prejudice to Article 104 (2) of the Treaty, any transaction with the public sector resulting or likely to result in a claim against that sector.

2. The following shall not be regarded as 'debt instruments' within the meaning of Article 104 of the Treaty: securities acquired from the public sector to ensure the conversion into negotiable fixed-maturity securities under market conditions of:

- fixed-maturity claims acquired before 1 January 1994 which are not negotiable or not under market conditions, provided that the maturity of the securities is not subsequent to that of the aforementioned claims;
- the amount of the 'ways and means' facility maintained by the United Kingdom Government with the Bank of England until the date, if any, on which the United Kingdom moves to stage three of EMU.

Article 2

1. During stage two of EMU, purchases by the national central bank of one Member State of marketable debt instruments issued by the public sector of another Member

State shall not be considered direct purchases within the meaning of Article 104 of the Treaty, provided that such purchases are conducted for the sole purpose of managing foreign exchange reserves.

2. During stage three of EMU, the following purchases conducted for the sole purpose of managing foreign exchange reserves shall not be considered direct purchases within the meaning of Article 104 of the Treaty:

- purchases by the national central bank of a Member State not participating in stage three of EMU, from the public sector of another Member State, of marketable debt instruments of the latter,
- purchases by the European Central Bank or the national central bank of a Member State participating in stage three of EMU, from the public sector of a Member State not participating in stage three, of marketable debt instruments of the latter.

Article 3

For the purposes of this Regulation, 'public sector' means Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States.

'National central banks' means the central banks of the Member States and the Luxembourg Monetary Institute.

Article 4

Intra-day credits by the European Central Bank or the national banks to the public sector shall not be considered as a credit facility within the meaning of Article 104 of the Treaty, provided that they remain limited to the day and that no extension is possible.

Article 5

Where the European Central Bank or the national central banks receive from the public sector, for collection, cheques issued by third parties and credit the public sector's account before the drawee bank has been debited, this operation shall not be considered as a credit facility within the meaning of Article 104 of the Treaty if a fixed period of time corresponding to the normal period for the collection of cheques by the central bank of the Member State concerned has elapsed since receipt of the cheque, provided that any float which may arise is exceptional, is of a small amount and averages out in the short term.

Article 6

The holding by the European Central Bank or the national central banks of coins issued by the public sector and credited to the public sector shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty where the amount of these assets remains at less than 10 % of the coins in circulation.

Until 31 December 1996, this figure shall be 15 % for Germany.

Article 7

The financing by the European Central Bank or the national central banks of obligations falling upon the public sector vis-à-vis the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up by Regulation (EEC) No 1969/88 (4) shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty.

Article 8

1. For the purposes of Articles 104 and 104b (1) of the Treaty, 'public undertaking' shall be defined as any undertaking over which the State or other regional or local authorities may directly or indirectly exercise a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. For the purposes of Articles 104 and 104b (1) of the Treaty, the European Central Bank and the national central banks do not form part of the public sector.

Article 9

This Regulation shall enter into force on 1 January 1994.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EC) NO 3604/93
of 13 December 1993
specifying definitions for the application of the prohibition of privileged access
referred to in Article 104a of the Treaty

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104a (2) thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Whereas the prohibition of privileged access to financial institutions, as laid down in Article 104a of the Treaty, forms an essential element of the submission of the public sector in its financing operations to the discipline of the market mechanism and so makes a contribution to the strengthening of budgetary discipline; whereas, moreover, it places the Member States on an equal footing as regards public sector access to financial institutions;

Whereas the Council must specify definitions for the application of such prohibition;

Whereas the Member States and the Community must act with due regard for the principle of an open market economy in which there is free competition;

Whereas, in particular, this Regulation cannot affect the methods for organizing markets complying with that principle;

Whereas this Regulation does not seek to interfere with any operation of public financial institutions complying with the same principle;

Whereas Article 104a of the Treaty prohibits measures establishing privileged access; whereas the types of acts concerned by this prohibition should be specified; whereas the commitments freely made by financial institutions in the framework of contractual relations unquestionably cannot be affected;

Whereas the same Article provides that prudential considerations may justify departure from the principle of this prohibition; whereas laws, regulations or administrative actions may not, however, under the cover of prudential consideration, be used to establish disguised privileged access;

Whereas public undertakings are covered by the same prohibition; whereas they are defined in Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between the Member States and public undertakings (3);

Whereas, for reasons of monetary policy, financial institutions and, in particular, credit institutions may be obliged to hold claims against the European Central Bank and/or national central banks;

Whereas the European Central Bank and national central banks may not, as public authorities, take measures establishing privileged access; whereas the rules on mobilization or pledging of debt instruments enacted by the European Central Bank or by national central banks must not be used as a means of circumventing the prohibition of privileged access;

Whereas, in order to avoid any circumvention of the prohibition, the definitions in Community law of the various types of financial institution should be supplemented by a reference to those institutions engaging in financial activities which have not yet been harmonized at Community level, such as, for instance, branches of third-country establishments, holding and factoring companies, uncoordinated undertakings for collective investment in transferable securities (UCITS), institutions for retirement provision, etc.,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of Article 104a of the Treaty, 'any measure establishing privileged access' shall be defined as any law, regulation or any other binding legal instrument adopted in the exercise of public authority which:

- obliges financial institutions to acquire or to hold liabilities of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States (hereinafter referred to as 'public sector'), or
- confers tax advantages which may benefit only financial institutions or financial advantages which do not comply with the principles of a market economy, in order to encourage the acquiring or the holding by those institutions of such liabilities.

2. Privileged access shall not be regarded as being established by those measures which give rise to obligations for funding social housing under special terms such as, inter alia, an obligation to centralize funds with public financial institutions, when the funding terms prevailing for the public sector are identical to those for funding of the same nature granted to private borrowers for the same purposes,

- the obligation to centralize funds with a public credit institution, in so far as such a constraint is an integral part, as at 1 January 1994, of the organization of a particular network of credit institutions or of specific savings arrangements designed for households and intended to provide the whole of the network or the specific arrangements with financial security. The use of such centralized funds must be determined by the management bodies of the public credit institution concerned and comply with the principle of a market economy where there is free competition,
- obligations to finance the repair of disaster damage, provided that the conditions for financing repairs are not more favourable when damage is sustained by the public sector than when it is sustained by the private sector.

Article 2

For the purposes of Article 104a of the Treaty, 'prudential considerations' shall be those which underlie national laws, regulations or administrative actions based on, or consistent with, EC law and designed to promote the soundness of financial institutions so as to strengthen the stability of the financial system as a whole and the protection of the customers of those institutions.

Article 3

1. For the purposes of Article 104a of the Treaty, 'public undertaking' shall be defined as any undertaking over which the State or other regional or local authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence on the part of the State or other regional or local authorities shall be presumed when these authorities, directly or indirectly in relation to an undertaking:

- (a) hold the major part of the undertaking's subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking; or
- (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

2. Without prejudice to their obligation as public authorities not to take measures establishing privileged access within the meaning of Article 104a of the Treaty, the European Central Bank and the national central banks shall not, for the purposes of this Article, be considered as forming part of the public sector.

3. 'National central banks' means the central banks of the Member States and the Luxembourg Monetary Institute.

Article 4

1. For the purposes of Article 104a of the Treaty, 'financial institutions' means:

- credit institutions as defined in the first indent of Article 1 of Directive 77/780/EEC (4),
- insurance undertakings as defined in Article 1, point (a) of Directive 92/49/EEC (5),
- assurance undertakings as defined in Article 1, point (a) of Directive 92/96/EEC (6),
- UCITS as defined in Article 1 (2) of Directive 85/611/EEC (7),
- investment firms as defined in Article 1 (2) of Directive 93/22/EEC (8),
- other undertakings the activities of which are similar to those of the undertakings referred to in the previous indents or the principal activity of which is to acquire holdings of financial assets or to transform financial claims.

2. The following institutions do not form part of the financial institutions defined in paragraph 1:

- the European Central Bank and national central banks,
- post office financial services when they form part of the general government sector defined in accordance with the European System of Integrated Economic Accounts or when their main activity is to act as the financial agent of government, and
- the institutions which are part of the general government sector defined in accordance with the European System of Integrated Economic Accounts or the liabilities of which correspond completely to a public debt.

Article 5

This Regulation shall enter into force on 1 January 1994.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

2. FISCAL COORDINATION

COUNCIL REGULATION (EC) NO 479/2009

of 25 May 2009

on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community as amended by Council Regulation (EU) No 679/2010 of 26 July 2010 and Commission Regulation (EU) No 220/2014 of 7 March 2014

(Codified version)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 104(14) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the European Central Bank⁽²⁾,

Whereas:

- (1) Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community⁽³⁾ has been substantially amended several times⁽⁴⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) The definitions of ‘government’, ‘deficit’ and ‘investment’ are laid down in the Protocol on the excessive deficit procedure by reference to the European System of Integrated Economic Accounts (ESA), replaced by the European system of national and regional accounts in the Community (adopted by

¹ Opinion of 21 October 2008 (not yet published in the Official Journal).

² OJ C 88, 9.4.2008, p. 1.

³ OJ L 332, 31.12.1993, p. 7.

⁴ See Annex I.

Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community and hereinafter referred to as ESA 2010)⁵). Precise definitions referring to the classification codes of ESA 2010 are required. Those definitions may be subject to revision in the context of the necessary harmonisation of national statistics or for other reasons. Any revision of ESA will be decided by the Council in accordance with the rules on competence and procedure laid down in the Treaty.

- (3) Under ESA 2010, interest flows under swap contracts and forward rate agreements (FRAs) are to be classified in the financial account and require specific treatment for the data transmitted under the excessive deficit procedure.
- (4) The definition of ‘debt’ laid down in the Protocol on the excessive deficit procedure needs to be amplified by a reference to the classification codes of ESA 2010.
- (5) In the case of financial derivatives, as defined in ESA 2010, there is no nominal value identical to that for other debt instruments. Therefore, it is necessary that financial derivatives are not included with the liabilities making up government debt for the purposes of the Protocol on the excessive deficit procedure. For liabilities which are subject to agreements fixing the exchange rate, this rate should be taken into account in the conversion into national currency.
- (6) ESA 2010 provides a detailed definition of gross domestic product at current market prices, which is appropriate for the calculation of the ratios of government deficit to gross domestic product and of government debt to gross domestic product referred to in Article 104 of the Treaty.
- (7) Consolidated government interest expenditure is an important indicator for monitoring the budgetary situation in the Member States. Interest expenditure is intrinsically linked to government debt. Government debt to be reported to the Commission by the Member States has to be consolidated within the government sector. The levels of government debt and of interest expenditure should be made mutually consistent. The methodology of ESA 2010 (point 1.58) recognises that, for certain kinds of analysis, consolidated aggregates are more significant than overall gross figures.
- (8) Pursuant to the terms of the Protocol on the excessive deficit procedure, the Commission is required to provide the statistical data to be used in that procedure.

⁵ OJ L 310, 30.11.1996, p. 1.

- (9) The role of the Commission, as statistical authority, in that context is specifically exercised by Eurostat, on behalf of the Commission. As the Commission department responsible for carrying out the tasks devolving on the Commission as regards the production of Community statistics, Eurostat is required to execute its tasks in accordance with the principles of impartiality, reliability, relevance, cost-effectiveness, statistical confidentiality and transparency, as laid down in Commission Decision 97/281/EC of 21 April 1997 on the role of Eurostat as regards the production of Community statistics⁶). The implementation by the national and Community statistical authorities of the Recommendation of the Commission of 25 May 2005 on the independence, integrity and accountability of the national and Community authorities should enhance the principle of professional independence, adequacy of resources and quality of statistical data.
- (10) Eurostat is responsible, on behalf of the Commission, for assessing the quality of the data and for providing the data to be used within the context of the excessive deficit procedure, in accordance with Commission Decision 97/281/EC.
- (11) A permanent dialogue should be established between the Commission and the Member States' statistical authorities in order to ensure the quality both of the data reported by Member States and of the underlying government sector accounts compiled in accordance with ESA 2010.
- (12) Detailed rules are required to organise prompt and regular reporting by the Member States to the Commission (Eurostat) of their planned and actual deficits and of the levels of their debt.
- (13) Pursuant to Article 104c(2) and (3) of the Treaty, the Commission is to monitor the development of the budgetary situation and of the stock of government debt in the Member States and to examine compliance with budgetary discipline on the basis of criteria relating to government deficit and government debt. If a Member State does not fulfil the requirements under one or both criteria, it is necessary for the Commission to take into account all relevant factors. The Commission has to examine whether there is a risk of an excessive deficit in a Member State,

HAS ADOPTED THIS REGULATION:

⁶ OJ L 112, 29.4.1997, p. 56

CHAPTER I

DEFINITIONS

Article 1

1. For the purposes of the Protocol on the excessive deficit procedure and of this Regulation, the terms in paragraphs 2 to 6 are defined according to Regulation (EU) No 549/2013 of the European Parliament and the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (hereinafter referred to as ESA 2010). The codes in brackets refer to ESA 2010.

2. ‘Government’ means the sector of ‘general government’ (S. 13), that is ‘central government’ (S.1311), ‘state government’ (S.1312), ‘local government’ (S.1313) and ‘social security funds’ (S.1314), to the exclusion of commercial operations, as defined in ESA 2010.

The exclusion of commercial operations means that the sector of ‘general government’ (S.13) comprises only institutional units producing non-market services as their main activity.

3. ‘Government deficit (surplus)’ means the net borrowing (net lending) (B.9) of the sector of ‘general government’ (S.13), as defined in ESA 2010. The interest comprised in the government deficit is the interest (D.41), as defined in ESA 2010.

4. ‘Government investment’ means the gross fixed capital formation (P.51) of the sector of ‘general government’ (S.13), as defined in ESA 2010.

5. ‘Government debt’ means the total gross debt at nominal value outstanding at the end of the year of the sector of ‘general government’ (S.13), with the exception of those liabilities the corresponding financial assets of which are held by the sector of ‘general government’ (S.13).

Government debt is constituted by the liabilities of general government in the following categories: currency and deposits (AF.2); debt securities (AF.3) and loans (AF. 4), as defined in ESA 2010.

The nominal value of a liability outstanding at the end of the year is the face value.

The nominal value of an index-linked liability corresponds to its face value adjusted by the index-related change in the value of the principal accrued to the end of the year.

Liabilities denominated in a foreign currency, or exchanged from one foreign currency through contractual agreements to one or more other foreign currencies shall be converted into the other foreign currencies at the rate agreed on in those contracts and

shall be converted into the national currency on the basis of the representative market exchange rate prevailing on the last working day of each year.

Liabilities denominated in the national currency and exchanged through contractual agreements to a foreign currency shall be converted into the foreign currency at the rate agreed on in those contracts and shall be converted into the national currency on the basis of the representative market exchange rate prevailing on the last working day of each year.

Liabilities denominated in a foreign currency and exchanged through contractual agreements to the national currency shall be converted into the national currency at the rate agreed on in those contracts.

6. ‘Gross domestic product’ means gross domestic product at current market prices (GDP mp) (B.1*g), as defined in ESA 2010.

Article 2

1. ‘Planned government deficit and government debt level figures’ means the figures established for the current year by the Member States. They shall be the most recent official forecasts, taking into account the most recent budgetary decisions and economic developments and prospects. They should be produced in as short a time as possible before the reporting deadline.

2. ‘Actual government deficit and government debt level figures’ means estimated, provisional, half-finalised or final results for a past year. The planned data together with the actual data shall form a consistent time series as far as the definitions and concepts are concerned.

Article 2a

‘Access’ means that relevant documents and other information must be provided when requested, either immediately or as promptly afterwards as is consistent with the time needed to collect the requested information.

CHAPTER II

RULES AND COVERAGE OF REPORTING

Article 3

1. Member States shall report to the Commission (Eurostat) their planned and actual government deficits and levels of government debt twice a year, the first time before 1 April of the current year (year n) and the second time before 1 October of year n.

Member States shall inform the Commission (Eurostat) which national authorities are responsible for the excessive deficit procedure reporting.

2. Before 1 April of year n, Member States shall:

- (a) report to the Commission (Eurostat) their planned government deficit for year n, an up-to-date estimate of their actual government deficit for year n-1 and their actual government deficits for years n- 2, n-3 and n-4;
- (b) simultaneously provide the Commission (Eurostat) with their planned data for year n and the actual data for years n-1, n-2, n-3 and n-4 of their corresponding public accounts budget deficits in accordance with the definition which is given most prominence nationally and with the figures which explain the transition between the public accounts budget deficit and their government deficit for the sub-sector S.1311;
- (c) simultaneously provide the Commission (Eurostat) with their actual data for years n-1, n-2, n-3 and n-4 of their corresponding working balances and with the figures which explain the transition between the working balances of each government sub-sector and their government deficit for the sub-sectors S.1312, S.1313 and S.1314;
- (d) report to the Commission (Eurostat) their planned level of government debt at the end of year n and their levels of actual government debt at the end of years n-1, n-2, n-3 and n-4;
- (e) simultaneously provide the Commission (Eurostat), for years n-1, n-2, n-3 and n-4, with the figures which explain the contribution of the government deficit and other factors relevant to the variation in the level of their government debt by sub-sector.

3. Before 1 October of year n, Member States shall report to the Commission (Eurostat) their:

- (a) updated planned government deficit for year n and their actual government deficits for years n-1, n-2, n-3 and n-4 and shall comply with the requirements of points (b) and (c) of paragraph 2;
- (b) updated planned level of government debt at the end of year n and their levels of actual government debt at the end of years n-1, n-2, n-3 and n-4, and shall comply with the requirements of paragraph 2(e).

4. The figures for the planned government deficit reported to the Commission (Eurostat) in accordance with paragraphs 2 and 3 shall be expressed in national currency and in budget years.

The figures for actual government deficit and actual government debt level reported to the Commission (Eurostat) in accordance with paragraphs 2 and 3 shall be expressed in national currency and in calendar years, with the exception of the up-to-date estimates for year n-1, which may be expressed in budget years.

Where the budget year differs from the calendar year, Member States shall also report to the Commission (Eurostat) their figures for actual government deficit and actual government debt level in budget years for the two budget years preceding the current budget year.

Article 4

Member States shall, in accordance with the procedure laid down in Article 3(1), (2) and (3), provide the Commission (Eurostat) with the figures for their government investment expenditure and interest expenditure (consolidated).

Article 5

Member States shall provide the Commission (Eurostat) with a forecast of their gross domestic product for year n and the actual amount of their gross domestic product for years n-1, n-2, n-3 and n-4, under the same timing conditions as those indicated in Article 3(1).

Article 6

1. Member States shall inform the Commission (Eurostat), as soon as it becomes available, of any major revision in their actual and planned government deficit and debt figures already reported.
2. Major revisions in the actual deficit and debt figures already reported shall be properly documented. In any case, revisions which result in the reference values as specified in the Protocol on the excessive deficit procedure being exceeded, or revisions which mean that a Member State's data no longer exceed the reference values, shall be reported and properly documented.

Article 7

Member States shall make public the actual deficit and debt data and other data for past years reported to the Commission (Eurostat) in accordance with Articles 3 to 6.

CHAPTER III

QUALITY OF DATA

Article 8

1. The Commission (Eurostat) shall regularly assess the quality both of actual data reported by Member States and of the underlying government sector accounts compiled according to ESA 2010 (hereinafter referred to as government accounts). Quality of actual data means compliance with accounting rules, completeness, reliability, timeliness, and consistency of the statistical data. The assessment will focus on areas specified in the inventories of Member States such as the delimitation of the government sector, the classification of government transactions and liabilities, and the time of recording.

2. Member States shall provide the Commission (Eurostat), as promptly as possible, with the relevant statistical information requested for the needs of the data quality assessment, without prejudice to the provisions of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics ⁽⁷⁾ relating to statistical confidentiality.

The statistical information referred to in the first subparagraph shall be limited to the information strictly necessary to check the compliance with ESA rules. In particular, ‘statistical information’ means:

- (a) data from national accounts;
- (b) inventories;
- (c) EDP notification tables;
- (d) additional questionnaires and clarification related to the notifications.

The format of the questionnaires shall be defined by the Commission (Eurostat) after consultation of the Committee on Monetary, Financial and Balance of Payments Statistics (hereinafter referred to as CMFB).

3. The Commission (Eurostat) shall report regularly to the European Parliament and to the Council on the quality of the actual data reported by Member States. The report shall address the overall assessment of the actual data reported by Member States as regards to the compliance with accounting rules, completeness, reliability, timeliness, and consistency of the data.

⁷ OJ L 87, 31.3.2009, p. 164.

Article 9

1. Member States shall provide the Commission (Eurostat) with a detailed inventory of the methods, procedures and sources used to compile actual deficit and debt data and the underlying government accounts.
2. The inventories shall be prepared in accordance with guidelines adopted by the Commission (Eurostat) after consultation of CMFB.
3. The inventories shall be updated following revisions in the methods, procedures and sources adopted by Member States to compile their statistical data.
4. Member States shall make their inventories public.
5. The issues referred to in paragraphs 1, 2 and 3 may be addressed in the visits mentioned in Article 11.

Article 10

1. In the event of a doubt regarding the correct implementation of the ESA 2010 accounting rules, the Member State concerned shall request clarification from the Commission (Eurostat). The Commission (Eurostat) shall promptly examine the issue and communicate its clarification to the Member State concerned and, when appropriate, to the CMFB.
2. For cases which are either complex or of general interest in the view of the Commission or the Member State concerned, the Commission (Eurostat) shall take a decision after consultation of the CMFB. The Commission (Eurostat) shall make decisions public, together with the opinion of the CMFB, without prejudice to the provisions relating to statistical confidentiality of Regulation (EC) No 322/97.

Article 11

1. The Commission (Eurostat) shall ensure a permanent dialogue with Member States' statistical authorities. To this end, the Commission (Eurostat) shall carry out in all Member States regular dialogue visits, as well as possible methodological visits.
2. When organising dialogue and methodological visits, the Commission (Eurostat) shall transmit its provisional findings to the Member States concerned for comments.

Article 11a

The dialogue visits are designed to review actual data reported according to Article 8, to examine methodological issues, to discuss statistical processes and sources described in the inventories, and to assess compliance with the accounting rules. The dialogue

visits shall be used to identify risks or potential problems with respect to the quality of the reported data.

Article 11b

1. The methodological visits are designed to monitor the processes and verify the accounts which justify the reported data, and to draw detailed conclusions as to the quality of reported data, as described in Article 8(1).

2. The methodological visits shall only be undertaken in exceptional cases where significant risks or problems with respect to the quality of the data have been clearly identified.

3. For the purposes of this Regulation, it could be considered that there are significant risks or problems with the quality of the data notified by a Member State in such cases as:

- (a) there are frequent and sizeable revisions of the deficit or debt that are not clearly and adequately explained;
- (b) the Member State concerned is not sending to the Commission (Eurostat) all the statistical information requested in the context of the rounds for clarification of the EDP notification or as a consequence of a dialogue visit, in the period agreed between them and has not clearly and adequately explained the reason for the delay or non-response;
- (c) the Member State concerned changes, unilaterally and without a clear explanation, the sources and methods for estimating the deficit and debts of the general government set out in the inventory, with a material effect on estimates;
- (d) there are outstanding methodological issues likely to have a material effect on the debt or deficit statistics which have not been resolved between the Member State and the Commission (Eurostat) arising from the rounds for clarification or the previous dialogue visits, resulting in reservations from the Commission (Eurostat) in two subsequent EDP notifications;
- (e) there are persistent, unusually high stock-flow adjustments not clearly explained.

4. Mainly taking into account the criteria mentioned in paragraph 3, the Commission (Eurostat), after informing the CMFB, shall decide to carry out a methodological visit.

5. The Commission should provide the Economic and Financial Committee with full information about the reasons behind the methodological visits.

Article 12

1. Member States are expected to provide, at the request of the Commission (Eurostat), and on a voluntary basis, the assistance of experts in national accounting, including for the preparation and carrying-out of the methodological visits. In the exercise of their duties, these experts shall provide independent expertise. A list of those experts in national accounting shall be constituted on the basis of proposals sent to the Commission (Eurostat) by the national authorities responsible for the excessive deficit reporting.

The Commission shall lay down the rules and procedures related to the selection of the experts, taking into account an appropriate distribution of experts across Member States and an appropriate rotation of experts between Member States, their working arrangements and the financial details. The Commission shall share with the Member States the full cost incurred by the Member States for the assistance of their national experts.

2. In the framework of the methodological visits, the Commission (Eurostat) shall have the right to access the accounts of all government entities at central, state, local and social security levels, including the provision of existing underlying detailed accounting and budgetary information.

In this context, accounting and budgetary information includes:

- transactions and balance sheets,
- relevant statistical surveys and questionnaires of general government and further related information, such as analytical documents,
- information from relevant national, regional and local authorities on the execution of the budget of all sub-sectors of the general government,
- the accounts of extra-budgetary bodies, corporations, and non-profit institutions and other similar bodies that are part of the general government sector in national accounts,
- the accounts of social security funds.

Member States shall take all necessary measures to facilitate the methodological visits. Those visits may be carried out at national authorities involved in the excessive deficit procedure reporting, as well as at all services directly or indirectly involved in the production of government accounts and debt. In both cases, the national statistical institutes as national coordinators according to Article 5(1) of Regulation (EC) No

223/2009, shall support the Commission (Eurostat) in the organisation and coordination of the visits. Member States shall ensure that those national authorities and services, and where necessary, their national authorities who have a functional responsibility for the control of the public accounts, provide the Commission officials or other experts referred to in paragraph 1 with the assistance necessary to carry out their duties, including making documents available to justify the reported actual deficit and debt data and the underlying government accounts. Confidential records of the national statistical system as well as other confidential data should be provided to the Commission (Eurostat) only for the purpose of assessing the quality thereof. Experts in national accounting assisting the Commission (Eurostat) in the framework of the methodological visits shall sign a commitment to respect the confidentiality before accessing those confidential records or data.

3. The Commission (Eurostat) shall ensure that officials and experts participating in these visits meet every guarantee as regards technical competence, professional independence and observance of confidentiality.

Article 13

The Commission (Eurostat) shall report to the Economic and Financial Committee on the findings of dialogue and methodological visits, including any comments on these findings made by the Member State concerned. Those reports, along with any comments made by the Member State concerned, after having been transmitted to the Economic and Financial Committee, shall be made public, without prejudice to the provisions concerning statistical confidentiality in Regulation (EC) No 322/97.

CHAPTER IV

PROVISION OF DATA BY THE COMMISSION

(EUROSTAT)

Article 14

1. The Commission (Eurostat) shall provide the actual government deficit and debt data for the application of the Protocol on the excessive deficit procedure, within three weeks after the reporting deadlines referred to in Article 3(1) or after revisions as referred to in Article 6(1). That provision of data shall be effected through publication.

2. The Commission (Eurostat) shall not delay the provision of the actual government deficit and debt data of Member States where a Member State has not reported its own data.

Article 15

1. The Commission (Eurostat) may express a reservation on the quality of the actual data reported by the Member States. No later than three working days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the President of the Economic and Financial Committee the reservation it intends to express and make public. Where the issue is resolved after publication of the data and the reservation, withdrawal of the reservation shall be made public immediately thereafter.

2. The Commission (Eurostat) may amend actual data reported by Member States and provide the amended data and a justification of the amendment where there is evidence that actual data reported by Member States do not comply with the requirements of Article 8(1). No later than three working days before the planned publication date, the Commission (Eurostat) shall communicate to the Member State concerned and to the President of the Economic and Financial Committee the amended data and the justification for the amendment.

CHAPTER V

GENERAL PROVISIONS*Article 16*

1. Member States shall ensure that the actual data reported to the Commission (Eurostat) are provided in accordance with the principles established by Article 2 of Regulation (EC) No 223/2009. In this regard, the responsibility of the national statistical authorities is to ensure the compliance of reported data with Article 1 of this Regulation and the underlying ESA 2010 accounting rules. Member States shall ensure that the national statistical authorities are provided with access to all relevant information necessary to perform these tasks.

2. Member States shall take appropriate measures to ensure that institutions and officials responsible for the reporting of the actual data to the Commission (Eurostat) and of the underlying government accounts are accountable and act in accordance with principles established by Article 2 of Regulation (EC) No 223/2009.

Article 17

In the event of a revision of ESA 2010 or of an amendment to its methodology decided on by the European Parliament and the Council or the Commission in accordance with the rules of competence and procedure laid down in the Treaty and in Regulation (EC) No 2223/96, the Commission shall introduce the new references to ESA 2010 into Articles 1 and 3 of this Regulation.

Article 18

Regulation (EC) No 3605/93 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and be read in accordance with the correlation table set out in Annex II.

Article 19

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

Repealed Regulation with list of its successive amendments

Council Regulation (EC) No 3605/93 (OJ L 332, 31.12.1993, p. 7).

Council Regulation (EC) No 475/2000 (OJ L 58, 3.3.2000, p. 1).

Commission Regulation (EC) No 351/2002 (OJ L 55, 26.2.2002, p. 23).

Council Regulation (EC) No 2103/2005 (OJ L 337, 22.12.2005, p. 1).

ANNEX II

CORRELATION TABLE

Regulation (EC) No 3605/93	This Regulation
Section 1	Chapter I
Article 1(1) to (5)	Article 1(1) to (5)
Article 2	Article 1(6)
Article 3	Article 2
Section 2	Chapter II
Article 4(1)	Article 3(1)
Article 4(2), first to fifth indents	Article 3(2), points (a) to (e)
Article 4(3), first and second indents	Article 3(3), points (a) and (b)
Article 4(4)	Article 3(4)
Article 5	Article 4
Article 6	Article 5
Article 7	Article 6
Article 8	Article 7
Section 2a	Chapter III
Article 8a(1)	Article 8(1)
Article 8a(2), first subparagraph	Article 8(2), first subparagraph
Article 8a(2), second subparagraph, first to fourth indents	Article 8(2), second subparagraph, points (a) to (d)
Article 8a(2), third subparagraph	Article 8(2), third subparagraph

Regulation (EC) No 3605/93	This Regulation
Article 8a(3)	Article 8(3)
Article 8b	Article 9
Article 8c	Article 10
Article 8d, first paragraph, first and second sentences	Article 11(1)
Article 8d, first paragraph, third sentence	Article 11(3), third subparagraph
Article 8d, second paragraph, first and second sentences	Article 11(2)
Article 8d, second paragraph, third sentence	Article 11(3), second subparagraph
Article 8d, second paragraph, fourth and fifth sentences	Article 11(3), first subparagraph
Article 8d, third paragraph	Article 11(4)
Article 8e	Article 12
Article 8f	Article 13
Section 2b	Chapter IV
Article 8g	Article 14
Article 8h	Article 15
Section 2c	Chapter V
Article 8i	Article 16
Article 8j	Article 17
—	Article 18
—	Article 19
—	Annex I
—	Annex II

REGULATION (EU) NO 473/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2013

**on common provisions for monitoring and assessing draft budgetary plans and
ensuring the correction of excessive deficit of the Member States in the euro area**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 136 in combination with Article 121(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁽¹⁾,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) The Treaty on the Functioning of the European Union (TFEU) requires that Member States regard their economic policies as a matter of common concern, that their budgetary policies are guided by the need for sound public finances and that their economic policies do not risk jeopardising the proper functioning of economic and monetary union.
- (2) The Stability and Growth Pact (SGP) aims to secure budgetary discipline across the Union and sets out the framework for preventing and correcting excessive government deficits. It is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth underpinned by financial stability, thereby supporting the achievement of the Union's objectives for sustainable growth and jobs. The SGP includes the multilateral surveillance system laid down in Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies⁽³⁾ and the procedure for the avoidance of excessive government deficit laid down in Article 126 TFEU and further specified in Council Regulation (EC) No 1467/97 of 7 July 1997 on

¹ OJ C 141, 17.5.2012, p. 7.

² Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of 13 May 2013.

³ OJ L 209, 2.8.1997, p. 6.

speeding up and clarifying the implementation of the excessive deficit procedure⁽⁴⁾. The SGP has been further strengthened by Regulation (EU) No 1175/2011 of the European Parliament and of the Council⁽⁵⁾ and Council Regulation (EU) No 1177/2011⁽⁶⁾. Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area⁽⁷⁾ added a system of effective, preventive and gradual enforcement mechanisms in the form of the imposition of sanctions on Member States whose currency is the euro.

- (3) The strengthening of the SGP has enhanced the guidance provided to Member States concerning prudent fiscal policy-making, and, for the Member States whose currency is the euro, has reinforced and made more automatic the imposition of sanctions for non-compliance with prudent fiscal policy-making, in order to avoid excessive government deficits. Those provisions have created a more comprehensive framework.
- (4) In order to ensure closer coordination of economic policies and sustained convergence of the economic performance of Member States, the European Semester, as established in Article 2-a of Regulation (EC) No 1466/97, provides a framework for economic policy coordination. The European Semester includes the formulation, and the surveillance of the implementation, of the broad guidelines of the economic policies of the Member States and of the Union (broad economic policy guidelines) in accordance with Article 121(2) TFEU; the formulation, and the examination of the implementation, of the employment guidelines that must be taken into account by Member States in accordance with Article 148(2) TFEU (employment guidelines); the submission and assessment of Member States' stability or convergence programmes under that Regulation; the submission and assessment of Member States' national reform programmes supporting the Union's strategy for growth and jobs and established in line with the broad economic guidelines, with the employment guidelines and with the general guidance to Member States issued by the Commission (the annual growth survey) and the European Council at the beginning of the annual cycle of surveillance; and surveillance to prevent and correct macroeconomic imbalances under Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances⁽⁸⁾. Where appropriate, opinions issued in the context of an economic partnership programme, as established by this Regulation, should also be taken into account.
- (5) To enable the Union to emerge stronger from the crisis, both internally and at an international level, by boosting competitiveness, productivity, growth potential,

⁴ OJ L 209, 2.8.1997, p. 6.

⁵ OJ L 306, 23.11.2011, p. 12.

⁶ OJ L 306, 23.11.2011, p. 33.

⁷ OJ L 306, 23.11.2011, p. 1.

⁸ OJ L 306, 23.11.2011, p. 25.

social cohesion and economic convergence, the European Council, in its conclusions of 17 June 2010, adopted a new Union's strategy for growth and jobs which also contains objectives in the fields of poverty, education, innovation and the environment.

- (6) In order to ensure the proper functioning of the economic and monetary union, the TFEU allows the adoption of specific measures in the euro area which go beyond the provisions applicable to all Member States to strengthen the coordination and surveillance of their budgetary discipline. Such reinforced coordination and surveillance should be accompanied by commensurate involvement of the European Parliament and of national parliaments as appropriate. Active use, where appropriate and necessary, should be made of specific measures provided for in Article 136 TFEU.
- (7) The application of this Regulation should be in full compliance with Article 152 TFEU and the recommendations issued under this Regulation should respect national practice and institutions for wage formation. This Regulation takes into account Article 28 of the Charter of Fundamental Rights of the European Union, and, accordingly, does not affect the right to negotiate, conclude or enforce collective agreements or to take collective action in accordance with national law and practice.
- (8) Article 9 TFEU provides that, in defining and implementing its policies and activities, the Union is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.
- (9) Gradually strengthened surveillance and coordination, as set out in this Regulation, will further complete the European Semester for economic policy coordination, will complement the existing provisions of the SGP and strengthen the surveillance of budgetary and economic policies in Member States whose currency is the euro. A gradually enhanced monitoring procedure should contribute to better budgetary and economic outcomes, macro-financial soundness and economic convergence, to the benefit of all Member States whose currency is the euro. As part of a gradually strengthened process, closer monitoring is particularly valuable to Member States that are subject to an excessive deficit procedure.
- (10) Biased and unrealistic macroeconomic and budgetary forecasts can considerably hamper the effectiveness of budgetary planning and, consequently, impair commitment to budgetary discipline. Unbiased and realistic macroeconomic forecasts can be provided by independent bodies or bodies endowed with functional autonomy vis-à-vis the budgetary authorities of a Member State and which are underpinned by national legal provisions ensuring a high degree of

functional autonomy and accountability. Such forecasts should be used throughout the budgetary procedure.

- (11) Strong public finances are best ensured at the planning stage and gross errors should be identified as early as possible. Member States should benefit not just from the setting of guiding principles and budgetary targets but also from a synchronised monitoring of their budgetary policies.
- (12) Setting up a common budgetary timeline for Member States whose currency is the euro should better synchronise the key steps in the preparation of national budgets, thus contributing to the effectiveness of the SGP and of the European Semester for economic policy coordination. This should lead to stronger synergies by facilitating policy coordination among Member States whose currency is the euro and by ensuring that Council and Commission recommendations are appropriately integrated in the budgetary procedure of the Member States. That procedure should be consistent with the framework for economic policy coordination in the context of the annual cycle of surveillance which includes, in particular, the general guidance to Member States issued by the Commission and the European Council at the beginning of the cycle. Member States' budgetary policies should be consistent with the recommendations issued in the context of the SGP and, where appropriate, with recommendations issued in the context of the annual cycle of surveillance, including the macroeconomic imbalances procedure as established by Regulation (EU) No 1176/2011, and with opinions on economic partnership programmes, as established by this Regulation.
- (13) As a first step of that common budgetary timeline, Member States should make public their national medium-term fiscal plan at the same time as their stability programmes preferably by 15 April and no later than by 30 April. Those fiscal plans should include indications on how the reforms and measures set out are expected to contribute to the achievement of the targets and national commitments established within the framework of the Union's strategy for growth and jobs. The national medium-term fiscal plan and the stability programme can be the same document.
- (14) One important milestone of that common budgetary timeline should be the publication of the draft central government budget by 15 October. Since compliance with the rules of the SGP is to be ensured at the level of the general government and achievement of the budgetary objectives requires consistent budgeting across all subsectors of the general government, the publication of the draft central government budget should be accompanied by the publication of the main parameters of the draft budgets of all the other subsectors of the general government. Such parameters should include, in particular, the projected budgetary outcomes of the other subsectors, the main assumptions underlying those projections and the reasons for expected changes with respect to the stability programme assumptions.

- (15) The common budgetary timeline also provides for the budget to be adopted or fixed upon annually by 31 December together with the updated main budgetary parameters for the other subsectors of the general government. Where, for objective reasons beyond the control of the government, the budget is not adopted by 31 December, reversionary budget procedures should be put in place to ensure that the government remains able to discharge its essential duties. Such arrangements could include the implementation of the government's draft budget, of the preceding year's approved budget, or of specific parliament-approved measures.
- (16) With a view to better coordinating the planning of their national debt issuance, the Member States should report *ex ante* on their public debt issuance plans to the Eurogroup and to the Commission.
- (17) Compliance with effective rules-based fiscal frameworks can be important in supporting sound and sustainable fiscal policies. Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States⁹) established that monitoring of compliance with country-specific numerical fiscal rules should be supported at national level by independent bodies or bodies endowed with functional autonomy. It is important to note that given the diversity of possible and existing arrangements, while not the preferred option, it should be possible for more than one independent body to be in charge of monitoring compliance with those rules as long as there is a clear allocation of responsibility and as long as there is no overlap of competency over specific aspects of the monitoring. Excessive institutional fragmentation of monitoring tasks should be avoided. In order for monitoring bodies to fulfil their mandate effectively, national legal provisions ensuring a high degree of functional autonomy and accountability should underpin such bodies. The design of those monitoring bodies should take into account the existing institutional setting and the administrative structure of the Member State concerned. In particular, it should be possible to endow a suitable entity of an existing institution with functional autonomy provided that such an entity is designated to carry out specific monitoring tasks, has a distinct statutory regime and complies with the other principles referred to in this recital.
- (18) This Regulation does not impose on Member States additional requirements or obligations with regard to country-specific numerical fiscal rules. Strong country-specific numerical fiscal rules consistent with the budgetary objectives at the level of the Union and monitored by independent bodies are a cornerstone of the strengthened budgetary surveillance framework of the Union. The rules with which those bodies should comply, and their specific tasks, are set out in this Regulation.

⁹ OJ L 306, 23.11.2011, p. 41.

- (19) Member States whose currency is the euro are particularly subject to spill-over effects from each other's budgetary policies. Member States whose currency is the euro should consult the Commission and each other before adopting any major fiscal policy reform plans with potential spill-over effects, so as to allow an assessment of the possible impact for the euro area as a whole. They should also consider their budgetary plans to be of common concern and submit them to the Commission for monitoring purposes in advance of their becoming binding. The Commission, in cooperation with the Member States, should propose guidelines in the form of a harmonised framework for the specification of the content of draft budgetary plans.
- (20) In the exceptional cases where, after consulting the Member State concerned, the Commission identifies in the draft budgetary plan particularly serious non-compliance with the budgetary policy obligations laid down in the SGP, the Commission, in its opinion on the draft budgetary plan, should request a revised draft budgetary plan, in accordance with this Regulation. This will be the case, in particular, where the implementation of the draft budgetary plan would put at risk the financial stability of the Member State concerned or risk jeopardising the proper functioning of the economic and monetary union, or where the implementation of the draft budgetary plan would entail an obvious significant violation of the recommendations adopted by the Council under the SGP.
- (21) The Commission's opinion on the draft budgetary plan should be adopted as soon as possible and in any event by the end of November, taking into account, to the extent possible, the specific national fiscal schedule and parliamentary procedures, in order to ensure that Union's policy guidance in the budgetary area can be appropriately integrated in the national budgetary preparations. In particular, the opinion should include an assessment of whether the budgetary plans appropriately address the recommendations issued in the context of the European Semester in the budgetary area. At the request of the parliament of the Member State concerned or of the European Parliament, the Commission should be prepared to present its opinion to the parliament making the request, after it has been made public. Member States are invited to take into account, in the process of adopting their budget law, the Commission opinion on their draft budgetary plan.
- (22) The extent to which that opinion has been taken into account in a Member State's budget law should be part of the assessment, if and when the conditions are met, leading to a decision on the existence of an excessive deficit in the Member State concerned. In such a case, no follow-up to the early guidance from the Commission should be considered as an aggravating factor.
- (23) Also, based on an overall assessment of the draft budgetary plans by the Commission, the Eurogroup should discuss the budgetary situation and prospects for the euro area as a whole.

- (24) Member States whose currency is the euro and which are subject to an excessive deficit procedure should be monitored more closely, in order to secure a full, sustainable and timely correction of the excessive deficit. Closer monitoring by means of additional reporting requirements should ensure prevention and early correction of any deviations from the Council recommendations to correct the excessive deficit. Such monitoring should complement the provisions set out in Regulation (EC) No 1467/97. Those additional reporting requirements should be proportionate to the stage of the procedure to which the Member State is subject, under Article 126 TFEU. As a first step, the Member State concerned should carry out a comprehensive assessment of in-year budgetary execution for the general government and its subsectors, taking into account in particular financial risks associated to contingent liabilities with potentially large impacts on public budgets.
- (25) Additional reporting requirements for Member States whose currency is the euro and which are subject to an excessive deficit procedure should enable a better exchange of information between the Member States concerned and the Commission, and, as a consequence, the identification of risks in the compliance of a Member State with the deadline which has been set by the Council to correct its excessive deficit. In the event of such risks being identified, the Commission should issue a recommendation to the Member State concerned setting out appropriate measures to be taken within a given timeframe. Upon request, the Commission should present its recommendation to the parliament of the Member State concerned. Compliance with the recommendation should lead to a prompt correction of any developments putting at risk the correction of the excessive deficit within the established deadline.
- (26) Assessment of compliance with the Commission recommendation should be part of the continuous assessment made by the Commission of effective action to correct an excessive deficit. When deciding whether effective action to correct the excessive deficit has been taken, the Council should also base its decision on whether or not the Member State complied with the Commission recommendation, while giving due consideration to Article 3(5) and Article 5(2) of Regulation (EC) No 1467/97.
- (27) Indeed, Regulation (EC) No 1467/97, which sets out in detail the excessive deficit procedure based on Article 126 TFEU, embeds elements of flexibility which allow unexpected adverse economic events to be taken into account. Article 3(5) and Article 5(2) of that Regulation provide that if effective action has been taken in compliance with, respectively, a recommendation under Article 126(7) TFEU or a decision to give notice under Article 126(9) TFEU, and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that recommendation or decision to give notice, the Council may decide, on a recommendation from the Commission, to adopt a

revised recommendation under Article 126(7) TFEU or a revised decision to give notice under Article 126(9) TFEU. The revised recommendation or revised decision to give notice, taking into account the relevant factors referred to in Article 2(3) of Regulation (EC) No 1467/97 may, in particular, extend the deadline for the correction of the excessive deficit by one year as a rule.

The Council should assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its initial recommendation or decision to give notice. In the case of a severe economic downturn in the euro area or in the Union as a whole, the Council may also decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 126(7) TFEU or a revised decision to give notice under Article 126(9) TFEU, provided that that does not endanger fiscal sustainability in the medium term. In addition, Article 2(1a) of Regulation (EC) No 1467/97 provides that, in implementing the debt ratio adjustment benchmark, account shall be taken of the influence of the cycle on the pace of debt reduction. Thus, a Member State would not be considered as having breached the debt criterion laid down in Article 126(2)(b) TFEU if that is only because of negative cyclical conditions.

- (28) Also, since budgetary measures might be insufficient to ensure a lasting correction of the excessive deficit, Member States whose currency is the euro and are subject to an excessive deficit procedure should present an economic partnership programme detailing the policy measures and structural reforms needed to ensure an effective and lasting correction of the excessive deficit, building on the latest update of their national reform programme and their stability programme.
- (29) Furthermore, strengthening economic governance has involved a closer dialogue with the European Parliament. While recognising that the counterparts of the European Parliament in the framework of the dialogue are the relevant institutions of the Union and their representatives, the competent committee of the European Parliament may offer an opportunity to participate in an exchange of views to a Member State which is the subject of a Commission recommendation or of a Council opinion in accordance with this Regulation. The Member State's participation in such an exchange of views is voluntary.
- (30) In order to specify the extent of the reporting obligations for Member States subject to an excessive deficit procedure, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the content and scope of such reporting. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (31) The power to adopt opinions on economic partnership programmes, as established by this Regulation should be conferred on the Council. Those opinions are complementary to the excessive deficit procedure laid down under Article 126 TFEU in accordance with which the Council is to decide on the existence of an excessive deficit and on the measures required to put an end to it.
- (32) Recalling the importance of sound public finances, structural reform and targeted investment for sustainable growth, the Member States' Heads of State or Government signed a Compact for Growth and Jobs on 29 June 2012, demonstrating their determination to stimulate job-creating growth in parallel to their commitment to sound public finances. The Compact includes, in particular, measures to boost the financing of the economy. EUR 120000 million (equivalent to around 1 % of the Union's Gross National Income) are being mobilised for fast-acting growth measures. As recommended in the annual growth survey in 2012 and 2013, the Member States should strive to maintain an adequate pace of fiscal consolidation while preserving investment aiming to achieve the Europe 2020 goals for growth and jobs.
- (33) The Commission is monitoring the impact of tight budget constraints on growth enhancing public expenditure and on public investment. The Union's fiscal framework offers scope to balance the acknowledgement of productive public investment needs with fiscal discipline objectives: while fully respecting the SGP, the possibilities offered by the Union's existing fiscal framework to balance productive public investment needs with fiscal discipline objectives can be exploited in the preventive arm of the SGP. The Commission has announced its intention to report on the scope for possible action within the boundaries of the existing Union fiscal framework.
- (34) The European Parliament's resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup "Towards a Genuine Economic and Monetary Union" and the Commission's Communication of 28 November 2012 entitled "A blueprint for a deep and genuine EMU" outline, respectively, the views of the European Parliament and of the Commission on the steps needed to achieve a deeper and better integrated economic and monetary union. Following the report "Towards a Genuine Economic and Monetary Union", the European Council, in its conclusions in December 2012, set out its views on a number of issues with a view to the further strengthening of EMU,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation sets out provisions for enhanced monitoring of budgetary policies in the euro area and for ensuring that national budgets are consistent with the economic policy guidance issued in the context of the SGP and the European Semester for economic policy coordination, by:

- (a) complementing the European Semester, as established in Article 2-a of Regulation (EC) No 1466/97, with a common budgetary timeline;
- (b) complementing the procedure for the prevention and correction of excessive macroeconomic imbalances, as established by Regulation (EU) No 1176/2011;
- (c) complementing the multilateral surveillance system of budgetary policies, as established by Regulation (EC) No 1466/97, with additional monitoring requirements in order to ensure that Union policy recommendations in the budgetary area are appropriately integrated in the national budgetary preparations;
- (d) complementing the procedure for correcting a Member State's excessive deficit, as established by Article 126 TFEU and by Regulation (EC) No 1467/97, with closer monitoring of the budgetary policies of Member States subject to an excessive deficit procedure in order to secure a timely and lasting correction of an excessive deficit;
- (e) guaranteeing the consistency between budgetary policies and measures and reforms taken in the context of the procedure for prevention and correction of excessive macroeconomic imbalances as established by Regulation (EU) No 1176/2011 and, where appropriate, in the context of an economic partnership programme as referred to in Article 9.

2. The application of this Regulation shall be in full compliance with Article 152 TFEU and the recommendations issued under this Regulation shall respect national practice and institutions for wage formation. In accordance with Article 28 of the Charter of Fundamental Rights of the European Union, this Regulation shall not affect the right to negotiate, conclude or enforce collective agreements or to take collective action in accordance with national law and practice.

3. This Regulation shall apply to Member States whose currency is the euro.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

- (a) "independent bodies" means bodies that are structurally independent or bodies endowed with functional autonomy vis-à-vis the budgetary authorities of the Member State, and which are underpinned by national legal provisions ensuring a high degree of functional autonomy and accountability, including:
 - i. a statutory regime grounded in national laws, regulations or binding administrative provisions;
 - ii. not taking instructions from the budgetary authorities of the Member State concerned or from any other public or private body;
 - iii. the capacity to communicate publicly in a timely manner;
 - iv. procedures for nominating members on the basis of their experience and competence;
 - v. adequate resources and appropriate access to information to carry out their mandate;
- (b) "independent macroeconomic forecasts" means macroeconomic forecasts produced or endorsed by independent bodies;
- (c) "medium-term budgetary framework" means medium-term budgetary framework as described in point (e) of Article 2 of Directive 2011/85/EU;
- (d) "stability programme" means stability programme as described in Article 3 of Regulation (EC) No 1466/97.

In order to ensure consistency across the independent macroeconomic forecasts referred to in point (b) of the first subparagraph, the Member States and the Commission shall, at least annually, engage in a technical dialogue concerning the assumptions underpinning the preparation of macroeconomic and budgetary forecasts in accordance with Article 4(5) of Directive 2011/85/EU.

2. The definitions of "general government sector" and of "subsectors of the general government sector", set out in point 2.70 of Annex A to Regulation (EC) No 2223/96 of

25 June 1996 on the European system of national and regional accounts in the Community¹⁰) shall also apply to this Regulation.

3. The application of this Regulation is without prejudice to Article 9 TFEU.

CHAPTER II ECONOMIC POLICY COORDINATION

Article 3

Consistency with the framework for economic policy coordination

The Member States' budgetary procedure shall be consistent with:

- (1) the framework for economic policy coordination in the context of the annual cycle of surveillance, which includes, in particular, the general guidance to Member States issued by the Commission and the European Council at the beginning of the cycle;
- (2) the recommendations issued in the context of the SGP;
- (3) where appropriate, recommendations issued in the context of the annual cycle of surveillance, including the macroeconomic imbalances procedure as established by Regulation (EU) No 1176/2011; and
- (4) where appropriate, opinions on economic partnership programmes, as referred to in Article 9.

CHAPTER III COMMON BUDGETARY PROVISIONS

Article 4

Common budgetary timeline

1. Member States shall, in the context of the European Semester, make public, preferably by 15 April but no later than 30 April each year, their national medium-term fiscal plans in accordance with their medium-term budgetary framework. Such plans shall include at least all the information to be provided in their stability programmes and shall be presented together with their national reform programmes and the stability programmes. Such plans shall be consistent with the framework for economic policy coordination in the context of the annual cycle of surveillance, which includes, in particular, the general guidance to Member States issued by the Commission and the

¹⁰ OJ L 310, 30.11.1996, p. 1.

European Council at the beginning of the cycle. They shall also be consistent with the recommendations issued in the context of the SGP and, where appropriate, with recommendations issued in the context of the annual cycle of surveillance, including the macroeconomic imbalances procedure as established by Regulation (EU) No 1176/2011, and with opinions on economic partnership programmes referred to in Article 9.

National medium-term fiscal plans and national reform programmes shall include indications on how the reforms and measures set out are expected to contribute to the achievement of the targets and national commitments established within the framework of the Union's strategy for growth and jobs. Furthermore, national medium-term fiscal plans or national reform programmes shall include indications on the expected economic returns on non-defence public investment projects that have a significant budgetary impact. National medium-term fiscal plans and stability programmes may be the same document.

2. The draft budget for the forthcoming year for the central government and the main parameters of the draft budgets for all the other subsectors of the general government shall be made public annually not later than 15 October.

3. The budget for the central government shall be adopted or fixed upon and made public annually not later than 31 December together with the updated main budgetary parameters for the other sub-sectors of the general government. Member States shall have in place reversionary budget procedures to be applied if, for objective reasons beyond the control of the government, the budget is not adopted or fixed upon and made public by 31 December.

National medium-term fiscal plans and draft budgets referred to in paragraphs 1 and 2 shall be based on independent macroeconomic forecasts, and shall indicate whether the budgetary forecasts have been produced or endorsed by an independent body. Those forecasts shall be made public together with the national medium-term fiscal plans and the draft budgets that they underpin.

Article 5

Independent bodies monitoring compliance with fiscal rules

1. Member States shall have in place independent bodies for monitoring compliance with:

- (a) numerical fiscal rules incorporating in the national budgetary processes their medium-term budgetary objective as established in Article 2a of Regulation (EC) No 1466/97;
- (b) numerical fiscal rules as referred to in Article 5 of Directive 2011/85/EU.

2. Those bodies shall, where appropriate, provide public assessments with respect to national fiscal rules, inter alia relating to:

- (a) the occurrence of circumstances leading to the activation of the correction mechanism for cases of significant observed deviation from the medium-term objective or the adjustment path towards it in accordance with Article 6(2) of Regulation (EC) No 1466/97;
- (b) whether the budgetary correction is proceeding in accordance with national rules and plans;
- (c) any occurrence or cessation of circumstances referred to in the tenth subparagraph of Article 5(1) of Regulation (EC) No 1466/97 which may allow a temporary deviation from the medium-term budgetary objective or the adjustment path towards it, provided that such a deviation does not endanger fiscal sustainability in the medium term.

CHAPTER IV

MONITORING AND ASSESSMENT OF MEMBER STATES DRAFT BUDGETARY PLANS

Article 6

Monitoring requirements

1. Member States shall submit annually to the Commission and to the Eurogroup a draft budgetary plan for the forthcoming year by 15 October. That draft budgetary plan shall be consistent with the recommendations issued in the context of the SGP and, where applicable, with recommendations issued in the context of the annual cycle of surveillance, including the macroeconomic imbalances procedure as established by Regulation (EU) No 1176/2011, and with opinions on the economic partnership programmes referred to in Article 9.

2. As soon as the draft budgetary plans referred to in paragraph 1 have been submitted to the Commission, they shall be made public.

3. The draft budgetary plan shall contain the following information for the forthcoming year:

- (a) the targeted budget balance for the general government as a percentage of Gross Domestic Product (GDP), broken down by subsector of general government;

- (b) the projections at unchanged policies for expenditure and revenue as a percentage of GDP for the general government and their main components, including gross fixed capital formation;
- (c) the targeted expenditure and revenue as a percentage of GDP for the general government and their main components, taking into account the conditions and criteria to establish the growth path of government expenditure net of discretionary revenue measures under Article 5(1) of Regulation (EC) No 1466/97;
- (d) relevant information on the general government expenditure by function, including on education, healthcare and employment, and, where possible, indications on the expected distributional impact of the main expenditure and revenue measures;
- (e) a description and quantification of the expenditure and revenue measures to be included in the draft budget for the year to come at the level of each subsector in order to bridge the gap between the targets referred to in point (c) and the projections at unchanged policies provided in accordance with point (b);
- (f) the main assumptions of the independent macroeconomic forecasts and important economic developments which are relevant to the achievement of the budgetary targets;
- (g) an annex containing the methodology, economic models and assumptions, and any other relevant parameters underpinning the budgetary forecasts and the estimated impact of aggregated budgetary measures on economic growth;
- (h) indications on how reforms and measures in the draft budgetary plan, including in particular public investment, address the current recommendations to the Member State concerned in accordance with Articles 121 and 148 TFEU and are instrumental to the achievement of the targets set by the Union's strategy for growth and jobs.

The description referred to in point (e) of the first subparagraph may be less detailed for measures with a budgetary impact estimated to be lower than 0,1 % of GDP. Particular and explicit attention shall be paid to major fiscal policy reform plans with potential spill-over effects for other Member States whose currency is the euro.

4. Where the budgetary targets reported in the draft budgetary plan in accordance with paragraph 3 or the projections at unchanged policies differ from those in the most recent stability programme, the differences shall be duly explained.

5. The specification of the content of the draft budgetary plan shall be set out in a harmonised framework established by the Commission in cooperation with the Member States.

Article 7

Assessment of the draft budgetary plan

1. The Commission shall adopt an opinion on the draft budgetary plan as soon as possible and in any event by 30 November.

2. Notwithstanding paragraph 1, where, in exceptional cases, after consulting the Member State concerned within one week of submission of the draft budgetary plan, the Commission identifies particularly serious non-compliance with the budgetary policy obligations laid down in the SGP, the Commission shall adopt its opinion within two weeks of submission of the draft budgetary plan. In its opinion, the Commission shall request that a revised draft budgetary plan be submitted as soon as possible and in any event within three weeks of the date of its opinion. The Commission's request shall be reasoned and shall be made public.

Article 6(2), (3) and (4) shall apply to revised draft budgetary plans submitted pursuant to the first subparagraph of this paragraph.

The Commission shall adopt a new opinion on the revised draft budgetary plan as soon as possible and in any event within three weeks of submission of the revised draft budgetary plan.

3. The Commission's opinion shall be made public and shall be presented to the Eurogroup. Thereafter, at the request of the parliament of the Member State concerned or of the European Parliament, the Commission shall present its opinion to the parliament making the request.

4. The Commission shall make an overall assessment of the budgetary situation and prospects in the euro area as a whole, on the basis of the national budgetary prospects and their interaction across the area, relying on the most recent economic forecasts of the Commission services.

The overall assessment shall include sensitivity analyses that provide an indication of the risks to public finance sustainability in the event of adverse economic, financial or budgetary developments. It shall also, as appropriate, outline measures to reinforce the coordination of budgetary and macroeconomic policy at the euro area level.

The overall assessment shall be made public and shall be taken into account in the annual general guidance to Member States issued by the Commission.

The methodology (including models) and assumptions of the most recent economic forecasts of the Commission services for each Member State, including estimates of the impact of aggregated budgetary measures on economic growth, shall be annexed to the overall assessment.

5. The Eurogroup shall discuss opinions of the Commission on the draft budgetary plans and the budgetary situation and prospects in the euro area as a whole on the basis of the overall assessment made by the Commission in accordance with paragraph 4. The results of those discussions of the Eurogroup shall be made public where appropriate.

Article 8

Reporting on debt issuance

1. Member States shall report to the Commission and the Eurogroup, ex ante and in a timely manner, on their national debt issuance plans.

2. The harmonised form and content of the report referred to in paragraph 1 shall be laid down by the Commission, in cooperation with the Member States.

CHAPTER V

ENSURING THE CORRECTION OF EXCESSIVE DEFICIT

Article 9

Economic partnership programmes

1. If the Council, acting under Article 126(6) TFEU, decides that an excessive deficit exists in a Member State, the Member State concerned shall present to the Commission and to the Council an economic partnership programme describing the policy measures and structural reforms that are needed to ensure an effective and lasting correction of the excessive deficit, as a development of its national reform programme and its stability programme, and fully taking into account the Council recommendations on the implementation of the integrated guidelines for the economic and employment policies of the Member State concerned.

2. The economic partnership programme shall identify and select a number of specific priorities aiming to enhance competitiveness and long-term sustainable growth and addressing structural weaknesses in the Member State concerned. Those priorities shall be consistent with the Union's strategy for growth and jobs. Where appropriate, potential financial resources shall be identified, including credit lines of the European Investment Bank and other relevant financial instruments, as appropriate.

3. The economic partnership programme shall be presented at the same time as the report provided for in Article 3(4a) of Regulation (EC) No 1467/97.
4. The Council, acting on a proposal from the Commission, shall adopt an opinion on the economic partnership programme.
5. A corrective action plan as referred to in Article 8(1) of Regulation (EU) No 1176/2011 may be amended in accordance with Article 9(4) of that Regulation to replace the economic partnership programme provided for in this Article. Where such a corrective action plan is submitted after the adoption of an economic partnership programme, the measures set out in the economic partnership programme may, as appropriate, be included in the corrective action plan.
6. The implementation of the programme, and the annual budgetary plans consistent with it, shall be monitored by the Council and by the Commission.

Article 10

Reporting requirements for Member States in excessive deficit procedure

1. Where the Council decides in accordance with Article 126(6) TFEU that an excessive deficit exists in a Member State, the Member State concerned shall, on a request from the Commission, be subject to reporting requirements in accordance with paragraphs 2 to 5 of this Article, until the abrogation of its excessive deficit procedure.
2. The Member State shall carry out a comprehensive assessment of in-year budgetary execution for the general government and its subsectors. The financial risks associated with contingent liabilities with potentially large impacts on public budgets, as referred to in Article 14(3) of Directive 2011/85/EU shall also be covered by the assessment to the extent that they may contribute to the existence of an excessive deficit. The result of that assessment shall be included in the report submitted in accordance with Article 3(4a) or Article 5(1a) of Regulation (EC) No 1467/97 on action taken to correct the excessive deficit.
3. The Member State shall report regularly to the Commission and to the Economic and Financial Committee, for the general government and its subsectors, the in-year budgetary execution, the budgetary impact of discretionary measures taken on both the expenditure and the revenue side, targets for the government expenditure and revenues, and information on the measures adopted and the nature of those envisaged to achieve the targets. The report shall be made public.

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 specifying the content of the regular reporting referred to in this paragraph.

4. If the Member State concerned is the subject of a Council recommendation under Article 126(7) TFEU, the report referred to in paragraph 3 of this Article shall be

submitted for the first time six months after the report provided for in Article 3(4a) of Regulation (EC) No 1467/97, and thereafter on a six-monthly basis.

5. If the Member State concerned is the subject of a Council decision to give notice under Article 126(9) TFEU, the report in accordance with paragraph 3 of this Article shall also contain information on the actions being taken in response to the specific Council notice. It shall be submitted for the first time three months after the report provided for in Article 5(1a) of Regulation (EC) No 1467/97, and thereafter on a quarterly basis.

6. Upon request and within the deadline set by the Commission, a Member State subject to an excessive deficit procedure shall:

- (a) carry out and report on a comprehensive independent audit of the public accounts of all subsectors of the general government conducted preferably in coordination with national supreme audit institutions, aiming to assess the reliability, completeness and accuracy of those public accounts for the purposes of the excessive deficit procedure;
- (b) provide available additional information for the purposes of monitoring progress towards the correction of the excessive deficit.

The Commission (Eurostat) shall assess the quality of statistical data reported by the Member State concerned under point (a) in accordance with Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community⁽¹¹⁾.

Article 11

Member States at risk of non-compliance with their obligation under their excessive deficit procedure

1. When assessing whether compliance with the deadline to correct the excessive deficit, as established by a Council recommendation under Article 126(7) TFEU or a Council decision to give notice under Article 126(9) TFEU, is at risk, the Commission shall base its assessment, inter alia, on the reports submitted by the Member States in accordance with Article 10(3) of this Regulation.

2. In the case of a risk of non-compliance with the deadline to correct the excessive deficit, the Commission shall address a recommendation to the Member State concerned regarding full implementation of the measures provided for in the recommendation or decision to give notice referred to in paragraph 1, adoption of other measures, or both, within a timeframe consistent with the deadline for the correction of

¹¹ OJ L 145, 10.6.2009, p. 1.

its excessive deficit. The recommendation by the Commission shall be made public and shall be presented to the Economic and Financial Committee. At the request of the parliament of the Member State concerned, the Commission shall present the recommendation to that parliament.

3. Within the timeframe set by the Commission recommendation referred to in paragraph 2, the Member State concerned shall report to the Commission on measures adopted in response to that recommendation together with the reports provided for in Article 10(3). The report shall include the budgetary impact of all discretionary measures taken, targets for the government expenditure and revenues, information on the measures adopted and the nature of those envisaged to achieve the targets, and information on the other actions being taken in response to the Commission recommendation. The report shall be made public and shall be presented to the Economic and Financial Committee.

4. On the basis of the report referred to in paragraph 3, the Commission shall assess whether the Member State has complied with the recommendation referred to in paragraph 2.

Article 12

Impact on the excessive deficit procedure

1. The extent to which the Member State concerned has taken into account the Commission's opinion referred to in Article 7(1) shall be taken into account by:

- (a) the Commission when conducting a report under Article 126(3) TFEU and when recommending the imposition of a non-interest bearing deposit in accordance with Article 5 of Regulation (EU) No 1173/2011;
- (b) the Council when deciding whether an excessive deficit exists in accordance with Article 126(6) TFEU.

2. The monitoring established by Articles 10 and 11 of this Regulation shall be an integral part of the regular monitoring, as provided for in Article 10(1) of Regulation (EC) No 1467/97, of the implementation of action taken by the Member State concerned in response to Council recommendations under Article 126(7) TFEU or Council decisions to give notice under Article 126(9) TFEU to correct the excessive deficit.

3. When considering whether effective action has been taken in response to recommendations under Article 126(7) TFEU or to decisions to give notice under Article 126(9) TFEU, the Commission shall take into account the assessment referred to in Article 11(4) in this Regulation and shall recommend, as appropriate, that the Council take decisions under Article 126(8) or Article 126(11) TFEU, giving due consideration to Article 3(5) and Article 5(2) of Regulation (EC) No 1467/97.

Article 13

Consistency with Regulation (EU) No 472/2013⁽¹²⁾

Member States subject to a macroeconomic adjustment programme shall not be subject to Articles 6 to 12 of this Regulation.

CHAPTER VI

FINAL PROVISIONS

Article 14

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 10(3) shall be conferred on the Commission for a period of three years from 30 May 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 10(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 10(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

¹² Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.5.2013, p.1).

Article 15

Economic Dialogue

1. In order to enhance the dialogue between the Union institutions, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite, where appropriate, the President of the Council, the Commission, the President of the European Council or the President of the Eurogroup to appear before the committee to discuss:

- (a) the specification of the content of the draft budgetary plan as set out in a harmonised framework established in accordance with Article 6(5);
- (b) the results of the discussion of the Eurogroup on the Commission opinions adopted in accordance with Article 7(1), to the extent that they have been made public;
- (c) the overall assessment of the budgetary situation and prospects in the euro area as a whole made by the Commission in accordance with Article 7(4);
- (d) Council acts referred to in Article 9(4) and in Article 12(3).

2. The competent committee of the European Parliament may offer the opportunity to the Member State that is the subject of a Commission recommendation under Article 11(2) or Council acts as referred to in paragraph 1(d) to participate in an exchange of views.

3. The European Parliament shall be duly involved in the European Semester in order to increase the transparency and ownership of, and the accountability for the decisions taken, in particular by means of the economic dialogue carried out pursuant to this Article.

Article 16

Review and reports on the application of this Regulation

1. By 14 December 2014, and every five years thereafter, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation, accompanied, where appropriate, by a proposal to amend this Regulation. The Commission shall make that report public.

The reports referred to in the first subparagraph shall evaluate, inter alia:

- (a) the effectiveness of this Regulation;
- (b) progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU;

- (c) the contribution of this Regulation to the achievement of the Union’s strategy for growth and jobs.

2. By 31 July 2013, the Commission shall report on the possibilities offered by the Union's existing fiscal framework to balance productive public investment needs with fiscal discipline objectives in the preventive arm of the SGP, while complying with it fully.

Article 17

Transitional provisions

1. Member States already subject to an excessive deficit procedure at the time of the entry into force of this Regulation shall comply with the regular reporting in accordance with Article 10(3), (4) and (5) by 31 October 2013.

2. Article 9(1) and Article 10(2) shall apply to Member States that are already subject to an excessive deficit procedure at the time of the entry into force of this Regulation only when a Council recommendation in accordance with Article 126(7) TFEU, or a Council decision to give notice in accordance with Article 126(9) TFEU, is taken after 30 May 2013.

In such cases, the economic partnership programme shall be presented simultaneously with the report submitted in accordance with Article 3(4a) or Article 5(1a) of Regulation (EC) No 1467/97.

Member States shall comply with Article 5 by 31 October 2013.

Article 18

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 21 May 2013.

For the European Parliament

The President M. SCHULZ

For the Council

The President L. CREIGHTON

COUNCIL REGULATION (EC) NO 1466/97**of 7 July 1997****on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies as amended by Council Regulation (EC) No 1055/2005 of 27 June 2005 and Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 121 (5) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Acting in accordance with the procedure referred to in Article 189c of the Treaty⁽²⁾,

- (1) Whereas the Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation;
- (2) Whereas the Stability and Growth Pact consists of this Regulation which aims to strengthen the surveillance of budgetary positions and the surveillance and coordination of economic policies, of Council Regulation (EC) No 1467/97⁽³⁾ which aims to speed up and to clarify the implementation of the excessive deficit procedure and of the Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact⁽⁴⁾, in which, in accordance with Article D of the Treaty on European Union, firm political guidelines are issued in order to implement the Stability and Growth Pact in a strict and timely manner and in particular to adhere to the medium term objective of budgetary positions of close to balance or in surplus, to which all Member States are committed, and to take the corrective budgetary action they deem necessary to meet the objectives of their stability and convergence programmes, whenever they have information indicating actual or expected significant divergence from the medium-term budgetary objective;
- (3) Whereas in stage three of Economic and Monetary Union (EMU) the Member States are, according to Article 104c of the Treaty, under a clear Treaty obligation to avoid excessive general government deficits; whereas under Article 5 of

¹ OJ No C 368, 6. 12. 1996, p. 9.

² Opinion of the European Parliament of 28 November 1996 (OJ No C 380, 16. 12. 1996, p. 28), Council Common Position of 14 April 1997 (OJ No C 146, 30. 5. 1997, p. 26) and Decision of the European Parliament of 29 May 1997 (OJ No C 182, 16. 6. 1997).

³ OJ L 209, 2.8.1997, p. 6.

⁴ OJ No C 236, 2. 8. 1997, p. 1.

Protocol (No 11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland to the Treaty, Article 104c(1) does not apply to the United Kingdom unless it moves to the third stage; whereas the obligation under Article 109e(4) to endeavour to avoid excessive deficits will continue to apply to the United Kingdom;

- (4) Whereas adherence to the medium-term objective of budgetary positions close to balance or in surplus will allow Member States to deal with normal cyclical fluctuations while keeping the government deficit within the 3 % of GDP reference value;
- (5) Whereas it is appropriate to complement the multilateral surveillance procedure of Article 121 (3) and (4) with an early warning system, under which the Council will alert a Member State at an early stage to the need to take the necessary budgetary corrective action in order to prevent a government deficit becoming excessive;
- (6) Whereas the multilateral surveillance procedure of Article 121 (3) and (4) should furthermore continue to monitor the full range of economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad economic guidelines referred to in Article 121 (2); whereas for the monitoring of these developments, the presentation of information in the form of stability and convergence programmes is appropriate;
- (7) Whereas there is a need to build upon the useful experience gained during the first two stages of economic and monetary union with convergence programmes;
- (8) Whereas the Member States adopting the single currency, hereafter referred to as ‘participating Member States’, will, in accordance with Article 109j, have achieved a high degree of sustainable convergence and in particular a sustainable government financial position; whereas the maintenance of sound budgetary positions in these Member States will be necessary to support price stability and to strengthen the conditions for the sustained growth of output and employment; whereas it is necessary that participating Member States submit medium-term programmes, hereafter referred to as ‘stability programmes’; whereas it is necessary to define the principal contents of such programmes;
- (9) Whereas the Member States not adopting the single currency, hereafter referred to as ‘non-participating Member States’, will need to pursue policies aimed at a high degree of sustainable convergence; whereas it is necessary that these Member States submit medium-term programmes, hereafter referred to as ‘convergence programmes’; whereas it is necessary to define the principal contents of such convergence programmes;

- (10) Whereas in its Resolution of 16 June 1997 on the establishment of an exchange-rate mechanism in the third stage of Economic and Monetary Union, the European Council issued firm political guidelines in accordance with which an exchange-rate mechanism is established in the third stage of EMU, hereafter referred to as 'ERM2'; whereas the currencies of non-participating Member States joining ERM2 will have a central rate vis-à-vis the euro, thereby providing a reference point for judging the adequacy of their policies; whereas the ERM2 will also help to protect them and the Member States adopting the euro from unwarranted pressures in the foreign-exchange markets; whereas, so as to enable appropriate surveillance in the Council, non-participating Member States not joining ERM2 will nevertheless present policies in their convergence programmes oriented to stability thus avoiding real exchange rate misalignments and excessive nominal exchange rate fluctuations;
- (11) Whereas lasting convergence of economic fundamentals is a prerequisite for sustainable exchange rate stability;
- (12) Whereas it is necessary to lay down a timetable for the submission of stability programmes and convergence programmes and their updates;
- (13) Whereas in the interest of transparency and informed public debate it is necessary that Member States make public their stability programmes and their convergence programmes;
- (14) Whereas the Council, when examining and monitoring the stability programmes and the convergence programmes and in particular their medium-term budgetary objective or the targeted adjustment path towards this objective, should take into account the relevant cyclical and structural characteristics of the economy of each Member State;
- (15) Whereas in this context particular attention should be given to significant divergences of budgetary positions from the budgetary objectives of being close to balance or in surplus; whereas it is appropriate for the Council to give an early warning in order to prevent a government deficit in a Member State becoming excessive; whereas in the event of persistent budgetary slippage it will be appropriate for the Council to reinforce its recommendation and make it public; whereas for non-participating Member States the Council may make recommendations on action to be taken to give effect to their convergence programmes;
- (16) Whereas both convergence and stability programmes lead to the fulfilment of the conditions of economic convergence referred to in Article 104c,

HAS ADOPTED THIS REGULATION:

SECTION 1

PURPOSE AND DEFINITIONS

Article 1

This Regulation sets out the rules covering the content, the submission, the examination and the monitoring of stability programmes and convergence programmes as part of multilateral surveillance by the Council and the Commission so as to prevent, at an early stage, the occurrence of excessive general government deficits and to promote the surveillance and coordination of economic policies thereby supporting the achievement of the Union's objectives for growth and employment.

Article 2

For the purpose of this Regulation:

(a) 'participating Member States' means those Member States whose currency is the euro;

(b) 'non-participating Member States' means Member States other than those whose currency is the euro.

SECTION 1-A

EUROPEAN SEMESTER FOR ECONOMIC POLICY COORDINATION

Article 2-a

1. In order to ensure closer coordination of economic policies and sustained convergence of the economic performance of the Member States, the Council shall conduct multilateral surveillance as an integral part of the European Semester for economic policy coordination in accordance with the objectives and requirements set out in the Treaty on the Functioning of the European Union (TFEU).

2. The European Semester shall include:

(a) the formulation, and the surveillance of the implementation, of the broad guidelines of the economic policies of the Member States and of the Union (broad economic policy guidelines) in accordance with Article 121(2) TFEU;

(b) the formulation, and the examination of the implementation, of the employment guidelines that must be taken into account by Member States in accordance with Article 148(2) TFEU (employment guidelines);

- (c) the submission and assessment of Member States' stability or convergence programmes under this Regulation;
- (d) the submission and assessment of Member States' national reform programmes supporting the Union's strategy for growth and jobs and established in line with the guidelines set out in point (a) and (b) and with the general guidance to Member States issued by the Commission and the European Council at the beginning of the annual cycle of surveillance;
- (e) the surveillance to prevent and correct macroeconomic imbalances under Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances⁵.

3. In the course of the European Semester, in order to provide timely and integrated policy advice on macrofiscal and macrostructural policy intentions, the Council shall, as a rule, following the assessment of these programmes on the basis of recommendations from the Commission, address guidance to the Member States making full use of the legal instruments provided under Articles 121 and 148 TFEU, and under this Regulation and Regulation (EU) No 1176/2011.

Member States shall take due account of the guidance addressed to them in the development of their economic, employment and budgetary policies before taking key decisions on their national budgets for the succeeding years. Progress shall be monitored by the Commission.

Failure by a Member State to act upon the guidance received may result in:

- (a) further recommendations to take specific measures;
- (b) a warning by the Commission under Article 121(4) TFEU;
- (c) measures under this Regulation, Regulation (EC) No 1467/97 or Regulation (EU) No 1176/2011.

Implementation of the measures shall be subject to reinforced monitoring by the Commission and may include surveillance missions under Article -11 of this Regulation.

4. The European Parliament shall be duly involved in the European Semester in order to increase the transparency and ownership of, and the accountability for the decisions taken, in particular by means of the economic dialogue carried out pursuant to Article 2-ab of this Regulation. The Economic and Financial Committee, the Economic Policy Committee, the Employment Committee and the Social Protection Committee shall be

⁵ OJ L 306, 23.11.2011, p. 25.

consulted within the framework of the European Semester where appropriate. Relevant stakeholders, in particular the social partners, shall be involved within the framework of the European Semester, on the main policy issues where appropriate, in accordance with the provisions of the TFEU and national legal and political arrangements.

The President of the Council, and the Commission in accordance with Article 121 TFEU, and, where appropriate, the President of the Eurogroup, shall report annually to the European Parliament and to the European Council on the results of the multilateral surveillance. These reports should be a component of the Economic Dialogue referred to in Article 2-ab of this Regulation.

SECTION 1-Aa

ECONOMIC DIALOGUE

Article 2-ab

1. In order to enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup to appear before the committee to discuss:

- (a) information provided to the committee by the Council on the broad guidelines of economic policy pursuant to Article 121(2) TFEU;
- (b) general guidance to Member States issued by the Commission at the beginning of the annual cycle of surveillance;
- (c) any conclusions drawn by the European Council on orientations for economic policies in the context of the European Semester;
- (d) the results of multilateral surveillance carried out under this Regulation;
- (e) any conclusions drawn by the European Council on the orientations for and results of multilateral surveillance;
- (f) any review of the conduct of multilateral surveillance at the end of the European Semester;
- (g) Council recommendations addressed to Member States in accordance with Article 121(4) TFEU in the event of significant deviation and the report made by the Council to the European Council as defined in Article 6(2) and Article 10(2) of this Regulation.

2. The Council is expected to, as a rule, follow the recommendations and proposals of the Commission or explain its position publicly.
3. The competent committee of the European Parliament may offer the opportunity to a Member State which is the subject of a Council recommendation under Article 6(2) or Article 10(2) to participate in an exchange of views.
4. The Council and the Commission shall regularly inform the European Parliament of the application of this Regulation.

SECTION 1A

MEDIUM-TERM BUDGETARY OBJECTIVES

Article 2a

Each Member State shall have a differentiated medium-term objective for its budgetary position. These country-specific medium-term budgetary objectives may diverge from the requirement of a close to balance or in surplus position, while providing a safety margin with respect to the 3 % of GDP government deficit ratio. The medium-term budgetary objectives shall ensure the sustainability of public finances or a rapid progress towards such sustainability while allowing room for budgetary manoeuvre, considering in particular the need for public investment.

Taking these factors into account, for participating Member States and for Member States that are participating in ERM2 the country-specific medium-term budgetary objectives shall be specified within a defined range between -1 % of GDP and balance or surplus, in cyclically adjusted terms, net of one-off and temporary measures.

The medium-term budgetary objective shall be revised every 3 years. A Member State's medium-term budgetary objective may be further revised in the event of the implementation of a structural reform with a major impact on the sustainability of public finances.

The respect of the medium-term budgetary objective shall be included in the national medium-term budgetary frameworks in accordance with Chapter IV of Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States⁶.

⁶ OJ L 306, 23.11.2011, p. 41.

SECTION 2

STABILITY PROGRAMMES

Article 3

1. Each participating Member State shall submit to the Council and to the Commission information necessary for the purpose of multilateral surveillance at regular intervals under Article 121 TFEU in the form of a stability programme, which provides an essential basis for the sustainability of public finances which is conducive to price stability, strong sustainable growth and employment creation.
2. A stability programme shall present the following information:
 - (a) the medium-term budgetary objective and the adjustment path towards that objective for the general government balance as a percentage of GDP, the expected path of the general government debt ratio, the planned growth path of government expenditure, including the corresponding allocation for gross fixed capital formation, in particular bearing in mind the conditions and criteria to establish the expenditure growth under Article 5(1), the planned growth path of government revenue at unchanged policy and a quantification of the planned discretionary revenue measures;
 - (aa) information on implicit liabilities related to ageing, and contingent liabilities, such as public guarantees, with a potentially large impact on the general government accounts;
 - (ab) information on the consistency of the stability programme with the broad economic policy guidelines and the national reform programme;
 - (b) the main assumptions about expected economic developments and important economic variables which are relevant to the achievement of the stability programme, such as government investment expenditure, real GDP growth, employment and inflation;
 - (c) a quantitative assessment of the budgetary and other economic policy measures being taken or proposed to achieve the objectives of the programme, comprising a cost-benefit analysis of major structural reforms which have direct long-term positive budgetary effects, including by raising potential sustainable growth;
 - (d) an analysis of how changes in the main economic assumptions would affect the budgetary and debt position;
 - (e) if applicable, the reasons for a deviation from the required adjustment path towards the medium term budgetary objective.

2a. The stability programme shall be based on the most likely macrofiscal scenario or on a more prudent scenario. The macroeconomic and budgetary forecasts shall be compared with the most updated Commission forecasts and, if appropriate, those of other independent bodies. Significant differences between the chosen macrofiscal scenario and the Commission's forecast shall be described with reasoning, in particular if the level or growth of external assumptions departs significantly from the values retained in the Commission's forecasts.

The exact nature of the information included in points (a), (aa), (b), (c) and (d) of paragraph 2 shall be set out in a harmonised framework established by the Commission in cooperation with the Member States.

3. The information about the paths for the general government balance and debt ratio, the growth of government expenditure, the planned growth path of government revenue at unchanged policy, the planned discretionary revenue measures, appropriately quantified, and the main economic assumptions referred to in points (a) and (b) of paragraph 2 shall be on an annual basis and shall cover the preceding year, the current year and at least the following 3 years.

4. Each programme shall include information on its status in the context of national procedures, in particular whether the programme was presented to the national parliament, and whether the national parliament had the opportunity to discuss the Council's opinion on the previous programme or, if relevant, any recommendation or warning, and whether there has been parliamentary approval of the programme.

Article 4

1. Stability programmes shall be submitted annually in April, preferably by mid-April and not later than 30 April.
2. Member States shall make public their stability programmes.

Article 5

1. Based on assessments by the Commission and the Economic and Financial Committee, the Council shall, within the framework of multilateral surveillance under Article 121 TFEU, examine the medium-term budgetary objectives presented by the Member States concerned in their stability programmes, assess whether the economic assumptions on which the programme is based are plausible, whether the adjustment path towards the medium-term budgetary objective is appropriate, including consideration of the accompanying path for the debt ratio, and whether the measures being taken or proposed to respect that adjustment path are sufficient to achieve the medium-term budgetary objective over the cycle.

The Council and the Commission, when assessing the adjustment path toward the medium-term budgetary objective, shall examine if the Member State concerned pursues an appropriate annual improvement of its cyclically-adjusted budget balance, net of one-off and other temporary measures, required to meet its medium-term budgetary objective, with 0,5 % of GDP as a benchmark. For Member States faced with a debt level exceeding 60 % of GDP or with pronounced risks of overall debt sustainability, the Council and the Commission shall examine whether the annual improvement of the cyclically-adjusted budget balance, net of one-off and other temporary measures is higher than 0,5 % of GDP. The Council and the Commission shall take into account whether a higher adjustment effort is made in economic good times, whereas the effort might be more limited in economic bad times. In particular, revenue windfalls and shortfalls shall be taken into account.

Sufficient progress towards the medium-term budgetary objective shall be evaluated on the basis of an overall assessment with the structural balance as the reference, including an analysis of expenditure net of discretionary revenue measures. To this end, the Council and the Commission shall assess whether the growth path of government expenditure, taken in conjunction with the effect of measures being taken or planned on the revenue side, is in accordance with the following conditions:

- (a) for Member States that have achieved their medium-term budgetary objective, annual expenditure growth does not exceed a reference medium-term rate of potential GDP growth, unless the excess is matched by discretionary revenue measures;
- (b) for Member States that have not yet reached their medium-term budgetary objective, annual expenditure growth does not exceed a rate below a reference medium-term rate of potential GDP growth, unless the excess is matched by discretionary revenue measures. The size of the shortfall of the growth rate of government expenditure compared to a reference medium-term rate of potential GDP growth is set in such a way as to ensure an appropriate adjustment towards the medium-term budgetary objective;
- (c) for Member States that have not yet reached their medium-term budgetary objective, discretionary reductions of government revenue items are matched either by expenditure reductions or by discretionary increases in other government revenue items or both.

The expenditure aggregate shall exclude interest expenditure, expenditure on Union programmes fully matched by Union funds revenue and non-discretionary changes in unemployment benefit expenditure.

The excess expenditure growth over the medium-term reference shall not be counted as a breach of the benchmark to the extent that it is fully offset by revenue increases mandated by law.

The reference medium-term rate of potential GDP growth shall be determined on the basis of forward-looking projections and backward-looking estimates. Projections shall be updated at regular intervals. The Commission shall make public the calculation method for those projections and the resulting reference medium-term rate of potential GDP growth.

When defining the adjustment path to the medium-term budgetary objective for Member States that have not yet reached this objective, and in allowing a temporary deviation from this objective for Member States that have already reached it, provided that an appropriate safety margin with respect to the deficit reference value is preserved and that the budgetary position is expected to return to the medium-term budgetary objective within the programme period, the Council and the Commission shall take into account the implementation of major structural reforms which have direct long-term positive budgetary effects, including by raising potential sustainable growth, and therefore a verifiable impact on the long-term sustainability of public finances.

Particular attention shall be paid to pension reforms introducing a multi-pillar system that includes a mandatory, fully funded pillar. Member States implementing such reforms shall be allowed to deviate from the adjustment path to their medium-term budgetary objective or from the objective itself, with the deviation reflecting the amount of the direct incremental impact of the reform on the general government balance, provided that an appropriate safety margin with respect to the deficit reference value is preserved.

The Council and the Commission shall also examine whether the stability programme facilitates the achievement of sustained and real convergence within the euro area and the closer coordination of economic policies, and whether the economic policies of the Member State concerned are consistent with the broad economic policy guidelines and the employment guidelines of the Member States and of the Union.

In the case of an unusual event outside the control of the Member State concerned which has a major impact on the financial position of the general government or in periods of severe economic downturn for the euro area or the Union as a whole, Member States may be allowed temporarily to depart from the adjustment path towards the medium-term budgetary objective referred to in the third subparagraph, provided that this does not endanger fiscal sustainability in the medium term.

2. The Council and the Commission shall examine the stability programme within at most 3 months of its submission. The Council, on a recommendation from the Commission and after consulting the Economic and Financial Committee, shall, if necessary, adopt an opinion on the programme. Where the Council, in accordance with

Article 121 TFEU, considers that the objectives and the content of the programme should be strengthened with particular reference to the adjustment path towards the medium-term budgetary objective, the Council shall in its opinion invite the Member State concerned to adjust its programme.

Article 6

1. As part of multilateral surveillance in accordance with Article 121(3) TFEU, the Council and the Commission shall monitor the implementation of stability programmes, on the basis of information provided by participating Member States and of assessments by the Commission and the Economic and Financial Committee, in particular with a view to identifying actual or expected significant divergences of the budgetary position from the medium-term budgetary objective, or from the appropriate adjustment path towards it.

2. In the event of a significant observed deviation from the adjustment path towards the medium-term budgetary objective referred to in the third subparagraph of Article 5(1) of this Regulation, and in order to prevent the occurrence of an excessive deficit, the Commission shall address a warning to the Member State concerned in accordance with Article 121(4) TFEU.

The Council shall, within 1 month of the date of adoption of the warning referred to in the first subparagraph, examine the situation and adopt a recommendation for the necessary policy measures, on the basis of a Commission recommendation, based on Article 121(4) TFEU. The recommendation shall set a deadline of no more than 5 months for addressing the deviation. The deadline shall be reduced to 3 months if the Commission, in its warning, considers that the situation is particularly serious and warrants urgent action. The Council, on a proposal from the Commission, shall make the recommendation public.

Within the deadline set by the Council in the recommendation under Article 121(4) TFEU, the Member State concerned shall report to the Council on action taken in response to the recommendation.

If the Member State concerned fails to take appropriate action within the deadline specified in a Council recommendation under the second subparagraph, the Commission shall immediately recommend to the Council to adopt, by qualified majority, a decision establishing that no effective action has been taken. At the same time, the Commission may recommend to the Council to adopt a revised recommendation under Article 121(4) TFEU on necessary policy measures.

In the event that the Council does not adopt the decision on the Commission recommendation that no effective action has been taken, and failure to take appropriate action on the part of the Member State concerned persists, the Commission, after 1

month from its earlier recommendation, shall recommend to the Council to adopt the decision establishing that no effective action has been taken. The decision shall be deemed to be adopted by the Council unless it decides, by simple majority, to reject the recommendation within 10 days of its adoption by the Commission. At the same time, the Commission may recommend to the Council to adopt a revised recommendation under Article 121(4) TFEU on necessary policy measures.

When taking the decision on non-compliance referred to in the fourth and fifth subparagraphs, only members of the Council representing participating Member States shall vote and the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

The Council shall submit a formal report to the European Council on the decisions taken accordingly.

3. A deviation from the medium-term budgetary objective or from the appropriate adjustment path towards it shall be evaluated on the basis of an overall assessment with the structural balance as the reference, including an analysis of expenditure net of discretionary revenue measures, as defined in Article 5(1).

The assessment of whether the deviation is significant shall, in particular, include the following criteria:

- (a) for a Member State that has not reached the medium-term budgetary objective, when assessing the change in the structural balance, whether the deviation is at least 0,5 % of GDP in a single year or at least 0,25 % of GDP on average per year in 2 consecutive years;
- (b) when assessing expenditure developments net of discretionary revenue measures, whether the deviation has a total impact on the government balance of at least 0,5 % of GDP in a single year or cumulatively in 2 consecutive years.

The deviation of expenditure developments shall not be considered significant if the Member State concerned has overachieved the medium-term budgetary objective, taking into account the possibility of significant revenue windfalls and the budgetary plans laid out in the stability programme do not jeopardise that objective over the programme period.

Similarly, the deviation may be left out of consideration when it results from an unusual event outside the control of the Member State concerned and which has a major impact on the financial position of the general government or in case of severe economic downturn for the euro area or the Union as a whole, provided that this does not endanger fiscal sustainability in the medium-term.

SECTION 3

CONVERGENCE PROGRAMMES

Article 7

1. Each non-participating Member State shall submit to the Council and to the Commission information necessary for the purpose of multilateral surveillance at regular intervals under Article 121 TFEU in the form of a convergence programme, which provides an essential basis for the sustainability of public finances which is conducive to price stability, strong sustainable growth and employment creation.
2. A convergence programme shall present the following information in particular on variables related to convergence:
 - (a) the medium-term budgetary objective and the adjustment path towards this objective for the general government balance as a percentage of GDP, the expected path of the general government debt ratio, the planned growth path of government expenditure, including the corresponding allocation for gross fixed capital formation, in particular bearing in mind the conditions and criteria to establish the expenditure growth under Article 9(1), the planned growth path of government revenue at unchanged policy and a quantification of the planned discretionary revenue measures, the medium-term monetary policy objectives, the relationship of those objectives to price and exchange rate stability and to the achievement of sustained convergence;
 - (aa) information on implicit liabilities related to ageing, and contingent liabilities, such as public guarantees, with a potentially large impact on the general government accounts;
 - (ab) information on the consistency of the convergence programme with the broad economic policy guidelines and the national reform programme;
 - (b) the main assumptions about expected economic developments and important economic variables which are relevant to the achievement of the convergence programme, such as government investment expenditure, real GDP growth, employment and inflation;
 - (c) a quantitative assessment of the budgetary and other economic policy measures being taken or proposed to achieve the objectives of the programme, comprising a cost-benefit analysis of major structural reforms, which have direct long-term positive budgetary effects, including by raising potential sustainable growth;
 - (d) an analysis of how changes in the main economic assumptions would affect the budgetary and debt position;

(e) if applicable, the reasons for a deviation from the required adjustment path towards the medium term budgetary objective.

2a. The convergence programme shall be based on the most likely macrofiscal scenario or on a more prudent scenario. The macroeconomic and budgetary forecasts shall be compared with the most updated Commission forecasts and, if appropriate, those of other independent bodies. Significant differences between the chosen macrofiscal scenario and the Commission forecast shall be described with reasoning, in particular if the level or growth of external assumptions departs significantly from the values retained in the Commission's forecasts.

The exact nature of the information included in points (a), (aa), (b), (c) and (d) of paragraph 2 shall be set out in a harmonised framework established by the Commission in cooperation with the Member States.

3. The information about the paths for the general government balance and debt ratio, the growth of government expenditure, the planned growth path of government revenue at unchanged policy, the planned discretionary revenue measures, appropriately quantified, and the main economic assumptions referred to in points (a) and (b) of paragraph 2 shall be on an annual basis and shall cover the preceding year, the current year and at least the following 3 years.

4. Each programme shall include information on its status in the context of national procedures, in particular whether the programme was presented to the national parliament, and whether the national parliament had the opportunity to discuss the Council opinion on the previous programme or, if relevant, any recommendation or warning, and whether there has been parliamentary approval of the programme.

Article 8

1. Convergence programmes shall be submitted annually in April, preferably by mid April and not later than 30 April.

2. Member States shall make public their convergence programmes.

Article 9

1. Based on assessments by the Commission and the Economic and Financial Committee, the Council shall, within the framework of multilateral surveillance under Article 121 TFEU, examine the medium-term budgetary objectives presented by the Member States concerned in their convergence programmes, assess whether the economic assumptions on which the programme is based are plausible, whether the adjustment path towards the medium-term budgetary objective is appropriate, including consideration of the accompanying path for the debt ratio, and whether the measures

being taken or proposed to respect that adjustment path are sufficient to achieve the medium-term budgetary objective over the cycle and to achieve sustained convergence.

The Council and the Commission, when assessing the adjustment path toward the medium-term budgetary objective, shall take into account whether a higher adjustment effort is made in economic good times, whereas the effort might be more limited in economic bad times. In particular, revenue windfalls and shortfalls shall be taken into account. For Member States faced with a debt level exceeding 60 % of GDP or with pronounced risks of overall debt sustainability, the Council and the Commission shall examine whether the annual improvement of the cyclically-adjusted budget balance, net of one-off and other temporary measures, is higher than 0,5 % of GDP. For Member States that are participating in ERM2, the Council and the Commission shall examine if the Member State concerned pursues an appropriate annual improvement of its cyclically adjusted balance, net of one-off and other temporary measures, required to meet its medium-term budgetary objective, with 0,5 % of GDP as a benchmark.

Sufficient progress towards the medium-term budgetary objective shall be evaluated on the basis of an overall assessment with the structural balance as the reference, including an analysis of expenditure net of discretionary revenue measures. To this end, the Council and the Commission shall assess whether the growth path of government expenditure, taken in conjunction with the effect of measures being taken or planned on the revenue side, is in accordance with the following conditions:

- (a) for Member States that have achieved their medium-term budgetary objective, annual expenditure growth does not exceed a reference medium-term rate of potential GDP growth, unless the excess is matched by discretionary revenue measures;
- (b) for Member States that have not yet reached their medium-term budgetary objective, annual expenditure growth does not exceed a rate below a reference medium-term rate of potential GDP growth, unless the excess is matched by discretionary revenue measures. The size of the shortfall of the growth rate of government expenditure compared to a reference medium-term rate of potential GDP growth is set in such a way as to ensure an appropriate adjustment towards the medium-term budgetary objective;
- (c) for Member States that have not yet reached their medium-term budgetary objective, discretionary reductions of government revenue items are matched either by expenditure reductions or by discretionary increases in other government revenue items or both.

The expenditure aggregate shall exclude interest expenditure, expenditure on Union programmes fully matched by Union funds revenue and non-discretionary changes in unemployment benefit expenditure.

The excess expenditure growth over the medium-term reference shall not be counted as a breach of the benchmark to the extent that it is fully offset by revenue increases mandated by law.

The reference medium-term rate of potential GDP growth shall be determined on the basis of forward-looking projections and backward-looking estimates. Projections shall be updated at regular intervals. The Commission shall make public the calculation method for those projections and the resulting reference medium-term rate of potential GDP growth.

When defining the adjustment path to the medium-term budgetary objective for Member States that have not yet reached this objective, and in allowing a temporary deviation from this objective for Member States that have already reached it, provided that an appropriate safety margin with respect to the deficit reference value is preserved and that the budgetary position is expected to return to the medium-term budgetary objective within the programme period, the Council and the Commission shall take into account the implementation of major structural reforms which have direct long-term positive budgetary effects, including by raising potential sustainable growth, and therefore a verifiable impact on the long-term sustainability of public finances.

Particular attention shall be paid to pension reforms introducing a multi-pillar system that includes a mandatory, fully funded pillar. Member States implementing such reforms shall be allowed to deviate from the adjustment path to their medium-term budgetary objective or from the objective itself, with the deviation reflecting the amount of the direct incremental impact of the reform on the general government balance, provided that an appropriate safety margin with respect to the deficit reference value is preserved.

The Council and the Commission shall also examine whether the convergence programme facilitates the achievement of sustained and real convergence and the closer coordination of economic policies, and whether the economic policies of the Member State concerned are consistent with the broad economic policy guidelines and the employment guidelines of the Member States and of the Union. In addition, for Member States that are participating in ERM2, the Council shall examine whether the convergence programme ensures a smooth participation in the exchange rate mechanism.

In the case of an unusual event outside the control of the Member State concerned, which has a major impact on the financial position of the general government or in periods of severe economic downturn for the euro area or the Union as a whole, Member States may be allowed temporarily to depart from the adjustment path towards the medium-term budgetary objective referred to in the third subparagraph, provided that this does not endanger fiscal sustainability in the medium term.

2. The Council and the Commission shall examine the convergence programme within at most 3 months of its submission. The Council, on a recommendation from the Commission and after consulting the Economic and Financial Committee, shall, if necessary, adopt an opinion on the programme. Where the Council, in accordance with Article 121 TFEU, considers that the objectives and the content of the programme should be strengthened with particular reference to the adjustment path towards the medium-term budgetary objective, the Council shall in its opinion invite the Member State concerned to adjust its programme.

Article 10

1. As part of multilateral surveillance in accordance with Article 121(3) TFEU, the Council and the Commission shall monitor the implementation of convergence programmes, on the basis of information provided by Member States with a derogation and of assessments by the Commission and the Economic and Financial Committee, in particular with a view to identifying actual or expected significant divergences of the budgetary position from the medium-term budgetary objective, or from the appropriate adjustment path towards it.

In addition, the Council and the Commission shall monitor the economic policies of non-participating Member States in the light of convergence programme objectives with a view to ensure that their policies are geared to stability and thus to avoid real exchange rate misalignments and excessive nominal exchange rate fluctuations.

2. In the event of a significant observed deviation from the adjustment path towards the medium-term budgetary objective referred to in the third subparagraph of Article 9(1) of this Regulation, and in order to prevent the occurrence of an excessive deficit, the Commission shall address a warning to the Member State concerned in accordance with Article 121(4) TFEU.

The Council shall, within 1 month of the date of adoption of the warning referred to in the first subparagraph, examine the situation and adopt a recommendation for the necessary policy measures, on the basis of a Commission recommendation, based on Article 121(4) TFEU. The recommendation shall set a deadline of no more than 5 months for addressing the deviation. The deadline shall be reduced to 3 months if the Commission, in its warning, considers that the situation is particularly serious and warrants urgent action. The Council, on a proposal from the Commission, shall make the recommendation public.

Within the deadline set by the Council in the recommendation under Article 121(4) TFEU, the Member State concerned shall report to the Council on action taken in response to the recommendation.

If the Member State concerned fails to take appropriate action within the deadline specified in a Council recommendation under the second subparagraph, the Commission shall immediately recommend to the Council to adopt, by qualified majority, a decision establishing that no effective action has been taken. At the same time, the Commission may recommend to the Council to adopt a revised recommendation under Article 121(4) TFEU on necessary policy measures.

In the event that the Council does not adopt the decision on the Commission recommendation that no effective action has been taken, and failure to take appropriate action on the part of the Member State concerned persists, the Commission, after 1 month from its earlier recommendation, shall recommend to the Council to adopt the decision establishing that no effective action has been taken. The decision shall be deemed to be adopted by the Council unless it decides, by simple majority, to reject the recommendation within 10 days of its adoption by the Commission. At the same time, the Commission may recommend to the Council to adopt a revised recommendation under Article 121(4) TFEU on necessary policy measures.

When taking the decision on non-compliance referred to in the fourth and fifth subparagraphs, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

The Council shall submit a formal report to the European Council on the decisions taken accordingly.

3. A deviation from the medium-term budgetary objective or from the appropriate adjustment path towards it shall be evaluated on the basis of an overall assessment with the structural balance as the reference, including an analysis of expenditure net of discretionary revenue measures, as defined in Article 9(1).

The assessment of whether the deviation is significant shall, in particular, include the following criteria:

- (a) for a Member State that has not reached the medium-term budgetary objective, when assessing the change in the structural balance, whether the deviation is at least 0,5 % of GDP in a single year or at least 0,25 % of GDP on average per year in two consecutive years;
- (b) when assessing expenditure developments net of discretionary revenue measures, whether the deviation has a total impact on the government balance of at least 0,5 % of GDP in a single year or cumulatively in two consecutive years.

The deviation of expenditure developments shall not be considered significant if the Member State concerned has overachieved the medium-term budgetary objective, taking into account the possibility of significant revenue windfalls and the budgetary plans laid out in the convergence programme do not jeopardise that objective over the programme period.

Similarly, the deviation may be left out of consideration when resulting from an unusual event outside the control of the Member State concerned and which has a major impact on the financial position of the general government or in case of severe economic downturn for the euro area or the Union as a whole, on the condition that this does not endanger fiscal sustainability in the medium term.

SECTION 3A

PRINCIPLE OF STATISTICAL INDEPENDENCE

Article 10a

With a view to ensuring that the multilateral surveillance is based on sound and independent statistics, Member States shall ensure the professional independence of national statistical authorities, which shall be consistent with the European statistics code of practice as laid down in Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European Statistics⁽⁷⁾. As a minimum this shall require:

- (a) transparent recruitment and dismissal processes which must be solely based on professional criteria;
- (b) budgetary allocations which must be made on an annual or a multiannual basis;
- (c) the date of publication of key statistical information which must be designated significantly in advance.

SECTION 4

COMMON PROVISIONS

Article -11

1. The Commission shall ensure a permanent dialogue with the relevant authorities of the Member States in accordance with the objectives of this Regulation. To that end, the Commission shall, in particular, carry out missions for the purpose of the assessment of the economic situation in the Member State and the identification of any risks or difficulties in complying with the objectives of this Regulation.

2. The Commission may undertake enhanced surveillance missions in Member States which are the subject of recommendations issued under Article 6(2) or Article 10(2) for the purposes of on-site monitoring. The Member States concerned shall provide all necessary information for the preparation and the conduct of those missions.

⁷ OJ L 87, 31.3.2009, p. 164.

3. When the Member State concerned is a participating Member State or a Member State that is participating in ERM2, the Commission may invite representatives of the European Central Bank, if appropriate, to participate in surveillance missions.
4. The Commission shall report to the Council on the outcome of the missions referred to in paragraph 2 and, if appropriate, may decide to make its findings public.
5. When organising the missions referred to in paragraph 2, the Commission shall transmit its provisional findings to the Member States concerned for comments.

Article 11

As part of the multilateral surveillance described in this Regulation, the Council shall carry out the overall assessment described in Article 121 (3).

Article 12

In accordance with the second subparagraph of Article 121 (4) the President of the Council and the Commission shall include in their report to the European Parliament the results of the multilateral surveillance carried out under this Regulation.

Article 12a

1. By 14 December 2014 and every 5 years thereafter, the Commission shall publish a report on the application of this Regulation.

That report shall evaluate, inter alia:

- (a) the effectiveness of this Regulation, particularly whether the provisions governing decision-making have proved sufficiently robust;
- (b) the progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU.

2. Where appropriate, this report shall be accompanied by a proposal for amendments to this Regulation, including to the decision-making procedures.

3. The report shall be forwarded to the European Parliament and the Council.

Article 13

This Regulation shall enter into force on 1 July 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EC) NO 1467/97

on speeding up and clarifying the implementation of the excessive deficit procedure as amended by Council Regulation (EC) No 1056/2005 of 27 June 2005 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure and by Council Regulation (EU) No 1177/2011 amending the procedure on excessive deficits

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second subparagraph of Article 126(14) thereof,

Having regard to the proposal from the Commission⁽⁸⁾,

Having regard to the opinion of the European Parliament⁽⁹⁾,

Having regard to the opinion of the European Monetary Institute,

- (1) Whereas it is necessary to speed up and to clarify the excessive deficit procedure set out in Article 126 TFEU in order to deter excessive general government deficits and, if they occur, to further their prompt correction; whereas the provisions of this Regulation, which are to the above effect and adopted under Article 126(14) second subparagraph, constitute, together with those of Protocol (No 5) to the Treaty, a new integrated set of rules for the application of Article 126;
- (2) Whereas the Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation;
- (3) Whereas the Stability and Growth Pact consists of this Regulation, of Council Regulation (EC) No 1466/97⁽¹⁰⁾ which aims to strengthen the surveillance of budgetary positions and the surveillance and coordination of economic policies and of the Resolution of the European Council of 17 June 1997 on the Stability and Growth Pact⁽¹¹⁾, in which, in accordance with Article 4 of the Treaty on European Union, firm political guidelines are issued in order to implement the manner and in particular to adhere to the medium term objective for budgetary positions of close to balance or in surplus, to which all Member States are committed, and to take the corrective budgetary action they deem necessary to

⁸ OJ No C 368, 6. 12. 1996, p. 12.

⁹ OJ No C 380, 16. 12. 1996, p. 29.

¹⁰ OJ L 209, 2.8.1997, p. 1.

¹¹ OJ No C 236, 2. 8. 1997, p. 1.

meet the objectives of their stability and convergence programmes, whenever they have information indicating actual or expected significant divergence from the medium-term budgetary objective;

- (4) Whereas Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community¹²) contains detailed rules for the reporting of budgetary data by Member States;
- (5) Whereas in stage three of Economic and Monetary Union (EMU) the Member States are, according to Article 126 TFEU, under a clear Treaty obligation to avoid excessive government deficits; whereas under Article 5 of Protocol (No 11) to the Treaty, paragraphs 1, 9 and 11 of Article 126 do not apply to the United Kingdom unless it moves to the third stage; whereas the obligation under Article 116 (4) to endeavour to avoid excessive deficits will continue to apply to the United Kingdom;
- (6) Whereas Denmark, referring to paragraph 1 of Protocol (No 12) to the Treaty has notified, in the context of the Edinburgh decision of 12 December 1992, that it will not participate in the third stage; whereas, therefore, in accordance with paragraph 2 of the said Protocol, paragraph 9 and 11 of Article 126 shall not apply to Denmark;
- (7) Whereas in stage three of EMU Member States remain responsible for their national budgetary policies, subject to the provisions of the Treaty; whereas the Member States will take the necessary measures in order to meet their responsibilities in accordance with the provisions of the Treaty;
- (8) Whereas adherence to the medium-term objective of budgetary positions close to balance or in surplus to which all Member States are committed, contributes to the creation of the appropriate conditions for price stability and for sustained growth conducive to employment creation in all Member States and will allow them to deal with normal cyclical fluctuations while keeping the government deficit within the 3 % of GDP reference value;
- (9) Whereas for EMU to function properly, it is necessary that convergence of economic and budgetary performances of Member States which have adopted the single currency, hereafter referred to as 'participating Member States', proves stable and durable; whereas budgetary discipline is necessary in stage three of EMU to safeguard price stability;
- (10) Whereas according to Article 109k (3) Article 126(9) and (11) only apply to participating Member States;

¹² OJ No L 332, 31. 12. 1993, p. 7.

- (11) Whereas it is necessary to define the concept of an exceptional and temporary excess over the reference value as referred to in Article 126(2) (a); whereas the Council should in this context, *inter alia*, take account of the pluriannual budgetary forecasts provided by the Commission;
- (12) Whereas a Commission report in accordance with Article 126(3) is also to take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State;
- (13) Whereas there is a need to establish deadlines for the implementation of the excessive deficit procedure in order to ensure its expeditious and effective implementation; whereas it is necessary in this context to take account of the fact that the budgetary year of the United Kingdom does not coincide with the calendar year;
- (14) Whereas there is a need to specify how the sanctions provided for in Article 126 could be imposed in order to ensure the effective implementation of the excessive deficit procedure;
- (15) Whereas reinforced surveillance under the Council Regulation (EC) No 1466/97 together with the Commission's monitoring of budgetary positions in accordance with paragraph 2 of Article 126 should facilitate the effective and rapid implementation of the excessive deficit procedure;
- (16) Whereas in the light of the above, in the event that a participating Member State fails to take effective action to correct an excessive deficit, an overall maximum period of ten months from the reporting date of the figures indicating the existence of an excessive deficit until the decision to impose sanctions, if necessary, seems both feasible and appropriate in order to exert pressure on the participating Member State concerned to take such action; in this event, and if the procedure starts in March, this would lead to sanctions being imposed within the calendar year in which the procedure had been started;
- (17) Whereas the Council recommendation for the correction of an excessive deficit or the later steps of the excessive deficit procedure, should have been anticipated by the Member State concerned, which would have had an early warning; whereas the seriousness of an excessive deficit in stage three should call for urgent action from all those involved;
- (18) Whereas it is appropriate to hold the excessive deficit procedure in abeyance if the Member State concerned takes appropriate action in response to a recommendation under Article 126(7) or a notice issued under Article 126(9) in order to provide an incentive to Member States to act accordingly; whereas the time period during which the procedure would be held in abeyance should not be included in the

maximum period of ten months between the reporting date indicating the existence of an excessive deficit and the imposition of sanctions; whereas it is appropriate to resume the procedure immediately if the envisaged action is not being implemented or if the implemented action is proving to be inadequate;

- (19) Whereas, in order to ensure that the excessive deficit procedure has a sufficient deterrent effect, a non-interest-bearing deposit of an appropriate size should be required from the participating Member State concerned, whenever the Council decides to impose a sanction;
- (20) Whereas the definition of sanctions on a prescribed scale is conducive to legal certainty; whereas it is appropriate to relate the amount of the deposit to the GDP of the participating Member State concerned;
- (21) Whereas, whenever the imposition of a non-interest-bearing deposit does not induce the participating Member State concerned to correct its excessive deficit in due time, it is appropriate to intensify the sanctions; whereas it is then appropriate to transform the deposit into a fine;
- (22) Whereas appropriate action by the participating Member State concerned in order to correct its excessive deficit is the first step towards abrogation of sanctions; whereas significant progress in correcting the excessive deficit should allow for the lifting of sanctions in accordance with paragraph 12 of Article 126; whereas the abrogation of all outstanding sanctions should only occur once the excessive deficit has been totally corrected;
- (23) Whereas, according to Article 117 (8), where the Treaty provides for a consultative role for the European Central Bank (ECB), references to the ECB shall be read as referring to the European Monetary Institute before the establishment of the ECB,

HAS ADOPTED THIS REGULATION:

SECTION 1

DEFINITIONS AND ASSESSMENTS

Article 1

1. This Regulation lays down the provisions for speeding up and clarifying the excessive deficit procedure. The objective of the excessive deficit procedure is to deter excessive government deficits and, if they occur, to further prompt their correction, where compliance with the budgetary discipline is examined on the basis of the government deficit and government debt criteria.

2. For the purposes of this Regulation, ‘participating Member States’ shall mean those Member States whose currency is the euro.

Article 2

1. The excess of a government deficit over the reference value shall be considered exceptional, in accordance with the second indent of point (a) of Article 126(2) of the Treaty on the Functioning of the European Union (TFEU), when resulting from an unusual event outside the control of the Member State concerned and with a major impact on the financial position of general government, or when resulting from a severe economic downturn.

In addition, the excess over the reference value shall be considered temporary if budgetary forecasts as provided by the Commission indicate that the deficit will fall below the reference value following the end of the unusual event or the severe economic downturn.

1a. When it exceeds the reference value, the ratio of the government debt to gross domestic product (GDP) shall be considered sufficiently diminishing and approaching the reference value at a satisfactory pace in accordance with point (b) of Article 126(2) TFEU if the differential with respect to the reference value has decreased over the previous three years at an average rate of one twentieth per year as a benchmark, based on changes over the last three years for which the data is available.

The requirement under the debt criterion shall also be considered to be fulfilled if the budgetary forecasts of the Commission indicate that the required reduction in the differential will occur over the three-year period encompassing the two years following the final year for which the data is available. For a Member State that is subject to an excessive deficit procedure on 8 November 2011 and for a period of three years from the correction of the excessive deficit, the requirement under the debt criterion shall be considered fulfilled if the Member State concerned makes sufficient progress towards compliance as assessed in the opinion adopted by the Council on its stability or convergence programme.

In implementing the debt ratio adjustment benchmark, account shall be taken of the influence of the cycle on the pace of debt reduction.

2. The Commission and the Council, when assessing and deciding upon the existence of an excessive deficit in accordance with Article 126(3) to (6) TFEU, may consider an excess over the reference value resulting from a severe economic downturn as exceptional in the sense of the second indent of Article 126(2)(a) if the excess over the reference value results from a negative annual GDP volume growth rate or from an accumulated loss of output during a protracted period of very low annual GDP volume growth relative to its potential.

3. The Commission, when preparing a report under Article 126(3) TFEU, shall take into account all relevant factors as indicated in that Article, in so far as they significantly affect the assessment of compliance with the deficit and debt criteria by the Member State concerned. The report shall reflect, as appropriate:

- (a) the developments in the medium-term economic position, in particular potential growth, including the various contributions provided by labour, capital accumulation and total factor productivity, cyclical developments, and the private sector net savings position;
- (b) the developments in the medium-term budgetary positions, including, in particular, the record of adjustment towards the medium-term budgetary objective, the level of the primary balance and developments in primary expenditure, both current and capital, the implementation of policies in the context of the prevention and correction of excessive macroeconomic imbalances, the implementation of policies in the context of the common growth strategy of the Union, and the overall quality of public finances, in particular the effectiveness of national budgetary frameworks;
- (c) the developments in the medium-term government debt position, its dynamics and sustainability, including, in particular, risk factors including the maturity structure and currency denomination of the debt, stock-flow adjustment and its composition, accumulated reserves and other financial assets, guarantees, in particular those linked to the financial sector, and any implicit liabilities related to ageing and private debt, to the extent that it may represent a contingent implicit liability for the government.

The Commission shall give due and express consideration to any other factors which, in the opinion of the Member State concerned, are relevant in order to comprehensively assess compliance with deficit and debt criteria and which the Member State has put forward to the Council and the Commission. In that context, particular consideration shall be given to financial contributions to fostering international solidarity and achieving the policy goals of the Union, the debt incurred in the form of bilateral and multilateral support between Member States in the context of safeguarding financial stability, and the debt related to financial stabilisation operations during major financial disturbances.

4. The Council and the Commission shall make a balanced overall assessment of all the relevant factors, specifically, the extent to which they affect the assessment of compliance with the deficit and/or the debt criteria as aggravating or mitigating factors. When assessing compliance on the basis of the deficit criterion, if the ratio of the government debt to GDP exceeds the reference value, those factors shall be taken into account in the steps leading to the decision on the existence of an excessive deficit provided for in paragraphs 4, 5 and 6 of Article 126 TFEU only if the double condition of the overarching principle — that, before these relevant factors are taken into account, the general government deficit remains close to the reference value and its excess over the reference value is temporary — is fully met.

However, those factors shall be taken into account in the steps leading to the decision on the existence of an excessive deficit when assessing compliance on the basis of the debt criterion.

5. When assessing compliance with the deficit and debt criterion and in the subsequent steps of the excessive deficit procedure, the Council and the Commission shall give due consideration to the implementation of pension reforms introducing a multi-pillar system that includes a mandatory, fully funded pillar and the net cost of the publicly managed pillar. In particular, consideration shall be given to the features of the overall pension system created by the reform, namely whether it promotes long-term sustainability while not increasing risks for the medium-term budgetary position.

6. If the Council, acting under Article 126(6) TFEU, decides that an excessive deficit exists in a Member State, the Council and the Commission shall, in the subsequent procedural steps of that Article of the TFEU, take into account the relevant factors referred to in paragraph 3 of this Article, as they affect the situation of the Member State concerned, including as specified in Article 3(5) and Article 5(2) of this Regulation, in particular in establishing a deadline for the correction of the excessive deficit and eventually extending that deadline. However, those relevant factors shall not be taken into account for the decision of the Council under Article 126(12) TFEU on the abrogation of some or all of its decisions under paragraphs 6 to 9 and 11 of Article 126 TFEU.

7. In the case of Member States where the excess of the deficit over the reference value reflects the implementation of a pension reform introducing a multi-pillar system that includes a mandatory, fully funded pillar, the Council and the Commission shall also consider the cost of the reform when assessing developments of deficit figures in excessive deficit procedures as long as the deficit does not significantly exceed a level that can be considered close to the reference value, and the debt ratio does not exceed the reference value, provided that overall fiscal sustainability is maintained. The net cost shall be taken into account also for the decision of the Council under Article 126(12) TFEU on the abrogation of some or all of its decisions under paragraphs 6 to 9 and 11 of Article 126 TFEU, if the deficit has declined substantially and continuously and has reached a level that comes close to the reference value.

SECTION IA

ECONOMIC DIALOGUE

Article 2a

1. In order to enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission and, where appropriate, the

President of the European Council or the President of the Eurogroup, to appear before the committee to discuss Council decisions under Article 126(6) TFEU, Council recommendations under Article 126(7) TFEU, notices under Article 126(9) TFEU, or Council decisions under Article 126(11) TFEU.

The Council is, as a rule, expected to follow the recommendations and proposals of the Commission or explain its position publicly.

The competent committee of the European Parliament may offer the opportunity to the Member State concerned by such decisions, recommendations or notices to participate in an exchange of views.

2. The Council and the Commission shall regularly inform the European Parliament of the application of this Regulation.

SECTION 2

SPEEDING UP THE EXCESSIVE DEFICIT PROCEDURE

Article 3

1. Within two weeks of the adoption by the Commission of a report issued in accordance with Article 126(3), the Economic and Financial Committee shall formulate an opinion in accordance with Article 126(4).

2. Taking fully into account the opinion referred to in paragraph 1, the Commission, if it considers that an excessive deficit exists, shall address an opinion and a proposal to the Council in accordance with paragraphs 5 and 6 of Article 126 TFEU and shall inform the European Parliament thereof.

3. The Council shall decide on the existence of an excessive deficit in accordance with Article 126(6) TFEU, as a rule within four months of the reporting dates established in Article 3(2) and (3) of Regulation (EC) No 479/2009. When it decides that an excessive deficit exists, the Council shall at the same time make recommendations to the Member State concerned in accordance with Article 126(7) TFEU.

4. The Council recommendation made in accordance with Article 126(7) TFEU shall establish a maximum deadline of six months for effective action to be taken by the Member State concerned. When warranted by the seriousness of the situation, the deadline for effective action may be three months. The Council recommendation shall also establish a deadline for the correction of the excessive deficit, which shall be completed in the year following its identification unless there are special circumstances. In its recommendation, the Council shall request that the Member State achieve annual budgetary targets which, on the basis of the forecast underpinning the recommendation, are consistent with a minimum annual improvement of at least 0,5 % of GDP as a

benchmark, in its cyclically adjusted balance net of one-off and temporary measures, in order to ensure the correction of the excessive deficit within the deadline set in the recommendation.

4a. Within the deadline provided for in paragraph 4, the Member State concerned shall report to the Council and the Commission on action taken in response to the Council's recommendation under Article 126(7) TFEU. The report shall include the targets for government expenditure and revenue and for the discretionary measures on both the expenditure and the revenue side consistent with the Council's recommendation, as well as information on the measures taken and the nature of those envisaged to achieve the targets. The Member State shall make the report public.

5. If effective action has been taken in compliance with a recommendation under Article 126(7) TFEU and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that recommendation, the Council may decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 126(7) TFEU. The revised recommendation, taking into account the relevant factors referred to in Article 2(3) of this Regulation may, in particular, extend the deadline for the correction of the excessive deficit by one year as a rule. The Council shall assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its recommendation. In the case of a severe economic downturn in the euro area or in the Union as a whole, the Council may also decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 126(7) TFEU provided that this does not endanger fiscal sustainability in the medium term.

Article 4

1. Any decision by the Council under Article 126(8) TFEU to make public its recommendations where it is established that no effective action has been taken, shall be taken immediately after the expiry of the deadline set in accordance with Article 3(4) of this Regulation.

2. The Council, when considering whether effective action has been taken in response to its recommendations made in accordance with Article 126(7) TFEU, shall base its decision on the report submitted by the Member State concerned in accordance with Article 3(4a) of this Regulation and its implementation, as well as on any other publicly announced decisions by the government of the Member State concerned.

Where the Council establishes, in accordance with Article 126(8) TFEU, that the Member State concerned has failed to take effective action, it shall report to the European Council accordingly.

Article 5

1. Any Council decision to give notice to the participating Member State concerned to take measures for the deficit reduction in accordance with Article 126(9) TFEU shall be taken within two months of the Council decision under Article 126(8) TFEU establishing that no effective action has been taken. In the notice, the Council shall request that the Member State achieve annual budgetary targets which, on the basis of the forecast underpinning the notice, are consistent with a minimum annual improvement of at least 0,5 % of GDP as a benchmark, in its cyclically adjusted balance net of one-off and temporary measures, in order to ensure the correction of the excessive deficit within the deadline set in the notice. The Council shall also indicate measures conducive to the achievement of those targets.

1a. Following a Council notice under Article 126(9) TFEU, the Member State concerned shall report to the Council and the Commission on action taken in response thereto. The report shall include the targets for the government expenditure and revenue and for the discretionary measures on both the expenditure and the revenue side, as well as information on the actions being taken in response to the specific Council recommendations so as to allow the Council to take, if necessary, a decision in accordance with Article 6(2) of this Regulation. The Member State shall make the report public.

2. If effective action has been taken in compliance with a notice under Article 126(9) TFEU and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that notice, the Council may decide, on a recommendation from the Commission, to adopt a revised notice under Article 126(9) TFEU. The revised notice, taking into account the relevant factors referred to in Article 2(3) of this Regulation may, in particular, extend the deadline for the correction of the excessive deficit by one year as a rule. The Council shall assess the existence of unexpected adverse economic events with major unfavourable consequences for government finances against the economic forecasts in its notice. In the case of a severe economic downturn in the euro area or in the Union as a whole, the Council may also decide, on a recommendation from the Commission, to adopt a revised notice under Article 126(9) TFEU, on condition that this does not endanger fiscal sustainability in the medium term.

Article 6

1. The Council, when considering whether effective action has been taken in response to its notice made in accordance with Article 126(9) TFEU, shall base its decision on the report submitted by the Member State concerned in accordance with Article 5(1a) of this Regulation and its implementation, as well as on any other publicly announced decisions by the government of the Member State concerned. The outcome of the surveillance mission carried out by the Commission in accordance with Article 10a of this Regulation shall be taken into account.

2. Where the conditions to apply Article 126(11) TFEU are met, the Council shall impose sanctions in accordance with that Article. Any such decision shall be taken no later than four months after the Council decision under Article 126(9) TFEU giving notice to the participating Member State concerned to take measures.

Article 7

If a participating Member State fails to act in compliance with the successive acts of the Council in accordance with Article 126(7) and (9) TFEU, the decision of the Council under Article 126(11) TFEU to impose sanctions shall be taken as a rule within 16 months of the reporting dates established in Article 3(2) and (3) of Regulation (EC) No 479/2009. Where Article 3(5) or Article 5(2) of this Regulation is applied, the 16-month deadline shall be adjusted accordingly. An expedited procedure shall be used in the case of a deliberately planned deficit which the Council decides is excessive.

Article 8

Any Council decision under Article 126(11) TFEU to intensify sanctions shall be taken no later than two months after the reporting dates pursuant to Regulation (EC) No 479/2009. Any Council decision under Article 126(12) TFEU to abrogate some or all of its decisions shall be taken as soon as possible and in any event no later than two months after the reporting dates pursuant to Regulation (EC) No 479/2009.

SECTION 3

ABEYANCE AND MONITORING

Article 9

1. The excessive deficit procedure shall be held in abeyance:

- if the Member State concerned acts in compliance with recommendations made in accordance with Article 126(7),
- if the participating Member State concerned acts in compliance with notices given in accordance with Article 126(9).

2. The period during which the procedure is held in abeyance shall be included neither in the period referred to in Article 6 nor in the period referred to in Article 7 of this Regulation.

3. Following the expiry of the period referred to in the first sentence of Article 3(4) and following the expiry of the period referred to in the second sentence of Article 6(2) of this Regulation, the Commission shall inform the Council if it considers that the measures taken seem sufficient to ensure adequate progress towards the correction of

the excessive deficit within the time limits set by the Council, provided that they are fully implemented and that economic developments are in line with forecasts. The Commission statement shall be made public.

Article 10

1. The Council and the Commission shall regularly monitor the implementation of action taken:

- by the Member State concerned in response to recommendations made under Article 126(7),
- by the participating Member State concerned in response to notices given under Article 126(9).

2. If action by a participating Member State is not being implemented or, in the Council's view, is proving to be inadequate, the Council shall immediately take a decision under Article 126(9) or Article 126(11) respectively.

3. If actual data pursuant to Regulation (EC) No 479/2009 indicate that an excessive deficit has not been corrected by a participating Member State within the time limits specified either in recommendations issued under Article 126(7) or notices issued under Article 126(9), the Council shall immediately take a decision under Article 126(9) or Article 126(11) respectively.

Article 10a

1. The Commission shall ensure a permanent dialogue with authorities of the Member States in accordance with the objectives of this Regulation. To that end, the Commission shall, in particular, carry out missions for the purpose of the assessment of the actual economic situation in the Member State and the identification of any risks or difficulties in complying with the objectives of this Regulation.

2. Enhanced surveillance may be undertaken for Member States which are the subject of recommendations and notices issued following a decision pursuant to Article 126(8) TFEU and decisions under Article 126(11) TFEU for the purposes of on-site monitoring. The Member States concerned shall provide all necessary information for the preparation and the conduct of the mission.

3. The Commission may invite representatives of the European Central Bank, if appropriate, to participate in surveillance missions in a Member State whose currency is the euro or which is participating in the Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the

euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union⁽¹³⁾ (ERM II).

4. The Commission shall report to the Council on the outcome of the mission referred to in paragraph 2 and may decide to make its findings public.

5. When organising surveillance missions referred to in paragraph 2, the Commission shall transmit its provisional findings to the Member States concerned for comments.;

SECTION 4 SANCTIONS

Article 11

Whenever the Council decides under Article 126(11) TFEU to impose sanctions on a participating Member State, a fine shall, as a rule, be required. The Council may decide to supplement such a fine by the other measures provided for in Article 126(11) TFEU.

Article 12

1. The amount of the fine shall comprise a fixed component equal to 0,2 % of GDP, and a variable component. The variable component shall amount to one tenth of the absolute value of the difference between the balance as a percentage of GDP in the preceding year and either the reference value for government balance or, if non-compliance with budgetary discipline includes the debt criterion, the government balance as a percentage of GDP that should have been achieved in the same year according to the notice issued under Article 126(9) TFEU.

2. In each year following that in which a fine is imposed, until the decision on the existence of an excessive deficit is abrogated, the Council shall assess whether the participating Member State concerned has taken effective action in response to the Council notice in accordance with Article 126(9) TFEU. In this annual assessment the Council shall decide, in accordance with Article 126(11) TFEU, to intensify the sanctions, unless the participating Member State concerned has complied with the Council's notice. If the Council decides to impose an additional fine, it shall be calculated in the same way as for the variable component of the fine referred to in paragraph 1.

3. No single fine referred to in paragraphs 1 and 2 shall exceed 0,5 % of GDP.

¹³ OJ C 73, 25.3.2006, p. 21.

Article 14

1. In accordance with Article 126(12), the Council shall abrogate the sanctions referred to in the first and second indents of Article 126(11) depending on the significance of the progress made by the participating Member State concerned in correcting the excessive deficit.

Article 15

In accordance with Article 126(12), the Council shall abrogate all outstanding sanctions if the decision on the existence of an excessive deficit is abrogated. Fines imposed in accordance with Article 12 of this Regulation will not be reimbursed to the participating Member State concerned.

Article 16

The fines referred to in Article 12 shall constitute other revenue, as referred to in Article 311 TFEU, and shall be assigned to the European Financial Stability Facility. When the participating Member States create another stability mechanism to provide financial assistance in order to safeguard the stability of the euro area as a whole, the amount of those fines shall be assigned to that mechanism.

SECTION 5

TRANSITIONAL AND FINAL PROVISIONS

Article 17

For the purpose of this Regulation and for as long as the United Kingdom has a budgetary year which is not a calendar year, the provisions of sections 2, 3 and 4 of this Regulation shall be applied to the United Kingdom in accordance with the Annex.

Article 17a

1. By 14 December 2014 and every five years thereafter, the Commission shall publish a report on the application of this Regulation.

That report shall evaluate, inter alia:

- (a) the effectiveness of this Regulation;
- (b) the progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU.

2. Where appropriate, the report referred to in paragraph 1 shall be accompanied by a proposal for amendments to this Regulation.
3. The report shall be forwarded to the European Parliament and to the Council.

Article 18

This Regulation shall enter into force on 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

ANNEX

TIME LIMITS APPLICABLE TO THE UNITED KINGDOM

1. In order to ensure equal treatment of all Member States, the Council, when taking decisions in Sections 2, 3 and 4 of this Regulation, shall have regard to the different budgetary year of the United Kingdom, with a view to taking decisions with regard to the United Kingdom at a point in its budgetary year similar to that at which decisions have been or will be taken in the case of other Member States.

2. The provisions specified in Column I shall be substituted by the provisions specified in Column II.

Column I	Column II
<p>‘as a rule, within four months of the reporting dates established in Article 3(2) and (3) of Council Regulation (EC) No 479/2009’</p> <p>(Article 3(3))</p>	<p>‘as a rule, within six months after the end of the budgetary year in which the deficit occurred’</p>
<p>‘the year following its identification’</p> <p>(Article 3(4))</p>	<p>‘the budgetary year following its identification’</p>
<p>‘as a rule, within sixteen months of reporting dates established in Article 4(2) and (3) of Regulation (EC) No 3605/93’</p> <p>(Article 7)</p>	<p>‘as a rule, within eighteen months from the end of the budgetary year in which the deficit occurred’</p>
<p>‘the preceding year’</p> <p>(Article 12(1))</p>	<p>‘the preceding budgetary year’</p>

COUNCIL DIRECTIVE 2011/85/EU
of 8 November 2011
on requirements for budgetary frameworks of the Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third subparagraph of Article 126(14) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the European Central Bank⁽²⁾,

Whereas:

- (1) There is a need to build upon the experience gained during the first decade of the economic and monetary union. Recent economic developments have posed new challenges to the conduct of fiscal policy across the Union and have in particular highlighted the need for strengthening national ownership and having uniform requirements as regards the rules and procedures forming the budgetary frameworks of the Member States. In particular, it is necessary to specify what national authorities must do to comply with the provisions of the Protocol (No 12) on the excessive deficit procedure annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 3 thereof.
- (2) Member State governments and government sub-sectors maintain public accounting systems which include elements such as bookkeeping, internal control, financial reporting, and auditing. Those systems should be distinguished from statistical data which relate to the outcomes of government finances based on statistical methodologies, and from forecasts or budgeting actions which relate to future government finances.
- (3) Complete and reliable public accounting practices for all sub-sectors of general government are a precondition for the production of high-quality statistics that are comparable across Member States. Internal control should ensure that existing rules are enforced throughout the sub-sectors of general government. Independent

¹ European Parliament opinion of 28 September 2011 (not yet published in the Official Journal).

² OJ C 150, 20.5.2011, p. 1.

audits conducted by public institutions such as courts of auditors or by private auditing bodies should encourage best international practices.

- (4) The availability of fiscal data is crucial to the proper functioning of the budgetary surveillance framework of the Union. The regular availability of timely and reliable fiscal data is the key to proper and well timed monitoring, which in turn allows prompt action in the event of unexpected budgetary developments. A crucial element in ensuring the quality of fiscal data is transparency, which must entail the regular public availability of such data.
- (5) With regard to statistics, Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics⁽³⁾ established a legislative framework for the production of European statistics with a view to the formulation, application, monitoring and assessment of the policies of the Union. That Regulation also laid down the principles governing the development, production and dissemination of European statistics: professional independence, impartiality, objectivity, reliability, statistical confidentiality and cost-effectiveness, giving precise definitions of each of these principles. Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community⁽⁴⁾, strengthened the Commission's powers to verify statistical data used for the excessive deficit procedure.
- (6) The definitions of "government", "deficit" and "investment" are laid down in the Protocol (No 12) on the excessive deficit procedure by reference to the European System of Integrated Economic Accounts (ESA), replaced by the European system of national and regional accounts in the Community, adopted by Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community⁽⁵⁾ (ESA 95).
- (7) The availability and quality of ESA 95 data is crucial to ensure the proper functioning of the Union's fiscal surveillance framework. ESA 95 relies on information provided on an accrual basis. However, these accrual fiscal statistics rely on the previous compilation of cash data, or their equivalent. These can play a relevant role in enhancing timely budgetary monitoring, so as to avoid the late detection of significant budgetary errors. The availability of cash-data time series on budgetary developments can reveal patterns warranting closer surveillance. The cash-based fiscal data (or equivalent figures from public accounting if cash-based data are not available) to be published should at least include an overall balance, total revenue and total expenditure. Where justified, for example where there is a large number of local government bodies, timely publication of data could rely on

³ OJ L 87, 31.3.2009, p. 164.

⁴ OJ L 145, 10.6.2009, p. 1.

⁵ OJ L 310, 30.11.1996, p. 1.

suitable estimation techniques based on a sample of bodies, with a subsequent revision using complete data.

- (8) Biased and unrealistic macroeconomic and budgetary forecasts can considerably hamper the effectiveness of fiscal planning and consequently impair commitment to budgetary discipline, while transparency and discussion of forecasting methodologies can significantly increase the quality of macroeconomic and budgetary forecasts for fiscal planning.
- (9) A crucial element in ensuring the use of realistic forecasts for the conduct of budgetary policy is transparency, which should entail the public availability not only of the official macroeconomic and budgetary forecast prepared for fiscal planning, but also of the methodologies, assumptions and relevant parameters on which such forecasts are based.
- (10) Sensitivity analysis and corresponding budgetary projections supplementing the most likely macrofiscal scenario allow the analysis of how main fiscal variables would evolve under various growth and interest rates assumptions, and thus greatly reduce the risk of budgetary discipline being jeopardised by forecast errors.
- (11) Forecasts by the Commission and information regarding the models on which they are based can provide Member States with a useful benchmark for their most likely macrofiscal scenario, enhancing the validity of the forecasts used for budgetary planning. However, the extent to which Member States can be expected to compare the forecasts used for budgetary planning with the Commission's forecasts varies according to the timing of forecast preparation and the comparability of the forecast methodologies and assumptions. Forecasts from other independent bodies can also provide useful benchmarks.
- (12) Significant differences between the chosen macrofiscal scenario and the Commission's forecast should be described and reasons therefor should be given, in particular if the level or growth of variables in external assumptions departs significantly from the values contained in the Commission's forecasts.
- (13) Given the interdependence between Member States' budgets and the Union's budget, in order to support Member States in preparing their budgetary forecasts, the Commission should provide forecasts for the Union's expenditure based on the level of expenditure programmed within the multiannual financial framework.
- (14) In order to facilitate the production of the forecasts used for budgetary planning and to clarify differences between the forecasts of the Member States and those of the Commission, each Member State should, on an annual basis, have the opportunity to discuss with the Commission the assumptions underpinning the preparation of macroeconomic and budgetary forecasts.

- (15) The quality of official macroeconomic and budgetary forecasts is critically enhanced by regular, unbiased and comprehensive evaluation based on objective criteria. Thorough evaluation includes scrutiny of the economic assumptions, comparison with forecasts prepared by other institutions, and evaluation of past forecast performance.
- (16) Considering the documented effectiveness of rules-based budgetary frameworks of the Member States in enhancing national ownership of the Union's fiscal rules promoting budgetary discipline, strong country-specific numerical fiscal rules that are consistent with the budgetary objectives at the level of the Union should be a cornerstone of the strengthened budgetary surveillance framework of the Union. Strong numerical fiscal rules should be equipped with well-specified target definitions together with mechanisms for effective and timely monitoring. Those rules should be based on reliable and independent analysis carried out by independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States. In addition, policy experience has shown that for numerical fiscal rules to work effectively, consequences must be attached to non-compliance, where the costs involved may be simply reputational.
- (17) By virtue of the Protocol (No 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland annexed to the TEU and to the TFEU, the reference values mentioned in the Protocol (No 12) on the excessive deficit procedure annexed to those Treaties are not directly binding on the United Kingdom. The obligation to have in place numerical fiscal rules that effectively promote compliance with the specific reference values for the excessive deficit, and the related obligation for the multiannual objectives in medium-term budgetary frameworks to be consistent with such rules, should therefore not apply to the United Kingdom.
- (18) Member States should avoid pro-cyclical fiscal policies, and fiscal consolidation efforts should be greater in economic good times. Well-specified numerical fiscal rules are conducive to these objectives and should be reflected in the annual budget legislation of the Member States.
- (19) National fiscal planning can be consistent with both the preventive and the corrective parts of the Stability and Growth Pact (SGP) only if it adopts a multiannual perspective and pursues the achievement, in particular, of the medium-term budgetary objectives. Medium-term budgetary frameworks are strictly instrumental in ensuring that budgetary frameworks of the Member States are consistent with the legislation of the Union. In the spirit of Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies⁶ and Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and

⁶ OJ L 209, 2.8.1997, p. 1.

clarifying the implementation of the excessive deficit procedure⁽⁷⁾, the preventive and corrective parts of the SGP should not be regarded in isolation.

- (20) Although the approval of annual budget legislation is the key step in the budget process in which important budgetary decisions are adopted in the Member States, most fiscal measures have budgetary implications that go well beyond the annual budgetary cycle. A single-year perspective therefore provides a poor basis for sound budgetary policies. In order to incorporate the multiannual budgetary perspective of the budgetary surveillance framework of the Union, planning of annual budget legislation should be based on multiannual fiscal planning stemming from the medium-term budgetary framework.
- (21) That medium-term budgetary framework should contain, inter alia, projections of each major expenditure and revenue item for the budget year and beyond, based on unchanged policies. Each Member State should be able appropriately to define unchanged policies and those definitions should be made public together with the assumptions involved, the methodologies and other relevant parameters.
- (22) This Directive should not prevent a Member State's new government from updating its medium-term budgetary framework to reflect its new policy priorities. In this case, the new government should highlight the differences from the previous medium-term budgetary framework.
- (23) Provisions of the budgetary surveillance framework established by the TFEU and in particular the SGP apply to general government as a whole, which comprises the sub-sectors central government, state government, local government, and social security funds, as defined in Regulation (EC) No 2223/96.
- (24) A significant number of Member States have experienced a sizeable fiscal decentralisation with the devolution of budgetary powers to sub-national governments. The role of such sub-national governments in ensuring that the SGP is complied with has thereby increased considerably, and particular attention should be paid to ensuring that all general government sub-sectors are duly covered by the scope of the obligations and procedures laid down in domestic budgetary frameworks, in particular, but not exclusively, in those Member States.
- (25) To be effective in promoting budgetary discipline and the sustainability of public finance, budgetary frameworks should comprehensively cover public finances. For this reason, operations of those general government bodies and funds which do not form part of the regular budgets at sub-sector level and that have an immediate or medium-term impact on Member States' budgetary positions should be given particular consideration. Their combined impact on general government balances

⁷ OJ L 209, 2.8.1997, p. 6.

and debts should be presented in the framework of the annual budgetary processes and in the medium-term budgetary plans.

- (26) Similarly, due attention should be paid to the existence of contingent liabilities. More specifically, contingent liabilities encompass possible obligations depending on whether some uncertain future event occurs, or present obligations where payment is not probable or the amount of the probable payment cannot be measured reliably. They comprise for instance relevant information on government guarantees, non-performing loans, and liabilities stemming from the operation of public corporations, including, where appropriate, the likelihood and potential due date of expenditure of contingent liabilities. Market sensitivities should be duly taken into account.
- (27) The Commission should regularly monitor the implementation of this Directive. Best practices concerning the provisions of this Directive dealing with the different aspects of national budgetary frameworks should be identified and shared.
- (28) Since the objective of this Directive, namely uniform compliance with budgetary discipline as required by the TFEU, cannot be sufficiently achieved by the Member States and can therefore be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (29) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁸), Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

This Directive lays down detailed rules concerning the characteristics of the budgetary frameworks of the Member States. Those rules are necessary to ensure Member States' compliance with obligations under the TFEU with regard to avoiding excessive government deficits.

⁸ OJ C 321, 31.12.2003, p. 1.

Article 2

For the purposes of this Directive, the definitions of "government", "deficit" and "investment" set out in Article 2 of the Protocol (No 12) on the excessive deficit procedure annexed to the TEU and to the TFEU shall apply. The definition of sub-sectors of general government set out in point 2.70 of Annex A to Regulation (EC) No 2223/96 shall also apply.

In addition, the following definition shall apply:

"budgetary framework" means the set of arrangements, procedures, rules and institutions that underlie the conduct of budgetary policies of general government, in particular:

- (a) systems of budgetary accounting and statistical reporting;
- (b) rules and procedures governing the preparation of forecasts for budgetary planning;
- (c) country-specific numerical fiscal rules, which contribute to the consistency of Member States' conduct of fiscal policy with their respective obligations under the TFEU, expressed in terms of a summary indicator of budgetary performance, such as the government budget deficit, borrowing, debt, or a major component thereof;
- (d) budgetary procedures comprising procedural rules to underpin the budget process at all stages;
- (e) medium-term budgetary frameworks as a specific set of national budgetary procedures that extend the horizon for fiscal policy-making beyond the annual budgetary calendar, including the setting of policy priorities and of medium-term budgetary objectives;
- (f) arrangements for independent monitoring and analysis, to enhance the transparency of elements of the budget process;
- (g) mechanisms and rules that regulate fiscal relationships between public authorities across sub-sectors of general government.

CHAPTER II

ACCOUNTING AND STATISTICS

Article 3

1. As concerns national systems of public accounting, Member States shall have in place public accounting systems comprehensively and consistently covering all sub-sectors of general government and containing the information needed to generate accrual data with a view to preparing data based on the ESA 95 standard. Those public accounting systems shall be subject to internal control and independent audits.

2. Member States shall ensure timely and regular public availability of fiscal data for all sub-sectors of general government as defined by Regulation (EC) No 2223/96. In particular Member States shall publish:

- (a) cash-based fiscal data (or the equivalent figure from public accounting if cash-based data are not available) at the following frequencies:
 - monthly for central government, state government and social security sub-sectors, before the end of the following month, and
 - quarterly, for the local government sub-sector, before the end of the following quarter;
- (b) a detailed reconciliation table showing the methodology of transition between cash-based data (or the equivalent figures from public accounting if cash-based data are not available) and data based on the ESA 95 standard.

CHAPTER III

FORECASTS

Article 4

1. Member States shall ensure that fiscal planning is based on realistic macroeconomic and budgetary forecasts using the most up-to-date information. Budgetary planning shall be based on the most likely macrofiscal scenario or on a more prudent scenario. The macroeconomic and budgetary forecasts shall be compared with the most updated forecasts of the Commission and, if appropriate, those of other independent bodies. Significant differences between the chosen macrofiscal scenario and the Commission's forecast shall be described with reasoning, in particular if the level or growth of variables in external assumptions departs significantly from the values contained in the Commission's forecasts.

2. The Commission shall make public the methodologies, assumptions and relevant parameters that underpin its macroeconomic and budgetary forecasts.

3. In order to support Member States in preparing their budgetary forecasts, the Commission shall provide forecasts for the expenditure of the Union based on the level of expenditure programmed within the multiannual financial framework.

4. Within the framework of a sensitivity analysis, the macroeconomic and budgetary forecasts shall examine paths of main fiscal variables under different assumptions as to growth and interest rates. The range of alternative assumptions used in macroeconomic and budgetary forecasts shall be guided by the performance of past forecasts and shall endeavour to take into account relevant risk scenarios.

5. Member States shall specify which institution is responsible for producing macroeconomic and budgetary forecasts and shall make public the official macroeconomic and budgetary forecasts prepared for fiscal planning, including the methodologies, assumptions and relevant parameters underpinning those forecasts. At least annually, the Member States and the Commission shall engage in a technical dialogue concerning the assumptions underpinning the preparation of macroeconomic and budgetary forecasts.

6. The macroeconomic and budgetary forecasts for fiscal planning shall be subject to regular, unbiased and comprehensive evaluation based on objective criteria, including ex post evaluation. The result of that evaluation shall be made public and taken into account appropriately in future macroeconomic and budgetary forecasts. If the evaluation detects a significant bias affecting macroeconomic forecasts over a period of at least 4 consecutive years, the Member State concerned shall take the necessary action and make it public.

7. Member States' quarterly debt and deficit levels shall be published by the Commission (Eurostat) every 3 months.

CHAPTER IV NUMERICAL FISCAL RULES

Article 5

Each Member State shall have in place numerical fiscal rules which are specific to it and which effectively promote compliance with its obligations deriving from the TFEU in the area of budgetary policy over a multiannual horizon for the general government as a whole. Such rules shall promote in particular:

- (a) compliance with the reference values on deficit and debt set in accordance with the TFEU;
- (b) the adoption of a multiannual fiscal planning horizon, including adherence to the Member State's medium-term budgetary objective.

Article 6

1. Without prejudice to the provisions of the TFEU concerning the budgetary surveillance framework of the Union, country-specific numerical fiscal rules shall contain specifications as to the following elements:

- (a) the target definition and scope of the rules;
- (b) the effective and timely monitoring of compliance with the rules, based on reliable and independent analysis carried out by independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States;
- (c) the consequences in the event of non-compliance.

2. If numerical fiscal rules contain escape clauses, such clauses shall set out a limited number of specific circumstances consistent with the Member States' obligations deriving from the TFEU in the area of budgetary policy, and stringent procedures in which temporary non-compliance with the rule is permitted.

Article 7

The annual budget legislation of the Member States shall reflect their country-specific numerical fiscal rules in force.

Article 8

Articles 5 to 7 shall not apply to the United Kingdom.

CHAPTER V

MEDIUM-TERM BUDGETARY FRAMEWORKS

Article 9

1. Member States shall establish a credible, effective medium-term budgetary framework providing for the adoption of a fiscal planning horizon of at least 3 years, to ensure that national fiscal planning follows a multiannual fiscal planning perspective.

2. Medium-term budgetary frameworks shall include procedures for establishing the following items:

- (a) comprehensive and transparent multiannual budgetary objectives in terms of the general government deficit, debt and any other summary fiscal indicator such as expenditure, ensuring that these are consistent with any numerical fiscal rules as provided for in Chapter IV in force;

- (b) projections of each major expenditure and revenue item of the general government with more specifications on the central government and social security level, for the budget year and beyond, based on unchanged policies;
 - (c) a description of medium-term policies envisaged with an impact on general government finances, broken down by major revenue and expenditure item, showing how the adjustment towards the medium-term budgetary objectives is achieved compared to projections under unchanged policies;
 - (d) an assessment as to how in the light of their direct long-term impact on general government finances, the policies envisaged are likely to affect the long-term sustainability of the public finances.
3. Projections adopted within medium-term budgetary frameworks shall be based on realistic macroeconomic and budgetary forecasts in accordance with Chapter III.

Article 10

Annual budget legislation shall be consistent with the provisions of the medium-term budgetary framework. Specifically, revenue and expenditure projections and priorities resulting from the medium-term budgetary framework as set out in Article 9(2) shall constitute the basis for the preparation of the annual budget. Any departure from those provisions shall be duly explained.

Article 11

No provision of this Directive shall prevent a Member State's new government from updating its medium-term budgetary framework to reflect its new policy priorities. In this case, the new government shall indicate the differences from the previous medium-term budgetary framework.

CHAPTER VI

TRANSPARENCY OF GENERAL GOVERNMENT FINANCES AND COMPREHENSIVE SCOPE OF BUDGETARY FRAMEWORKS

Article 12

Member States shall ensure that any measures taken to comply with Chapters II, III and IV are consistent across, and comprehensive in coverage of, all sub-sectors of general government. This shall, in particular, require the consistency of accounting rules and procedures, and the integrity of their underlying data collection and processing systems.

Article 13

1. Member States shall establish appropriate mechanisms of coordination across sub-sectors of general government to provide for comprehensive and consistent coverage of all sub-sectors of general government in fiscal planning, country-specific numerical fiscal rules, and in the preparation of budgetary forecasts and setting-up of multiannual planning as laid down, in particular, in the multiannual budgetary framework.
2. In order to promote fiscal accountability, the budgetary responsibilities of public authorities in the various sub-sectors of general government shall be clearly laid down.

Article 14

1. Within the framework of the annual budgetary processes, Member States shall identify and present all general government bodies and funds which do not form part of the regular budgets at sub-sector level, together with other relevant information. The combined impact on general government balances and debts of those general government bodies and funds shall be presented in the framework of the annual budgetary processes and the medium-term budgetary plans.
2. Member States shall publish detailed information on the impact of tax expenditures on revenues.
3. For all sub-sectors of general government, Member States shall publish relevant information on contingent liabilities with potentially large impacts on public budgets, including government guarantees, non-performing loans, and liabilities stemming from the operation of public corporations, including the extent thereof. Member States shall also publish information on the participation of general government in the capital of private and public corporations in respect of economically significant amounts.

CHAPTER VII
FINAL PROVISIONS

Article 15

1. Member States shall bring into force the provisions necessary to comply with this Directive by 31 December 2013. They shall forthwith communicate to the Commission the text of those provisions. The Council encourages the Member States to draw up, for themselves and in the interests of the Union, their own correlation tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. The Commission shall prepare an interim progress report on the implementation of the main provisions of this Directive on the basis of relevant information from Member States, which shall be submitted to the European Parliament and to the Council by 14 December 2012.

4. Member States shall communicate to the Commission the text of the main provisions which they adopt in the field covered by this Directive.

Article 16

1. By 14 December 2018 the Commission shall publish a review of the suitability of this Directive.

2. The review shall assess, inter alia, the suitability of:

- (a) the statistical requirements for all sub-sectors of government;
- (b) the design and effectiveness of numerical fiscal rules in the Member States;
- (c) the general level of transparency of public finances in the Member States.

3. By 31 December 2012, the Commission shall assess the suitability of the International Public Sector Accounting Standards for the Member States.

Article 17

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 18

This Directive is addressed to the Member States.

**REGULATION (EU) NO 1173/2011 OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL**

of 16 November 2011

on the effective enforcement of budgetary surveillance in the euro area

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 136, in combination with Article 121(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) Member States whose currency is the euro have a particular interest in and a responsibility to conduct economic policies that promote the proper functioning of the economic and monetary union and to avoid policies that jeopardise that functioning.
- (2) The Treaty on the Functioning of the European Union (TFEU) allows the adoption of specific measures in the euro area which go beyond the provisions applicable to all Member States, for the purpose of ensuring the proper functioning of the economic and monetary union.
- (3) Experience gained and mistakes made during the first decade of the economic and monetary union show a need for improved economic governance in the Union, which should be built on stronger national ownership of commonly agreed rules and policies and on a more robust framework at the level of the Union for the surveillance of national economic policies.

¹ OJ C 150, 20.5.2011, p. 1.

² OJ C 218, 23.7.2011, p. 46.

³ Position of the European Parliament of 28 September 2011 (not yet published in the Official Journal) and decision of the Council of 8 November 2011.

- (4) The improved economic governance framework should rely on several interlinked and coherent policies for sustainable growth and jobs, in particular a Union strategy for growth and jobs, with particular focus on developing and strengthening the internal market, fostering international trade and competitiveness, a European Semester for strengthened coordination of economic and budgetary policies, an effective framework for preventing and correcting excessive government deficits (the Stability and Growth Pact (SGP)), a robust framework for preventing and correcting macroeconomic imbalances, minimum requirements for national budgetary frameworks, and enhanced financial market regulation and supervision, including macroprudential supervision by the European Systemic Risk Board.
- (5) The SGP and the complete economic governance framework should complement and be compatible with the Union strategy for growth and jobs. The interlinks between different strands should not provide for exemptions from the provisions of the SGP.
- (6) Achieving and maintaining a dynamic internal market should be considered an element of the proper and smooth functioning of the economic and monetary union.
- (7) The Commission should play a stronger role in the enhanced surveillance procedure as regards assessments that are specific to each Member State, monitoring, on-site missions, recommendations and warnings. When taking decisions on sanctions, the role of the Council should be limited, and reversed qualified majority voting should be used.
- (8) In order to ensure a permanent dialogue with the Member States aiming at achieving the objectives of this Regulation, the Commission should carry out surveillance missions.
- (9) A broad evaluation of the economic governance system, in particular of the effectiveness and adequacy of its sanctions, should be undertaken by the Commission at regular intervals. Such evaluations should be complemented by relevant proposals if necessary.
- (10) When implementing this Regulation, the Commission should take into account the current economic situation of the Member States concerned.
- (11) The strengthening of economic governance should include a closer and a more timely involvement of the European Parliament and the national parliaments.
- (12) An economic dialogue with the European Parliament may be established, enabling the Commission to make its analyses public and the President of the Council, the Commission and, where appropriate, the President of the European Council or the

President of the Eurogroup to discuss. Such a public debate could enable discussion of the spill-over effects of national decisions and enable public peer pressure to be brought to bear on the relevant actors. While recognising that the counterparts of the European Parliament in the framework of that dialogue are the relevant institutions of the Union and their representatives, the competent committee of the European Parliament may offer an opportunity to participate in an exchange of views to a Member State which is the subject of a Council decision taken pursuant to Articles 4, 5 and 6 of this Regulation. The Member State's participation in such an exchange of views is voluntary.

- (13) Additional sanctions are necessary to make the enforcement of budgetary surveillance in the euro area more effective. Those sanctions should enhance the credibility of the fiscal surveillance framework of the Union.
- (14) The rules laid down in this Regulation should ensure fair, timely, graduated and effective mechanisms for compliance with the preventive and the corrective parts of the SGP, in particular Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies⁴) and Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁵), where compliance with the budgetary discipline is examined on the basis of the government deficit and government debt criteria.
- (15) Sanctions under this Regulation and based upon the preventive part of the SGP in respect of Member States whose currency is the euro should provide incentives for adjusting to and maintaining the medium-term budgetary objective.
- (16) In order to deter against the misrepresentation, whether intentional or due to serious negligence, of government deficit and debt data, which data is an essential input to economic policy coordination in the Union, fines should be imposed on Member States responsible.
- (17) In order to supplement the rules on calculation of the fines for manipulation of statistics as well as the rules on the procedure to be followed by the Commission for the investigation of such actions, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of detailed criteria for establishing the amount of the fine and for conducting the Commission's investigations. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

⁴ OJ L 209, 2.8.1997, p. 1.

⁵ OJ L 209, 2.8.1997, p. 6.

- (18) In respect of the preventive part of the SGP, adjustment and adherence to the medium-term budgetary objective should be ensured through an obligation imposed on a Member State whose currency is the euro that is making insufficient progress with budgetary consolidation to lodge temporarily an interest-bearing deposit. This should be the case when a Member State, including a Member State with a deficit below the 3 % of Gross Domestic Product (GDP) reference value, deviates significantly from the medium-term budgetary objective or the appropriate adjustment path towards that objective and fails to correct the deviation.
- (19) The interest-bearing deposit imposed should be released to the Member State concerned together with the interest accrued on it once the Council has been satisfied that the situation giving rise to the obligation to lodge that deposit has come to an end.
- (20) In respect of the corrective part of the SGP, sanctions for Member States whose currency is the euro should take the form of an obligation to lodge a non-interest-bearing deposit linked to a Council decision establishing the existence of an excessive deficit if an interest-bearing deposit has already been imposed on the Member State concerned in the preventive part of the SGP or in cases of particularly serious non-compliance with the budgetary policy obligations laid down in the SGP, or the obligation to pay a fine in the event of non-compliance with a Council recommendation to correct an excessive government deficit.
- (21) In order to avoid the retroactive application of the sanctions under the preventive part of the SGP provided for in this Regulation, they should apply only in respect of the relevant decisions adopted by the Council under Regulation (EC) No 1466/97 after the entry into force of this Regulation. Similarly, in order to avoid the retroactive application of the sanctions under the corrective part of the SGP provided for in this Regulation, they should apply only in respect of the relevant recommendations and decisions to correct an excessive government deficit adopted by the Council after the entry into force of this Regulation.
- (22) The amount of the interest-bearing deposits, of the non-interest-bearing deposits and of the fines provided for in this Regulation should be set in such a way as to ensure a fair graduation of sanctions in the preventive and corrective parts of the SGP and to provide sufficient incentives for the Member States whose currency is the euro to comply with the fiscal framework of the Union. Fines under Article 126(11) TFEU and as specified in Article 12 of Regulation (EC) No 1467/97 are composed of a fixed component that equals 0,2 % of GDP and of a variable component. Thus, graduation and equal treatment between Member States are ensured if the interest-bearing deposit, the non-interest-bearing deposit and the fine specified in this Regulation are equal to 0,2 % of GDP, that being the amount of the fixed component of the fine under Article 126(11) TFEU.

- (23) A possibility should be provided for the Council to reduce or to cancel the sanctions imposed on Member States whose currency is the euro on the basis of a Commission recommendation following a reasoned request by the Member State concerned. In the corrective part of the SGP, the Commission should also be able to recommend reducing the amount of a sanction or cancelling it on grounds of exceptional economic circumstances.
- (24) The non-interest-bearing deposit should be released upon correction of the excessive deficit, while the interest on such deposits and the fines collected should be assigned to stability mechanisms to provide financial assistance, created by Member States whose currency is the euro in order to safeguard the stability of the euro area as a whole.
- (25) The power to adopt individual decisions for the application of the sanctions provided for in this Regulation should be conferred on the Council. As part of the coordination of the economic policies of the Member States conducted within the Council as provided for in Article 121(1) TFEU, those individual decisions are an integral follow-up to the measures adopted by the Council in accordance with Articles 121 and 126 TFEU and Regulations (EC) No 1466/97 and (EC) No 1467/97.
- (26) Since this Regulation contains general rules for the effective enforcement of Regulations (EC) No 1466/97 and (EC) No 1467/97, it should be adopted in accordance with the ordinary legislative procedure referred to in Article 121(6) TFEU.
- (27) Since the objective of this Regulation, namely to create a system of sanctions for enhancing the enforcement of the preventive and corrective parts of the SGP in the euro area, cannot be sufficiently achieved at the level of the Member States, the Union may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation sets out a system of sanctions for enhancing the enforcement of the preventive and corrective parts of the Stability and Growth Pact in the euro area.

2. This Regulation shall apply to Member States whose currency is the euro.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) "preventive part of the Stability and Growth Pact" means the multilateral surveillance system as organised by Regulation (EC) No 1466/97;
- (2) "corrective part of the Stability and Growth Pact" means the procedure for the avoidance of Member States' excessive deficit as regulated by Article 126 TFEU and Regulation (EC) No 1467/97;
- (3) "exceptional economic circumstances" means circumstances where an excess of a government deficit over the reference value is considered exceptional within the meaning of the second indent of point (a) of Article 126(2) TFEU and as specified in Regulation (EC) No 1467/97.

CHAPTER II

ECONOMIC DIALOGUE

Article 3

Economic dialogue

In order to enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup to appear before the committee to discuss decisions taken pursuant to Articles 4, 5 and 6 of this Regulation.

The competent committee of the European Parliament may offer the opportunity to the Member State concerned by such decisions to participate in an exchange of views.

CHAPTER III

SANCTIONS IN THE PREVENTIVE PART OF THE STABILITY AND GROWTH PACT

Article 4

Interest-bearing deposits

1. If the Council adopts a decision establishing that a Member State failed to take action in response to the Council recommendation referred to in the second subparagraph of Article 6(2) of Regulation (EC) No 1466/97, the Commission shall, within 20 days of adoption of the Council's decision, recommend that the Council, by a further decision, require the Member State in question to lodge with the Commission an interest-bearing deposit amounting to 0,2 % of its GDP in the preceding year.
2. The decision requiring a lodgement shall be deemed to be adopted by the Council unless it decides by a qualified majority to reject the Commission's recommendation within 10 days of the Commission's adoption thereof.
3. The Council, acting by a qualified majority, may amend the Commission's recommendation and adopt the text so amended as a Council decision.
4. The Commission may, following a reasoned request by the Member State concerned addressed to the Commission within 10 days of adoption of the Council's decision establishing that a Member State failed to take action referred to in paragraph 1, recommend that the Council reduce the amount of the interest-bearing deposit or cancel it.
5. The interest-bearing deposit shall bear an interest rate reflecting the Commission's credit risk and the relevant investment period.
6. If the situation giving rise to the Council's recommendation referred to in the second subparagraph of Article 6(2) of Regulation (EC) No 1466/97 no longer exists, the Council, on the basis of a further recommendation from the Commission, shall decide that the deposit and the interest accrued thereon be returned to the Member State concerned. The Council may, acting by a qualified majority, amend the Commission's further recommendation.

CHAPTER IV

SANCTIONS IN THE CORRECTIVE PART OF THE STABILITY AND GROWTH PACT

Article 5

Non-interest-bearing deposits

1. If the Council, acting under Article 126(6) TFEU, decides that an excessive deficit exists in a Member State which has lodged an interest-bearing deposit with the Commission in accordance with Article 4(1) of this Regulation, or where the Commission has identified particularly serious non-compliance with the budgetary policy obligations laid down in the SGP, the Commission shall, within 20 days of adoption of the Council's decision, recommend that the Council, by a further decision, require the Member State concerned to lodge with the Commission a non-interest-bearing deposit amounting to 0,2 % of its GDP in the preceding year.
2. The decision requiring a lodgement shall be deemed to be adopted by the Council unless it decides by a qualified majority to reject the Commission's recommendation within 10 days of the Commission's adoption thereof.
3. The Council, acting by a qualified majority, may amend the Commission's recommendation and adopt the text so amended as a Council decision.
4. The Commission may, on grounds of exceptional economic circumstances or following a reasoned request by the Member State concerned addressed to the Commission within 10 days of adoption of the Council's decision under Article 126(6) TFEU referred to in paragraph 1, recommend that the Council reduce the amount of the non-interest-bearing deposit or cancel it.
5. The deposit shall be lodged with the Commission. If the Member State has lodged an interest-bearing deposit with the Commission in accordance with Article 4, that interest-bearing deposit shall be converted to a non-interest-bearing deposit.

If the amount of an interest-bearing deposit lodged in accordance with Article 4 and of the interest accrued thereon exceeds the amount of the non-interest-bearing deposit to be lodged under paragraph 1 of this Article, the excess shall be returned to the Member State.

If the amount of the non-interest-bearing deposit exceeds the amount of an interest-bearing deposit lodged in accordance with Article 4 and the interest accrued thereon, the Member State shall make up the shortfall when it lodges the non-interest-bearing deposit.

Article 6

Fines

1. If the Council, acting under Article 126(8) TFEU, decides that a Member State has not taken effective action to correct its excessive deficit, the Commission shall, within 20 days of that decision, recommend that the Council, by a further decision, impose a fine, amounting to 0,2 % of the Member State's GDP in the preceding year.
2. The decision imposing a fine shall be deemed to be adopted by the Council unless it decides by a qualified majority to reject the Commission's recommendation within 10 days of the Commission's adoption thereof.
3. The Council, acting by a qualified majority, may amend the Commission's recommendation and adopt the text so amended as a Council decision.
4. The Commission may, on grounds of exceptional economic circumstances or following a reasoned request by the Member State concerned addressed to the Commission within 10 days of adoption of the Council's decision under Article 126(8) TFEU referred to in paragraph 1, recommend that the Council reduce the amount of the fine or cancel it.
5. If the Member State has lodged a non-interest-bearing deposit with the Commission in accordance with Article 5, the non-interest-bearing deposit shall be converted into the fine.

If the amount of a non-interest-bearing deposit lodged in accordance with Article 5 exceeds the amount of the fine, the excess shall be returned to the Member State.

If the amount of the fine exceeds the amount of a non-interest-bearing deposit lodged in accordance with Article 5, or if no non-interest-bearing deposit has been lodged, the Member State shall make up the shortfall when it pays the fine

Article 7

Return of non-interest-bearing deposits

If the Council, acting under Article 126(12) TFEU, decides to abrogate some or all of its decisions, any non-interest-bearing deposit lodged with the Commission shall be returned to the Member State concerned.

CHAPTER V

SANCTIONS CONCERNING THE MANIPULATION OF STATISTICS

Article 8

Sanctions concerning the manipulation of statistics

1. The Council, acting on a recommendation by the Commission, may decide to impose a fine on a Member State that intentionally or by serious negligence misrepresents deficit and debt data relevant for the application of Articles 121 or 126 TFEU, or for the application of the Protocol on the excessive deficit procedure annexed to the TEU and to the TFEU.

2. The fines referred to in paragraph 1 shall be effective, dissuasive and proportionate to the nature, seriousness and duration of the misrepresentation. The amount of the fine shall not exceed 0,2 % of GDP of the Member State concerned.

3. The Commission may conduct all investigations necessary to establish the existence of the misrepresentations referred to in paragraph 1. It may decide to initiate an investigation when it finds that there are serious indications of the existence of facts liable to constitute such a misrepresentation. The Commission shall investigate the putative misrepresentations taking into account any comments submitted by the Member State concerned. In order to carry out its tasks, the Commission may request the Member State to provide information, and may conduct on-site inspections and accede to the accounts of all government entities at central, state, local and social-security level. If the law of the Member State concerned requires prior judicial authorisation for on-site inspections, the Commission shall make the necessary applications.

Upon completion of its investigation, and before submitting any proposal to the Council, the Commission shall give to the Member State concerned the opportunity of being heard in relation to the matters under investigation. The Commission shall base any proposal to the Council only on facts on which the Member State concerned has had the opportunity to comment.

The Commission shall fully respect the rights of defence of the Member State concerned during the investigations.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 11 concerning:

- (a) detailed criteria establishing the amount of the fine referred to in paragraph 1;
- (b) detailed rules concerning the procedures for the investigations referred to in paragraph 3, the associated measures and the reporting on the investigations;

(c) detailed rules of procedure aimed at guaranteeing the rights of the defence, access to the file, legal representation, confidentiality and provisions as to timing and the collection of the fines referred to in paragraph 1.

5. The Court of Justice of the European Union shall have unlimited jurisdiction to review the decisions of the Council imposing fines under paragraph 1. It may annul, reduce or increase the fine so imposed.

CHAPTER VI

ADMINISTRATIVE NATURE OF THE SANCTIONS AND DISTRIBUTION OF THE INTEREST AND FINES

Article 9

Administrative nature of the sanctions

The sanctions imposed pursuant to Articles 4 to 8 shall be of an administrative nature.

Article 10

Distribution of the interest and fines

The interest earned by the Commission on deposits lodged in accordance with Article 5 and the fines collected in accordance with Articles 6 and 8 shall constitute other revenue, as referred to in Article 311 TFEU, and shall be assigned to the European Financial Stability Facility. When the Member States whose currency is the euro create another stability mechanism to provide financial assistance in order to safeguard the stability of the euro area as a whole, the interest and the fines shall be assigned to that mechanism.

CHAPTER VII

GENERAL PROVISIONS

Article 11

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 8(4) shall be conferred on the Commission for a period of 3 years from 13 December 2011. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of that 3-year period. The delegation of power shall be tacitly extended for

periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 8(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 8(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 12

Voting in the Council

1. For the measures referred to in Articles 4, 5, 6 and 8, only members of the Council representing Member States whose currency is the euro shall vote, and the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

2. A qualified majority of the members of the Council referred to in paragraph 1 shall be defined in accordance with point (b) of Article 238(3) TFEU.

Article 13

Review

1. By 14 December 2014 and every 5 years thereafter, the Commission shall publish a report on the application of this Regulation.

That report shall evaluate, inter alia:

- (a) the effectiveness of this Regulation, including the possibility to enable the Council and the Commission to act in order to address situations which risk jeopardising the proper functioning of the monetary union;

- (b) the progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU.
- 2. Where appropriate, that report shall be accompanied by a proposal for amendments to this Regulation.
- 3. The report shall be forwarded to the European Parliament and to the Council.
- 4. Before the end of 2011 the Commission shall present a report to the European Parliament and to the Council on the possibility of introducing euro-securities.

Article 14

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

TREATY ON STABILITY, COORDINATION AND GOVERNANCE IN THE ECONOMIC AND MONETARY UNION⁶

between

the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, 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, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden

hereinafter referred to as "the Contracting Parties";

CONSCIOUS of their obligation, as Member States of the European Union, to regard their economic policies as a matter of common concern;

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area;

BEARING IN MIND that the need for governments to maintain sound and sustainable public finances and to prevent a general government deficit becoming excessive is of essential importance to safeguard the stability of the euro area as a whole, and accordingly, requires the introduction of specific rules, including a "balanced budget rule" and an automatic mechanism to take corrective action;

CONSCIOUS of the need to ensure that their general government deficit does not exceed 3 % of their gross domestic product at market prices and that their general government debt does not exceed, or is sufficiently declining towards, 60 % of their gross domestic product at market prices;

RECALLING that the Contracting Parties, as Member States of the European Union, are to refrain from any measure which could jeopardise the attainment of the Union's objectives in the framework of the economic union, particularly the practice of accumulating debt outside the general government accounts;

BEARING IN MIND that the Heads of State or Government of the euro area Member States agreed on 9 December 2011 on a reinforced architecture for economic and monetary union, building upon the Treaties on which the European Union is founded

⁶ Available on http://www.eurozone.europa.eu/media/304649/st00tscg26_en12.pdf.

and facilitating the implementation of measures taken on the basis of Articles 121, 126 and 136 of the Treaty on the Functioning of the European Union;

BEARING IN MIND that the objective of the Heads of State or Government of the euro area Member States and of other Member States of the European Union is to incorporate the provisions of this Treaty as soon as possible into the Treaties on which the European Union is founded;

WELCOMING the legislative proposals made by the European Commission for the euro area, within the framework of the Treaties on which the European Union is founded, on 23 November 2011, on the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability, and on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States, and

TAKING NOTE of the European Commission's intention to present further legislative proposals for the euro area concerning, in particular, ex ante reporting of debt issuance plans, economic partnership programmes detailing structural reforms for Member States under an excessive deficit procedure as well as the coordination of major economic policy reform plans of Member States;

EXPRESSING their readiness to support proposals which the European Commission might present to further strengthen the Stability and Growth Pact by introducing, for Member States whose currency is the euro, a new range for medium-term objectives in line with the limits established in this Treaty;

TAKING NOTE that, when reviewing and monitoring the budgetary commitments under this Treaty, the European Commission will act within the framework of its powers, as provided by the Treaty on the Functioning of the European Union, in particular Articles 121, 126 and 136 thereof;

NOTING in particular that, in respect of the application of the "balanced budget rule" set out in Article 3 of this Treaty, that monitoring will be carried out through the setting up, for each Contracting Party, of country-specific medium-term objectives and of calendars of convergence, as appropriate;

NOTING that the medium-term objectives should be updated regularly on the basis of a commonly agreed method, the main parameters of which are also to be reviewed regularly, reflecting appropriately the risks of explicit and implicit liabilities for public finance, as embodied in the aims of the Stability and Growth Pact;

NOTING that sufficient progress towards the medium-term objectives should be evaluated on the basis of an overall assessment with the structural balance as a reference, including an analysis of expenditure net of discretionary revenue measures, in line with the provisions specified under European Union law, in particular Council

Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, as amended by Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 ("the revised Stability and Growth Pact");

NOTING that the correction mechanism to be introduced by the Contracting Parties should aim at correcting deviations from the medium-term objective or the adjustment path, including their cumulated impact on government debt dynamics;

NOTING that compliance with the Contracting Parties' obligation to transpose the "balanced budget rule" into their national legal systems, through binding, permanent and preferably constitutional provisions, should be subject to the jurisdiction of the Court of Justice of the European Union, in accordance with Article 273 of the Treaty on the Functioning of the European Union;

RECALLING that Article 260 of the Treaty on the Functioning of the European Union empowers the Court of Justice of the European Union to impose a lump sum or penalty payment on a Member State of the European Union which has failed to comply with one of its judgments and RECALLING that the European Commission has established criteria for determining the lump sum or penalty payment to be imposed in the framework of that Article;

RECALLING the need to facilitate the adoption of measures under the excessive deficit procedure of the European Union in respect of Member States whose currency is the euro and whose planned or actual ratio of general government deficit to gross domestic product exceeds 3 %, whilst strongly reinforcing the objective of that procedure, namely to encourage and, if necessary, compel a Member State to reduce a deficit which might be identified;

RECALLING the obligation for those Contracting Parties whose general government debt exceeds the 60 % reference value to reduce it at an average rate of one twentieth per year as a benchmark;

BEARING IN MIND the need to respect, in the implementation of this Treaty, the specific role of the social partners, as it is recognised in the laws or national systems of each of the Contracting Parties;

STRESSING that no provision of this Treaty is to be interpreted as altering in any way the economic policy conditions under which financial assistance has been granted to a Contracting Party in a stabilisation programme involving the European Union, its Member States or the International Monetary Fund;

NOTING that the proper functioning of the economic and monetary union requires the Contracting Parties to work jointly towards an economic policy where, whilst building upon the mechanisms of economic policy coordination, as defined in the Treaties on

which the European Union is founded, they take the necessary actions and measures in all the areas which are essential to the proper functioning of the euro area;

NOTING, in particular, the wish of the Contracting Parties to make a more active use of enhanced cooperation, as provided for in Article 20 of the Treaty on European Union and Articles 326 to 334 of the Treaty on the Functioning of the European Union, without undermining the internal market, and their wish to have full recourse to measures specific to the Member States whose currency is the euro pursuant to Article 136 of the Treaty on the Functioning of the European Union, and to a procedure for the ex ante discussion and coordination among the Contracting Parties whose currency is the euro of all major economic policy reforms planned by them, with a view to benchmarking best practices;

RECALLING the agreement of the Heads of State or Government of the euro area Member States, of 26 October 2011, to improve the governance of the euro area, including the holding of at least two Euro Summit meetings per year, to be convened, unless justified by exceptional circumstances, immediately after meetings of the European Council or meetings with the participation of all Contracting Parties having ratified this Treaty;

RECALLING also the endorsement by the Heads of State or Government of the euro area Member States and of other Member States of the European Union, on 25 March 2011, of the Euro Plus Pact, which identifies the issues that are essential to fostering competitiveness in the euro area;

STRESSING the importance of the Treaty establishing the European Stability Mechanism as an element of the global strategy to strengthen the economic and monetary union and POINTING OUT that the granting of financial assistance in the framework of new programmes under the European Stability Mechanism will be conditional, as of 1 March 2013, on the ratification of this Treaty by the Contracting Party concerned and, as soon as the transposition period referred to in Article 3(2) of this Treaty has expired, on compliance with the requirements of that Article;

NOTING that the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland are Contracting Parties whose currency is the euro and that, as such, they will be bound by this Treaty from the first day of the month following the deposit of their instrument of ratification if the Treaty is in force at that date;

NOTING ALSO that the Republic of Bulgaria, the Kingdom of Denmark, the Republic of Latvia, the Republic of Lithuania, Hungary, the Republic of Poland, Romania and the Kingdom of Sweden are Contracting Parties which, as Member States of the

European Union, have, at the date of signature of this Treaty, a derogation or an exemption from participation in the single currency and may be bound, as long as such derogation or exemption is not abrogated, only by those provisions of Titles III and IV of this Treaty by which they declare, on depositing their instrument of ratification or at a later date, that they intend to be bound;

HAVE AGREED UPON THE FOLLOWING PROVISIONS:

TITLE I

PURPOSE AND SCOPE

Article 1

1. By this Treaty, the Contracting Parties agree, as Member States of the European Union, to strengthen the economic pillar of the economic and monetary union by adopting a set of rules intended to foster budgetary discipline through a fiscal compact, to strengthen the coordination of their economic policies and to improve the governance of the euro area, thereby supporting the achievement of the European Union's objectives for sustainable growth, employment, competitiveness and social cohesion.

2. This Treaty shall apply in full to the Contracting Parties whose currency is the euro. It shall also apply to the other Contracting Parties to the extent and under the conditions set out in Article 14.

TITLE II

CONSISTENCY AND RELATIONSHIP WITH THE LAW OF THE UNION

Article 2

1. This Treaty shall be applied and interpreted by the Contracting Parties in conformity with the Treaties on which the European Union is founded, in particular Article 4(3) of the Treaty on European Union, and with European Union law, including procedural law whenever the adoption of secondary legislation is required.

2. This Treaty shall apply insofar as it is compatible with the Treaties on which the European Union is founded and with European Union law. It shall not encroach upon the competence of the Union to act in the area of the economic union.

TITLE III
FISCAL COMPACT

Article 3

1. The Contracting Parties shall apply the rules set out in this paragraph in addition and without prejudice to their obligations under European Union law:

- (a) the budgetary position of the general government of a Contracting Party shall be balanced or in surplus;
- (b) the rule under point (a) shall be deemed to be respected if the annual structural balance of the general government is at its country-specific medium-term objective, as defined in the revised Stability and Growth Pact, with a lower limit of a structural deficit of 0.5 % of the gross domestic product at market prices. The Contracting Parties shall ensure rapid convergence towards their respective medium-term objective. The time-frame for such convergence will be proposed by the European Commission taking into consideration country-specific sustainability risks. Progress towards, and respect of, the medium-term objective shall be evaluated on the basis of an overall assessment with the structural balance as a reference, including an analysis of expenditure net of discretionary revenue measures, in line with the revised Stability and Growth Pact;
- (c) the Contracting Parties may temporarily deviate from their respective medium-term objective or the adjustment path towards it only in exceptional circumstances, as defined in point (b) of paragraph 3;
- (d) where the ratio of the general government debt to gross domestic product at market prices is significantly below 60 % and where risks in terms of long-term sustainability of public finances are low, the lower limit of the medium-term objective specified under point (b) can reach a structural deficit of at most 1,0 % of the gross domestic product at market prices;
- (e) in the event of significant observed deviations from the medium-term objective or the adjustment path towards it, a correction mechanism shall be triggered automatically. The mechanism shall include the obligation of the Contracting Party concerned to implement measures to correct the deviations over a defined period of time.

2. The rules set out in paragraph 1 shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes. The Contracting Parties shall put in place at national level the correction mechanism referred to in paragraph 1(e) on the basis of common principles

to be proposed by the European Commission, concerning in particular the nature, size and time-frame of the corrective action to be undertaken, also in the case of exceptional circumstances, and the role and independence of the institutions responsible at national level for monitoring compliance with the rules set out in paragraph 1. Such correction mechanism shall fully respect the prerogatives of national Parliaments.

3. For the purposes of this Article, the definitions set out in Article 2 of the Protocol (No 12) on the excessive deficit procedure, annexed to the European Union Treaties, shall apply.

The following definitions shall also apply for the purposes of this Article:

- (a) "annual structural balance of the general government" refers to the annual cyclically-adjusted balance net of one-off and temporary measures;
- (b) "exceptional circumstances" refers to the case of an unusual event outside the control of the Contracting Party concerned which has a major impact on the financial position of the general government or to periods of severe economic downturn as set out in the revised Stability and Growth Pact, provided that the temporary deviation of the Contracting Party concerned does not endanger fiscal sustainability in the medium-term.

Article 4

When the ratio of a Contracting Party's general government debt to gross domestic product exceeds the 60 % reference value referred to in Article 1 of the Protocol (No 12) on the excessive deficit procedure, annexed to the European Union Treaties, that Contracting Party shall reduce it at an average rate of one twentieth per year as a benchmark, as provided for in Article 2 of Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, as amended by Council Regulation (EU) No 1177/2011 of 8 November 2011. The existence of an excessive deficit due to the breach of the debt criterion will be decided in accordance with the procedure set out in Article 126 of the Treaty on the Functioning of the European Union.

Article 5

1. A Contracting Party that is subject to an excessive deficit procedure under the Treaties on which the European Union is founded shall put in place a budgetary and economic partnership programme including a detailed description of the structural reforms which must be put in place and implemented to ensure an effective and durable correction of its excessive deficit. The content and format of such programmes shall be defined in European Union law. Their submission to the Council of the European Union and to the European Commission for endorsement and their monitoring will take

place within the context of the existing surveillance procedures under the Stability and Growth Pact.

2. The implementation of the budgetary and economic partnership programme, and the yearly budgetary plans consistent with it, will be monitored by the Council of the European Union and by the European Commission .

Article 6

With a view to better coordinating the planning of their national debt issuance, the Contracting Parties shall report ex-ante on their public debt issuance plans to the Council of the European Union and to the European Commission.

Article 7

While fully respecting the procedural requirements of the Treaties on which the European Union is founded, the Contracting Parties whose currency is the euro commit to supporting the proposals or recommendations submitted by the European Commission where it considers that a Member State of the European Union whose currency is the euro is in breach of the deficit criterion in the framework of an excessive deficit procedure. This obligation shall not apply where it is established among the Contracting Parties whose currency is the euro that a qualified majority of them, calculated by analogy with the relevant provisions of the Treaties on which the European Union is founded, without taking into account the position of the Contracting Party concerned, is opposed to the decision proposed or recommended.

Article 8

1. The European Commission is invited to present in due time to the Contracting Parties a report on the provisions adopted by each of them in compliance with Article 3(2). If the European Commission, after having given the Contracting Party concerned the opportunity to submit its observations, concludes in its report that such Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union by one or more Contracting Parties. Where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3(2), it may also bring the matter to the Court of Justice. In both cases, the judgment of the Court of Justice shall be binding on the parties to the proceedings, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court of Justice.

2. Where, on the basis of its own assessment or that of the European Commission, a Contracting Party considers that another Contracting Party has not taken the necessary measures to comply with the judgment of the Court of Justice referred to in paragraph 1, it may bring the case before the Court of Justice and request the imposition of financial sanctions following criteria established by the European Commission in the

framework of Article 260 of the Treaty on the Functioning of the European Union. If the Court of Justice finds that the Contracting Party concerned has not complied with its judgment, it may impose on it a lump sum or a penalty payment appropriate in the circumstances and that shall not exceed 0,1 % of its gross domestic product. The amounts imposed on a Contracting Party whose currency is the euro shall be payable to the European Stability Mechanism. In other cases, payments shall be made to the general budget of the European Union.

3. This Article constitutes a special agreement between the Contracting Parties within the meaning of Article 273 of the Treaty on the Functioning of the European Union.

TITLE IV

ECONOMIC POLICY COORDINATION AND CONVERGENCE

Article 9

Building upon economic policy coordination, as defined in the Treaty on the Functioning of the European Union, the Contracting Parties undertake to work jointly towards an economic policy that fosters the proper functioning of the economic and monetary union and economic growth through enhanced convergence and competitiveness. To that end, the Contracting Parties shall take the necessary actions and measures in all the areas which are essential to the proper functioning of the euro area in pursuit of the objectives of fostering competitiveness, promoting employment, contributing further to the sustainability of public finances and reinforcing financial stability.

Article 10

In accordance with the requirements of the Treaties on which the European Union is founded, the Contracting Parties stand ready to make active use, whenever appropriate and necessary, of measures specific to those Member States whose currency is the euro, as provided for in Article 136 of the Treaty on the Functioning of the European Union, and of enhanced cooperation, as provided for in Article 20 of the Treaty on European Union and in Articles 326 to 334 of the Treaty on the Functioning of the European Union on matters that are essential for the proper functioning of the euro area, without undermining the internal market.

Article 11

With a view to benchmarking best practices and working towards a more closely coordinated economic policy, the Contracting Parties ensure that all major economic policy reforms that they plan to undertake will be discussed ex-ante and, where

appropriate, coordinated among themselves. Such coordination shall involve the institutions of the European Union as required by European Union law.

TITLE V

GOVERNANCE OF THE EURO AREA

Article 12

1. The Heads of State or Government of the Contracting Parties whose currency is the euro shall meet informally in Euro Summit meetings, together with the President of the European Commission. The President of the European Central Bank shall be invited to take part in such meetings.

The President of the Euro Summit shall be appointed by the Heads of State or Government of the Contracting Parties whose currency is the euro by simple majority at the same time as the European Council elects its President and for the same term of office.

2. Euro Summit meetings shall take place when necessary, and at least twice a year, to discuss questions relating to the specific responsibilities which the Contracting Parties whose currency is the euro share with regard to the single currency, other issues concerning the governance of the euro area and the rules that apply to it, and strategic orientations for the conduct of economic policies to increase convergence in the euro area.

3. The Heads of State or Government of the Contracting Parties other than those whose currency is the euro, which have ratified this Treaty, shall participate in discussions of Euro Summit meetings concerning competitiveness for the Contracting Parties, the modification of the global architecture of the euro area and the fundamental rules that will apply to it in the future, as well as, when appropriate and at least once a year, in discussions on specific issues of implementation of this Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

4. The President of the Euro Summit shall ensure the preparation and continuity of Euro Summit meetings, in close cooperation with the President of the European Commission. The body charged with the preparation of and follow up to the Euro Summit meetings shall be the Euro Group and its President may be invited to attend such meetings for that purpose.

5. The President of the European Parliament may be invited to be heard. The President of the Euro Summit shall present a report to the European Parliament after each Euro Summit meeting.

6. The President of the Euro Summit shall keep the Contracting Parties other than those whose currency is the euro and the other Member States of the European Union closely informed of the preparation and outcome of the Euro Summit meetings.

Article 13

As provided for in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty.

TITLE VI

GENERAL AND FINAL PROVISIONS

Article 14

1. This Treaty shall be ratified by the Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the General Secretariat of the Council of the European Union ("the Depositary").

2. This Treaty shall enter into force on 1 January 2013, provided that twelve Contracting Parties whose currency is the euro have deposited their instrument of ratification, or on the first day of the month following the deposit of the twelfth instrument of ratification by a Contracting Party whose currency is the euro, whichever is the earlier.

3. This Treaty shall apply as from the date of entry into force amongst the Contracting Parties whose currency is the euro which have ratified it. It shall apply to the other Contracting Parties whose currency is the euro as from the first day of the month following the deposit of their respective instrument of ratification.

4. By derogation from paragraphs 3 and 5, Title V shall apply to all Contracting Parties concerned as from the date of entry into force of this Treaty.

5. This Treaty shall apply to the Contracting Parties with a derogation, as defined in Article 139(1) of the Treaty on the Functioning of the European Union, or with an exemption, as referred to in Protocol (No 16) on certain provisions related to Denmark annexed to the European Union Treaties, which have ratified this Treaty, as from the date when the decision abrogating that derogation or exemption takes effect, unless the

Contracting Party concerned declares its intention to be bound at an earlier date by all or part of the provisions in Titles III and IV of this Treaty.

Article 15

This Treaty shall be open to accession by Member States of the European Union other than the Contracting Parties. Accession shall be effective upon depositing the instrument of accession with the Depositary, which shall notify the other Contracting Parties thereof. Following authentication by the Contracting Parties, the text of this Treaty in the official language of the acceding Member State that is also an official language and a working language of the institutions of the Union, shall be deposited in the archives of the Depositary as an authentic text of this Treaty.

Article 16

Within five years, at most, of the date of entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in accordance with the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union.

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE
ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE REGIONS
AND THE EUROPEAN INVESTMENT BANK**

**making the best use of the flexibility
within the existing rules of the Stability and Growth Pact**

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1. Introduction

In its 2015 Annual Growth Survey (AGS),¹ the Commission identified investment, structural reforms and fiscal responsibility as key elements of the European Union's economic policy strategy to create jobs and growth. It also presented a new Investment Plan for Europe in support of this strategy.² Both this overall economic approach and the concrete elements of the Investment Plan were endorsed by the European Council of 18-19 December 2014.

The Commission also announced that, in order to strengthen the link between investment, structural reforms and fiscal responsibility, it would provide further guidance on the best possible use of the flexibility that is built into the existing rules of the Stability and Growth Pact (hereafter "the Pact"),³ without changing these rules. This follows a commitment from the Political Guidelines for the new Commission,⁴ as well as previous discussions at the European Council⁵ and in the European Parliament.⁶

This interpretative Communication⁷ provides this additional guidance, without changing or replacing the existing rules. The Pact is a cornerstone of the EU's economic governance and of decisive importance for the proper functioning of Economic and Monetary Union. Its objective is to promote sound budgetary policies and to ensure the sustainability of public finances in the Member States. Since its inception in 1997, the Pact has been reformed by the EU legislator in 2005 and in 2011-13 and enriched by experience. In recent years, it has operated as part of a wider and strengthened annual cycle of economic policy coordination, known as the European Semester.

¹ COM(2014) 902 of 28 November 2014.

² COM(2014) 903 of 26 November 2014.

³ The Pact is anchored in the Treaty on the Functioning of the EU (TFEU) and consists of Council Regulation (EC) No 1466/97 (the "preventive arm", based on Art. 121 TFEU) and Council Regulation (EC) No 1467/97 (the "corrective arm", based on Art. 126 TFEU), as well as their subsequent amendments and related legislation. To access documents, see: http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm

⁴ "As regards the use of national budgets for growth and investment, we must – as reaffirmed by the European Council on 27 June 2014 – respect the Stability and Growth Pact, while making the best possible use of the flexibility that is built into the existing rules of the Pact, as reformed in 2005 and 2011. I intend to issue concrete guidance on this as part of my ambitious Jobs, Growth and Investment Package." Jean-Claude Juncker, A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change Political Guidelines for the next European Commission, 15 July 2014. Available at: http://ec.europa.eu/priorities/docs/pg_en.pdf

⁵ "We respect the Stability and Growth Pact. All our economies need to continue to pursue structural reforms. Very clearly, our common strength hinges upon each and every country's success. That is why the Union needs bold steps to foster growth, increase investments, create more and better jobs and encourage reforms for competitiveness. This also requires making best use of the flexibility that is built into the existing Stability and Growth Pact rules." Conclusions of the European Council of 27 June 2014. Available at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf

⁶ See in particular the resolution from the European Parliament on "the European Semester for economic policy coordination: implementation of 2014 priorities" (A8-0019/2014) of 22 October 2014.

⁷ For another example of an interpretative Communication, see Commission interpretative Communication on certain aspects of the provisions on televised advertising in the 'Television without frontiers' Directive, OJC 101, 28.4.2004, p. 2.

The credibility of the agreed rules is key for the sustainability of public finances and for financial stability in the euro area and in the EU as a whole. The financial and sovereign debt crisis of the past years has shown how interdependent European economies are and the necessity of strong economic and fiscal coordination in the EU. The existence and respect of the rules have been essential to restore trust and confidence. Faced with escalating deficits and debt in several countries just a few years ago, the EU has achieved considerable progress in improving the soundness of its public finances overall.

At the heart of the application of the Pact must be the principle of equal treatment of all Member States. The Pact is a rules-based system setting a framework shared and applied by all Member States, where the Commission proposes and the Council decides. Equal treatment, however, does not mean “one-size-fits-all” and must be combined with the economic assessment that is required by every situation. It is on purpose that the Pact envisages flexibility in the way its rules should be applied, both over time and across countries. It is also on purpose that some discretion is left, within the agreed rules, for the Commission and the Council to assess the soundness of public finances in the light of country-specific circumstances, in order to recommend the best course of action based on the latest developments and information.

The flexibility varies depending on whether a Member State is in the preventive or the corrective arm of the Pact. The preventive arm aims at guaranteeing a sound budgetary position in all Member States: its core is the attainment by each Member State of its medium-term sound budgetary position (so-called Medium-Term Objective or MTO), which is set according to commonly agreed principles.⁸ This MTO is formulated in structural terms, which means that it is adjusted to take account of the economic cycle and corrected to exclude the impact of one-off measures, and is specific to each country. The underlying logic is that Member States should achieve and maintain a budgetary position that will allow automatic stabilisers to play their full role in mitigating possible economic shocks. This should also serve to bring down debt to prudent levels, by taking account of the demographic profile of each country and of the budgetary cost of ageing populations. The corrective arm of the Pact deals with situations in which the government deficit and/or the debt are above the reference values set in the Treaty: in these cases, Member States are then subject to an Excessive Deficit Procedure (“EDP”), which entails stricter conditions and monitoring.⁹

The guidance presented here focuses on the margin of interpretation which is left to the Commission, in line with the rules of the Pact, without modifying existing legislation. It clarifies how three specific policy dimensions can best be taken into account in applying the rules. These relate to: (i) investment, in particular as regards the establishment of a new European Fund for Strategic Investments as part of the Investment Plan for Europe; (ii) structural reforms; and (iii) cyclical conditions.

⁸ The MTO is calculated as a function of potential growth, general government debt and the cost of ageing.

⁹ There are currently 11 Member States in the corrective arm of the Pact (“in EDP”), down from 24 in 2011.

This interpretative Communication is a contribution to developing a more growth-friendly fiscal stance in the euro area.¹⁰ It is also part of the Commission's efforts to reinforce the effectiveness and understanding of the – sometimes necessarily complex – rules which it is responsible for applying. Transparency and predictability are essential for ownership of the rules by all actors.

2. Clarifications regarding investment

2.1. The new European Fund for Strategic Investments

A central aspect of the Investment Plan for Europe proposed by the Commission is the establishment of a new European Fund for Strategic Investments (EFSI) in partnership between the Commission and the European Investment Bank (EIB). Following endorsement by the European Council on 18-19 December 2014, the Commission has presented a proposal for a Regulation on the EFSI.¹¹

The Fund will offer a new risk-bearing capacity which will allow the EIB to invest in equity, subordinated debt and higher risk tranches of senior debt, and to provide credit enhancements to eligible projects. An initial contribution to this risk-bearing capacity will be made from the EU budget, in the form of a new guarantee fund, and from the EIB's own resources. The use of this EU guarantee and of EIB funds has no impact on the deficit or debt levels of Member States.

The capacity of the EFSI can be further increased through additional financial contributions from Member States. In its Investment Plan for Europe, the Commission announced its intention take a “favourable position towards (such) capital contributions to the Fund in the context of its assessment of public finances under the Pact”. The European Council of 18-19 December 2014 took note of this intention.¹²

In addition to contributing to the EFSI, Member States will have the possibility to co-finance individual projects also co-financed by it. This section provides guidance on how these various contributions will be assessed under the Pact.

¹⁰ On this, see ECB President Mario Draghi's speech in Jackson Hole on 22 August 2014: “[I]t may be useful to have a discussion on the overall fiscal stance of the euro area. Unlike in other major advanced economies, our fiscal stance is not based on a single budget voted for by a single parliament, but on the aggregation of eighteen [as of 1 January 2015: 19] national budgets and the EU budget. Stronger coordination among the different national fiscal stances should in principle allow us to achieve a more growth-friendly overall fiscal stance for the euro area.”

¹¹ COM(2015) 10 of 13 January 2015.

¹² “The European Council takes note of the favourable position the Commission has indicated towards such capital contributions in the context of the assessment of public finances under the Stability and Growth Pact, necessarily in line with the flexibility that is built into its existing rules”. Conclusions of the European Council of 18-19 December 2014 at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/146411.pdf

2.1.1. Financial contributions from Member States to the EFSI

Two aspects need to be distinguished here: i) whether these contributions are recorded statistically as deficit and/or debt, in line with the established definitions of the European System of Account (ESA); and ii) the way in which the Commission will take account of such contributions in its assessment of compliance with the Pact.

Statistical recording

As regards statistical recording, this will depend on the specific nature of the contributions and their categorisation by the European Statistical Office (Eurostat), in full respect of its independence. Annex 1 provides more information, based on concrete examples.

Application of the Pact

Legal Framework

The Pact provides that, in the assessment of the necessary fiscal adjustment under its preventive and corrective arms, the Council specifies targets which are set in “structural” terms.

Preventive arm

Article 5 of Regulation (EC) No 1466/97 provides that “*Based on assessments by the Commission and the Economic and Financial Committee, the Council shall [...] assess [...] whether the measures being taken or proposed [by the Member State][...] are sufficient to achieve the medium-term budgetary objective over the cycle. The Council and the Commission, when assessing the adjustment path toward the medium-term budgetary objective, shall examine if the Member State concerned pursues an appropriate annual improvement of its cyclically-adjusted budget balance, net of one-off and other temporary measures, required to meet its medium-term budgetary objective, with 0.5 % of GDP as a benchmark [...].*”

Corrective arm

Article 3 of Regulation (EC) No 1467/97 provides that “[...] *the Commission, if it considers that an excessive deficit exists, shall address an opinion and a proposal to the Council [...] and shall inform the European Parliament thereof.*

The Council shall decide on the existence of an excessive deficit [...]. When it decides that an excessive deficit exists, the Council shall at the same time make

recommendations to the Member State concerned [...].

The Council recommendation [...] shall establish a maximum deadline of six months for effective action to be taken by the Member State concerned [...]. The Council recommendation shall also establish a deadline for the correction of the excessive deficit, which shall be completed in the year following its identification unless there are special circumstances. In its recommendation, the Council shall request that the Member State achieve annual budgetary targets which, on the basis of the forecast underpinning the recommendation, are consistent with a minimum annual improvement of at least 0.5 % of GDP as a benchmark, in its cyclically adjusted balance net of one-off and temporary measures, in order to ensure the correction of the excessive deficit within the deadline set in the recommendation. [...]"

Without prejudice to the statistical recording by Eurostat of contributions to the EFSI, the Commission can already provide guidance on how the existing rules of the Pact will apply in these cases.

In its assessment of the necessary fiscal adjustment under the preventive and corrective arms, the Council specifies targets in structural terms. Such targets exclude exceptional one-off measures, which have no bearing on the underlying fiscal position. This would typically be the case for initial cash contributions to the Fund.¹³

Specifically, the Commission will consider that:

- Under the preventive arm of the Pact, neither the attainment of the MTO nor the required fiscal adjustment towards it would be affected, since both are set in structural terms. The structural balance is by definition not affected by one-off expenditures, such as the contributions to the Fund.
- Under the corrective arm of the Pact (the EDP), compliance with the fiscal adjustment effort recommended by the Council would not be affected, since this is also measured in structural terms. A contribution to the EFSI should therefore not lead to a Member State being found non-compliant with its EDP recommendation.
- In case of a non-respect of the deficit reference value, when preparing the report envisaged under Article 126(3) TFEU, the Commission will consider the contribution to the EFSI to be a “relevant factor” in line with Article 2(3) of Regulation (EC) No 1467/97. This means that an EDP will not be launched if this non-respect is due to the contribution, and if the excess over the reference value is small and is expected to be temporary.
- In case of a non-respect of the debt reference value, when preparing the report envisaged under Article 126(3) TFEU, the Commission will consider the

¹³ The same treatment will apply to guarantees to the extent they have an impact on deficit and/or debt.

contribution to the EFSI to be a “relevant factor” in line with Article 2(3) of Regulation (EC) No 1467/97. This means that an EDP will not be launched if the non-respect is due to the contribution.

2.1.2. Co-financing by Member States of investment projects also co-financed by the EFSI

The EFSI will contribute to a variety of investment projects and will serve to secure additional private and/or public investments for these projects. Co-financing by Member States of individual projects, including possible investment platforms, will typically take the form of innovative financial instruments, such as loans, debt instruments or equity participation. The statistical recording varies according to the instrument (see Annex 1).

From the point of view of the implementation of the Pact, the Commission will take into account national co-financing of investment projects also co-financed by the EFSI in the application of the so-called “investment clause” spelled out in Section 2.2 below.

Summary regarding the European Fund for Strategic Investments

National contributions to the EFSI will not be taken into account by the Commission when defining the fiscal adjustment under either the preventive or the corrective arm of the Pact.

In case of an excess over the deficit reference value, the Commission will not launch an EDP if this excess is only due to the contribution and is small and expected to be temporary. When assessing an excess over the debt reference value, contributions to the EFSI will not be taken into account by the Commission.

2.2 Other investments under the preventive arm of the Pact

Legal Framework

Article 5 of Regulation (EC) No 1466/97 provides that “[...] the Council and the Commission shall take into account the implementation of major structural reforms which have direct long-term positive budgetary effects, including by raising potential sustainable growth [...].” This Article is reproduced in greater detail in the *Legal Framework* box in Section 3.1 below.

Under the preventive arm of the Pact, some investments deemed to be equivalent to major structural reforms may, under certain conditions, justify a temporary deviation from the MTO of the concerned Member State or from the adjustment path towards it.

The Commission has provided first guidance in the past on how these provisions apply to public investments with positive, direct and verifiable long-term budgetary effects on growth and on the sustainability of public finances.¹⁴ This guidance (commonly referred to as the “investment clause”) is specified and formalised through this Communication to take better account of country-specific situations, in line with the text and spirit of the Pact. Henceforth, a Member State will benefit from the “investment clause” if the following conditions are met:

- (i) its GDP growth is negative or GDP remains well below its potential (resulting in a negative output gap greater than 1.5 % of GDP);
- (ii) the deviation from the MTO or the agreed fiscal adjustment path towards it does not lead to an excess over the reference value of 3 % of GDP deficit and an appropriate safety margin is preserved;
- (iii) the deviation is linked to national expenditure on projects co-funded by the EU under the Structural and Cohesion policy,¹⁵ Trans-European Networks and Connecting Europe Facility, and to national co-financing of investment projects also co-financed by the EFSI, which have direct long-term positive and verifiable budgetary effects;
- (iv) co-financed expenditure should not substitute for nationally financed investments, so that total public investments are not decreased;
- (v) the Member State must compensate for any temporary deviations and the MTO must be reached within the four-year horizon of its current Stability or Convergence Programme.

Compared to previous guidance, this means that the Commission will apply the “investment clause” irrespective of the economic condition of the euro area or EU as a whole, in order to link it only to the cyclical conditions faced by individual Member States. Allowing Member States to benefit from this clause when their own growth is negative, or output is well below its potential, will permit a broader application of the clause than in the past, and one which better reflects country-specific conditions.¹⁶

¹⁴ Letter of 3 July 2013 by former Commission Vice-President Olli Rehn to EU Finance Ministers on the implementation of Art. 5(1) of Regulation (EC) No 1466/97. This approach was applied in 2013 for Bulgaria and in 2014 for Bulgaria, Romania and Slovakia.

¹⁵ Including projects co-financed through the Youth Employment Initiative.

¹⁶ See also Section 4 below.

Summary for the “investment clause” under the preventive arm of the Pact

Member States in the preventive arm of the Pact can deviate temporarily from their MTO or adjustment path towards it to accommodate investment, provided that: their GDP growth is negative or GDP remains well below its potential; the deviation does not lead to an excess over the 3 % deficit reference value and an appropriate safety margin is preserved; investment levels are effectively increased as a result; the deviation is compensated within the timeframe of the Member State’s Stability or Convergence Programme. Eligible investments are national expenditures on projects co-funded by the EU under the Structural and Cohesion policy, Trans-European Networks and the Connecting Europe Facility, as well as national co-financing of projects also co-financed by the European Fund for Strategic Investments.

3. Clarifications regarding structural reforms

3.1. Structural reforms under the preventive arm of the Pact

Legal Framework

Article 5 of Regulation (EC) No 1466/97 specifies how Member States should progress towards a sound budgetary position. In particular, it provides that “[...] *When defining the adjustment path to the medium-term budgetary objective for Member States that have not yet reached this objective, and in allowing a temporary deviation from this objective for Member States that have already reached it, provided that an appropriate safety margin with respect to the deficit reference value is preserved and that the budgetary position is expected to return to the medium-term budgetary objective within the programme period, the Council and the Commission shall take into account the implementation of major structural reforms which have direct long-term positive budgetary effects, including by raising potential sustainable growth, and therefore a verifiable impact on the long-term sustainability of public finances.*

Particular attention shall be paid to pension reforms introducing a multi-pillar system that includes a mandatory, fully funded pillar. Member States implementing such reforms shall be allowed to deviate from the adjustment path to their medium-term budgetary objective or from the objective itself, with the deviation reflecting the amount of the direct incremental impact of the reform on the general government balance, provided that an appropriate safety margin with respect to the deficit reference value is preserved.”

Article 9 of the same Regulation provides for the same rule to apply to non-euro area Member States.

This section provides guidance on how structural reforms can be taken into account under the preventive arm of the Pact, i.e. the so-called “structural reform clause”.¹⁷

In line with the existing rules of the Pact, Member States implementing major structural reforms are allowed to deviate temporarily from their MTO or the adjustment path towards it. This allows them to cater for the short-term costs of implementing structural reforms that will have long-term positive budgetary effects, including by raising potential sustainable growth.

“Structural reforms” which can be taken into account under the Pact

To be fully operational, the “structural reform clause” has to rely on well-defined principles regarding the eligibility of such reforms. The Commission will base its assessment on the following criteria:

- (i) The reforms must be **major**. While there are some individual reforms with a major positive impact on growth and the long-term sustainability of public finances, such as pension reforms, well-designed and comprehensive packages of reforms addressing structural weaknesses may also have a major positive impact. This is notably the case when the reforms reinforce each other's impact through an appropriate choice of policy mix and sequencing of implementation.
- (ii) The reforms must have direct **long-term positive budgetary effects**, including by raising potential sustainable growth, and therefore a verifiable impact on the long-term sustainability of public finances. The sustainability effects can stem either from direct budgetary savings from the reforms (such as in pensions or healthcare), or from the increased revenues drawn in the medium to long-run from a more efficient economy with a higher potential output (e.g. due to lower structural unemployment or an increased labour force), or from a combination of both kinds of effects.¹⁸
- (iii) The reforms must be **fully implemented**. While it is understood that all the reforms should be adopted before being considered as eligible for the clause, it is also true that the effective implementation of adopted reforms may take time and may be subject to delays and setbacks. This raises the question of introducing strong safeguards against the risk of implementation failures.

¹⁷ On this, see ECB President Mario Draghi's speech in Jackson Hole on 22 August 2014: “[T]he existing flexibility within the rules could be used to better address the weak recovery and to make room for the cost of needed structural reforms.”

¹⁸ For a discussion of the effect of reforms, see European Economy, Economic Papers 541, December 2014: “The potential growth impact of structural reforms in the EU – a benchmarking exercise”, published by the Directorate General for Economic and Financial Affairs, European Commission.

While the Pact does not provide the tools for monitoring the enforcement of structural reforms, the legal framework in which the Pact operates – notably the European Semester process and the new Excessive Imbalances Procedure (EIP)¹⁹ – allows the Commission and the Council to assess challenges and imbalances requiring structural reforms, and for monitoring action taken by the Member States.

Activation of the “structural reform clause”

The Commission will consider that the criterion related to the implementation of reforms is fulfilled *ex ante* when:

- The Member State presents a medium-term structural reform plan which is comprehensive and detailed (for instance as part of the National Reform Programme published alongside the Stability or Convergence Programme) and includes well-specified measures and credible timelines for their adoption and delivery. The implementation of the reforms will be monitored closely in the context of the European Semester.
- In the specific case of a Member State in the Excessive Imbalances Procedure (EIP), it has submitted a Corrective Action Plan (CAP) providing the necessary information. The implementation of the reforms will then be monitored through the EIP.

In both cases, Member States will be expected to provide in-depth and transparent documentation, and to quantify the reforms in terms of both their medium-term budgetary and potential growth impact. This must also include details on the timetable of implementation of the reforms.

Application of the “structural reform clause”

In the specific case of pension reforms consisting in introducing a multi-pillar system that includes a mandatory, fully-funded pillar, the methodology to allow them to be taken into account in the preventive arm of the Pact is outlined in Article 5 of Regulation (EC) No 1466/97 (see box at the beginning of this Section).²⁰

For other structural reforms, the Commission will base itself on the information contained in the dedicated structural reform plan (or Corrective Action Plan). In this case, it will recommend granting eligible Member States additional time to reach the MTO, hence allowing temporary deviations from the structural adjustment path towards it, or to deviate temporarily from the MTO for Member States that have reached it, provided that:

¹⁹ See Regulation (EU) No 1176/2011.

²⁰ This methodology has been applied for instance to take account of the pension reform introduced in Latvia in 2013.

- (i) the reforms meet the above criteria;
- (ii) the temporary deviation does not exceed 0.5 % of GDP, and the MTO is reached within the four year horizon of the Stability or Convergence Programme of the year in which the clause is activated;
- (iii) an appropriate safety margin is continuously preserved so that the deviation from the MTO or the agreed fiscal adjustment path does not lead to an excess over the 3 % of GDP reference value for the deficit.

In case a Member State fails to implement the agreed reforms, the temporary deviation from the MTO, or from the adjustment path towards it, will no longer be considered as warranted. If such a failure results in a significant deviation from the MTO or the path towards it, the Commission will apply the procedure envisaged in Article 6(2) and Article 10(2) of Regulation (EC) No 1466/97. This means that the Commission will issue a warning to that Member State, followed by a proposal for a Council recommendation, to ensure that the Member State takes the appropriate policy measures within five months to address that deviation. For euro area Member States, continued failure to comply can ultimately lead to a requirement to lodge an interest-bearing deposit.²¹

Summary for the “structural reform clause” under the preventive arm of the Pact

The Commission will take into account the positive fiscal impact of structural reforms under the preventive arm of the Pact, provided that such reforms (i) are major, (ii) have verifiable direct long-term positive budgetary effects, including by raising potential sustainable growth, and (iii) are fully implemented.

For reform measures to qualify “ex ante”, Member States will be expected to present a dedicated structural reform plan providing detailed and verifiable information, as well as credible timelines for adoption and delivery. The Commission will assess the relevant reform plan before recommending allowing a temporary deviation from the MTO or the path towards it. The Commission will closely monitor the implementation of the reforms. In case of failure to implement, the Commission will take the necessary action.

²¹ Article 4 of Regulation (EU) No 1173/2011.

3.2 Structural reforms under the corrective arm of the Pact

Legal Framework

Article 2 of Regulation (EC) No 1467/97 provides that “[...] *The Commission, when preparing a report [requested] under Article 126(3) TFEU [i.e. when a Member State does not fulfil the requirements under the deficit or the debt criterion, or both], shall take into account all relevant factors as indicated in that Article, in so far as they significantly affect the assessment of compliance with the deficit and debt criteria by the Member State concerned. The report shall reflect, as appropriate: (a) the developments in the medium-term economic position [...]; (b) the developments in the medium-term budgetary positions, including, in particular, the record of adjustment towards the medium-term budgetary objective, the level of the primary balance and developments in primary expenditure, both current and capital, the implementation of policies in the context of the prevention and correction of excessive macroeconomic imbalances, the implementation of policies in the context of the common growth strategy of the Union, and the overall quality of public finances, in particular the effectiveness of national budgetary frameworks; (c) the developments in the medium-term government debt position [...].*

The Commission shall give due and express consideration to any other factors which, in the opinion of the Member State concerned, are relevant in order to comprehensively assess compliance with deficit and debt criteria and which the Member State has put forward to the Council and the Commission.[...]

The Council and the Commission shall make a balanced overall assessment of all the relevant factors [...]. When assessing compliance on the basis of the deficit criterion, if the ratio of the government debt to GDP exceeds the reference value, those factors shall be taken into account in the steps leading to the decision on the existence of an excessive deficit provided for in paragraphs 4, 5 and 6 of Article 126 TFEU only if the double condition of the overarching principle - that, before these relevant factors are taken into account, the general government deficit remains close to the reference value and its excess over the reference value is temporary - is fully met [...].

If the Council [...] decides that an excessive deficit exists in a Member State, the Council and the Commission shall, in the subsequent procedural steps of that Article of the TFEU, take into account the relevant factors referred to in paragraph 3 of this Article [...], in particular in establishing a deadline for the correction of the excessive deficit and eventually extending that deadline.[...]”

The main purpose of the corrective arm of the Pact is to ensure the prompt correction of excessive deficits. The relevant rules do not include detailed provisions to take account of structural reforms (or investment) when assessing whether a Member State has taken effective action in response to the Council recommendations to correct the excessive deficit. However, structural reforms do have a recognised place in the corrective arm of the Pact when deciding different steps in the EDP.²²

First, at the point of examining whether an EDP needs to be opened for a given Member State, the Commission analyses carefully all relevant medium-term developments regarding the economic, budgetary and debt positions. These “relevant factors” include the implementation of structural reforms in the context of the European Semester, such as within the Excessive Imbalances Procedure. The Commission considers that a lack of implementation of structural reforms constitutes an aggravating relevant factor.

Second, relevant factors are also taken into account when setting the deadline for the correction of the excessive deficit. While the correction of an excessive deficit is expected to take place within the year following its identification, the implementation of major structural reforms constitutes a key factor taken into account when considering instead a multiannual path for the correction of the excessive deficit.

To make operational this provision for reforms not yet fully implemented, the Commission will consider that they can be taken into account *ex ante*, provided that the Member State presents a dedicated structural reform plan, adopted by the government and/or the national Parliament, containing detailed and verifiable information, as well as credible timelines for implementation and delivery, under the same conditions as for the activation of the “structural reform clause” described in Section 3.1. This is without prejudice to the minimum annual improvement of 0.5 % of GDP as a benchmark envisaged by Article 3(4) of Regulation (EC) No 1467/97.

In case a Member State fails to implement the agreed reforms, the Commission will consider it an aggravating factor when assessing effective action in response to the EDP recommendation and when setting a deadline for the correction of the excessive deficit. Lack of effective action will lead to a stepping up of the procedure and the possible suspension of European Structural and Investment Funds.²³ For euro area Member States, this means that the Commission will recommend to the Council the imposition of a fine.²⁴

Third, at the point of closing the EDP, the Commission gives due consideration, where relevant, to the direct cost of pension reforms introducing a multi-pillar system that

²² Moreover, when placed in an Excessive Deficit Procedure, all euro area Member States shall present an economic partnership programme describing the policy measures and structural reforms that are needed to ensure an effective and lasting correction of the excessive deficit. See Article 9 of Regulation (EU) No 473/2013.

²³ Article 23 of Regulation (EU) No 1303/2013.

²⁴ Article 6 of Regulation (EU) No 1173/2011.

includes a mandatory fully funded pillar. Concretely, an EDP may be closed even if the deficit is over 3 % of GDP, provided that the excess is wholly due to the costs of implementing the pension reform and the deficit has declined substantially and continuously and has reached a level that comes close to the reference value.

Summary for structural reforms under the corrective arm of the Pact

The Commission will take into account the existence of a dedicated structural reform plan, providing detailed and verifiable information, as well as credible timelines for adoption and delivery, when recommending a deadline for the correction of the excessive deficit or the length of any extension to that deadline. The Commission will closely monitor the implementation of the reforms. In case of failure to implement, the Commission will take the necessary action.

4. Clarifications regarding cyclical conditions

4.1 Modulation of fiscal effort over the economic cycle under the preventive arm of the Pact

Legal Framework

Article 5 of Regulation (EC) No 1466/97 specifies how the Member States should progress towards a sound budgetary position. In particular, Article 5 provides that “[...] *The Council and the Commission, when assessing the adjustment path toward the medium-term budgetary objective, shall examine if the Member State concerned pursues an appropriate annual improvement of its cyclically-adjusted budget balance, net of one-off and other temporary measures, required to meet its medium-term budgetary objective, with 0.5 % of GDP as a benchmark. For Member States faced with a debt level exceeding 60 % of GDP or with pronounced risks of overall debt sustainability, the Council and the Commission shall examine whether the annual improvement of the cyclically-adjusted budget balance, net of one-off and other temporary measures is higher than 0.5 % of GDP. The Council and the Commission shall take into account whether a higher adjustment effort is made in economic good times, whereas the effort might be more limited in economic bad times. In particular, revenue windfalls and shortfalls shall be taken into account.[...]*”

In order to assess the appropriate adjustment path for each Member State towards its respective MTO, the Pact requires that due consideration be given to the economic situation as well as the sustainability conditions. In principle, Member States not

having yet reached their MTO are required, as a benchmark, to pursue an annual improvement in the structural budget balance of 0.5 % of GDP. The rules also provide that the Commission needs to take into account whether a higher adjustment effort is made in good economic times, whereas effort may be more limited in bad times.

The Commission has thus designed a matrix (see Annex 2) which clarifies and specifies the fiscal adjustment requirements under the preventive arm of the Pact. This matrix is symmetrical, differentiating between larger fiscal effort to be undertaken during better times and a smaller fiscal effort to be undertaken during difficult economic conditions. This should make it possible to better capture cyclical conditions. It should also smoothen the required fiscal effort over time and avoid unwarranted discontinuities as economic circumstances change.

Summary for the modulation of effort over the economic cycle under the preventive arm

From now on, the Commission will apply a matrix (set out in Annex 2) to specify the appropriate fiscal adjustment and take better account of the cyclical situation of individual Member States under the preventive arm of the Pact.

4.2 Accommodating an unexpected fall in economic activity under the corrective arm of the Pact

Legal Framework

The Pact caters for unexpected negative economic conditions at Member State level in the corrective arm of the Pact. Article 3 of Regulation (EC) No 1467/97 provides that the Council, if it considers that an excessive deficit exists, issues a recommendation for taking effective action and containing a deadline for correcting the excessive deficit and annual budgetary targets for the Member State. The Member State concerned has the obligation to take effective action to this purpose within the deadline set by the Council.

In particular, Article 3 of Regulation (EC) No 1467/97 provides that *“If effective action has been taken in compliance with a recommendation under Article 126(7) TFEU and unexpected adverse economic events with major unfavourable consequences for government finances occur after the adoption of that recommendation, the Council may decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 126(7) TFEU. The revised recommendation, taking into account the relevant factors referred to in Article 2(3) of this Regulation may, in particular, extend the deadline for the correction of the excessive deficit by one year as*

a rule. [...]”

Acknowledging the need to distinguish between fiscal consolidation actions and fiscal consolidation outcomes, with the latter often being influenced by developments outside the control of the authorities concerned, the rules envisage the possibility to take into account an unexpected deterioration of the economic situation.

If a country has taken effective action by delivering the structural fiscal effort recommended by the Council, it may be given additional time to correct the excessive nominal deficit without incurring financial sanctions (euro area Member States), or a suspension of commitments/payments of European Structural and Investment Funds (all Member States).²⁵

The Commission has developed a systematic approach to assessing the delivery of the required structural fiscal effort, which the Council endorsed recently.²⁶ This helps to disentangle as much as possible those budgetary developments that can be assumed to be under the control of the government from those attributable to an unexpected fall in economic activity.

Summary for the accommodation of the economic cycle under the corrective arm

The Commission will continue to assess effective action under the corrective arm of the Pact on the basis of a measurement of structural fiscal effort, excluding budgetary developments which are outside the control of governments.

4.3 Severe economic downturn in the euro area or in the Union as a whole

Legal Framework

The Pact caters for cases of unusually negative economic conditions at the EU or euro area level both in the preventive arm and in the corrective arm.

Preventive arm

As explained in the *Legal Framework* boxes in Sections 2.1.1, 3.1 and 4.1, the Council examines whether Member States in the preventive arm of the Pact take sufficient measures to achieve its medium-term budgetary objective over the cycle. In this context

²⁵ Article 23 of Regulation (EU) No 1303/2013.

²⁶ See conclusions of the 20 June 2014 ECOFIN Council at:
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/143293.pdf

due account is taken of relevant factors and of structural reforms implemented. Moreover, Article 5 of Regulation (EC) No 1466/97 covers the case of negative, unusual economic conditions.

In particular, Article 5 provides that “[...] *in the case of an unusual event outside the control of the Member State concerned which has a major impact on the financial position of the general government or in periods of severe economic downturn for the euro area or the Union as a whole, Member States may be allowed temporarily to depart from the adjustment path towards the medium-term budgetary objective referred to in the third subparagraph, provided that this does not endanger fiscal sustainability in the medium term. [...]*”

Corrective arm

As explained in the *Legal Framework* boxes in Sections 2.1. and 4.2, Article 3 of Regulation (EC) No 1467/97 provides that the Council, if it considers that an excessive deficit exists, issues a recommendation for taking effective action and containing a deadline for correcting the excessive deficit and annual budgetary targets for the Member State. The Member State concerned has the obligation to take effective action to this purpose within the deadline set by the Council. Article 3 also caters for taking into account the possibility of unusually negative economic conditions.

In particular, Article 3 states that “[...] *In the case of a severe economic downturn in the euro area or in the Union as a whole, the Council may also decide, on a recommendation from the Commission, to adopt a revised recommendation under Article 126(7) TFEU provided that this does not endanger fiscal sustainability in the medium term.*”

Since 2011, the Pact has provided, in cases of a severe economic downturn in the euro area or the Union as a whole, for the pace of fiscal consolidation to be adapted for all Member States, as long as this does not endanger fiscal sustainability in the medium-term.

This provision has so far never been applied – although it *de facto* reflects the logic used at the time of the 2008 financial crisis when the adjustment paths were re-designed for several Member States. The activation of this provision would not mean putting on hold the fiscal adjustment, but rather re-designing the adjustment path on a country-specific basis, both in terms of the adjustment effort and the deadlines to achieve the targets, to take into account the exceptional circumstances of the severe economic downturn in the euro area or the Union as a whole. The use of this provision should remain limited to exceptional, carefully circumscribed situations to minimise the risk of moral hazard.

Summary in the case of severe economic downturn

The Commission considers that the provisions of the Pact addressing a severe economic downturn in the euro area or in the EU as a whole should be used when necessary.

5. Conclusion

This interpretative Communication provides additional guidance on how the Commission will apply its margin of interpretation in implementing the existing rules of the Stability and Growth Pact.

The Commission will apply this guidance immediately. It will engage with Member States and the Council to provide any necessary explanations ahead of forthcoming milestones, notably the presentation of the Stability or Convergence Programmes and National Reform Programmes expected in spring 2015. The Commission will also present this Communication to the European Parliament.

This Communication gives clarity to Member States on how to ensure that the common fiscal framework is supportive of the EU's jobs and growth agenda, in particular as regards investment and structural reforms, while better reflecting the cyclical situations in individual Member States.

It does not replace the existing rules of the Pact, nor the need for an overall assessment by the Commission and the Council of the broader economic and fiscal situation of each Member State, the euro area and the EU as a whole, in line with the spirit of the Treaty and its overall objective of ensuring sound public finances. Moreover, adequate safeguards and conditions are in place to make sure that while the best use is made of the flexibility within the existing rules, their credibility and effectiveness in ensuring fiscal responsibility is maintained.

Over and above this Communication, the Commission will also engage with stakeholders at all levels to define further steps to ensure closer coordination of economic policy and progress towards the deepening of the Economic and Monetary Union.

As agreed by the European Council, the President of the Commission, in close cooperation with the President of the Euro Summit, the President of the Eurogroup and the President of the European Central Bank, will report on these matters to the June 2015 European Council. As part of its Work Programme for 2015,²⁷ the Commission is also committed to developing proposals on further steps towards pooled sovereignty in economic governance.

²⁷ COM(2014) 910 of 16 December 2014.

ANNEX 1 - THE STATISTICAL RECORDING OF CONTRIBUTIONS IN RELATION TO THE EUROPEAN FUND FOR STRATEGIC INVESTMENTS

Below are some illustrative examples of how various types of contributions may be recorded from a statistical point of view by Eurostat. This statistical recording is a separate step and without prejudice to the Commission's assessment of such contributions under the relevant provisions of the Stability and Growth Pact.

Example 1. Member States' cash contributions at the level of the EFSI

Whether Member States' cash contributions to the EFSI have a statistical impact on their deficit cannot be established with full certainty until the detailed legal and governance arrangements of the Fund are in place. If a Member State does not have the funds available for such contributions and will borrow them, this will increase the government debt.

Example 2. Use of guarantees by the Member States at the level of the EFSI

In the case Member States provide guarantees to the EFSI, there should be no immediate impact on deficit or debt until the moment the guarantee is called, for the amount called, if it is called.

Example 3. Member States' co-financing to individual projects

Direct contributions from Member States to projects, including investment platforms, may take several forms, such as equity participation, loans, guarantees etc. The statistical recording will vary according to the form of the instrument:

- For guarantees, the statistical recording will follow the same principles as in example 2.
- For equity participation, this will depend on whether a market rate of return can be expected (similar to that of a private investor). If this is the case, it will not have an impact on the deficit. It may have an impact on debt levels if financed through government borrowing.
- For loans, this will not have an impact on the deficit unless there will be evidence that the loan will not be returned. It may have an impact on debt levels if financed through government borrowing.
- For grants, this will have a direct impact on the deficit and an indirect impact on the debt, if financed via government borrowing.

- If the Member States use resources from the European Structural and Investment Funds, the national co-financing part will have an impact on the deficit. It may have an impact on debt levels if financed through government borrowing. The European co-financing part is recorded as a financial transaction and thus has no impact on the accounts of governments.

Example 4. Contributions via National Promotional Banks

A Member State may consider contributions via a National Promotional Bank (NPB), both at the level of the EFSI and at the level of individual projects, including investment platforms. The impact will depend first and foremost on whether the National Promotional Banks are classified inside or outside government. If the banks are classified inside government, the impact will be exactly the same as if the government itself carries out the investment. If the banks are classified outside government, the recording will depend on whether the National Promotional Banks will be undertaking the investment or will contribute to the project on behalf of government. If it is concluded that this is the case, the operation will be counted as part of government accounts, which means that the money spent on behalf of the government will be treated as government expenditure, and the liabilities incurred for obtaining this money will be treated as government debt.

**ANNEX 2 - MATRIX FOR SPECIFYING THE ANNUAL FISCAL ADJUSTMENT
TOWARDS THE MEDIUM-TERM OBJECTIVE (MTO)
UNDER THE PREVENTIVE ARM OF THE PACT**

		Required annual fiscal adjustment*	
		Debt below 60 % and no sustainability risk	Debt above 60 % or sustainability risk
	Condition		
Exceptionally bad times	Real growth <0 or output gap <-4	No adjustment needed	
Very bad times	$-4 \leq$ output gap <-3	0	0.25
Bad times	$-3 \leq$ output gap < -1.5	0 if growth below potential, 0.25 if growth above potential	0.25 if growth below potential, 0.5 if growth above potential
Normal times	$-1.5 \leq$ output gap < 1.5	0.5	> 0.5
Good times	output gap \geq 1.5 %	> 0.5 if growth below potential, \geq 0.75 if growth above potential	\geq 0.75 if growth below potential, \geq 1 if growth above potential

* all figures are in percentage points of GDP

Definitions:

- Fiscal adjustment: improvement in the general government fiscal balance measured in structural terms (i.e. cyclically adjusted and without one-off measures).
- Growth potential: estimated rate of growth if the economy is at its potential output.
- Output gap: difference between the level of actual and potential output (expressed in percentage points compared to the potential output).

- Potential output: a summary indicator of the economy's capacity to generate sustainable, non-inflationary output.

Explanations:

The matrix ensures that Member States can adapt their fiscal adjustments over the economic cycle while taking into account their fiscal consolidation needs.

The larger the positive (negative) output gap, the greater (lower) the required adjustment effort. The matrix takes into account the direction into which the economy is moving, i.e. whether the economic situation is improving or deteriorating, by distinguishing whether the real GDP exceeds or falls short of a country-specific potential growth rate.

The required effort is also greater for Member States with unfavourable overall fiscal positions, i.e. where fiscal sustainability is at risk or the debt-to-GDP ratio is above the 60 % of GDP reference value of the Treaty.

All Member States are expected to accumulate savings in good times so as to be able to have sufficient latitude for the operation of the so-called automatic stabilisers (e.g. higher welfare spending and lower tax revenues) during the downturns. In good times, the revenues of the state increase due to more vigorous economic activity and expenditure related to the unemployment falls. Therefore, the matrix envisages a higher fiscal adjustment for the Member States identified as experiencing good times, i.e. when their output gap is estimated to be ≥ 1.5 %. This is particularly important for the Member States with fiscal sustainability risks or debt-to-GDP ratios exceeding the 60 % and therefore such Member States would be required to provide a structural fiscal adjustment of ≥ 0.75 % of GDP or ≥ 1 % of GDP, depending on whether their good economic situation continues to improve further or not.

In normal times, interpreted as an output gap between -1.5 % and +1.5 %, all Member States with a debt-to-GDP ratio below 60 % would be required to make an effort of 0.5 % of GDP, whereas the Member States with debt levels above 60 % of GDP would need to make an adjustment greater than 0.5 % of GDP.

In bad times, interpreted as an output gap between -3 % and -1.5 %, the required adjustment would be lower. All EU Member States with the debt-to-GDP ratio below 60 % would be required to ensure a budgetary effort of 0.25 % of GDP when their economies grow above the potential, and a fiscal adjustment of zero would be temporarily allowed when their economies grow below the potential.

In very bad times, interpreted as an output gap between -4 % and -3 %, all Member States with the debt-to-GDP ratio below 60 % would be temporarily allowed zero

adjustment, meaning that no fiscal effort would be required, whereas Member States with debt-ratios exceeding 60 % would need to provide the annual adjustment of 0.25 % of GDP.

In exceptionally bad times, interpreted as an output gap below -4 % or when real GDP contracts, all Member States, irrespective of their debt levels, would be temporarily exempted from making any fiscal effort.

The output gap thresholds set at -3 % and -4 % are supported by past data: since the 1980s, output gaps in EU countries have been below -4 % in only one year out of twenty, while they reached -3 % in one year out of ten, hence these two values are truly indicating very bad and exceptionally bad times.

COMMISSION DECISION (EU) 2015/1937 OF 21 OCTOBER 2015 ESTABLISHING AN INDEPENDENT ADVISORY EUROPEAN FISCAL BOARD

THE EUROPEAN COMMISSION,

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

Whereas:

- (1) The Stability and Growth Pact aims to secure budgetary discipline across the Union and sets out the framework for preventing and correcting excessive government deficits, whereas strengthened surveillance of budgetary policies applies to Member States whose currency is the euro.
- (2) The related competences conferred upon the Commission and the Council with regard to the multilateral surveillance framework are rooted in the Treaties and Union secondary legislation.
- (3) The Five Presidents' Report 'Completing Europe's Economic and Monetary Union' proposes to strengthen the current economic governance framework through the creation of an advisory European Fiscal Board. It should contribute in an advisory capacity to the exercise of the Commission's functions in the multilateral surveillance in the euro area. This is without prejudice to the Treaty-based competences of the Commission.
- (4) The Board should provide the Commission with an evaluation of the implementation of the Union fiscal framework, in particular regarding the horizontal consistency of the decisions and implementation of budgetary surveillance, cases of particularly serious non-compliance with the rules, and the appropriateness of the actual fiscal stance at euro area and national level.
- (5) As the Stability and Growth Pact centres on national budgets and does not specify the aggregate fiscal stance, the Board should also contribute to a more informed discussion within the Commission of the overall implications of budgetary policies at euro area and national level, with a view to achieving an appropriate fiscal stance for the euro area, within the rules of the Stability and Growth Pact.
- (6) The European Fiscal Board should perform its tasks independently and prepare its opinions autonomously from any national or European institution, body, office or agency. Its secretariat should be administratively attached to the Commission's Secretariat-General,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment

An independent European Fiscal Board ('the Board') is established.

Article 2

Mission and tasks

1. The Board shall contribute in an advisory capacity to the exercise of the Commission's functions in the multilateral fiscal surveillance as set out in Articles 121, 126 and 136 TFEU as far as the euro area is concerned.
2. For the purposes of paragraph 1, the Board shall carry out the following tasks.
 - (a) The Board shall provide to the Commission an evaluation of the implementation of the Union fiscal framework, in particular regarding the horizontal consistency of the decisions and implementation of budgetary surveillance, cases of particularly serious non-compliance with the rules, and the appropriateness of the actual fiscal stance at euro area and national level. In this evaluation, the Board may also make suggestions for the future evolution of the Union fiscal framework.
 - (b) The Board shall advise the Commission on the prospective fiscal stance appropriate for the euro area as a whole based on an economic judgment. It may advise the Commission on the appropriate national fiscal stances that are consistent with its advice on the aggregate fiscal stance of the euro area within the rules of the Stability and Growth Pact. Where it identifies risks jeopardising the proper functioning of the Economic and Monetary Union, the Board shall accompany its advice with a specific consideration of the policy options available under the Stability and Growth Pact.
 - (c) The Board shall cooperate with the national fiscal councils as referred to in Article 6(1)(b) of Council Directive 2011/85/EU ⁽¹⁾. The cooperation between the Board and the national fiscal councils shall in particular aim at exchanging best practices and facilitating common understanding on matters related to the Union fiscal framework.
 - (d) On the request of the President, the Board shall provide ad-hoc advice.

¹ Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States (OJ L 306, 23.11.2011, p. 41).

Article 3

Composition

1. The Board shall be composed of a Chair and four members.
2. The Chair shall be responsible for overseeing the performance of tasks entrusted to the Board and ensuring its proper functioning. He/she shall convene and chair meetings of the Board. The Chair and one member shall be appointed by the Commission upon proposal of the President, after having consulted the Vice-President for the Euro and Social Dialogue and the Commissioner for Economic and Financial Affairs, Taxation and Customs. The other three members shall be appointed by the Commission upon proposal of the President, after having consulted the national fiscal councils, the European Central Bank and the Eurogroup Working Group. For all Board members, including the Chair, an equal opportunities policy shall apply.
3. The Chair and the members of the Board shall be renowned international experts appointed on the basis of merit, skills, knowledge of macroeconomics and public finances, and experience relevant to fiscal policy and budgetary management.
4. The members of the Board shall be appointed for a period of 3 years, renewable once.
5. The Chair and the members of the Board shall be appointed as Special Advisors, whose status and remuneration are defined pursuant to Articles 5, 123 and 124 of the Conditions of Employment of Other Servants.
6. Travel and subsistence expenses incurred by the Chair and the members shall be reimbursed by the Commission in accordance with the provisions in force within the Commission. Those expenses shall be reimbursed within the limits of the available appropriations allocated under the annual procedure for the allocation of resources.
7. The Board shall be supported by a secretariat consisting of a Head of secretariat and dedicated supporting staff members. The secretariat is attached, for administrative purposes, to the Secretariat-General and shall be responsible for the following activities:
 - (a) assist in the decision-making process of the Board by preparing the meetings of the Board, reviewing the documents to be discussed and monitoring the progress of work against the priorities set out by the Board;
 - (b) provide high-quality analytical, statistical, administrative and logistical support to the Board under the direction of the Chair;

- (c) ensure cooperation with the national fiscal councils as necessary for supporting the mission and tasks of the Board in line with Article 2.

8. The Chief Economic Analyst established by Decision C(2015) 2665 shall exercise the function of Head of Secretariat. His/Her tasks shall include preparing the setting up of the Board. The other members of the secretariat shall be officials, temporary agents, contract agents, and seconded national experts, selected by the Head of Secretariat in agreement with the Chair. All members of the secretariat shall be selected on the basis of high levels of qualification and experience in areas relevant for the Board's activity and be assigned or attached (*mis à disposition*).

Article 4

Independence

1. In the performance of their tasks, the members of the Board shall act independently and shall neither seek nor take instructions from the Union's institutions or bodies, from any government of a Member State or from any other public or private body. The members of the secretariat shall take instructions only from the Board.

2. The members of the Board shall disclose any potential conflict of interest with respect to a particular assessment or opinion to the Chair, who shall take any appropriate measure, and may decide that the member concerned shall not participate in the preparation and adoption of that assessment or opinion. As regards the Chair, any such difficulty shall be settled by decision of the Board.

Article 5

Functioning

1. The Board shall adopt its advice only when at least three members, including the Chair, are present. The Board shall seek to adopt advice as much as possible by consensus. If no consensus can be reached, it shall decide by a simple majority of its members present at the meeting including the Chair, abstentions not counting as a vote. In the event of a tie, the Chair shall have the casting vote.

2. The Board shall establish its Rules of Procedure.

3. The Board shall operate in accordance with its Rules of Procedure. The meetings of the Board shall not be open to the public.

4. A memorandum of understanding laying down practical modalities regarding the scope and means of cooperation, including in particular the access to relevant information, shall be concluded between the Board and relevant Commission services.

Article 6

Transparency

The Board shall publish an annual report of its activities, which shall include summaries of its advice and evaluations rendered to the Commission.

Article 7

Final provisions

This decision takes effect on 1 November 2015.

Done at Brussels, 21 October 2015.

For the Commission

The President

Jean-Claude JUNCKER

A COMMONLY AGREED POSITION ON FLEXIBILITY WITHIN THE STABILITY AND GROWTH PACT*

Flexibility for cyclical conditions, structural reforms and investment

Preamble

On 13 January 2015 the Commission adopted its Communication on flexibility within the Stability and Growth Pact (SGP). Between January and April 2015, the Economic and Financial Committee (EFC) and the EFC-Alternates (Alternates) discussed three Commission notes on the operationalisation of the Communication, namely on the new matrix of required adjustment under the preventive arm, the structural reform clause and the investment clause. On 7 April, the Council Legal Service provided to the EFC its Opinion on flexibility in the SGP. At the meeting of the EFC on 8 April 2015, the President noted that for the preparation of the 2015 European Semester Council Recommendations, the Commission would use its interpretation of the rules of the SGP as expressed in its Communication on flexibility. On 29 April 2015, the EFC agreed that the EFC-Alternates would work on preparing a commonly agreed position on the flexibility in the SGP for cyclical conditions, structural reforms, and government investments aiming at, ancillary to, and economically equivalent to major structural reforms. The commonly agreed position should preferably be reflected in an updated Code of Conduct (CoC).

This document presents the commonly agreed position on flexibility in the SGP, as agreed by the EFC on 27 November 2015, taking into account the Commission Communication and the Commission notes on the operationalisation of the Communication, the above-mentioned discussions by the Alternates and the members of the EFC between January and April 2015, and the opinion of the Council Legal Service on flexibility in the SGP. The concession of such flexibility is without prejudice to the requirement for Member States to reduce their government debt at a satisfactory pace, thereby contributing to the long-term sustainability of their public finances, in accordance with Article 126.2 of the Treaty on the functioning of the European Union and Article 2 of Regulation 1467/97. This document is intended to serve as a basis for the codification in the Code of Conduct of a commonly agreed position on flexibility in the SGP.

* *Text agreed by the Economic and Financial Committee on a commonly agreed position on Flexibility within the Stability and Growth Pact, Brussels, 27 November 2015.*

1. Introduction

A commonly agreed position on flexibility in the SGP would provide guidance on the best possible use of the flexibility that is built into the existing rules of the preventive arm of the SGP, without changing or replacing the existing rules. The preventive arm aims at guaranteeing a sound budgetary position in all Member States: its core is the attainment by each Member State of its medium-term sound budgetary position (so-called Medium-Term Objective or MTO), which is established according to the commonly agreed principles set out in Sub-section A(1) of Section I of the *Specifications on the Implementation of the Stability and Growth Pact*¹ (hereafter “the Code of Conduct”).

The corrective arm of the Pact deals with situations in which the government deficit and/or the debt are above the reference values set in the Treaty: in these cases, Member States are then subject to an Excessive Deficit Procedure (“EDP”), which entails stricter conditions and monitoring. The commonly agreed principles on the implementation of the corrective arm of the SGP remain those established in the Code of Conduct endorsed by the ECOFIN in September 2012 and complemented by the effective action methodology endorsed by the ECOFIN in June 2014.

Subject to the rules of the SGP and without modifying existing legislation, the commonly agreed position clarifies how three specific policy dimensions can best be taken into account in applying the rules. These relate to: (i) cyclical conditions; (ii.) structural reforms; and (iii.) government investments aiming at, ancillary to, and economically equivalent to major structural reforms.

2. Flexibility for Cyclical Conditions

2.1 Matrix specifying the annual fiscal adjustment towards the Medium-Term Objective

Member States should achieve a more symmetrical approach to fiscal policy over the cycle through enhanced budgetary discipline in periods of economic recovery, with the objective to avoid pro-cyclical policies and to gradually reach their medium-term budgetary objective, thus creating the necessary room to accommodate economic downturns and reduce government debt at a satisfactory pace, thereby contributing to the long-term sustainability of public finances.

¹ http://ec.europa.eu/economy_finance/economIc_governance/sgp/pdf/coc/code_of_conduct_en.pdf

Member States that have not yet reached their MTO should take steps to achieve it over the cycle. Their adjustment effort should be higher in good times; it could be more limited in bad times. In order to reach their MTO, Member States of the euro area or of ERM-II should pursue an annual adjustment in cyclically adjusted terms, net of one-off and other temporary measures, of 0.5 of a percentage point of GDP as a benchmark. In parallel, the growth rate of expenditure net of discretionary revenue measures in relation to the reference medium-term rate of potential GDP growth should be expected to yield an annual improvement in the government balance in cyclically adjusted terms net of one-offs and other temporary measures of 0.5 of a percentage point of GDP.

The following matrix clarifies and specifies the fiscal adjustment requirements under the preventive arm of the Pact. This matrix is symmetrical, differentiating between larger fiscal effort to be undertaken during better times and a smaller fiscal effort to be undertaken during difficult economic conditions.

MATRIX FOR SPECIFYING THE ANNUAL FISCAL ADJUSTMENT TOWARDS THE MEDIUM-TERM OBJECTIVE (MTO) UNDER THE PREVENTIVE ARM OF THE PACT

		Required annual fiscal adjustment*	
Condition		Debt below 60 and no sustainability risk	Debt above 60 or sustainability risk
Exceptionally bad times	Real growth < 0 or output gap < -4	No adjustment needed	
Very bad times	-4 ≤ output gap < -3	0	0.25
Bad times	-3 ≤ output gap < -1.5	0 if growth below potential, 0.25 if growth above potential	0.25 if growth below potential, 0.5 if growth above potential
Normal times	-1.5 ≤ output gap < 1.5	0.5	> 0.5
Good times	output gap ≥ 1.5	> 0.5 if growth below potential, ≥ 0.75 if growth above potential	≥ 0.75 if growth below potential, ≥ 1 if growth above potential

* all figures are in percentage points of GDP

Given the volatility of the output gap estimates and of the structural balance level, the requirements for annual fiscal adjustment will be frozen on the basis of the vintage data available at spring $t-1$.

In order to avoid unwarranted consequences in the event of worsened economic conditions or when it is not necessary anymore to progress towards the medium-term objective (MTO), the following shall apply:

- first, in case the actual data signal a worsening of the economic situation so that the country is considered to be in either exceptionally (OG < -4% or

negative real growth) or very bad times ($OG < -3\%$), the requirements based on the most recent data will prevail over the frozen requirements, allowing to consider exceptionally and very bad economic circumstances;

- second, in case the actual data are revised so that the country has already achieved its MTO in year t , the assessment of the country as being at or above its MTO will prevail over the frozen requirements.

The "sustainability risk" in the matrix specifying the annual fiscal adjustment refers to the medium-term overall debt sustainability as measured by the S1 indicator, among other information².

Progress towards the MTO is assessed on the basis of two pillars, with the structural balance being complemented by the expenditure benchmark. The expenditure benchmark establishes a maximum growth rate (i.e. the reference rate) for government spending net of discretionary revenue measures. The medium-term reference rate (as well as the share of government primary expenditure used in the convergence margin) will be updated on a yearly basis, as from spring 2015. In practice, this means that each spring of year t , when setting the required adjustment towards the MTO for the year to come $t + 1$, an updated medium-term reference rate is computed as the 10-year average potential GDP growth on the period $[t-5, t+4]$. The budgetary process in some MS requires identification of the reference rate for the expenditure benchmark before spring. A Member State may ask the Commission to provide for indicative purposes an update of its reference rate for the expenditure benchmark already in the winter of year t . However, the Commission assessments and recommendations under the framework of the European Semester will be based on the reference rate for the expenditure benchmark as calculated in the spring of year t . Should significant differences between the winter and spring computations of the reference rate materialise, these would be taken into account as appropriate in the ex post analysis under the preventive arm of the SGP.

2.2 Review of the flexibility clause for cyclical conditions

The Commission shall submit a review report to the Council before 30 June 2018 on the effectiveness of the matrix specifying the annual fiscal adjustment towards the Medium-Term budgetary Objective (MTO). In particular, the review will examine the success of the matrix in promoting counter-cyclical fiscal policies and the achievement by the Member States of their MTOs, thereby creating the necessary room to accommodate economic downturns. The review will also assess whether the new matrix has ensured a reduction in government debt at a satisfactory pace, thereby contributing to the long-term sustainability of public finances, in line with the

² S1 shows the adjustment effort required, in terms of a steady improvement in the structural primary balance to be introduced till 2020 and then sustained for a decade, to bring debt ratios to 60% of GDP in 2030, taking also into account the costs arising from an ageing population.

requirements under the debt rule as specified in Sub-section B(1) of Section I of the Code of Conduct.

3. Structural Reforms

In order to enhance the growth oriented nature of the Pact, structural reforms will be taken into account when defining the adjustment path to the medium-term objective for countries that have not yet reached this objective and in allowing a temporary deviation from this objective for countries that have already reached it.

3.1 Criteria for eligible reforms

To be fully operational, the “structural reform clause” has to rely on well-defined principles regarding the eligibility of such reforms. The Commission and the Council will base their assessment on the following criteria:

- (i) The reforms must be **major**. While there are some individual reforms with a major positive impact on growth and the long-term sustainability of public finances, such as pension reforms, well-designed and comprehensive packages of reforms addressing structural weaknesses may also have a major positive impact. This is notably the case when the reforms reinforce each other's impact through an appropriate choice of policy mix and sequencing of implementation. The assessments by the Commission and the Council on whether a reform or set of reforms can be considered as major will take into account available Commission quantitative estimates on the long-term positive budgetary effects of those reforms. In any case the Commission will provide an explanation of its judgement that the reforms are to be considered as major.
- (ii) The reforms must have direct **long-term positive budgetary effects**, including by raising potential sustainable growth, and therefore a verifiable impact on the long-term sustainability of public finances. The sustainability effects can stem either from direct budgetary savings from the reforms (such as in pensions or healthcare), or from the increased revenues drawn in the medium to long-run from a more efficient economy with a higher potential output (e.g. due to lower structural unemployment or an increased labour force), or from a combination of both kinds of effects. The long-term positive budgetary effects could be measured as the improvement in the primary budget balance in net present value equivalent terms. The budgetary effects of the reforms over time are assessed by the Commission and the Council in a prudent way, making due allowance for the margin of uncertainties associated to such an exercise.

- (iii) The reforms must be **fully implemented**. The reforms must be adopted by the national authorities through provisions of binding force, whether legislative or not, in accordance with the applicable domestic laws and procedures. In case the structural reform is not yet fully implemented, the Member State should also submit a dedicated structural reform plan – subsumed, as relevant, in the National Reform Programme (NRP) or Corrective Action Plan (CAP). A plan announcing upcoming reforms as a simple manifestation of political intentions or of wishes would not fulfil the requirements for the application of Article 5(1) of Regulation 1466/97. While it is understood that all the reforms should be adopted through provisions of binding force before being considered as eligible for the clause, it is also true that the effective implementation of adopted reforms may take time and may be subject to delays and setbacks. This raises the question of introducing strong safeguards against the risk of implementation failures.

3.2 Activation of the structural reform clause

Member States that want to benefit from the structural reform clause should apply for it in their Stability or Convergence Programmes (SCPs). The flexibility is granted in the context of the assessment of the SCPs, specifically in the relevant Country Specific Recommendation. This Country Specific Recommendation could make the granting of flexibility conditional on the subsequent fulfilment of certain eligibility criteria (e.g. the respect of the safety margin). Euro area Member States may request to benefit from the Structural Reform Clause at the time of the Draft Budgetary Plans to be submitted by 15 October. Non-euro area Member States may also apply for the structural reform clause by 15 October through an *ad hoc* application³. The structural reform clause may be granted provided it is endorsed by the Council in the autumn of the same year as an updated Country Specific Recommendation. The Commission and the Council will consider that the criterion related to the implementation of reforms is in part fulfilled *ex ante* when:

- The Member State presents a medium-term structural reform plan which is comprehensive and detailed and includes well-specified measures and credible timelines for their adoption and delivery. The implementation of the reforms will be monitored closely in the context of the European Semester.
- In the specific case of a Member State in the Excessive Imbalances Procedure (EIP), it has submitted a Corrective Action Plan (CAP) providing the necessary information. The implementation of the reforms will then be monitored through the EIP.

³ In order to ensure equal treatment of all Member States, the Commission and the Council shall have regard to the different budgetary year of the United Kingdom, with a view to taking decisions with regards to the United Kingdom at a point in its budgetary year similar to that at which decisions have been or will be taken in the case of other Member States.

In both cases, Member States will be expected to provide in-depth and transparent documentation, providing quantitative analysis of the short-term costs – if any – and of both their medium-term budgetary and potential growth impact. The documentation must also include details on the timetable of implementation of the reforms. Concurrently, Member States will provide an independent evaluation of the information provided to support their application for a temporary deviation under the reform clause, including on the estimated short and medium-term impact on the budgetary position and on the timetable for the implementation of the reforms. Alternatively, Member States should provide comprehensive independent information to support the estimated impact and planned timetable. The Commission will when possible also provide to the Council its estimate of the quantitative impact of the reforms on the long-term positive budgetary effects and on potential growth.

3.3 Operationalisation of the structural reform clause

In the specific case of pension reforms consisting in introducing a multi-pillar system that includes a mandatory, fully-funded pillar, the methodology to allow them to be taken into account in the preventive arm of the Pact is outlined in Article 5 of Regulation (EC) No 1466/97.

For other structural reforms, the Commission and the Council will base themselves on the information contained in the dedicated structural reform plan (or Corrective Action Plan). In this case, the Council will grant eligible Member States additional time to reach the MTO, hence allowing temporary deviations from the structural adjustment path towards it, or to deviate temporarily from the MTO for Member States that have reached it, provided that:

- (i) the reforms meet the above criteria;
- (ii) the temporary deviation does not exceed 0.5 % of GDP;
- (iii) the cumulative temporary deviation granted under the structural reform clause and the investment clause (see Section 4) does not exceed 0.75 % of GDP;
- (iv) In case the structural reform is planned but not yet fully implemented, the Commission and the Council - when setting via the CSR the required structural effort for the year $t+1$ - will base themselves on the requirements as per the matrix of the preventive arm, i.e. without any deviation from the adjustment path from the MTO or from the MTO itself. However, the CSR will also state that if the planned reform is fully implemented, the *ex post* assessment of compliance with the requirements of the preventive arm will

incorporate the allowed deviation, i.e. by subtracting it from the requirement set by matrix of adjustment;

- (v) the MTO is reached within the four year horizon of the Stability or Convergence Programme of the year in which the clause is activated. In order to ensure that, in the benchmark case of an annual adjustment of 0.5% of GDP, the Member State can regain their MTO within the required four year timeframe, the maximum initial distance which the structural balance of a Member State applying for the structural reform clause can be from the MTO is 1.5% of GDP in year t ;
- (vi) the application of the structural reform clause is restricted to one single time per period of adjustment towards the MTO. In other words, once a Member State has benefitted from the structural reform clause, it will not be allowed to benefit from the clause again until it has attained its MTO. This restriction maintains the integrity of the MTO as the central target of the Preventive Arm of the Pact, as to allow multiple or concurrent applications of the clauses could effectively negate the requirement for Member States to achieve their MTO in the medium-term. This conclusion is supported by the record of Member States since the inception of the SGP evidencing in several cases a 100% failure rate in terms of achieving the MTO;
- (vii) an appropriate safety margin is continuously preserved so that the deviation from the MTO or the agreed fiscal adjustment path does not lead to an excess over the 3 % of GDP reference value for the deficit.

While the Pact does not provide the tools for monitoring the enforcement of structural reforms, the legal framework in which the Pact operates – notably the European Semester process and the new Excessive Imbalances Procedure (EIP) – allows the Commission and the Council to assess challenges and imbalances requiring structural reforms, and for monitoring action taken by the Member States. When a Member State is granted a temporary deviation under the reform clause, the Commission shall prepare an assessment of the progress or full adoption and delivery of the reforms in line with the agreed timetable of implementation.

The Council shall grant the temporary deviation after the Commission assessment confirms the full implementation of the agreed reforms. In case a Member State fails to implement or reverses the agreed reforms, the temporary deviation from the MTO, or from the adjustment path towards it, will be considered as not warranted. If such a failure results in a significant deviation from the MTO or the path towards it, the Commission will apply the procedure envisaged in Article 6(2) and Article 10(2) of Regulation (EC) No 1466/97. This means that the Commission will issue a warning to that Member State, followed by a proposal for a Council recommendation, to ensure that the Member State takes the appropriate policy measures within five months to

address that deviation. For euro area Member States, continued failure to comply can ultimately lead to a requirement to lodge an interest-bearing deposit⁴.

3.4 Trajectory of the temporary deviation

Member States qualifying of the structural reform clause will be granted a temporary deviation of up to 0.5% of GDP in year t+1 which permits their structural balance to worsen by this amount from the balance that would have prevailed in the absence of the structural reform clause. In order to provide equality of treatment among Member States that are both at and on a path towards the MTO, it is necessary to require the Member States to adjust on a trajectory that is parallel to their original path, but to halt that adjustment if, while being entitled to the deviation, they reach the point where they are within 0.5% of GDP of their MTO (i.e. their MTO minus the temporary deviation). In the fourth year of the adjustment period covered by the structural reform clause, the deviation is no longer applied and the Member State is then required to adjust according to the matrix. In the benchmark case, this will return the Member State to its MTO. Therefore, a Member State which is at the MTO will be allowed to depart from the MTO for three years. A Member State that starts out at 1.0% of GDP from the MTO in the year the clause is applied for, will not be required to adjust in year t+1, implement an adjustment in year t+2, apply no adjustment in year t+3 and finally adjust again in year t+4. A Member State that starts out at 1.5% of GDP from the MTO in the year the clause is applied for will not be required to adjust in year t+1 and will implement the adjustment in years t+2, t+3, and t+4.

4. Government investments aiming at, ancillary to, and economically equivalent to the implementation of major structural reforms

Under the preventive arm of the Pact, some investments aiming at, ancillary to, and economically equivalent to the implementation of major structural reforms may, under certain conditions, justify a temporary deviation from the MTO of the concerned Member State or from the adjustment path towards it.

⁴ Article 4 of Regulation (EU) No 1173/2011.

4.1 Legal framework

Regulation (EC) No 1466/97, in Article 5(1) and Article 2a of the Regulation, recognises "major structural reforms" and "public investment" as two different concepts.

Article 5(1) of Regulation 1466/97 (also known as the "flexibility clause") provides that *"When defining the adjustment path to the medium-term budgetary objective for Member States that have not yet reached this objective, and in allowing a temporary deviation from this objective for Member States that have already reached it, provided that an appropriate safety margin with respect to the deficit reference value is preserved and that the budgetary position is expected to return to the medium-term budgetary objective within the programme period, the Council and the Commission shall take into account the implementation of major structural reforms which have direct long-term positive budgetary effects, including by raising potential sustainable growth, and therefore a verifiable impact on the long-term sustainability of public finances."*

Article 2a of Regulation (EC) 1466/97 states that *"The medium-term budgetary objectives shall ensure the sustainability of public finances or a rapid progress towards such sustainability while allowing room for budgetary manoeuvre, considering in particular the need for public investment."* Such a room of manoeuvre is however limited by the Code of Conduct to Member States with relatively low debt.

Public investments cannot be assimilated *"tout court"* as structural reforms, unless it is duly shown that they are instrumental to the achievement and implementation of the said reforms. It is not legally feasible to establish *ex ante* that all co-financing expenditure by Member States in investment projects amounts to structural reforms and that such expenditure qualifies for the application of Article 5(1) of Regulation 1466/97.

Government investments that can be eligible for a temporary deviation must be national expenditures on projects that are to a large extent financed by co-funding by the EU under the European Structural and Investment Funds⁵, Trans-European Networks and the Connecting Europe Facility, as well as national co-financing of projects also co-financed by the European Fund for Strategic Investments. The temporary deviation for such investments will be subject to a plausibility assessment by the Commission and the Council, where consideration is given to whether the priority or project in question aims at, is ancillary to, and economically equivalent to the implementation of structural

⁵ See Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

reforms. An investment can be considered economically equivalent to a major structural reform only if it can be shown that the investment has a major net positive impact on potential growth and on the sustainability of public finances.

The Commission's plausibility assessment will be based on the detailed information on the contribution of the investment projects to the implementation of structural reforms and their economic equivalence to a structural reform, including on the positive, direct and verifiable long-term budgetary effect of the expenditure covered by the temporary deviation. This information is necessary to ensure compatibility with Article 5(1) and Article 9(1) of Regulation 1466/97, i.e. the SGP provisions which allow temporary deviations from the MTO or the adjustment path towards it to accommodate structural reforms with positive, direct and verifiable effect on fiscal sustainability, including via potential growth. Therefore the Member State should present information by main category of projects co-financed by the EU (including the EFSI), the size of the expenditure involved, the key features and objectives of the investment project and specifying how it will contribute to boost potential growth and the long-term sustainability of public finances.

4.2 European Fund for Strategic Investments (EFSI)

On 25 June 2015, the Council adopted a regulation on a European Fund for Strategic Investments (EFSI) aimed at stimulating the economy. The Fund will offer a new risk-bearing capacity which will allow the EIB to invest in equity, subordinated debt and higher risk tranches of senior debt, and to provide credit enhancements to eligible projects. An initial contribution to this risk-bearing capacity will be made from the EU budget, in the form of a new guarantee fund, and from the EIB's own resources. The use of this EU guarantee and of EIB funds has no impact on the deficit or debt levels of Member States.

The capacity of the EFSI can be further increased through additional financial contributions from Member States. In addition to contributing to the EFSI, Member States will have the possibility to co-finance individual projects also co-financed by it.

4.2.1 Financial contributions from Member States to the EFSI

In their assessment of the necessary fiscal adjustment under the preventive and corrective arms, the Council and the Commission will consider that:

- Initial deficit increasing contributions into the EFSI can be considered as one-off expenditures. Under the preventive arm of the Pact, one-off expenditures will not affect the MTO or the required fiscal adjustment towards it, as these are set in structural terms.

- Under the corrective arm of the Pact (the EDP), compliance with the fiscal adjustment effort recommended by the Council would not be affected, since this is also measured in structural terms. A contribution to the EFSI should therefore not lead to a Member State being found non-compliant with its EDP recommendation.
- In case of a non-respect of the deficit reference value, when preparing the report envisaged under Articles 126(3) and 126(4) TFEU, the Commission and the Council will consider the contribution to the EFSI to be a “relevant factor” in line with Article 2(3) of Regulation (EC) No 1467/97. This means that an EDP will not be launched if this non-respect is due to the contribution, and if the excess over the reference value is small and is expected to be temporary.
- In case of a non-respect of the debt reference value, when preparing the report envisaged under Articles 126(3) and 126(4) TFEU, the Commission and the Council will consider the contribution to the EFSI to be a “relevant factor” in line with Article 2(3) of Regulation (EC) No 1467/97. This means that an EDP will not be launched if the non-respect is due to the contribution.

4.2.2 Co-financing by Member States of investment projects also co-financed by the EFSI

From the point of view of the implementation of the Pact, the Commission and the Council will take into account national co-financing of investment projects that are to a large extent financed by co-financing by the EFSI in the application of a temporary deviation under the conditions set out in Section 4.3 below.

4.3 Criteria for eligible investments under the EFSI and other investment under the preventive arm of the Pact

Under the preventive arm of the Pact, some other investments aiming at, ancillary to, and economically equivalent to the implementation of major structural reforms may, under certain conditions, justify a temporary deviation from the MTO of the concerned Member State or from the adjustment path towards it. An investment can be considered economically equivalent to a major structural reform only if it can be shown that the investment has a major net positive impact on potential growth and on the sustainability of public finances.

For such investments, a Member State will benefit from a temporary deviation of up to 0.5% of GDP from the structural adjustment path towards the MTO, or from the MTO for Member States that have reached it, if the following conditions are met:

- (i) its GDP growth is negative or GDP remains well below its potential (resulting in a negative output gap greater than 1.5 % of GDP);
- (ii) the deviation from the MTO or the agreed fiscal adjustment path towards it does not lead to an excess over the reference value of 3 % of GDP deficit and an appropriate safety margin is preserved;
- (iii) subject to a total maximum temporary deviation of 0.5% of GDP for an application for flexibility for investment by a Member State, the deviation is equal to the national expenditure on eligible projects that are to a large extent financed by co-funding by the EU under the European Structural and Investment Funds⁶, Trans-European Networks and Connecting Europe Facility, and to national co-financing of eligible investment projects also co-financed by the EFSI, which have direct long-term positive and verifiable budgetary effects;
- (iv) the cumulative temporary deviation granted under the structural reform clause and the investment clause does not exceed 0.75 % of GDP;
- (v) co-financed expenditure should not substitute for nationally financed investments, so that total public investments are not decreased. In order to evaluate the respect of this condition, the Commission will assess the change in gross fixed capital formation for the year of the application of the clause on the basis of the Commission forecasts to check that there is no fall in overall investment;
- (vi) the Member State must compensate for any temporary deviations and the MTO must be reached within the four-year horizon of its current Stability or Convergence Programme.
- (vii) As with the Structural Reform Clause, in order to preserve the integrity of the MTO, the full temporary deviation (corresponding to the total amount of the national part of eligible co-financed expenditure but not exceeding 0.5% of GDP) will be granted for one single time per period of adjustment towards the MTO. For the following years, only positive incremental changes would be added to the initial temporary deviation. In other words, once a Member State has benefitted from a total temporary deviation of

⁶ Including eligible projects co-financed through the Youth Employment Initiative.

0.5% of GDP under the "investment clause", it will not be allowed to benefit from the clause again until it has attained its MTO.

The trajectory of the temporary deviation stemming from the application of the "investment clause" should be established in line with the "structural reform clause".

The country-specific temporary deviation will depend on several factors. Ex-ante, the potential deviation will depend on the commitments of the EU structural funds towards each Member State as well as on the level of planned co-financing. Ex-post, the allowed deviation will depend on the effective payments of EU structural funds and on the correspondent effective co-financing. In case the actual co-financing falls short of projected co-financing, a correction will be added to the required change in the structural balance, which could potentially lead to the opening of a significant deviation procedure.

4.4 Activation of a temporary deviation for eligible investments

The "investment clause" (IC) is activated ex-ante upon request from Member States in their Stability or Convergence Programmes (SCPs). The flexibility is granted in the context of the assessment of the SCPs, specifically in the relevant Country Specific Recommendation. This Country Specific Recommendation could make the granting of flexibility conditional on the subsequent fulfilment of certain eligibility criteria (e.g. the respect of the safety margin). Euro area Member States may request to benefit from the "investment clause" also at the time of the Draft Budgetary Plans to be submitted by 15 October. Non-euro area Member States may also apply for the "investment clause" by 15 October through an *ad hoc* application⁷. The "investment clause" may be granted provided it is endorsed by the Council in the autumn of that same year as an updated Country Specific Recommendation. The application should be submitted in the year ahead of the application of the clause. That is, in the SCP or at the time of the DBP (or the *ad hoc* application by a non-euro area MS) submitted in year t for an application of the clause in year $t+1$.

Ex-ante, the Commission will assess the eligibility of such investments where on the basis of the detailed information provided by the Member States (see Section 4.1 above), consideration is given to whether the priority or project in question aims at, is ancillary to, and economically equivalent to the implementation of structural reforms. The Commission will conclude that an investment can be considered as being economically equivalent to a major structural reform if it can be shown that the investment has a major net positive impact on potential growth and on the sustainability of public finances. The Commission will also assess ex-ante whether the projects satisfy the requirement that they are to large extent financed by EU co-funding.

⁷ In order to ensure equal treatment of all Member States, the Commission and the Council shall have regard to the different budgetary year of the United Kingdom, with a view to taking decisions with regards to the United Kingdom at a point in its budgetary year similar to that at which decisions have been or will be taken in the case of other Member States.

Ex-ante, the Commission will also assess eligibility to the IC with respect to the spring forecast of year t and will factor it in the ex-ante guidance it provides at the occasion of the European Semester. Ex-post assessment will be based on outturn data available in year $t+2$, as it is usually the case. The temporary deviation will be reviewed in order to reflect the effective co-financing of the Member States. The (downward) revision of this temporary deviation shall not imply that a Member State implements an effort superior to the one necessary to reach its MTO.

When requesting the application of the IC, Member States should include in their SCPs the following information (for the years t to $t+4$):

- The forecast path of co-financing expenditure, including for EFSI projects (as a % of GDP).
- The corrected path of its structural balance resulting from the application of the IC, while planning to reach the MTO within the timeframe of the SCP. Member States shall also take due consideration of the annual fiscal adjustment requirements towards the MTO as defined in Section 2.1 given their projections for GDP and the output gap in their SCPs.
- As specified in Section 4.1, detailed information on the contribution of the investment projects to the implementation of structural reforms and their economic equivalence to a structural reform, including the positive, direct and verifiable long-term budgetary effect of the expenditure covered by the temporary deviation. This information is necessary to ensure compatibility with Article 5(1) and Article 9(1) of Regulation 1466/97, i.e. the SGP provisions which allow temporary deviations from the MTO or the adjustment path towards it to accommodate structural reforms with positive, direct and verifiable effect on fiscal sustainability, including via potential growth.
- Member States will provide an independent evaluation of the information provided to support their application for a temporary deviation under the investment clause, including on the estimated long-term impact on the budgetary position. Alternatively, Member States should provide comprehensive independent information to support the estimated impact.
- The Member State should demonstrate that the eligible co-financed investment does not substitute for nationally funded investments, so that the total share of public capital expenditure is not decreased.

- Member States who have benefitted from the IC will also report in the SCPs on the actual level of co-financing, including for EFSI projects, following the year of application.

5. Review of the structural reform clause and the investment clause

By the end of June 2018, the Commission will carry out a review on the application of the structural reform and investment clauses, taking full account of the economic situation at that time and the achievement of its objectives. The review will examine the achievement by the Member States of their MTOs, thereby creating the necessary room to accommodate economic downturns. The review will examine to what extent the projects eligible for the investment clause were co-funded by the EU and whether the investment clause led to new investments. The review will also examine the implications of the continuation of the investment clause. The review may, as appropriate, be accompanied by proposals to the Economic and Financial Committee for a possible modification of the commonly agreed position on flexibility in the SGP.

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE
ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE
REGIONS AND THE EUROPEAN INVESTMENT BANK**

**on the review of the flexibility under the Stability and Growth Pact
{SWD(2018) 270 FINAL}**

On 13 January 2015, the Commission issued a communication on "making the best use of the flexibility within the existing rules of the Stability and Growth Pact"¹. It provided new guidance on how to apply the existing rules of the Stability and Growth Pact (the "Pact") to strengthen the link between the key priority of the three-pronged economic strategy of the new Commission, namely investment, structural reforms and fiscal responsibility in support of jobs and growth as well as to take better account of changes in the economic situation. The new clarifications by the Commission were extensively discussed with Member States. It resulted in the publication of a common position agreed by the Economic and Financial Committee (EFC), which was endorsed by the ECOFIN Council on 12 February 2016.

Sections 2.2 and 5 of the commonly agreed position on flexibility request the Commission to review the effectiveness of the new clarifications by the end of June 2018. In particular, the review should address two key elements, namely the effectiveness of the modulation of the fiscal effort over the economic cycle as well as the application of the flexibility for structural reforms and investment. A technical annex presents the calculations and necessary details underlying the findings of this review.

1. Recalling the main elements of flexibility under the Stability and Growth Pact

The Communication of January 2015 was adopted at a time when Europe was starting to emerge from the economic recession started in 2008 but was still facing a weak and fragile recovery, with major differences across countries. In particular, unemployment remained persistently high, private and public investment was weak and a number of Member States faced high debt levels as a legacy of the crisis. Inflation remained subdued and well below the target of the European Central Bank.

Against that backdrop, the Commission Communication and the commonly agreed position provided operational guidance on how to apply the existing rules in a responsible, differentiated and growth-friendly manner.

¹ COM(2015)12 final

The clarifications concern only the preventive arm of the Pact, whose aim is to guarantee a sound budgetary position in all Member States over the medium run. This fundamental principle of fiscal responsibility was upheld and reasserted by the Commission. At the same time, the Commission allowed the budgetary adjustment requirement recommended to Member States to vary according to i) the fluctuations in the economic environment and ii) the need to promote structural reforms and public investment.

The modulation of budgetary adjustment over the economic cycle was addressed by the so-called "matrix of requirements" (hereafter, simply "matrix"). This means that larger fiscal efforts are required for Member States in economic good times and/or with high levels of public debt, while smaller fiscal efforts are required for Member States in economic bad times and/or with low levels of public debt (see Box).

A temporary and limited relaxation of the required fiscal adjustment was identified to support structural reforms and investment. The Pact allows a Member State to depart from its sound budgetary position (or the convergence path toward it) to accommodate the short-term costs associated with implementing structural reforms that will bear a long-term pay-off². This corresponds to the so-called "structural reform clause". The fiscal trajectory of a Member State could also cater for significant public investment carried out at national level but co-financed by the Union. This corresponds to the so-called "investment clause". Safeguards for both clauses have been put in place to balance flexibility with the need to preserve fiscal prudence. The Box provides additional information on the functioning of the two clauses.

Box: the main elements of the Communication of January 2015

The 13 January 2015 Communication consists of two main components. It gives orientation for the application of the flexibility in the preventive arm of the Stability and Growth Pact (i) to take into account cyclical fluctuations of the economy, and (ii) to allow for room for the implementation of structural reforms and investment.

Cyclical modulation of required budgetary adjustments

The size of the annual required fiscal adjustment is provided by the so-called "matrix of requirements". The matrix gives a detailed breakdown of the required annual adjustment taking into account the economic cycle, the debt level and sustainability needs of each Member State, and the direction into which the economy is moving.

The economic cycle is mainly captured by the output gap, i.e. the difference between actual output and estimated potential output. The larger the positive (negative) output gap, the greater (lower) the required adjustment effort. Unfavourable overall fiscal positions require a faster fiscal adjustment, specifically in case of fiscal sustainability being at risk or the debt-to-GDP ratio above the 60% of GDP reference value of the Treaty.

Flexibility to promote structural reform and investment

² Article 5(1) and Article 9(1) of EC Regulation (EC) No 1466/97

The preventive arm of the Pact provides the necessary flexibility within the rules without compromising fiscal responsibility. With regard to structural reforms and investment, it takes the form of a fiscal allowance (technically, a temporary deviation from the Medium-Term Objective or the path towards it) corresponding to their short-term budgetary impact.

Both structural reforms and investment should have positive budgetary effects in the long term and raise potential growth. Structural reforms must be major and fully implemented. Investment needs to be to a large extent co-funded by the Union, but only the nationally financed part is taken into account.

Both clauses concerning structural reforms and investment are subject to safeguards to preserve fiscal prudence. For instance, they can be applied only once per period of adjustment towards a sound budgetary position. The use of the clauses should not lead to a breach of the 3% of GDP deficit threshold and a safety margin in relation to that threshold should be preserved. Only Member States in bad economic times can apply for investment clause. Furthermore, total public investment should not decrease.

2. The main findings of the review

In line with the mandate given to the Commission, the review answers two main questions. The first one is if the matrix specifying the annual fiscal adjustment has been effective in modulating the required fiscal adjustment over the economic cycle. The second question is whether further flexibility effectively allows for more structural reforms and investment. The key findings of the review (see the Annex for the full analysis) can be summarised as follows.

The cyclical modulation of required budgetary adjustments has been effective. The matrix has been the base for setting and quantifying the budgetary adjustment requirements in the Country-Specific Recommendations proposed by the Commission in the context of the European Semester since 2015. The design of the matrix promotes a real modulation of the required fiscal effort according to the economic cycle and the level of public debt in Member States. That modulation does not reduce the standard pace of the necessary fiscal adjustment. It therefore supports the achievement of a sound budgetary position over the medium-term and promotes debt reduction at satisfactory pace.

Four Member States have applied to make use of the structural reforms and/or investment clauses since 2015: Italy, Latvia, Lithuania and Finland for structural reform; Italy and Finland for investment. Nearly half of the Member States would have been eligible to apply to make use of the structural reform clause but most did not request to do so. The condition that a Member State must be experiencing bad economic times to benefit from the investment clause limited its use significantly. The need to respect the safety margin vis-à-vis the 3% deficit ceiling for three years has also proven constraining for some Member States.

The positive impact of the reforms and investment on fiscal sustainability unfolds over a longer time span than that covered by this review. It should also be noted that the impact on public investment volumes is complex to assess with precision.

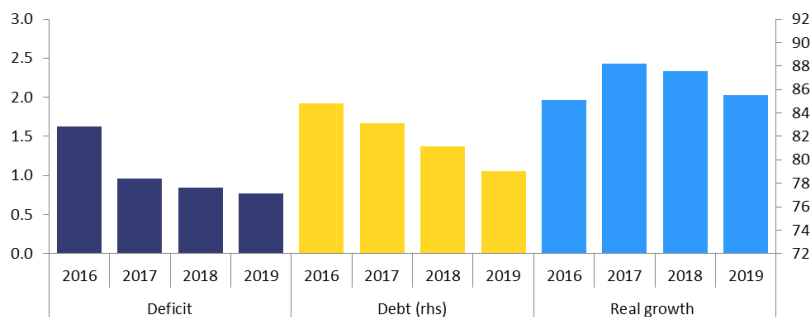
3. Conclusion: the new approach worked and delivered

Overall, the review shows that the key objectives of the Commission Communication and the commonly agreed position on flexibility have been met to a large extent. They provide a predictable and transparent framework that allowed the Commission to apply the existing rules of the Pact in a country-specific and balanced manner. The first annual report³ issued by the European Fiscal Board also pointed to a balanced implementation of the Pact.

The flexibility allowed under the Pact allowed a good balance to be struck between the objective of ensuring prudent fiscal policy and stabilising the economy. The European Commission spring forecast 2018 shows that public debt and deficits declined, while economic activity has picked up since 2016 (Fig. 1 and 2).

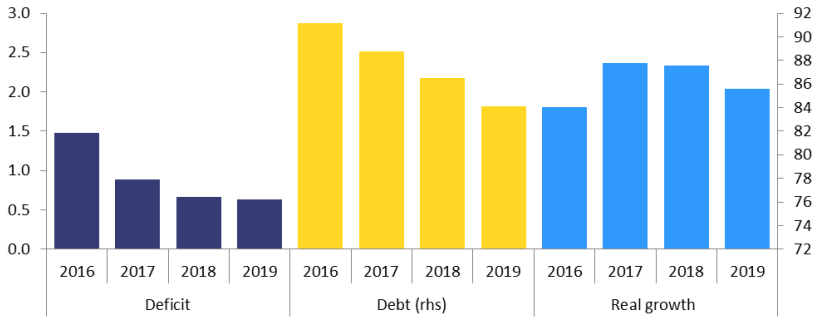
For the future, the cyclical modulation encourages Member States to increase their fiscal effort in good times to make our economies more resilient. With the economic expansion in Europe in its fifth year, the time is ripe to build up fiscal buffers, which would allow automatic stabilisers to fully play their role in the next downturn and mitigate the employment and social impacts. This is urgent, since improvements in the fiscal situations of many Member States have recently been largely driven by the positive business cycle and since public debt levels are still close to their historical peaks in several Member States.

Figure 1: Developments in public finances and real growth in the EU-28



³ European Fiscal Board, Annual Report 2017, 15 November 2017

Main Legal Texts and Policy Documents
 for further strengthening of the Economic and Monetary Union 2018 – Part 1



Source: European Commission spring 2018 forecast.

3. ECONOMIC COORDINATION

REGULATION (EU) NO 1174/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 November 2011

on enforcement measures to correct excessive macroeconomic imbalances in the euro area

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 136, in combination with Article 121(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) The improved economic governance framework should rely on several interlinked and coherent policies for sustainable growth and jobs, in particular a Union strategy for growth and jobs, with particular focus upon developing and strengthening the internal market, fostering international trade and competitiveness, a European Semester for strengthened coordination of economic and budgetary policies, an effective framework for preventing and correcting excessive government deficits (the Stability and Growth Pact (SGP)), a robust framework for preventing and correcting macroeconomic imbalances, minimum requirements for national budgetary frameworks, and enhanced financial market

¹ OJ C 150, 20.5.2011, p. 1.

² OJ C 218, 23.7.2011, p. 53.

³ Position of the European Parliament of 28 September 2011 (not yet published in the Official Journal) and decision of the Council of 8 November 2011.

regulation and supervision, including macroprudential supervision by the European Systemic Risk Board.

- (2) Reliable statistical data is the basis for the surveillance of macroeconomic imbalances. In order to guarantee sound and independent statistics, Member States should ensure the professional independence of national statistical authorities, consistent with the European statistics code of practice as laid down in Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics⁽⁴⁾. In addition, the availability of sound fiscal data is also relevant for the surveillance of macroeconomic imbalances. This requirement should be guaranteed by the rules provided in this regard by Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area⁽⁵⁾, in particular its Article 8.
- (3) The coordination of the economic policies of the Member States within the Union should be developed in the context of the broad economic policy guidelines and the employment guidelines, as provided for by the Treaty on the Functioning of the European Union (TFEU), and should entail compliance with the guiding principles of stable prices, sound and sustainable public finances and monetary conditions and a sustainable balance of payments.
- (4) Experience gained and mistakes made during the first decade of the economic and monetary union show a need for improved economic governance in the Union, which should be built on stronger national ownership of commonly agreed rules and policies and on a more robust framework at the level of the Union for the surveillance of national economic policies.
- (5) Achieving and maintaining a dynamic internal market should be considered an element of the proper and smooth functioning of the economic and monetary union.
- (6) In particular, surveillance of the economic policies of the Member States should be broadened beyond budgetary surveillance to include a more detailed and formal framework to prevent excessive macroeconomic imbalances and to help the Member States affected to establish corrective plans before divergences become entrenched and before economic and financial developments take a durable turn in an excessively unfavourable direction. Such broadening of the surveillance of economic policies should take place in parallel with a deepening of fiscal surveillance.
- (7) To help correct such excessive macroeconomic imbalances, it is necessary to lay down a detailed procedure in legislation.

⁴ OJ L 87, 31.3.2009, p. 164.

⁵ OJ L 306, 23.11.2011, p. 1.

- (8) It is appropriate to supplement the multilateral surveillance procedure referred to in paragraphs 3 and 4 of Article 121 TFEU with specific rules for the detection of macroeconomic imbalances as well as the prevention and correction of excessive macroeconomic imbalances within the Union. It is essential that the procedure be embedded in the annual multilateral surveillance cycle.
- (9) Strengthening economic governance should include a closer and more timely involvement of the European Parliament and the national parliaments. While recognising that the counterparts of the European Parliament in the framework of the dialogue are the relevant institutions of the Union and their representatives, the competent committee of the European Parliament may offer an opportunity to participate in an exchange of views to a Member State which is the subject of a Council decision imposing an interest-bearing deposit or an annual fine in accordance with this Regulation. The Member State's participation in such an exchange of views is voluntary.
- (10) The Commission should have a stronger role in the enhanced surveillance procedure as regards assessments that are specific to each Member State, monitoring, on-site missions, recommendations and warnings.
- (11) Enforcement of Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances⁽⁶⁾ should be strengthened by establishing interest-bearing deposits in case of non-compliance with the recommendation to take corrective action. Such deposits should be converted into an annual fine in the case of continued non-compliance with the recommendation to address excessive macroeconomic imbalances within the same imbalances procedure. Those enforcement measures should be applicable to Member States whose currency is the euro.
- (12) In the case of failure to comply with Council recommendations, the interest-bearing deposit or the fine should be imposed until the Council establishes that the Member State has taken corrective action to comply with its recommendations.
- (13) Moreover, repeated failure of the Member State to draw up a corrective action plan to address the Council recommendation should also be subject to an annual fine as a rule, until the Council establishes that the Member State has provided a corrective action plan that sufficiently addresses its recommendation.
- (14) To ensure equal treatment between Member States, the interest-bearing deposit and the fine should be identical for all Member States whose currency is the euro and equal to 0,1 % of the gross domestic product (GDP) of the Member State concerned in the preceding year.

⁶ OJ L 306, 23.11.2011, p. 25.

- (15) The Commission should be able to recommend reducing the amount of a sanction or cancelling it on grounds of exceptional economic circumstances.
- (16) The procedure for applying sanctions to those Member States which fail to take effective measures to correct excessive macroeconomic imbalances should be construed in such a way that the application of the sanctions to those Member States would be the rule and not the exception.
- (17) Fines referred to in this Regulation should constitute other revenue, as referred to in Article 311 TFEU, and should be assigned to stability mechanisms to provide financial assistance, created by Member States whose currency is the euro in order to safeguard the stability of the euro area as a whole.
- (18) The power to adopt individual decisions for the application of the sanctions provided for in this Regulation should be conferred on the Council. As part of the coordination of the economic policies of the Member States conducted within the Council as provided for in Article 121(1) TFEU, those individual decisions are an integral follow-up to the measures adopted by the Council in accordance with Article 121 TFEU and Regulation (EU) No 1176/2011.
- (19) Since this Regulation contains general rules for the effective enforcement of Regulation (EU) No 1176/2011, it should be adopted in accordance with the ordinary legislative procedure referred to in Article 121(6) TFEU.
- (20) Since the objective of this Regulation, namely the effective enforcement of the correction of excessive macroeconomic imbalances in the euro area, cannot be sufficiently achieved by the Member States because of the deep trade and financial interlinks between Member States and the spill-over effects of national economic policies on the Union and the euro area as a whole, and can therefore be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down a system of sanctions for the effective correction of excessive macroeconomic imbalances in the euro area.
2. This Regulation shall apply to Member States whose currency is the euro.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Article 2 of Regulation (EU) No 1176/2011 shall apply.

In addition, the following definition shall apply:

"exceptional economic circumstances" means circumstances where an excess of a government deficit over the reference value is considered exceptional within the meaning of the second indent of point (a) of Article 126(2) TFEU and as specified in Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁷.

Article 3

Sanctions

1. An interest-bearing deposit shall be imposed by a Council decision, acting on a recommendation from the Commission, if a Council decision establishing non-compliance is adopted in accordance with Article 10(4) of Regulation (EU) No 1176/2011, where the Council concludes that the Member State concerned has not taken the corrective action recommended by the Council.

2. An annual fine shall be imposed by a Council decision, acting on a recommendation by the Commission, where:

- (a) two successive Council recommendations in the same imbalance procedure are adopted in accordance with Article 8(3) of Regulation (EU) No 1176/2011 and the Council considers that the Member State has submitted an insufficient corrective action plan; or
- (b) two successive Council decisions in the same imbalance procedure are adopted establishing non-compliance in accordance with Article 10(4) of Regulation (EU) No 1176/2011. In this case, the annual fine shall be imposed by means of converting the interest-bearing deposit into an annual fine.

3. The decisions referred to in paragraphs 1 and 2 shall be deemed adopted by the Council unless it decides, by qualified majority, to reject the recommendation within 10 days of its adoption by the Commission. The Council may decide, by qualified majority, to amend the recommendation.

4. The Commission's recommendation for a Council decision shall be issued within 20 days of the conditions referred to in paragraphs 1 and 2 being met.

⁷ OJ L 209, 2.8.1997, p. 6.

5. The interest-bearing deposit or the annual fine recommended by the Commission shall be 0,1 % of the GDP in the preceding year of the Member State concerned.

6. By derogation from paragraph 5, the Commission may, on grounds of exceptional economic circumstances or following a reasoned request by the Member State concerned addressed to the Commission within 10 days of the conditions referred to in paragraphs 1 and 2 being met, propose to reduce or cancel the interest-bearing deposit or the annual fine.

7. If a Member State has constituted an interest-bearing deposit or has paid an annual fine for a given calendar year and the Council thereafter concludes, in accordance with Article 10(1) of Regulation (EU) No 1176/2011 that the Member State has taken the recommended corrective action in the course of that year, the deposit paid for that year together with the accrued interest or the fine paid for that year shall be returned to the Member State pro rata temporis.

Article 4

Allocation of the fines

Fines referred to in Article 3 of this Regulation shall constitute other revenue, as referred to in Article 311 TFEU, and shall be assigned to the European Financial Stability Facility. When the Member States whose currency is the euro create another stability mechanism to provide financial assistance in order to safeguard the stability of the euro area as a whole, those fines shall be assigned to that mechanism.

Article 5

Voting in the Council

1. For the measures referred to in Article 3, only members of the Council representing Member States whose currency is the euro shall vote, and the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

2. A qualified majority of the members of the Council referred to in paragraph 1 shall be defined in accordance with point (b) of Article 238(3) TFEU.

Article 6

Economic dialogue

In order to enhance the dialogue between the Union institutions, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission and, where appropriate, the

President of the European Council or the President of the Eurogroup to appear before the committee to discuss decisions taken pursuant to Article 3.

The competent committee of the European Parliament may offer the opportunity to the Member State concerned by such decisions to participate in an exchange of views.

Article 7

Review

1. By 14 December 2014 and every 5 years thereafter, the Commission shall publish a report on the application of this Regulation.

That report shall evaluate, inter alia:

- (a) the effectiveness of this Regulation;
- (b) the progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU.

2. Where appropriate, that report shall be accompanied by a proposal for amendments to this Regulation.

3. The Commission shall send the report and any accompanying proposals to the European Parliament and to the Council.

Article 8

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

**REGULATION (EU) NO 1176/2011 OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

of 16 November 2011

on the prevention and correction of macroeconomic imbalances⁽¹⁾

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 121(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee⁽³⁾,

Acting in accordance with the ordinary legislative procedure⁽⁴⁾,

Whereas:

- (1) The coordination of the economic policies of the Member States within the Union should be developed in the context of the broad economic policy guidelines and the employment guidelines, as provided for by the Treaty on the Functioning of the European Union (TFEU), and should entail compliance with the guiding principles of stable prices, sound and sustainable public finances and monetary conditions and a sustainable balance of payments.
- (2) There is a need to draw lessons from the first decade of functioning of the economic and monetary union and, in particular, for improved economic governance in the Union built on stronger national ownership.

¹ OJ L 306, 23.11.2011, p. 25.

² OJ C 150, 20.5.2011, p. 1.

³ OJ C 218, 23.7.2011, p. 53.

⁴ Position of the European Parliament of 28 September 2011 (not yet published in the Official Journal) and decision of the Council of 8 November 2011.

- (3) Achieving and maintaining a dynamic internal market should be considered an element of the proper and smooth functioning of the economic and monetary union.
- (4) The improved economic governance framework should rely on several interlinked and coherent policies for sustainable growth and jobs, in particular a Union strategy for growth and jobs, with particular focus on developing and strengthening the internal market, fostering international trade and competitiveness, a European Semester for strengthened coordination of economic and budgetary policies (European Semester), an effective framework for preventing and correcting excessive government deficits (the Stability and Growth Pact (SGP)), a robust framework for preventing and correcting macroeconomic imbalances, minimum requirements for national budgetary frameworks, and enhanced financial market regulation and supervision, including macroprudential supervision by the European Systemic Risk Board (ESRB).
- (5) The strengthening of economic governance should include a closer and more timely involvement of the European Parliament and the national parliaments. While recognising that the counterparts of the European Parliament in the framework of the dialogue are the relevant institutions of the Union and their representatives, the competent committee of the European Parliament may offer an opportunity to participate in an exchange of views to a Member State which is the subject of a Council recommendation or decision in accordance with Article 7(2), Article 8(2) or Article 10(4) of this Regulation. The Member State's participation in such an exchange of views is voluntary.
- (6) The Commission should have a stronger role in the enhanced surveillance procedure as regards assessments that are specific to each Member State, monitoring, on-site missions, recommendations and warnings.
- (7) In particular, surveillance of the economic policies of the Member States should be broadened beyond budgetary surveillance to include a more detailed and formal framework to prevent excessive macroeconomic imbalances and to help the Member States affected to establish corrective plans before divergences become entrenched. Such broadening of the surveillance of economic policies should take place in parallel with a deepening of fiscal surveillance.
- (8) To help correct such excessive macroeconomic imbalances, it is necessary to lay down a detailed procedure in legislation.
- (9) It is appropriate to supplement the multilateral surveillance procedure referred to in paragraphs 3 and 4 of Article 121 TFEU with specific rules for the detection of macroeconomic imbalances, as well as the prevention and correction of excessive macroeconomic imbalances within the Union. It is essential that the procedure should be aligned with the annual multilateral surveillance cycle.

- (10) That procedure should establish an alert mechanism for the early detection of emerging macroeconomic imbalances. It should be based on the use of an indicative and transparent "scoreboard" comprising indicative thresholds, combined with economic judgment. This judgment should take into account, inter alia, nominal and real convergence inside and outside the euro area.
- (11) In order to function efficiently as an element of the alert mechanism, the scoreboard should consist of a limited set of economic, financial and structural indicators relevant to the detection of macroeconomic imbalances, with corresponding indicative thresholds. The indicators and thresholds should be adjusted when necessary, in order to adapt to the changing nature of macroeconomic imbalances due, inter alia, to evolving threats to macroeconomic stability, and in order to take into account the enhanced availability of relevant statistics. The indicators should not be understood as goals for economic policy in themselves but as tools to take account of the evolving nature of the macroeconomic imbalances within the Union.
- (12) The Commission should closely cooperate with the European Parliament and the Council when drawing up the scoreboard and the set of macroeconomic and macrofinancial indicators for Member States. The Commission should present suggestions for comments to the competent committees of the European Parliament and of the Council on plans to establish and adjust the indicators and thresholds. The Commission should inform the European Parliament and the Council of any changes to the indicators and thresholds and explain its reasons for suggesting such changes.
- (13) In developing the scoreboard, due consideration should also be given to catering for heterogeneous economic circumstances, including catching-up effects.
- (14) The crossing of one or more indicative thresholds need not necessarily imply that macroeconomic imbalances are emerging, as economic policy-making should take into account interlinks between macroeconomic variables. Conclusions should not be drawn from an automatic reading of the scoreboard: economic judgment should ensure that all pieces of information, whether from the scoreboard or not, are put in perspective and become part of a comprehensive analysis.
- (15) Based on the multilateral surveillance procedure and the alert mechanism, or in the event of unexpected, significant economic developments that require urgent analysis for the purpose of this Regulation, the Commission should identify the Member States to be subject to an in-depth review. The in-depth review should be undertaken without the presumption that an imbalance exists and should encompass a thorough analysis of sources of imbalances in the Member State under review, taking due account of country-specific economic conditions and circumstances and of a wider set of analytical tools, indicators and qualitative

information of country-specific nature. When the Commission is undertaking the in-depth review, the Member State should cooperate to ensure that the information available to the Commission is as complete and correct as possible. Furthermore, the Commission should give due consideration to any other information which, in the opinion of the Member State concerned is relevant, and which the Member State has put forward to the Council and to the Commission.

- (16) The in-depth review should be discussed within the Council, and within the Eurogroup for the Member States whose currency is the euro. The in-depth review should take into account, where appropriate, Council recommendations or invitations addressed to Member States under review adopted in accordance with Articles 121, 126 and 148 TFEU and under Articles 6, 7, 8 and 10 of this Regulation, and the policy intentions of the Member State under review, as reflected in its national reform programmes, as well as international best practices as regards indicators and methodologies. When the Commission decides to undertake an in-depth review in the event of significant and unexpected economic developments that require urgent analysis, it should inform the Member States concerned.
- (17) When assessing macroeconomic imbalances, account should be taken of their severity and their potential negative economic and financial spill-over effects which aggravate the vulnerability of the Union economy and are a threat to the smooth functioning of the economic and monetary union. Actions to address macroeconomic imbalances and divergences in competitiveness are required in all Member States, particularly in the euro area. However, the nature, importance and urgency of the policy challenges may differ significantly depending on the Member States concerned. Given vulnerabilities and the magnitude of the adjustment required, the need for policy action is particularly pressing in Member States showing persistently large current-account deficits and competitiveness losses. Furthermore, in Member States that accumulate large current-account surpluses, policies should aim to identify and implement measures that help strengthen their domestic demand and growth potential.
- (18) The economic adjustment capacity and the track record of the Member State concerned as regards compliance with earlier recommendations issued under this Regulation and other recommendations issued under Article 121 TFEU as part of multilateral surveillance, in particular the broad guidelines for the economic policies of the Member States and of the Union, should also be considered.
- (19) A procedure to monitor and correct adverse macroeconomic imbalances, with preventive and corrective elements, will require enhanced surveillance tools based on those used in the multilateral surveillance procedure. This could include enhanced surveillance missions to Member States by the Commission, in liaison with the European Central Bank (ECB) for Member States whose currency is the euro or Member States participating in the Agreement of 16 March 2006 between

the European Central Bank and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union⁽⁵⁾ (ERM II), and additional reporting by Member States in case of severe imbalances, including imbalances that jeopardise the proper functioning of the economic and monetary union. Social partners and other national stakeholders should, where appropriate, be involved in the dialogue.

- (20) If macroeconomic imbalances are identified, recommendations, where appropriate involving the relevant committees, should be addressed to the Member State concerned to provide guidance on appropriate policy responses. The policy response of the Member State concerned should be timely and should use all available policy instruments under the control of public authorities. Where appropriate, relevant national stakeholders, including social partners, should also be involved in accordance with the TFEU and national legal and political arrangements. The policy response should be tailored to the specific environment and circumstances of the Member State concerned and should cover the main economic policy areas, potentially including fiscal and wage policies, labour markets, product and services markets and financial sector regulation. The commitments under ERM II should be taken into account.
- (21) The warnings and recommendations by the ESRB to Member States or to the Union address risks of a macrofinancial nature. These should also warrant appropriate follow-up action by the Commission in the context of the surveillance of macroeconomic imbalances, where appropriate. The independence and confidentiality of the ESRB should be strictly observed.
- (22) If severe macroeconomic imbalances are identified, including imbalances that jeopardise the proper functioning of the economic and monetary union, an excessive imbalance procedure should be initiated that may include issuing recommendations to the Member State, enhanced surveillance and monitoring requirements and, in respect of Member States whose currency is the euro, the possibility of enforcement in accordance with Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area⁽⁶⁾ in the event of sustained failure to take corrective action.
- (23) A Member State subject to the excessive imbalance procedure should establish a corrective action plan setting out details of its policies designed to implement the Council's recommendations. The corrective action plan should include a timetable for implementing the measures envisaged. It should be endorsed by a

⁵ OJ C 73, 25.3.2006, p. 21.

⁶ OJ L 306, 23.11.2011, p. 8

recommendation of the Council. That recommendation should be transmitted to the European Parliament.

- (24) The power to adopt individual decisions establishing non-compliance with the recommendations adopted by the Council within the framework of the corrective action plan should be conferred on the Council. As part of the coordination of the economic policies of the Member States conducted within the Council, as provided for in Article 121(1) TFEU, those individual decisions are an integral follow-up to the recommendations adopted by the Council on the basis of Article 121(4) TFEU in the context of the corrective action plan.
- (25) In applying this Regulation, the Council and the Commission should fully respect the role of national parliaments and social partners, as well as differences in national systems, such as the systems for wage formation.
- (26) If the Council considers that a Member State is no longer affected by an excessive macroeconomic imbalance, the excessive imbalance procedure should be closed following the Council's abrogation, on a recommendation from the Commission, of its relevant recommendations. That abrogation should be based on a comprehensive analysis by the Commission showing that the Member State has acted in line with the relevant Council recommendations and that the underlying causes and associated risks identified in the Council recommendation opening the excessive imbalance procedure no longer exist, taking account, *inter alia*, of macroeconomic developments, prospects and spill-over effects. The closure of the excessive imbalance procedure should be made public.
- (27) Since the objective of this Regulation, namely the establishment of an effective framework for the detection of macroeconomic imbalances and the prevention and correction of excessive macroeconomic imbalances, cannot be sufficiently achieved by the Member States because of the deep trade and financial interlinks between Member States and the spill-over effects of national economic policies on the Union and the euro area as a whole, and can therefore be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

1. This Regulation sets out detailed rules for the detection of macroeconomic imbalances, as well as the prevention and correction of excessive macroeconomic imbalances within the Union.
2. This Regulation shall be applied in the context of the European Semester as set out in Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies⁽⁷⁾.
3. The application of this Regulation shall fully observe Article 152 TFEU, and the recommendations issued under this Regulation shall respect national practices and institutions for wage formation. This Regulation takes into account Article 28 of the Charter of Fundamental Rights of the European Union, and accordingly does not affect the right to negotiate, conclude or enforce collective agreements or to take collective action in accordance with national law and practices.

Article 2

Definitions

For the purposes of this Regulation:

- (1) "imbalances" means any trend giving rise to macroeconomic developments which are adversely affecting, or have the potential adversely to affect, the proper functioning of the economy of a Member State or of the economic and monetary union, or of the Union as a whole;
- (2) "excessive imbalances" means severe imbalances, including imbalances that jeopardise or risks jeopardising the proper functioning of the economic and monetary union.

⁷ OJ L 306, 23.11.2011, p. 12.

CHAPTER II

DETECTION OF IMBALANCES

Article 3

Alert mechanism

1. An alert mechanism shall be established to facilitate the early identification and the monitoring of imbalances. The Commission shall prepare an annual report containing a qualitative economic and financial assessment based on a scoreboard with a set of indicators the values of which are compared to their indicative thresholds, as provided for in Article 4. The annual report, including the values of the indicators of the scoreboard, shall be made public.
2. The Commission's annual report shall contain an economic and financial assessment putting the movement of the indicators into perspective, drawing, if necessary, on other relevant economic and financial indicators when assessing the evolution of imbalances. Conclusions shall not be drawn from a mechanical reading of the scoreboard indicators. The assessment shall take into account the evolution of imbalances in the Union and in the euro area. The report shall also indicate whether the crossing of thresholds in one or more Member States signifies the possible emergence of imbalances. The assessment of Member States showing large current-account deficits may differ from that of Member States that accumulate large current-account surpluses.
3. The annual report shall identify Member States that the Commission considers may be affected by, or may be at risk of being affected by, imbalances.
4. The Commission shall transmit the annual report to the European Parliament, the Council and the European Economic and Social Committee in a timely manner.
5. As part of the multilateral surveillance in accordance with Article 121(3) TFEU, the Council shall discuss and carry out an overall assessment of the Commission's annual report. The Eurogroup shall discuss the report as far as it relates to Member States whose currency is the euro.

Article 4

Scoreboard

1. The scoreboard comprising the set of indicators, shall be used as a tool to facilitate early identification and monitoring of imbalances.
2. The scoreboard shall comprise a small number of relevant, practical, simple, measurable and available macroeconomic and macrofinancial indicators for Member States. It shall allow for the early identification of macroeconomic imbalances that

emerge in the short-term and imbalances that arise due to structural and long-term trends.

3. The scoreboard shall, inter alia, encompass indicators which are useful in the early identification of:

- (a) internal imbalances, including those that can arise from public and private indebtedness; financial and asset market developments, including housing; the evolution of private sector credit flow; and the evolution of unemployment;
- (b) external imbalances, including those that can arise from the evolution of current account and net investment positions of Member States; real effective exchange rates; export market shares; changes in price and cost developments; and non-price competitiveness, taking into account the different components of productivity.

4. In undertaking its economic reading of the scoreboard in the alert mechanism, the Commission shall pay close attention to developments in the real economy, including economic growth, employment and unemployment performance, nominal and real convergence inside and outside the euro area, productivity developments and its relevant drivers such as research and development and foreign and domestic investment, as well as sectoral developments including energy, which affect GDP and current account performance.

The scoreboard shall also include indicative thresholds for the indicators, to serve as alert levels. The choice of indicators and thresholds shall be conducive towards promoting competitiveness in the Union.

The scoreboard of indicators shall have upper and lower alert thresholds unless inappropriate, which shall be differentiated for euro and non-euro area Member States if justified by specific features of the monetary union and relevant economic circumstances. In developing the scoreboard, due consideration shall be given to catering for heterogeneous economic circumstances, including catching-up effects.

5. The work of the ESRB shall be taken into due consideration in the drafting of indicators relevant to financial market stability. The Commission shall invite the ESRB to provide its views regarding draft indicators, relevant to financial market stability.

6. The Commission shall make the set of indicators and the thresholds in the scoreboard public.

7. The Commission shall assess on a regular basis the appropriateness of the scoreboard, including the composition of indicators, the thresholds set and the methodology used, and it shall adjust or modify them where necessary. The Commission shall make changes in the underlying methodology and composition of the scoreboard and the associated thresholds public.

8. The Commission shall update the values for the indicators on the scoreboard at least on an annual basis.

Article 5

In-depth review

1. Taking due account of the discussions within the Council and the Eurogroup referred to in Article 3(5), or in the event of unexpected, significant economic developments that require urgent analysis for the purpose of this Regulation, the Commission shall undertake an in-depth review for each Member State that it considers may be affected by, or may be at risk of being affected by, imbalances.

The in-depth review shall build on a detailed analysis of country-specific circumstances, including the different starting positions across Member States; it shall examine a broad range of economic variables and involve the use of analytical tools and qualitative information of country-specific nature. It shall acknowledge the national specificities regarding industrial relations and social dialogue.

The Commission shall also give due consideration to any other information which the Member State concerned considers to be relevant and has communicated to the Commission.

The Commission shall undertake its in-depth review in conjunction with surveillance missions to the Member State concerned in accordance with Article 13.

2. The Commission's in-depth review shall include an evaluation of whether the Member State in question is affected by imbalances, and of whether these imbalances constitute excessive imbalances. It shall examine the origin of the detected imbalances against the background of prevailing economic circumstances, including the deep trade and financial interlinks between Member States and the spill-over effects of national economic policies. The in-depth review shall analyse relevant developments related to the Union strategy for growth and jobs. It shall also consider the relevance of economic developments in the Union and the euro area as a whole. It shall, in particular, take into account:

- (a) where appropriate, Council recommendations or invitations addressed to Member States under review adopted in accordance with Articles 121, 126 and 148 TFEU and under Articles 6, 7, 8 and 10 of this Regulation;
- (b) the policy intentions of the Member State under review, as reflected in its national reform programmes and, where appropriate, in its stability or convergence programme;

- (c) any warnings or recommendations from the ESRB on systemic risks addressed to, or being relevant to, the Member State under review. The confidentiality regime of the ESRB shall be observed.
3. The Commission shall inform the European Parliament and the Council of the results of the in-depth review and shall make them public.

Article 6

Preventive action

1. If, on the basis of the in-depth review referred to in Article 5, the Commission considers that a Member State is experiencing imbalances, it shall inform the European Parliament, the Council and the Eurogroup accordingly. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned, in accordance with the procedure set out in Article 121(2) TFEU.
2. The Council shall inform the European Parliament of the recommendation and shall make it public.
3. The recommendations of the Council and of the Commission shall fully observe Article 152 TFEU and shall take into account Article 28 of the Charter of Fundamental Rights of the European Union.
4. The Council shall review its recommendation annually in the context of the European Semester and may, if appropriate, adjust it in accordance with paragraph 1.

CHAPTER III

EXCESSIVE IMBALANCE PROCEDURE

Article 7

Opening of the excessive imbalance procedure

1. If, on the basis of the in-depth review referred to in Article 5, the Commission considers that the Member State concerned is affected by excessive imbalances, it shall inform the European Parliament, the Council and the Eurogroup accordingly.

The Commission shall also inform the relevant European Supervisory Authorities and the ESRB. The ESRB is invited to take the steps that it deems necessary.

2. The Council, on a recommendation from the Commission, may, in accordance with Article 121(4) TFEU, adopt a recommendation establishing the existence of an

excessive imbalance and recommending that the Member State concerned take corrective action.

The Council's recommendation shall set out the nature and implications of the imbalances and shall specify a set of policy recommendations to be followed and a deadline within which the Member State concerned is to submit a corrective action plan. The Council may, as provided for in Article 121(4) TFEU, make its recommendation public.

Article 8

Corrective action plan

1. Any Member State for which an excessive imbalance procedure is opened shall submit a corrective action plan to the Council and the Commission based on, and within a deadline to be defined in, the Council's recommendation referred to in Article 7(2). The corrective action plan shall set out the specific policy actions the Member State concerned has implemented or intends to implement and shall include a timetable for those actions. The corrective action plan shall take into account the economic and social impact of the policy actions and shall be consistent with the broad economic policy guidelines and the employment guidelines.

2. The Council, on the basis of a Commission report, shall assess the corrective action plan within 2 months of submission of that plan. If, upon a Commission recommendation, the Council considers the corrective action plan sufficient, it shall endorse the plan by way of a recommendation listing the specific actions required and the deadlines for taking them, and shall establish a timetable for surveillance, paying due attention to the transmission channels and recognising that there may be long lags between the adoption of the corrective action and the actual resolution of imbalances.

3. If, upon a Commission recommendation, the Council considers the actions or the timetable envisaged in the corrective action plan insufficient, it shall adopt a recommendation addressed to the Member State to submit, within 2 months as a rule, a new corrective action plan. The Council shall examine the new corrective action plan in accordance with the procedure laid down in this Article.

4. The corrective action plan, the Commission report and the Council recommendation referred to in paragraphs 2 and 3 shall be made public.

Article 9

Monitoring of corrective action

1. The Commission shall monitor implementation of the Council's recommendation adopted under Article 8(2). For that purpose, the Member State shall present to the Council and the Commission at regular intervals progress reports, the frequency of

which shall be established by the Council in the recommendation referred to in Article 8(2).

2. The Council shall make Member States' progress reports public.

3. The Commission may carry out enhanced surveillance missions to the Member State concerned, in order to monitor the implementation of the corrective action plan, in liaison with the ECB when those missions concern Member States whose currency is the euro or Member States participating in ERM II. The Commission shall, where appropriate, involve social partners and other national stakeholders in a dialogue during those missions.

4. In the event of relevant major changes in economic circumstances, the Council, on a recommendation from the Commission, may amend the recommendations adopted under Article 8(2) in accordance with the procedure laid down in that Article. Where appropriate, the Council shall invite the Member State concerned to submit a revised corrective action plan, and shall assess that revised corrective action plan in accordance with the procedure laid down in Article 8.

Article 10

Assessment of corrective action

1. On the basis of a Commission report, the Council shall assess whether the Member State concerned has taken the recommended corrective action in accordance with the Council's recommendation issued under Article 8(2).

2. The Commission shall make its report public.

3. The Council shall make its assessment by the deadline set by the Council in its recommendations adopted in accordance with Article 8(2).

4. Where it considers that the Member State has not taken the recommended corrective action, the Council, on a recommendation from the Commission, shall adopt a decision establishing non-compliance, together with a recommendation setting new deadlines for taking corrective action. In this case, the Council shall inform the European Council, and shall make public the conclusions of the surveillance missions referred to in Article 9(3).

The Commission's recommendation on establishing non-compliance shall be deemed to have been adopted by the Council, unless it decides, by qualified majority, to reject the recommendation within 10 days of its adoption by the Commission. The Member State concerned may request that a meeting of the Council be convened within that period to take a vote on the decision.

5. Where the Council, on the basis of the Commission's report referred to in paragraph 1, considers that the Member State has taken the corrective action recommended in accordance with Article 8(2), the excessive imbalance procedure shall be considered to be on track and shall be held in abeyance. Nevertheless, monitoring shall continue in accordance with the timetable set out in the recommendation under Article 8(2). The Council shall make public its reasons for holding the procedure in a position of abeyance and recognising the corrective policy actions taken by the Member State concerned.

Article 11

Closing of the excessive imbalance procedure

The Council, on a recommendation from the Commission, shall abrogate recommendations issued under Articles 7, 8 or 10 as soon as it considers that the Member State concerned is no longer affected by excessive imbalances as outlined in the recommendation referred to in Article 7(2). The Council shall make a public statement reflecting that fact.

Article 12

Voting within the Council

For the measures referred to in Articles 7 to 11, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

CHAPTER IV

FINAL PROVISIONS

Article 13

Surveillance missions

1. The Commission shall ensure a permanent dialogue with the authorities of the Member States in accordance with the objectives of this Regulation. To that end, the Commission shall, in particular, carry out missions for the purpose of assessing the economic situation in the Member State and the identification of any risks or difficulties in complying with the objectives of this Regulation.

2. The Commission may undertake enhanced surveillance missions for Member States which are the subject of a recommendation as to the existence of an excessive imbalance position under Article 7(2) for the purposes of on-site monitoring.

3. Where the Member State concerned is a Member State whose currency is the euro or is participating in ERM II, the Commission may, if appropriate, invite representatives of the European Central Bank to participate in surveillance missions.
4. The Commission shall report to the Council on the outcome of the missions referred to in paragraph 2 and may, if appropriate, decide to make its findings public.
5. When organising the missions referred to in paragraph 2, the Commission shall transmit its provisional findings to the Member State concerned for comments.

Article 14

Economic Dialogue

1. In order to enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability, the competent committee of the European Parliament may invite the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup to appear before the committee to discuss:
 - (a) information provided by the Council on the broad guidelines of economic policy pursuant to Article 121(2) TFEU;
 - (b) general guidance to Member States issued by the Commission at the beginning of the annual cycle of surveillance;
 - (c) the conclusions of the European Council concerning orientations for economic policies in the context of the European Semester;
 - (d) the results of multilateral surveillance carried out under this Regulation;
 - (e) the conclusions of the European Council concerning the orientations for, and results of, multilateral surveillance;
 - (f) a review of the conduct of the multilateral surveillance at the end of the European Semester;
 - (g) the recommendations taken pursuant to Article 7(2), Article 8(2) and Article 10(4) of this Regulation.
2. The competent committee of the European Parliament may offer the opportunity to participate in an exchange of views to the Member State which is the subject of a Council recommendation or decision under Article 7(2), Article 8(2) or Article 10(4).

3. The Council and the Commission shall regularly inform the European Parliament of the results of the application of this Regulation.

Article 15

Annual Reporting

The Commission shall report annually on the application of this Regulation, including the updating of the scoreboard as set out in Article 4 and shall present its findings to the European Parliament and to the Council in the context of the European Semester.

Article 16

Review

1. By 14 December 2014 and every 5 years thereafter, the Commission shall review and report on the application of this Regulation.

Those reports shall evaluate, inter alia:

- (a) the effectiveness of this Regulation;
- (b) the progress in ensuring closer coordination of economic policies and sustained convergence of economic performances of the Member States in accordance with the TFEU.

Where appropriate, those reports shall be accompanied by a proposal for amendments to this Regulation.

2. The Commission shall send the reports referred to in paragraph 1 to the European Parliament and to the Council.

Article 17

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL RECOMMENDATION
of 20 September 2016
on the establishment of National Productivity Boards
(2016/C 349/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292, in conjunction

with Article 121(2) and Article 136 thereof,

Having regard to the recommendation of the European Commission,

Whereas:

- (1) Potential growth in the euro area and in the Union as a whole has slowed down considerably since 2000. The downward trend in potential output growth is notably due to a steady decline in the contribution of total factor productivity. Since 2008, economic growth has been further weakened by a fall in investment. Looking forward, economic growth will ultimately depend on increasing productivity. Raising productivity is a multi-faceted challenge which requires a set of well-balanced policies aimed, in particular, at supporting innovation, increasing skills, reducing rigidities in the labour and product markets, as well as allowing a better allocation of resources. While there is a need to improve the productivity and competitiveness performance within the Union, the recent crisis showed that Member States whose currency is the euro ('euro area Member States') can be particularly subject to the possible build-up and sudden unwinding of macroeconomic imbalances that may spill-over into other euro area Member States and non-euro area Member States. In the absence of flexible nominal exchange rates, they need adequate adjustment mechanisms to country-specific shocks. Productivity and competitiveness dynamics are of relevance both for the accumulation and correction of macroeconomic imbalances (for example trade and current account deficits, stocks of domestic and external liabilities) and for the effective adjustment to asymmetric shocks. Research and analysis of policies having a bearing on productivity and competitiveness dynamics should

provide a basis for developments compatible with the objective of a smooth functioning of the economic and monetary union.

- (2) While this Recommendation is addressed to the euro area Member States, non-euro area Member States are encouraged to identify or set up similar bodies. Non-euro area Member States declaring their intention to follow up on this Recommendation should be allowed to participate on equal terms in all aspects of the cooperation related to the productivity boards.
- (3) The European Semester, in particular the Macroeconomic Imbalance Procedure as established in Regulation (EU) No 1176/2011 of the European Parliament and of the Council¹ and Regulation (EU) No 1174/2011 of the European Parliament and of the Council², provides a framework for integrated economic policy coordination and surveillance. In view of fostering progress with structural reforms, these existing mechanisms should benefit from strong national ownership. For this purpose, ensuring independent analysis at the national level and reinforcing the policy dialogue in Member States appears warranted.
- (4) The setting up of national productivity boards that track developments and inform the national debate in the field of productivity and competitiveness should contribute to the enhancement of ownership of the necessary policies and reforms at national level and to improving the knowledge basis for Union economic policy coordination. These boards should analyse productivity and competitiveness developments including relative to global competitors, taking into account national specificities and established practices.
- (5) The scope of diagnosis and analysis by productivity boards spans a comprehensive notion of productivity and competitiveness. They should take into account the long-term drivers and enablers of productivity and competitiveness, including innovation, and the capacity to attract investment, businesses and human capital, and to address cost and non-cost factors that can affect prices and quality content of goods and services, including relative to global competitors in the short term.

¹ Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances (OJ L 306, 23.11.2011, p. 25).

² Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area (OJ L 306, 23.11.2011, p. 8).

- (6) Moreover, independent high-quality economic analysis of policy challenges increases transparency in policy debates. Assessing policy challenges could raise awareness of all stakeholders. This can have a positive impact on public support and ownership for necessary reforms. Also, if and to the extent foreseen in their national mandate, the productivity boards could assess the effects of policy options by making trade-offs of policy explicit.
- (7) Productivity boards should have functional autonomy vis-à-vis any public authority in charge of the design and implementation of policies in the field of productivity and competitiveness in the Member State or at European level. In particular, they should be able to produce independent analysis within the scope of their area of work. The composition of productivity boards, while subject to national discretion, should be unbiased, in the sense that they should not convey only or mainly views of specific groups of stakeholders. Such independence and unbiasedness requirements are aimed at ensuring that the productivity boards are empowered to produce expert analyses formulated in the general interest.
- (8) The characteristics of the productivity boards should fully observe Article 152 of the Treaty of the Functioning of the European Union (TFEU) and should respect the national practice and institutions for wage formation. In accordance with Article 28 of the Charter of Fundamental Rights of the European Union, the functioning of the productivity boards should not affect the right of workers and employers, or their respective organisations, to negotiate and conclude collective agreements at the appropriate levels or to take collective action in accordance with Union law and national laws and practices.
- (9) Productivity boards should be engaged in contacts with productivity boards of other participating Member States with the aim of exchanging views and best practices, also taking into account the broader euro area and Union dimension. The Commission could facilitate the exchange of views between the productivity boards of all participating Member States. There should also be a regular discussion between the productivity boards and the Economic Policy Committee on issues within the latter's area of competence, involving relevant experts in non-participating Member States.
- (10) Productivity boards should carry out their activities on a continuous basis. They should make their analyses publicly available and publish an annual report, which could be integrated into an already existing report. The independent expertise provided by those boards, including through the annual

reports, could be used by Member States and the Commission in the context of the European Semester and the Macroeconomic Imbalance Procedure.

- (11) In order to ease exchange of views at supra-national level, there should be one identifiable productivity board in each Member State. It is important to build on existing structures in order to preserve what already works and to minimise administrative costs. Where appropriate the productivity board could be based on an already established and respected national structure including as regards the involvement and consultation of stakeholders. However, to carry out their activities properly, productivity boards could in turn rely on different separate and existing bodies, provided that their analysis is of the same high quality.
- (12) This Recommendation does not alter the assigned responsibilities for the European Semester, including formulating and monitoring the Country Specific Recommendations, or the application of the Macroeconomic Imbalance Procedure as established in Regulation (EU) No 1176/2011,

HAS ADOPTED THIS RECOMMENDATION:

I. Objectives and scope

1. The objective of this Recommendation is the identification or setting up of national productivity boards to analyse developments and policies in the field of productivity and competitiveness, thereby contributing to foster ownership and implementation of the necessary reforms at the national level, and hence foster sustained economic growth and convergence.
2. This Recommendation is addressed to the euro area Member States. The non-euro area Member States are also encouraged to identify or set up similar bodies.
3. The application of this Recommendation should fully observe Article 152 TFEU and should respect national practices and institutions for wage formation. This Recommendation takes into account Article 28 of the Charter of Fundamental Rights of the European Union, and accordingly does not affect the right to negotiate, conclude or enforce collective agreements or to take collective action in accordance with national laws and practices.

II. The productivity boards

4. Each Member State should have in place a productivity board tasked with:
- a) Diagnosis and analysis of productivity and competitiveness developments in the Member State concerned. The analysis should take into account euro area and Union aspects and address the long-term drivers and enablers of productivity and competitiveness, including innovation, and the capacity to attract investment, businesses and human capital, and to address cost and non-cost factors that can affect prices and quality content of goods and services including relative to global competitors in the short term. Analysis should be based on transparent and comparable indicators; and
 - b) Independent analysis of policy challenges in the field of productivity and competitiveness, and, if and to the extent foreseen in their national mandate, assessment of the effects of policy options, making trade-offs of policy explicit.
5. Each Member State should identify one productivity board, which could in turn rely on, or consist of, different existing bodies.
6. Productivity boards should carry out their activities on a continuous basis. They should make their analyses publicly available and publish an annual report. They should be engaged in contacts with productivity boards of non-euro area Member States with the aim of exchanging views and best practices, and where appropriate produce joint analysis, also taking into account the broader euro area and Union dimension. The Commission will on a regular basis exchange views with all participating productivity boards, including during fact-finding missions to Member States, and could facilitate the exchange of views between the productivity boards.

III. Characteristics of the productivity boards

7. Productivity boards should have functional autonomy vis-à-vis any public authority in charge of the design and implementation of policies in the field of productivity and competitiveness in the Member State or at European level. To fulfil the tasks of this Recommendation they should be underpinned by national provisions ensuring a high degree of functional autonomy and accountability, including:
- a) the capacity to communicate publicly in a timely manner;

- b) procedures for nominating members on the basis of their experience and competence;
 - c) appropriate access to information to carry out their mandate.
8. Productivity boards should be objective, neutral and fully independent regarding analysis and content. They may consult relevant stakeholders, but should not convey only or mainly the opinions and the interests of a particular group of stakeholders.
9. Productivity boards should have the ability to carry out economic and statistical analyses with a high degree of quality, including as recognised by the academic community. The analysis could be produced by existing and separate bodies provided that it is of the same high quality.

IV. Relationship with the European Semester

10. The independent expertise provided by those boards, including through the annual reports, could be used by Member States and the Commission in the context of the European Semester and the Macroeconomic Imbalance Procedure. This Recommendation does not alter the assigned responsibilities for the European Semester, including designing and monitoring of the Country Specific Recommendations, or the application of the Macroeconomic Imbalances Procedure as established in Regulation (EU) No 1176/2011.

V. Accountability and transparency

11. As a rule, the analyses produced by those boards should be made public.

VI. Final provisions

12. The Member States of the euro area are invited to implement the principles set out in this Recommendation by 20 March 2018.

13. By 20 March 2019, the Commission is invited to prepare a progress report, on the basis of relevant information from all Member States on the implementation and the suitability of this Recommendation, including whether the adoption of further

provisions appears necessary. If warranted, the report shall be accompanied by a proposal to adapt this Recommendation.

Done at Brussels, 20 September 2016.

For the Council

The President

I. KORČOK

4. FINANCIAL SUPPORT AND SURVEILLANCE

REGULATION (EU) NO 472/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2013

on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability⁽¹⁾

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 136 in combination with Article 121(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) The unprecedented global crisis that has hit the world since 2007 has seriously damaged economic growth and financial stability and has given rise to a strong deterioration in the government deficit and debt position of the Member States, leading a number of them to seek financial assistance within and outside the framework of the Union.
- (2) Article 9 of the Treaty on the Functioning of the European Union (TFEU) provides that, in defining and implementing its policies and activities, the Union is to take into account requirements linked to the promotion of a high level of employment,

¹ OJ L 140, 27.05.2013, p. 1.

² OJ C 141, 17.5.2012, p. 7.

³ Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of 13 May 2013.

the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

- (3) Full consistency between the Union multilateral surveillance framework established by the TFEU and the possible policy conditions attached to financial assistance should be enshrined in Union law. The economic and financial integration of all Member States, in particular those whose currency is the euro, calls for enhanced surveillance to prevent contagion from a Member State experiencing or threatened with serious difficulties with respect to its financial stability to the rest of the euro area and, more broadly, to the Union as a whole.
- (4) The intensity of economic and budgetary surveillance should be commensurate with, and proportionate to, the severity of the financial difficulties encountered and should take due account of the nature of the financial assistance received, which may range from mere precautionary support based on eligibility conditions to a full macroeconomic adjustment programme involving strict policy conditionality. Any macroeconomic adjustment programme should take into account the national reform programme of the Member State concerned in the context of the Union's strategy for growth and jobs.
- (5) A Member State whose currency is the euro should be subject to enhanced surveillance under this Regulation when it is experiencing or is threatened with serious financial difficulties, with a view to ensuring its swift return to a normal situation and to protecting the other euro area Member States against potential adverse spill-over effects. Such enhanced surveillance should be proportionate to the seriousness of the problems and should be adjusted accordingly. It should include wider access to the information needed for a close monitoring of the economic, fiscal and financial situation and a regular reporting to the competent committee of the European Parliament and to the Economic and Financial Committee (EFC) or to any subcommittee the latter may designate for that purpose. The same arrangements for surveillance should apply to Member States requesting precautionary assistance from one or several other Member States or third countries, the European Financial Stabilisation Mechanism (EFSM), the European Stability Mechanism (ESM), the European Financial Stability Facility (EFSF), or another relevant international financial institution such as the International Monetary Fund (IMF).
- (6) A Member State subject to enhanced surveillance should also adopt measures aimed at addressing the sources or potential sources of its difficulties. To that end, all recommendations addressed to it in the course of an excessive deficit procedure or of an excessive macroeconomic imbalance procedure should be taken into account.

- (7) Economic and budgetary surveillance should be strongly reinforced for Member States subject to a macroeconomic adjustment programme. Because of the comprehensive nature of the latter, the other processes of economic and budgetary surveillance should be suspended or, where appropriate, streamlined for the duration of the macroeconomic adjustment programme, with a view to ensuring consistency of economic policy surveillance and to avoiding duplication of reporting obligations. However, when preparing the macroeconomic adjustment programme, all recommendations addressed to the Member State in the course of an excessive deficit procedure or an excessive macroeconomic imbalance procedure should be taken into account.
- (8) The challenge posed by tax fraud and evasion has increased considerably. Globalisation of the economy, technological developments, the internationalisation of fraud and the resulting interdependence of Member States reveal the limits of strictly national approaches and reinforce the need for joint action.
- (9) The problems presented by tax fraud and evasion in Member States subject to a macroeconomic adjustment programme should be tackled by improving revenue collection in those Member States and enhancing cooperation between the revenue administrations in the Union and in third countries.
- (10) Rules should be laid down to enhance the dialogue between the Union institutions, in particular the European Parliament, the Council and the Commission, and to ensure greater transparency and accountability. The parliament of a Member State subject to a macroeconomic adjustment programme or to enhanced surveillance should be kept informed in accordance with national rules and practice.
- (11) Member States should involve the social partners and civil society organisations in the preparation, implementation, monitoring and evaluation of financial assistance programmes, in accordance with national rules and practice.
- (12) Before a Council decision relating to a macroeconomic adjustment programme under this Regulation is adopted, the relevant bodies of the ESM and of the EFSF should have the opportunity to hold a discussion on the outcome of negotiations between the Commission – acting on behalf of the ESM or the EFSF, in liaison with the European Central Bank (ECB) and, where appropriate, the IMF – and the beneficiary Member State on the possible policy conditions attached to that Member State's financial assistance. Memoranda of understanding setting down the detailed conditions for granting financial assistance are to be adopted under the Treaty establishing the European Stability Mechanism and the EFSF Framework Agreement.
- (13) Unless otherwise provided, references to financial assistance in this Regulation should also cover financial support granted on a precautionary basis and loans for the recapitalisation of financial institutions.

- (14) The decision of the Commission to subject a Member State to enhanced surveillance under this Regulation should be taken in close cooperation with the EFC, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽⁴⁾, the European Supervisory Authority (European Insurance and Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽⁵⁾, the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽⁶⁾ (collectively referred to as the "ESAs") and the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.⁽⁷⁾ The Commission should also cooperate with the EFC when deciding on whether to prolong enhanced surveillance.
- (15) Following a reasoned request by the Member State concerned or, where appropriate, on grounds of exceptional economic circumstances, the Commission is able to recommend reducing or cancelling any existing interest-bearing deposit, non-interest-bearing deposit or fine imposed by the Council in the framework of the preventive or corrective part of the Stability and Growth Pact for a Member State subject to a macroeconomic adjustment programme.
- (16) Access to information on the preparatory work undertaken before the adoption of a recommendation under this Regulation should be subject to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.⁽⁸⁾
- (17) Where a decision is taken under this Regulation that a Member State does not comply with the requirements contained in its macroeconomic adjustment programme, and events and analyses clearly show that a mechanism is needed to ensure respect for the obligations towards its creditors and the stabilisation of its economic and financial situation, the Commission is invited to make proposals for such mechanism.
- (18) The power to adopt recommendations on the adoption of precautionary corrective measures and on the preparation of a macroeconomic adjustment programme; the power to approve macroeconomic adjustment programmes; the power to adopt decisions on the main policy requirements which the ESM or the EFSF plan to

⁴ OJ L 331, 15.12.2010, p. 12.

⁵ OJ L 331, 15.12.2010, p. 48.

⁶ OJ L 331, 15.12.2010, p. 84.

⁷ OJ L 331, 15.12.2010, p. 1.

⁸ OJ L 145, 31.5.2001, p. 43.

include in the conditionality for financial assistance granted on a precautionary basis, loans for the recapitalisation of financial institutions or any new financial instrument agreed within the framework of the ESM; and the power to recommend the adoption of corrective measures to Member States under post-programme surveillance, should be conferred on the Council. Those powers are of particular relevance to the policy of economic coordination of Member States, which, pursuant to Article 121 TFEU, is to take place within the Council,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down provisions for strengthening the economic and budgetary surveillance of Member States whose currency is the euro, where those Member States:

(a) experience or are threatened with serious difficulties with respect to their financial stability or to the sustainability of their public finances, leading to potential adverse spill-over effects on other Member States in the euro area; or

(b) request or receive financial assistance from one or several other Member States or third countries, the European Financial Stabilisation Mechanism (EFSM), the European Stability Mechanism (ESM), the European Financial Stability Facility (EFSF), or another relevant international financial institution such as the International Monetary Fund (IMF).

2. This Regulation also lays down provisions for enhanced economic policy coordination.

3. This Regulation shall apply to Member States whose currency is the euro.

4. In applying this Regulation, the Council, the Commission and the Member States shall fully observe Article 152 TFEU. In applying this Regulation and the recommendations adopted hereunder, the Council, the Commission and the Member States shall take into account national rules and practice and Article 28 of the Charter of Fundamental Rights of the European Union. Accordingly, the application of this Regulation and of those recommendations does not affect the right to negotiate, conclude and enforce collective agreements or to take collective action in accordance with national law.

Article 2

Member States subject to enhanced surveillance

1. The Commission may decide to subject to enhanced surveillance a Member State experiencing or threatened with serious difficulties with respect to its financial stability which are likely to have adverse spill-over effects on other Member States in the euro area.

When assessing whether a Member State is threatened with serious difficulties with respect to its financial stability, the Commission shall use, among other parameters, the alert mechanism established under Article 3(1) of Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances⁹) or, where available, the latest in-depth review. The Commission shall also conduct a comprehensive assessment, taking into account, in particular, the borrowing conditions of that Member State, the repayment profile of its debt obligations, the robustness of its budgetary framework, the long-term sustainability of its public finances, the importance of its debt burden and the risk of contagion from severe tensions in its financial sector on its budgetary situation or on the financial sector of other Member States.

The Member State concerned shall be given the opportunity to express its views before the Commission adopts its decision to subject that Member State to enhanced surveillance. Every six months, the Commission shall decide whether to prolong the enhanced surveillance on that Member State.

2. Where the Commission decides to subject a Member State to enhanced surveillance under paragraph 1, it shall duly inform the Member State concerned of all the results of the assessment and shall notify the European Central Bank (ECB), in its supervisory capacity, the relevant ESAs and the ESRB accordingly.

3. Where a Member State is in receipt of financial assistance on a precautionary basis from one or several other Member States or third countries, the EFSM, the ESM, the EFSF, or another relevant international financial institution such as the IMF, the Commission shall subject that Member State to enhanced surveillance.

The Commission shall make public its decisions taken in accordance with paragraph 1 and with this paragraph.

4. Paragraph 3 shall not apply to a Member State receiving financial assistance on a precautionary basis in the form of a credit line, which is not conditional on that Member State adopting new policy measures, provided that the credit line is not drawn.

⁹ OJ L 306, 23.11.2011, p. 25.

5. The Commission shall publish, for information purposes, a list of the instruments providing precautionary financial assistance, as referred to in paragraph 3 and shall keep it updated to take into account possible changes in the financial support policy of the ESM, the EFSF or of another relevant international financial institution.

Article 3

Enhanced surveillance

1. A Member State subject to enhanced surveillance shall, after consulting, and in cooperation with, the Commission, acting in liaison with the ECB, the ESAs, the ESRB and, where appropriate, the IMF, adopt measures aimed at addressing the sources or potential sources of difficulties. In so doing, the Member State shall take into account any recommendations addressed to it under Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of budgetary positions and the surveillance and coordination of economic policies,⁽¹⁰⁾ Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure,⁽¹¹⁾ or Regulation (EU) No 1176/2011 concerning its national reform programme and its stability programme.

The Commission shall inform the competent committee of the European Parliament, the EFC, the Eurogroup Working Group, and the parliament of the Member State concerned, where relevant and in accordance with national practice, of the measures referred to in the first subparagraph.

2. The closer monitoring of the fiscal situation laid down in Article 10(2), (3) and (6) of Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area⁽¹²⁾ shall apply to a Member State subject to enhanced surveillance, irrespective of the existence of an excessive deficit in that Member State. The report drawn up in accordance with Article 10(3) of that Regulation shall be submitted on a quarterly basis.

3. On a request from the Commission, a Member State subject to enhanced surveillance pursuant to Article 2(1) shall:

(a) communicate to the ECB in its supervisory capacity, and, where appropriate, to the relevant ESAs, in accordance with Article 35 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, at the requested frequency, disaggregated information on developments in its financial system, including an analysis of the results of any stress test exercises or sensitivity analyses carried out under point (b) of this paragraph;

¹⁰ OJ L 209, 2.8.1997, p. 1.

¹¹ OJ L 209, 2.8.1997, p. 6.

¹² OJ L 140, 27.5.3012, p. 11.

(b) carry out, under the supervision of the ECB in its supervisory capacity, or, where appropriate, under the supervision of the relevant ESAs, stress test exercises or sensitivity analyses, as necessary, to assess the resilience of the financial sector to various macroeconomic and financial shocks, as specified by the Commission and the ECB, in liaison with the relevant ESAs and with the ESRB;

(c) be required to submit to regular assessments of its supervisory capacities over the financial sector in the framework of a specific peer review carried out by the ECB, in its supervisory capacity, or, where appropriate, by the relevant ESAs;

(d) communicate to the Commission any information needed for the monitoring of macroeconomic imbalances in accordance with Regulation (EU) No 1176/2011.

On the basis of the analysis of the results of the stress test exercises and sensitivity analyses referred to in point (a) of the first subparagraph, and taking into account the conclusions of the assessment of the relevant indicators of the scoreboard for macroeconomic imbalances established in Regulation (EU) No 1176/2011, the ECB, in its supervisory capacity, and the relevant ESAs shall prepare, in liaison with the ESRB, an assessment of the potential vulnerabilities of the financial system and shall submit that assessment to the Commission, at the frequency indicated by the latter, and to the ECB.

4. On a request from the Commission, a Member State subject to enhanced surveillance pursuant to Article 2(3) shall:

(a) communicate to the Commission, the ECB and, where appropriate, the relevant ESAs, in accordance with Article 35 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, at the requested frequency, disaggregated information on developments in its financial system, including an analysis of the results of any stress test exercises or sensitivity analyses carried out under point (b);

(b) carry out, under the supervision of the ECB, in its supervisory capacity, or, where appropriate, under the supervision of the relevant ESAs, stress test exercises or sensitivity analyses, as necessary, to assess the resilience of the financial sector to various macroeconomic and financial shocks, as specified by the Commission and the ECB, in liaison with the relevant ESAs and with the ESRB, and share the detailed results with them;

(c) be required to submit to regular assessments of its supervisory capacities over the financial sector in the framework of a specific peer review carried out by the ECB, in its supervisory capacity, or, where appropriate, by the relevant ESAs;

(d) communicate to the Commission any information needed for the monitoring of macroeconomic imbalances in accordance with Regulation (EU) No 1176/2011.

The Commission, the ECB and the relevant ESAs shall treat any disaggregated information communicated to them as confidential.

5. The Commission, in liaison with the ECB and with the relevant ESAs and, where appropriate, with the IMF, shall conduct regular review missions in the Member State subject to enhanced surveillance to verify the progress made by that Member State in the implementation of the measures referred to in paragraphs 1, 2, 3 and 4.

Every quarter, the Commission shall communicate its assessment to the competent committee of the European Parliament and to the EFC. In that assessment, it shall examine, in particular, whether further measures are needed.

The review missions referred to in the first subparagraph shall replace the on-site monitoring provided for in Article 10a(2) of Regulation (EC) No 1467/97.

6. When preparing the assessment referred to in paragraph 5, the Commission shall take into account the results of any in-depth review under Regulation (EU) No 1176/2011, including the evaluation of spill-over effects of national economic policies on the Member State subject to enhanced surveillance, in accordance with Article 5(2) of that Regulation.

7. Where the Commission concludes that, on the basis of the review missions provided for in paragraph 5, further measures are needed and the financial and economic situation of the Member State concerned has significant adverse effects on the financial stability of the euro area or of its Member States, the Council, acting by a qualified majority on a proposal from the Commission, may recommend to the Member State concerned to adopt precautionary corrective measures or to prepare a draft macroeconomic adjustment programme.

The Council may decide to make its recommendation public.

8. Where a recommendation referred to in paragraph 7 is made public:

(a) the competent committee of the European Parliament may offer the opportunity to the Member State concerned and to the Commission to participate in an exchange of views;

(b) representatives of the Commission may be invited by the parliament of the Member State concerned to participate in an exchange of views;

(c) the Council shall inform the relevant committee of the European Parliament in due time about the content of the recommendation.

9. During the course of the enhanced surveillance process, the competent committee of the European Parliament and the parliament of the Member State concerned may invite

representatives of the Commission, the ECB and the IMF to participate in an economic dialogue.

Article 4

Reporting in the event of financial support for the recapitalisation of financial institutions

Member States subject to enhanced surveillance or to a macroeconomic adjustment programme receiving financial support for the recapitalisation of their financial institutions shall report twice a year to the EFC on the conditions imposed on those financial institutions, including the conditions relating to executive remuneration. Those Member States shall also report on the credit conditions offered by the financial sector to the real economy.

Article 5

Information on envisaged financial assistance requests

A Member State intending to request financial assistance from one or several other Member States or third countries, the ESM, the EFSF, or another relevant international financial institution, such as the IMF, shall immediately inform the President of the Eurogroup Working Group, the member of the Commission responsible for Economic and Monetary Affairs and the President of the ECB of its intention.

After receiving an assessment from the Commission, the Eurogroup Working Group shall hold a discussion about the intended request with a view to examining, inter alia, the possibilities available under existing Union or euro area financial instruments before the Member State concerned addresses potential lenders.

A Member State intending to request financial assistance from the EFSM shall immediately inform the President of the EFC, the member of the Commission responsible for economic and monetary affairs and the President of the ECB of its intention.

Article 6

Evaluation of the sustainability of the government debt

Where a Member State requests financial assistance from the EFSM, the ESM, or the EFSF, the Commission shall assess, in liaison with the ECB and, where possible, with the IMF, the sustainability of that Member State's government debt and its actual or potential financing needs. The Commission shall submit that assessment to the Eurogroup Working Group where the financial assistance is to be granted under the

ESM or the EFSF, and to the EFC where the financial assistance is to be granted under the EFSM.

The assessment of the sustainability of the government debt shall be based on the most likely macroeconomic scenario or a more prudent scenario and budgetary forecasts using the most up-to-date information and taking proper account of the outcome of the reporting referred to in point (a) of Article 3(3) as well as any supervisory task exercised in accordance with point (b) of Article 3(3). The Commission shall also assess the impact of macroeconomic and financial shocks and adverse developments on the sustainability of government debt.

The Commission shall make public the macroeconomic scenario, including the growth scenario, the relevant parameters underpinning the assessment of the sustainability of the government debt of the Member State concerned, and the estimated impact of the aggregate budgetary measures on economic growth.

Article 7

Macroeconomic adjustment programme

1. Where a Member State requests financial assistance from one or several other Member States or third countries, the EFSM, the ESM, the EFSF or the IMF, it shall prepare, in agreement with the Commission, acting in liaison with the ECB and, where appropriate, with the IMF, a draft macroeconomic adjustment programme which shall build on and substitute any economic partnership programme under Regulation (EU) No 473/2013 and which shall include annual budgetary targets.

The draft macroeconomic adjustment programme shall address the specific risks emanating from that Member State for the financial stability in the euro area and shall aim at rapidly re-establishing a sound and sustainable economic and financial situation and restoring the Member State's capacity to finance itself fully on the financial markets.

The draft macroeconomic adjustment programme shall be based on the assessment of the sustainability of the government debt referred to in Article 6, which shall be updated to incorporate the impact of the draft corrective measures negotiated with the Member State concerned, and shall take due account of any recommendation addressed to that Member State under Articles 121, 126, 136 or 148 TFEU and of its actions to comply with any such recommendation, while aiming at broadening, strengthening and deepening the required policy measures.

The draft macroeconomic adjustment programme shall take into account the practice and institutions for wage formation and the national reform programme of the Member State concerned in the context of the Union's strategy for growth and jobs.

The draft macroeconomic adjustment programme shall fully observe Article 152 TFEU and Article 28 of the Charter of Fundamental Rights of the European Union. The Commission shall orally inform the Chair and Vice-Chairs of the competent committee of the European Parliament of the progress made in the preparation of the draft macroeconomic adjustment programme. That information shall be treated as confidential.

2. The Council, acting by a qualified majority on a proposal from the Commission, shall approve the macroeconomic adjustment programme prepared by the Member State requesting financial assistance in accordance with paragraph 1.

The Commission shall ensure that the memorandum of understanding signed by the Commission on behalf of the ESM or of the EFSF is fully consistent with the macroeconomic adjustment programme approved by the Council.

3. The Commission shall ensure consistency in the process of economic and budgetary surveillance with respect to a Member State under a macroeconomic adjustment programme to avoid duplication of reporting obligations.

4. The Commission, in liaison with the ECB and, where appropriate, with the IMF, shall monitor the progress made by a Member State in the implementation of its macroeconomic adjustment programme.

Every three months, the Commission shall inform the EFC of such progress. The Member State concerned shall fully cooperate with the Commission and with the ECB. It shall, in particular, provide the Commission and the ECB with all the information that they consider to be necessary for the monitoring of the implementation of the macroeconomic adjustment programme in accordance with Article 3(4).

The Commission shall inform the Chair and Vice-Chairs of the competent committee of the European Parliament orally of the conclusions drawn from the monitoring of the macroeconomic adjustment programme. That information shall be treated as confidential.

5. The Commission, in liaison with the ECB and, where appropriate, with the IMF, shall examine with the Member State concerned the changes and updates that may be needed to its macroeconomic adjustment programme in order to take proper account, inter alia, of any significant gap between macroeconomic forecasts and realised figures, including possible consequences resulting from the macroeconomic adjustment programme, adverse spill-over effects and macroeconomic and financial shocks. The Council, acting by a qualified majority on a proposal from the Commission, shall decide on any change to be made to that programme.

6. The Member State concerned shall consider, in close cooperation with the Commission, whether to take all necessary measures to invite private investors to maintain their overall exposure on a voluntary basis.

7. Where the monitoring referred to in paragraph 4 highlights significant deviations from a Member State's macroeconomic adjustment programme, the Council, acting by a qualified majority on a proposal from the Commission, may decide that the Member State concerned does not comply with the policy requirements contained in its programme. The Commission, in its proposal, shall assess explicitly whether such significant deviations are due to reasons that are not within the control of the Member State concerned.

The budgetary consolidation efforts set out in the macroeconomic adjustment programme shall take into account the need to ensure sufficient means for fundamental policies, such as education and health care.

Where a decision is taken under this paragraph, the Member State concerned shall, in close cooperation with the Commission and in liaison with the ECB and, where appropriate, with the IMF, take measures aimed at stabilising markets and preserving the good functioning of its financial sector.

8. A Member State subject to a macroeconomic adjustment programme experiencing insufficient administrative capacity or significant problems in the implementation of the programme shall seek technical assistance from the Commission, which may constitute, for that purpose, groups of experts composed of members from other Member States and other Union institutions or from relevant international institutions. The objectives and the means of the technical assistance shall be explicitly outlined in the updated versions of the macroeconomic adjustment programme and focus on the area where major needs are identified. Technical assistance may include the establishment of a resident representative and supporting staff to advise authorities on the implementation of the programme.

The macroeconomic adjustment programme, including its objectives and the expected distribution of the adjustment effort, shall be made public.

The conclusions of the assessment of the sustainability of the government debt shall be annexed to the macroeconomic adjustment programme.

9. A Member State subject to a macroeconomic adjustment programme shall carry out a comprehensive audit of its public finances in order, *inter alia*, to assess the reasons that led to the building up of excessive levels of debt as well as to track any possible irregularity.

10. The competent committee of the European Parliament may offer the opportunity to the Member State concerned and to the Commission to participate in an exchange of

views on the progress made in the implementation of the macroeconomic adjustment programme.

11. Representatives of the Commission may be invited by the parliament of the Member State concerned to participate in an exchange of views on the progress made in the implementation of its macroeconomic adjustment programme.

12. This Article shall not apply to instruments providing financial assistance on a precautionary basis, to loans made for the recapitalisation of financial institutions, or to any new ESM financial instrument for which the ESM rules do not provide for a macroeconomic adjustment programme.

For information purposes, the Commission shall establish a list of the financial assistance instruments referred to in the first subparagraph and shall keep it updated to take into account possible changes in the financial support policy of the ESM.

Concerning those instruments, the Council, acting on a recommendation from the Commission, shall, by a decision addressed to the Member State concerned, approve the main policy requirements which the ESM or the EFSF plans to include in the conditionality for its financial support, to the extent that the content of those measures falls within the competence of the Union as laid down by the Treaties.

The Commission shall ensure that the memorandum of understanding signed by the Commission on behalf of the ESM or the EFSF is fully consistent with such a Council decision.

Article 8

Involvement of social partners and civil society

A Member State shall seek the views of social partners as well as relevant civil society organisations when preparing its draft macroeconomic adjustment programmes, with a view to contributing to building consensus over its content.

Article 9

Measures to safeguard tax revenue

A Member State shall, where necessary, take measures in close cooperation with the Commission and in liaison with the ECB and, where appropriate, with the IMF, aiming to reinforce the efficiency and effectiveness of revenue collection capacity and the fight against tax fraud and evasion, with a view to increasing its fiscal revenue.

Article 10

Consistency with the Stability and Growth Pact

1. Where a Member State is subject to a macroeconomic adjustment programme, and the changes thereto, under Article 7 of this Regulation, it shall be exempt from submitting a stability programme, under Article 3 of Regulation (EC) No 1466/97, and shall integrate the content of such a stability programme into its macroeconomic adjustment programme.

2. Where a Member State subject to a macroeconomic adjustment programme is also the subject of a recommendation under Article 126(7) TFEU or of a decision to give notice under Article 126(9) TFEU for the correction of an excessive deficit:

(a) it shall be exempt from submitting, as appropriate, the reports under Article 3(4a) and Article 5(1a) of Regulation (EC) No 1467/97;

(b) the annual budgetary targets in each macroeconomic adjustment programme shall be integrated into the recommendation or decision to give notice, respectively under Article 3(4) and Article 5(1) of Regulation (EC) No 1467/97, and, where the Member State concerned is subject to a decision to give notice under Article 126(9) TFEU, the measures conducive to those targets in the macroeconomic adjustment programme shall be integrated into the decision to give notice in accordance with Article 5(1) of Regulation (EC) No 1467/97;

(c) with regard to the monitoring provided for by Article 7(4) of this Regulation, it shall be exempt from monitoring under Article 10(1) and Article 10a of Regulation (EC) No 1467/97 and monitoring underlying any decision under Article 4(2) and Article 6(2) of that Regulation.

Article 11

Consistency with Regulation (EU) No 1176/2011

Where a Member State is subject to a macroeconomic adjustment programme, Regulation (EU) No 1176/2011 shall not apply to that Member State for the duration of that programme, save that the indicators in the scoreboard established in Regulation (EU) No 1176/2011 shall be integrated into the monitoring of that programme.

Article 12

Consistency with the European Semester for economic policy coordination

Where a Member State is subject to a macroeconomic adjustment programme, it shall be exempt from the monitoring and assessment of the European Semester for economic policy coordination under Article 2-a of Regulation (EC) No 1466/97 for the duration of that programme.

Article 13

Consistency with Regulation (EU) No 473/2013

Where a Member State is subject to a macroeconomic adjustment programme, Regulation (EU) No 473/2013 shall not apply to that Member State for the duration of that programme, with the exception of Articles 1 to 5 and 13 to 18 of that Regulation.

Article 14

Post-programme surveillance

1. A Member State shall be under post-programme surveillance as long as a minimum of 75 % of the financial assistance received from one or several other Member States, the EFSM, the ESM or the EFSF has not been repaid. The Council, on a proposal from the Commission, may extend the duration of the post-programme surveillance in the event of a persistent risk to the financial stability or fiscal sustainability of the Member State concerned. The proposal from the Commission shall be deemed to be adopted by the Council unless the Council decides, by a qualified majority, to reject it within 10 days of the Commission's adoption thereof.

2. On a request from the Commission, a Member State under post-programme surveillance shall comply with the requirements under Article 3(3) of this Regulation and shall provide the information referred to in Article 10(3) of Regulation (EU) No 473/2013.

3. The Commission shall conduct, in liaison with the ECB, regular review missions in the Member State under post-programme surveillance to assess its economic, fiscal and financial situation. Every six months, it shall communicate its assessment to the competent committee of the European Parliament, to the EFC and to the parliament of the Member State concerned and shall assess, in particular, whether corrective measures are needed.

The competent committee of the European Parliament may offer the opportunity to the Member State concerned to participate in an exchange of views on the progress made under post-programme surveillance.

4. The Council, acting on a proposal from the Commission, may recommend to a Member State under post-programme surveillance to adopt corrective measures. The proposal from the Commission shall be deemed to be adopted by the Council unless the Council decides, by a qualified majority, to reject it within 10 days of the Commission's adoption thereof.

5. The parliament of the Member State concerned may invite representatives of the Commission to participate in an exchange of views on the post-programme surveillance.

Article 15

Voting within the Council

For the measures referred to in this Regulation, only members of the Council representing Member States whose currency is the euro shall vote and the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the members of the Council referred to in the first paragraph shall be calculated in accordance with Article 238(3)(a) TFEU.

Article 16

Application to Member States in receipt of financial assistance

Member States in receipt of financial assistance on 30 May 2013 shall be subject to this Regulation as from that date.

Article 17

Transitional provisions

Notwithstanding Article 14, Member States that are under post-programme surveillance on 30 May 2013 shall be subject to the post-programme surveillance rules, conditions and procedures applicable to the financial assistance from which they benefit.

Article 18

Informing the European Parliament

The European Parliament may invite representatives of the Council and of the Commission to enter into a dialogue on the application of this Regulation.

Article 19

Reports

By 1 January 2014, and every five years thereafter, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation, accompanied, where appropriate, by a proposal to amend this Regulation. The Commission shall make that report public.

The reports referred to in the first subparagraph shall evaluate, inter alia:

- (a) the effectiveness of this Regulation;

- (b) progress in ensuring closer coordination of economic policies and sustained convergence of economic performance of the Member States in accordance with the TFEU;
- (c) the contribution of this Regulation to the achievement of the Union’s strategy for growth and jobs.

Article 20

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

COUNCIL REGULATION (EU) NO 407/2010

of 11 May 2010

establishing a European financial stabilisation mechanism as amended by Council Regulation (EU) 2015/1360 of 4 August 2015

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 122(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 122(2) of the Treaty foresees the possibility of granting Union financial assistance to a Member State in difficulties or seriously threatened with severe difficulties caused by exceptional occurrences beyond its control.
- (2) Such difficulties may be caused by a serious deterioration in the international economic and financial environment.
- (3) The unprecedented global financial crisis and economic downturn that have hit the world over the last two years have seriously damaged economic growth and financial stability and provoked a strong deterioration in the deficit and debt positions of the Member States.
- (4) The deepening of the financial crisis has led to a severe deterioration of the borrowing conditions of several Member States beyond what can be explained by economic fundamentals. At this point, this situation, if not addressed as a matter of urgency, could present a serious threat to the financial stability of the European Union as a whole.
- (5) In order to address this exceptional situation beyond the control of the Member States, it appears necessary to put in place immediately a Union stabilisation mechanism to preserve financial stability in the European Union. Such a mechanism should allow the Union to respond in a coordinated, rapid and effective manner to acute difficulties in a particular Member State. Its activation will be in the context of a joint EU/International Monetary Fund (IMF) support.

- (6) Given their particular financial implications, the decisions to grant Union financial assistance pursuant to this Regulation require the exercise of implementing powers, which should be conferred on the Council.
- (7) Strong economic policy conditions should be imposed in case of activation of this mechanism with a view to preserving the sustainability of the public finances of the beneficiary Member State and restoring its capacity to finance itself on the financial markets.
- (8) The Commission should regularly review whether the exceptional circumstances threatening the financial stability of the European Union as a whole still exist.
- (9) The existing facility providing medium-term financial assistance for non-euro-area Member States, as established by Council Regulation (EC) No 332/2002⁽¹⁾, should remain in place,

HAS ADOPTED THIS REGULATION:

Article 1

Aim and scope

With a view to preserving the financial stability of the European Union, this Regulation establishes the conditions and procedures under which Union financial assistance may be granted to a Member State which is experiencing, or is seriously threatened with, a severe economic or financial disturbance caused by exceptional occurrences beyond its control, taking into account the possible application of the existing facility providing medium-term financial assistance for non-euro-area Member States' balances of payments, as established by Regulation (EC) No 332/2002.

Article 2

Form of the Union financial assistance

1. Union financial assistance for the purposes of this Regulation shall take the form of a loan or of a credit line granted to the Member State concerned.

¹ Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

To this end, in accordance with a Council decision pursuant to Article 3, the Commission shall be empowered on behalf of the European Union to contract borrowings on the capital markets or with financial institutions.

2. The outstanding amount of loans or credit lines to be granted to Member States under this Regulation shall be limited to the margin available under the own resources ceiling for payment appropriations.

Article 3

Procedure

1. The Member State seeking Union financial assistance shall discuss with the Commission, in liaison with the European Central Bank (ECB), an assessment of its financial needs and submit a draft economic and financial adjustment programme to the Commission and the Economic and Financial Committee.

2. Union financial assistance shall be granted by a decision adopted by the Council, acting by a qualified majority on a proposal from the Commission.

2a. Where the beneficiary Member State is a Member State whose currency is the euro, the granting of Union financial assistance shall be conditional upon the enactment of legally binding provisions, with a dedicated arrangement for that purpose having been put in place prior to disbursement, guaranteeing that the Member States whose currency is not the euro are immediately and fully compensated for any liability they may incur as a result of any failure by the beneficiary Member State to repay the financial assistance in accordance with its terms.

Appropriate arrangements shall also be put in place so as to ensure the absence of overcompensation of Member States whose currency is not the euro, when instruments to protect the general budget of the Union, including the recovery of debt, where necessary by offsetting amounts receivable and payments over time, are activated.

3. The decision to grant a loan shall contain:

- (a) the amount, the average maturity, the pricing formula, the maximum number of instalments, the availability period of the Union financial assistance and the other detailed rules needed for the implementation of the assistance;
- (b) the general economic policy conditions which are attached to the Union financial assistance with a view to re-establishing a sound economic or financial situation in the beneficiary Member State and to restoring its capacity to finance itself on the financial markets; these conditions will be defined by the Commission, in consultation with the ECB; and

- (c) an approval of the adjustment programme prepared by the beneficiary Member State to meet the economic conditions attached to the Union financial assistance.

4. The decision to grant a credit line shall contain:

- (a) the amount, the fee for the availability of the credit line, the pricing formula applicable for the release of funds and the availability period of the Union financial assistance and the other detailed rules needed for the implementation of the assistance;
- (b) the general economic policy conditions which are attached to the Union financial assistance with a view to re-establishing a sound economic or financial situation in the beneficiary Member State; these conditions will be defined by the Commission, in consultation with the ECB; and
- (c) an approval of the adjustment programme prepared by the beneficiary Member State to meet the economic conditions attached to the Union financial assistance.

5. The Commission and the beneficiary Member State shall conclude a Memorandum of Understanding detailing the general economic policy conditions laid down by the Council. The Commission shall communicate the Memorandum of Understanding to the European Parliament and to the Council.

6. The Commission shall re-examine, in consultation with the ECB, the general economic policy conditions referred to in paragraphs 3(b) and 4(b) at least every six months and discuss with the beneficiary Member State the changes that may be needed to its adjustment programme.

7. The Council, acting by a qualified majority on a proposal from the Commission, shall decide on any adjustments to be made to the initial general economic policy conditions and shall approve the revised adjustment programme as prepared by the beneficiary Member State.

8. If a financing outside the Union subject to economic policy conditions is envisaged, notably from the IMF, the Member State concerned shall first consult the Commission. The Commission shall examine the possibilities available under the Union financial assistance facility and the compatibility of the envisaged economic policy conditions with the commitments taken by the Member State concerned for the implementation of the Council recommendations and Council decisions adopted on the basis of Article 121, Article 126 and Article 136 of the TFEU. The Commission shall inform the Economic and Financial Committee.

Article 4

Disbursement of the loan

1. The loan shall, as a rule, be disbursed in instalments.
2. The Commission shall verify at regular intervals whether the economic policy of the beneficiary Member State accords with its adjustment programme and with the conditions laid down by the Council pursuant to Article 3(3)(b). To this end, that Member State shall provide all the necessary information to the Commission and give the latter its full cooperation.
3. On the basis of the findings of such verification, the Commission shall decide on the release of further instalments.

Article 5

Release of funds

1. The beneficiary Member State shall inform the Commission in advance of its intention to draw down funds from its credit line. Detailed rules shall be laid down in the decision referred to in Article 3(4).
2. The Commission shall verify at regular intervals whether the economic policy of the beneficiary Member State accords with its adjustment programme and with the conditions laid down by the Council pursuant to Article 3(4)(b). To this end, that Member State shall provide all the necessary information to the Commission and give the latter its full cooperation.
3. On the basis of the findings of such verification, the Commission shall decide on the release of the funds.

Article 6

Borrowing and lending operations

1. The borrowing and lending operations referred to in Article 2 shall be carried out in euro.
2. The characteristics of the successive instalments released by the Union under the financial assistance facility shall be negotiated between the beneficiary Member State and the Commission.
3. Once the decision on a loan has been made by the Council, the Commission shall be authorised to borrow on the capital markets or from financial institutions at the most appropriate time in between planned disbursements so as to optimise the cost of funding and preserve its reputation as the Union's issuer in the markets. Funds raised but not yet disbursed shall be kept at all times on dedicated cash or securities account

which are handled in accordance with rules applying to off-budget operations and cannot be used for any other goal than to provide financial assistance to Member States under the present mechanism.

4. Where a Member State receives a loan carrying an early repayment clause and decides to exercise this option, the Commission shall take the necessary steps.

5. At the request of the beneficiary Member State and where circumstances permit an improvement in the interest rate on the loan, the Commission may refinance all or part of its initial borrowing or restructure the corresponding financial conditions.

6. The Economic and Financial Committee shall be kept informed of the developments in the operations referred to in paragraph 5.

Article 7

Costs

The costs incurred by the Union in concluding and carrying out each operation shall be borne by the beneficiary Member State.

Article 8

Administration of the loans

1. The Commission shall establish the necessary arrangements for the administration of the loans with the ECB.

2. The beneficiary Member State shall open a special account with its National Central Bank for the management of the Union financial assistance received. It shall also transfer the principal and the interest due under the loan to an account with the ECB fourteen TARGET2 business days prior to the corresponding due date.

3. Without prejudice to Article 27 of the Statute of the European System of Central Banks and of the European Central Bank, the European Court of Auditors shall have the right to carry out in the beneficiary Member State any financial controls or audits that it considers necessary in relation to the management of that assistance. The Commission, including the European Anti-Fraud office, shall in particular have the right to send its officials or duly authorised representatives to carry out in the beneficiary Member State any technical or financial controls or audits that it considers necessary in relation to that assistance.

Article 9

Review and adaptation

1. The Commission shall forward to the Economic and Financial Committee and to the Council, within six months following the entry into force of this Regulation and where appropriate every six months thereafter, a report on the implementation of this Regulation and on the continuation of the exceptional occurrences that justify the adoption of this Regulation.
2. Where appropriate, the report shall be accompanied by a proposal for amendments to this Regulation with a view to adapting the possibility of granting financial assistance without affecting the validity of decisions already adopted.

Article 10

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

**COUNCIL REGULATION (EC) NO 332/2002
of 18 February 2002**

establishing a facility providing medium-term financial assistance for Member States' balances of payments as last amended by Council Regulation (EC) No 431/2009 of 18 May 2009⁽²⁾

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission, presented following consultation with the Economic and Financial Committee⁽³⁾,

Having regard to the opinion of the European Parliament⁽⁴⁾,

Having regard to the opinion of the European Central Bank⁽⁵⁾,

Whereas:

- (1) The second subparagraph of Article 119(1) and Article 119(2) of the Treaty provide that, acting on a recommendation from the Commission made after consulting the Economic and Financial Committee, the Council will grant mutual assistance where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments. Article 119 does not define the instrument to be used for granting the mutual assistance envisaged.
- (2) It should be possible for the operation of lending to a Member State to take place soon enough to encourage that Member State to adopt, in good time in a situation where orderly exchange rate conditions prevail, economic policy measures likely to prevent the occurrence of an acute balance of payments crisis and to support its efforts towards convergence.
- (3) Each loan to a Member State should be linked to the adoption by that Member State of economic policy measures designed to re-establish or ensure a sustainable balance of payments situation and to adapt it to the gravity of the balance of payments situation in that State and to the way in which it develops.

² Consolidated version (available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002R0332:20090528:EN:HTML>).

³ OJ C 180 E, 26.6.2001, p. 199.

⁴ Opinion delivered on 6 September 2001 (not yet published in the Official Journal).

⁵ OJ C 151, 22.5.2001, p. 18.

- (4) Appropriate procedures and instruments should be provided for in advance to enable the Community and Member States to ensure that, if required, financial medium-term assistance is provided quickly, especially where circumstances call for immediate action.
- (5) In order to finance assistance that has been granted, the Community needs to be able to use its creditworthiness to borrow resources that will be placed at the disposal of the Member States concerned in the form of loans. Operations of this kind are necessary to the achievement of the objectives of the Community as defined in the Treaty, especially the harmonious development of economic activities in the Community as a whole.
- (6) To this end, a single facility providing medium-term financial assistance for Member States' balances of payments was established by Council Regulation (EEC) No 1969/88⁶.
- (7) Since 1 January 1999 the Member States participating in the single currency no longer qualify for medium-term financial assistance. However, the financial assistance facility should be retained in order to meet not only the potential needs of the present Member States which have not adopted the euro but also the needs of new Member States until such time as they adopt the euro.
- (8) The introduction of the single currency has led to a substantial reduction in the number of Member States eligible for the instrument. A downwards revision of the present ceiling of EUR 16 billion is therefore justified. The loan ceiling should, though, be kept at a sufficiently high level in order to satisfy properly the simultaneous needs of several Member States. A reduction in the loan ceiling from EUR 16 billion to EUR 12 billion seems apt to meet this need and also to take account of forthcoming enlargements of the European Union.
- (9) The glaring imbalance between the number of potential beneficiaries of the loans during the third stage of economic and monetary union and the number of countries capable of financing them makes it difficult to maintain direct financing of loans granted by all the other Member States. These loans should therefore be financed exclusively by way of recourse to capital markets and financial institutions, these having now attained a stage of development and maturity which should enable them to undertake such financing.
- (10) The arrangements for using the facility should also be clarified in the light of experience gained and account should be taken of the development of international financial markets and of the technical possibilities and constraints inherent in recourse to these sources of financing.

⁶ OJ L 178, 8.7.1988, p. 1. Regulation as amended by the 1994 Act of Accession.

- (11) It is for the Council to decide whether to grant a loan or appropriate financing facility, its average duration, its total amount and the amounts of the successive instalments. However, the characteristics of the instalments, duration and type of interest rate, should be fixed by common agreement between the beneficiary Member State and the Commission. If the Commission takes the view that the loan characteristics desired by that Member State result in financing that is incompatible with the technical constraints imposed by capital markets or financial institutions, it must be able to propose alternative financing arrangements.
- (12) In order to finance loans granted under this Regulation, the Commission should be authorised to contract on behalf of the European Community borrowings on capital markets or from financial institutions.
- (13) The financial assistance facility established by Regulation (EEC) No 1969/88 should be adapted accordingly. In the interests of clarity, that Regulation should be replaced.
- (14) For the adoption of this Regulation, which provides for the granting of Community loans financed exclusively with funds raised on the capital markets and not by the other Member States, the Treaty provides no powers other than those of Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

1. A Community medium-term financial assistance facility enabling loans to be granted to one or more Member States which are experiencing, or are seriously threatened with, difficulties in their balance of current payments or capital movements shall be established. Only Member States which have not adopted the euro may benefit from this Community facility.

The outstanding amount of loans to be granted to Member States under this facility shall be limited to EUR 50 billion in principal.

2. To this end, in accordance with a decision adopted by the Council pursuant to Article 3 and after consulting the Economic and Financial Committee, the Commission shall be empowered on behalf of the European Community to contract borrowings on the capital markets or with financial institutions.

Article 2

Where a Member State which has not adopted the euro proposes to call upon sources of financing outside the Community which are subject to economic policy conditions, it shall first consult the Commission and the other Member States in order to examine, among other things, the possibilities available under the Community medium-term financial assistance facility. Such consultations shall be held within the Economic and Financial Committee, in accordance with Article 119 of the Treaty.

Article 3

1. The medium-term financial assistance facility may be implemented by the Council on the initiative of:

- (a) the Commission, acting pursuant to Article 119 of the Treaty in agreement with the Member State seeking Community financing;
- (b) a Member State experiencing, or seriously threatened with, difficulties as regards its balance of current payments or capital movements.

2. The Member State seeking medium-term financial assistance shall discuss with the Commission an assessment of its financial needs and submit a draft adjustment programme to the Commission and the Economic and Financial Committee. The Council, after examining the situation in the Member State concerned and the adjustment programme presented in support of its application, shall decide, as a rule during the same meeting:

- (a) whether to grant a loan or appropriate financing facility, its amount and its average duration;
- (b) the economic policy conditions attached to the medium-term financial assistance with a view to re-establishing or ensuring a sustainable balance of payments situation;
- (c) the techniques for disbursing the loan or financing facility, the release or drawing-down of which shall, as a rule, be by successive instalments, the release of each instalment being subject to verification of the results achieved in implementing the programme in terms of the objectives set.

Article 3a

The Commission and the Member State concerned shall conclude a Memorandum of Understanding setting out in detail the conditions laid down by the Council pursuant to Article 3. The Commission shall communicate the Memorandum of Understanding to the European Parliament and the Council.

Article 4

In cases where restrictions on capital movements are introduced or reintroduced pursuant to Article 120 of the Treaty during the period of the financial assistance, its conditions and arrangements shall be re-examined pursuant to Article 119 of the Treaty.

Article 5

The Commission shall take the necessary measures to verify at regular intervals, in collaboration with the Economic and Financial Committee that the economic policy of the Member State in receipt of a Community loan complies with the adjustment programme, any other conditions laid down by the Council pursuant to Article 3 and the Memorandum of Understanding referred to in Article 3a. To this end, the Member State shall make all the necessary information available to the Commission and fully cooperate with the latter. On the basis of the findings of such verification, the Commission, after the Economic and Financial Committee has delivered an opinion, shall decide on the release of further instalments.

The Council shall decide on any adjustments to be made to the initial economic policy conditions.

Article 6

Loans granted as medium-term financial assistance may be granted as consolidation of support made available by the European Central Bank under the very short-term financing facility.

Article 7

1. The borrowing and lending operations referred to in Article 1 shall be carried out in euro. They shall use the same value date and shall not involve the Community in the transformation of maturities, in any interest rate risk, or in any other commercial risk.

The characteristics of the successive instalments released by the Community under the financial assistance facility shall be negotiated between the Member State and the Commission. Where the Commission takes the view that the characteristics desired by the Member State will lead to Community financing that runs counter to the technical constraints imposed by financial markets or is such as to tarnish the reputation of the Community as a borrower on those same markets, it has the right to withhold its agreement and propose an alternative solution.

Where a Member State receives a loan carrying an early repayment clause and decides to exercise this option, the Commission shall take the necessary steps.

2. At the request of the debtor Member State and where circumstances permit an improvement in the interest rate on the loan, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions.

Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average duration of the borrowing concerned or increasing the amount of capital outstanding at the date of the refinancing or restructuring.

3. The costs incurred by the Community in concluding and carrying out each operation shall be borne by the beneficiary Member State.

4. The Economic and Financial Committee shall be kept informed of developments in the operations referred to in the first subparagraph of paragraph 2.

5. The Member State concerned shall open a special account with its National Central Bank for the management of the Community medium-term financial assistance received. It shall also transfer the principal and the interest due under the loan to an account with the European Central Bank seven TARGET2⁽⁷⁾ business days prior to the corresponding due date.

Article 8

The Council shall adopt the decisions referred to in Articles 3 and 5, acting by qualified majority on a proposal from the Commission made after consulting the Economic and Financial Committee.

Article 9

The European Central Bank shall make the necessary arrangements for the administration of the loans.

The funds shall be paid only for the purposes indicated in Article 1.

Article 9a

Without prejudice to Article 27 of the Statute of the European System of Central Banks and of the European Central Bank, the European Court of Auditors shall have the right to carry out, in the Member States receiving Community medium-term financial assistance, any financial controls or audits that it considers necessary in relation to the management of that assistance. The Commission, including the European Anti-Fraud Office, shall thus have the right to send its officials or duly authorised representatives

⁷ As defined in Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 237, 8.9.2007, p. 1).

to carry out, in Member States receiving Community medium-term financial assistance, any technical or financial controls or audits that it considers necessary in relation to that assistance.

Article 10

Every three years the Council shall examine, on the basis of a report from the Commission and after the Economic and Financial Committee has delivered an opinion, whether the facility established still meets, in its principle, arrangements and ceiling, the need which led to its creation.

Article 11

Regulation (EEC) No 1969/88 is hereby repealed.

Article 12

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

**REGULATION (EU) 2017/825
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 May 2017**

**on the establishment of the Structural Reform Support Programme for the period
2017 to 2020
and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 175 and Article 197(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) In accordance with Article 9 of the Treaty on the Functioning of the European Union (TFEU), in defining and implementing its policies and activities, the Union needs to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. In addition, and as set out in Article 11 TFEU, environmental protection requirements need to be integrated into the Union policies and activities, in particular with a view to promoting sustainable development.

¹ OJ C 177, 18.5.2016, p. 47.

² OJ C 240, 1.7.2016, p. 49.

³ Position of the European Parliament of 27 April 2017 (not yet published in the Official Journal) and decision of the Council of 11 May 2017.

- (2) Articles 120 and 121 TFEU provide that Member States are required to conduct their economic policies with a view to contributing to the achievement of the objectives of the Union and in the context of the broad guidelines that the Council formulates. The coordination of the economic policies of the Member States is therefore a matter of common concern.
- (3) Several Member States have been undergoing and continue to undergo adjustment processes to correct macroeconomic imbalances accumulated in the past and many Member States are facing the challenge of low potential growth. The Union has identified the implementation of structural reforms as being among its policy priorities to set the recovery on a sustainable path, unlock the growth potential to strengthen the adjustment capacity, and support the process of convergence.
- (4) Reforms are by their very nature complex processes that require a complete chain of highly specialised knowledge and skills, as well as a long-term vision. Addressing structural reforms in a variety of public policy areas is challenging since their impact often takes time to materialise. Therefore, timely and efficient design and implementation is crucial, be it for crisis-struck or structurally weak economies. In that context, the provision of support by the Union in the form of technical assistance has been important in supporting the economic adjustment of Greece and Cyprus in the last few years. Ownership of structural reforms on the ground is essential for their successful implementation.
- (5) Member States can benefit from support in addressing challenges as regards the design and implementation of growth-sustaining structural reforms in line with the Union's economic and social goals. Those challenges could be dependent on various factors, such as limited administrative and institutional capacity, as well as inadequate application and implementation of Union law.
- (6) The Union has considerable experience in providing specific support to national administrations and other authorities of Member States as regards capacity building and similar actions in certain sectors (e.g. taxation, customs and support to small and medium-sized enterprises) and in relation to the implementation of cohesion policy. The experience gained by the Union in assisting national authorities in carrying out reforms should be used in order to enhance the capacity of the Union to provide support to Member States. Comprehensive and integrated action is indeed necessary in order to provide support to those Member States that are undertaking growth-enhancing reforms and request assistance from the Union in that respect.
- (7) The European Court of Auditors' Special Report (19/2015) entitled 'More attention to results needed to improve the delivery of technical assistance to Greece' includes useful recommendations with respect to the provision of

technical assistance by the Commission to Member States. Those recommendations are to be taken into account in the implementation of the support under this Regulation.

- (8) Against that background, it is necessary to establish a Structural Reform Support Programme ('the Programme') with the objective of strengthening the capacity of Member States to prepare and implement growth-enhancing administrative and structural reforms, including through assistance for the efficient and effective use of the Union funds. The Programme is intended to contribute to the achievement of common goals of supporting economic recovery, cohesion and job creation, boosting Europe's competitiveness and productivity, and stimulating investment in the real economy. That would also allow for a better response to the economic and social challenges of achieving a high level of social welfare as well as high-quality health and education services, and of combating poverty and social exclusion.
- (9) Support under the Programme should be provided by the Commission, upon request by a Member State, in areas related to cohesion, competitiveness, productivity, innovation, smart, sustainable and inclusive growth, jobs and investment, such as budget and taxation, public service, institutional and administrative reforms, justice systems, the fight against fraud, corruption, money laundering and tax evasion, business environment, private sector development, competition, public procurement, public participation in enterprises, privatisation processes, access to finance, financial sector policies, trade, sustainable development, education and training, labour policies, public health, asylum, migration policies, agriculture, rural development and fisheries.
- (10) Member States should be able to request support from the Commission under the Programme in relation to the implementation of reforms in the context of economic governance processes, in particular of country-specific recommendations in the context of the European Semester, to actions related to the implementation of Union law, as well as in relation to the implementation of economic adjustment programmes. They should also be able to request support in relation to reforms undertaken at their own initiative, in order to achieve cohesion, investment, sustainable growth, job creation and competitiveness. The Commission could provide guidance on the main elements of the request for support.
- (11) Further to a dialogue with the requesting Member State, including in the context of the European Semester, the Commission should analyse the request, taking into account the principles of transparency, equal treatment and sound financial management, and determine the support to be provided based on urgency, breadth and depth of the problems as identified, support needs in respect of the policy areas envisaged, analysis of socioeconomic indicators, and the general administrative capacity of the Member State. Based on that analysis and taking

into account the existing actions and activities financed by Union funds or Union programmes, the Commission should come to an agreement with the Member State concerned on the priority areas, the objectives, an indicative timeline, the scope of the support measures to be provided and the estimated global financial contribution for such support, to be set out in a cooperation and support plan.

- (12) For the purposes, inter alia, of transparency, the Commission should, under the conditions set out in this Regulation, provide the cooperation and support plans to the European Parliament and to the Council.
- (13) The Commission should be able, with the consent of the Member State wishing to receive support, to organise the provision of support in cooperation with European and international organisations or other Member States which have agreed to act as reform partners. The Member State wishing to receive support should be able, for a specific area or areas of support, to enter into a partnership with one or more Member States as reform partners to help formulate strategy, reform roadmaps, design high-quality assistance or oversee the implementation of strategy and projects. While the responsibility for the reforms lies with the Member State wishing to receive support, the reform partners or other Member States, or both, which provide support, should be able to contribute to the successful implementation of the Programme.
- (14) The Commission Communications of 19 October 2010 entitled ‘The EU Budget Review’ and of 29 June 2011 entitled ‘A budget for Europe 2020’ underline the importance of focusing funding on activities and measures which have clear European added value, i.e. where the Union intervention can bring additional value compared to action of Member States alone. Against that background, the support actions and activities carried out under the Programme should ensure complementarity and synergy with other programmes and policies at regional, national, Union and international level, as appropriate. The actions and activities under the Programme should allow for the development and implementation of solutions which address, at the appropriate level, national challenges that have an impact on cross-border or Union-wide challenges and which could also contribute to social, economic and territorial cohesion. In addition, the actions and activities under the Programme should contribute to achieving a consistent and coherent implementation of Union law. Furthermore, they should also contribute to further developing trust and promoting cooperation with the Commission and among Member States. Moreover, the Union is in a better position than Member States to provide a platform for the provision and sharing of good practices from peers as well as for the mobilisation of expertise.
- (15) It is necessary to establish a financial envelope for the Programme to cover a period aligned with the duration of the multiannual financial framework laid

down in Council Regulation (EU, Euratom) No 1311/2013 ⁽⁴⁾.

- (16) The financial envelope of the Programme should consist of financial resources deducted from allocations for technical assistance at the initiative of the Commission under Regulations (EU) No 1303/2013 ⁽⁵⁾ and (EU) No 1305/2013 ⁽⁶⁾ of the European Parliament and of the Council. In order to allow such deduction for this particular programme, and without prejudice to any future proposals, it is necessary to amend those Regulations.
- (17) This Regulation lays down a financial envelope for the entire duration of the Programme which is to constitute the prime reference amount, within the meaning of Point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management⁽⁷⁾, for the European Parliament and the Council during the annual budgetary procedure. The financing of the Programme through the transfer of allocations from technical assistance at the initiative of the Commission under Regulations (EU) No 1303/2013 and (EU) No 1305/2013 should only be considered a one-off solution that should not constitute a precedent as regards the funding of future initiatives.
- (18) Member States that request support should have the possibility to contribute, on a voluntary basis, to the financial envelope of the Programme with additional funds. Currently, Regulation (EU) No 1303/2013 limits the possibility of a transfer of resources dedicated to technical assistance at the initiative of a Member State to those Member States which face temporary budgetary difficulties. Regulation (EU) No 1303/2013 should therefore be amended in order to allow all Member States to participate financially in the Programme. The resources transferred to the Union budget should be used for supporting actions contributing to smart, sustainable and inclusive growth in the Member States concerned.
- (19) This Regulation should be implemented in compliance with Regulation (EU,

⁴ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

⁵ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

⁶ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

⁷ OJ C 373, 20.12.2013, p. 1.

Euratom) No 966/2012 of the European Parliament and of the Council⁸) ('the Financial Regulation'). To that effect, the Commission should adopt annual work programmes and inform the European Parliament and the Council thereof. The annual work programmes should set out the measures needed for their implementation, in line with the general and specific objectives of the Programme, the selection and award criteria for grants, as well as all other elements required.

- (20) In view of the importance of sustaining the efforts of Member States in pursuing and implementing structural, institutional and administrative reforms, it is necessary to allow a co-financing rate for grants of up to 100 % of the eligible costs in order to achieve the objectives of the Programme, whilst ensuring compliance with the principles of co-financing and no-profit.
- (21) In the event of unforeseen and duly justified grounds of urgency requiring immediate response, such as a serious disturbance in the economy or significant circumstances which seriously affect the economic or social conditions in a Member State going beyond its control, upon the request of a Member State wishing to receive support, the Commission should be able to adopt special measures, for a limited part of the annual work programme and for a limited period of time of up to six months, in accordance with objectives and actions eligible under the Programme to support the national authorities in addressing those urgent needs.
- (22) In order to ensure an efficient and coherent allocation of funds from the Union budget and respect for the principle of sound financial management, actions under the Programme should complement and be additional to ongoing Union programmes, whilst avoiding double funding for the same expenditure. In particular, the Commission and the Member State concerned, in accordance with their respective responsibilities, should ensure at Union and Member State levels, at all stages of the process, effective coordination in order to ensure consistency, complementarity and synergy among sources of funding that support actions in the relevant Member States with close links to the Programme, specifically with measures being financed from the Union funds and Union programmes in the Member States. The Commission should make its best efforts to ensure complementarity and synergies with support that is provided by relevant international organisations.
- (23) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, unduly paid or

⁸ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

incorrectly used and, where appropriate, administrative and financial penalties.

- (24) To facilitate the evaluation of the Programme, a proper transparent framework for monitoring the implementation of the actions and the results achieved by the Programme should be put in place from the start. The Commission should provide the European Parliament and the Council with an annual monitoring report on the implementation of the Programme, including information on requests for support submitted by Member States, on analyses of the application of the criteria for assessing the requests for support, on cooperation and support plans, on participation of reform partners, and on special measures adopted. An independent mid-term evaluation, looking at the achievement of the objectives of the Programme, the efficiency of the use of its resources and its added value at the European level, should be carried out. An independent ex-post evaluation should, in addition, deal with the long-term impact and the sustainability effects of the Programme. Those evaluations should be based on the indicators that measure the effects of the Programme.
- (25) In order to adapt the list of indicators measuring the achievement of the objectives of the Programme, in the light of experience during the implementation of the Programme, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the amendment of that list. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁹). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (26) In order to ensure uniform conditions for the implementation of this Regulation as regards the adoption of the annual work programmes, implementing powers should be conferred on the Commission.
- (27) Since the objective of this Regulation, namely to contribute to the institutional, administrative and structural reforms in Member States by providing support to national authorities, as defined in this Regulation, for measures aimed at reforming institutions, governance structures or public administration and economic and social sectors, including through assistance for the efficient, transparent and effective use of the Union funds, cannot be sufficiently achieved by the Member States, but can rather, by reasons of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on

⁹ OJ L 123, 12.5.2016, p. 1.

European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective, since the scope of the support is to be mutually agreed with the Member State concerned.

(28) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1

Establishment and duration of the Programme

This Regulation establishes the Structural Reform Support Programme ('the Programme') for the period from 20 May 2017 to 31 December 2020.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'beneficiary Member State' means a Member State that receives support from the Union under the Programme;
- (2) 'Union funds' means the European Structural and Investment Funds referred to in Article 1 of Regulation (EU) No 1303/2013, the Fund for the European Aid to the Most Deprived, established by Regulation (EU) No 223/2014 of the European Parliament and of the Council¹⁰, the Asylum, Migration and Integration Fund established by Regulation (EU) No 516/2014 of the European Parliament and of the Council¹¹, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management established as part of the Internal Security Fund, by Regulation (EU) No 513/2014 of the European Parliament and of the Council¹², and the

¹⁰ Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014, on the Fund for European Aid to the Most Deprived (OJ L 72, 12.3.2014, p. 1).

¹¹ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p. 168).

¹² Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and

instrument for financial support for external borders and visa established, as part of the Internal Security Fund, by Regulation (EU) No 515/2014 of the European Parliament and of the Council⁽¹³⁾;

- (3) ‘national authority’ means one or more national authorities, including authorities at regional and local levels, cooperating in a spirit of partnership in accordance with the Member States’ institutional and legal framework;
- (4) ‘international organisation’ means an international public-sector organisation set up by an international agreement, as well as specialised agencies set up by such an organisation, within the meaning of point (c)(ii) of Article 58(1) of the Financial Regulation; organisations assimilated with an international organisation are considered to be international organisations in line with the Financial Regulation;
- (5) ‘European organisations’ means the European Investment Bank and the European Investment Fund, as referred to in point (c)(iii) of Article 58(1) of the Financial Regulation.

Article 3

European added value

1. The Programme shall finance actions and activities with European added value. To that effect, the Commission shall ensure that actions and activities selected for funding are likely to produce results which, in accordance with the principle of subsidiarity, have European added value, and shall monitor whether European added value is actually achieved.

2. Actions and activities of the Programme shall ensure European added value in particular through:

- (a) the development and implementation of solutions that address local, regional or national challenges that have an impact on cross-border or Union-wide challenges, and which may also contribute to social, economic and territorial cohesion;
- (b) their complementarity and synergy with other Union programmes and policies at regional, national, Union and international level, as appropriate;

combating crime, and crisis management and repealing Council Decision 2007/125/JHA (OJ L 150, 20.5.2014, p. 93).

¹³ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

- (c) their contribution to the consistent and coherent implementation of Union law and policies, as well as the promotion of European values, including solidarity;
- (d) their contribution to the sharing of good practices, also with a view to increasing the visibility of the reform programmes, and to building a Union-wide platform and network of expertise;
- (e) the promotion of mutual trust between beneficiary Member States and the Commission and of cooperation among Member States.

Article 4

General objective

The general objective of the Programme shall be to contribute to institutional, administrative and growth-sustaining structural reforms in the Member States by providing support to national authorities for measures aimed at reforming and strengthening institutions, governance, public administration, and economic and social sectors in response to economic and social challenges, with a view to enhancing cohesion, competitiveness, productivity, sustainable growth, job creation, and investment, in particular in the context of economic governance processes, including through assistance for the efficient, effective and transparent use of the Union funds.

Article 5

Specific objectives and scope of the Programme

1. To achieve the general objective set out in Article 4, the Programme shall have the following specific objectives to be pursued in close cooperation with beneficiary Member States:

- (a) to support the initiatives of national authorities to design their reforms according to their priorities, taking into account initial conditions and expected socioeconomic impacts;
- (b) to support the national authorities in enhancing their capacity to formulate, develop and implement reform policies and strategies and in pursuing an integrated approach ensuring consistency between goals and means across sectors;
- (c) to support the efforts of national authorities to define and implement appropriate processes and methodologies by taking into account good practices of and lessons learned by other countries in addressing similar situations;

- (d) to assist the national authorities in enhancing the efficiency and effectiveness of human-resource management, inter alia, by strengthening professional knowledge and skills and setting out clear responsibilities.
2. The specific objectives set out in paragraph 1 shall refer to policy areas related to cohesion, competitiveness, productivity, innovation, smart, sustainable, and inclusive growth, jobs and investment, in particular to one or more of the following:
- (a) public financial and asset management, budget process, debt management and revenue administration;
 - (b) institutional reform and efficient and service-oriented functioning of public administration, including, where appropriate, through the simplification of rules, effective rule of law, reform of the justice systems and reinforcement of the fight against fraud, corruption and money laundering;
 - (c) business environment (including for SMEs), re-industrialisation, private sector development, investment, public participation in enterprises, privatisation processes, trade and foreign direct investment, competition and public procurement, sustainable sectoral development and support for innovation and digitalisation;
 - (d) education and training; labour market policies, including social dialogue, for the creation of jobs; the fight against poverty; the promotion of social inclusion; social security and social welfare systems; public health and healthcare systems; as well as cohesion, asylum, migration and border policies;
 - (e) policies for implementing climate action, promoting energy efficiency and achieving energy diversification, as well as for the agricultural sector, fisheries and the sustainable development of rural areas;
 - (f) financial sector policies, including the promotion of financial literacy, financial stability, access to finance and lending to the real economy; the production, provision and quality monitoring of data and statistics; and policies aimed at combating tax evasion.

Article 6

Eligible actions

With a view to pursuing the objectives set out in Articles 4 and 5, the Programme shall finance in particular the following types of action:

- (a) expertise related to policy advice, policy change, formulation of strategies and reform roadmaps, as well as to legislative, institutional, structural and administrative reforms;

- (b) the provision of experts, including resident experts, for a short or long period, to perform tasks in specific domains or to carry out operational activities, where necessary with interpretation, translation and cooperation support, administrative assistance and infrastructure and equipment facilities;
- (c) institutional, administrative or sectoral capacity building and related supporting actions at all governance levels, also contributing to the empowerment of civil society, as appropriate, in particular: (i) seminars, conferences and workshops; (ii) working visits to relevant Member States or third countries to enable officials to acquire or increase their expertise or knowledge in relevant matters; and (iii) training actions and the development of online or other training modules to support the necessary professional skills and knowledge relating to the relevant reforms;
- (d) collection of data and statistics, development of common methodologies and, where appropriate, indicators or benchmarks;
- (e) organisation of local operational support in areas such as asylum, migration and border control;
- (f) IT capacity building: expertise related to development, maintenance, operation and quality control of the IT infrastructure and applications needed to implement the relevant reforms, as well as expertise related to programmes geared towards the digitalisation of public services;
- (g) studies, research, analyses and surveys, evaluations and impact assessments, and the development and publication of guides, reports and educational material;
- (h) communication projects for learning, cooperation, awareness raising, dissemination activities and the exchange of good practices; organisation of awareness-raising and information campaigns, media campaigns and events, including corporate communication and communication, where appropriate, through social networks;
- (i) compilation and publication of materials to disseminate information as well as the results of the Programme, including through the development, operation and maintenance of systems and tools using information and communication technologies;
- (j) any other relevant activity in support of the general and specific objectives set out in Articles 4 and 5.

Article 7

Request for support

1. A Member State wishing to receive support under the Programme shall submit a request for support to the Commission, identifying the policy areas and the priorities for support within the scope of the Programme as set out in Article 5(2). That request shall be submitted by 31 October of a calendar year. The Commission may provide guidance on the main elements to be included in the request for support.

2. Taking into account the principles of transparency, equal treatment and sound financial management, further to a dialogue with the Member State, including in the context of the European Semester, the Commission shall analyse the request for support referred to in paragraph 1 based on the urgency, breadth and depth of the problems identified, support needs in respect of the policy areas concerned, analysis of socioeconomic indicators and general administrative capacity of the Member State.

Based on that analysis and taking into account the existing actions and measures financed by Union funds or other Union programmes, the Commission shall come to an agreement with the Member State concerned on the priority areas for support, the objectives, an indicative timeline, the scope of the support measures to be provided and the estimated global financial contribution for such support, to be set out in a cooperation and support plan.

3. The request for support may be submitted regarding the following:

- (a) the implementation of reforms by Member States, undertaken at their own initiative, in particular to achieve sustainable economic growth and job creation;
- (b) the implementation of economic adjustment programmes for Member States that receive Union financial assistance under existing instruments, in particular in accordance with Regulation (EU) No 472/2013 of the European Parliament and of the Council¹⁴ for the euro area Member States and Council Regulation (EC) No 332/2002¹⁵ for non-euro area Member States;
- (c) the implementation of growth-sustaining reforms in the context of economic governance processes, in particular of the country-specific recommendations issued in the context of the European Semester or of actions related to the implementation of Union law.

Article 8

Information to the European Parliament and the Council on the cooperation and support plans

¹⁴ Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.5.2013, p. 1).

¹⁵ Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

1. Subject to the consent of the beneficiary Member State, the Commission shall forward the cooperation and support plan to the European Parliament and the Council without undue delay. The beneficiary Member State may refuse to give such consent in the case of sensitive or confidential information, the disclosure of which would jeopardise public interests of the beneficiary Member State.
2. Nonetheless, the Commission shall provide the cooperation and support plan to the European Parliament and the Council in the following circumstances:
 - (a) as soon as the beneficiary Member State has redacted all sensitive or confidential information, the disclosure of which would jeopardise public interests of the beneficiary Member State;
 - (b) after a reasonable period of time, when the disclosure of relevant information would not adversely affect the implementation of the support measures under the Programme, and in any case no later than two months after the delivery of such measures under the cooperation and support plan.

Article 9

Organisation of support and reform partners

1. The Commission may, with the consent of the beneficiary Member State, organise the support under the Programme in cooperation with other Member States or European and international organisations.
2. The beneficiary Member State, in coordination with the Commission, may enter into partnership with one or more other Member States which shall act as reform partners in respect of specific areas of reform. A reform partner shall, in coordination with the Commission and on the basis of a mutual understanding with the beneficiary Member State and the Commission, help formulate strategy, reform roadmaps, design high-quality assistance or oversee implementation of strategy and projects.

Article 10

Financial envelope

1. The financial envelope for the implementation of the Programme is set at EUR 142 800 000 in current prices.
2. The financial allocation of the Programme may also cover expenses pertaining to preparatory, monitoring, control, audit and evaluation activities which are required for the management of the Programme and the achievement of its objectives, in particular studies, meetings of experts, information and communication actions, including corporate communication of the political priorities of the Union, in so far as they are

related to the general objectives of this Regulation, expenses linked to IT networks focusing on information processing and exchange, and all other technical and administrative assistance expenses incurred by the Commission for the management of the Programme.

3. The annual appropriations shall be authorised by the European Parliament and the Council within the limits of the multiannual financial framework.

Article 11

Other financial contributions to the budget of the Programme

1. In addition to the financial envelope set out in Article 10, the Programme may be financed through additional voluntary contributions from Member States.

2. The additional contributions referred to in paragraph 1 of this Article may consist of contributions from resources provided for technical assistance at the initiative of the Member States under Article 59 of Regulation (EU) No 1303/2013 and transferred pursuant to Article 25 of that Regulation.

3. The additional contributions referred to in paragraph 1 shall be used to support actions which contribute to delivering the Union strategy for smart, sustainable and inclusive growth. A contribution made by a beneficiary Member State in accordance with paragraph 2 shall be used exclusively in that Member State.

Article 12

No double funding

Actions financed under this Regulation may receive support from other Union programmes, instruments or funds under the Union's budget provided that such support does not cover the same cost items.

Article 13

Implementation of the Programme

1. The Commission shall implement the Programme in accordance with the Financial Regulation.

2. The measures of the Programme may be implemented either directly by the Commission or, indirectly, by entities and persons other than Member States in accordance with Article 60 of the Financial Regulation. In particular, Union financial support for actions provided for in Article 6 of this Regulation shall take the form of:

- (a) grants, including grants to the Member States' national authorities;
- (b) public procurement contracts;
- (c) reimbursement of costs incurred by external experts, including experts from the national, regional or local authorities of Member States providing or receiving support;
- (d) contributions to trust funds set up by international organisations; and
- (e) actions carried out in indirect management.

3. Grants may be awarded to the national authorities of Member States, the European Investment Bank group, international organisations, public or private bodies and entities legally established in any of the following:

- (a) Member States; and
- (b) European Free Trade Association countries which are party to the European Economic Area Agreement, in accordance with the conditions laid down therein. The co-financing rate for grants shall be up to 100 % of the eligible costs, without prejudice to the principles of co-financing and no-profit.

4. Support may also be provided by individual experts, who may be invited to contribute to selected activities organised under the Programme wherever that is necessary for the achievement of the specific objectives set out in Article 5.

5. In order to implement the Programme, the Commission shall adopt, by way of implementing acts, annual work programmes and inform the European Parliament and the Council thereof. The annual work programmes shall set out the measures needed for their implementation, in line with the general and specific objectives referred to in Articles 4 and 5 of this Regulation, the selection and award criteria for grants, and all the elements required by the Financial Regulation.

6. To ensure timely availability of resources, a limited part of the annual work programme shall be envisaged for special measures in the event of unforeseen and duly justified grounds of urgency requiring an immediate response, including a serious disturbance in the economy or significant circumstances seriously affecting the economic or social conditions in a Member State going beyond its control. The Commission may, on request by a Member State wishing to receive support, adopt

special measures in accordance with the objectives and actions defined in this Regulation to support the national authorities in addressing urgent needs. Such special measures are interim in nature, and shall not be subject to the conditions set out in Article 7(1) and (2). The special measures shall end within six months and may be replaced by support in accordance with the conditions set out in Article 7.

Article 14

Coordination and complementarity

1. The Commission and the beneficiary Member States, within their respective responsibilities, shall foster synergies and ensure effective coordination between the Programme and other Union programmes and instruments, and in particular with measures financed by the Union funds. To that end, they shall:

- (a) ensure complementarity and synergy between different instruments at Union, national and, where appropriate, regional level, in particular in relation to measures financed by Union funds, both in the planning phase and during implementation;
- (b) optimise mechanisms for coordination to avoid duplication of effort; and
- (c) ensure close cooperation between those responsible for implementation at Union, national and, where appropriate, regional level to deliver coherent and streamlined support actions.

2. The Commission shall make its best efforts to ensure complementarity and synergies with support provided by other relevant international organisations.

3. The relevant annual work programmes may serve as the coordination framework, where support is envisaged in any of the areas referred to in Article 5(2).

Article 15

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts unduly paid or incorrectly used and, where appropriate, by effective, proportionate, administrative and financial penalties.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors which have received Union funding under the Programme. The European Anti-fraud Office (OLAF) may carry out on-the-spot checks

and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Council Regulation (Euratom, EC) No 2185/96¹⁶) with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract concerning Union funding.

Without prejudice to the first and second subparagraphs, cooperation agreements with international organisations and grant agreements and grant decisions and contracts resulting from the implementation of this Regulation shall expressly empower the Commission, the Court of Auditors and OLAF to conduct such audits and on-the-spot checks and inspections.

Article 16

Monitoring and evaluation

1. The Commission shall monitor the implementation of the actions financed by the Programme and measure the achievement of the general objective set out in Article 4 and the specific objectives referred to in Article 5(1) in accordance with indicators set out in the Annex. The Commission is empowered to adopt delegated acts in accordance with Article 17 concerning amendments to the list of indicators set out in the Annex.
2. The Commission shall provide the European Parliament and the Council with an annual monitoring report on the implementation of the Programme. That report shall include information on:
 - (a) requests for support submitted by Member States, referred to in Article 7(1);
 - (b) analyses of the application of the criteria, referred to in Article 7(2), used to analyse the requests for support submitted by Member States;
 - (c) cooperation and support plans, referred to in Article 7(2);
 - (d) participation of reform partners, referred to in Article 9; and
 - (e) special measures adopted, referred to in Article 13(6). The Commission shall also provide the European Parliament and the Council with an independent mid-term evaluation report by mid-2019 at the latest and an independent *ex post* evaluation report by 31 December 2021.

¹⁶ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

3. The mid-term evaluation report shall include information on the achievement of the Programme's objectives, the efficiency of the use of resources and the Programme's European added value. It shall also address the continued relevance of all objectives and actions. The ex post evaluation report shall assess the Programme as a whole and include information on its longer-term impact.

Article 17

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in the second subparagraph of Article 16(1) shall be conferred on the Commission for a period from 20 May 2017 to 31 December 2020.

3. The delegation of power referred to in the second subparagraph of Article 16(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to the second subparagraph of Article 16(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 18

Amendments to Regulation (EU) No 1303/2013

Regulation (EU) No 1303/2013 is amended as follows:

(1) Article 25 is amended as follows:

(a) the title is replaced by the following:

‘Management of technical assistance for Member States’;

(b) paragraph 1 is replaced by the following:

‘1. On the request of a Member State pursuant to Article 11 of Regulation (EU) 2017/825 of the European Parliament and the Council (*), a part of the resources provided for under Article 59 of this Regulation and programmed in accordance with Fund-specific rules may, in agreement with the Commission, be transferred to technical assistance at the initiative of the Commission for implementation of measures in relation to the Member State concerned in accordance with point (l) of the third subparagraph of Article 58(1) of this Regulation through direct or indirect management.

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

‘A Member State shall request the transfer referred to in paragraph 1 for a calendar year by 31 January of the year in which a transfer is to be made. The request shall be accompanied by a proposal to amend the programme or programmes from which the transfer will be made. Corresponding amendments shall be made to the Partnership Agreement in accordance with Article 30(2) which shall set out the total amount transferred each year to the Commission.’;

(d) the following paragraph is added:

‘4. Resources transferred by a Member State in accordance with paragraph 1 of this Article shall be subject to the decommitment rule set out in Article 136 of this Regulation and Article 38 of Regulation (EU) No 1306/2013.’;

(2) in the third subparagraph of Article 58(1), point (l) is replaced by the following:

‘(l) actions financed under Regulation (EU) 2017/825 in order to contribute to delivering the Union strategy for smart, sustainable and inclusive growth.’;

(3) in Article 91, paragraph 3 is replaced by the following:

‘3.0.35 % of the global resources after the deduction of the support to the CEF referred to in Article 92(6), and to the aid for the most deprived referred to in Article 92(7) shall be allocated to technical assistance at the initiative of the Commission, of which up to EUR 112 233 000 in current prices shall be allocated to the Structural Reform Support Programme established by Regulation (EU) 2017/825 for use within the scope and purpose of that programme.’

Article 19

Amendment to Regulation (EU) No 1305/2013

In Article 51 of Regulation (EU) No 1305/2013, the first subparagraph of paragraph 1 is replaced by the following:

‘In accordance with Article 6 of Regulation (EU) No 1306/2013 the EAFRD may use up to 0,25 % of its annual allocation to finance the tasks referred to in Article 58 of Regulation (EU) No 1303/2013, including the costs for setting up and operating the European network for rural development referred to in Article 52 of this Regulation and the EIP network referred to in Article 53 of this Regulation at the Commission's initiative and/or on its behalf, of which up to EUR 30 567 000 in current prices shall be allocated to the Structural Reform Support Programme established by Regulation (EU) 2017/825 of the European Parliament and of the Council (*) for use within the scope and purpose of that programme.

Article 20

Entry into force

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 17 May 2017.

For the European Parliament The President A. TAJANI

For the Council The President C. ABELA

TREATY ESTABLISHING THE EUROPEAN STABILITY MECHANISM⁽¹⁷⁾

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, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland

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

COMMITTED TO ensuring the financial stability of the euro area;

RECALLING the Conclusions of the European Council adopted on 25 March 2011 on the establishment of a European Stability Mechanism;

Whereas:

- (1) The European Council agreed on 17 December 2010 on the need for euro area Member States to establish a permanent stability mechanism. This European Stability Mechanism ("ESM") will assume the tasks currently fulfilled by the European Financial Stability Facility ("EFSF") and the European Financial Stabilisation Mechanism ("EFSM") in providing, where needed, financial assistance to euro area Member States.
- (2) On 25 March 2011, the European Council adopted Decision 2011/199/EU amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro adding the following paragraph to Article 136: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of

¹⁷ Available on http://www.esm.europa.eu/pdf/esm_treaty_en.pdf.

any required financial assistance under the mechanism will be made subject to strict conditionality".

- (3) With a view to increasing the effectiveness of the financial assistance and to prevent the risk of financial contagion, the Heads of State or Government of the Member States whose currency is the euro agreed on 21 July 2011 to "increase [the] flexibility [of the ESM] linked to appropriate conditionality".
- (4) Strict observance of the European Union framework, the integrated macro-economic surveillance, in particular the Stability and Growth Pact, the macroeconomic imbalances framework and the economic governance rules of the European Union, should remain the first line of defence against confidence crises affecting the stability of the euro area.
- (5) On 9 December 2011 the Heads of State or Government of the Member States whose currency is the euro agreed to move towards a stronger economic union including a new fiscal compact and strengthened economic policy coordination to be implemented through an international agreement, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union ("TSCG"). The TSCG will help develop a closer coordination within the euro area with a view to ensuring a lasting, sound and robust management of public finances and thus addresses one of the main sources of financial instability. This Treaty and the TSCG are complementary in fostering fiscal responsibility and solidarity within the economic and monetary union. It is acknowledged and agreed that the granting of financial assistance in the framework of new programmes under the ESM will be conditional, as of 1 March 2013, on the ratification of the TSCG by the ESM Member concerned and, upon expiration of the transposition period referred to in Article 3(2) TSCG on compliance with the requirements of that article.
- (6) Given the strong interrelation within the euro area, severe risks to the financial stability of Member States whose currency is the euro may put at risk the financial stability of the euro area as a whole. The ESM may therefore provide stability support on the basis of a strict conditionality, appropriate to the financial assistance instrument chosen if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. The initial maximum lending volume of the ESM is set at EUR 500 000 million, including the outstanding EFSF stability support. The adequacy of the consolidated ESM and EFSF maximum lending volume will, however, be reassessed prior to the entry into force of this Treaty. If appropriate, it will be increased by the Board of Governors of the ESM, in accordance with Article 10, upon entry into force of this Treaty.
- (7) All euro area Member States will become ESM Members. As a consequence of joining the euro area, a Member State of the European Union should become an ESM Member with full rights and obligations, in line with those of the Contracting Parties.

- (8) The ESM will cooperate very closely with the International Monetary Fund ("IMF") in providing stability support. The active participation of the IMF will be sought, both at technical and financial level. A euro area Member State requesting financial assistance from the ESM is expected to address, wherever possible, a similar request to the IMF.
- (9) Member States of the European Union whose currency is not the euro ("non euro area Member States") participating on an ad hoc basis alongside the ESM in a stability support operation for euro area Member States will be invited to participate, as observers, in the ESM meetings when this stability support and its monitoring will be discussed. They will have access to all information in a timely manner and be properly consulted.
- (10) On 20 June 2011, the representatives of the Governments of the Member States of the European Union authorised the Contracting Parties of this Treaty to request the European Commission and the European Central Bank ("ECB") to perform the tasks provided for in this Treaty.
- (11) In its statement of 28 November 2010, the Euro Group stated that standardised and identical Collective Action Clauses ("CACs") will be included, in such a way as to preserve market liquidity, in the terms and conditions of all new euro area government bonds. As requested by the European Council on 25 March 2011, the detailed legal arrangements for including CACs in euro area government securities were finalised by the Economic and Financial Committee.
- (12) In accordance with IMF practice, in exceptional cases an adequate and proportionate form of private sector involvement shall be considered in cases where stability support is provided accompanied by conditionality in the form of a macro-economic adjustment programme.
- (13) Like the IMF, the ESM will provide stability support to an ESM Member when its regular access to market financing is impaired or is at risk of being impaired. Reflecting this, Heads of State or Government have stated that the ESM loans will enjoy preferred creditor status in a similar fashion to those of the IMF, while accepting preferred creditor status of the IMF over the ESM. This status will be effective as of the date of entry into force of this Treaty. In the event of ESM financial assistance in the form of ESM loans following a European financial assistance programme existing at the time of the signature of this Treaty, the ESM will enjoy the same seniority as all other loans and obligations of the beneficiary ESM Member, with the exception of the IMF loans.
- (14) The euro area Member States will support equivalent creditor status of the ESM and that of other States lending bilaterally in coordination with the ESM.

- (15) ESM lending conditions for Member States subject to a macroeconomic adjustment programme, including those referred to in Article 40 of this Treaty, shall cover the financing and operating costs of the ESM and should be consistent with the lending conditions of the Financial Assistance Facility Agreements signed between the EFSF, Ireland and the Central Bank of Ireland on the one hand and the EFSF, the Portuguese Republic and Banco de Portugal on the other.
- (16) Disputes concerning the interpretation and application of this Treaty arising between the Contracting Parties or between the Contracting Parties and the ESM should be submitted to the jurisdiction of the Court of Justice of the European Union, in accordance with Article 273 of the Treaty on the Functioning of the European Union ("TFEU").
- (17) Post-programme surveillance will be carried out by the European Commission and by the Council of the European Union within the framework laid down in Articles 121 and 136 TFEU,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

MEMBERSHIP AND PURPOSE

Article 1

Establishment and members

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

Article 2

New members

1. Membership in the ESM shall be open to the other Member States of the European Union as from the entry into force of the decision of the Council of the European Union taken in accordance with Article 140(2) TFEU to abrogate their derogation from adopting the euro. 2. New ESM Members shall be admitted on the same terms and conditions as existing ESM Members, in accordance with Article 44.
3. A new member acceding to the ESM after its establishment shall receive shares in the ESM in exchange for its capital contribution, calculated in accordance with the contribution key provided for in Article 11.

Article 3

Purpose

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

CHAPTER 2 GOVERNANCE

Article 4

Structure and voting rules

1. The ESM shall have a Board of Governors and a Board of Directors, as well as a Managing Director and other dedicated staff as may be considered necessary.
2. The decisions of the Board of Governors and the Board of Directors shall be taken by mutual agreement, qualified majority or simple majority as specified in this Treaty. In respect of all decisions, a quorum of $\frac{2}{3}$ of the members with voting rights representing at least $\frac{2}{3}$ of the voting rights must be present.
3. The adoption of a decision by mutual agreement requires the unanimity of the members participating in the vote. Abstentions do not prevent the adoption of a decision by mutual agreement.
4. By way of derogation from paragraph 3, an emergency voting procedure shall be used where the Commission and the ECB both conclude that a failure to urgently adopt a decision to grant or implement financial assistance, as defined in Articles 13 to 18, would threaten the economic and financial sustainability of the euro area. The adoption of a decision by mutual agreement by the Board of Governors referred to in points (f) and (g) of Article 5(6) and the Board of Directors under that emergency procedure requires a qualified majority of 85% of the votes cast. Where the emergency procedure referred to in the first subparagraph is used, a transfer from the reserve fund and/or the paid-in capital to an emergency reserve fund is made in order to constitute a dedicated buffer to cover the risks arising from the financial support granted under that emergency procedure. The Board of Governors may decide to cancel the emergency reserve fund and transfer its content back to the reserve fund and/or paid-in capital.

5. The adoption of a decision by qualified majority requires 80% of the votes cast.
6. The adoption of a decision by simple majority requires a majority of the votes cast.
7. The voting rights of each ESM Member, as exercised by its appointee or by the latter's representative on the Board of Governors or Board of Directors, shall be equal to the number of shares allocated to it in the authorised capital stock of the ESM as set out in Annex II.
8. If any ESM Member fails to pay any part of the amount due in respect of its obligations in relation to paid-in shares or calls of capital under Articles 8, 9 and 10, or in relation to the reimbursement of the financial assistance under Article 16 or 17, such ESM Member shall be unable, for so long as such failure continues, to exercise any of its voting rights. The voting thresholds shall be recalculated accordingly.

Article 5

Board of Governors

1. Each ESM Member shall appoint a Governor and an alternate Governor. Such appointments are revocable at any time. The Governor shall be a member of the government of that ESM Member who has responsibility for finance. The alternate Governor shall have full power to act on behalf of the Governor when the latter is not present.
2. The Board of Governors shall decide either to be chaired by the President of the Euro Group, as referred to in Protocol (No 14) on the Euro Group annexed to the Treaty on the European Union and to the TFEU or to elect a Chairperson and a Vice-Chairperson from among its members for a term of two years. The Chairperson and the Vice-Chairperson may be re-elected. A new election shall be organised without delay if the incumbent no longer holds the function needed for being designated Governor.
3. The Member of the European Commission in charge of economic and monetary affairs and the President of the ECB, as well as the President of the Euro Group (if he or she is not the Chairperson or a Governor) may participate in the meetings of the Board of Governors as observers.
4. Representatives of non-euro area Member States participating on an *ad hoc* basis alongside the ESM in a stability support operation for a euro area Member State shall also be invited to participate, as observers, in the meetings of the Board of Governors when this stability support and its monitoring will be discussed.
5. Other persons, including representatives of institutions or organisations, such as the IMF, may be invited by the Board of Governors to attend meetings as observers on an *ad hoc* basis.

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

- (a) to cancel the emergency reserve fund and transfer its content back to the reserve fund and/or paid-in capital, in accordance with Article 4(4);
- (b) to issue new shares on terms other than at par, in accordance with Article 8(2);
- (c) to make the capital calls, in accordance with Article 9(1);
- (d) to change the authorised capital stock and adapt the maximum lending volume of the ESM, in accordance with Article 10(1);
- (e) to take into account a possible update of the key for the subscription of the ECB capital, in accordance with Article 11(3), and the changes to be made to Annex I in accordance with Article 11(6);
- (f) to provide stability support by the ESM, including the economic policy conditionality as stated in the memorandum of understanding referred to in Article 13(3), and to establish the choice of instruments and the financial terms and conditions, in accordance with Articles 12 to 18;
- (g) to give a mandate to the European Commission to negotiate, in liaison with the ECB, the economic policy conditionality attached to each financial assistance, in accordance with Article 13(3);
- (h) to change the pricing policy and pricing guideline for financial assistance, in accordance with Article 20;
- (i) to change the list of financial assistance instruments that may be used by the ESM, in accordance with Article 19;
- (j) to establish the modalities of the transfer of EFSF support to the ESM, in accordance with Article 40;
- (k) to approve the application for membership of the ESM by new members, referred to in Article 44;
- (l) to make adaptations to this Treaty as a direct consequence of the accession of new members, including changes to be made to the distribution of capital among ESM Members and the calculation of such a distribution as a direct consequence of the accession of a new member to the ESM, in accordance with Article 44; and
- (m) to delegate to the Board of Directors the tasks listed in this Article.

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

- (a) to set out the detailed technical terms of accession of a new member to the ESM, in accordance with Article 44;
- (b) whether to be chaired by the President of the Euro Group or to elect, by qualified majority, the Chairperson and Vice-Chairperson of the Board of Governors, in accordance with paragraph 2;
- (c) to set out by-laws of the ESM and the rules of procedure applicable to the Board of Governors and Board of Directors (including the right to establish committees and subsidiary bodies), in accordance with paragraph 9;
- (d) to determine the list of activities incompatible with the duties of a Director or an alternate Director, in accordance with Article 6(8);
- (e) to appoint and to end the term of office of the Managing Director, in accordance with Article 7;
- (f) to establish other funds, in accordance with Article 24;
- (g) on the actions to be taken for recovering a debt from an ESM Member, in accordance with Article 25(2) and (3);
- (h) to approve the annual accounts of the ESM, in accordance with Article 27(1);
- (i) to appoint the members of the Board of Auditors, in accordance with Article 30(1);
- (j) to approve the external auditors, in accordance with Article 29;
- (k) to waive the immunity of the Chairperson of the Board of Governors, a Governor, alternate Governor, Director, alternate Director or the Managing Director, in accordance with Article 35(2);
- (l) to determine the taxation regime applicable to the ESM staff, in accordance with Article 36(5);
- (m) on a dispute, in accordance with Article 37(2); and
- (n) any other necessary decision not explicitly provided for by this Treaty.

8. The Chairperson shall convene and preside over the meetings of the Board of Governors.

The Vice-Chairperson shall preside over these meetings when the Chairperson is unable to participate.

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

Article 6

Board of Directors

1. Each Governor shall appoint one Director and one alternate Director from among people of high competence in economic and financial matters. Such appointments shall be revocable at any time. The alternate Directors shall have full power to act on behalf of the Director when the latter is not present.
2. The Member of the European Commission in charge of economic and monetary affairs and the President of the ECB may appoint one observer each.
3. Representatives of non-euro area Member States participating on an *ad hoc* basis alongside the ESM in a financial assistance operation for a euro area Member State shall also be invited to participate, as observers, in the meetings of the Board of Directors when this financial assistance and its monitoring will be discussed.
4. Other persons, including representatives of institutions or organisations, may be invited by the Board of Governors to attend meetings as observers on an *ad hoc* basis.
5. The Board of Directors shall take decisions by qualified majority, unless otherwise stated in this Treaty. Decisions to be taken on the basis of powers delegated by the Board of Governors shall be adopted in accordance with the relevant voting rules set in Article 5(6) and (7).
6. Without prejudice to the powers of the Board of Governors as set out in Article 5, the Board of Directors shall ensure that the ESM is run in accordance with this Treaty and the by-laws of the ESM adopted by the Board of Governors. It shall take decisions as provided for in this Treaty or which are delegated to it by the Board of Governors.
7. Any vacancy in the Board of Directors shall be immediately filled in accordance with paragraph 1.
8. The Board of Governors shall lay down what activities are incompatible with the duties of a Director or an alternate Director, the by-laws of the ESM and rules of procedure of the Board of Directors.

Article 7

Managing Director

1. The Managing Director shall be appointed by the Board of Governors from among candidates having the nationality of an ESM Member, relevant international experience and a high level of competence in economic and financial matters. Whilst holding office, the Managing Director may not be a Governor or Director or an alternate of either.
2. The term of office of the Managing Director shall be five years. He or she may be re-appointed once. The Managing Director shall, however, cease to hold office when the Board of Governors so decides.
3. The Managing Director shall chair the meetings of the Board of Directors and shall participate in the meetings of the Board of Governors.
4. The Managing Director shall be chief of the staff of the ESM. He or she shall be responsible for organising, appointing and dismissing staff in accordance with staff rules to be adopted by the Board of Directors.
5. The Managing Director shall be the legal representative of the ESM and shall conduct, under the direction of the Board of Directors, the current business of the ESM.

CHAPTER 3

CAPITAL

Article 8

Authorised capital stock

1. The authorised capital stock shall be EUR 700 000 million. It shall be divided into seven million shares, having a nominal value of EUR 100 000 each, which shall be available for subscription according to the initial contribution key provided for in Article 11 and calculated in Annex I.
2. The authorised capital stock shall be divided into paid-in shares and callable shares. The initial total aggregate nominal value of paid-in shares shall be EUR 80 000 million. Shares of authorised capital stock initially subscribed shall be issued at par. Other shares shall be issued at par, unless the Board of Governors decides to issue them in special circumstances on other terms.
3. Shares of authorised capital stock shall not be encumbered or pledged in any manner whatsoever and they shall not be transferable, with the exception of transfers for the

purposes of implementing adjustments of the contribution key provided for in Article 11 to the extent necessary to ensure that the distribution of shares corresponds to the adjusted key.

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

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

Article 9

Capital calls

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

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

3. The Managing Director shall call authorised unpaid capital in a timely manner if needed to avoid the ESM being in default of any scheduled or other payment obligation due to ESM creditors. The Managing Director shall inform the Board of Directors and the Board of Governors of any such call. When a potential shortfall in ESM funds is detected, the Managing Director shall make such capital call(s) as soon as possible with a view to ensuring that the ESM shall have sufficient funds to meet payments due to creditors in full on their due date. ESM Members hereby irrevocably and unconditionally undertake to pay on demand any capital call made on them by the Managing Director pursuant to this paragraph, such demand to be paid within seven days of receipt.

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

Article 10

Changes in authorised capital stock

1. The Board of Governors shall review regularly and at least every five years the maximum lending volume and the adequacy of the authorised capital stock of the ESM. It may decide to change the authorised capital stock and amend Article 8 and Annex II accordingly. Such decision shall enter into force after the ESM Members have notified the Depositary of the completion of their applicable national procedures. The new shares shall be allocated to the ESM Members according to the contribution key provided for in Article 11 and in Annex I.
2. The Board of Directors shall adopt the detailed terms and conditions which shall apply to all or any capital changes made under paragraph 1.
3. Upon a Member State of the European Union becoming a new ESM Member, the authorised capital stock of the ESM shall be automatically increased by multiplying the respective amounts then prevailing by the ratio, within the adjusted contribution key provided for in Article 11, between the weighting of the new ESM Member and the weighting of the existing ESM Members.

Article 11

Contribution key

1. The contribution key for subscribing to ESM authorised capital stock shall, subject to paragraphs 2 and 3, be based on the key for subscription, by the national central banks of ESM Members, of the ECB's capital pursuant to Article 29 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (the "ESCB Statute") annexed to the Treaty on European Union and to the TFEU.
2. The contribution key for the subscription of the ESM authorised capital stock is specified in Annex I.
3. The contribution key for the subscription of the ESM authorised capital stock shall be adjusted when:
 - (a) a Member State of the European Union becomes a new ESM Member and the ESM's authorised capital stock automatically increases, as specified in Article 10(3); or
 - (b) the twelve year temporary correction applicable to an ESM Member established in accordance with Article 42 ends.
4. The Board of Governors may decide to take into account possible updates to the key for the subscription of the ECB's capital referred to in paragraph 1 when the

contribution key is adjusted in accordance with paragraph 3 or when there is a change in the authorised capital stock, as specified in Article 10(1).

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

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

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

CHAPTER 4 OPERATIONS

Article 12

Principles

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

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

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

Article 13

Procedure for granting stability support

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

- (a) to assess the existence of a risk to the financial stability of the euro area as a whole or of its Member States, unless the ECB has already submitted an analysis under Article 18(2);
- (b) to assess whether public debt is sustainable. Wherever appropriate and possible, such an assessment is expected to be conducted together with the IMF;
- (c) to assess the actual or potential financing needs of the ESM Member concerned.

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

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

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

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

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

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

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

Article 14

ESM precautionary financial assistance

1. The Board of Governors may decide to grant precautionary financial assistance in the form of a precautionary conditioned credit line or in the form of an enhanced conditions credit line in accordance with Article 12(1).
2. The conditionality attached to the ESM precautionary financial assistance shall be detailed in the MoU, in accordance with Article 13(3).
3. The financial terms and conditions of the ESM precautionary financial assistance shall be specified in a precautionary financial assistance facility agreement, to be signed by the Managing Director.
4. The Board of Directors shall adopt the detailed guidelines on the modalities for implementing the ESM precautionary financial assistance.
5. The Board of Directors shall decide by mutual agreement on a proposal from the Managing Director and after having received a report from the European Commission in accordance with Article 13(7), whether the credit line should be maintained.
6. After the ESM Member has drawn funds for the first time (via a loan or a primary market purchase), the Board of Directors shall decide by mutual agreement on a proposal from the Managing Director and based on an assessment conducted by the European Commission, in liaison with the ECB, whether the credit line continues to be adequate or whether another form of financial assistance is needed.

Article 15

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

1. The Board of Governors may decide to grant financial assistance through loans to an ESM Member for the specific purpose of re-capitalising the financial institutions of that ESM Member.
2. The conditionality attached to financial assistance for the re-capitalisation of an ESM Member's financial institutions shall be detailed in the MoU, in accordance with Article 13(3).
3. Without prejudice to Articles 107 and 108 TFEU, the financial terms and conditions of financial assistance for the re-capitalisation of an ESM Member's financial institutions shall be specified in a financial assistance facility agreement, to be signed by the Managing Director.

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

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

Article 16

ESM loans

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

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

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

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

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

Article 17

Primary market support facility

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

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

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

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

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

Article 18

Secondary market support facility

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

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

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

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

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

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

Article 19

Review of the list of financial assistance instruments

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

Article 20

Pricing policy

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

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

Article 21

Borrowing operations

1. The ESM shall be empowered to borrow on the capital markets from banks, financial institutions or other persons or institutions for the performance of its purpose.
2. The modalities of the borrowing operations shall be determined by the Managing Director, in accordance with detailed guidelines to be adopted by the Board of Directors.
3. The ESM shall use appropriate risk management tools, which shall be reviewed regularly by the Board of Directors.

CHAPTER 5

FINANCIAL MANAGEMENT

Article 22

Investment policy

1. The Managing Director shall implement a prudent investment policy for the ESM, so as to ensure its highest creditworthiness, in accordance with guidelines to be adopted and reviewed regularly by the Board of Directors. The ESM shall be entitled to use part of the return on its investment portfolio to cover its operating and administrative costs.
2. The operations of the ESM shall comply with the principles of sound financial and risk management.

Article 23

Dividend policy

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

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

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

Article 24

Reserve and other funds

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

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

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

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

Article 25

Coverage of losses

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

- (a) firstly, against the reserve fund;
- (b) secondly, against the paid-in capital; and
- (c) lastly, against an appropriate amount of the authorised unpaid capital, which shall be called in accordance with Article 9(3).

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

ensuring that the ESM Member concerned settles its debt to the ESM within a reasonable period of time. The Board of Governors shall be entitled to require the payment of default interest on the overdue amount.

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

Article 26

Budget

The Board of Directors shall approve the ESM budget annually.

Article 27

Annual accounts

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

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

Article 28

Internal audit

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

Article 29

External audit

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

Article 30

Board of Auditors

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

2. The members of the Board of Auditors shall be independent. They shall neither seek nor take instructions from the ESM governing bodies, the ESM Members or any other public or private body.
3. The Board of Auditors shall draw up independent audits. It shall inspect the ESM accounts and verify that the operational accounts and balance sheet are in order. It shall have full access to any document of the ESM needed for the implementation of its tasks.
4. The Board of Auditors may inform the Board of Directors at any time of its findings. It shall, on an annual basis, draw up a report to be submitted to the Board of Governors.
5. The Board of Governors shall make the annual report accessible to the national parliaments and supreme audit institutions of the ESM Members and to the European Court of Auditors.
6. Any matter relating to this Article shall be detailed in the by-laws of the ESM.

CHAPTER 6 GENERAL PROVISIONS

Article 31

Location

1. The ESM shall have its seat and principal office in Luxembourg.
2. The ESM may establish a liaison office in Brussels.

Article 32

Legal status, privileges and immunities

1. To enable the ESM to fulfil its purpose, the legal status and the privileges and immunities set out in this Article shall be accorded to the ESM in the territory of each ESM Member. The ESM shall endeavour to obtain recognition of its legal status and of its privileges and immunities in other territories in which it performs functions or holds assets.
2. The ESM shall have full legal personality; it shall have full legal capacity to:
 - (a) acquire and dispose of movable and immovable property;
 - (b) contract;

- (c) be a party to legal proceedings; and
 - (d) enter into a headquarter agreement and/or protocols as necessary for ensuring that its legal status and its privileges and immunities are recognised and enforced.
3. The ESM, its property, funding and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that the ESM expressly waives its immunity for the purpose of any proceedings or by the terms of any contract, including the documentation of the funding instruments.
4. The property, funding and assets of the ESM shall, wherever located and by whomsoever held, be immune from search, requisition, confiscation, expropriation or any other form of seizure, taking or foreclosure by executive, judicial, administrative or legislative action.
5. The archives of the ESM and all documents belonging to the ESM or held by it, shall be inviolable.
6. The premises of the ESM shall be inviolable.
7. The official communications of the ESM shall be accorded by each ESM Member and by each state which has recognised the legal status and the privileges and immunities of the ESM, the same treatment as it accords to the official communications of an ESM Member.
8. To the extent necessary to carry out the activities provided for in this Treaty, all property, funding and assets of the ESM shall be free from restrictions, regulations, controls and moratoria of any nature.
9. The ESM shall be exempted from any requirement to be authorised or licensed as a credit institution, investment services provider or other authorised licensed or regulated entity under the laws of each ESM Member.

Article 33

Staff of the ESM

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

Article 34

Professional secrecy

The Members or former Members of the Board of Governors and of the Board of Directors and any other persons who work or have worked for or in connection with the

ESM shall not disclose information that is subject to professional secrecy. They shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

Article 35

Immunities of persons

1. In the interest of the ESM, the Chairperson of the Board of Governors, Governors, alternate Governors, Directors, alternate Directors, as well as the Managing Director and other staff members shall be immune from legal proceedings with respect to acts performed by them in their official capacity and shall enjoy inviolability in respect of their official papers and documents.
2. The Board of Governors may waive to such extent and upon such conditions as it determines any of the immunities conferred under this Article in respect of the Chairperson of the Board of Governors, a Governor, an alternate Governor, a Director, an alternate Director or the Managing Director.
3. The Managing Director may waive any such immunity in respect of any member of the staff of the ESM other than himself or herself.
4. Each ESM Member shall promptly take the action necessary for the purposes of giving effect to this Article in the terms of its own law and shall inform the ESM accordingly.

Article 36

Exemption from taxation

1. Within the scope of its official activities, the ESM, its assets, income, property and its operations and transactions authorised by this Treaty shall be exempt from all direct taxes.
2. The ESM Members shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property where the ESM makes, for its official use, substantial purchases, the price of which includes taxes of this kind.
3. No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.
4. Goods imported by the ESM and necessary for the exercise of its official activities shall be exempt from all import duties and taxes and from all import prohibitions and restrictions.

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

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

- (a) which discriminates against such obligation or security solely because of its origin; or
- (b) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the ESM.

Article 37

Interpretation and dispute settlement

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

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

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

Article 38

International cooperation

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

CHAPTER 7 TRANSITIONAL ARRANGEMENTS

Article 39

Relation with EFSF lending

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

Article 40

Transfer of EFSF supports

1. By way of derogation from Article 13, the Board of Governors may decide that the EFSF commitments to provide financial assistance to an ESM Member under its agreement with that member shall be assumed by the ESM as far as such commitments relate to undisbursed and unfunded parts of loan facilities.
2. The ESM may, if authorised by its Board of Governors, acquire the rights and assume the obligations of the EFSF, in particular in respect of all or part of its outstanding rights and obligations under, and related to, its existing loan facilities.
3. The Board of Governors shall adopt the detailed modalities necessary to give effect to the transfer of the obligations from the EFSF to the ESM, as referred to in paragraph 1 and any transfer of rights and obligations as described in paragraph 2.

Article 41

Payment of the initial capital

1. Without prejudice to paragraph 2, payment of paid-in shares of the amount initially subscribed by each ESM Member shall be made in five annual instalments of 20% each of the total amount. The first instalment shall be paid by each ESM Member within fifteen days of the date of entry into force of this Treaty. The remaining four instalments shall each be payable on the first, second, third and fourth anniversary of the payment date of the first instalment.
2. During the five-year period of capital payment by instalments, ESM Members shall accelerate the payment of paid-in shares, in a timely manner prior to the issuance date, in order to maintain a minimum 15% ratio between paid-in capital and the outstanding

amount of ESM issuances and guarantee a minimum combined lending capacity of the ESM and of the EFSF of EUR 500 000 million.

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

Article 42

Temporary correction of the contribution key

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

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

- (a) 25% of the percentage share in the ECB capital of the national central bank of that ESM Member, determined in accordance with Article 29 of the ESCB Statute; and
- (b) 75% of that ESM Member's percentage share in the gross national income (GNI) at market prices in euro of the euro area in the year immediately preceding its accession to the ESM. The percentages referred to in points (a) and (b) shall be rounded up or down to the nearest multiple of 0,0001 percentage points. The statistical terms shall be those published by Eurostat.

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

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

Article 43

First appointments

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

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

CHAPTER 8 FINAL PROVISIONS

Article 44

Accession

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

Article 45

Annexes

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

- 1) Annex I: Contribution key of the ESM; and
- 2) Annex II: Subscriptions to the authorised capital stock.

Article 46

Deposit

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

Article 47

Ratification, approval or acceptance

1. This Treaty shall be subject to ratification, approval or acceptance by the signatories. Instruments of ratification, approval or acceptance shall be deposited with the Depositary.
2. The Depositary shall notify the other signatories of each deposit and the date thereof.

Article 48

Entry into force

1. This Treaty shall enter into force on the date when instruments of ratification, approval or acceptance have been deposited by signatories whose initial subscriptions represent no less than 90% of the total subscriptions set forth in Annex II. Where appropriate, the list of ESM Members shall be adjusted; the key in Annex I shall then be recalculated and the total authorised capital stock in Article 8(1) and Annex II and the initial total aggregated nominal value of paid-in shares in Article 8(2) shall be reduced accordingly.
2. For each signatory which thereafter deposits its instrument of ratification, approval or acceptance, this Treaty shall enter into force on the day following the date of deposit.
3. For each State which accedes to this Treaty in accordance with Article 44, this Treaty shall enter into force on the twentieth day following the deposit of its instrument of accession.

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

Upon accession of the Republic of Latvia, the Latvian text shall be equally authentic, which shall be deposited in the archives of the Depositary which shall transmit a duly certified copy to each of the Contracting Parties.

Upon accession of the Republic of Lithuania, the Lithuanian text shall be equally authentic, which shall be deposited in the archives of the Depositary which shall transmit a duly certified copy to each of the Contracting Parties.

ANNEX I

Contribution Key of the ESM

ESM Member	ESM key (%)
Kingdom of Belgium	3.4534
Federal Republic of Germany	26.9616
Republic of Estonia	0.1847
Ireland	1.5814
Hellenic Republic	2.7975
Kingdom of Spain	11.8227
French Republic	20.2471
Italian Republic	17.7917
Republic of Cyprus	0.1949
Republic of Latvia	0.2746
Republic of Lithuania	0.4063
Grand Duchy of Luxembourg	0.2487
Malta	0.0726
Kingdom of the Netherlands	5.6781
Republic of Austria	2.7644
Portuguese Republic	2.4921
Republic of Slovenia	0.4247
Slovak Republic	0.8184
Republic of Finland	1.7852
Total	100.0

The above figures are rounded to four decimals.

ANNEX II

Subscriptions to the authorised capital stock

ESM Member	Number of shares	Capital subscription (EUR)
Kingdom of Belgium	243 397	24 339 700 000
Federal Republic of Germany	1 900 248	190 024 800 000
Republic of Estonia	13 020	1 302 000 000
Ireland	111 454	11 145 400 000
Hellenic Republic	197 169	19 716 900 000
Kingdom of Spain	833 259	83 325 900 000
French Republic	1 427 013	142 701 300 000
Italian Republic	1 253 959	125 395 900 000
Republic of Cyprus	13 734	1 373 400 000
Republic of Latvia	19 353	1 935 300 000
Republic of Lithuania	28 634	2 863 400 000
Grand Duchy of Luxembourg	17 528	1 752 800 000
Malta	5 117	511 700 000
Kingdom of the Netherlands	400 190	40 019 000 000
Republic of Austria	194 838	19 483 800 000
Portuguese Republic	175 644	17 564 400 000
Republic of Slovenia	29 932	2 993 200 000
Slovak Republic	57 680	5 768 000 000
Republic of Finland	125 818	12 581 800 000
Total	7 047 987	704 798 700 000

**EFSF FRAMEWORK AGREEMENT
(AS AMENDED WITH EFFECT FROM THE EFFECTIVE DATE OF THE
AMENDMENTS) ⁽¹⁸⁾**

between

Kingdom of Belgium, Federal Republic of Germany, Republic of Estonia, Ireland,
Hellenic Republic, Kingdom of Spain, French Republic, Italian Republic, Republic of
Cyprus, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the
Netherlands, Republic of Austria, Portuguese Republic, Republic of Slovenia, Slovak
Republic, and Republic of Finland

and

European Financial Stability Facility

EFSF FRAMEWORK AGREEMENT (the "Agreement")

is made by and between:

(A) Kingdom of Belgium, Federal Republic of Germany, Republic of Estonia, Ireland, Hellenic Republic, Kingdom of Spain, French Republic, Italian Republic, Republic of Cyprus, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Austria, Portuguese Republic, Republic of Slovenia, Slovak Republic, and Republic of Finland (the "euro-area Member States" or "EFSF Shareholders"); and

(B) European Financial Stability Facility ("EFSF"), a *société anonyme* incorporated in Luxembourg, with its registered office at 43, avenue John F. Kennedy, L-1855 Luxembourg (R.C.S. Luxembourg B153.414) (the euro-area Member States and EFSF referred to hereafter as the "Parties").

PREAMBLE

Whereas:

¹⁸ Available on http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf. Please note that this consolidated version is for information purposes. The new amendments will be effected by a Supplemental Amendment Agreement setting out the changes to the Framework Agreement.

- (1) On 9 May 2010 a comprehensive package of measures has been decided including (a) a Council Regulation establishing the European Financial Stabilisation Mechanism ("EFSM") based on Article 122(2) of the Treaty on the functioning of the European Union and (b) the EFSF in order to financially support euro-area Member States in difficulties caused by exceptional circumstances beyond such euro-area Member States' control with the aim of safeguarding the financial stability of the euro area as a whole and of its Member States. It is envisaged that financial support to euro-area Member States shall be provided by EFSF in conjunction with the IMF and shall be on comparable terms to the stability support loans advanced by euro-area Member States to the Hellenic Republic on 8 May 2010 or on such other terms as may be agreed.

- (2) EFSF has been incorporated on 7 June 2010 for the purpose of making stability support to euro-area Member States. In a statement dated 21 July 2011 the Heads of State or Government of the euro area and EU institutions stated their intention to improve the effectiveness of EFSF and address contagion and they had agreed to increase the flexibility of EFSF linked to appropriate conditionality. As a consequence, whilst originally financial assistance was provided solely by way of loan facility agreements, financial assistance may now be granted in the form of financial assistance facility agreements ("Financial Assistance Facility Agreements", each a "Financial Assistance Facility Agreement") to provide financial assistance by way of loan disbursements, precautionary facilities, facilities to finance the recapitalisation of financial institutions in a euro-area Member State (through loans to the governments of such Member States including in non-programme countries), facilities for the purchase of bonds in the secondary markets on the basis of an ECB analysis recognizing the existence of exceptional financial market circumstances and risks to financial stability or facilities for the purchase of bonds in the primary market (each such utilization of a Financial Assistance Facility Agreement being a "Financial Assistance") with the Financial Assistance to be made under all Financial Assistance Facility Agreements being financed with the benefit of guarantees in an amount of up to EUR 779,783.14 million to be used within a limited period of time. This is intended to result in an effective capacity for EFSF to provide Financial Assistance of EUR 440,000 million. The availability of such Financial Assistance Facility Agreements will be conditional upon the relevant euro-area Member States which request such Financial Assistance Facility Agreements entering into memoranda of understanding (each an "MoU") with the European Commission, acting on behalf of the euro-area Member States, including conditions such as budgetary discipline and economic policy guidelines and their compliance with the terms of such MoU. With respect to each Financial Assistance Facility Agreement, the relevant beneficiary euro-area Member State shall be referred to as the "Beneficiary Member State". If Financial Assistance is in the form of facilities for the purchase of bonds in the primary or secondary market, the nature and terms, including as to pricing, policy conditionality, conditions to utilization and documentation of such arrangements shall be in accordance with guidelines adopted by the board of

directors of EFSF acting unanimously pursuant to Article 2(1)(b). Similarly, if Financial Assistance is in the form of precautionary facilities and facilities to finance the recapitalisation of financial institutions of a euro-area Member State, the board of directors of EFSF acting unanimously shall adopt guidelines under Article 2(1)(c) in relation to such arrangements. The terms of an MoU shall impose appropriate policy conditionality for the full duration of a Financial Assistance Facility Agreement and not just limited to the period in which Financial Assistance is made available. The conditions attached to the provision of Financial Assistance by EFSF as well as the rules which apply to monitoring compliance must be fully consistent with the Treaty on the Functioning of the European Union and the acts of EU law.

(2)(a) On 20 June 2011, euro area Finance Ministers agreed that the pricing structure for EFSF loan facility agreements should be as follows:

- EFSF Cost of Funding; plus
- the Margin.

The margin shall be equal to 200 basis points with such Margin being increased to 300 basis points in respect of any Loan which remains outstanding after the third anniversary of the date of disbursement.

In respect of fixed rated Loans with a scheduled maturity which exceeds three (3) years, the Margin shall be equal to the weighted average of 200 basis points for the first three (3) years and 300 basis points for the period from (and including) the third anniversary of its drawdown and ending on (but excluding) the scheduled maturity date of such Loan." Subsequently, on 21 July 2011, Heads of State or Government of the euro area stated:

"We have decided to lengthen the maturity of future EFSF loans to Greece to the maximum extent possible from the current 7.5 years to a minimum of 15 years and up to 30 years with a grace period of 10 years. In this context, we will ensure adequate post programme monitoring. We will provide EFSF loans at lending rates equivalent to those of the Balance of Payments facility (currently approx. 3.5%), close to, without going below, the EFSF funding cost. We also decided to extend substantially the maturities of the existing Greek facility. This will be accompanied by a mechanism which ensures appropriate incentives to implement the programme."

They also stated:

"The EFSF lending rates and maturities we agreed upon for Greece will be applied also for Portugal and Ireland."

- (3) By a decision of the representatives of the governments of the 16 euro-area Member States dated 7 June 2010, acting on the basis of the conclusions of the 27 European Union Member States of 9 May 2010, the Commission was tasked with carrying out certain duties and functions as contemplated by the terms of this Agreement.
- (4) EFSF shall finance the making of Financial Assistance by issuing or entering into bonds, notes, commercial paper, debt securities or other financing arrangements ("Funding Instruments") which are backed by irrevocable and unconditional guarantees (each a "Guarantee") of the euro-area Member States which shall act as guarantors in respect of such Funding Instruments as contemplated by the terms of this Agreement. The guarantors (the "Guarantors") of Funding Instruments issued or entered into by EFSF shall be comprised of each euro-area Member State (excluding any euro-area Member State which is or has become a Stepping-Out Guarantor under Article 2(7) prior to the issue of such Funding Instruments). It is not anticipated that a request under Article 2(7) of this Agreement would be made by a euro-area Member State which has requested Financial Assistance in the form of a precautionary facility, so long as such facility is not drawn or utilised, a facility to finance the recapitalisation of financial institutions in such Member State by way of a loan made to such Member State or a facility for the purchase of bonds of such Member State in the secondary market.
- (5) A political decision has been taken by all euro-area Member States to provide Guarantee Commitments (as defined in Article 2(3)) pursuant to the terms of this Agreement.
- (6) The euro-area Member States and EFSF have entered into this Agreement to set out the terms and conditions upon which EFSF may enter into Financial Assistance Facility Agreements, make Financial Assistance available to euro-area Member States, finance such Financial Assistance by issuing or entering into Funding Instruments backed by Guarantees issued by the Guarantors, the terms and conditions on which the Guarantors shall issue Guarantees in respect of the Funding Instruments issued by or entered into by EFSF, the arrangements entered into between them in the event that a Guarantor is required to pay under a Guarantee more than its required proportion of liabilities in respect of a Funding Instrument and certain other matters relating to EFSF.

Now, therefore, the Parties have agreed as follows:

1. ENTRY INTO FORCE

- (1) This Agreement (with the exception of the obligation of euro-area Member States to issue Guarantees under this Agreement) shall, upon at least five (5) euro-area Member States comprising at least two-thirds (2/3) of the total guarantee commitments set out in Annex 1 (the "Total Guarantee Commitments") providing written confirmation substantially in the form of Annex 3 to EFSF that they have concluded all procedures necessary under their respective national laws to ensure that their obligations under this Agreement shall come into immediate force and effect (a "Commitment Confirmation"), enter into force and become binding between EFSF and the euro-area Member States providing such Commitment Confirmations.
- (2) The obligation of euro-area Member States to issue Guarantees under this Agreement shall enter into force and become binding between EFSF and the euro-area Member States which have provided Commitment Confirmations only when Commitment Confirmations have been received by EFSF from euro-area Member States whose Guarantee Commitments represent in aggregate ninety per cent (90%) or more of the Total Guarantee Commitments. Any euro-area Member State which applies for stability support from the euro-area Member States or which benefits from financial support under a similar programme or which is already a Stepping-Out Guarantor shall be excluded in computing whether this ninety per cent (90%) threshold of the Total Guarantee Commitments is satisfied.
- (3) This Agreement and the obligation to provide Guarantees in accordance with the terms of this Agreement shall enter into force and become binding on any remaining euro-area Member States (which have not provided their Commitment Confirmations at the time the Agreement or the obligation to provide Guarantees comes into force pursuant to Article 1(1) or 1(2)) at the time when such euro-area Member States provide their Commitment Confirmation to EFSF copies of which should be addressed to the Commission.

2. FINANCIAL ASSISTANCE FACILITY AGREEMENTS, GRANT OF FINANCIAL ASSISTANCE, FUNDING INSTRUMENTS AND ISSUANCE OF GUARANTEES

- (1)
 - (a) The euro-area Member States agree that in the event of a request made by a euro-area Member State to the other euro-area Member States for a Financial Assistance Facility Agreement (i) the Commission (in liaison with the ECB

and the IMF) shall be hereby authorised to negotiate the MoU with the relevant Beneficiary Member State which shall be consistent with a decision the Council may adopt under Article 136(1) of the Treaty on the functioning of the European Union following a proposal of the Commission and the Commission shall be hereby authorised to finalise the terms of such MoU and to sign such MoU with the Beneficiary Member State on behalf of the euro-area Member States once such MoU has been approved by the Eurogroup Working Group (unless an MoU has been already entered into between the Beneficiary Member State and the Commission under the EFSM which MoU has been approved by all euro-area Member States in which case this latter MoU shall apply, provided that it covers both EFSM and EFSF stability support); (ii) following such approval of the relevant MoU, the Commission, in liaison with the ECB, shall make a proposal to the Eurogroup Working Group of the main terms of the Financial Assistance Facility Agreement to be proposed to the Beneficiary Member State based on its assessment of market conditions and provided that the terms of such Financial Assistance Facility Agreement contain financial terms compatible with the MoU and the compatibility of maturities with debt sustainability; (iii) following a decision of the Eurogroup Working Group, EFSF (in conjunction with the Eurogroup Working Group) shall negotiate the detailed, technical terms of the Financial Assistance Facility Agreements under which Financial Assistance will, subject to the terms and conditions set out therein, be made available to the relevant Beneficiary Member State, provided that such Financial Assistance Facility Agreements shall be substantially in the form of template Financial Assistance Facility Agreements (each adapted to the particular form of financial assistance being provided to the relevant euro-area Member State) which shall be approved by the euro-area Member States for the purpose of this Agreement and the financial parameters of such Financial Assistance Facility Agreements shall be based on the financial terms proposed by the Commission, in liaison with the ECB, and approved by the Eurogroup Working Group and (iv) EFSF shall collect, verify and hold in safe custody the conditions precedent to such Financial Assistance Facility Agreements and the executed versions of all related documents. The terms of Article 3(2) set out the basis upon which decisions shall be made in relation to Financial Assistance to be made available under an existing Financial Assistance Facility Agreement subject to any other procedures which may be adopted pursuant to guidelines adopted by the board of directors of EFSF pursuant to Articles 2(1)(b) or 2(1)(c). Given that EFSF is not a credit institution, Beneficiary Member States shall represent and warrant in each Financial Assistance Facility Agreement that no regulatory authorisation is required for EFSF to grant Financial Assistance to such Beneficiary Member State under its applicable national law or that an exemption to such regulatory authorisation requirement exists under applicable national law. The Guarantors hereby authorise EFSF to sign such Financial Assistance Facility

Agreements, subject to the prior unanimous approval by all of them participating in the relevant votes of Guarantors.

- (b) Financial Assistance to a euro-area Member State may consist of facilities for the purchase of bonds in the secondary market to avoid contagion, on the basis of an ECB analysis recognising the existence of exceptional financial market circumstances and risks to financial stability or by way of facilities for the purchase of bonds in the primary market. The nature and terms, including as to pricing, conditions to and procedures for disbursement or utilisation, administration, documentation and monitoring of compliance with policy conditionality of such arrangements shall be in accordance with guidelines adopted by the board of directors of EFSF acting with unanimity. Bonds purchased by EFSF in the primary or secondary markets can either be held to maturity or sold in accordance with the applicable guidelines.
 - (c) To improve the effectiveness of EFSF and address contagion, Financial Assistance Facility Agreements to a euro-area Member State may consist of precautionary facilities or facilities to finance the re-capitalisation of financial institutions in a euro-area Member State by way of a loan to the government of such Member State (whether or not it is a programme country). If a Financial Assistance Facility Agreement covers such Financial Assistance, the nature and terms of such agreement, including as to pricing, conditions to and procedures for disbursement or utilisation, compliance with policy conditionality, administration, documentation and monitoring of compliance with policy conditionality shall be in accordance with guidelines to be adopted by the board of directors of EFSF acting with unanimity.
- (2) In respect of each Financial Assistance Facility Agreement and the Financial Assistance to be made thereunder, the euro-area Member States agree that EFSF (in consultation with the Eurogroup Working Group) shall be authorised to structure and negotiate the terms on which EFSF may issue or enter into Funding Instruments on a stand-alone basis or pursuant to a debt issuance programme or programmes or facility (each an "EFSF Programme(s)") to finance the making of Financial Assistance to Beneficiary Member States. So long as market conditions permit and save as otherwise stated in this Agreement, such Funding Instruments shall have substantially the same financial profile as the related Financial Assistance (provided that (x) for operational reasons there will need to be delays between issue dates and payment dates to facilitate the transfers of funds and calling Guarantees and (y) notwithstanding the liability of each Guarantor to pay any amounts of interest and principal due but unpaid under the Funding Instruments, the recourse of investors against EFSF under the Funding Instruments shall be limited to the assets of EFSF including, in particular, the amounts it recovers in respect of the Financial Assistance. The pricing which will apply to each Financial Assistance is intended to cover the cost of funding and operations

incurred by EFSF and shall include a margin (the "Margin"). This shall provide remuneration for the Guarantors and shall be specified in the relevant Financial Assistance Facility Agreement. The EFSF shall review periodically the pricing structure applicable to its Financial Assistance Facility Agreements and any changes thereto shall be agreed by the Guarantors acting unanimously in accordance with Article 10(5). The Service Fee retained in respect of Financial Assistance disbursed prior to the Effective Date of the Amendments may be used to cover the operational costs of EFSF and any costs and fees directly related to the issuance of Funding Instruments which have not otherwise been charged to the relevant Beneficiary Member State.

- (3) In respect of Funding Instruments issued or entered into under an EFSF Programme or on a stand-alone basis, each Guarantor shall be required to issue an irrevocable and unconditional Guarantee in a form to be approved by the Guarantors for the purpose of this Agreement and in an amount equal to the product of (a) the percentage set out next to each Guarantor's name in the third column (the "Contribution Key") in Annex 2¹⁹ (as such percentage is adjusted from time to time in accordance with the terms of this Agreement and/or to reflect any euro-area Member State not yet having provided its Commitment Confirmation during the implementation period pursuant to Article 1 and notified in writing by EFSF to the Guarantors) (the "Adjusted Contribution Key Percentage"), (b) up to 165% (the "Over-Guarantee Percentage") in respect of Funding Instruments issued or entered into after the Effective Date of the Amendments, and (c) the obligations of EFSF (in respect of principal, interest or other amounts due) in respect of the Funding Instruments issued or entered into by EFSF on a stand-alone basis or under an EFSF Programme. If EFSF issues Funding Instruments under an EFSF Programme, each Guarantor shall issue its Guarantee to guarantee all Funding Instruments issued or entered into pursuant to the relevant EFSF Programme. The Offering Materials or contractual documentation for each issue or contracting of Funding Instruments made under an EFSF Programme shall confirm which Guarantors have Guarantees which cover the relevant Funding Instruments or issue or series thereof. EFSF may also request the Guarantors to issue Guarantees under this Agreement for other purposes which are closely-linked to an issue of Funding Instruments and which facilitates the obtaining and maintenance of a high quality rating for Funding Instruments issued by EFSF and efficient funding by EFSF. The decision to issue Guarantees for such other purposes in connection with an EFSF Programme or a stand-alone issue of or entry into Funding Instruments shall be taken by a unanimous decision of the Guarantors. No Guarantor shall be required to issue Guarantees which would result in it having a Guarantee Notional Exposure in excess of its guarantee commitment ("Guarantee Commitment") set alongside its name in Annex 1. For

¹⁹ In respect of Funding Instruments issued or entered into prior to the Effective Date of the Amendments the Contribution Key and Adjusted Contribution Key Percentage shall be determined by the terms of this Agreement (including Annex 2) prior to the amendments

the purposes of this Agreement, a Guarantor's "Guarantee Notional Exposure" is equal to the aggregate of:

- (i) the principal amount of Funding Instruments issued or entered into (including Funding Instruments issued or entered into pursuant to any Diversified Funding Strategy approved pursuant to Article 4(5), and other principal amounts guaranteed under Guarantees issued for other purposes pursuant to Article 2(3)) which benefit from Guarantees issued under this Agreement and which remain outstanding; and
- (ii) without double counting, the aggregate amounts paid by the Guarantors following demands made under Guarantees issued under this Agreement which paid amounts have not been reimbursed to the Guarantors.

Accordingly, if an outstanding, undrawn Guarantee expires or if an amount drawn under a Guarantee is reimbursed this will reduce a Guarantor's Guarantee Notional Exposure and replenish its capacity to issue Guarantees under this Agreement.

It is acknowledged and agreed that the amendments to this Article 2(3) apply to Funding Instruments issued or entered into on or after the Effective Date of the Amendments. These amendments do not in any respect affect or reduce the liability of Guarantors (including any Guarantors which became Stepping-Out Guarantors) under Guarantees which guarantee Funding Instruments issued or entered into prior to the Effective Date of the Amendments in respect of which the Contribution Key and Adjusted Contribution Key Percentage and Guarantee Commitment of each Guarantor is that which applied on the date of issue of or entry into the relevant Funding Instrument.

(4)

- (a) The Guarantees shall irrevocably and unconditionally guarantee the due payment of scheduled payments of interest and principal due on Funding Instruments issued by EFSF. In the case of EFSF Programmes, the Guarantors shall issue Guarantees which guarantee all series of Funding Instruments issued from time to time under the relevant EFSF Programme. The Offering Materials and/or contractual documentation of each series shall confirm which Guarantees cover that series, in particular, if a Guarantor under the relevant EFSF Programme has subsequently become a Stepping-out Guarantor and no longer guarantees further issues or series under such EFSF Programme.
- (b) The Guarantees may be issued to a bond trustee or other representative of bondholders or creditors (a "Noteholder Representative") who shall be

entitled to make demands under the Guarantees on behalf of holders of Funding Instruments and enforce the claims of holders of Funding Instruments so as to facilitate the management of making demands on the Guarantees. The detailed terms and conditions of each issue of Funding Instruments and the Guarantees relating thereto shall be agreed by EFSF, subject to the approval of the Guarantors, and shall be as described in the relevant Offering Materials (as defined in Article 4(1) applicable thereto) and applicable contractual documentation.

- (5) A Guarantor shall only be required to issue a Guarantee in accordance with this Agreement if:
- (a) it is issued in respect of Funding Instruments issued or entered into under an EFSF Programme or on a stand-alone basis and such Funding Instruments finance the making of Financial Assistance approved in accordance with the terms of this Agreement and the Articles of Association of EFSF or it is issued for such other closely-linked purpose as are approved under Article 2(3);
 - (b) the Guarantee is issued to facilitate the financing under Financial Assistance Facility Agreements entered into on or prior to 30 June 2013 (including the financing of Financial Assistance made pursuant to an existing Financial Assistance Facility Agreement after such date and any related issue of bonds or debt securities related thereto) and the Guarantee is in any event issued on or before 30 June 2013;
 - (c) the Guarantee is in the form approved by euro-area Member States for the purpose of this Agreement and the EFSF Programme;
 - (d) the liability of the Guarantor under such Guarantee gives rise to a Guarantee Notional Exposure which complies with the terms of Article 2(3); and
 - (e) it is denominated in euros or such other currency as is approved by the Guarantors for the purpose of this Agreement.
- (6) The Guarantee Commitment of each Guarantor to provide Guarantees is irrevocable and firm and binding. Each Guarantor will be required, subject to the terms of this Agreement, to issue Guarantees up to its Guarantee Commitment for the amounts to be determined by EFSF and at the dates specified by EFSF in order to facilitate the issuance or entry into of Funding Instruments under the relevant EFSF Programme or stand-alone Funding Instrument in each case in accordance with the EFSF funding strategy.

- (7) If a euro-area Member State encounters financial difficulties such that it makes a demand for a Financial Assistance Facility Agreement from EFSF, it may by written notice together with supporting information satisfactory to the other Guarantors request the other Guarantors (with a copy to the Commission, the Eurogroup Working Group Chairman) to accept that the Guarantor in question does not participate in issuing a Guarantee or incurring new liabilities as a Guarantor in respect of any further debt issuance by EFSF. The decision of the euro-area Member States in relation to such a request is to be made at the latest when they decide upon making any further Financial Assistance Facility Agreements or make available further Financial Assistance.
- (8) In respect of Financial Assistance disbursed prior to the Effective Date of the Amendments, an up-front service fee (the "Service Fee") calculated as being 50 basis points on the aggregate principal amount of each Financial Assistance shall be charged to each Beneficiary Member State and deducted from the cash amount to be remitted to the Beneficiary Member State in respect of each such Financial Assistance. In addition, the net present value (calculated on the basis of the internal rate of return of the Funding Instruments financing such Financial Assistance (or such other blended internal rate of return as is deemed appropriate in case of a Diversified Funding Strategy), the "Discount Rate") of the anticipated Margin that would accrue on each Financial Assistance to its scheduled maturity date (the "Prepaid Margin") shall be deducted from the cash amount to be remitted to the Beneficiary Member State in respect of such Financial Assistance. The Service Fee and the Prepaid Margin, together with such other amounts as EFSF decides to retain as an additional cash buffer, will be deducted from the cash amount remitted to the Beneficiary Member State in respect of each Financial Assistance (such that on the disbursement date (the "Disbursement Date") the Beneficiary Member State receives the net amount (the "Net Disbursement Amount")) but shall not reduce the principal amount of such Financial Assistance that the Beneficiary Member State is liable to repay and on which interest accrues under the relevant Financial Assistance. These retained amounts shall be retained to provide a cash reserve to be used as credit enhancement and otherwise as described in Article 5 below. The "Cash Reserve" shall include these retained amounts, the amounts credited to the Cash Reserve under Article 2(9), together with all income and investments earned by investment of these amounts. The Cash Reserve shall be invested in accordance with investment guidelines approved by the board of directors of EFSF.
- (9) In respect of Financial Assistance disbursed after the Effective Date of the Amendments, if on the date of disbursement of such Financial Assistance, the Notes issued to finance such Financial Assistance obtain the highest credit ratings (without any additional credit enhancement), then, unless otherwise agreed:

- (a) subject to Article 2(9)(c), the Margin shall be payable on such Financial Assistance in arrear at the end of each interest period;
- (b) an amount calculated as being 50 basis points on the aggregate principal amount of each Financial Assistance shall be charged to the Beneficiary Member State as an advance payment of a portion of the Margin on such Financial Assistance (the "Advance Margin") and shall be deducted from the cash amount to be remitted to the Beneficiary Member State in respect of such Financial Assistance;
- (c) on the first (and/or subsequent) interest payment date(s) of a Financial Assistance the amount payable in respect of the Margin shall be reduced by an amount equal to the Advance Margin and the interest cost related to the funding of the Advance Margin; and
- (d) the only deduction from the cash amount of the Financial Assistance shall be the amount of Advance Margin and any fees and costs incurred in connection with the issue of Funding Instruments to finance such Financial Assistance and any adjustment for Funding Instruments being issued for an issue price less than par value ("Issuance Costs") and the Net Disbursement Amount shall be equal to the principal amount of the Financial Assistance less (i) the amount of Advance Margin and (ii) the Issuance Costs.

The deduction of an amount equal to the Issuance Costs and the amount of Advance Margin shall not reduce the principal amount of a Financial Assistance that the Beneficiary Member State is liable to repay and on which interest accrues.

Advance Margin and Margin amounts retained or received in respect of a Financial Assistance shall be credited to the Cash Reserve.

If, on the date of disbursement of a Financial Assistance, the Notes issued to finance such Financial Assistance would not obtain the highest quality credit ratings (without any additional credit enhancement), then the euro-area Member States may adopt additional credit enhancement mechanisms under Article 5(3) of this Agreement and make consequent modifications to the relevant Financial Assistance Facility Agreement.

- (10) If, following the repayment of all Financial Assistance made under Financial Assistance Facility Agreements and all Funding Instruments issued by or entered into by EFSF, there remain amounts in the Cash Reserve (including amounts representing interest or investment income earned by investment of the Cash Reserve), then, unless otherwise agreed, these amounts shall be paid to the Guarantors as consideration for the issuance of their Guarantees. EFSF shall maintain ledger accounts and other records of the amounts of Service Fee and

anticipated Margin retained in respect of each Financial Assistance Facility Agreement and the amounts credited to the Cash Reserve under Article 2(9) and the amount of all Guarantees issued by each Guarantor pursuant to this Agreement. These ledger accounts and records shall permit EFSF to calculate the consideration due to each Guarantor in respect of the Guarantees issued under this Agreement which shall be payable on a *pro rata* proportional basis to each Guarantor by reference to its participation in all the Guarantees issued under this Agreement.

- (11) Euro-area Member States which are potential Beneficiary Member States may only request and enter into Financial Assistance Facility Agreements in the period commencing on the date this Agreement enters into force and ending on 30 June 2013 (provided that Financial Assistance may be disbursed after this date under Financial Assistance Facility Agreements entered into prior to this date).
- (12) Following the execution of this Agreement, the Parties shall agree upon forms of (i) the Guarantees, (ii) the Financial Assistance Facility Agreements (adapted as appropriate pursuant to guidelines adopted by the board of directors of EFSF under Articles 2(1)(b) or 2(1)(c)), (iii) the documentation for the Funding Instruments, (iv) the arrangements in respect of the appointment of Noteholder Representatives, (v) the dealer and subscription agreements for Funding Instruments and (vi) any agency or service level agreement with EIB or any other agency, institution or person.

3. PREPARATION AND AUTHORISATION OF DISBURSEMENTS

- (1) Before each disbursement of a Financial Assistance under a Financial Assistance Facility Agreement, unless otherwise specified in the relevant Financial Assistance Facility Agreement (in accordance with guidelines adopted by the board of directors of EFSF pursuant to Articles 2(1)(b) or 2(1)(c) and applicable to the relevant category of Financial Assistance Facility Agreement), the Commission will, in liaison with the ECB, present a report to the Eurogroup Working Group analysing compliance by the relevant Beneficiary Member State with the terms and the conditions set out in the MoU and in the Council Decision (if any) relating to it. The Guarantors will evaluate such compliance and will unanimously decide on whether to permit disbursement of the relevant Financial Assistance. The first Financial Assistance to be made available to a Beneficiary Member State under a Financial Assistance Facility Agreement shall be released or utilised following the initial signature of the relevant MoU and will not be the object of such a report. The board of directors of EFSF acting with unanimity shall adopt guidelines under Article 2(1)(b) and 2(1)(c) regarding the conditions to and procedures for the disbursement and on-going monitoring of compliance with policy conditionality of Financial Assistance in the form of precautionary facilities, facilities for the

recapitalisation of financial institutions in a Member State and facilities for the purchase of bonds in the primary or secondary markets.

- (2) Unless otherwise specified in the relevant Financial Assistance Facility Agreement (in accordance with guidelines adopted by the board of directors of EFSF under Articles 2(1)(b) or 2(1)(c) and applicable to the relevant category of Financial Assistance Facility Agreement), following a request for financial assistance (a "Request for Financial Assistance") from a Beneficiary Member State complying with the terms of the relevant Financial Assistance Facility Agreement, the Guarantors shall (other than in respect of the first Financial Assistance) consider the report of the Commission regarding the Beneficiary Member State's compliance with the MoU and the relevant Council decision (if any). If, acting unanimously, the Guarantors consider that the Beneficiary Member State has complied with the conditions to drawdown under the Financial Assistance Facility Agreement and are satisfied with its compliance with the terms and conditions of the MoU then the Eurogroup Working Group Chairman shall request in writing EFSF to make a proposal of detailed terms of the Financial Assistance it would recommend to make to the Beneficiary Member State within the parameters of the Financial Assistance Facility Agreement, the MoU, taking into account debt sustainability and the market situation for bond issuance. The EFSF proposal shall specify the amount which EFSF is authorised to make available by way of a Financial Assistance under the Financial Assistance Facility Agreement and on what terms including as to the amount of the Financial Assistance, the Net Disbursement Amount, the term, the redemption schedule and the interest rate (including the Margin) in relation to such Financial Assistance. If the Eurogroup Working Group accepts this proposal the Eurogroup Working Group Chairman shall request EFSF to communicate an acceptance notice (an "**Acceptance Notice**") to the Beneficiary Member State confirming the terms of the Financial Assistance.
- (3) At the latest following the signature of a Financial Assistance Facility Agreement, EFSF shall commence the process for the issuance of or entry into Funding Instruments under the EFSF Programme(s) or otherwise and, to the extent necessary, shall request the Guarantors to issue Guarantees in accordance with Article 2 (above) such that EFSF has sufficient funds when needed to make disbursements under the relevant Financial Assistance.
- (4) If applicable, and prior to the delivery of any Acceptance Notice, the Eurogroup Working Group Chairman shall communicate to the Commission and EFSF whether any Guarantor has notified it that the circumstances described in Article 2(7) apply to it and the decision of the euro-area Member States relating thereto. The Eurogroup Working Group Chairman shall communicate the decisions of the Guarantors to EFSF, the Commission and the euro-area Member States at least thirty (30) Business Days prior to the date of any related issue of or entry into Funding Instruments. On the relevant Disbursement Date, unless otherwise

specified in the relevant Financial Assistance Facility Agreement (in accordance with guidelines adopted by the board of directors of EFSF under Articles 2(1)(b) or 2(1)(c) and applicable to the relevant category of Financial Assistance Facility Agreement) EFSF shall make the relevant Financial Assistance available to the Beneficiary Member State by making available the Net Disbursement Amount through the accounts of EFSF and the relevant Beneficiary Member State opened for the purpose of the Financial Assistance Facility Agreement with the ECB.

4. ISSUANCE OF OR ENTRY INTO FUNDING INSTRUMENTS

- (1) In compliance with its funding strategy, EFSF may issue or enter into Funding Instruments benefitting from the Guarantees on a stand-alone basis or shall establish one or more EFSF Programme(s) for the purpose of issuing Funding Instruments benefitting from Guarantees which shall finance the making of Financial Assistance in accordance with the terms of this Agreement. EFSF may establish a base prospectus (the "**Base Prospectus**") for each EFSF Programme with each individual issue of Funding Instruments being issued pursuant to final terms ("**Final Terms**") setting out the detailed financial terms of each issue (including the Over-Guarantee Percentage applicable to such issue of Funding Instruments). Alternatively, EFSF may establish information memoranda (the "**Information Memoranda**") for the purpose of issuing Funding Instruments (which would not be prospectuses for the purposes of the Prospectus Directive 2003/71/EC). Any Base Prospectus, Final Terms, prospectus, Information Memorandum or related materials relating to the placement or syndication of Funding Instruments shall be referred to as "**Offering Materials**". It shall also enter into relevant contractual documentation relating to such Funding Instruments.
- (2) EFSF shall devise standard terms and conditions for the Funding Instruments issued or entered into by EFSF. These may include provisions for the calling of Guarantees either by EFSF if it anticipates a shortfall prior to a scheduled payment date or by the relevant Noteholder Representative (if EFSF has failed to make a scheduled payment of interest or principal under a Funding Instrument when due). The standard terms and conditions shall clarify that there is no acceleration of Funding Instruments in the event that the Financial Assistance financed by such Funding Instruments are accelerated or pre-paid for whatever reason.
- (3) In connection with the structuring and negotiation of Funding Instruments on a stand-alone basis or under EFSF Programme(s) EFSF may:
 - (a) appoint, liaise and negotiate with arranging banks, lead managers and book-runners;

- (b) appoint, liaise and negotiate with rating agencies and rating agency advisers and supply them with such data and documentation and make such presentations as necessary to obtain requisite ratings; appoint, liaise and negotiate with paying agents, listing agents, Noteholder Representative, lawyers and other professional advisers;
 - (c) appoint, liaise and negotiate with common depositaries and clearing systems such as Euroclear and/or Clearstream for the settlement of Funding Instruments;
 - (d) attend investor presentations and road shows to assist in the placement or syndication of Funding Instruments pursuant to the EFSF Programme(s);
 - (e) negotiate, execute and sign all legal documentation related to the Funding Instruments and any EFSF Programme(s); and
 - (f) generally do such other things necessary for the successful structuring and implementation of the EFSF Programme(s) and the issuance of or entry into Funding Instruments.
- (4) EFSF shall, subject to market conditions and the terms of this Article 4, fund Financial Assistance by the issuance of or entry into Funding Instruments on a matched-funding basis such that the Funding Instruments financing a Financial Assistance have substantially the same financial profile as to amount, time of issue, currency, repayment profile, final maturity and interest basis, provided that, to the extent feasible, the scheduled payment dates for Financial Assistance shall be at least fourteen (14) Business Days prior to the scheduled payment dates under the related Funding Instruments to permit processing of payments.
- (5) If, due to market condition or the volume of Funding Instruments to be issued or entered into by EFSF under the EFSF Programme(s) it is not practicable or feasible to issue or enter into Funding Instruments on a strict matched-funding basis, EFSF may request the Guarantors to permit EFSF certain flexibilities as to funding such that its funding is not matched to the Financial Assistance it makes, in particular as to (a) currency of Funding Instruments, (b) timing for the issue or entry into of Funding Instruments, (c) interest rate bases and/or (d) maturity and repayment profile of the Funding Instruments to be issued or entered into (including the possibility of issuing short term debt instruments, commercial paper or other financing arrangements supported by Guarantees) and (e) the possibility of pre-funding of Financial Assistance under Financial Assistance Facility Agreements. The Guarantors, acting unanimously, may permit EFSF to use a degree of funding flexibility and shall specify within which parameters and limits

EFSF may adopt a non-matched funding strategy (a "**Diversified Funding Strategy**").

- (6) Given that a Diversified Funding Strategy would require the management of transformation and basis risks, in the event that a Diversified Funding Strategy is authorised in relation to EFSF it may delegate the management of such funding activities, related asset and liability management activities and the conclusion of any related currency, interest rate or maturity mis-match hedging instruments to one or more debt management agencies of euro-area Member State or such other agencies or institutions as are approved unanimously by the Guarantors which shall be entitled to be compensated at an arm's length commercial rate for the provision of such services which remuneration shall constitute an operating cost for EFSF.

5. CREDIT ENHANCEMENT, LIQUIDITY AND TREASURY

- (1) The credit enhancement for the EFSF Programme shall include the following elements:
- (a) the Guarantees and, in particular, the fact that the participation of each Guarantor in issuing Guarantees shall be made on the basis of the Adjusted Contribution Key Percentage and that the Guarantee issued by each Guarantor is for an Over-Guarantee Percentage of up to 165% (as required to ensure the highest credit worthiness for Funding Instruments issued or entered into by EFSF on the date of issue) in respect of Funding Instruments issued or entered into after the Effective Date of the Amendments of its Adjusted Contribution Key Percentage of the amounts of the relevant Funding Instruments;
 - (b) the Cash Reserve (retained in respect of Financial Assistance disbursed prior to the Effective Date of the Amendments) shall act as a cash buffer. The Cash Reserve shall, pending its use, be invested in high quality liquid debt instruments. Upon repayment of all Financial Assistance made by EFSF and Funding Instruments issued by EFSF, the balance of the Cash Reserve shall be used firstly to repay any amounts paid by Guarantors which have not been repaid out of recoveries from the relevant underlying Beneficiary Member States and secondly, shall be paid to the Guarantors as consideration for their issuance of Guarantees under this Agreement as described in Article 2(10); and
 - (c) such other credit enhancement mechanisms as may be approved under this Article 5.

- (2) In the event that there is a delay or failure to pay by a Beneficiary Member State of a payment under a Financial Assistance and accordingly there is a shortfall in funds available to meet a scheduled payment of interest or principal under a Funding Instrument issued by EFSF then EFSF shall:
- (a) first, make a demand on a *pro rata, pari passu* basis on the Guarantors which have guaranteed such Funding Instrument up to the applicable Over-Guarantee Percentage of their respective Adjusted Contribution Key Percentage of the amount due but unpaid;
 - (b) second, if the steps taken in Article 5(2)(a) do not fully cover the shortfall, to release an amount from the Cash Reserve (provided that EFSF may not use any amounts credited to the Cash Reserve prior to the Effective Date of the Amendments to cover shortfalls arising in respect of Financial Assistance Facility Agreements entered into after such date) to cover such shortfall; and
 - (c) third, take such other steps as may be available in the event that additional credit enhancement mechanisms have been approved under Article 5(3).
- (3) The euro-area Member States may by unanimous decision approve and adopt such other credit enhancement mechanisms as they consider appropriate or, as the case may be, modify the existing credit enhancement mechanisms in order to enhance or to maintain the creditworthiness of the Funding Instruments issued or contracted by EFSF or to enhance the efficiency of funding of EFSF. Such other credit enhancement measures might include, amongst other techniques, the provision of subordinated loans, warehousing arrangements, liquidity lines or backstop facilities to EFSF or the issuance by EFSF of subordinated notes and/or the adoption of available credit enhancement mechanisms used by EFSF in relation to Financial Assistance disbursed prior to the Effective Date of the Amendments.
- (4) If a Guarantor has failed to make a payment which is due and payable in respect of a Guarantee and, as a consequence EFSF makes a withdrawal from the Cash Reserve to cover the shortfall pursuant to Article 5(2)(b) then such Guarantor shall reimburse such amount to EFSF on first written demand together with interest on such amount at a rate equal to one month EURIBOR plus 500 basis points from the date the amount is withdrawn from the Cash Reserve to the date such Guarantor reimburses such amount to EFSF together with such accrued interest. EFSF shall apply such reimbursed amounts (and the interest accrued thereon) to replenish the Cash Reserve.
- (5) In order to facilitate the availability of adequate liquidity for the funding needs of EFSF:

- (a) each euro-area Member State will ensure that EFSF will be eligible for receiving a counterparty limit for cash management operations of the debt management operations of the debt management agency of such euro-area Member State; and
 - (b) each euro-area Member State shall co-operate to assist EFSF to ensure that its Funding Instruments comply with applicable criteria to be eligible as collateral in Eurosystem operations.
- (6) In order to minimise any negative-carry costs in the event of any Diversified Funding Strategy EFSF shall be entitled to make deposits or other placements which, in accordance with the investment strategy agreed by the board of directors of EFSF, minimise the risk of a funding mis-match or negative-carry costs.
- (7) In respect of Financial Assistance disbursed after the Effective Date of the Amendments:
- (a) the Beneficiary Member States shall cover Issuance Costs (as described in Article 2(9));
 - (b) EFSF shall cover costs and expenses incurred in relation to a Financial Assistance Facility Agreement out of the Cash Reserve; Provided that, EFSF may not use any of the Cash Reserve established prior to the Effective Date of the Amendments to cover costs or expenses incurred in relation to Financial Assistance Facility Agreements entered into after such date unless the Cash Reserve is no longer required to serve as credit enhancement.
 - (c) This Article 5(7) shall be without prejudice to any undertaking of the Beneficiary Member State under the Financial Assistance Facility Agreement to cover costs and expenses of EFSF.
- (8) The euro-area Member States may, by a decision made pursuant to Article 10(6), agree that EFSF may use part of the sums credited to the Cash Reserve under Article 2(9) to cover the general non-loan specific operating expenses or exceptional costs of EFSF. Provided that, EFSF may not release any Prepaid Margin which has been credited to the Cash Reserve to constitute credit enhancement prior to the Effective Date of the Amendments to cover such operating or exceptional costs so long as such portion of the Cash Reserve is needed to constitute credit enhancement.

- (9) It is acknowledged and agreed that the provision of Article 5(7) and 5(8) are without prejudice to the general budgetary procedures of EFSF.

6. CLAIMS UNDER A GUARANTEE

- (1) If EFSF becomes aware that it has not received in full a scheduled payment under a Financial Assistance and such shortfall will give rise to a shortfall in available funds to make a scheduled payment of principal or interest under Funding Instruments issued by EFSF or scheduled payment due from EFSF under any other instrument or agreement which benefits from a Guarantee issued under this Agreement, it shall immediately notify in writing the Chairman of the Eurogroup Working Group, the Commission and each Guarantor and inform each Guarantor of its share of the shortfall under the terms of this Agreement and the relevant Guarantee and demand in writing each Guarantor to remit to EFSF its share of such shortfall on the date (the "**Guarantee Payment Date**") which is at least two (2) Business Days prior to the scheduled date for payment of the relevant amounts by EFSF (an "**EFSF Guarantee Demand**").
- (2) Each Guarantor shall remit to EFSF (or, if so specified in the relevant documentation, to the paying agent of the relevant Funding Instrument) its share of the amount demanded in the EFSF Guarantee Demand addressed to it by EFSF in cleared funds on the Guarantee Payment Date.
- (3) In the event that EFSF fails to pay a scheduled payment of interest or a scheduled payment of principal on a date when such amount is due and payable under a Funding Instrument issued by EFSF then the relevant Noteholder Representative shall be entitled to demand in writing (a "**Noteholder Representative Guarantee Demand**") the Guarantors (with a copy to EFSF) to pay the unpaid amount of such scheduled payment of interest and/or such scheduled payment of principal. Similarly, in the event of a failure by EFSF to pay a scheduled payment under any other instrument or agreement entered into between EFSF and a counterparty (a "**Counterparty**") which benefits from a Guarantee issued under this Agreement (which has been issued for a purpose closely-linked to an issue of Funding Instruments pursuant to Article 2(3)) the relevant Counterparty shall be entitled to demand in writing (a "**Counterparty Guarantee Demand**") the Guarantors (with a copy to EFSF) the unpaid amount of such scheduled payment. In the event of receipt by the Guarantors and EFSF of a Noteholder Representative Guarantee Demand or a Counterparty Guarantee Demand each Guarantor shall in accordance with the terms of its Guarantee remit in cleared funds its share of the amount duly demanded in such Noteholder Representative Guarantee Demand or, as the case may be such Counterparty Guarantee Demand. The detailed payment mechanics for co-ordinating payments under the Guarantees shall be set out in the documentation for the issue of Funding Instruments and the related Guarantees.

- (4) In the event that a shortfall of receipts in respect of a Financial Assistance gives rise both to an EFSF Guarantee Demand and a Noteholder Representative Guarantee Demand (or Counterparty Guarantee Demand) the relevant Guarantors shall only be liable to make one payment under their respective Guarantees, without double counting.
- (5) The Parties acknowledge and agree that each Guarantor shall be entitled to make payment in respect of any EFSF Guarantee Demand, Noteholder Representative Guarantee Demand or Counterparty Guarantee Demand which appears to be valid on its face without any reference by it to EFSF or any other Party or any other investigation or enquiry. EFSF irrevocably authorises each Guarantor to comply with any Guarantee Demand.
- (6) EFSF and each of the other Parties acknowledges and agrees that each Guarantor:
 - (i) is not obliged to carry out any investigation or seek any confirmation prior to paying a claim;
 - (ii) is not concerned with:
 1. the legality of a claim or any underlying transaction or any set-off, defence or counterclaim which may be available to any person;
 2. any amendment to any underlying document; or
 3. any unenforceability, illegality or invalidity of any document or security.
- (7) EFSF shall be liable to reimburse each Guarantor in respect of any claim paid in respect of a Guarantee and shall indemnify each Guarantor in respect of any loss or liability incurred by a Guarantor in respect of a Guarantee. EFSF's reimbursement obligation is subject to and limited to the extent of funds actually received from the underlying Beneficiary Member States or otherwise recovered by EFSF in respect of the Financial Assistance which gave rise to a shortfall of funds.
- (8) In addition to the reimbursement obligation of EFSF under Article 6(5), if a Guarantor makes a payment under its Guarantee, EFSF shall assign and transfer to the relevant Guarantor an amount of EFSF's rights and interests under the relevant Financial Assistance corresponding to the shortfall in payments made by the Beneficiary Member State and the related payment made by the Guarantor under the Guarantee. EFSF shall remain servicer of such portion of the Financial Assistance which has been assigned and transferred to the relevant Guarantor so as to facilitate the co-ordinated management of the Financial Assistance and the treatment of all Guarantors on a *pari passu* basis.

- (9) All Guarantors shall rank equally and *pari passu* amongst themselves, in particular in respect of reimbursement of amounts paid by them under their Guarantees provided that, if a Guarantor owes sums to EFSF pursuant to Article 5(4) or sums to the other Guarantors pursuant to Article 7(1), sums recovered from underlying Beneficiary Member States which would otherwise be due from EFSF to such Guarantor shall be applied to repaying the amount due under 5(4) or paying the amount due to other Guarantors under Article 7(1) in priority to being applied to reimburse such Guarantor.

7. CONTRIBUTION BETWEEN GUARANTORS

- (1) (a) If a Guarantor meets claims or demands in respect of any Guarantee it has issued or incurs costs, losses, expenses or liabilities in connection therewith ("**Guarantee Liabilities**"), and the aggregate amount of Guarantee Liabilities it makes or incurs exceeds its Required Proportion for the given Guarantee then it shall be entitled to be indemnified and receive contribution, upon first written demand, from the other Guarantors, in respect of such Guarantee Liabilities such that each Guarantor ultimately bears only its Required Proportion of such aggregate Guarantee Liabilities, provided that if the aggregate Guarantee Liabilities of any Guarantor in respect of any Guarantee is not reduced to its Required Proportion within three (3) Business Days, the other Guarantors (excluding Stepping-Out Guarantors) shall indemnify such Guarantor in an amount such that the excess over the Required Portion is allocated to each of the Guarantors (excluding Stepping-Out Guarantors) on a *pro rata* basis. The "**Required Proportion**" is equal to the Adjusted Contribution Key Percentage applicable to the relevant Guarantee as it applies to the relevant guaranteed obligation of EFSF. For the avoidance of doubt, in respect of the Republic of Estonia, it is only required to make or to receive contributions under this Article 7 in respect of Funding Instruments issued or entered into after the Effective Date of the Amendments. Any indemnity or contribution payment from one Guarantor to another under this Article 7 shall bear interest at a rate equal to one month EURIBOR plus 500 basis points which shall accrue from the date of demand of such payment to the date such payment is received by such Guarantor.

(b) The provisions of this Article 7 shall apply *mutatis mutandis* if a euro-area Member State issues any Guarantees according to an Adjusted Contribution Key Percentage in excess of that which would apply to it once 100% Total Guarantee Commitments have been obtained provided that the term "Guarantor" shall include any euro-area Member State which has not yet provided its Commitment Confirmation prior to EFSF issuing or entering into the relevant Funding Instrument.

- (2) The obligations of each Guarantor to make contributions or indemnity payments under this Article are continuing obligations which extend to the ultimate balance

of sums due regardless of any intermediate payment or discharge in whole or in part.

- (3) The indemnity and contribution obligations of any Guarantor under this Article will not be affected by any act, omission, matter or thing which, but for this Article, would reduce, release or prejudice any of its obligations under this Article (without limitation and whether or not known to it or any other person) including:
- (i) any time, waiver or consent granted to, or composition with, any person;
 - (ii) the release of any person under the terms of any composition or arrangement;
 - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person; or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
 - (v) any amendment (however fundamental) or replacement of any Financial Assistance Facility Agreement, Financial Assistance or any document or security;
 - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any document or security; or
 - (vii) any insolvency or similar proceedings.

8. CALCULATIONS AND ADJUSTMENT OF THE GUARANTEES

- (1) The Parties agree that EFSF may appoint EIB (or such other agency, institution, EU institution or financial institution as is approved unanimously by the Guarantors) with the task of making the calculations for the purposes of this Agreement, each Financial Assistance Facility Agreement, the financing of EFSF by issuing or entering into Funding Instruments (or otherwise) and the Guarantees. If EIB (or such other agency, institution, EU institution or financial institution) accepts such appointment, it shall calculate the interest rate for each Financial Assistance in accordance with the terms of the relevant Financial Assistance Facility Agreement, calculate the amounts payable on each interest payment date and notify the relevant Beneficiary Member State and EFSF thereof and make all

such other calculations and notifications as are necessary for the purposes of this Agreement, the Guarantees and the Funding Instruments.

- (2) In the event that a Guarantor experiences severe financial difficulties and requests a stability support loan or benefits from financial support under a similar programme, it (the "**Stepping-Out Guarantor**") may request the other Guarantors to suspend its commitment to provide further Guarantees under this Agreement. The remaining Guarantors, acting unanimously and meeting via the Eurogroup Working Group may decide to accept such a request and in this event, the Stepping-Out Guarantor shall not be required to issue its Guarantee or incur any new liabilities as Guarantor in respect of any further issues of or entry into Funding Instruments by EFSF and any further Guarantees to be issued under this Agreement or any new liabilities to be incurred as Guarantor shall be issued and/or incurred by the remaining Guarantors and the Adjusted Contribution Key Percentage for the issuance of further Guarantees or incurrence of any new liabilities as Guarantor shall be adjusted accordingly. Such adjustments shall not affect the liability of the Stepping-Out Guarantor under existing Guarantees. It is acknowledged and agreed that the Hellenic Republic is deemed to be a Stepping-Out Guarantor with effect from the entry into force of this Agreement, Ireland became a Stepping-Out Guarantor with effect from 3 December 2010 and Portugal, with effect from 16 May 2011.

9. BREACH OF OBLIGATIONS UNDER A FINANCIAL ASSISTANCE FACILITY AGREEMENT AND AMENDMENTS AND/OR WAIVERS

- (1) If EFSF becomes aware of a breach of an obligation under a Financial Assistance Facility Agreement, it shall promptly inform the Guarantors (through the Eurogroup Working Group Chairman), the Commission and the ECB about this situation and shall propose how to react to it. The Euro Working Group Chairman will coordinate the position of the Guarantors and will inform EFSF, the Commission and the ECB of the decision taken. EFSF will thereafter implement the decision in accordance with the relevant Financial Assistance Facility Agreement.
- (2) If EFSF becomes aware of a situation where amendments, a restructuring and/or waivers relating to any Financial Assistance made under a Financial Assistance Facility Agreement may become necessary, it shall inform the Guarantors through the Eurogroup Working Group Chairman, the Commission and the ECB about this situation and shall propose how to react to it. The Eurogroup Working Group Chairman will coordinate the position of the Guarantors and will inform EFSF, the Commission and the ECB of the decision taken. EFSF will thereafter implement the decision and, following instructions of the Guarantors, negotiate and sign a

corresponding amendment, a restructuring or waiver or a new loan agreement with the relevant Beneficiary Member State or any other arrangement needed.

- (3) In other cases than those referred to in Article 9(1) and 9(2), if EFSF becomes aware of a situation where there is a need for the Guarantors to express an opinion or take an action in relation to a Financial Assistance Facility Agreement, it shall inform the Guarantors through the Eurogroup Working Group Chairman about this situation, and shall propose how to react to it. The Eurogroup Working Group Chairman will coordinate the position of the Guarantors and will inform EFSF, the Commission and the ECB of the decision taken. EFSF will thereafter implement the decision taken in whichever form is needed.
- (4) In the event that the euro-area Member States consent to the modification of any MoU entered into with a Beneficiary Member State, the Commission shall be authorised to sign the amendment(s) to such MoU on behalf of the euro-area Member States.

10. EFSF, INTER-GUARANTOR DECISIONS, DIRECTORS AND GOVERNANCE

- (1) EFSF shall have a board of directors consisting of as many directors as there are EFSF Shareholders. Each EFSF Shareholder shall be entitled to propose for nomination one person to act as a director of EFSF and the other EFSF Shareholders hereby irrevocably undertake that they shall use their votes as shareholders of EFSF in the relevant general meetings to approve as a director the person proposed by such euro-area Member State. They shall equally use their votes as EFSF Shareholders to remove a person as director of EFSF if this is so requested by the euro-area Member State which proposed such director for nomination.
- (2) Each EFSF Shareholder shall propose for nomination to the board of directors of EFSF its representative in the Eurogroup Working Group from time to time (or such person's alternate as representative on such group). The Commission and ECB shall each be entitled to appoint an observer who may take part in the meetings of the board of directors and may present its observations, without however having the power to vote. The board of directors may permit other institutions of the European Union to appoint such observers.
- (3) In the event of a vacancy of a member of the board of directors each euro-area Member State shall ensure that the member of the Board nominated upon its proposal approves as a replacement director the person proposed for nomination

by the relevant euro-area Member State which does not have a director nominated upon its proposal.

- (4) The euro-area Member States acknowledge and agree that, in the event of a vote of the board of directors of EFSF, each director which has been proposed for nomination by a euro-area Member State shall have a weighted number of the total number of votes which corresponds to the number of shares which his/her nominating euro-area Member State holds in the issued share capital of EFSF.
- (5) The Guarantors agree that the following matters affecting their roles and liabilities as Guarantors shall require to be approved by them on a unanimous basis:
 - (a) decisions in relation to the grant of a Financial Assistance Facility Agreement to a euro-area Member State including the approval of the relevant MoU and Financial Assistance Facility Agreement, any decisions to change the pricing structure applicable to Financial Assistance Facility Agreements, and any decisions to include in a Financial Assistance Facility Agreement the faculty of providing Financial Assistance by way of the purchase of bonds in the primary markets or the purchase of bonds in the secondary markets based on an ECB analysis recognising the existence of exceptional financial market circumstances and risk to financial stability;
 - (b) decisions regarding the disbursement of Financial Assistance under an existing Financial Assistance Facility Agreement in particular as to whether conditionality criteria for a disbursement are satisfied. For secondary market purchases, the Financial Assistance Facility Agreement for the purchase of bonds in the secondary market adopted on the basis of Article 10(5)(a) may provide for alternative procedures for the technical implementation of individual bond purchases under such Financial Assistance Facility Agreement, in line with guidelines referred to in Article 2(1)(b);
 - (c) any modification to this Agreement including as to the availability period to grant Financial Assistance Facility Agreements;
 - (d) any modification to the following terms of any Financial Assistance Facility Agreement: aggregate principal amount of a Financial Assistance Facility Agreement, availability period, repayment profile or interest rate of any outstanding Financial Assistance;
 - (e) the terms of the EFSF Programme, the programme size and the approval of any Offering Materials;
 - (f) any decision to permit an existing Guarantor to cease to issue further guarantees; significant changes to the credit enhancement structure;

- (g) the funding strategy of each EFSF Programme and any decision to permit a Diversified Funding Strategy (including the manner in which EFSF allocates its operating costs and the funding costs of Funding Instruments to Financial Assistance and Financial Assistance Facility Agreements if a Diversified Funding Strategy is adopted);
- (h) any increase in the aggregate amount of Guarantees which might be issued under this Agreement;
- (i) any transfer of rights, obligations and/or liabilities of EFSF to ESM pursuant to Article 13(10); and
- (j) the adoption and the amendment of any guideline referred to in Article 2(1)(b) or 2(1)(c).

For the purpose of this Article 10(5) and any other provision of this Agreement which requires a unanimous decision of the Guarantors, unanimity means a positive or negative vote of all those Guarantors which are present and participate (by voting positively or negatively) in the relevant decision (ignoring any abstentions or absences) provided that any Guarantor which is no longer issuing new Guarantees (in particular, the Stepping-Out Guarantors) shall not be entitled to vote on any decision to make a new Financial Assistance Facility Agreement, a new Financial Assistance or a new issuance of Funding Instruments which are not guaranteed by it provided that it shall continue to have the right to vote on decisions in relation to Financial Assistance or Funding Instruments in respect of which it has issued a Guarantee which remains outstanding. It is a condition precedent to the validity of any such vote that a quorum of a majority of Guarantors able to vote whose Guarantee Commitments represent no less than 2/3 of the Total Guaranteed Commitments are present at the meeting.

- (6) The Guarantors agree that all matters which are not reserved to unanimity decision of the Guarantors pursuant to Article 10(5) (above) or unanimity decision of the euro-area Member States pursuant to Article 10(7) (below) and, in particular, the following matters affecting their roles and liabilities as Guarantors shall be decided by a majority of Guarantors (excluding however the Stepping-Out Guarantors) (i) whose Guarantee Commitments represent 2/3 of the Total Guarantee Commitments (in the event that no Guarantees have been issued) or (ii) if Guarantees have been issued, 2/3 of the aggregate maximum face amount of Guarantees which have been issued and remain outstanding provided that, in calculating the satisfaction of this threshold the face amount of Guarantees of a Guarantor which is a Stepped-Out Obligor or which has failed to pay under a Guarantee shall not be taken into account (a "**2/3 Majority**");

- (a) all decisions in relation to existing Financial Assistance Facility Agreements or Financial Assistance which are not specifically reserved to unanimity pursuant to Article 10(5) including decisions on breaches, waivers, restructurings and whether to declare defaults in relation to Financial Assistance Facility Agreements or Financial Assistance;
 - (b) issuances under an existing EFSF Programme (which programme has been approved unanimously by the Guarantors);
 - (c) operational matters in relation to debt issuance (including appointment of arrangers, lead managers, rating agents, trustees etc);
 - (d) detailed implementation of an approved Diversified Funding Strategy; and
 - (e) detailed implementation of any additional credit enhancement approved pursuant to Article 10(5).
 - (f) The proviso to Article 10(5) relating to euro-area Member States which no longer issue new Guarantees and/or are Stepping-Out Guarantors shall apply to votes on decisions within the scope of this Article 10(6).
- (7) The following corporate matters in relation to EFSF shall require the unanimous decision of all euro-area Member States:
- increases in authorized and/or issued and paid-up share capital;
 - increase in the level of commitments to subscribe for share capital;
 - reductions in share capital;
 - dividends;
 - employment of the CEO of the EFSF;
 - approving accounts;
 - prolonging duration of company;
 - liquidation;
 - changes to the Articles of Association;

- any other matter not specifically dealt with in the Articles of Association or in this Agreement.
- (8) The Guarantors or the euro-area Member States (as the case may be) shall take the decisions affecting the Guarantors and EFSF contemplated by Articles 10(5), (6) and (7) at meetings within the framework of the Eurogroup with the possibility to delegate the decision-making to the Eurogroup Working Group. All their decisions shall be communicated in writing by the Eurogroup Working Group Chairman to EFSF. For such decision-making, the Commission provides input on matters relating, in particular, to the MoU and the terms and conditions of the Financial Assistance Facility Agreements and other policy issues. The EFSF shall provide input relating, in particular, to the implementation of the Financial Assistance Facility Agreements, the issue of or entry into Financial Instruments and its general corporate matters.
 - (9) Each euro-area Member State hereby undertakes to the other euro-area Member States that it shall vote as shareholder of EFSF consistently with the decisions taken by the requisite majority of Guarantors or euro-area Member States (as the case may be) within the framework of such Eurogroup meetings and that it shall ensure that the director which has been proposed for nomination to the board of EFSF by it acts consistently with such decisions.
 - (10) Any decisions by the euro-area Member States to approve any MoU relating to a Financial Assistance Facility Agreement and Beneficiary Member State and regarding any proposed modification to an MoU shall be taken by them acting unanimously.
 - (11) Euro-area Member States may, to the extent permissible under their national laws, provide indemnities to the persons proposed by them to be nominated as directors of EFSF.
 - (12) In the event that euro-area Member States agree unanimously to increase the issued paid-up capital of EFSF, each euro-area Member State shall subscribe and pay in full a percentage of such increase in paid up capital equal to its Contribution Key percentage of such increase in paid-up capital on or prior to the date specified by EFSF.
 - (13) Matters referred to decisions by euro-area Member State or Guarantors under this Agreement shall be decided as soon as reasonably practicable and necessary. In due course, operational guidelines may be adopted which may set out timelines for decisions to be taken in relation to this Agreement.

11. TERM AND LIQUIDATION OF EFSF

- (1) This Agreement shall remain in full force and effect so long as there are amounts outstanding under any Financial Assistance Facility Agreements or Funding Instruments issued by EFSF under an EFSF Programme or under any reimbursement amounts due to Guarantors.
- (2) The euro-area Member States undertake that they shall liquidate EFSF in accordance with its Articles of Association on the earliest date after 30 June 2013 on which there are no longer Financial Assistance outstanding to a euro-area Member State and all Funding Instruments issued by EFSF and any reimbursement amounts due to Guarantors have been repaid in full.
- (3) In the event that there are any residual liabilities of EFSF on its liquidation the euro-area Member States shall in a final meeting of shareholders decide on what basis these may be divided between the euro-area Member States.
- (4) In the event there is a surplus on liquidation of EFSF it shall be distributed to its shareholders on a *pro rata* basis calculated by reference to their participation in the share capital of EFSF.
- (5) Prior to the determination of whether there is such a surplus:
 - (a) the credit balance of the Cash Reserve shall be paid to the Guarantors as described in Article 2(10); and
 - (b) any operating profit or surplus derived by EFSF which results from its issuance of Funding Instruments guaranteed by the Guarantors shall be paid as additional remuneration to the Guarantors by reference to their respective Adjusted Contribution Key Percentage.

12. APPOINTMENT OF EIB, ECB, OUTSOURCING AND DELEGATION

- (1) EFSF may appoint EIB (or such other agencies, institution, EU institution, financial institution or other persons as is approved unanimously by the euro-area Member States) for the purpose of:
 - (a) managing the receipt of funds from investors following the issue of bonds or securities under an EFSF Programme, the management of the transmission of these funds to Beneficiary Member States in the form of Financial Assistance and the receipt of funds from Beneficiary Member States and the application of such funds to meet scheduled payments of principal and interest under the bonds and debt securities and, following the making of payments under a

Guarantee, the management of funds received from Beneficiary Member States and the distribution of reimbursement amounts to the Guarantors;

- (b) the related management of the treasury of EFSF including in particular the Cash Reserve and any funds received by way of early repayment or prepayment of Financial Assistance pending the application of such funds to repay Funding Instruments;
 - (c) such other related cash and treasury management tasks as may be delegated from time to time;
 - (d) providing legal services, accounting services, human resources services, facilities management, procurement services, internal audit and such other services as require outsourcing and/or logistical support.
 - (e) These appointments may be effected pursuant to a Service Level Contract between EFSF and EIB (or the relevant agency or institution).
- (2) EFSF may contract the ECB to act as its paying agent. EFSF may appoint ECB (or another agency, institution, EU institution, financial institution or other persons approved unanimously by the Guarantors) to maintain its bank and securities accounts.
- (3) EFSF shall, in the event of the adoption of a Diversified Funding Strategy and subject to the unanimous approval of the Guarantors (other than Stepping-Out Guarantors), be entitled to and may delegate asset and liability management functions and the other activities and functions described in Article to one or more debt management agencies of a euro-area Member State or such other agencies, institutions, EU institutions or financial institutions as are approved unanimously by the Guarantors.
- (4) EFSF shall be entitled to delegate and/or outsource on arm's length commercial terms to any agency, institution, EU institution, financial institution or other persons such other functions as its board of directors consider desirable for the efficient discharge of its functions.

13. ADMINISTRATIVE PROVISIONS

- (1) The operating and out-of-pocket costs of EFSF shall be paid by EFSF out of its general revenues and resources. Fees and expenses directly related to funding may be re-invoiced to the relevant Beneficiary Member States (as appropriate).

- (2) Upon the incorporation of EFSF it shall assume full responsibility for all costs and expenses incurred in its setting-up and incorporation. In addition, it shall assume all liabilities and obligations (including indemnity obligations) under contracts and arrangements entered into on its behalf and for its benefit (whether by a shareholder or a third party) prior to its incorporation.
- (3) EFSF shall report to the euro-area Member States and the Commission on the outstanding claims and liabilities under the Financial Assistance Facility Agreements, EFSF Funding Instrument issues and the Guarantees on a quarterly basis.
- (4) EFSF will report to the Guarantors and request instructions from the Eurogroup Working Group Chairman regarding unsettled claims and liabilities or any other issues that may arise under this Agreement or in connection with any Guarantee.
- (5) The Parties shall not assign or transfer any of their rights or obligations under this Agreement without the prior written consent of all the other Parties to this Agreement.
- (6) (a) The euro-area Member States hereby agree that the shares they hold in EFSF cannot be transferred by any EFSF Shareholder during a period of 10 (ten) years from the date of acquisition of the shares by the relevant EFSF Shareholder except with the unanimous consent of all EFSF Shareholders. Such restriction does not apply to (i) the initial transfer by the sole founding shareholder (if any) to the other euro-area Member States and (ii) proportionate transfers by each EFSF Shareholder to any new euro-area Member State which adopts the Euro as its currency after the incorporation of the Company.

(b) In the event that a euro-area Member State wishes to dispose of its shares in EFSF after expiry of the lock-up period in Article 6.4 of the Articles of Association of EFSF, it shall offer such shares to be purchased by the other shareholders of EFSF on a *pro rata* basis to their shareholdings in EFSF. Any shares which are not purchased by a shareholder to whom they are offered may be offered to and acquired by any other EFSF Shareholder. If no EFSF Shareholder wishes to purchase such shares then, to the extent it has funds available for this purpose, EFSF may acquire such shares at their fair market value.
- (7) In the event that a new country becomes a euro-area Member State, the Parties hereto shall permit such new euro-area Member State to become a shareholder of EFSF by receiving a transfer of shares from other shareholders of EFSF such that its aggregate percentage holding of shares in EFSF corresponds with its Contribution Key and to adhere to the terms of this Agreement. The Parties shall negotiate in good faith as to the basis upon which such new adhering euro-area Member State shall accede to this Agreement.

- (8) In the event that one euro-area Member State incorporates EFSF, it shall promptly upon execution and entry into force of this Agreement transfer shares to the other euro-area Member States such that their respective percentage holdings of shares in EFSF corresponds with their respective Contribution Keys.
- (9) The terms:
- "**Business Day**" means a day on which Target 2 is open for settlement of payments in Euro.
 - "**Target 2**" means the Trans-European Automated Real-Time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.
 - The terms "**Financial Assistance Facility Agreement**" and "**Financial Assistance**" shall apply respectively to "**Loan Facility Agreements**" and "**Loans**" entered into or disbursed by EFSF prior to the Effective Date of the Amendments.
- (10) Following the constitution of the European Stability Mechanism (the "ESM"), EFSF may, with the approval of a decision of the euro-area Member States acting with unanimity and after obtaining any requisite consents of investors in Funding Instruments, transfer all and any of its rights, obligations and liabilities, including under Financial Instruments, Financial Assistance Facility Agreements and/or Financial Assistance, to ESM.

14. COMMUNICATIONS

All notices in relation to this Agreement shall be validly given if in writing and sent to the addresses and contact details to be set out in the operating guidelines which shall be adopted by the Parties for the purpose of this Agreement.

15. MISCELLANEOUS

- (1) If any one or more of the provisions contained in this Agreement should be or become fully or in part invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not be affected or impaired thereby. Provisions which are fully or in part invalid, illegal or unenforceable shall be interpreted and thus implemented according to the spirit and purpose of this Agreement.
- (2) The Preamble to this Agreement forms an integral part of this Agreement.

- (3) Each of the Parties hereby irrevocably and unconditionally waives all immunity to which it is or may become entitled, in respect of itself or its assets or revenues, from legal proceedings in relation to this Agreement, including, without limitation, immunity from suit, judgment or other order, from attachment, arrest, detention or injunction prior to judgment, and from any form of execution and enforcement against it, its assets or revenues after judgment to the extent not prohibited by mandatory law.
- (4) A person who is not a party to this Agreement shall not be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.
- (5) This Agreement may be amended by the Parties in writing.

16. GOVERNING LAW AND JURISDICTION

- (1) This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and shall be construed in accordance with English law.
- (2) Any dispute arising from or in the context of this Agreement shall be settled amicably. In the absence of such amicable agreement, the euro-area Member States agree that to the extent it constitutes a dispute between them only, it shall be submitted to the exclusive jurisdiction of the Court of Justice of the European Union. To the extent there is a dispute between one or more euro-area Member States and EFSF, the Parties agree to submit the dispute to the exclusive jurisdiction of the Courts of the Grand Duchy of Luxembourg.

17. EXECUTION OF THE AGREEMENT

This Agreement may be executed in any number of counterparts signed by one or more of the Parties. The counterparts each form an integral part of the original Agreement and the signature of the counterparts shall have the same effect as if the signatures on the counterparts were on a single copy of the Agreement.

EFSF is authorised to promptly after the signature of this Agreement supply conformed copies of the Agreement to each of the Parties.

18. ANNEXES

The Annexes to this Agreement shall constitute an integral part thereof:

1. List of Guarantors with their respective Guarantee Commitments;
2. Contribution Key; and
3. Template Commitment Confirmation.

ANNEX 1

**LIST OF GUARANTOR EURO-AREA MEMBER STATES WITH THEIR
RESPECTIVE GUARANTEE COMMITMENTS AS FROM THE EFFECTIVE
DATE OF THE AMENDMENTS**

Country	Guarantee Commitments EUR (millions)	
Kingdom of Belgium	27,031.99	
Federal Republic of Germany	211,045.90	
Ireland	12,378.15	*
Kingdom of Spain	92,543.56	
French Republic	158,487.53	
Italian Republic	139,267.81	
Republic of Cyprus	1,525.68	
Grand Duchy of Luxembourg	1,946.94	
Republic of Malta	704.33	
Kingdom of the Netherlands	44,446.32	
Republic of Austria	21,639.19	
Portuguese Republic	19,507.26	*
Republic of Slovenia	3,664.30	
Slovak Republic	7,727.57	
Republic of Finland	13,974.03	
Hellenic Republic	21,897.74	*
Republic of Estonia	1,994.86	
Total Guarantee Commitments	779,783.14	

* The Hellenic Republic, Ireland and the Portuguese Republic have become Stepping-Out Guarantors. Portugal remains liable as Guarantor in respect of Notes issued prior to the time it became a Stepping-Out Guarantor. The Republic of Estonia is only a Guarantor in respect of Notes issued after the Effective Date of the Amendments.

This means that as of the Effective Date of the Amendments the aggregate of the active Guarantee Commitments for the Guarantors which are not Stepping-Out Guarantors is EUR 726,000.00 million.

ANNEX 2

CONTRIBUTION KEY IN RESPECT OF FUNDING INSTRUMENTS ISSUED OR ENTERED INTO AS FROM THE EFFECTIVE DATE OF THE AMENDMENTS

Member State	ECB Capital subscription key %	Contribution Key
Kingdom of Belgium	2.4256	3.4666%
Federal Republic of Germany	18.9373	27.0647%
Republic of Estonia	0.1790	0.2558%
Ireland*	1.1107	1.5874%
Hellenic Republic*	1.9649	2.8082%
Kingdom of Spain	8.3040	11.8679%
French Republic	14.2212	20.3246%
Italian Republic	12.4966	17.8598%
Republic of Cyprus	0.1369	0.1957%
Grand Duchy of Luxembourg	0.1747	0.2497%
Republic of Malta	0.0632	0.0903%
Kingdom of the Netherlands	3.9882	5.6998%
Republic of Austria	1.9417	2.7750%
Portuguese Republic*	1.7504	2.5016%
Republic of Slovenia	0.3288	0.4699%
Slovak Republic	0.6934	0.9910%
Republic of Finland	1.2539	1.7920%
Total	<hr/>	<hr/>
	69.9705	100.0000%

*As at the Effective Date of the Amendments, the Hellenic Republic, Ireland and Portugal have become Stepping-Out Guarantors.

ANNEX 3

TEMPLATE FOR COMMITMENT CONFIRMATION

[Letter-head of Authorities of Euro Area Member State]

By fax followed by registered mail:

European Financial Stability Facility [●] Fax: [●]

Copy to:

[●] [●] Fax: [●]

Re: European Financial Stability Facility ("EFSF") – Confirmation Commitment

Dear Sirs,

We refer to the EFSF Framework Agreement between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and EFSF (the "**Parties**").

We hereby notify you that we are duly authorised under our national laws to permit us to be bound by the above mentioned Agreement with effect from [date].

Yours faithfully,

[Name of euro-area Member State]

5. EUROPEAN CENTRAL BANK

5.1. SECONDARY LEGISLATION ON THE MONETARY FUNCTION

COUNCIL DECISION

of 29 June 1998

**on the consultation of the European Central Bank by national authorities
regarding draft legislative provisions⁽¹⁾
(98/415/EC)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 105(4) thereof and Article 4 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed thereto,

Having regard to the proposal from the Commission⁽²⁾,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the European Monetary Institute⁽⁴⁾,

Acting in accordance with the procedure provided for in Article 106(6) of the Treaty and in Article 42 of the said Protocol,

- (1) Whereas the European Central Bank (ECB) will be established as soon as its Executive Board is appointed;
- (2) Whereas the Treaty stipulates that national authorities shall consult the ECB regarding any draft legislative provision in its fields of competence; whereas it is for the Council to set out the limits and the conditions of such consultation;
- (3) Whereas this obligation on the authorities of the Member States to consult the ECB must not prejudice the responsibility of these authorities for the matters which are the subject of such provision; whereas Member States must consult the

¹ OJ L 189, 3.7.1998, p. 42.

² OJ C 118, 17.4.1998, p. 11.

³ OJ C 195, 22.6.1998.

⁴ Opinion delivered on 6 April 1998 (not yet published in the Official Journal).

ECB on any draft legislation in its fields of competence in accordance with Article 105(4) of the Treaty; whereas the list of particular areas included in Article 2 of this Decision is not exhaustive; whereas the sixth indent of Article 2 of this Decision is without prejudice to the present assignment of competences for policies relating to the prudential supervision of credit institutions and the stability of the financial system;

- (4) Whereas the monetary functions and operations of the European System of Central Banks (ESCB) are defined in the Statute of the ESCB and of the ECB; whereas central banks of participating Member States are an integral part of the ESCB and must act in accordance with the guidelines and instructions of the ECB; whereas, in the third stage of Economic and Monetary Union (EMU), the authorities of non-participating Member States must consult the ECB on draft legislative provisions on the instruments of monetary policy;
- (5) Whereas as long as Member States do not participate in the monetary policy of the ESCB, this Decision does not concern decisions taken by authorities of these Member States in the context of the implementation of their monetary policy;
- (6) Whereas consultation of the ECB must not unduly lengthen procedures for adopting legislative provisions in the Member States; whereas the time limits within which the ECB must deliver its opinion must, nevertheless, enable it to examine the texts referred to it with the required care; whereas, in duly justified cases of extreme urgency, for which the reasons will be stated, for example on account of market sensitivity, Member States may set a time limit which is less than one month and which reflects the urgency of the situation; whereas in these cases particularly, dialogue between the national authorities and the ECB should enable the interests of both to be taken into account;
- (7) Whereas, in accordance with paragraphs 5 and 8 of Protocol No 11 annexed to the Treaty, this Decision shall not apply to the United Kingdom of Great Britain and Northern Ireland if and so long as that Member State does not move to the third stage of EMU;
- (8) Whereas, from the date of the establishment of the ECB until the start of the third stage of EMU, national authorities have to consult the ECB, pursuant to Decision 93/717/EC⁵ and Article 1091(2) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. For the purpose of this Decision:

⁵ OJ L 332, 31. 12. 1993, p. 14.

‘participating Member State’ shall mean a Member State which has adopted the single currency in accordance with the Treaty;

‘draft legislative provisions’ shall mean any such provisions which, once they become legally binding and of general applicability in the territory of a Member State, lay down rules for an indefinite number of cases and are addressed to an indefinite number of natural or legal persons.

2. Draft legislative provisions shall not include draft provisions the exclusive purpose of which is the transposition of Community directives into the law of Member States.

Article 2

1. The authorities of the Member States shall consult the ECB on any draft legislative provision within its field of competence pursuant to the Treaty and in particular on:

- currency matters,
- means of payment,
- national central banks,
- the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics,
- payment and settlement systems,
- rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.

2. In addition, the authorities of Member States other than participating Member States shall consult the ECB on any draft legislative provisions on the instruments of monetary policy.

3. The ECB shall, immediately on receipt of any draft legislative provision, notify the consulting authority whether, in its opinion, such provision is within its field of competence.

Article 3

1. The authorities of the Member States preparing a legislative provision may, if they consider it necessary, set the ECB a time limit for the submission of its opinion which may not be less than one month from the date on which the President of the ECB receives notification to this effect.

2. In case of extreme urgency, the time limit may be reduced. In this case, the consulting authority shall state the reasons for the urgency.
3. The ECB may request in due time an extension of the time limit for up to an additional four weeks. This request shall not be unreasonably declined by the consulting authority.
4. Upon expiry of the time limit, the absence of an opinion shall not prevent further action by the consulting national authority. Should the opinion of the ECB be received after the time limit, Member States shall, nevertheless, ensure that it is brought to the knowledge of the authorities referred to in Article 4.

Article 4

Each Member State shall take the measures necessary to ensure effective compliance with this Decision. To that end, it shall ensure that the ECB is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance and that the opinion received from the ECB is brought to the knowledge of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions concerned.

Article 5

1. This Decision shall apply from 1 January 1999.
2. Decision 93/717/EC shall be repealed with effect from 1 January 1999.

Article 6

This Decision is addressed to the Member States.

COUNCIL REGULATION (EC) NO 2531/98

of 23 November 1998

concerning the application of minimum reserves by the European Central Bank as amended by Council Regulation (EC) No 134/2002 of 22 January 2002⁽¹⁾

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol (No 3) on the Statute of the European System of Central Banks and of the European Central Bank (the ‘Statute’) and in particular to Article 19.2 thereof,

Having regard to the recommendation of the European Central Bank (the ‘ECB’)⁽²⁾,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Commission⁽⁴⁾,

Acting in accordance with the procedure laid down in Article 106(6) of the Treaty establishing the European Community (hereinafter referred to as the ‘Treaty’) and in Article 42 of the Statute and under the conditions set out in Article 43.1 of the Statute and paragraph 8 of the Protocol (No 11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland,

- (1) Whereas Article 19.2, in conjunction with Article 43.1 of the Statute, paragraph 8 of Protocol No 11 and paragraph 2 of the Protocol (No 12) on certain provisions relating to Denmark, are not to confer any rights or impose any obligations on a non-participating Member State;
- (2) Whereas Article 19.2 of the Statute requires the Council to define, *inter alia*, the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis;
- (3) Whereas Article 19.2 of the Statute also requires the Council to define the appropriate sanctions in cases of non-compliance with those requirements; whereas specific sanctions are set out herein; whereas this Regulation refers to Council Regulation (EC) No 2532/98 of 23 November 1998, concerning the

¹ Consolidated version
(available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998R2531:20020126:EN:HTML>).

² OJ C 246, 6.8.1998, p. 6.

³ OJ C 328, 26.10.1998.

⁴ Opinion delivered on 8 October 1998 (not yet published in the Official Journal).

powers of the European Central Bank to impose sanctions⁽⁵⁾ for the principles and procedures relating to the imposition of sanctions and provides for a simplified procedure for the imposition of sanctions in the event of certain kinds of infringements; whereas, in the event of a conflict between the provisions of the Regulation (EC) No 2532/98 and the provisions of this Regulation enabling the ECB to impose sanctions, the provisions of this Regulation should prevail;

- (4) Whereas Article 19.1 of the Statute provides that the Governing Council of the ECB may establish regulations concerning the calculation and determination of the required minimum reserves;
- (5) Whereas, in order to be effective as an instrument for the performance of money market management and monetary control functions, the system for the imposition of minimum reserves needs to be structured so that the ECB has the ability and flexibility to impose reserve requirements within the context of, and dependent upon, changing economic and financial conditions among participating Member States; whereas in this respect the ECB must have the flexibility to react to new payment technologies such as the development of electronic money; whereas the ECB may impose minimum reserves on liabilities resulting from off-balance-sheet items, in particular those that are either individually or in combination with other on-balance-sheet or off-balance-sheet items, comparable with liabilities recorded on the balance sheet, in order to limit the possibilities of circumvention;
- (6) Whereas the ECB, in establishing detailed regulations for the imposition of minimum reserves, including determining the actual reserve ratios, any remuneration of reserves, any exemptions from minimum reserves or any modifications to such requirements applicable to any specific group or groups of institutions, is bound to act in pursuance of the objectives of the European System of Central Banks (the 'ESCB') as set out in Article 105(1) of the Treaty and as reflected in Article 2 of the Statute; whereas this implies, *inter alia*, the principle of not inducing significant undesirable delocation or disintermediation; whereas the imposition of such minimum reserves may constitute an element of the definition and implementation of the monetary policy of the Community, being one of the basic tasks of the ESCB as specified in the first indent of Article 105(2) of the Treaty and as reflected in the first indent of Article 3.1 of the Statute;
- (7) Whereas the sanctions provided in the event of non-compliance with the obligations set out in this Regulation are without prejudice to the possibility of the ESCB establishing appropriate enforcement provisions in its relations with counterparties, including the partial or total exclusion of an institution from monetary policy operations in the case of serious infringements of the minimum reserve requirements;

⁵ J L 318, 27.11.1998, p. 4.

- (8) Whereas the ESCB and the ECB have been entrusted with the task of preparing the monetary policy instruments to allow for their full operation in the third stage of Economic and Monetary Union (hereinafter referred to as ‘Stage Three’); whereas an essential element of preparation is the adoption, ahead of Stage Three, of ECB regulations requiring institutions to hold minimum reserves as from 1 January 1999; whereas it is desirable to inform market participants during 1998 of the detailed provisions which the ECB may deem necessary to adopt for the implementation of the minimum reserves system; whereas it is therefore necessary to provide the ECB from the date of entry into force of this Regulation with a regulatory power;
- (9) Whereas the provisions of this Regulation can only be effectively applied in their entirety if participating Member States adopt the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in carrying out the collection and verification of information as required by this Regulation, in accordance with Article 5 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

1. ‘participating Member State’ shall mean a Member State which has adopted the single currency in accordance with the Treaty;
2. ‘national central bank’ shall mean the central bank of a participating Member State;
3. ‘institution’ shall mean any entity in a participating Member State which, under the terms of Article 19.1 of the Statute, the ECB may require to hold minimum reserves;
4. ‘reserve ratio’ shall mean such percentage of the basis for minimum reserves as the ECB may specify in accordance with Article 19.1 of the Statute;
5. ‘sanctions’ shall mean fines, periodic penalty payments, penalty interest and non-interest-bearing deposits.

Article 2

Right to exempt institutions

The ECB may, on a non-discriminatory basis, exempt institutions from minimum reserves in accordance with criteria established by the ECB.

Article 3

Basis for minimum reserves

1. The basis for minimum reserves which the ECB may require institutions to hold according to Article 19.1 of the Statute shall include, subject to the provisions specified in paragraphs 2 and 3 of this Article:

(i) liabilities of the institution resulting from the acceptance of funds, together with

(ii) liabilities resulting from off-balance-sheet items, but excluding

(iii) fully or partly liabilities which are owed to any other institution according to modalities which shall be specified by the ECB, and

(iv) liabilities which are owed to the ECB or to a national central bank.

2. For liabilities in the form of negotiable debt instruments, the ECB may specify, as an alternative to the provision in paragraph 1 (iii), that liabilities which are owed by one institution to another shall be fully or partly deducted from the basis for minimum reserves of the institution to which they are owed.

3. The ECB may, on a non-discriminatory basis, allow the deduction of specific types of assets from categories of liabilities forming part of the basis for minimum reserves.

Article 4

Reserve ratios

1. Reserve ratios, which the ECB may specify according to Article 19.1 of the Statute, shall not exceed 10% of any relevant liabilities forming part of the basis for minimum reserves but may be 0%.

2. Subject to paragraph 1, the ECB may, on a non-discriminatory basis, specify differing reserve ratios for specific categories of liabilities forming part of the basis for minimum reserves.

*Article 5***Regulatory power**

For the purpose of Articles 2, 3 and 4, the ECB shall adopt, where appropriate, regulations or decisions.

*Article 6***Right to collect and verify information**

1. The ECB shall have the right to collect from institutions the information necessary for the application of minimum reserves. Such information shall be confidential.
2. The ECB shall have the right to verify the accuracy and quality of the information which institutions provide to demonstrate compliance with the minimum reserve requirements. The ECB shall notify the institution of its decision to verify data or to effect their compulsory collection.
3. The right to verify data shall include the right to:
 - (a) require the submission of documents;
 - (b) examine the books and records of the institutions;
 - (c) take copies or extracts from such books and records; and
 - (d) obtain written or oral explanations.

When an institution obstructs the collection and/or verification of information, the participating Member State in which the relevant premises are located shall afford the necessary assistance, including ensuring access to the premises of the institution, so that the abovementioned rights can be exercised.

4. The ECB may delegate to the national central banks the execution of the rights to which paragraphs 1 to 3 refer. In accordance with the first indent of Article 34.1 of the Statute, the ECB shall be empowered to specify further in a regulation the conditions under which the right to verify may be exercised.

*Article 7***Sanctions in cases of non-compliance**

1. Where an institution fails to hold all or part of the minimum reserves imposed in accordance with this Regulation and ECB regulations or decisions associated herewith, the ECB may impose either of the following sanctions:

- (a) a payment of up to 5 percentage points above the ESCB's marginal lending rate or twice the ESCB's marginal lending rate, in both cases applied to the amount of the minimum reserves which the relevant institution fails to provide;
 - (b) the requirement for the relevant institution to establish a non-interest-bearing deposit with the ECB or the national central banks up to 3 times the amount of the minimum reserves which the relevant institution fails to provide. The maturity of the deposit shall not exceed the period during which the institution fails to hold the minimum reserves.
2. Whenever a sanction is imposed in accordance with paragraph 1, the principles and procedures set out in Regulation (EC) No 2532/98 shall apply. However, Article 2(1) and (3) and Article 3(1), (2), (3) and (4) of that Regulation shall not be applicable, and the periods referred to in Article 3(6) and (8) thereof shall be reduced to fifteen days.
3. Where an institution fails to comply with the obligations deriving from this Regulation or ECB regulations or decisions associated therewith, other than those set out in paragraph 1, sanctions in cases of such failure and the limits and conditions relating to the imposition of such sanctions shall be those set out in Regulation (EC) No 2532/98.

Article 8

Final provisions

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 5 shall apply from the date of entry into force of this Regulation. The remaining Articles shall apply from 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COUNCIL REGULATION (EC) No 2532/98

of 23 November 1998

concerning the powers of the European Central Bank to impose sanctions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') and in particular to Article 108a(3) thereof and to Article 34.3 of the Protocol (No 3) on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute'),

Having regard to the recommendation of the European Central Bank (hereinafter referred to as the 'ECB')⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Commission⁽³⁾,

Acting in accordance with the procedure laid down in Article 106(6) of the Treaty and in Article 42 of the Statute, and under the conditions set out in Article 109k(5) of the Treaty and paragraph 7 of the Protocol (No 11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland,

- (1) Whereas this Regulation, according to Article 34.3 of the Statute, in conjunction with Article 43.1 of the Statute, paragraph 8 of Protocol No 11 and paragraph 2 of the Protocol (No 12) on certain provisions relating to Denmark, is not to confer any rights or impose any obligations on a non-participating Member State;
- (2) Whereas Article 34.3 of the Statute requires the Council to specify the limits and conditions under which the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions;
- (3) Whereas infringements of the obligations arising from ECB regulations and decisions can arise in various fields of competence of the ECB;
- (4) Whereas it is appropriate, in order to ensure a uniform approach towards the imposition of sanctions in the various fields of competence of the ECB, that all

¹ OJ C 246, 6. 8. 1998, p. 9.

² OJ C 328, 26. 10. 1998.

³ Opinion delivered on 8 October 1998 (not yet published in the Official Journal).

general and procedural provisions for the imposition of such sanctions are contained in a single Council Regulation; whereas other Council Regulations provide for specific sanctions in specific fields and refer to this Regulation for the principles and procedures relating to the imposition of such sanctions;

- (5) Whereas, in order to provide an effective regime for the administration of sanctions, this Regulation must allow the ECB a certain discretion, both in relation to the relevant procedures and to their implementation within the limits and conditions laid down in this Regulation;
- (6) Whereas the European System of Central Banks (hereinafter referred to as the ‘ESCB’) and the ECB have been entrusted with the task of preparing for their full operation in the third stage of Economic and Monetary Union (hereinafter referred to as ‘Stage Three’); whereas timely preparation is essential to enable the ESCB to fulfil its tasks in Stage Three; whereas an essential element of preparation is the adoption, ahead of Stage Three, of the regime for the imposition of sanctions on undertakings failing to comply with obligations imposed upon them by ECB regulations and decisions; whereas it is desirable to inform market participants as soon as possible of the detailed provisions the ECB may deem necessary to adopt for the imposition of sanctions; whereas it is therefore necessary to provide the ECB from the date of entry into force of this Regulation with a regulatory power;
- (7) Whereas the provisions of this Regulation can only be effectively applied if participating Member States adopt the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in the implementation of the infringement procedure as required by this Regulation, in accordance with Article 5 of the Treaty;
- (8) Whereas the ECB is to have recourse to the national central banks to carry out the tasks of the ESCB to the extent deemed possible and appropriate;
- (9) Whereas decisions under this Regulation imposing pecuniary obligations are to be enforceable in accordance with Article 192 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

- (1) ‘participating Member State’ shall mean a Member State which has adopted the single currency in accordance with the Treaty;
- (2) ‘national central bank’ shall mean the central bank of a participating Member State;
- (3) ‘undertakings’ shall mean those natural or legal persons, private or public, with the exception of public persons in the exercise of their public powers, in a participating Member State, which are the subject of obligations arising from ECB regulations and decisions, and shall include branches or other permanent establishments located in a participating Member State, the head office or registered office of which is outside a participating Member State;
- (4) ‘infringement’ shall mean any failure by an under-taking to fulfil an obligation arising from ECB regulations or decisions;
- (5) ‘fine’ shall mean a single amount of money which an undertaking is obliged to pay as a sanction;
- (6) ‘periodic penalty payments’ shall mean amounts of money which, in the case of a continued infringement, an undertaking is obliged to pay as a sanction, which shall be calculated for each day of continued infringement following the notification of the undertaking of a decision, in accordance with the second subparagraph of article 3(1), requiring the termination of such an infringement;
- (7) ‘sanctions’ shall mean fines and periodic penalty payments imposed as a consequence of an infringement.

Article 2

Sanctions

1. The limits within which the ECB may impose fines and periodic penalty payments on undertakings, unless otherwise provided for in specific Council Regulations, shall be the following:

- (a) fines: the upper limit shall be EUR 500 000; and
 - (b) periodic penalty payments: the upper limit shall be EUR 10 000 per day of infringement. Periodic penalty payments may be imposed in respect of a maximum period of six months following the notification of the undertaking of the decision in accordance with Article 3(1).
2. In determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall be guided by the principle of proportionality.
3. The ECB shall take into consideration, where relevant, the circumstances of the specific case, such as:
- (a) on the one hand, the good faith and the degree of openness of the undertaking in the interpretation and fulfilment of the obligation arising from an ECB regulation or decision as well as the degree of diligence and cooperation shown by the undertaking or, on the other, any evidence of wilful deceit on the part of officials of the undertaking;
 - (b) the seriousness of the effects of the infringement;
 - (c) the repetition, frequency or duration of the infringement by that undertaking;
 - (d) the profits obtained by the undertaking by reason of the infringement;
 - (e) the economic size of the undertaking; and
 - (f) prior sanctions imposed by other authorities on the same undertaking and based on the same facts.
4. Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the undertaking from its performance, unless the decision adopted in accordance with Article 3(4) explicitly states the contrary.

Article 3

Procedural rules

1. The decision on whether or not to initiate an infringement procedure shall be taken by the Executive Board of the ECB, acting on its own initiative or on the basis of a motion to that effect addressed to it by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred. The same decision may also be taken, on its own initiative or on the basis of a motion to that effect addressed to it

by the ECB, by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred.

Written notification of the decision to initiate an infringement procedure shall be given to the undertaking concerned, to the relevant supervisory authority and to the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred or to the ECB. The notification shall disclose the details of the allegations against the undertaking and the evidence on which such allegations are founded. Where appropriate, the decision shall require the termination of the alleged infringement and shall give notice to the undertaking concerned that periodic penalty payments may be imposed.

2. The decision referred to in paragraph 1 may require the undertaking to submit to an infringement procedure. In carrying out the infringement procedure, the ECB or the national central bank, as the case may be, shall have the right to:

- (a) require the submission of documents;
- (b) examine the books and records of the undertaking;
- (c) take copies or extracts from such books and records; and
- (d) obtain written or oral explanations.

When an undertaking obstructs the conduct of the infringement procedure, the participating Member State where the relevant premises are located shall afford the necessary assistance, including ensuring access by the ECB or the national central bank to the premises of the undertaking, so that the aforementioned rights can be exercised.

3. The undertaking concerned shall have the right to be heard by the ECB or the national central bank, as the case may be. The undertaking shall be given no fewer than thirty days to present its defence.

4. The Executive Board of the ECB shall, as soon as possible after receiving a submission from the national central bank which initiates the infringement procedure or after having consulted the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred, adopt a reasoned decision as to whether an undertaking has committed an infringement together with the sanction, if any, to be imposed.

5. The undertaking concerned shall be notified in writing of the decision and shall be informed of its right of review. Notification of the decision shall also be given to relevant supervisory authorities and to the national central bank of the Member State in whose jurisdiction the infringement has occurred.

6. The undertaking concerned shall have the right to request a review of the decision of the Executive Board by the Governing Council of the ECB. Such a request shall be made within thirty days of the receipt of the notification of the decision and shall include all supporting information and allegations. Such a request shall be addressed in writing to the Governing Council of the ECB.

7. A decision by the Governing Council of the ECB in response to a request submitted under paragraph 6 shall include the reasons for the decision and written notification thereof shall be given to the undertaking concerned, to the relevant supervisory authority of that undertaking and to the national central bank of the Member State in whose jurisdiction the infringement occurred. The notification shall inform the undertaking of its right of judicial review. If no decision has been taken by the Governing Council of the ECB within two months of the request, the undertaking concerned may request a judicial review of the decision of the Executive Board in accordance with the Treaty.

8. No sanction shall be enforced against the under-taking until the decision has become final through either:

- (a) the period of thirty days referred to in paragraph 6 having elapsed without the undertaking making a request for review to the Governing Council of the ECB; or
- (b) the Governing Council notifying the undertaking of its decision, or the period referred to in paragraph 7 having elapsed without the Governing Council having taken a decision.

9. The proceeds from sanctions imposed by the ECB shall belong to the ECB.

10. If an infringement relates exclusively to a task entrusted to the ESCB under the Treaty and the Statute, an infringement procedure may be initiated only on the basis of this Regulation, irrespective of the existence of any national law or regulation which may provide for a separate procedure. If an infringement also relates to one or more areas outside the competence of the ESCB, the right to initiate an infringement procedure on the basis of this Regulation shall be independent of any right of a competent national authority to initiate separate pro-cedures in relation to such areas outside the competence of the ESCB. This provision shall be without prejudice to the application of criminal law and to prudential super-visory competencies in participating Member States.

11. An undertaking shall bear the costs of the infringement procedure if it has been decided that it has committed an infringement.

Article 4

Time limits

1. The right to take the decision to initiate an infringement procedure, as provided for in this Regulation, shall expire one year after the existence of the alleged infringement first became known either to the ECB or to the national central bank of the Member State in whose jurisdiction the alleged infringement occurred and, in any case, five years after the infringement occurred or, in the case of a continued infringement, five years after the infringement was terminated.
2. The right to take the decision to impose a sanction in respect of an infringement, as provided for in this Regulation, shall expire one year after the decision to initiate the procedure as described in Article 3(1) was taken.
3. The right to start an enforcement procedure shall expire six months after the decision has become enforce-able pursuant to Article 3(8).

Article 5

Judicial review

The Court of Justice of the European Communities shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty over the review of final decisions whereby a sanction is imposed.

Article 6

General provisions and regulatory power

1. In the event of a conflict between the provisions of this Regulation and the provisions of other Council Regulations enabling the ECB to impose sanctions, the provisions of the latter shall prevail.
2. Subject to the limits and conditions laid down in this Regulation, the ECB may adopt regulations to specify further the arrangements whereby sanctions may be imposed in accordance with this Regulation as well as guidelines to coordinate and harmonise the procedures in relation to the conduct of the infringement procedure.

Article 7

Final provisions

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 6(2) shall apply from the date of entry into force of this Regulation. The remaining Articles shall apply from 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 1998.

For the Council

The President R.EDLINGER

COUNCIL REGULATION (EC) NO 1009/2000
of 8 May 2000
concerning capital increases of the European Central Bank⁽¹⁵⁴⁾

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the "Statute") and in particular Article 28(1) thereof,

Having regard to the recommendation made by the European Central Bank (ECB)⁽¹⁵⁵⁾,

Having regard to the opinion of the European Parliament⁽¹⁵⁶⁾,

Having regard to the opinion of the Commission of the European Communities⁽¹⁵⁷⁾,

Acting in accordance with the procedure laid down in Article 107(6) of the Treaty establishing the European Community ("the Treaty") and Article 42 of the Statute,

Whereas:

- (1) Articles 28(1) and 28(2) of the Statute require that the ECB be provided by the national central banks with capital of EUR 5000 million, which is to become operational upon the establishment of the ECB.
- (2) Article 28(1) of the Statute provides that the capital may be increased by such amounts as may be decided by the Governing Council of the ECB, within the limits and under the conditions set by the Council.
- (3) Article 123(1), in conjunction with Article 107(6) of the Treaty provides that immediately after 1 July 1998 the Council is to adopt the provision referred to in Article 28(1) of the Statute.
- (4) This Regulation establishes a limit for future increases in the ECB's capital, thereby enabling the Governing Council of the ECB to decide on an actual increase at some point in the future in order to sustain the adequacy of the capital base needed to support the operations of the ECB,

¹⁵⁴ OJ L 115, 16.5.2000, p. 1.

¹⁵⁵ OJ C 411, 31.12.1998, p. 10.

¹⁵⁶ OJ C 219, 30.7.1999, p. 182.

¹⁵⁷ Opinion delivered on 8 March 2000 (not yet published in the Official Journal).

HAS ADOPTED THIS REGULATION:

Article 1

Increases in the capital of the ECB

The Governing Council of the ECB may increase the capital of the ECB beyond the amount specified in the first sentence of Article 28(1) of the Statute by an additional amount of up to EUR 5000 million.

Article 2

Final provision

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

5.2. ECB DECISIONS ON NON-STANDARD MONETARY POLICY MEASURES

DECISION OF THE EUROPEAN CENTRAL BANK

of 14 May 2010

establishing a securities markets programme

(ECB/2010/5)

(2010/281/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular to the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’), and in particular the second subparagraph of Article 12.1, Article 3.1 and Article 18.1 thereof,

Whereas:

- (1) Pursuant to Article 18.1 of the Statute of the ESCB, national central banks of Member States whose currency is the euro (hereinafter the ‘euro area NCBs’) and the European Central Bank (ECB) (hereinafter collectively referred to as the ‘Eurosystem central banks’) may operate in the financial markets by, among other things, buying and selling outright marketable instruments.
- (2) On 9 May 2010 the Governing Council decided and publicly announced that, in view of the current exceptional circumstances in financial markets, characterised by severe tensions in certain market segments which are hampering the monetary policy transmission mechanism and thereby the effective conduct of monetary policy oriented towards price stability in the medium term, a temporary securities markets programme (hereinafter the ‘programme’) should be initiated. Under the programme, the euro area NCBs, according to their percentage shares in the key for subscription of the ECB’s capital, and the ECB, in direct contact with counterparties, may conduct outright interventions in the euro area public and private debt securities markets.

- (3) The programme forms part of the Eurosystem's single monetary policy and will apply temporarily. The programme's objective is to address the malfunctioning of securities markets and restore an appropriate monetary policy transmission mechanism.
- (4) The Governing Council will decide on the scope of the interventions. The Governing Council has taken note of the statement of the euro area Member State governments that they 'will take all measures needed to meet their fiscal targets this year and the years ahead in line with excessive deficit procedures' and the precise additional commitments taken by some euro area Member State governments to accelerate fiscal consolidation and ensure the sustainability of their public finances.
- (5) As part of the Eurosystem's single monetary policy, the outright purchase of eligible marketable debt instruments by Eurosystem central banks under the programme should be implemented in accordance with the terms of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Establishment of the securities markets programme

Under the terms of this Decision, Eurosystem central banks may purchase the following: (a) on the secondary market, eligible marketable debt instruments issued by the central governments or public entities of the Member States whose currency is the euro; and (b) on the primary and secondary markets, eligible marketable debt instruments issued by private entities incorporated in the euro area.

Article 2

Eligibility criteria for debt instruments

Marketable debt instruments shall be eligible for outright purchase under the programme if they are all of the following: (a) denominated in euro; and (b) either: (i) issued by central governments or public entities of the Member States whose currency is the euro; or (ii) issued by other entities incorporated in the euro area and meeting the asset eligibility criteria specified in Chapter 6 of Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem ⁽¹⁾.

¹ OJ L 310, 11.12.2000, p. 1.

Article 3

Eligible counterparties

The following shall be eligible counterparties for the programme: (a) counterparties eligible for Eurosystem monetary policy operations as defined in Section 2.1 of Annex I to Guideline ECB/2000/7; and (b) any other counterparties that are used by a Eurosystem central bank for the investment of its euro-denominated investment portfolios.

Article 4

Final provision

This Decision shall enter into force on the day following its publication on the ECB's website.

Done at Frankfurt am Main, 14 May 2010.

The President of the ECB

Jean-Claude TRICHET

PRESS RELEASE

Technical features of Outright Monetary Transactions

6 September 2012

As announced on 2 August 2012, the Governing Council of the European Central Bank (ECB) has today taken decisions on a number of technical features regarding the Eurosystem's outright transactions in secondary sovereign bond markets that aim at safeguarding an appropriate monetary policy transmission and the singleness of the monetary policy. These will be known as Outright Monetary Transactions (OMTs) and will be conducted within the following framework:

Conditionality:

A necessary condition for Outright Monetary Transactions is strict and effective conditionality attached to an appropriate European Financial Stability Facility/European Stability Mechanism (EFSF/ESM) programme. Such programmes can take the form of a full EFSF/ESM macroeconomic adjustment programme or a precautionary programme (Enhanced Conditions Credit Line), provided that they include the possibility of EFSF/ESM primary market purchases. The involvement of the IMF shall also be sought for the design of the country-specific conditionality and the monitoring of such a programme.

The Governing Council will consider Outright Monetary Transactions to the extent that they are warranted from a monetary policy perspective as long as programme conditionality is fully respected, and terminate them once their objectives are achieved or when there is non-compliance with the macroeconomic adjustment or precautionary programme.

Following a thorough assessment, the Governing Council will decide on the start, continuation and suspension of Outright Monetary Transactions in full discretion and acting in accordance with its monetary policy mandate.

Coverage:

Outright Monetary Transactions will be considered for future cases of EFSF/ESM macroeconomic adjustment programmes or precautionary programmes as specified above. They may also be considered for Member States currently under a macroeconomic adjustment programme when they will be regaining bond market access.

Transactions will be focused on the shorter part of the yield curve, and in particular on sovereign bonds with a maturity of between one and three years.

No ex ante quantitative limits are set on the size of Outright Monetary Transactions.

Creditor treatment:

The Eurosystem intends to clarify in the legal act concerning Outright Monetary Transactions that it accepts the same (pari passu) treatment as private or other creditors with respect to bonds issued by euro area countries and purchased by the Eurosystem through Outright Monetary Transactions, in accordance with the terms of such bonds.

Sterilisation:

The liquidity created through Outright Monetary Transactions will be fully sterilised.

Transparency:

Aggregate Outright Monetary Transaction holdings and their market values will be published on a weekly basis. Publication of the average duration of Outright Monetary Transaction holdings and the breakdown by country will take place on a monthly basis.

Securities Markets Programme:

Following today's decision on Outright Monetary Transactions, the Securities Markets Programme (SMP) is herewith terminated. The liquidity injected through the SMP will continue to be absorbed as in the past, and the existing securities in the SMP portfolio will be held to maturity.

Source:

European Central Bank

Directorate General Communications

Sonnemannstrasse 20, 60314 Frankfurt am Main, Germany

Tel.: +49 69 1344 7455, E-mail: media@ecb.europa.eu

Website: www.ecb.europa.eu

DECISION OF THE EUROPEAN CENTRAL BANK

of 15 October 2014

on the implementation of the third covered bond purchase programme as amended by Decision (EU) 2017/101 of the European Central Bank of 11 January 2017, Decision (EU) 2017/1360 of the European Central Bank of 18 May 2017 and Decision (EU) 2017/2199 of the European Central Bank of 20. November 2017

(ECB/2014/40)

(2014/828/EU)

Article 1

Establishment and scope of the outright purchase of covered bonds

The Eurosystem hereby establishes the CBPP3 under which the Eurosystem central banks shall purchase eligible covered bonds within the meaning of Article 2. Under the CBPP3, eligible covered bonds may be purchased by the Eurosystem central banks from eligible counterparties in the primary and secondary markets according to the counterparty eligibility criteria contained in Article 3.

Article 2

Eligibility criteria for covered bonds

Covered bonds that are eligible for monetary policy operations in line with section 6.2.1 of Annex I to Guideline ECB/2011/14 ⁽¹⁾ and in addition, fulfil the conditions for their acceptance as own-used collateral as laid out in section 6.2.3.2. (fifth paragraph) of Annex I to Guideline ECB/2011/14, and are issued by credit institutions incorporated in the euro area, shall be eligible for outright purchase under the CBPP3. *Multicédulas* that are eligible for monetary policy operations in line with section 6.2.1 of Annex I to Guideline ECB/2011/14 and are issued by special purpose vehicles incorporated in the euro area shall be eligible for outright purchase under the CBPP3.

The abovementioned covered bonds shall be eligible for outright purchases under the CBPP3 provided that they satisfy the following additional requirements:

¹ Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem (OJ L 331, 14.12.2011, p. 1).

1. A minimum first-best credit assessment of credit quality step 3 (CQS3, currently equivalent to an External Credit Assessment Institution (ECAI) rating of 'BBB-' or equivalent), awarded by at least one of the ECAIs accepted within the Eurosystem Credit Assessment Framework (ECAAF) shall apply.
2. A 70% issue share limit per international securities identification number to the joint holdings under the first ⁽²⁾ and second ⁽³⁾ covered bond purchase programmes (the CBPP1 and CBPP2, respectively) and the CBPP3 and to the other holdings of Eurosystem central banks shall apply.
3. Covered bonds shall be denominated in euro, held and settled in the euro area.
4. Covered bonds issued by entities suspended from Eurosystem credit operations shall be excluded from purchases under the CBPP3 for the duration of their suspension.
5. For covered bonds which currently do not achieve the CQS3 rating in Cyprus and Greece, a minimum asset rating at the level of the maximum achievable covered bond rating defined by the respective ECAI for the jurisdiction shall be required for as long as the Eurosystem's minimum credit quality threshold is not applied in the collateral eligibility requirements for marketable debt instruments issued or guaranteed by the Greek or Cypriot governments (pursuant to Article 8(2) of Guideline ECB/2014/31 ⁽⁴⁾), and a 30% issue share limit per international securities identification number, which would apply to the joint holdings of the CBPP1, CBPP2, CBPP3 and the other holdings of Eurosystem central banks, provided that they satisfy the following additional requirements in order to achieve risk equivalence:
 - (a) monthly reporting of the cover pool characteristics, including loan-level data, to the NCB where the issuer is domiciled, as well as programme structural features and issuer information; the reporting template shall be made available to the counterparties by the respective NCB;

² Decision ECB/2009/16 of 2 July 2009 on the implementation of the covered bond purchase programme (OJ L 175, 4.7.2009, p. 18).

³ Decision ECB/2011/17 of 3 November 2011 on the implementation of the second covered bond purchase programme (OJ L 297, 16.11.2011, p. 70).

⁴ Guideline ECB/2014/31 of 9 July 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (OJ L 240, 13.8.2014, p. 28).

- (b) minimum committed over-collateralisation of 25%; the provisions for calculating the committed over-collateralisation shall be made available to the counterparties by the respective NCB;
 - (c) currency hedges with counterparties rated BBB- or higher for non-euro denominated claims are included in the cover pool of the programme or, alternatively, that at least 95% of the assets are denominated in euro; and
 - (d) the credit claims in the cover pool are against debtors located in the euro area.
6. Covered bonds retained by their issuer shall be eligible for purchases under the CBPP3, provided that they fulfil the eligibility criteria as specified above.
7. Purchases of nominal covered bonds at a negative yield to maturity (or yield to worst) equal to or above the deposit facility rate are permitted. Purchases of nominal covered bonds at a negative yield to maturity (or yield to worst) below the deposit facility rate are permitted to the extent necessary.
8. The issuer of the covered bonds is not an entity, whether publicly or privately owned, that: (a) has as its main purpose the gradual divestment of its assets and the cessation of its business; or (b) is an asset management or divestment entity established to support financial sector restructuring and/or resolution, including asset management vehicles resulting from a resolution action in the form of the application of an asset separation tool pursuant to Article 26 of Regulation (EU) No 806/2014 of the European Parliament and of the Council ⁽⁵⁾ or national legislation implementing Article 42 of Directive 2014/59/EU of the European Parliament and of the Council ⁽⁶⁾.
9. Covered bonds shall be excluded from purchases under the CBPP3 where both: (a) they have a conditional pass-through structure, whereby pre-

⁵ 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 (OJ L 225, 30.7.2014, p. 1).

⁶ 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, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

defined events lead to an extension of the bond's maturity and a switch to a payment structure dependent primarily on cash flows generated by the assets in the underlying cover pool; and (b) they are issued by an entity with a first-best issuer rating below CQS3.

Article 3

Eligible counterparties

The following shall be eligible counterparties for the CBPP3, both for outright transactions and for securities lending transactions involving covered bonds held in the CBPP3 Eurosystem portfolios: (a) domestic counterparties participating in Eurosystem monetary policy operations as defined in Section 2.1 of Annex I to Guideline ECB/2011/14; and (b) any other counterparties that are used by Eurosystem central banks for the investment of their euro-denominated investment portfolios, including non-euro area counterparties active in covered bonds.

Article 4

Final provision

This Decision shall enter into force on the day following its publication on the ECB's website.

DECISION (EU) 2015/5 OF THE EUROPEAN CENTRAL BANK

of 19 November 2014

on the implementation of the asset-backed securities purchase programme as amended by Decision (EU) 2015/1613 of the European Central Bank of 10 September 2015 and Decision (EU) 2017/102 of the European Central Bank of 11 January 2017

(ECB/2014/45)

Article 1

Establishment and scope of the ABSPP

The ABSPP, under which the ECB shall purchase eligible ABS within the meaning of Article 2 and in accordance with the provisions of this Decision, is hereby established. Under the ABSPP, the ECB may instruct its agents to purchase eligible ABS on its behalf in the primary and secondary markets from eligible counterparties within the meaning of Article 4.

Article 2

Eligibility criteria for the outright purchase of ABS

ABS shall be eligible for outright purchase under the ABSPP provided that they satisfy the following eligibility criteria:

- (1) The ABS have a credit quality assessment in compliance with, at a minimum, credit quality step 3 in the Eurosystem's harmonised rating scale⁽¹⁾, expressed in the form of at least two public credit ratings provided by any two External Credit Assessment Institutions (ECAIs) accepted within the Eurosystem Credit Assessment Framework (ECAAF).
- (2) Other than as provided in point 1 above and point 9 below, the ABS fulfil the eligibility criteria applicable to ABS submitted as collateral for Eurosystem monetary policy operations as laid down in Guideline ECB/2014/60⁽²⁾.
- (3) Where the ABS do not have a credit quality assessment in compliance with

¹ As published on the ECB's website.

² Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

at least credit quality step 2 in the Eurosystem's harmonised rating scale, expressed in the form of at least two public credit ratings provided by any two ECAs accepted within the ECAF, the ABS must, in addition to fulfilling the requirements of point 2, fulfil the eligibility criteria applicable to ABS submitted as collateral for Eurosystem monetary policy operations pursuant to Article 3 of Guideline ECB/2014/31⁽³⁾.

- (4) No less than 90% of the obligors of the cash-flow generating assets backing the ABS are classified as private sector non-financial corporations⁽⁴⁾ or natural persons, measured by reference to the outstanding principal amount of the cash-flow generating assets attributable to such obligors.
- (5) No less than 95% of:
 - (a) the outstanding principal amount of the cash-flow generating assets backing the ABS issue is denominated in euro;
 - (b) any properties securing the cash-flow generating assets backing an ABS issue of residential mortgage-backed securities (RMBS) or commercial mortgage-backed securities (CMBS) are located in the euro area, measured by reference to the outstanding principal amount of the cash-flow generating assets attributable to such properties; and
 - (c) the obligors of the cash-flow generating assets backing the ABS issue (other than ABS issues of RMBS and CMBS described under point (b)), measured by reference to the outstanding principal amount of the cash-flow generating assets attributable to such obligors, are incorporated or resident, as applicable, in the euro area.
- (6) The issuer of the ABS is established in the euro area.
- (7) A tranche of ABS (with the same or fungible International Securities Identification Number (ISIN)) which, at the time assessed by the ECB for potential purchase in accordance with Article 3, was retained in full by the originator or entities with which it has close links⁽⁵⁾ will be eligible for purchase under the ABSPP if an external investor without a close link to the originator (with the exception of a Eurosystem central bank acting outside the framework of the ABSPP) also purchases part of that tranche of ABS (with the same or fungible ISIN).
- (8) Where the obligors of the cash-flow generating assets backing an ABS issue are incorporated or resident in Greece or Cyprus, the minimum rating

³ Guideline ECB/2014/31 of 9 July 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (OJ L 240, 13.8.2014, p. 28).

⁴ Non-financial corporations' has the meaning given to it in the European System of Accounts as referred to in Annex I to Guideline ECB/2011/14.

⁵ 'Close links' has the meaning given to it in Section 6.2.3.2 of Annex I to Guideline ECB/2011/14.

level set out in point 1 shall not apply to those ABS provided that they are subject to the purchase limit specified in Article 5(2) and satisfy all other applicable eligibility criteria for purchase under the ABSPP and all of the following additional requirements:

- (a) the Eurosystem's minimum credit quality threshold used in determining the eligibility as collateral of marketable debt instruments issued or guaranteed by the Greek or Cypriot governments is not applied pursuant to Article 8(2) of Guideline ECB/2014/31;
- (b) the ABS have two public credit ratings from any two ECAIs accepted within the ECAF at the maximum achievable rating level for ABS issues in the relevant Member State;
- (c) the structure of the ABS issue incorporates current credit enhancement (such as the credit enhancement provided by all tranches of the ABS issue which are subordinated to the ABS tranche eligible for purchase) equal to a minimum of 25% of the current principal amount outstanding of all tranches of the ABS issue;
- (d) investor reports are available and the ABS can be modelled using standard third party ABS cash-flow modelling tools, as assessed by the ECB;
- (e) the best available credit quality assessment of each of the following counterparties in the ABS issue (if relevant), with the exception of the servicer, complies with a minimum of credit quality step 3 in the Eurosystem's harmonised rating scale, expressed in the form of at least one public credit rating from any single ECAI accepted within the ECAF:
 - (i) any issuer account bank;
 - (ii) any issuer account bank guarantor;
 - (iii) any liquidity facility provider;
 - (iv) any hedge counterparty;
 - (v) the principal paying agent; and
 - (vi) any guaranteed investment contract provider;
- (f) a back-up servicer for the ABS issue has been appointed.

- (9) The requirements set out in Article 77 of Guideline ECB/2014/60 shall not apply to ABS mezzanine tranches that are only eligible for purchase under the ABSPP if they:
- (a) are secured by a guarantee:
 - (i) meeting the requirements for guarantees of marketable assets as set out in Articles 114, 115, 117 and 118 of Part Four, Title IV of Guideline (EU) 2015/510 (ECB/2014/60); and
 - (ii) issued by a guarantor with a credit assessment in accordance with Article 83(c) of Guideline ECB/2014/60 and provided by at least one accepted ECAI system, expressed in the form of a public credit rating, in compliance with, as a minimum, credit quality step 3 in the Eurosystem's harmonised rating scale; and
 - (b) satisfy all other applicable eligibility criteria for purchase under the ABSPP.

For the purposes of this Decision, ‘mezzanine tranche’ means a tranche of an ABS issue that, in accordance with the post-enforcement priority of payments, and if applicable, the post-acceleration priority of payments as set out in the prospectus:

- (a) ranks below the non-subordinated tranche or sub-tranches of the same ABS issue as set out in Article 77 of Guideline ECB/2014/60; and
 - (b) ranks above the most subordinated tranche or sub-tranches that are the first to bear losses incurred on the securitised exposures and which thereby provide protection to the second loss and, where relevant, higher ranking tranches or sub-tranches.
- (10) Purchases of nominal ABSs at a negative yield to maturity (or yield to worst) equal to or above the deposit facility rate are permitted. Purchases of nominal ABSs at a negative yield to maturity (or yield to worst) below the deposit facility rate are permitted to the extent necessary.

Article 3

Credit risk assessment and due diligence

Prior to the purchase of any ABS fulfilling the eligibility criteria under Article 2, the ECB shall conduct a credit risk assessment and due diligence in relation to such ABS.

Article 4

Eligible counterparties

The following shall be eligible counterparties for the ABSPP, both for outright transactions and for securities lending transactions involving ABS held in ABSPP portfolios: (a) counterparties participating in Eurosystem monetary policy operations as defined in Section 2.1 of Annex I to Guideline ECB/2011/14; (b) counterparties that are used by Eurosystem central banks for the investment of their euro-denominated investment portfolios; and (c) entities deemed to be eligible counterparties for outright transactions under the ABSPP by the Governing Council on the basis of a Eurosystem counterparty risk assessment by the ECB.

Article 5

Purchase limits

1. Other than as provided for in paragraph 2, no more than 70% of the outstanding amount of a tranche of ABS (with the same or fungible ISIN) may be purchased and held pursuant to the ABSPP at any time.
2. In relation to a tranche of ABS (with the same or fungible ISIN) eligible for purchase under point 8 of Article 2, no more than 30% of the outstanding amount of such tranche may be purchased and held pursuant to the ABSPP at any time.

Article 6

Entry into force

This Decision shall enter into force on the day following its publication on the ECB's website.

DECISION (EU) 2017/1361 OF THE EUROPEAN CENTRAL BANK

of 18 May 2017

amending Decision (EU) 2015/5 on the implementation of the asset-backed securities purchase programme (ECB/2017/15)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the second subparagraph of Article 12.1 in conjunction with the first indent of Article 3.1, and Article 18.1 thereof,

Whereas:

- (1) Decision (EU) 2015/5 of the European Central Bank (ECB/2014/45)⁽¹⁾ established an asset-backed securities purchase programme (ABSPP). Alongside the third covered bond purchase programme, the secondary markets public sector asset purchase programme and the corporate sector purchase programme, the ABSPP is part of the expanded asset purchase programme (APP). The APP aims to further enhance the transmission of monetary policy, facilitate the provision of credit to the euro area economy, ease borrowing conditions for households and firms and contribute to returning inflation rates to levels below but close to 2% over the medium term, consistent with the primary objective of the European Central Bank (ECB) of maintaining price stability.
- (2) Achieving a single monetary policy, including through the APP, entails defining the tools, instruments and procedures to be used by the Eurosystem, in order to implement such a policy in a uniform manner throughout the Member States whose currency is the euro.
- (3) The Governing Council decided on 22 March 2017 to further refine the rules applicable to asset-backed securities (ABSs) originated by wind-down entities to ensure their consistent treatment in the Eurosystem's monetary policy through the APP.

¹ Decision (EU) 2015/5 of the European Central Bank of 19 November 2014 on the implementation of the asset-backed securities purchase programme (ECB/2014/45) (OJ L 1, 6.1.2015, p. 4).

- (4) Therefore, Decision (EU) 2015/5 (ECB/2014/45) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendment

In Article 2 of Decision (EU) 2015/5 (ECB/2014/45), the following point (11) is added:

- ‘(11) The entity which has originated or established the ABS is not an entity, whether publicly or privately owned, that: (a) has as its main purpose the gradual divestment of its assets and the cessation of its business; or (b) is an asset management or divestment entity established to support financial sector restructuring and/or resolution, including asset management vehicles resulting from a resolution action in the form of the application of an asset separation tool pursuant to Article 26 of Regulation (EU) No 806/2014 of the European Parliament and of the Council or national legislation implementing Article 42 of Directive 2014/59/EU of the European Parliament and of the Council.

Article 2

Entry into force

This Decision shall enter into force on 21 July 2017.

Done at Frankfurt am Main, 18 May 2017.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

DECISION (EU) 2015/774 OF THE EUROPEAN CENTRAL BANK

of 4 March 2015

on a secondary markets public sector asset purchase programme amended by Decision (EU) 2015/2101 of the European Central Bank of 5 November 2015, Decision (EU) 2015/2464 of the European Central Bank of 16 December 2015, Decision (EU) 2016/702 of the European Central Bank of 18 April 2016 and Decision (EU) 2017/100 of the European Central Bank of 11 January 2017

(ECB/2015/10)

Article 1

Establishment and scope of PSPP

The Eurosystem hereby establishes the PSPP under which the Eurosystem central banks shall purchase eligible marketable debt securities, as defined in Article 3, on the secondary markets, from eligible counterparties, as defined in Article 7, under specific conditions.

Article 2

Definitions

For the purposes of this Decision, the following definitions apply:

- (1) ‘Eurosystem central bank’ means the ECB and the national central banks of the Member States whose currency is the euro (hereinafter the ‘NCBs’);
- (2) ‘recognised agency’ means an entity that the Eurosystem has classified as such for the purpose of the PSPP;
- (3) ‘international organisation’ means an entity within the meaning of Article 118 of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹ and that the Eurosystem has classified as such for the purpose of the PSPP;
- (4) ‘multilateral development bank’ means an entity within the meaning of Article 117(2) of Regulation (EU) No 575/2013 and that the Eurosystem has classified as such for the purpose of the PSPP;

¹ 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 (OJ L 176, 27.6.2013, p. 1).

- (5) ‘positive outcome of a review’ means the later of the following two decisions: the decision by the Board of Directors of the European Stability Mechanism and, in case the International Monetary Fund co-finances the financial assistance programme, the Executive Board of the International Monetary Fund to approve the next disbursement under that programme, on the understanding that both decisions are necessary for the resumption of purchases under the PSPP.

Lists of the entities referred to in points (2) to (4) are published on the ECB's website.

Article 3

Eligibility criteria for marketable debt securities

1. Subject to the requirements laid down in Article 3, euro-denominated marketable debt securities issued by central, regional or local governments of a Member State whose currency is the euro, recognised agencies located in the euro area, international organisations located in the euro area and multilateral development banks located in the euro area shall be eligible for purchases by the Eurosystem central banks under the PSPP. In exceptional circumstances, where the envisaged purchase amount cannot be attained, the Governing Council may decide to purchase marketable debt securities issued by other entities located in the euro area, in accordance with the conditions laid down in paragraph 4.
2. In order to be eligible for purchase under the PSPP, marketable debt securities shall comply with the eligibility criteria for marketable assets for Eurosystem credit operations pursuant to Part Four of Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60)⁽²⁾, subject to the following requirements:
 - (a) the issuer or guarantor of the marketable debt securities shall have a credit quality assessment of at least Credit Quality Step 3 in the Eurosystem's harmonised rating scale expressed in the form of at least one public credit rating provided by an external credit assessment institution (ECAI) accepted within the Eurosystem credit assessment framework;
 - (b) if multiple ECAI issuer ratings or ECAI guarantor ratings are available, the first-best rule shall apply, i.e. the best available ECAI issuer rating or ECAI guarantor rating shall apply. If the fulfilment of the credit

² Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

quality requirements is established based on an ECAI guarantor rating, the guarantee shall fulfil the features of an acceptable guarantee as laid down in Article 87 and Articles 113 to 115 of Guideline (EU) 2015/510 (ECB/2014/60);

- (c) in the absence of an ECAI issuer rating and an ECAI guarantor rating, a marketable debt security shall have at least one ECAI issue rating of at least Credit Quality Step 3 on the Eurosystem's harmonised rating scale;
 - (d) if the credit assessment provided by an accepted ECAI for the issuer, guarantor or issue does not comply with at least Credit Quality Step 3 in the Eurosystem's harmonised rating scale, marketable debt securities shall be eligible only if they are issued or fully guaranteed by the central governments of euro area Member States under a financial assistance programme and in respect of which the application of the Eurosystem's credit quality threshold is suspended by the Governing Council pursuant to Article 8 of Guideline ECB/2014/31⁽³⁾;
 - (e) in the event of a review of an ongoing financial assistance programme, eligibility for PSPP purchases shall be suspended and shall resume only in the event of a positive outcome of the review.
3. In order to be eligible for purchase under the PSPP, debt securities, within the meaning of paragraphs 1 to 2, shall have a minimum remaining maturity of 1 year and a maximum remaining maturity of 30 years at the time of their purchase by the relevant Eurosystem central bank. In order to facilitate smooth implementation, marketable debt instruments with a remaining maturity of 30 years and 364 days shall be eligible under the PSPP. National central banks shall also carry out substitute purchases of marketable debt securities issued by international organisations and multilateral development banks if the envisaged amounts to be purchased in marketable debt securities issued by central, regional or local governments and recognised agencies cannot be attained.
 4. Eurosystem central banks may, in exceptional circumstances, propose to the Governing Council public non-financial corporations located in their jurisdiction as issuers of marketable debt instruments to be purchased as substitutes in case the envisaged amounts to be purchased in marketable debt instruments issued by central, regional or local governments and recognised agencies located in their jurisdiction cannot be attained.

³ Guideline ECB/20 14/31 of the European Central Bank of 9 July 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (OJ L 240, 13.8.2014, p. 28).

The proposed public non-financial corporations shall at least fulfil both of the following criteria:

- be a ‘non-financial corporation’ as defined in Regulation (EU) No 549/2013 of the European Parliament and of the Council⁽⁴⁾,
- be a ‘public sector entity’, meaning an entity within the meaning of Article 3 of Council Regulation (EC) No 3603/93⁽⁵⁾.

Following approval by the Governing Council, euro-denominated marketable debt instruments issued by such public non-financial corporations located in the euro area which comply with: (i) the eligibility criteria for marketable assets as collateral for Eurosystem credit operations, as per Part Four of Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60)⁽⁶⁾; and (ii) the requirements in paragraphs 2 and 3 shall be eligible for substitute purchases under the PSPP.

5. Purchases of nominal marketable debt instruments at a negative yield to maturity (or yield to worst) equal to or above the deposit facility rate are permitted. Purchases of nominal marketable debt instruments at a negative yield to maturity (or yield to worst) below the deposit facility rate are permitted to the extent necessary.

Article 4

Limitations on the execution of purchases

1. To permit the formation of a market price for eligible securities, no purchases shall be permitted in a newly issued or tapped security and the marketable debt instruments with a remaining maturity that are close in time, before and after, to the maturity of the marketable debt instruments to be issued, over a period to be determined by the Governing Council (‘blackout period’). For syndications, the blackout period in question is to be respected on a best effort basis before the issuance.
2. For debt securities issued or fully guaranteed by the central governments of euro area Member States under a financial assistance programme, the period of purchases under the PSPP after a positive outcome of each programme review shall, as a rule, be limited to two months, unless there are exceptional circumstances justifying a suspension of purchases before or a continuation of

⁴ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1).

⁵ Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

⁶ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

purchases after such period and until the start of the next review.

Article 5

Purchase limits

1. Subject to Article 3, an issue share limit per international securities identification number (ISIN) shall apply under the PSPP to marketable debt securities fulfilling the criteria laid down in Article 3, after consolidating holdings in all of the portfolios of the Eurosystem central banks. The issue share limit shall be as follows:
 - (a) 50% per ISIN for eligible marketable debt securities issued by eligible international organisations and multilateral development banks;
 - (b) 33% per ISIN for other eligible marketable debt securities, with the exception of 25% per ISIN for such eligible marketable debt securities containing a collective action clause (CAC) that differs from the euro area model CAC elaborated by the Economic and Financial Committee and implemented by the Member States in accordance with Article 12(3) of the Treaty establishing the European Stability Mechanism, but will be increased to 33%, subject to verification on a case-by-case basis that a holding of 33% per ISIN of those securities would not lead the Eurosystem central banks to reach blocking minority holdings in orderly debt restructurings.
2. All marketable debt securities eligible for purchase under the PSPP and which have the remaining maturities specified in Article 3 shall be subject to an aggregate limit, after consolidating holdings in all of the portfolios of the Eurosystem central banks, of:
 - (a) 50% of the outstanding securities of an issuer which is an eligible international organisation or a multilateral development bank; or

- (b) 33% of the outstanding securities of an issuer other than an eligible international organisation or a multilateral development bank.
3. With regard to the debt securities referred to in point (d) of Article 3(2), different issuer and issue share limits shall apply. These limits will be set by the Governing Council taking due account of risk management and market functioning considerations.

Article 6

Allocation of portfolios

1. Of the book value of purchases of marketable debt securities eligible under the PSPP, 10% shall be purchased in securities issued by eligible international organisations and multilateral development banks, and 90% of that book value shall be purchased in securities issued by eligible central, regional or local governments and recognised agencies or, where applicable pursuant to Article 3(4) of this Decision, in securities issued by eligible public non-financial corporations. This allocation is subject to revision by the Governing Council. Purchases of debt securities issued by eligible international organisations, multilateral development banks and regional and local governments shall be made by NCBs only.
2. The NCBs' share of the book value of purchases of marketable debt securities eligible under the PSPP shall be 90%, and the remaining 10% shall be purchased by the ECB. The distribution of purchases across jurisdictions shall be in accordance with the key for subscription of the ECB's capital as referred to in Article 29 of the Statute of the ESCB.
3. Eurosystem central banks shall apply a specialisation scheme for the allocation of marketable debt securities to be purchased under the PSPP. The Governing Council shall allow for ad hoc deviations from the specialisation scheme should objective considerations obstruct the achievement of the said scheme or otherwise render deviations advisable in the interests of attaining the overall monetary policy objectives of the PSPP. In particular, each NCB shall purchase eligible securities of issuers of its own jurisdiction. Securities issued by eligible international organisations and multilateral development banks may be purchased by all NCBs. The ECB shall purchase securities issued by central governments and recognised agencies of all jurisdictions.

Article 7

Eligible counterparties

The following shall be eligible counterparties for the PSPP:

- (a) entities that fulfil the eligibility criteria to participate in Eurosystem monetary policy operations pursuant to Section 2.1 of Annex I to Guideline ECB/2011/14; and
- (b) any other counterparties that are used by Eurosystem central banks for the investment of their euro-denominated investment portfolios.

Article 8

Transparency

1. The Eurosystem shall publish on a weekly basis the aggregate book value of the securities held under the PSPP in the commentary of its consolidated weekly financial statement.
2. The Eurosystem shall publish on a monthly basis the weighted average residual maturity by issuer residence, separating international organisations and multilateral development banks from other issuers, of its PSPP holdings.
3. The book value of securities held under the PSPP shall be published on the ECB's website under the open market operations section on a weekly basis.

Article 9

Securities lending

The Eurosystem shall make securities purchased under PSPP available for lending, including repos, with a view to ensuring the effectiveness of the PSPP.

Article 10

Final provision

This Decision shall enter into force on the day following its publication on the ECB's website. It shall apply from 9 March 2015.

DECISION (EU) 2016/948 OF THE EUROPEAN CENTRAL BANK

of 1 June 2016

on the implementation of the corporate sector purchase programme as amended by Decision (EU) 2017/103 of the European Central Bank of 11 January 2017

(ECB/2016/16)

Article 1

Establishment and scope of the outright purchase of corporate bonds

The CSPP is hereby established. Under the CSPP specified Eurosystem central banks may purchase eligible corporate bonds from eligible counterparties in the primary and secondary markets, while public sector corporate bonds, as defined in Article 3(1), may only be purchased in the secondary markets, under specific conditions.

Article 2

Eligibility criteria for corporate bonds

In order to be eligible for outright purchase under the CSPP, marketable debt instruments issued by corporations shall comply with the eligibility criteria for marketable assets for Eurosystem credit operations pursuant to Part 4 of Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60)(1) and the following additional requirements.

1. The issuer of the marketable debt instrument:
 - (a) is incorporated in a Member State whose currency is the euro;
 - (b) is not a credit institution as defined in point (14) of Article 2 of Guideline (EU) 2015/510 (ECB/2014/60);

¹ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

- (c) does not have a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽²⁾ that is also a credit institution as defined in point (14) of Article 2 of Guideline (EU) 2015/510 (ECB/2014/60);
- (d) does not have a parent company which is subject to banking supervision outside the euro area;
- (e) is not a supervised entity as defined in point (20) of Article 2 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)⁽³⁾ or a member of a supervised group as defined in subpoint (b) of point (21) of Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17), in each case, as contained in the list published by the ECB on its website in accordance with Article 49(1) of Regulation (EU) No 468/2014 (ECB/2014/17), and is not a subsidiary, as defined in point (16) of Article 4(1) of the Regulation (EU) No 575/2013, of any of those supervised entities or supervised groups;
- (f) is not an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council ⁽⁴⁾;
- (g) has not issued an asset-backed security within the meaning of point (3) of Article 2 of Guideline (EU) 2015/510 (ECB/2014/60);
- (h) has not issued a *multi cédula* within the meaning of point (62) of Article 2 of Guideline (EU) 2015/510 (ECB/2014/60);
- (i) has not issued a structured covered bond within the meaning of point (88) of Article 2 of Guideline (EU) 2015/510 (ECB/2014/60);
- (j) is not an asset management vehicle resulting from the application of an asset separation tool in a resolution action pursuant to Article 26 of Regulation (EU) No 806/2014 of the European Parliament and of

² 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 (OJ L 176, 27.6.2013, p. 1).

³ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

the Council⁽⁵⁾ or national legislation implementing Article 42 of Directive 2014/59/EU of the European Parliament and of the Council⁽⁶⁾;

- (k) is not a national asset management and divestment fund established to support financial sector restructuring and/or resolution⁽⁷⁾; and
 - (l) is not an eligible issuer for the PSPP.
2. The marketable debt instrument has a minimum remaining maturity of 6 months and a maximum remaining maturity of 30 years and 364 days at the time of its purchase by the relevant Eurosystem central bank.
 3. In deviation from Article 59(5) of Guideline (EU) 2015/510 (ECB/2014/60), only credit assessment information that is provided by an external credit assessment institution accepted within the Eurosystem credit assessment framework will be taken into account for the assessment of the credit quality requirements of the marketable debt instrument.
 4. The marketable debt instrument is denominated in euro.
 5. Purchases of nominal corporate bonds at a negative yield to maturity (or yield to worst) equal to or above the deposit facility rate are permitted. Purchases of nominal corporate bonds at a negative yield to maturity (or yield to worst) below the deposit facility rate are permitted to the extent necessary.

Article 3

Limitations on the execution of purchases of public sector corporate bonds

1. For the purposes of this Decision, a ‘public sector corporate bond’ means a

⁵ 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 (OJ L 225, 30.7.2014, p. 1).

⁶ 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, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁷ A list of such entities is published on the ECB's website at www.ecb.europa.eu

corporate bond that fulfils the requirements of Article 2 and is issued by a public undertaking within the meaning of Article 8 of Council Regulation (EC) No 3603/93⁸).

2. To permit the formation of a market price for eligible public sector corporate bonds, no purchases shall be permitted of a newly issued or tapped public sector corporate bond, or of public sector corporate bonds issued by the same entity or by the entities within the issuer's group with maturities that expire close in time to, either just before or after, the maturity of the marketable debt instruments to be issued or tapped, over a period to be determined by the Governing Council.

Article 4

Purchase limits

1. An issue share limit per international securities identification number (ISIN) shall apply under the CSPP, after consolidating holdings in all of the portfolios of the Eurosystem central banks. The issue share limit shall be 70% per ISIN for all corporate bonds other than public sector corporate bonds.

A lower issue share limit may apply in specific cases, including for public sector corporate bonds or for risk management reasons. Public sector corporate bonds shall be dealt with in a manner consistent with their treatment under the PSPP.

2. The Eurosystem shall conduct appropriate credit risk and due diligence procedures on eligible corporate bonds on an ongoing basis.
3. The Eurosystem shall define additional purchase limits for issuer groups based on a benchmark allocation related to an issuer group's market capitalisation to ensure a diversified allocation of purchases across issuers and issuer groups.

Article 5

Purchasing Eurosystem central banks

The Eurosystem central banks purchasing corporate bonds under the CSPP shall be specified in a list published on the ECB's website. The Eurosystem shall apply a specialisation scheme for the allocation of corporate bonds to

⁸ Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

be purchased under the CSPP based on the issuer's country of incorporation. The Governing Council shall allow ad hoc deviations from the specialisation scheme if there are objective considerations obstructing the scheme's implementation or if such deviations are advisable in order to achieve the CSPP's overall monetary policy objectives. In particular, each specified Eurosystem central bank shall only purchase eligible corporate bonds issued by issuers incorporated in specified Member States within the euro area. The geographical allocation of eligible corporate bond issuers' countries of incorporation in relation to the specified Eurosystem central banks shall be set out in a list published on the ECB's website.

Article 6

Eligible counterparties

The following shall be eligible counterparties for the CSPP, both for outright transactions and for securities lending transactions involving corporate bonds held in the CSPP Eurosystem portfolios:

- (a) entities that fulfil the eligibility criteria to participate in Eurosystem monetary policy operations pursuant to Article 55 of Guideline (EU) 2015/510 (ECB/2014/60); and
- (b) any other counterparties that are used by Eurosystem central banks for the investment of their euro-denominated investment portfolios.

Article 7

Securities lending transactions

The Eurosystem central banks purchasing corporate bonds under the CSPP shall make securities purchased under CSPP available for lending, including repos, with a view to ensuring the effectiveness of the CSPP.

Article 8

Final provisions

This Decision shall enter into force on 6 June 2016.

DECISION (EU) 2017/1359 OF THE EUROPEAN CENTRAL BANK

of 18 May 2017

amending Decision (EU) 2016/948 on the implementation of the corporate sector purchase programme (ECB/2017/13)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the second subparagraph of Article 12.1 in conjunction with the first indent of Article 3.1, and Article 18.1 thereof,

Whereas:

- (1) Decision (EU) 2016/948 of the European Central Bank (ECB/2016/16) ⁽¹⁾ established a corporate sector purchase programme (CSPP). Alongside the third covered bond purchase programme, the asset-backed securities purchase programme and the secondary markets public sector asset purchase programme, the CSPP is part of the expanded asset purchase programme (APP). The APP aims to further enhance the transmission of monetary policy, facilitate the provision of credit to the euro area economy, ease borrowing conditions for households and firms and contribute to returning inflation rates to levels below but close to 2 % over the medium term, consistent with the primary objective of the European Central Bank (ECB) of maintaining price stability.
- (2) Achieving a single monetary policy, including through the APP, entails defining the tools, instruments and procedures to be used by the Eurosystem, in order to implement such a policy in a uniform manner throughout the Member States whose currency is the euro.
- (3) The Governing Council decided on 22 March 2017 to further refine the rules applicable to debt instruments issued by wind-down entities to ensure their consistent treatment in the Eurosystem's monetary policy through the APP.
- (4) Therefore, Decision (EU) 2016/948 (ECB/2016/16) should be amended accordingly,

¹ Decision (EU) 2016/948 of the European Central Bank of 1 June 2016 on the implementation of the corporate sector purchase programme (ECB/2016/16) (OJ L 157, 15.6.2016, p. 28).

HAS ADOPTED THIS DECISION:

Article 1

Amendment

1. In Article 2 of Decision (EU) 2016/948 (ECB/2016/16), subpoint (j) of point 1 is replaced by the following:
 - (j) is not an entity, whether publicly or privately owned, that: (i) has as its main purpose the gradual divestment of its assets and the cessation of its business; or (ii) is an asset management or divestment entity established to support financial sector restructuring and/or resolution (*), including asset management vehicles resulting from a resolution action in the form of the application of an asset separation tool pursuant to Article 26 of Regulation (EU) No 806/2014 of the European Parliament and of the Council (**) or national legislation implementing Article 42 of Directive 2014/59/EU of the European Parliament and of the Council (***);
2. In Article 2 of Decision (EU) 2016/948 (ECB/2016/16), subpoint (k) of point 1 is deleted.

Article 2

Entry into force

This Decision shall enter into force on 21 July 2017.

Done at Frankfurt am Main, 18 May 2017.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

(*) A list of asset management and divestment entities relevant for the CSPP is published on the ECB website at www.ecb.europa.eu

- (**) 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 (OJ L 225, 30.7.2014, p. 1).

- (***) 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, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).⁹

5.3. SECONDARY LEGISLATION ON THE SUPERVISORY FUNCTION (SINGLE SUPERVISORY MECHANISM)

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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament, Having regard to the opinion of the European Central Bank, Acting in accordance with a special legislative procedure,

Whereas:

- (1) Over the past decades, the Union has made considerable progress in creating an internal market for banking services. Consequently, in many Member States, banking groups with their headquarters established in other Member States hold a significant market share, and credit institutions have geographically diversified their business, within both the euro area and non-euro area.
- (2) The present financial and economic crisis has shown that the integrity of the single currency and the internal market may be threatened by the fragmentation of the financial sector. It is therefore essential to intensify the integration of banking supervision in order to bolster the Union, restore financial stability and lay the basis for economic recovery.
- (3) Maintaining and deepening the internal market for banking services is

essential in order to foster economic growth in the Union and adequate funding of the real economy. However this proves increasingly challenging. Evidence shows that the integration of banking markets in the Union is coming to a halt.

- (4) At the same time, in addition to the adoption of an enhanced Union regulatory framework, supervisors must step up their supervisory scrutiny to take account of the lessons of the financial crisis in recent years, and be able to oversee highly complex and inter-connected markets and institutions.
- (5) Competence for supervision of individual credit institutions in the Union remains mostly at national level. Coordination between supervisors is vital but the crisis has shown that mere coordination is not enough, in particular in the context of a single currency. In order to preserve financial stability in the Union and increase the positive effects of market integration on growth and welfare, integration of supervisory responsibilities should therefore be enhanced. This is particularly important to ensure a smooth and sound overview over an entire banking group and its overall health and would reduce the risk of different interpretations and contradictory decisions on the individual entity level.
- (6) The stability of credit institutions is in many instances still closely linked to the Member State in which they are established. Doubts about the sustainability of public debt, economic growth prospects, and the viability of credit institutions have been creating negative, mutually reinforcing market trends. This may lead to risks to the viability of some credit institutions and to the stability of the financial system in the euro area and the Union as a whole, and may impose a heavy burden for already strained public finances of the Member States concerned.
- (7) The European Supervisory Authority (European Banking Authority) (EBA), established in 2011 by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)⁽¹⁾, and the European System of Financial Supervision (ESFS) established by Article 2 of that Regulation, and Article 2 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)⁽²⁾ (EIOPA) and Article 2 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a

¹ OJ L 331, 15.12.2010, p. 12.

² OJ L 331, 15.12.2010, p. 48.

European Supervisory Authority (European Securities and Markets Authority)⁽³⁾ (ESMA) have significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for financial services in the Union, and has been crucial in implementing in a consistent way the recapitalisation agreed by the euro Summit of 26 October 2011 of major Union credit institutions, consistent with the guidelines and conditions relating to State aid adopted by the Commission.

- (8) The European Parliament has called on various occasions for a European body to be directly responsible for certain supervisory tasks over financial institutions, starting with its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan⁽⁴⁾ and of 21 November 2002 on prudential supervision rules in the European Union⁽⁵⁾.
- (9) The European Council conclusions of 29 June 2012 invited the President of the European Council to develop a road map for the achievement of a genuine economic and monetary union. On the same day, the euro Summit pointed out that when an effective single supervisory mechanism is established involving the European Central Bank (ECB) for banks in the euro area, the European Stability Mechanism (ESM) could, following a regular decision, have the possibility to recapitalise banks directly which would rely on appropriate conditionality, including compliance with State aid rules.
- (10) The European Council on 19 October 2012 concluded that the process towards deeper economic and monetary union should build on the Union institutional and legal framework and be characterised by openness and transparency towards Member States whose currency is not the euro and by respect for the integrity of the internal market. The integrated financial framework will have a single supervisory mechanism which will be open to the extent possible to all Member States wishing to participate.
- (11) A banking union should therefore be set up in the Union, underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole and composed of a single supervisory mechanism and new frameworks for deposit insurance and resolution. In view of the close links and interactions between Member States whose currency is the euro, the banking union should apply at least to all euro area Member States.

³ OJ L 331, 15.12.2010, p. 84.

⁴ OJ C 40, 7.2.2001, p. 453.

⁵ OJ C 25 E, 29.1.2004, p. 394.

With a view to maintaining and deepening the internal market, and to the extent that this is institutionally possible, the banking union should also be open to the participation of other Member States.

- (12) As a first step towards a banking union, a single supervisory mechanism should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. In particular, the Single Supervisory Mechanism (SSM) should be consistent with the functioning of the internal market for financial services and with the free movement of capital. A single supervisory mechanism is the basis for the next steps towards the banking union. This reflects the principle that the ESM will, following a regular decision, have the possibility to recapitalise banks directly when an effective single supervisory mechanism is established. The European Council noted in its conclusions of 13/14 December 2012 that 'In a context where banking supervision is effectively moved to a single supervisory mechanism, a single resolution mechanism will be required, with the necessary powers to ensure that any bank in participating Member States can be resolved with the appropriate tools' and that 'the single resolution mechanism should be based on contributions by the financial sector itself and include appropriate and effective backstop arrangements'.
- (13) As the euro area's central bank with extensive expertise in macroeconomic and financial stability issues, the ECB is well placed to carry out clearly defined supervisory tasks with a focus on protecting the stability of the financial system of the Union. Indeed many Member States' central banks are already responsible for banking supervision. Specific tasks should therefore be conferred on the ECB concerning policies relating to the supervision of credit institutions within the participating Member States.
- (14) The ECB and the competent authorities of Member States that are not participating Member States ('nonparticipating Member States') should conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions referred to in this Regulation. The memorandum of understanding could, inter alia, clarify the consultation relating to decisions of the ECB having effect on subsidiaries or branches established in the nonparticipating Member State whose parent undertaking is established in a participating Member State, and the cooperation in emergency situations, including early warning mechanisms in accordance with the procedures set out in relevant Union law. The

memorandum should be reviewed on a regular basis.

- (15) Specific supervisory tasks which are crucial to ensure a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions should be conferred on the ECB, while other tasks should remain with national authorities. The ECB's tasks should include measures taken in pursuance of macroprudential stability, subject to specific arrangements reflecting the role of national authorities.
- (16) The safety and soundness of large credit institutions is essential to ensure the stability of the financial system. However, recent experience shows that smaller credit institutions can also pose a threat to financial stability. Therefore, the ECB should be able to exercise supervisory tasks in relation to all credit institutions authorised in, and branches established in, participating Member States.
- (17) When carrying out the tasks conferred on it, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union.
- (18) The exercise of the ECB's tasks should contribute in particular to ensure that credit institutions fully internalize all costs caused by their activities so as to avoid moral hazard and the excessive risk taking arising from it. It should take full account of the relevant macroeconomic conditions in Member States, in particular the stability of the supply of credit and facilitation of productive activities for the economy at large.
- (19) Nothing in this Regulation should be understood as changing the accounting framework applicable pursuant to other acts of Union and national law.
- (20) Prior authorisation for taking up the business of credit institutions is a key prudential technique to ensure that only operators with a sound economic basis, an organisation capable of dealing with the specific risks inherent to deposit taking and credit provision, and suitable directors carry out those activities. The ECB should therefore have the task of authorising credit institutions that are to be established in a participating Member State and should be responsible for the withdrawal of authorisations, subject to specific arrangements reflecting the role of national authorities.
- (21) In addition to the conditions set out in Union law for the authorisation of

credit institutions and the cases for withdrawal of such authorisations, Member States may currently provide for further conditions for authorisation and cases for withdrawal of authorisation. The ECB should therefore carry out its task with regard to authorization of credit institutions and withdrawal of the authorisation in case of non-compliance with national law on a proposal by the relevant national competent authority, which assesses compliance with the relevant conditions laid down in national law.

- (22) An assessment of the suitability of any new owner prior to the purchase of a significant stake in a credit institution is an indispensable tool for ensuring the continuous suitability and financial soundness of credit institutions' owners. The ECB as a Union institution is well placed to carry out such an assessment without imposing undue restrictions on the internal market. The ECB should have the task of assessing the acquisition and disposal of significant holdings in credit institutions, except in the context of bank resolution.
- (23) Compliance with Union rules requiring credit institutions to hold certain levels of capital against risks inherent to the business of credit institutions, to limit the size of exposures to individual counterparties, to publicly disclose information on credit institutions' financial situation, to dispose of sufficient liquid assets to withstand situations of market stress, and to limit leverage is a prerequisite for credit institutions' prudential soundness. The ECB should have the task of ensuring compliance with those rules, including in particular by granting approvals, permissions, derogations, or exemptions foreseen for the purposes of those rules.
- (24) Additional capital buffers, including a capital conservation buffer, a countercyclical capital buffer to ensure that credit institutions accumulate, during periods of economic growth, a sufficient capital base to absorb losses in stressed periods, global and other systemic institution buffers, and other measures aimed at addressing systemic or macroprudential risk, are key prudential tools. In order to ensure full coordination, where national competent authorities or national designated authorities impose such measures, the ECB should be duly notified. Moreover, where necessary the ECB should be able to apply higher requirements and more stringent measures, subject to close coordination with national authorities. The provisions in this Regulation on measures aimed at addressing systemic or macroprudential risk are without prejudice to any coordination procedures provided for in other acts of Union law. National competent authorities or national designated authorities and the ECB shall act in respect of any coordination procedure provided for in such acts after having followed the procedures provided for in this Regulation.

- (25) The safety and soundness of a credit institution depend also on the allocation of adequate internal capital, having regard to the risks to which it may be exposed, and on the availability of appropriate internal organisation structures and corporate governance arrangements. The ECB should therefore have the task of applying requirements ensuring that credit institutions in the participating Member States have in place robust governance arrangements, processes and mechanisms, including strategies and processes for assessing and maintaining the adequacy of their internal capital. In case of deficiencies it should also have the task of imposing appropriate measures including specific additional own funds requirements, specific disclosure requirements, and specific liquidity requirements.
- (26) Risks for the safety and soundness of a credit institution can arise both at the level of an individual credit institution and at the level of a banking group or of a financial conglomerate. Specific supervisory arrangements to mitigate those risks are important to ensure the safety and soundness of credit institutions. In addition to supervision of individual credit institutions, the ECB's tasks should include supervision at the consolidated level, supplementary supervision, supervision of financial holding companies and supervision of mixed financial holding companies, excluding the supervision of insurance undertakings.
- (27) In order to preserve financial stability, the deterioration of an institution's financial and economic situation must be remedied at an early stage. The ECB should have the task of carrying out early intervention actions as laid down in relevant Union law. It should however coordinate its early intervention action with the relevant resolution authorities. As long as national authorities remain competent to resolve credit institutions, the ECB should, moreover, coordinate appropriately with the national authorities concerned to ensure a common understanding about respective responsibilities in case of crises, in particular in the context of the cross-border crisis management groups and the future resolution colleges established for those purposes.
- (28) Supervisory tasks not conferred on the ECB should remain with the national authorities. Those tasks should include the power to receive notifications from credit institutions in relation to the right of establishment and the free provision of services, to supervise bodies which are not covered by the definition of credit institutions under Union law but which are supervised as credit institutions under national law, to supervise credit institutions from third countries establishing a branch or providing cross-border services in the Union, to supervise payments services, to carry out day-to-day verifications of credit institutions, to carry out the function of competent authorities over

credit institutions in relation to markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and consumer protection.

- (29) The ECB should cooperate, as appropriate, fully with the national authorities which are competent to ensure a high level of consumer protection and the fight against money laundering.
- (30) The ECB should carry out the tasks conferred on it with a view to ensuring the safety and soundness of credit institutions and the stability of the financial system of the Union as well as of individual participating Member States and the unity and integrity of the internal market, thereby ensuring also the protection of depositors and improving the functioning of the internal market, in accordance with the single rulebook for financial services in the Union. In particular the ECB should duly take into account the principles of equality and non-discrimination.
- (31) The conferral of supervisory tasks on the ECB should be consistent with the framework of the ESFS and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the whole Union. Cooperation between the banking supervisors and the supervisors of insurance and securities markets is important to deal with issues of joint interest and to ensure proper supervision of credit institutions operating also in the insurance and securities sectors. The ECB should therefore be required to cooperate closely with EBA, ESMA and EIOPA, the European Systemic Risk Board (ESRB), and the other authorities which form part of the ESFS. The ECB should carry out its tasks in accordance with the provisions of this Regulation and without prejudice to the competence and the tasks of the other participants within the ESFS. It should also be required to cooperate with relevant resolution authorities and facilities financing direct or indirect public financial assistance.
- (32) The ECB should carry out its tasks subject to and in compliance with relevant Union law including the whole of primary and secondary Union law, Commission decisions in the area of State aid, competition rules and merger control and the single rulebook applying to all Member States. EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not replace the exercise of those tasks by EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 of the Treaty on the Functioning of the European Union (TFEU) and in compliance with Union acts adopted by the Commission on the basis of drafts developed by EBA and subject to Article 16 of Regulation (EU) No 1093/2010.

- (33) Where necessary the ECB should enter into memoranda of understanding with competent authorities responsible for markets in financial instruments describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to financial institutions referred to in this Regulation. Such memoranda should be made available to the European Parliament, to the Council and to the competent authorities of all Member States.
- (34) For the carrying out of its tasks and the exercise of its supervisory powers, the ECB should apply the material rules relating to the prudential supervision of credit institutions. Those rules are composed of the relevant Union law, in particular directly applicable Regulations or Directives, such as those on capital requirements for credit institutions and on financial conglomerates. Where the material rules relating to the prudential supervision of credit institutions are laid down in Directives, the ECB should apply the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and in areas where, on the date of entry into force of this Regulation, those Regulations explicitly grant options for Member States, the ECB should also apply the national legislation exercising such options. Such options should be construed as excluding options available only to competent or designated authorities. This is without prejudice to the principle of the primacy of Union law. It follows that the ECB should, when adopting guidelines or recommendations or when taking decisions, base itself on, and act in accordance with, the relevant binding Union law.
- (35) Within the scope of the tasks conferred on the ECB, national law confers on national competent authorities certain powers which are currently not required by Union law, including certain early intervention and precautionary powers. The ECB should be able to require national authorities in the participating Member States to make use of those powers in order to ensure the performance of full and effective supervision within the SSM.
- (36) In order to ensure that supervisory rules and decisions are applied by credit institutions, financial holding companies and mixed financial holding companies, effective, proportionate and dissuasive penalties should be imposed in case of a breach. In accordance with Article 132(3) TFEU and Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions⁶, the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. Moreover, in order to enable the ECB to effectively carry out its tasks relating to the enforcement of supervisory rules set out in directly applicable

⁶ OJ L 318, 27.11.1998, p. 4.

Union law, the ECB should be empowered to impose pecuniary penalties on credit institutions, financial holding companies and mixed financial holding companies for breaches of such rules. National authorities should remain able to apply penalties in case of failure to comply with obligations stemming from national law transposing Union Directives. Where the ECB considers it appropriate for the fulfilment of its tasks that a penalty is applied for such breaches, it should be able to refer the matter to national competent authorities for those purposes.

- (37) National supervisors have important and long-established expertise in the supervision of credit institutions within their territory and their economic, organisational and cultural specificities. They have established a large body of dedicated and highly qualified staff for those purposes. Therefore, in order to ensure high-quality, Union-wide supervision, national competent authorities should be responsible for assisting the ECB in the preparation and implementation of any acts relating to the exercise of the ECB supervisory tasks. This should include, in particular, the ongoing day-to-day assessment of a credit institution's situation and related on-site verifications.
- (38) The criteria laid down in this Regulation defining the scope of institutions that are less significant should be applied at the highest level of consolidation within participating Member States based on consolidated data. Where the ECB carries out the tasks conferred on it by this Regulation with regard to a group of credit institutions that is not less significant on a consolidated basis, it should carry out those tasks on a consolidated basis with regard to the group of credit institutions and on an individual basis with regard to the banking subsidiaries and branches of that group established in participating Member States.
- (39) The criteria laid down in this Regulation defining the scope of institutions that are less significant should be specified in a framework adopted and published by the ECB in consultation with national competent authorities. On that basis, the ECB should be responsible to apply those criteria and verify, through its own calculations, whether those criteria are met. The ECB's request for information to perform its calculation should not force the institutions to apply accounting frameworks differing from those applicable to them pursuant to other acts of Union and national law.
- (40) Where a credit institution has been considered significant or less significant, that assessment should generally not be modified more often than once every 12 months, except if there are structural changes in the banking groups, such as mergers or divestitures.

- (41) When deciding, following a notification by a national competent authority, whether an institution is of significant relevance with regard to the domestic economy and should therefore be supervised by the ECB, the ECB should take into account all relevant circumstances, including level-playing field considerations.
- (42) As regards the supervision of cross-border credit institutions active both inside and outside the euro area the ECB should cooperate closely with the competent authorities of non-participating Member States. As a competent authority the ECB should be subject to the related obligations to cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a Union institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States whose currency is not the euro should therefore also have the possibility to participate in the SSM. However, it is a necessary pre-condition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States wishing to participate in the SSM should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be able to establish a close cooperation with the competent authorities of a Member State whose currency is not the euro. It should be obliged to establish the cooperation where the conditions set out in this Regulation are met.
- (43) Taking into account that participating Member States whose currency is not the euro are not present in the Governing Council for as long as they have not adopted the euro in accordance with the TFEU, and they cannot fully benefit from other mechanisms provided for Member States whose currency is the euro, additional safeguards in the decision-making process are provided for in this Regulation. However, those safeguards, in particular the possibility of the participating Member States whose currency is not the euro to request the immediate termination of the close cooperation after informing the Governing Council of its reasoned disagreement with a draft decision of the Supervisory Board, should be used in duly justified, exceptional cases. They should only be used as long as those specific circumstances apply. The safeguards are due to the specific circumstances in which participating Member States whose currency is not the euro are under this Regulation, since they are not present in the Governing Council and cannot fully benefit from other mechanisms provided for Member States whose currency is the euro. Therefore, the safeguards cannot and should not be construed as a precedent for other areas of Union policy.

- (44) Nothing in this Regulation should alter in any way the current framework regulating the change of legal form of subsidiaries or branches and the application of such framework, or be understood or applied as providing incentives in favour of such change. In this respect, the responsibility of competent authorities of nonparticipating Member States should be fully respected, so that those authorities continue to enjoy sufficient supervisory tools and powers over credit institutions operating in their territory in order to have the capacity to fulfil this responsibility and effectively safeguard financial stability and public interest. Moreover, in order to assist those competent authorities in fulfilling their responsibilities, timely information on a change of legal form of subsidiaries or branches should be provided to depositors and to the competent authorities.
- (45) In order to carry out its tasks, the ECB should have appropriate supervisory powers. Union law on the prudential supervision of credit institutions provides for certain powers to be conferred on competent authorities designated by the Member States for those purposes. To the extent that those powers fall within the scope of the supervisory tasks conferred on the ECB, for participating Member States the ECB should be considered the competent authority and should have the powers conferred on competent authorities by Union law. This includes powers conferred by those acts on the competent authorities of the home and the host Member States and the powers conferred on designated authorities.
- (46) The ECB should have the supervisory power to remove a member of a management body in accordance with this Regulation.
- (47) In order to carry out its tasks effectively, the ECB should be able to require all necessary information, and to conduct investigations and on-site inspections, where appropriate in cooperation with national competent authorities. The ECB and the national competent authorities should have access to the same information without credit institutions being subject to double reporting requirements.
- (48) Legal profession privilege is a fundamental principle of Union law, protecting the confidentiality of communications between natural or legal persons and their advisors, in accordance with the conditions laid down in the case-law of the Court of Justice of the European Union (CJEU).
- (49) When the ECB needs to require information from a person established in a non-participating Member State but belonging to a credit institution, financial holding company or mixed financial holding company established in a participating Member State, or to which such credit institution, financial

holding company or mixed financial holding company has outsourced operational functions or activities, and when such requirements will not apply and will not be enforceable in the non-participating Member State, the ECB should coordinate with the competent authority in the nonparticipating Member State concerned.

- (50) This Regulation does not affect the application of the rules established by Articles 34 and 42 of Protocol No 4 on the statute of the European System of Central Banks and of the European Central Bank, attached to the Treaty on European Union (TEU) and to the TFEU ('Statute of the ESCB and of the ECB'). The acts adopted by the ECB under this Regulation should not create any rights or impose any obligations in nonparticipating Member States, except where such acts are in accordance with relevant Union law, in accordance with that Protocol and with Protocol No 15 on certain provisions related to the United Kingdom of Great Britain and Northern Ireland, attached to the TEU and to the TFEU.
- (51) Where credit institutions exercise their right of establishment or to provide services in another Member State, or where several entities in a group are established in different Member States, Union law provides for specific procedures and for attribution of competences between the Member States concerned. To the extent that the ECB takes over certain supervisory tasks for all participating Member States, those procedures and attributions should not apply to the exercise of the right of establishment or to provide services in another participating Member State.
- (52) When carrying out its tasks under this Regulation and when requesting assistance from national competent authorities, the ECB should have due regard to a fair balance between the involvement of all national competent authorities involved, in line with the responsibilities set out in applicable Union law for solo supervision and for supervision on a sub-consolidated basis and on a consolidated basis.
- (53) Nothing in this Regulation should be understood as conferring on the ECB the power to impose penalties on natural or legal persons other than credit institutions, financial holding companies or mixed financial holding companies, without prejudice to the ECB's power to require national competent authorities to act in order to ensure that appropriate penalties are imposed.
- (54) (54) As established by the Treaties, the ECB is an institution of the Union as a whole. It should be bound in its decision-making procedures by Union rules and general principles on due process and transparency. The right of the

addressees of the ECB's decisions to be heard should be fully respected as well as their right to request a review of the decisions of the ECB according to the rules set out in this Regulation.

- (55) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. Any shift of supervisory powers from the Member State to the Union level should be balanced by appropriate transparency and accountability requirements. The ECB should therefore be accountable for the exercise of those tasks towards the European Parliament and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States. That should include regular reporting, and responding to questions by the European Parliament in accordance with its Rules of Procedure, and by the euro Group in accordance with its procedures. Any reporting obligations should be subject to the relevant professional secrecy requirements.
- (56) The ECB should also forward the reports, which it addresses to the European Parliament and to the Council, to the national parliaments of the participating Member States. National parliaments of the participating Member States should be able to address any observations or questions to the ECB on the performance of its supervisory tasks, to which the ECB may reply. The internal rules of those national parliaments should take into account details of the relevant procedures and arrangements for addressing the observations and questions to the ECB. In this context particular attention should be attached to observations or questions related to the withdrawal of authorisations of credit institutions in respect of which actions necessary for resolution or to maintain financial stability have been taken by national authorities in accordance with the procedure set out in this Regulation. The national parliament of a participating Member State should also be able to invite the Chair or a representative of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority. This role for national parliaments is appropriate given the potential impact that supervisory measures may have on public finances, credit institutions, their customers and employees, and the markets in the participating Member States. Where national competent authorities take action under this Regulation, accountability arrangements provided for under national law should continue to apply.
- (57) This Regulation is without prejudice to the right of the European Parliament to set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law pursuant to Article 226 TFEU or to the exercise of its functions of political

control as laid down in the Treaties, including the right for the European Parliament to take a position or adopt a resolution on matters which it considers appropriate.

- (58) In its action, the ECB should comply with the principles of due process and transparency.
- (59) The regulation referred to in Article 15(3) TFEU should determine detailed rules enabling access to documents held by the ECB resulting from the carrying out of supervisory tasks, in accordance with the TFEU.
- (60) Pursuant to Article 263 TFEU, the CJEU is to review the legality of acts of, inter alia, the ECB, other than recommendations and opinions, intended to produce legal effects vis-à-vis third parties.
- (61) In accordance with Article 340 TFEU, the ECB should, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties. This should be without prejudice to the liability of national competent authorities to make good any damage caused by them or by their servants in the performance of their duties in accordance with national legislation.
- (62) Council Regulation No 1 determining the languages to be used by the European Economic Community⁽⁷⁾ applies to the ECB by virtue of Article 342 TFEU.
- (63) When determining whether the right of access to the file by persons concerned should be limited, the ECB should respect the fundamental rights and observe the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial.
- (64) The ECB should provide natural and legal persons with the possibility to request a review of decisions taken under the powers conferred on it by this Regulation and addressed to them, or which are of direct and individual concern to them. The scope of the review should pertain to the procedural and substantive conformity with this regulation of such decisions while respecting the margin of discretion left to the ECB to decide on the opportunity to take those decisions. For that purpose, and for reasons of procedural economy, the ECB should establish an administrative board of review to carry out such internal review. To compose the board, the Governing Council of the ECB

⁷ OJ L7, 6.10.1958, p. 385

should appoint individuals of a high repute. In making its decision, the Governing Council should, to the extent possible, ensure an appropriate geographical and gender balance across the Member States. The procedure laid down for the review should provide for the Supervisory Board to reconsider its former draft decision as appropriate.

- (65) The ECB is responsible for carrying out monetary policy functions with a view to maintaining price stability in accordance with Article 127(1) TFEU. The exercise of supervisory tasks has the objective to protect the safety and soundness of credit institutions and the stability of the financial system. They should therefore be carried out in full separation, in order to avoid conflicts of interests and to ensure that each function is exercised in accordance with the applicable objectives. The ECB should be able to ensure that the Governing Council operates in a completely differentiated manner as regards monetary and supervisory functions. Such differentiation should at least include strictly separated meetings and agendas.
- (66) Organisational separation of staff should concern all services needed for independent monetary policy purposes and should ensure that the exercise of the tasks conferred by this Regulation is fully subject to democratic accountability and oversight as provided for by this Regulation. The staff involved in carrying out the tasks conferred on the ECB by this Regulation should report to the Chair of the Supervisory Board.
- (67) In particular, a Supervisory Board responsible for preparing decisions on supervisory matters should be set up within the ECB encompassing the specific expertise of national supervisors. The board should therefore be chaired by a Chair, have a Vice Chair and include representatives from the ECB and from national competent authorities. The appointments for the Supervisory Board in accordance with this Regulation should respect the principles of gender balance, experience and qualification. All members of the Supervisory Board should be timely and fully informed on the items on the agenda of its meetings, so as to facilitate the effectiveness of the discussion and the draft decision making process.
- (68) When exercising its tasks, the Supervisory Board should take account of all relevant facts and circumstances in the participating Member States and should perform its duties in the interest of the Union as a whole.
- (69) With full respect to the institutional and voting arrangements set by the Treaties, the Supervisory Board should be an essential body in the exercise of supervisory tasks by the ECB, tasks which until now have always been in the hands of national competent authorities. For this reason, the Council should

be given the power to adopt an implementing decision to appoint the Chair and the Vice-Chair of the Supervisory Board. After hearing the Supervisory Board, the ECB should submit a proposal for the appointment of the Chair and the Vice-Chair to the European Parliament for approval. Following the approval of this proposal, the Council should adopt that implementing decision. The Chair should be chosen on the basis of an open selection procedure, on which the European Parliament and the Council should be kept duly informed.

- (70) In order to allow for an appropriate rotation while ensuring the full independence of the Chair, the Chair's term of office should not exceed five years and should not be renewable. In order to ensure full coordination with the activities of EBA and with the prudential policies of the Union, the Supervisory Board should be able to invite EBA and the Commission as observers. The Chair of the European Resolution Authority, once established, should participate as observer in the meetings of the Supervisory Board.
- (71) The Supervisory Board should be supported by a steering committee with a more limited composition. The steering committee should prepare the meetings of the Supervisory Board, perform its duties solely in the interest of the Union as a whole, and work in full transparency with the Supervisory Board.
- (72) The Governing Council of the ECB should invite the representatives from participating Member States whose currency is not the euro whenever it is contemplated by the Governing Council to object to a draft decision prepared by the Supervisory Board or whenever the concerned national competent authorities inform the Governing Council of their reasoned disagreement with a draft decision of the Supervisory Board, when such decision is addressed to the national authorities in respect of credit institutions from participating Member States whose currency is not the euro.
- (73) With a view to ensuring separation between monetary policy and supervisory tasks, the ECB should be required to create a mediation panel. The setting up of the panel, and in particular its composition, should ensure that it resolves differences of views in a balanced way, in the interest of the Union as a whole.
- (74) The Supervisory Board, the steering committee and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Similar requirements should apply to the exchange of information with the staff of the ECB not involved in supervisory activities. This should not prevent the ECB from exchanging information within the

limits and under the conditions set out in the relevant Union legislation, including with the Commission for the purposes of its tasks under Articles 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.

- (75) In order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular free from undue political influence and from industry interference which would affect its operational independence.
- (76) The use of cooling-off periods in supervisory authorities forms an important part of ensuring the effectiveness and independence of the supervision conducted by those authorities. To this end, and without prejudice to the application of stricter national rules, the ECB should establish and maintain comprehensive and formal procedures, including proportionate review periods, to assess in advance and prevent possible conflicts with the legitimate interest of the SSM/ECB where a former member of the Supervisory Board begins work within the banking industry he or she once supervised.
- (77) In order to carry out its supervisory tasks effectively, the ECB should dispose of adequate resources. Those resources should be obtained in a way that ensures the ECB's independence from undue influences by national competent authorities and market participants, and separation between monetary policy and supervisory tasks. The costs of supervision should be borne by the entities subject to it. Therefore, the exercise of supervisory tasks by the ECB should be financed by annual fees charged to credit institutions established in the participating Member States. It should also be able to levy fees on branches established in a participating Member State by a credit institution established in a non-participating Member State to cover the expenditure incurred by the ECB when carrying out its tasks as a host supervisor over these branches. In the case a credit institution or a branch is supervised on a consolidated basis, the fee should be levied on the highest level of a credit institution within the involved group with establishment in participating Member States. The calculation of the fees should exclude any subsidiaries established in nonparticipating Member States.
- (78) Where a credit institution is included in supervision on a consolidated basis, the fee should be calculated at the highest level of consolidation within participating Member States and allocated to the credit institutions established in a participating Member State and included in the supervision on a consolidated basis, based on objective criteria relating to the importance and risk profile, including the risk weighted assets.

- (79) Highly motivated, well-trained and impartial staff is indispensable to effective supervision. In order to create a truly integrated supervisory mechanism, appropriate exchange and secondment of staff with and among all national competent authorities and the ECB should be provided for. To ensure a peer control on an on-going basis, particularly in the supervision of large credit institutions, the ECB should be able to request that national supervisory teams involve also staff from competent authorities of other participating Member States, making it possible to install supervisory teams of geographical diversity with specific expertise and profile. The exchange and secondment of staff should establish a common supervisory culture. On a regular basis the ECB should provide information on how many staff members from the national competent authorities are seconded to the ECB for the purposes of the SSM.
- (80) Given the globalisation of banking services and the increased importance of international standards, the ECB should carry out its tasks in respect of international standards and in dialogue and close cooperation with supervisors outside the Union, without duplicating the international role of EBA. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, while coordinating with EBA and while fully respecting the existing roles and respective competences of the Member States and the institutions of the Union.
- (81) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁸⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽⁹⁾ are fully applicable to the processing of personal data by the ECB for the purposes of this Regulation.
- (82) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽¹⁰⁾ applies to the ECB. The ECB has adopted Decision ECB/2004/11⁽¹¹⁾ concerning the terms and conditions for European Anti-

⁸ OJ L 281, 23.11.1995, p. 31.

⁹ OJ L 8, 12.1.2001, p. 1.

¹⁰ OJ L 136, 31.5.1999, p. 1.

¹¹ Decision ECB/2004/11 of the European Central Bank of 3 June 2004 concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank, in relation to the prevention of

Fraud Office investigations of the European Central Bank.

- (83) In order to ensure that credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations, and that the negative mutually reinforcing impacts of market developments which concern credit institutions and Member States are addressed in a timely and effective way, the ECB should start carrying out specific supervisory tasks as soon as possible. However, the transfer of supervisory tasks from national supervisors to the ECB requires a certain amount of preparation. Therefore, an appropriate phasing-in period should be provided for.
- (84) When adopting the detailed operational arrangements for the implementation of the tasks conferred on the ECB by this Regulation, the ECB should provide for transitional arrangements which ensure the completion of ongoing supervisory procedures, including any decision and/or measure adopted or investigation commenced prior to the entry into force of this Regulation.
- (85) The Commission has stated in its Communication of 28 November 2012 on a Blueprint for a deep and genuine economic and monetary union that Article 127(6) TFEU could be amended to make the ordinary legislative procedure applicable and to eliminate some of the legal constraints it currently places on the design of the SSM (e.g. enshrine a direct and irrevocable opt-in by Member States whose currency is not the euro to the SSM, beyond the model of ‘close cooperation’, grant Member States whose currency is not the euro participating in the SSM fully equal rights in the ECB’s decision-making, and go even further in the internal separation of decision-making on monetary policy and on supervision). It has also stated that a specific point to be addressed would be to strengthen democratic accountability over the ECB insofar as it acts as a banking supervisor. It is recalled that TEU provides that proposals for treaty change may be submitted by the Government of any Member State, the European Parliament, or the Commission, and may relate to any aspect of the Treaties.
- (86) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.
- (87) Since the objectives of this Regulation, namely setting up an efficient and

fraud, corruption and any other illegal activities detrimental to the European Communities’ financial interests (OJ L 230, 30.6.2004, p. 56).

effective framework for the exercise of specific supervisory tasks over credit institutions by a Union institution, and ensuring the consistent application of the single rulebook to credit institutions, cannot be sufficiently achieved at the Member State level and can therefore, by reason of the pan-Union structure of the banking market and the impact of failures of credit institutions on other Member States, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject matter and definitions

Article 1

Subject matter and scope

This Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage.

The institutions referred to in Article 2(5) of the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ⁽¹²⁾ are excluded from the supervisory tasks conferred on ECB in accordance with Article 4 of this Regulation. The scope of the ECB's supervisory tasks is limited to the prudential supervision of credit institutions pursuant to this Regulation. This Regulation shall not confer on the ECB any other supervisory tasks, such as tasks relating to the prudential supervision of central counterparties.

When carrying out its tasks according to this Regulation, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB shall

¹² OJ L 176, 27.6.2013, p. 338.

have full regard to the different types, business models and sizes of credit institutions.

No action, proposal or policy of the ECB shall, directly or indirectly, discriminate against any Member State or group of Member States as a venue for the provision of banking or financial services in any currency.

This Regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not conferred on the ECB by this Regulation.

This Regulation is also without prejudice to the responsibilities and related powers of the competent or designated authorities of the participating Member States to apply macroprudential tools not provided for in relevant acts of Union law.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘participating Member State’ means a Member State whose currency is the euro or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7;
- (2) ‘national competent authority’ means a national competent authority designated by a participating Member State in accordance with 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 firms¹³ and Directive 2013/36/EU;
- (3) ‘credit institution’ means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013;
- (4) ‘financial holding company’ means a financial holding company as defined in point 20 of Article 4(1) of Regulation (EU) No 575/2013;
- (5) ‘mixed financial holding company’ means a mixed financial holding company as defined in point 15 of Article 2 of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary

¹³ OJ L 176, 27.6.2013, p. 1.

supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (¹⁴);

- (6) ‘financial conglomerate’ means a financial conglomerate as defined in point 14 of Article 2 of Directive 2002/87/EC;
- (7) ‘national designated authority’ means a designated authority of a participating Member State, within the meaning of the relevant Union law;
- (8) ‘qualifying holding’ means a qualifying holding as defined in point 36 of Article 4(1) of Regulation (EU) No 575/2013;
- (9) ‘Single supervisory mechanism’ (SSM) means the system of financial supervision composed by the ECB and national competent authorities of participating Member States as described in Article 6 of this Regulation.

CHAPTER II

Cooperation and tasks

Article 3

Cooperation

1. The ECB shall cooperate closely with EBA, ESMA, EIOPA and the European Systemic Risk Board (ESRB), and the other authorities which form part of the ESFS, which ensure an adequate level of regulation and supervision in the Union.

Where necessary the ECB shall enter into memoranda of understanding with competent authorities of Member States responsible for markets in financial instruments. Such memoranda shall be made available to the European Parliament, to the Council and to competent authorities of all Member States.

2. For the purposes of this Regulation, the ECB shall participate in the Board of Supervisors of EBA under the conditions set out in Article 40 of Regulation (EU) No 1093/2010.

3. The ECB shall carry out its tasks in accordance with this Regulation and without prejudice to the competence and the tasks of EBA, ESMA, EIOPA and the ESRB.

¹⁴ OJ L 35, 11.2.2003, p. 1.

4. The ECB shall cooperate closely with the authorities empowered to resolve credit institutions, including in the preparation of resolution plans.

5. Subject to Articles 1, 4 and 6, the ECB shall cooperate closely with any public financial assistance facility including the European Financial Stability Facility (EFSF) and the ESM, in particular where such a facility has granted or is likely to grant, direct or indirect financial assistance to a credit institution which is subject to Article 4.

6. The ECB and the competent authorities of non-participating Member States shall conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions referred to in Article 2. The memorandum shall be reviewed on a regular basis.

Without prejudice to the first subparagraph the ECB shall conclude a memorandum of understanding with the competent authority of each non-participating Member State that is home to at least one global systemically important institution, as defined in Union law.

Each memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.

Article 4

Tasks conferred on the ECB

1. Within the framework of Article 6, the ECB shall, in accordance with paragraph 3 of this Article, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

- (a) to authorise credit institutions and to withdraw authorisations of credit institutions subject to Article 14;
- (b) for credit institutions established in a participating Member State, which wish to establish a branch or provide cross-border services in a non-participating Member State, to carry out the tasks which the competent authority of the home Member State shall have under the relevant Union law;
- (c) to assess notifications of the acquisition and disposal of qualifying holdings in credit institutions, except in the case of a bank resolution, and subject to Article 15;

- (d) to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;
- (e) to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose requirements on credit institutions to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes, including Internal Ratings Based models;
- (f) to carry out supervisory reviews, including where appropriate in coordination with EBA, stress tests and their possible publication, in order to determine whether the arrangements, strategies, processes and mechanisms put in place by credit institutions and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on credit institutions specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures, where specifically made available to competent authorities by relevant Union law;
- (g) to carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors without prejudice to the participation of national competent authorities in those colleges as observers, in relation to parents not established in one of the participating Member State;
- (h) to participate in supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and to assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out in relevant Union law;
- (i) to carry out supervisory tasks in relation to recovery plans, and early intervention where a credit institution or group in relation to which the ECB is the consolidating supervisor, does not meet or is likely to breach the applicable prudential requirements, and, only in the cases explicitly stipulated by relevant Union law for competent authorities, structural changes required from credit institutions to prevent financial stress or failure, excluding any resolution powers.

2. For credit institutions established in a non-participating Member State, which establish a branch or provide cross-border services in a participating Member State, the ECB shall carry out, within the scope of paragraph 1, the tasks for which the national competent authorities are competent in accordance with relevant Union law.

3. For the purpose of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the ECB shall apply also the national legislation exercising those options.

To that effect, the ECB shall adopt guidelines and recommendations, and take decisions subject to and in compliance with the relevant Union law and in particular any legislative and non-legislative act, including those referred to in Articles 290 and 291 TFEU. It shall in particular be subject to binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Article 10 to 15 of Regulation (EU) No 1093/2010, to Article 16 of that Regulation, and to the provisions of that Regulation on the European supervisory handbook developed by EBA in accordance with that Regulation. The ECB may also adopt regulations only to the extent necessary to organise or specify the arrangements for the carrying out of the tasks conferred on it by this Regulation.

Before adopting a regulation, the ECB shall conduct open public consultations and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulations concerned or in relation to the particular urgency of the matter, in which case the ECB shall justify that urgency.

Where necessary the ECB shall contribute in any participating role to the development of draft regulatory technical standards or implementing technical standards by EBA in accordance with Regulation (EU) No 1093/2010 or shall draw the attention of EBA to a potential need to submit to the Commission draft standards amending existing regulatory or implementing technical standards.

Article 5

Macroprudential tasks and tools

1. Whenever appropriate or deemed required, and without prejudice to paragraph 2 of this Article, the national competent authorities or national designated authorities of the participating Member States shall apply requirements for capital buffers to be

held by credit institutions at the relevant level in accordance with relevant Union law in addition to own funds requirements referred to in point (d) of Article 4(1) of this Regulation, including countercyclical buffer rates, and any other measures aimed at addressing systemic or macro-prudential risks provided for, and subject to the procedures set out, in the Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law. Ten working days prior to taking such a decision, the concerned authority shall duly notify its intention to the ECB. Where the ECB objects, it shall state its reasons in writing within five working days. The concerned authority shall duly consider the ECB's reasons prior to proceeding with the decision as appropriate.

2. The ECB may, if deemed necessary, instead of the national competent authorities or national designated authorities of the participating Member State, apply higher requirements for capital buffers than applied by the national competent authorities or national designated authorities of participating Member States to be held by credit institutions at the relevant level in accordance with relevant Union law in addition to own funds requirements referred to in point (d) of Article 4(1) of this Regulation, including countercyclical buffer rates, subject to the conditions set out in paragraphs 4 and 5 of this Article, and apply more stringent measures aimed at addressing systemic or macroprudential risks at the level of credit institutions subject to the procedures set out in the Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law.

3. Any national competent authority or a national designated authority may propose to the ECB to act under paragraph 2, in order to address the specific situation of the financial system and the economy in its Member State.

4. Where the ECB intends to act in accordance with paragraph 2, it shall cooperate closely with the national designated authorities in the Member States concerned. It shall in particular notify its intention to the concerned national competent authorities or national designated authorities ten working days prior to taking such a decision. Where any of the concerned authorities objects, it shall state its reasons in writing within five working days. The ECB shall duly consider those reasons prior to proceeding with the decision as appropriate.

5. When carrying out the tasks referred to in paragraph 2, the ECB shall take into account the specific situation of the financial system, economic situation and the economic cycle in individual Member States or parts thereof.

*Article 6***Cooperation within the SSM**

1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities. The ECB shall be responsible for the effective and consistent functioning of the SSM.

2. Both the ECB and national competent authorities shall be subject to a duty of cooperation in good faith, and an obligation to exchange information.

Without prejudice to the ECB's power to receive directly, or have direct access to information reported, on an ongoing basis, by credit institutions, the national competent authorities shall in particular provide the ECB with all information necessary for the purposes of carrying out the tasks conferred on the ECB by this Regulation.

3. Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by this Regulation, national competent authorities shall be responsible for assisting the ECB, under the conditions set out in the framework mentioned in paragraph 7 of this Article, with the preparation and implementation of any acts relating to the tasks referred to in Article 4 related to all credit institutions, including assistance in verification activities. They shall follow the instructions given by the ECB when performing the tasks mentioned in Article 4.

4. In relation to the tasks defined in Article 4 except for points (a) and (c) of paragraph 1 thereof, the ECB shall have the responsibilities set out in paragraph 5 of this Article and the national competent authorities shall have the responsibilities set out in paragraph 6 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article, for the supervision of the following credit institutions, financial holding companies or mixed financial holding companies, or branches, which are established in participating Member States, of credit institutions established in non-participating Member States, those that are less significant on a consolidated basis, at the highest level of consolidation within the participating Member States, or individually in the specific case of branches, which are established in participating Member States, of credit institutions established in non-participating Member States. The significance shall be assessed based on the following criteria:

- (i) size;
- (ii) importance for the economy of the Union or any participating Member State;

(iii) significance of cross-border activities.

With respect to the first subparagraph above, a credit institution or financial holding company or mixed financial holding company shall not be considered less significant, unless justified by particular circumstances to be specified in the methodology, if any of the following conditions is met:

(i) the total value of its assets exceeds EUR 30 billion;

(ii) the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of its assets is below EUR 5 billion;

(iii) following a notification by its national competent authority that it considers such an institution of significant relevance with regard to the domestic economy, the ECB takes a decision confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of that credit institution.

The ECB may also, on its own initiative, consider an institution to be of significant relevance where it has established banking subsidiaries in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its total assets or liabilities subject to the conditions laid down in the methodology.

Those for which public financial assistance has been requested or received directly from the EFSF or the ESM shall not be considered less significant.

Notwithstanding the previous subparagraphs, the ECB shall carry out the tasks conferred on it by this Regulation in respect of the three most significant credit institutions in each of the participating Member States, unless justified by particular circumstances.

5. With regard to the credit institutions referred to in paragraph 4, and within the framework defined in paragraph 7:

(a) the ECB shall issue regulations, guidelines or general instructions to national competent authorities, according to which the tasks defined in Article 4 excluding points (a) and (c) of paragraph 1 thereof are performed and supervisory decisions are adopted by national competent authorities.

Such instructions may refer to the specific powers in Article 16(2) for groups or categories of credit institutions for the purposes of ensuring the consistency of supervisory outcomes within the SSM;

- (b) when necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national competent authorities or upon request by a national competent authority, decide to exercise directly itself all the relevant powers for one or more credit institutions referred to in paragraph 4, including in the case where financial assistance has been requested or received indirectly from the EFSF or the ESM;
- (c) the ECB shall exercise oversight over the functioning of the system, based on the responsibilities and procedures set out in this Article, and in particular point (c) of paragraph 7;
- (d) the ECB may at any time make use of the powers referred to in Articles 10 to 13;
- (e) the ECB may also request, on an ad hoc or continuous basis, information from the national competent authorities on the performance of the tasks carried out by them under this Article.

6. Without prejudice to paragraph 5 of this Article, national competent authorities shall carry out and be responsible for the tasks referred to in points (b), (d) to (g) and (i) of Article 4(1) and adopting all relevant supervisory decisions with regard to the credit institutions referred to in the first subparagraph of paragraph 4 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article.

Without prejudice to Articles 10 to 13, the national competent authorities and national designated authorities shall maintain the powers, in accordance with national law, to obtain information from credit institutions, holding companies, mixed holding companies and undertakings included in the consolidated financial situation of a credit institution and to perform on site inspections at those credit institutions, holding companies, mixed holding companies and undertakings. The national competent authorities shall inform the ECB, in accordance with the framework set out in paragraph 7 of this Article, of the measures taken pursuant to this paragraph and closely coordinate those measures with the ECB.

The national competent authorities shall report to the ECB on a regular basis on the performance of the activities performed under this Article.

7. The ECB shall, in consultation with national competent authorities, and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for the implementation of this Article. The framework shall include, at least, the following:

- (a) the specific methodology for the assessment of the criteria referred to in the first, second and third subparagraph of paragraph 4 and the criteria under which

the fourth subparagraph of paragraph 4 ceases to apply to a specific credit institution and the resulting arrangements for the purposes of implementing paragraphs 5 and 6. Those arrangements and the methodology for the assessment of the criteria referred to in the first, second and third subparagraph of paragraph 4 shall be reviewed to reflect any relevant changes, and shall ensure that where a credit institution has been considered significant or less significant that assessment shall only be modified in case of substantial and non-transitory changes of circumstances, in particular those circumstances relating to the situation of the credit institution which are relevant for that assessment.

- (b) the definition of the procedures, including time-limits, and the possibility to prepare draft decisions to be sent to the ECB for consideration, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions not considered as less significant in accordance with paragraph 4;
- (c) the definition of the procedures, including time-limits, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions considered as less significant in accordance with paragraph 4. Such procedures shall in particular require national competent authorities, depending on the cases defined in the framework, to:
 - (i) notify the ECB of any material supervisory procedure;
 - (ii) further assess, on the request of the ECB, specific aspects of the procedure;
 - (iii) transmit to the ECB material draft supervisory decisions on which the ECB may express its views.

8. Wherever the ECB is assisted by national competent authorities or national designated authorities for the purpose of exercising the tasks conferred on it by this Regulation, the ECB and the national competent authorities shall comply with the provisions set out in the relevant Union acts in relation to the allocation of responsibilities and cooperation between competent authorities from different Member States.

Article 7

Close cooperation with the competent authorities of participating Member States whose currency is not the euro

1. Within the limits set out in this Article, the ECB shall carry out the tasks in the areas referred to in Articles 4(1), 4(2) and 5 in relation to credit institutions

established in a Member State whose currency is not the euro, where close cooperation has been established between the ECB and the national competent authority of such Member State in accordance with this Article.

To that end, the ECB may address instructions to the national competent authority or to the national designated authority of the participating Member State whose currency is not the euro.

2. Close cooperation between the ECB and the national competent authority of a participating Member State whose currency is not the euro shall be established, by a decision adopted by the ECB, where the following conditions are met:

- (a) the Member State concerned notifies the other Member States, the Commission, the ECB and EBA the request to enter into a close cooperation with the ECB in relation to the exercise of the tasks referred to in Articles 4 and 5 with regard to all credit institutions established in the Member State concerned, in accordance with Article 6;
- (b) in the notification, the Member State concerned undertakes:
 - to ensure that its national competent authority or national designated authority will abide by any guidelines or requests issued by the ECB, and
 - to provide all information on the credit institutions established in that Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those credit institutions;
- (c) the Member State concerned has adopted relevant national legislation to ensure that its national competent authority will be obliged to adopt any measure in relation to credit institutions requested by the ECB, in accordance with paragraph 4.

3. The decision referred to in paragraph 2 shall be published in the Official Journal of the European Union. The decision shall apply 14 days after its publication.

4. Where the ECB considers that a measure relating to the tasks referred to in paragraph 1 should be adopted by the national competent authority of a concerned Member State in relation to a credit institution, financial holding company or mixed-financial holding company, it shall address instructions to that authority, specifying a relevant timeframe.

That timeframe shall be no less than 48 hours unless earlier adoption is indispensable to prevent irreparable damage. The national competent authority of the concerned Member State shall take all the necessary measures in accordance with the obligation referred to in point (c) of paragraph 2.

5. The ECB may decide to issue a warning to the Member State concerned that the close cooperation will be suspended or terminated if no decisive corrective action is undertaken in the following cases:

- (a) where, in the opinion of the ECB, the conditions set out in points (a) to (c) of paragraph 2 are no longer met by the Member State concerned; or
- (b) where, in the opinion of the ECB, the national competent authority of the Member State concerned does not act in accordance with the obligation referred to in point (c) of paragraph 2.

If no such action has been undertaken within 15 days of notification of such a warning, the ECB may suspend or terminate the close cooperation with that Member State.

The decision to suspend or terminate the close cooperation shall be notified to the Member State concerned and shall be published in the Official Journal of the European Union. The decision shall indicate the date from which it applies, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions.

6. The Member State may request the ECB to terminate the close cooperation at any time after a lapse of three years from the date of the publication in the Official Journal of the European Union of the decision adopted by the ECB for the establishment of the close cooperation. The request shall explain the reasons for the termination, including, when relevant, potential significant adverse consequences as regards the fiscal responsibilities of the Member State. In this case, the ECB shall immediately proceed to adopt a decision terminating the close cooperation and indicate the date from which it applies within a maximum period of three months, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions. The decision shall be published in the Official Journal of the European Union.

7. If a participating Member State whose currency is not the euro notifies the ECB in accordance with Article 26(8) of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board, the Governing Council shall, within a period of 30 days, give its opinion on the reasoned disagreement expressed by the Member State and, stating its reasons to do so, confirm or withdraw its objection.

Where the Governing Council confirms its objection, the participating Member State whose currency is not the euro may notify the ECB that it will not be bound by the

potential decision related to a possible amended draft decision by the Supervisory Board.

The ECB shall then consider the possible suspension or termination of the close cooperation with that Member State, taking due consideration of supervisory effectiveness, and take a decision in that respect.

The ECB shall take into account, in particular, the following considerations:

- (a) whether the absence of such suspension or termination could jeopardize the integrity of the SSM or have significant adverse consequences as regards the fiscal responsibilities of the Member States;
- (b) whether such suspension or termination could have significant adverse consequences as regards the fiscal responsibilities in the Member State which has notified a reasoned disagreement in accordance with Article 26(8);
- (c) whether or not it is satisfied that the national competent authority concerned has adopted measures which, in the ECB's opinion:
 - ensure that credit institutions in the Member State which notified its reasoned disagreement pursuant to the previous subparagraph are not subject to a more favourable treatment than credit institutions in the other participating Member States, and
 - are equally effective as the decision of the Governing Council under the second subparagraph of this paragraph in achieving the objectives referred to in Article 1 and in ensuring compliance with relevant Union law.

The ECB shall include these considerations in its decision and communicate them to the Member State in question.

8. If a participating Member State whose currency is not the euro disagrees with a draft decision of the Supervisory Board, it shall inform the Governing Council of its reasoned disagreement within five working days of receiving the draft decision. The Governing Council shall then decide about the matter within five working days, taking fully into account those reasons, and explain in writing its decision to the Member State concerned. The Member State concerned may request the ECB to terminate the close cooperation with immediate effect and will not be bound by the ensuing decision.

9. A Member State which has terminated the close cooperation with the ECB may not enter into a new close cooperation before a lapse of three years from the date of

the publication in the Official Journal of the European Union of the ECB decision terminating the close cooperation.

Article 8

International relations

Without prejudice to the respective competences of the Member States and institutions and bodies of the Union, other than the ECB, including EBA, in relation to the tasks conferred on the ECB by this Regulation, the ECB may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, subject to appropriate coordination with EBA. Those arrangements shall not create legal obligations in respect of the Union and its Member States.

CHAPTER III

Powers of the ECB

Article 9

Supervisory and investigatory powers

1. For the exclusive purpose of carrying out the tasks conferred on it by Articles 4(1), 4(2) and 5(2), the ECB shall be considered, as appropriate, the competent authority or the designated authority in the participating Member States as established by the relevant Union law.

For the same exclusive purpose, the ECB shall have all the powers and obligations set out in this Regulation. It shall also have all the powers and obligations, which competent and designated authorities shall have under the relevant Union law, unless otherwise provided for by this Regulation. In particular, the ECB shall have the powers listed in Sections 1 and 2 of this Chapter.

To the extent necessary to carry out the tasks conferred on it by this Regulation, the ECB may require, by way of instructions, those national authorities to make use of their powers, under and in accordance with the conditions set out in national law, where this Regulation does not confer such powers on the ECB. Those national authorities shall fully inform the ECB about the exercise of those powers.

2. The ECB shall exercise the powers referred to in paragraph 1 of this Article in accordance with the acts referred to in the first subparagraph of Article 4(3). In the exercise of their respective supervisory and investigatory powers, the ECB and national competent authorities shall cooperate closely.

3. By derogation from paragraph 1 of this Article, with regard to credit institutions established in participating Member States whose currency is not the euro, the ECB shall exercise its powers in accordance with Article 7.

Section 1

Investigatory powers

Article 10

Request for information

1. Without prejudice to the powers referred to in Article 9(1), and subject to the conditions set out in relevant Union law, the ECB may require the following legal or natural persons, subject to Article 4, to provide all information that is necessary in order to carry out the tasks conferred on it by this Regulation, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

- (a) credit institutions established in the participating Member States;
- (b) financial holding companies established in the participating Member States;
- (c) mixed financial holding companies established in the participating Member States;
- (d) mixed-activity holding companies established in the participating Member States;
- (e) persons belonging to the entities referred to in points (a) to (d);
- (f) third parties to whom the entities referred to in points (a) to (d) have outsourced functions or activities.

2. The persons referred to in paragraph 1 shall supply the information requested. Professional secrecy provisions do not exempt those persons from the duty to supply that information. Supplying that information shall not be deemed to be in breach of professional secrecy.

3. Where the ECB obtains information directly from the legal or natural persons referred to in paragraph 1 it shall make that information available to the national competent authorities concerned.

Article 11

General investigations

1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may conduct all necessary investigations of any person referred to in Article 10(1) established or located in a participating Member State.

To that end, the ECB shall have the right to:

- (a) require the submission of documents;
- (b) examine the books and records of the persons referred to in Article 10(1) and take copies or extracts from such books and records;
- (c) obtain written or oral explanations from any person referred to in Article 10(1) or their representatives or staff;
- (d) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.

2. The persons referred to in Article 10(1) shall be subject to investigations launched on the basis of a decision of the ECB.

When a person obstructs the conduct of the investigation, the national competent authority of the participating Member State where the relevant premises are located shall afford, in compliance with national law, the necessary assistance including, in the cases referred to in Articles 12 and 13, facilitating the access by the ECB to the business premises of the legal persons referred to in Article 10(1), so that the aforementioned rights can be exercised.

Article 12

On-site inspections

1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may in accordance with Article 13 and subject to prior notification to the national competent authority concerned conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 10(1) and any other undertaking included in

supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1). Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement to those legal persons.

2. The officials of and other persons authorised by the ECB to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by the ECB and shall have all the powers stipulated in Article 11(1).

3. The legal persons referred to in Article 10(1) shall be subject to on-site inspections on the basis of a decision of the ECB.

4. Officials and other accompanying persons authorised or appointed by the national competent authority of the Member State where the inspection is to be conducted shall, under the supervision and coordination of the ECB, actively assist the officials of and other persons authorised by the ECB. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the national competent authority of the participating Member State concerned shall also have the right to participate in the on-site inspections.

5. Where the officials of and other accompanying persons authorised or appointed by the ECB find that a person opposes an inspection ordered pursuant to this Article, the national competent authority of the participating Member State concerned shall afford them the necessary assistance in accordance with national law. To the extent necessary for the inspection, this assistance shall include the sealing of any business premises and books or records. Where that power is not available to the national competent authority concerned, it shall use its powers to request the necessary assistance of other national authorities.

Article 13

Authorisation by a judicial authority

1. If an on-site inspection provided for in Article 12(1) and (2) or the assistance provided for in Article 12(5) requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for.

2. Where authorisation as referred to in paragraph 1 of this Article is applied for, the national judicial authority shall control that the decision of the ECB is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the ECB for detailed explanations, in particular relating to the grounds the ECB has for suspecting that an infringement of the acts referred to in the first subparagraph of Article 4(3) has taken place and the seriousness of the suspected infringement and the nature of the

involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the ECB's file. The lawfulness of the ECB's decision shall be subject to review only by the CJEU.

Section 2

Specific supervisory powers

Article 14

Authorisation

1. Any application for an authorisation to take up the business of a credit institution to be established in a participating Member State shall be submitted to the national competent authorities of the Member State where the credit institution is to be established in accordance with the requirements set out in relevant national law.
2. If the applicant complies with all conditions of authorisation set out in the relevant national law of that Member State, the national competent authority shall take, within the period provided for by relevant national law, a draft decision to propose to the ECB to grant the authorisation. The draft decision shall be notified to the ECB and the applicant for authorisation. In other cases, the national competent authority shall reject the application for authorisation.
3. The draft decision shall be deemed to be adopted by the ECB unless the ECB objects within a maximum period of ten working days, extendable once for the same period in duly justified cases. The ECB shall object to the draft decision only where the conditions for authorisation set out in relevant Union law are not met. It shall state the reasons for the rejection in writing.
4. The decision taken in accordance with paragraphs 2 and 3 shall be notified by the national competent authority to the applicant for authorisation.
5. Subject to paragraph 6, the ECB may withdraw the authorisation in the cases set out in relevant Union law on its own initiative, following consultations with the national competent authority of the participating Member State where the credit institution is established, or on a proposal from such national competent authority. These consultations shall in particular ensure that before taking decisions regarding withdrawal, the ECB allows sufficient time for the national authorities to decide on the necessary remedial actions, including possible resolution measures, and takes these into account.

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in accordance with the relevant national law, it shall submit a proposal to the ECB to that end. In that case, the ECB shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.

6. As long as national authorities remain competent to resolve credit institutions, in cases where they consider that the withdrawal of the authorisation would prejudice the adequate implementation of or actions necessary for resolution or to maintain financial stability, they shall duly notify their objection to the ECB explaining in detail the prejudice that a withdrawal would cause. In those cases, the ECB shall abstain from proceeding to the withdrawal for a period mutually agreed with the national authorities. The ECB may extend that period if it is of the opinion that sufficient progress has been made. If, however, the ECB determines in a reasoned decision that proper actions necessary to maintain financial stability have not been implemented by the national authorities, the withdrawal of the authorisations shall apply immediately.

Article 15

Assessment of acquisitions of qualifying holdings

1. Without prejudice to the exemptions provided for in point (c) of Article 4(1), any notification of an acquisition of a qualifying holding in a credit institution established in a participating Member State or any related information shall be introduced with the national competent authorities of the Member State where the credit institution is established in accordance with the requirements set out in relevant national law based on the acts referred to in the first subparagraph of Article 4(3).

2. The national competent authority shall assess the proposed acquisition, and shall forward the notification and a proposal for a decision to oppose or not to oppose the acquisition, based on the criteria set out in the acts referred to in the first subparagraph of Article 4(3), to the ECB, at least ten working days before the expiry of the relevant assessment period as defined by relevant Union law, and shall assist the ECB in accordance with Article 6.

3. The ECB shall decide whether to oppose the acquisition on the basis of the assessment criteria set out in relevant Union law and in accordance with the procedure and within the assessment periods set out therein.

Article 16

Supervisory powers

1. For the purpose of carrying out its tasks referred to in Article 4(1) and without prejudice to other powers conferred on the ECB, the ECB shall have the powers set out in paragraph 2 of this Article to require any credit institution, financial holding company or mixed financial holding company in participating Member States to take the necessary measures at an early stage to address relevant problems in any of the following circumstances:

- (a) the credit institution does not meet the requirements of the acts referred to in the first subparagraph of Article 4(3);
- (b) the ECB has evidence that the credit institution is likely to breach the requirements of the acts referred to in the first subparagraph of Article 4(3) within the next 12 months;
- (c) based on a determination, in the framework of a supervisory review in accordance with point (f) of Article 4(1), that the arrangements, strategies, processes and mechanisms implemented by the credit institution and the own funds and liquidity held by it do not ensure a sound management and coverage of its risks.

2. For the purposes of Article 9(1), the ECB shall have, in particular, the following powers:

- (a) to require institutions to hold own funds in excess of the capital requirements laid down in the acts referred to in the first subparagraph of Article 4(3) related to elements of risks and risks not covered by the relevant Union acts;
- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies;
- (c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to the acts referred to in the first subparagraph of Article 4(3) and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;

- (f) to require the reduction of the risk inherent in the activities, products and systems of institutions;
- (g) to require institutions to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base;
- (h) to require institutions to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions by the institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
- (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- (l) to require additional disclosures;
- (m) to remove at any time members from the management body of credit institutions who do not fulfil the requirements set out in the acts referred to in the first subparagraph of Article 4(3).

Article 17

Powers of host authorities and cooperation on supervision on a consolidated basis

1. Between participating Member States the procedures set out in the relevant Union law for credit institutions wishing to establish a branch or to exercise the freedom to provide services by carrying on their activities within the territory of another Member State and the related competences of home and host Member States shall apply only for the purposes of the tasks not conferred on the ECB by Article 4.

2. The provisions set out in the relevant Union law in relation to the cooperation between competent authorities from different Member States for conducting supervision on a consolidated basis shall not apply to the extent that the ECB is the only competent authority involved.

3. In fulfilling its tasks as defined in Articles 4 and 5 the ECB shall respect a fair balance between all participating Member States in accordance with Article 6(8) and shall, in its relationship with non-participating Member States, respect the balance between home and host Member States established in relevant Union law.

Article 18

Administrative penalties

1. For the purpose of carrying out the tasks conferred on it by this Regulation, where credit institutions, financial holding companies, or mixed financial holding companies, intentionally or negligently, breach a requirement under relevant directly applicable acts of Union law in relation to which administrative pecuniary penalties shall be made available to competent authorities under the relevant Union law, the ECB may impose administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10 % of the total annual turnover, as defined in relevant Union law, of a legal person in the preceding business year or such other pecuniary penalties as may be provided for in relevant Union law.

2. Where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover referred to in paragraph 1 shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

3. The penalties applied shall be effective, proportionate and dissuasive. In determining whether to impose a penalty and in determining the appropriate penalty, the ECB shall act in accordance with Article 9(2).

4. The ECB shall apply this Article in accordance with the acts referred to in the first subparagraph of Article 4(3) of this Regulation, including the procedures contained in Regulation (EC) No 2532/98, as appropriate.

5. In the cases not covered by paragraph 1 of this Article, where necessary for the purpose of carrying out the tasks conferred on it by this Regulation, the ECB may require national competent authorities to open proceedings with a view to taking action in order to ensure that appropriate penalties are imposed in accordance with the acts referred to in the first subparagraph of Article 4(3) and any relevant national legislation which confers specific powers which are currently not required by Union law. The penalties applied by national competent authorities shall be effective, proportionate and dissuasive.

The first subparagraph of this paragraph shall be applicable in particular to pecuniary penalties to be imposed on credit institutions, financial holding companies or mixed financial holding companies for breaches of national law transposing relevant Directives, and to any administrative penalties or measures to be imposed on members of the management board of a credit institution, financial holding company or mixed financial holding company or any other individuals who under national law

are responsible for a breach by a credit institution, financial holding company or mixed financial holding company.

6. The ECB shall publish any penalty referred to paragraph 1, whether it has been appealed or not, in the cases and in accordance with the conditions set out in relevant Union law.

7. Without prejudice to paragraphs 1 to 6, for the purposes of carrying out the tasks conferred on it by this Regulation, in case of a breach of ECB regulations or decisions, the ECB may impose sanctions in accordance with Regulation (EC) No 2532/98.

CHAPTER IV

Organisational principles

Article 19

Independence

1. When carrying out the tasks conferred on it by this Regulation, the ECB and the national competent authorities acting within the SSM shall act independently. The members of the Supervisory Board and the steering committee shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body.

2. The institutions, bodies, offices and agencies of the Union and the governments of the Member States and any other bodies shall respect that independence.

3. Following an examination of the need for a Code of Conduct by the Supervisory Board, the Governing Council shall establish and publish a Code of Conduct for the ECB staff and management involved in banking supervision concerning in particular conflicts of interest.

Article 20

Accountability and reporting

1. The ECB shall be accountable to the European Parliament and to the Council for the implementation of this Regulation, in accordance with this Chapter.

2. The ECB shall submit on an annual basis to the European Parliament, to the Council, to the Commission and to the euro Group a report on the execution of the

tasks conferred on it by this Regulation, including information on the envisaged evolution of the structure and amount of the supervisory fees mentioned in Article 30.

3. The Chair of the Supervisory Board of the ECB shall present that report in public to the European Parliament, and to the euro Group in the presence of representatives from any participating Member State whose currency is not the euro.

4. The Chair of the Supervisory Board of the ECB may, at the request of the euro Group, be heard on the execution of its supervisory tasks by the euro Group in the presence of representatives from any participating Member States whose currency is not the euro.

5. At the request of the European Parliament, the Chair of the Supervisory Board of the ECB shall participate in a hearing on the execution of its supervisory tasks by the competent committees of the European Parliament.

6. The ECB shall reply orally or in writing to questions put to it by the European Parliament, or by the euro Group in accordance with the its own procedures and in the presence of representatives from any participating Member States whose currency is not the euro.

7. When the European Court of Auditors examines the operational efficiency of the management of the ECB under Article 27.2 of the Statute of the ESCB and of the ECB, it shall also take into account the supervisory tasks conferred on the ECB by this Regulation.

8. Upon request the Chair of the Supervisory Board of the ECB shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament concerning its supervisory tasks where such discussions are required for the exercise of the European Parliament's powers under the TFEU. An agreement shall be concluded between the European Parliament and the ECB on the detailed arrangements for organising such discussions, with a view to ensuring full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law.

9. The ECB shall cooperate sincerely with any investigations by the European Parliament, subject to the TFEU. The ECB and the European Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB by this Regulation. Those arrangements shall cover, inter alia, access to information, cooperation in investigations and information on the selection procedure of the Chair of the Supervisory Board.

Article 21

National parliaments

1. When submitting the report provided for in Article 20(2), the ECB shall simultaneously forward that report directly to the national parliaments of the participating Member States.

National parliaments may address to the ECB their reasoned observations on that report.

2. National parliaments of the participating Member States, through their own procedures, may request the ECB to reply in writing to any observations or questions submitted by them to the ECB in respect of the tasks of the ECB under this Regulation.

3. The national parliament of a participating Member State may invite the Chair or a member of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority.

4. This Regulation is without prejudice to the accountability of national competent authorities to national parliaments in accordance with national law for the performance of tasks not conferred on the ECB by this Regulation and for the performance of activities carried out by them in accordance with Article 6.

Article 22

Due process for adopting supervisory decisions

1. Before taking supervisory decisions in accordance with Article 4 and Section 2 of Chapter III, the ECB shall give the persons who are the subject of the proceedings the opportunity of being heard. The ECB shall base its decisions only on objections on which the parties concerned have been able to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant damage to the financial system. In such a case, the ECB may adopt a provisional decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons concerned shall be fully respected in the proceedings. They shall be entitled to have access to the ECB's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information.

The decisions of the ECB shall state the reasons on which they are based.

Article 23

Reporting of violations

The ECB shall ensure that effective mechanisms are put in place for reporting of breaches by credit institutions, financial holding companies or mixed financial holding companies or competent authorities in the participating Member States of the legal acts referred to in Article 4(3), including specific procedures for the receipt of reports of breaches and their follow-up. Such procedures shall be consistent with relevant Union legislation and shall ensure that the following principles are applied: appropriate protection for persons who report breaches, protection of personal data, and appropriate protection for the accused person.

Article 24

Administrative Board of Review

1. The ECB shall establish an Administrative Board of Review for the purposes of carrying out an internal administrative review of the decisions taken by the ECB in the exercise of the powers conferred on it by this Regulation after a request for review submitted in accordance with paragraph 5. The scope of the internal administrative review shall pertain to the procedural and substantive conformity with this Regulation of such decisions.

2. The Administrative Board of Review shall be composed of five individuals of high repute, from Member States and having a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking or other financial services, excluding current staff of the ECB, as well as current staff of competent authorities or other national or Union institutions, bodies, offices and agencies who are involved in the carrying out of the tasks conferred on the ECB by this Regulation. The Administrative Board of Review shall have sufficient resources and expertise to assess the exercise of the powers of the ECB under this Regulation. Members of the Administrative Board of Review and two alternates shall be appointed by the ECB for a term of five years, which may be extended once, following a public call for expressions of interest published in the *Official Journal of the European Union*. They shall not be bound by any instructions.

3. The Administrative Board of Review shall decide on the basis of a majority of at least three of its five members.

4. The members of the Administrative Board of Review shall act independently and in the public interest. For that purpose, they shall make a public declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered prejudicial to their independence or the absence of any such interest.

5. Any natural or legal person may in the cases referred to in paragraph 1 request a review of a decision of the ECB under this Regulation which is addressed to that person, or is of a direct and individual concern to that person. A request for a review against a decision of the Governing Council as referred to in paragraph 7 shall not be admissible.

6. Any request for review shall be made in writing, including a statement of grounds, and shall be lodged at the ECB within one month of the date of notification of the decision to the person requesting the review, or, in the absence thereof, of the day on which it came to the knowledge of the latter as the case may be.

7. After ruling on the admissibility of the review, the Administrative Board of Review shall express an opinion within a period appropriate to the urgency of the matter and no later than two months from the receipt of the request and remit the case for preparation of a new draft decision to the Supervisory Board. The Supervisory Board shall take into account the opinion of the Administrative Board of Review and shall promptly submit a new draft decision to the Governing Council. The new draft decision shall abrogate the initial decision, replace it with a decision of identical content, or replace it with an amended decision. The new draft decision shall be deemed adopted unless the Governing Council objects within a maximum period of ten working days.

8. A request for review pursuant to paragraph 5 shall not have suspensory effect. However, the Governing Council, on a proposal by the Administrative Board of Review may, if it considers that circumstances so require, suspend the application of the contested decision.

9. The opinion expressed by the Administrative Board of Review, the new draft decision submitted by the Supervisory Board and the decision adopted by the Governing Council pursuant to this Article shall be reasoned and notified to the parties.

10. The ECB shall adopt a decision establishing the Administrative Board of Review's operating rules.

11. This Article is without prejudice to the right to bring proceedings before the CJEU in accordance with the Treaties.

Article 25

Separation from monetary policy function

1. When carrying out the tasks conferred on it by this Regulation, the ECB shall pursue only the objectives set by this Regulation.
2. The ECB shall carry out the tasks conferred on it by this Regulation without prejudice to and separately from its tasks relating to monetary policy and any other tasks. The tasks conferred on the ECB by this Regulation shall neither interfere with, nor be determined by, its tasks relating to monetary policy. The tasks conferred on the ECB by this Regulation shall moreover not interfere with its tasks in relation to the ESRB or any other tasks. The ECB shall report to the European Parliament and to the Council as to how it has complied with this provision. The tasks conferred by this Regulation on the ECB shall not alter the ongoing monitoring of the solvency of its monetary policy counterparties.

The staff involved in carrying out the tasks conferred on the ECB by this Regulation shall be organisationally separated from, and subject to, separate reporting lines from the staff involved in carrying out other tasks conferred on the ECB.

3. For the purposes of paragraphs 1 and 2, the ECB shall adopt and make public any necessary internal rules, including rules regarding professional secrecy and information exchanges between the two functional areas.
4. The ECB shall ensure that the operation of the Governing Council is completely differentiated as regards monetary and supervisory functions. Such differentiation shall include strictly separated meetings and agendas.
5. With a view to ensuring separation between monetary policy and supervisory tasks, the ECB shall create a mediation panel. This panel shall resolve differences of views expressed by the competent authorities of participating Member States concerned regarding an objection of the Governing Council to a draft decision by the Supervisory Board. This panel shall include one member per participating Member State, chosen by each Member State among the members of the Governing Council.

Article 26

Supervisory board

1. The planning and execution of the tasks conferred on the ECB shall be fully undertaken by an internal body composed of its Chair and Vice Chair, appointed in accordance with paragraph 3, and four representatives of the ECB, appointed in accordance with paragraph 5, and one representative of the national competent

authority in each participating Member State ('Supervisory Board'). All members of the Supervisory Board shall act in the interest of the Union as a whole.

Where the competent authority is not a central bank, the member of the Supervisory Board referred to in this paragraph may decide to bring a representative from the Member State's central bank. For the purposes of the voting procedure set out in paragraph 6, the representatives of the authorities of any one Member State shall together be considered as one member.

2. The appointments for the Supervisory Board in accordance with this Regulation shall respect the principles of gender balance, experience and qualification.

3. After hearing the Supervisory Board, the ECB shall submit a proposal for the appointment of the Chair and the Vice-Chair to the European Parliament for approval. Following the approval of this proposal, the Council shall adopt an implementing decision to appoint the Chair and the Vice-Chair of the Supervisory Board. The Chair shall be chosen on the basis of an open selection procedure, on which the European Parliament and the Council shall be kept duly informed, from among individuals of recognised standing and experience in banking and financial matters and who are not members of the Governing Council. The Vice Chair of the Supervisory Board shall be chosen from among the members of the Executive Board of the ECB. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

Once appointed, the Chair shall be a full-time professional and shall not hold any offices at national competent authorities. The term of office shall be five years and shall not be renewable.

4. If the Chair of the Supervisory Board no longer fulfils the conditions required for the performance of his duties or has been guilty of serious misconduct, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Chair from office. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

Following a compulsory retirement of the Vice-Chair of the Supervisory Board as a member of the Executive Board, pronounced in accordance with the Statute of the ESCB and of the ECB, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Vice-Chair from office. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

For those purposes the European Parliament or the Council may inform the ECB that they consider that the conditions for the removal of the Chair or the Vice Chair of the Supervisory Board from office are fulfilled, to which the ECB shall respond.

5. The four representatives of the ECB appointed by the Governing Council shall not perform duties directly related to the monetary function of the ECB. All the ECB representatives shall have voting rights.

6. Decisions of the Supervisory Board shall be taken by a simple majority of its members. Each member shall have one vote. In case of a draw, the Chair shall have a casting vote.

7. By derogation from paragraph 6 of this Article, the Supervisory Board shall take decisions on the adoption of regulations pursuant to Article 4(3), on the basis of a qualified majority of its members, as defined in Article 16(4) TEU and in Article 3 of Protocol No 36 on transitional provisions attached to the TEU and to the TFEU, for the members representing the participating Member State's authorities. Each of the four representatives of the ECB appointed by the Governing Council shall have a vote equal to the median vote of the other members.

8. Without prejudice to Article 6, the Supervisory Board shall carry out preparatory works regarding the supervisory tasks conferred on the ECB and propose to the Governing Council of the ECB complete draft decisions to be adopted by the latter, pursuant to a procedure to be established by the ECB. The draft decisions shall be transmitted at the same time to the national competent authorities of the Member States concerned. A draft decision shall be deemed adopted unless the Governing Council objects within a period to be defined in the procedure mentioned above but not exceeding a maximum period of ten working days. However, if a participating Member State whose currency is not the euro disagrees with a draft decision of the Supervisory Board, the procedure set out in Article 7(8) shall apply. In emergency situations the aforementioned period shall not exceed 48 hours. If the Governing Council objects to a draft decision, it shall state the reasons for doing so in writing, in particular stating monetary policy concerns. If a decision is changed following an objection by the Governing Council, a participating Member State whose currency is not the euro may notify the ECB of its reasoned disagreement with the objection and the procedure set out in Article 7(7) shall apply.

9. A secretariat shall support the activities of the Supervisory Board, including preparing the meetings on a full time basis.

10. The Supervisory Board, voting in accordance with the rule set out in paragraph 6, shall establish a steering committee from among its members with a more limited composition to support its activities, including preparing the meetings.

The steering committee of the Supervisory Board shall have no decision-making powers. The steering committee shall be chaired by the Chair or, in the exceptional absence of the Chair, the Vice-Chair of the Supervisory Board. The composition of the steering committee shall ensure a fair balance and rotation between national competent authorities. It shall consist of no more than ten members including the

Chair, the Vice-Chair and one additional representative from the ECB. The steering committee shall execute its preparatory tasks in the interest of the Union as a whole and shall work in full transparency with the Supervisory Board.

11. A representative of the Commission may participate as an observer in the meetings of the Supervisory Board upon invitation. Observers shall not have access to confidential information relating to individual institutions.

12. The Governing Council shall adopt internal rules setting out in detail its relation with the Supervisory Board. The Supervisory Board shall also adopt its rules of procedure, voting in accordance with the rule set out in paragraph 6. Both sets of rules shall be made public. The rules of procedure of the Supervisory Board shall ensure equal treatment of all participating Member States.

Article 27

Professional secrecy and exchange of information

1. Members of the Supervisory Board, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties, even after their duties are ceased, shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and of the ECB and in the relevant acts of Union law.

The ECB shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of supervisory duties are subject to equivalent professional secrecy requirements.

2. For the purpose of carrying out the tasks conferred on it by this Regulation, the ECB shall be authorised, within the limits and under the conditions set out in the relevant Union law, to exchange information with national or Union authorities and bodies in the cases where the relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law.

Article 28

Resources

The ECB shall be responsible for devoting the necessary financial and human resources to the exercise of the tasks conferred on it by this Regulation.

Article 29

Budget and annual accounts

1. The ECB's expenditure for carrying out the tasks conferred on it by this Regulation shall be separately identifiable within the budget of the ECB.
2. The ECB shall, as part of the report referred to in Article 20, report in detail on the budget for its supervisory tasks. The annual accounts of the ECB drawn up and published in accordance with Article 26.2 of the Statute of the ESCB and of the ECB shall include the income and expenses related to the supervisory tasks.
3. In line with Article 27.1 of the Statute of the ESCB and of the ECB the supervisory section of the annual accounts shall be audited.

Article 30

Supervisory fees

1. The ECB shall levy an annual supervisory fee on credit institutions established in the participating Member States and branches established in a participating Member State by a credit institution established in a non-participating Member State. The fees shall cover expenditure incurred by the ECB in relation to the tasks conferred on it under Articles 4 to 6 of this Regulation. These fees shall not exceed the expenditure relating to these tasks.
2. The amount of the fee levied on a credit institution or branch shall be calculated in accordance with the arrangements established, and published in advance, by the ECB.

Before establishing those arrangements, the ECB shall conduct open public consultations and analyse the potential related costs and benefits, and publish the results of both.
3. The fees shall be calculated at the highest level of consolidation within participating Member States, and shall be based on objective criteria relating to the importance and risk profile of the credit institution concerned, including its risk weighted assets.

The basis for calculating the annual supervisory fee for a given calendar year shall be the expenditure relating to the supervision of credit institutions and branches in that year. The ECB may require advance payments in respect of the annual supervisory fee which shall be based on a reasonable estimate. The ECB shall communicate with the national competent authority before deciding on the final fee level so as to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned. The ECB shall communicate to credit institutions and branches the basis for the calculation of the annual supervisory fee.

4. The ECB shall report in accordance with Article 20.

5. This Article is without prejudice to the right of national competent authorities to levy fees in accordance with national law and, to the extent supervisory tasks have not been conferred on the ECB, or in respect of costs of cooperating with and assisting the ECB and acting on its instructions, in accordance with relevant Union law and subject to the arrangements made for the implementation of this Regulation, including Articles 6 and 12.

Article 31

Staff and staff exchange

1. The ECB shall establish, together with all national competent authorities, arrangements to ensure an appropriate exchange and secondment of staff with and among national competent authorities.

2. The ECB may require as appropriate that supervisory teams of national competent authorities taking supervisory actions regarding a credit institution, financial holding company or mixed financial holding company located in one participating Member State in accordance with this Regulation also involve staff from national competent authorities of other participating Member States.

3. The ECB shall establish and maintain comprehensive and formal procedures including ethics procedures and proportionate periods to assess in advance and prevent possible conflicts of interest resulting from subsequent employment within two years of members of the Supervisory Board and ECB staff members engaged in supervisory activities, and shall provide for appropriate disclosures subject to applicable data protection rules.

Those procedures shall be without prejudice to the application of stricter national rules. For members of the Supervisory Board who are representatives of national competent authorities, those procedures shall be established and implemented in cooperation with national competent authorities, without prejudice to applicable national law.

For the ECB staff members engaged in supervisory activities, those procedures shall determine categories of positions to which such assessment applies, as well as periods that are proportionate to the functions of those staff members in the supervisory activities during their employment at the ECB.

4. The procedures referred to in paragraph 3 shall provide that the ECB shall assess whether there are objections that members of the Supervisory Board take paid work in private sector institutions for which the ECB has supervisory responsibility after they have ceased to hold office.

The procedures referred to in paragraph 3 shall apply as a rule for two years after the members of the Supervisory Board have ceased to hold office and may be adjusted,

on the basis of due justification, proportionate to the functions performed during that term of office and the length of time that office was held.

5. The Annual Report of the ECB in accordance with Article 20 shall include detailed information, including statistical data on the application of the procedures referred to in paragraphs 3 and 4 of this Article.

CHAPTER V

General and final provisions

Article 32

Review

By 31 December 2015, and subsequently every three years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate, inter alia:

- (a) the functioning of the SSM within the ESFS and the impact of the supervisory activities of the ECB on the interests of the Union as a whole and on the coherence and integrity of the internal market in financial services, including its possible impact on the structures of the national banking systems within the Union, and regarding the effectiveness of cooperation and information sharing arrangements between the SSM and competent authorities of non-participating Member States;
- (b) the division of tasks between the ECB and the national competent authorities within the SSM, the effectiveness of the practical arrangements of organisation adopted by the ECB, and the impact of the SSM on the functioning of the remaining supervisory colleges;
- (c) the effectiveness of the ECB's supervisory and sanctioning powers and the appropriateness of conferring on the ECB additional sanctioning powers, including in relation to persons other than credit institutions, financial holding companies or mixed financial holding companies;
- (d) the appropriateness of the arrangements set out respectively for macroprudential tasks and tools under Article 5 and for the granting and withdrawal of authorisations under Article 14;
- (e) the effectiveness of independence and accountability arrangements;
- (f) the interaction between the ECB and the EBA;

- (g) the appropriateness of governance arrangements, including the composition of, and voting arrangements in, the Supervisory Board and its relation with the Governing Council, as well as the collaboration in the Supervisory Board between Member States whose currency is the euro and the other participating Member States in the SSM;
- (h) the interaction between the ECB and the competent authorities of non-participating Member States and the effects of the SSM on these Member States;
- (i) the effectiveness of the recourse mechanism against decisions of the ECB;
- (j) the cost effectiveness of the SSM;
- (k) the possible impact of the application of Article 7(6), 7(7) and 7(8) on the functioning and integrity of the SSM;
- (l) the effectiveness of the separation between supervisory and monetary policy functions within the ECB and of the separation of financial resources devoted to supervisory tasks from the budget of the ECB, taking into account any modifications of the relevant legal provisions including at the level of primary law;
- (m) the fiscal effects that supervisory decisions taken by the SSM have on participating Member States and the impact of any developments in relation to resolution financing arrangements;
- (n) the possibilities of developing further the SSM, taking into account any modifications of the relevant provisions, including at the level of primary law, and taking into account whether the rationale of the institutional provisions in this Regulation is no longer present, including the possibility to fully align rights and obligations of Member States whose currency is the euro and other participating Member States.

The report shall be forwarded to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

Article 33

Transitional provisions

1. The ECB shall publish the framework referred to in Article 6(7) by 4 May 2014.
2. The ECB shall assume the tasks conferred on it by this Regulation on 4 November 2014 subject to the implementation arrangements and measures set out in this paragraph.

After 3 November 2013, the ECB shall publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred on it by this Regulation.

From 3 November 2013, the ECB shall send a quarterly report to the European Parliament, to the Council and to the Commission on progress in the operational implementation of this Regulation.

If on the basis of the reports referred to in the third subparagraph of this paragraph and following discussions of the reports in the European Parliament and in the Council, it is shown that the ECB will not be ready for exercising in full its tasks on 4 November 2014, the ECB may adopt a decision to set a date later than the one referred to in the first subparagraph of this paragraph to ensure continuity during the transition from national supervision to the SSM, and based on the availability of staff, the setting up of appropriate reporting procedures and arrangements for cooperation with national competent authorities pursuant to Article 6.

3. Notwithstanding paragraph 2, and without prejudice to the exercise of investigatory powers conferred on it under this Regulation, from 3 November 2013, the ECB may start carrying out the tasks conferred on it by this Regulation other than adopting supervisory decisions in respect of any credit institution, financial holding company or mixed financial holding company and following a decision addressed to the entities concerned and to the national competent authorities concerned.

Notwithstanding paragraph 2, if the ESM unanimously requests the ECB to take over direct supervision of a credit institution, financial holding company or mixed financial holding company as a precondition for its direct recapitalisation, the ECB may immediately start carrying out the tasks conferred on it by this Regulation in respect of that credit institution, financial holding company or mixed financial holding company, and following a decision addressed to the entities concerned and to the national competent authorities concerned.

4. From 3 November 2013, in view of the assumption of its tasks, the ECB may require the national competent authorities and the persons referred to in Article 10(1) to provide all relevant information for the ECB to carry out a comprehensive assessment, including a balance-sheet assessment, of the credit institutions of the participating Member State. The ECB shall carry out such an assessment at least in relation to the credit institutions not covered by Article 6(4). The credit institution and the competent authority shall supply the information requested.

5. Credit institutions authorised by participating Member States on 3 November 2013 or, where relevant, on the dates referred to in paragraphs 2 and 3 of this Article shall be deemed to be authorised in accordance with Article 14 and may continue to carry out their business. National competent authorities shall communicate to the

ECB before the date of application of this Regulation or, where relevant, before the dates referred to in paragraphs 2 and 3 of this Article, the identity of those credit institutions together with a report indicating the supervisory history and the risk profile of the institutions concerned, and any further information requested by the ECB. The information shall be submitted in the format requested by the ECB.

6. Notwithstanding Article 26(7), until 31 December 2015, qualified majority voting and simple majority voting shall be applied together for the adoption of the regulations referred to in Article 4(3).

Article 34

Entry into force

This Regulation shall enter into force on the fifth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 15 October 2013.

For the Council

The President

R. ŠADŽIUSEN

REGULATIONS

REGULATION (EU) No 468/2014 OF THE EUROPEAN CENTRAL BANK

of 16 April 2014

establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation)

(ECB/2014/17)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) and Article 132 thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 34 thereof,

Having regard to 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 ⁽¹⁾, and in particular Article 4(3), Article 6 and Article 33(2) thereof,

Having regard to the Inter-institutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism ⁽²⁾,

Having regard to the public consultation and analysis carried out in accordance with Article 4(3) of Regulation (EU) No 1024/2013,

Having regard to the proposal from the Supervisory Board and in consultation with the national competent authorities,

Whereas:

¹ OJ L 287, 29.10.2013, p. 63.

² OJ L 320, 30.11.2013, p. 1.

- (1) Regulation (EU) No 1024/2013 (hereinafter the ‘SSM Regulation’) establishes the Single Supervisory Mechanism (SSM) composed of the European Central Bank (ECB) and the national competent authorities (NCAs) of participating Member States.
- (2) Within the framework of Article 6 of the SSM Regulation, the ECB is exclusively competent to carry out the micro-prudential tasks conferred on it by Article 4 thereof relating to credit institutions established in the participating Member States. The ECB is responsible for the effective and consistent functioning of the SSM and for exercising oversight over the functioning of the system, based on the responsibilities and procedures set out in Article 6 of the SSM Regulation.
- (3) Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by the SSM Regulation, NCAs are responsible for assisting the ECB, under the conditions laid down in the SSM Regulation and in this Regulation, with the preparation and implementation of any acts concerning the tasks referred to in Article 4 of the SSM Regulation relating to all credit institutions, including assistance in verification activities. For this purpose, the NCAs should follow the instructions given by the ECB when performing the tasks mentioned in Article 4 of the SSM Regulation.
- (4) The ECB, NCAs and national designated authorities (NDAs) have to perform the macro-prudential tasks referred to in Article 5 of the SSM Regulation and follow the coordination procedures provided for therein, in this Regulation and in relevant Union law, without prejudice to the role of the Eurosystem and of the European Systemic Risk Board.
- (5) Within the SSM, the respective ECB and NCA supervisory responsibilities are allocated on the basis of the significance of the entities that fall under the scope of the SSM. This Regulation sets out, in particular, the specific methodology for the assessment of such significance, as required by Article 6(7) of the SSM Regulation. The ECB has direct supervisory competence in respect of credit institutions, financial holding companies, mixed financial holding companies established in participating Member States, and branches in participating Member States of credit institutions established in non-participating Member States that are significant. The NCAs are responsible for directly supervising the entities that are less significant, without prejudice to the ECB’s power to decide in specific cases to directly supervise such entities where this is necessary for the consistent application of supervisory standards.
- (6) To take into account recent developments in Union legislation in the field of sanctions and the European Court of Human Rights case-law regarding the

principle of separation between an investigation and the decision-taking phase, an independent investigating unit will be established by the ECB which is to autonomously investigate breaches of supervisory rules and decisions.

- (7) Article 6(7) of the SSM Regulation states that the ECB must, in consultation with the NCAs and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for cooperation between the ECB and the NCAs within the SSM.
- (8) Article 33(2) of the SSM Regulation states that the ECB must publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred upon it by that Regulation. This Regulation contains the provisions implementing Article 33(2) relating to cooperation between the ECB and the NCAs within the SSM.
- (9) As a result, this Regulation further develops and specifies the cooperation procedures established in the SSM Regulation between the ECB and the NCAs within the SSM as well as, where appropriate, with the national designated authorities, and thereby ensures the effective and consistent functioning of the SSM.
- (10) The ECB attaches great importance to the comprehensive assessment of credit institutions, including the balance sheet assessment that it must carry out before the assumption of its tasks. This extends to any Member States joining the euro area and therefore joining the SSM after the date for the commencement of supervision in accordance with Article 33(2) of the SSM Regulation.
- (11) It is essential for the smooth functioning of the SSM that there is full cooperation between the ECB and NCAs and that they exchange all the information that may have an impact on their respective tasks, in particular, all information that the NCAs avail of regarding procedures that may have an impact on the safety and soundness of a supervised entity or that interact with the supervisory procedures in relation to such entities,

HAS ADOPTED THIS REGULATION:

PART I

GENERAL PROVISIONS

Article 1

Subject matter and purpose

1. This Regulation lays down rules on all of the following:

- (a) the framework referred to in Article 6(7) of the SSM Regulation, namely a framework to organise the practical arrangements for implementing Article 6 of the SSM Regulation concerning cooperation within the SSM, to include:
 - (i) the specific methodology for the assessment and review of whether a supervised entity is classified as significant or less significant pursuant to the criteria laid down in Article 6(4) of the SSM Regulation, and the arrangements resulting from this assessment;
 - (ii) the definition of procedures, including time limits, also in relation to the possibility for NCAs to prepare draft decisions for the ECB's consideration, concerning the relation between the ECB and the NCAs regarding the supervision of significant supervised entities;
 - (iii) the definition of procedures, including time limits, concerning the relation between the ECB and the NCAs regarding the supervision of less significant supervised entities. In particular, such procedures shall require the NCAs, depending on the cases defined in this Regulation, to:
 - notify the ECB of any material supervisory procedure,
 - further assess, on the ECB's request, specific aspects of the procedure,
 - transmit to the ECB material draft supervisory decisions, on which the ECB may express its views;
- (b) cooperation and exchange of information between the ECB and the NCAs within the SSM with regard to the procedures relating to significant supervised entities and less significant supervised entities, including common procedures applying to authorisations to take up the business of a credit institution, withdrawals of such authorisations and the assessment of acquisitions and disposals of qualifying holdings;

- (c) the procedures relating to cooperation between the ECB, the NCAs and the NDAs regarding macro-prudential tasks and tools within the meaning of Article 5 of the SSM Regulation;
- (d) the procedures relating to the operation of close cooperation within the meaning of Article 7 of the SSM Regulation and applicable between the ECB, the NCAs and the NDAs;
- (e) the procedures relating to cooperation between the ECB and the NCAs with regard to Articles 10 to 13 of the SSM Regulation, including on certain aspects relating to supervisory reporting;
- (f) the procedures relating to the adoption of supervisory decisions addressed to supervised entities and other persons;
- (g) the linguistic arrangements between the ECB and the NCAs and between the ECB and supervised entities and other persons;
- (h) the procedures applicable to the ECB's and the NCAs' sanctioning powers within the SSM in relation to the tasks conferred on the ECB by the SSM Regulation;
- (i) transitional provisions.

2. This Regulation does not affect the supervisory tasks that have not been conferred on the ECB by the SSM Regulation and that therefore remain with national authorities.

3. This Regulation shall be read in particular in conjunction with Decision ECB/2004/2⁽³⁾ and the Rules of Procedure of the Supervisory Board of the European Central Bank⁽⁴⁾, in particular with regard to decision-making within the SSM, including the procedure applying between the Supervisory Board and the Governing Council as regards the non-objection by the Governing Council referred to in Article 26(8) of the SSM Regulation and other relevant ECB legal acts, including Decision ECB/2014/16⁽⁵⁾.

³ Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

⁴ Adopted on 31 March 2014 and available on the ECB's website at www.ecb.europa.eu. Not yet published in the Official Journal.

⁵ Decision ECB/2014/16 of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules. Not yet published in the Official Journal.

Article 2

Definitions

For the purposes of this Regulation, the definitions contained in the SSM Regulation shall apply, unless otherwise provided for, together with the following definitions:

- (1) ‘authorisation’ means an authorisation as defined in point (42) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (⁶);
- (2) ‘branch’ means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;
- (3) ‘common procedures’ means the procedures provided for in Part V with respect to an authorisation to take up the business of a credit institution, withdrawal of an authorisation to pursue such business and decisions with regard to qualifying holdings;
- (4) ‘euro area Member State’ means a Member State whose currency is the euro;
- (5) ‘group’ means a group of undertakings of which at least one is a credit institution and which consists of a parent undertaking and its subsidiaries, or undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council (⁷), including any sub-group thereof;
- (6) ‘joint supervisory team’ means a team of supervisors in charge of the supervision of a significant supervised entity or a significant supervised group;
- (7) ‘less significant supervised entity’ means both (a) a less significant supervised entity in a euro area Member State; and (b) a less significant supervised entity in a non-euro area Member State that is a participating Member State;
- (8) ‘less significant supervised entity in a euro area Member State’ means a supervised entity established in a euro area Member State and which does not have the status of a significant supervised entity within the meaning of Article 6(4) of the SSM Regulation;

⁶ 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 (OJ L 176, 27.6.2013, p. 1).

⁷ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (9) ‘national competent authority’ (NCA) means a national competent authority as defined in point (2) of Article 2 of the SSM Regulation. This definition is without prejudice to arrangements under national law which assign certain supervisory tasks to a national central bank (NCB) not designated as an NCA. In this case, the NCB shall carry out these tasks within the framework set out in national law and this Regulation. A reference to an NCA in this Regulation shall in this case apply as appropriate to the NCB for the tasks assigned to it by national law;
- (10) ‘NCA in close cooperation’ means an NCA designated by a participating Member State in close cooperation in accordance with Directive 2013/36/EU of the European Parliament and of the Council⁽⁸⁾;
- (11) ‘national designated authority’ (NDA) means a national designated authority as defined in point (7) of Article 2 of the SSM Regulation;
- (12) ‘NDA in close cooperation’ means a non-euro area NDA designated by a participating Member State in close cooperation for the purposes of the tasks related to Article 5 of the SSM Regulation;
- (13) ‘non-euro area Member State’ means a Member State whose currency is not the euro;
- (14) ‘parent undertaking’ means a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;
- (15) ‘participating Member State in close cooperation’ means a non-euro area Member State that has entered into close cooperation with the ECB in accordance with Article 7 of the SSM Regulation;
- (16) ‘significant supervised entity’ means both (a) a significant supervised entity in a euro area Member State; and (b) a significant supervised entity in a participating non-euro area Member State;
- (17) ‘significant supervised entity in a euro area Member State’ means a supervised entity established in a euro area Member State which has the status of a significant supervised entity pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;

⁸ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (18) ‘significant supervised entity in a participating non-euro area Member State’ means a supervised entity established in a participating non-euro area Member State which has the status of a significant supervised entity pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;
- (19) ‘subsidiary’ means a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
- (20) ‘supervised entity’ means any of the following: (a) a credit institution established in a participating Member State; (b) a financial holding company established in a participating Member State; (c) a mixed financial holding company established in a participating Member State, provided that it fulfils the conditions laid down in point (21)(b); (d) a branch established in a participating Member State by a credit institution which is established in a non-participating Member State.
- (21) A central counterparty (CCP), as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁹, which qualifies as a credit institution within the meaning of Directive 2013/36/EU, shall be considered a supervised entity in accordance with the SSM Regulation, this Regulation and relevant Union law without prejudice to the supervision of CCPs by relevant NCAs as laid down under Regulation (EU) No 648/2012;
- (22) ‘supervised group’ means any of the following:
- (a) a group whose parent undertaking is a credit institution or financial holding company that has its head office in a participating Member State;
 - (b) a group whose parent undertaking is a mixed financial holding company that has its head office in a participating Member State, provided that the coordinator of the financial conglomerate, within the meaning of Directive 2002/87/EC of the European Parliament and of the Council ¹⁰, is an authority competent for the supervision of credit institutions and is also the coordinator in its function as supervisor of credit institutions;

⁹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

¹⁰ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

- (c) supervised entities each having their head office in the same participating Member State provided that they are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation (EU) No 575/2013 and which is established in the same participating Member State;
- (23) ‘significant supervised group’ means a supervised group which has the status of significant supervised group pursuant to an ECB decision based on Article 6(4) or Article 6(5)(b) of the SSM Regulation;
- (24) ‘less significant supervised group’ means a supervised group which does not have the status of a significant supervised group within the meaning of Article 6(4) of the SSM Regulation;
- (25) ‘ECB supervisory procedure’ means any ECB activity directed towards preparing the issue of an ECB supervisory decision, including common procedures and the imposition of administrative pecuniary penalties. All ECB supervisory procedures are subject to Part III. Part III also applies to the imposition of administrative pecuniary penalties, unless Part X provides otherwise;
- (26) ‘NCA supervisory procedure’ means any NCA activity directed towards preparing the issue of a supervisory decision by the NCA, which is addressed to one or more supervised entities or supervised groups or one or more other persons, including the imposition of administrative penalties;
- (27) ‘ECB supervisory decision’ means a legal act adopted by the ECB in the exercise of the tasks and powers conferred on it by the SSM Regulation, which takes the form of an ECB decision, is addressed to one or more supervised entities or supervised groups or one or more other persons and is not a legal act of general application;
- (28) ‘third country’ means a country which is neither a Member State nor a European Economic Area Member State;
- (29) ‘working day’ means a day which is not a Saturday, Sunday or an ECB public holiday in accordance with the calendar applicable to the ECB ⁽¹¹⁾.

¹¹ As published on the ECB’s website.

PART II

ORGANISATION OF THE SSM

TITLE 1

STRUCTURES FOR THE SUPERVISION OF SIGNIFICANT AND LESS SIGNIFICANT SUPERVISED ENTITIES

CHAPTER 1

Supervision of significant supervised entities

Article 3

Joint supervisory teams

1. A joint supervisory team shall be established for the supervision of each significant supervised entity or significant supervised group in participating Member States. Each joint supervisory team shall be composed of staff members from the ECB and from the NCAs appointed in accordance with Article 4 and working under the coordination of a designated ECB staff member (hereinafter the ‘JST coordinator’) and one or more NCA sub-coordinators, as further laid down in Article 6.
2. Without prejudice to other provisions of this Regulation, the tasks of a joint supervisory team shall include, but are not limited to, the following:
 - (a) performing the supervisory review and evaluation process (SREP) referred to in Article 97 of Directive 2013/36/EU for the significant supervised entity or significant supervised group that it supervises;
 - (b) taking into account the SREP, participating in the preparation of a supervisory examination programme to be proposed to the Supervisory Board, including an on-site inspection plan, as laid down in Article 99 of Directive 2013/36/EC, for such a significant supervised entity or significant supervised group;
 - (c) implementing the supervisory examination programme approved by the ECB and any ECB supervisory decisions with respect to the significant supervised entity or significant supervised group that it supervises;

- (d) ensuring coordination with the on-site inspection team referred to in Part XI as regards the implementation of the on- site inspection plan;
- (e) liaising with NCAs where relevant.

Article 4

Establishment and composition of joint supervisory teams

1. The ECB shall be in charge of the establishment and the composition of joint supervisory teams. The appointment of staff members from the NCAs to joint supervisory teams shall be made by the respective NCAs in accordance with paragraph 2.
2. In accordance with the principles laid down in Article 6(8) of the SSM Regulation and without prejudice to Article 31 thereof, the NCAs shall appoint one or more persons from their staff as a member or members of a joint supervisory team. An NCA staff member may be appointed as a member of more than one joint supervisory team.
3. Notwithstanding paragraph 2, the ECB may require the NCAs to modify the appointments they have made if appropriate for the purpose of the composition of a joint supervisory team.
4. Where more than one NCA exercises supervisory tasks in a participating Member State, or where in a participating Member State national law confers on an NCB specific supervisory tasks and the NCB is not an NCA, the relevant authorities shall coordinate their participation within the joint supervisory teams.
5. The ECB and NCAs shall consult with each other and agree on the use of NCA resources with regard to the joint supervisory teams.

Article 5

Involvement of staff members from NCBs of participating Member States

1. NCBs of participating Member States that are involved in the prudential supervision of a significant supervised entity or a significant supervised group under their national law but which are not NCAs may also appoint one or several members of their staff to a joint supervisory team.
2. The ECB shall be informed of such appointments and Article 4 shall apply accordingly.

3. Where staff members of NCBs of participating Member States are appointed to a joint supervisory team, references to NCAs in relation to joint supervisory teams shall be read as including a reference to those NCBs.

Article 6

JST coordinator and sub-coordinators

1. The JST coordinator, assisted by NCA sub-coordinators as defined in paragraph 2, shall ensure the coordination of the work within the joint supervisory team. For this purpose, joint supervisory team members shall follow the JST coordinator's instructions as regards their tasks in the joint supervisory team. This shall be without prejudice to their tasks and duties with their respective NCA.

2. Each NCA that appoints more than one staff member to the joint supervisory team shall designate one of them as sub-coordinator (hereinafter an 'NCA sub-coordinator'). NCA sub-coordinators shall assist the JST coordinator as regards the organisation and coordination of the tasks in the joint supervisory team, in particular as regards the staff members that were appointed by the same NCA as the relevant NCA sub-coordinator. The NCA sub-coordinator may give instructions to the members of the joint supervisory team appointed by the same NCA, provided that these do not conflict with the instructions given by the JST coordinator.

CHAPTER 2

Supervision of less significant supervised entities

Article 7

Involvement of staff members from other NCAs in an NCA's supervisory team

Without prejudice to Article 31(1) of the SSM Regulation, when, in relation to the supervision of less significant supervised entities, the ECB determines that it is appropriate to involve staff members from one or more other NCAs in the supervisory team of an NCA, the ECB may require the latter to involve staff members of such other NCAs.

TITLE 2

SUPERVISION ON A CONSOLIDATED BASIS AND PARTICIPATION OF THE ECB AND NCAS IN COLLEGES OF SUPERVISORS

Article 8

Supervision on a consolidated basis

1. The ECB shall conduct supervision on a consolidated basis as provided for by Article 111 of Directive 2013/36/EU in respect of credit institutions, financial holding companies or mixed financial holding companies that are significant on a consolidated basis, where the parent undertaking is either a parent institution in a participating Member State or an EU parent institution established in a participating Member State.
2. The relevant NCA shall perform the task of the supervisor on a consolidated basis in respect of credit institutions, financial holding companies or mixed financial holding companies that are less significant on a consolidated basis.

Article 9

The ECB as chair of a college of supervisors

1. When the ECB is the consolidating supervisor, it shall chair the college established pursuant to Article 116 of Directive 2013/36/EU. The NCAs of the participating Member States where the parent, subsidiaries and significant branches within the meaning of Article 51 of Directive 2013/36/EU, if any, are established, shall have the right to participate in the college as observers.
2. If there is no college established pursuant to Article 116 of Directive 2013/36/EU, and a significant supervised entity has branches in non-participating Member States that are considered as significant in accordance with Article 51(1) of Directive 2013/36/EU, the ECB shall establish a college of supervisors with the competent authorities of the host Member States.

Article 10

The ECB and NCAs as members of a college of supervisors

If the consolidating supervisor is not in a participating Member State, the ECB and NCAs shall participate in the college of supervisors in accordance with the following rules and with the relevant Union law:

- (a) if the supervised entities in participating Member States are all significant supervised entities, the ECB shall participate in the college of supervisors as a member, while the NCAs shall be entitled to participate in the same college as observers;
- (b) if the supervised entities in participating Member States are all less significant supervised entities, the NCAs shall participate in the college of supervisors as members;
- (c) if the supervised entities in participating Member States are both less significant supervised entities and significant supervised entities, the ECB and the NCAs shall participate in the college of supervisors as members. The NCAs of the participating Member States where the significant supervised entities are established shall be entitled to participate in the college of supervisors as observers.

TITLE 3

PROCEDURES FOR THE RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

CHAPTER 1

Procedures for the right of establishment and freedom to provide services within the SSM

Article 11

Right of establishment of credit institutions within the SSM

1. Any significant supervised entity wishing to establish a branch within the territory of another participating Member State shall notify the NCA of the participating Member State where the significant supervised entity has its head office, of its intention. Information shall be provided in accordance with the requirements laid down in Article 35(2) of Directive 2013/36/EU. The NCA shall immediately inform the ECB on the receipt of this notification.
2. Any less significant supervised entity wishing to establish a branch within the territory of another participating Member State shall notify its NCA of its intention in accordance with the requirements laid down in Article 35(2) of Directive 2013/36/EU.

3. Where no decision to the contrary is taken by the ECB within two months of receipt of the notification, the branch referred to in paragraph 1 may be established and commence its activities. The ECB shall communicate this information to the NCA of the participating Member State where the branch will be established.
4. Where no decision to the contrary is taken by the NCA of the home Member State within two months of receipt of the notification, the branch referred to in paragraph 2 may be established and commence its activities. The NCA shall communicate this information to the ECB and to the NCA of the participating Member State where the branch will be established.
5. In the event of a change to any of the information communicated pursuant to paragraphs 1 and 2, the supervised entity shall give written notice of this change to the NCA that received the initial information at least one month before implementing the change. This NCA shall inform the NCA of the Member State where the branch is established.

Article 12

Exercise of the freedom to provide services by credit institutions within the SSM

1. Any significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within the territory of another participating Member State for the first time shall notify the NCA of the participating Member State where the significant supervised entity has its head office of its intention. Information shall be provided in accordance with the requirements laid down in Article 39(1) of Directive 2013/36/EU. The NCA shall immediately inform the ECB on the receipt of this notification. The NCA shall also communicate the notification to the NCA of the participating Member State where the services will be provided.
2. Any less significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within the territory of another participating Member State for the first time shall notify its NCA in accordance with the requirements laid down in Article 39(1) of Directive 2013/36/EU. The notification shall be communicated to the ECB and to the NCA of the participating Member State where the services will be provided.

CHAPTER 2

Procedures for the right of establishment and freedom of credit institutions established in non-participating Member States to provide services within the SSM

Article 13

Notification of the exercise of the right of establishment within the SSM by credit institutions established in non-participating Member States

1. Where the competent authority of a non-participating Member State communicates the information referred to in Article 35(2) of Directive 2013/36/EU in accordance with the procedure laid down in Article 35(3) thereof to the NCA of the participating Member State where the branch is to be established, such NCA shall immediately notify the ECB on the receipt of this communication.
2. Within two months of receipt of the communication from the competent authority of a non-participating Member State, the ECB, in the case of a branch that is significant pursuant to the criteria laid down in Article 6 of the SSM Regulation and in Part IV of this Regulation, or the relevant NCA in the case of a branch which is less significant on the basis of the criteria laid down in Article 6 of the SSM Regulation and in Part IV of this Regulation, shall prepare to supervise the branch in accordance with Articles 40 to 46 of Directive 2013/36/EU, and if necessary, indicate the conditions under which, in the interests of the general good, the branch may carry on its activity in the host Member State.
3. NCAs shall inform the ECB about the conditions under which, under national law and in the interests of the general good, activities can be carried out by a branch in their Member State.
4. A change to any information provided by the credit institution wishing to establish a branch pursuant to points (b), (c) or (d) of Article 35(2) of Directive 2013/36/EU shall be notified to the NCA referred to in paragraph 1.

Article 14

Competent authority of the host Member State for branches

1. In accordance with Article 4(2) of the SSM Regulation, the ECB shall exercise the powers of the competent authority of the host Member State where a branch is significant within the meaning of Article 6(4) thereof.

2. Where a branch is less significant within the meaning of Article 6(4) of the SSM Regulation, the NCA of the participating Member State where the branch is established shall exercise the powers of the competent authority of the host Member State.

Article 15

Notification of the exercise of the freedom to provide services within the SSM by credit institutions established in non-participating Member States

Where the competent authority of a non-participating Member State provides a notification within the meaning of Article 39(2) of Directive 2013/36/EU, the NCA of the participating Member State where the freedom to provide services shall be exercised shall be the addressee of the notification. The NCA shall immediately inform the ECB on the receipt of this notification.

Article 16

Competent authority of the host Member State for freedom to provide services

1. In accordance with Article 4(2) and within the scope of Article 4(1) of the SSM Regulation, the ECB shall carry out the tasks of the competent authority of the host Member State in respect of credit institutions established in non-participating Member States which exercise the freedom to provide services in participating Member States.

2. If the freedom to provide services is in the interest of the general good, subject to certain conditions under the national law of participating Member States, NCAs shall inform the ECB of these conditions.

CHAPTER 3

Procedures for the right of establishment and freedom to provide services in relation to non-participating Member States

Article 17

Right of establishment and exercise of the freedom to provide services in relation to non-participating Member States

1. A significant supervised entity wishing to establish a branch or to exercise the freedom to provide services within the territory of a non-participating Member State shall notify the relevant NCA of its intention in accordance with the applicable Union law. The NCA shall immediately inform the ECB on the receipt of this

notification. The ECB shall exercise the powers of the competent authority of the home Member State.

2. A less significant supervised entity wishing to establish a branch or to exercise the freedom to provide services within the territory of a non-participating Member State shall notify the relevant NCA of its intention in accordance with the applicable Union law. The relevant NCA shall exercise the powers of the competent authority of the home Member State.

TITLE 4

SUPPLEMENTARY SUPERVISION OF FINANCIAL CONGLOMERATES

Article 18

Coordinator

1. The ECB shall assume the task of coordinator of a financial conglomerate in accordance with the criteria set out in relevant Union law in relation to a significant supervised entity.
2. The NCA shall assume the task of coordinator of a financial conglomerate in accordance with the criteria set out in relevant Union law in relation to a less significant supervised entity.

PART III

GENERAL PROVISIONS APPLYING TO THE OPERATION OF THE SSM

TITLE 1

PRINCIPLES AND OBLIGATIONS

Article 19

Overview

This Part lays down (a) general rules for the operation of the SSM by the ECB and NCAs, and (b) the provisions to be applied by the ECB when carrying out an ECB supervisory procedure.

The general principles and provisions applying between the ECB and NCAs in close cooperation are set out in Part IX.

Article 20

Duty to cooperate in good faith

The ECB and NCAs shall be subject to a duty to cooperate in good faith, and an obligation to exchange information.

Article 21

General obligation to exchange information

1. Without prejudice to the ECB's power to receive directly, or have direct access to information reported by supervised entities, on an on-going basis, NCAs shall, in particular, provide the ECB in a timely and accurate manner with all the information necessary for the ECB to carry out the tasks conferred on it by the SSM Regulation. Such information shall include information stemming from the NCAs' verification and on-site activities.

2. In circumstances where the ECB obtains information directly from the legal or natural persons referred to in Article 10(1) of the SSM Regulation, it shall provide the NCAs concerned with such information in a timely and accurate manner. Such information shall include, in particular, information necessary for the NCAs to carry out their role in assisting the ECB.

3. Without prejudice to paragraph 2, the ECB shall provide NCAs with regular access to updated information necessary for NCAs to carry out their tasks related to prudential supervision.

Article 22

Right of the ECB to instruct NCAs or NDAs to make use of their powers and to take action if the ECB has a supervisory task but no related power

1. To the extent necessary to carry out the tasks conferred on it by the SSM Regulation, the ECB may require, by way of instructions, the NCAs or the NDAs or both to make use of their powers, under and in accordance with the conditions set out in national law and as provided for in Article 9 of the SSM Regulation, where the SSM Regulation does not confer such powers on the ECB.

2. The NCAs and/or, in respect of Article 5 of the SSM Regulation, the NDAs, shall inform the ECB about the exercise of these powers without undue delay.

Article 23

Language regime between the ECB and NCAs

The ECB and NCAs shall adopt arrangements for their communications within the SSM, including the language(s) to be used.

Article 24

Language regime between the ECB and legal or natural persons, including supervised entities

1. Any document which a supervised entity or any other legal or natural person individually subject to ECB supervisory procedures sends to the ECB may be drafted in any one of the official languages of the Union, chosen by the supervised entity or person.

2. The ECB, supervised entities and any other legal or natural person individually subject to ECB supervisory procedures may agree to exclusively use one Union official language in their written communication, including with regard to ECB supervisory decisions.

The revocation of such agreement on the use of one language shall only affect the aspects of the ECB supervisory procedure which have not yet been carried out.

Where participants in an oral hearing request to be heard in a Union official language other than the language of the ECB supervisory procedure, sufficient advance notice of this requirement shall be given to the ECB so that it can make the necessary arrangements.

TITLE 2

**GENERAL PROVISIONS RELATING TO DUE PROCESS FOR ADOPTING
ECB SUPERVISORY DECISIONS**

CHAPTER 1

ECB supervisory procedures

Article 25

General principles

1. Any ECB supervisory procedures initiated in accordance with Article 4 and Section 2 of Chapter III of the SSM Regulation shall be carried out in accordance with Article 22 of the SSM Regulation and the provisions of this Title.
2. The provisions of this Title shall not apply to procedures carried out by the Administrative Board of Review.

Article 26

Parties

1. Parties to an ECB supervisory procedure shall be:
 - (a) those making an application;
 - (b) those to which the ECB intends to address or has addressed an ECB supervisory decision.
2. NCAs are deemed not to be parties.

Article 27

Representation of a party

1. A party may be represented by its legal or statutory representatives or by any other representative empowered by written mandate to take any and all actions relating to the ECB supervisory procedure.
2. Any revocation of the mandate shall only be effective on the ECB's receipt of a written revocation. The ECB shall acknowledge receipt of such revocation.
3. Where a party has appointed a representative in an ECB supervisory procedure, the ECB shall contact only the appointed representative in that supervisory procedure unless the particular circumstances require that the ECB contact the party directly. In the latter case, the representative shall be informed.

Article 28

General obligations of the ECB and parties to an ECB supervisory procedure

1. An ECB supervisory procedure may be initiated ex officio or at the request of a party. Subject to paragraph 3, the ECB shall determine the facts which will be relevant for adopting its final decision in each ECB supervisory procedure ex officio.

2. In its assessment, the ECB shall take account of all relevant circumstances.

3. Subject to Union law, a party shall be required to participate in an ECB supervisory procedure and to provide assistance to clarify the facts. In ECB supervisory procedures initiated on the request of a party, the ECB may limit its determination of the facts to requesting the party to provide the relevant factual information.

Article 29

Evidence in ECB supervisory procedures

1. In order to ascertain the facts of a case, the ECB shall make use of such evidence as, after due consideration, it deems appropriate.

2. The parties shall, subject to Union law, assist the ECB in ascertaining the facts of the case. In particular, subject to the limits relating to sanctioning procedures under Union law, the parties shall state truthfully the facts known to them.

3. The ECB may set a time limit by which evidence may be provided by the parties.

Article 30

Witnesses and experts in ECB supervisory procedures

1. The ECB may hear witnesses and experts if it deems it necessary.

2. When the ECB appoints an expert it shall define that expert's task in an agreement and set a time limit within which the expert shall submit his report.

3. When the ECB hears witnesses or experts, they shall be entitled on application to reimbursement of their travel and subsistence expenses. Witnesses shall be entitled to compensation for loss of earnings and experts to the agreed fees for their service after they have provided their statements. The compensation shall be provided in accordance with the appropriate provisions applying to the compensation of witnesses and remuneration of experts respectively by the Court of Justice of the European Union.

4. The ECB may require that the persons mentioned in Article 11(1)(c) of the SSM Regulation, attend as witnesses in the offices of the ECB or any other place in a participating Member State determined by the ECB. Where a person mentioned in Article 11(1)(c) of the SSM Regulation is a legal person, the natural persons representing such legal person shall be obliged to attend pursuant to the preceding sentence.

Article 31

Right to be heard

1. Before the ECB may adopt an ECB supervisory decision addressed to a party which would adversely affect the rights of such party, the party must be given the opportunity of commenting in writing to the ECB on the facts, objections and legal grounds relevant to the ECB supervisory decision. If the ECB deems it appropriate it may give the parties the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision in a meeting. The notification by which the ECB gives the party the opportunity to provide its comments shall mention the material content of the intended ECB supervisory decision and the material facts, objections and legal grounds on which the ECB intends to base its decision. Section 1 of Chapter III of the SSM Regulation shall not be subject to the provisions of this Article.

2. If the ECB gives a party the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision in a meeting, unless duly excused, the absence of the party is not a reason to postpone the meeting. If the party is duly excused, the ECB may postpone the meeting or give the party the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision in writing. The ECB shall prepare written minutes of the meeting that shall be signed by the parties and shall provide a copy of the minutes to the parties.

3. The party shall, in principle, be given the opportunity to provide its comments in writing within a time limit of two weeks following receipt of a statement setting out the facts, objections and legal grounds on which the ECB intends to base the ECB supervisory decision.

On application of the party, the ECB may extend the time limit as appropriate.

In particular circumstances, the ECB may shorten the time limit to three working days. The time limit shall also be shortened to three working days in the situations covered by Articles 14 and 15 of the SSM Regulation.

4. Notwithstanding paragraph 3, and subject to paragraph 5, the ECB may adopt an ECB supervisory decision addressed to a party which would adversely affect the rights of such party without giving the party the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision prior to its adoption if an urgent decision appears necessary in order to prevent significant damage to the financial system.

5. If an urgent ECB supervisory decision is adopted in accordance with paragraph 4, the party shall be given the opportunity to comment in writing on the facts, objections and legal grounds relevant to the ECB supervisory decision without undue delay after its adoption. The party shall, in principle, be given the opportunity to provide its comments in writing within a time limit of two weeks from receipt of the ECB supervisory decision. On application of the party, the ECB may extend the time limit; however, the time limit may not exceed six months. The ECB shall review the ECB supervisory decision in the light of the party's comments and may either confirm it, revoke it, amend it or revoke it and replace it by a new ECB supervisory decision.

6. For ECB supervisory procedures relating to penalties pursuant to Article 18 of the SSM Regulation and Part X of this Regulation, paragraphs 4 and 5 shall not apply.

Article 32

Access to files in an ECB supervisory procedure

1. The rights of defence of the parties concerned shall be fully respected in ECB supervisory procedures. For this purpose, and after the opening of the ECB supervisory procedure, the parties shall be entitled to have access to the ECB's file, subject to the legitimate interest of legal and natural persons other than the relevant party, in the protection of their business secrets. The right of access to the file shall not extend to confidential information. The NCAs shall forward to the ECB, without undue delay, any request received by them related to the access to files connected with ECB supervisory procedures.

2. The files consist of all documents obtained, produced or assembled by the ECB during the ECB supervisory procedure, irrespective of the storage medium.

3. Nothing in this Article shall prevent the ECB or NCAs from disclosing and using information necessary to prove an infringement.

4. The ECB may determine that access to a file shall be granted in one or more of the following ways, taking due account of the technical capabilities of the parties:

- (a) by means of CD-ROMs or any other electronic data storage device including any that may become available in future;
- (b) through copies of the accessible file in paper form sent to them by mail;
- (c) by inviting them to examine the accessible file in the offices of the ECB.

5. For the purpose of this article, confidential information may include internal documents of the ECB and NCAs and correspondence between the ECB and an NCA or between NCAs.

CHAPTER 2

ECB supervisory decisions

Article 33

Motivation of ECB supervisory decisions

1. Subject to paragraph 2, an ECB supervisory decision shall be accompanied by a statement of the reasons for that decision.
2. The statement of reasons shall contain the material facts and legal reasons on which the ECB supervisory decision is based.
3. Subject to Article 31(4), the ECB shall base an ECB supervisory decision only on facts and objections on which a party has been able to comment.

Article 34

Suspensory effect

Without prejudice to Article 278 TFEU and Article 24(8) of the SSM Regulation, the ECB may decide that the application of an ECB supervisory decision is suspended either (a) by stating it in the ECB supervisory decision, or (b) in cases other than a request for review by the Administrative Board of Review, on request of the addressee of an ECB supervisory decision.

Article 35

Notification of ECB supervisory decisions

1. The ECB may notify an ECB supervisory decision to a party (a) orally, (b) by serving or delivering by hand a copy of the supervisory decision, (c) by registered mail with a form for acknowledgment, (d) by express courier service, (e) by telefax, or (f) electronically, in accordance with paragraph 10.
2. If a representative is empowered by a written mandate, the ECB may notify the ECB supervisory decision to the representative. In such cases the ECB is not obliged

to also notify the ECB supervisory decision to the supervised entity represented by such representative.

3. In the case of an oral notification of an ECB supervisory decision, notification of the decision shall be deemed to be served on the addressee if a member of the staff of the ECB has informed (a) the relevant natural person, in the case of a natural person or (b) an authorised receiving agent of the legal person, in the case of a legal person, of the ECB supervisory decision. In such case without undue delay after such oral notification a written copy of the ECB supervisory decision shall be provided to the addressee.

4. In the case of a notification of an ECB supervisory decision by registered mail with a form for acknowledgment, notification of the ECB supervisory decision shall be deemed to be served on the addressee on the tenth day after the letter has been handed over to the mail provider, unless the acknowledgement of receipt indicates that the letter was received on a different date.

5. In the case of a notification of an ECB supervisory decision by express courier service, notification of the ECB supervisory decision shall be deemed to be served on the addressee on the tenth day after the letter has been handed over to the courier service, unless the delivery document of the courier service indicates that the letter was received on a different date.

6. For the purposes of paragraphs 4 and 5, the ECB supervisory decision must be addressed to an address suitable for service (valid address). A valid address is:

- (a) in the case of an ECB supervisory procedure initiated on a request or application of the addressee of an ECB supervisory decision, the address provided by the addressee in its request or application;
- (b) in the case of a supervised entity, the last business address of the head office provided to the ECB by the supervised entity;
- (c) in the case of a natural person, the last address provided to the ECB and if no address is provided to the ECB and the natural person is an employee, a manager or a shareholder of a supervised entity, the business address of the supervised entity in accordance with (b).

7. Each person that is party to an ECB supervisory procedure shall provide to the ECB on request a valid address.

8. If a person is established or domiciled in a State that is not a Member State, the ECB may require the party to name, within a reasonable period of time, an authorised recipient who is resident in a Member State or who has business premises

in a Member State. Should no authorised recipient be named upon such request and until such authorised recipient is named respectively, any communication may be served in accordance with paragraphs 3 to 5 and 9 to the address of the party available to the ECB.

9. Where the person who is the addressee of an ECB supervisory decision has provided a fax number to the ECB, the ECB may notify an ECB supervisory decision by transmitting a copy of the ECB supervisory decision by telefax. The ECB supervisory decision is deemed to be notified to the addressee if the ECB has received a completion report on the successful delivery of the telefax.

10. The ECB may determine the criteria under which an ECB supervisory decision may be served by electronic or other comparable means of communication.

TITLE 3

REPORTING OF BREACHES

Article 36

Reporting of breaches

Any person, in good faith, may submit a report directly to the ECB if that person has reasonable grounds for believing that the report will show breaches of the legal acts referred to in Article 4(3) of the SSM Regulation by credit institutions, financial holding companies, mixed financial holding companies or competent authorities (including the ECB itself).

Article 37

Appropriate protection for reports of breaches

1. Where a person makes a report in good faith about alleged breaches of the legal acts referred to in Article 4(3) of the SSM Regulation by supervised entities or competent authorities, the report shall be treated as a protected report.

2. All personal data concerning both the person who makes a protected report and the person who is allegedly responsible for a breach shall be protected in compliance with the applicable Union data protection framework.

3. The ECB shall not reveal the identity of a person who has made a protected report without first obtaining that person's explicit consent, unless such disclosure is

required by a court order in the context of further investigations or subsequent judicial proceedings.

Article 38

Procedures for the follow-up of reports

1. The ECB shall assess all reports relating to significant supervised entities. It shall assess reports relating to less significant supervised entities in respect of breaches of ECB regulations or decisions. In the latter case, when NCAs receive these reports, they shall forward the reports to the ECB, without communicating the identity of the person who made the report, unless such person provides their explicit consent.
2. Without prejudice to paragraph 1, the ECB shall forward reports concerning a less significant supervised entity to the relevant NCA, without communicating the identity of the person who made the report, unless such person provides their explicit consent.
3. The ECB shall exchange information with NCAs: (a) in order to assess if the reports were sent to both the ECB and the relevant NCA and to coordinate efforts; and (b) to know the outcome of the follow-up of the reports forwarded to the NCAs.
4. The ECB shall use reasonable discretion when determining how to assess the reports received and the actions to be taken.
5. In the case of alleged breaches by supervised entities, the relevant supervised entity shall provide to the ECB any information and documents requested by it in order to assess the reports received.
6. In the case of alleged breaches by competent authorities (other than the ECB), the ECB shall request the relevant competent authority to provide their comments on the facts reported.
7. In its annual report, as described in Article 20(2) of the SSM Regulation, the ECB shall provide information on the reports received in abridged or aggregated form, such that individual supervised entities or persons cannot be identified.

PART IV

DETERMINING THE STATUS OF A SUPERVISED ENTITY AS SIGNIFICANT OR LESS SIGNIFICANT

TITLE 1

GENERAL PROVISIONS RELATING TO THE CLASSIFICATION AS SIGNIFICANT OR LESS SIGNIFICANT

Article 39

Classifying a supervised entity on an individual basis as significant

1. A supervised entity shall be considered a significant supervised entity if the ECB so determines in an ECB decision addressed to the relevant supervised entity pursuant to Articles 43 to 49, explaining the underlying reasons for such decision.
2. A supervised entity shall cease to be classified as a significant supervised entity if the ECB determines, in an ECB decision addressed to the supervised entity explaining the underlying reasons for such decision, that it is a less significant supervised entity or is no longer a supervised entity.
3. A supervised entity can be classified as a significant supervised entity on the basis of any of the following:
 - (a) its size, as determined in accordance with Articles 50 to 55 (hereinafter the ‘size criterion’);
 - (b) its importance for the economy of the Union or any participating Member State, as determined in accordance with Articles 56 to 58 (hereinafter the ‘economic importance criterion’);
 - (c) its significance with regard to cross-border activities, as determined in accordance with Articles 59 and 60 (hereinafter the ‘cross-border activities criterion’);
 - (d) a request for or the receipt of direct public financial assistance from the European Stability Mechanism (ESM), as determined in accordance with Articles 61 to 64 (hereinafter the ‘direct public financial assistance criterion’);
 - (e) the fact that the supervised entity is one of the three most significant credit institutions in a participating Member State, as determined in accordance with Articles 65 and 66.

4. Significant supervised entities shall be directly supervised by the ECB unless particular circumstances justify supervision by the relevant NCA in accordance with Title 9 of this Part.

5. The ECB shall also directly supervise a less significant supervised entity or a less significant supervised group under an ECB decision adopted pursuant to Article 6(5)(b) of the SSM Regulation to the effect that the ECB will exercise directly all relevant powers referred to in Article 6(4) of the SSM Regulation. For the purposes of the SSM, such a less significant supervised entity or less significant supervised group shall be classified as significant.

6. Prior to taking the ECB decisions referred to in this Article, the ECB shall consult with the relevant NCAs. Each ECB decision referred to in this Article shall also be notified to the relevant NCAs.

Article 40

Classifying supervised entities which are part of a group as significant

1. If one or more supervised entities are part of a supervised group, the criteria for determining significance shall be determined at the highest level of consolidation within participating Member States in accordance with the provisions laid down in Titles 3 to 7 of Part IV.

2. Each of the supervised entities forming part of a supervised group shall be deemed to be a significant supervised entity in any of the following circumstances:

- (a) if the supervised group at its highest level of consolidation within the participating Member States fulfils the size criterion, the economic importance criterion, or the cross-border activities criterion;
- (b) if one of the supervised entities forming part of the supervised group fulfils the direct public financial assistance criterion;
- (c) if one of the supervised entities forming part of the supervised group is one of the three most significant credit institutions in a participating Member State.

3. Where a supervised group is determined to be significant or is determined to be no longer significant, the ECB shall adopt an ECB decision on the classification as a significant supervised entity, or on the lifting of the classification as a significant supervised entity, and shall provide the beginning and end dates of direct supervision by the ECB to each supervised entity forming part of the supervised group in question in accordance with the criteria and procedures provided for in Article 39.

Article 41

Specific provisions in respect of branches of credit institutions established in non-participating Member States

1. All branches opened in the same participating Member State by a credit institution which is established in a non- participating Member State shall be deemed to be a single supervised entity for the purposes of this Regulation.
2. Branches opened in different participating Member States by a credit institution which is established in a non- participating Member State shall be treated individually as separate supervised entities for the purposes of this Regulation.
3. Without prejudice to paragraph 1, branches of a credit institution which is established in a non-participating Member State shall be assessed individually as separate supervised entities, and separately from subsidiaries of the same credit institution, when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation is fulfilled.

Article 42

Specific provisions in respect of subsidiaries of credit institutions established in non-participating Member States and third countries

1. Subsidiaries established in one or more participating Member States by a credit institution that has its head office in a non-participating Member State or third country shall be assessed separately from the branches of that credit institution when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation is fulfilled.
2. The following subsidiaries shall be assessed separately when determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation are fulfilled:
 - (a) those that are established in a participating Member State;
 - (b) those that belong to a group whose parent undertaking has its head office in a non-participating Member State or a third country; and
 - (c) those that do not belong to a supervised group within participating Member States.

TITLE 2

PROCEDURE FOR CLASSIFYING SUPERVISED ENTITIES AS SIGNIFICANT SUPERVISED ENTITIES

CHAPTER 1

Classifying a supervised entity as significant

Article 43

Review of the status of a supervised entity

1. Unless otherwise provided for in this Regulation, the ECB shall review, on at least an annual basis, whether a significant supervised entity or a significant supervised group continues to fulfil any of the criteria provided for in Article 6(4) of the SSM Regulation.
2. Unless otherwise provided for in this Regulation, each NCA shall review, on at least an annual basis, whether a less significant supervised entity or a less significant supervised group fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation. In the case of a less significant supervised group, the relevant NCA of the participating Member State in which the parent undertaking, determined at the highest level of consolidation within the participating Member States, is established shall carry out this review.
3. The ECB may review, at any time after it receives relevant information, in particular in the cases specified in Article 52, (a) whether a supervised entity fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation and (b) whether a significant supervised entity no longer fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation.
4. If an NCA assesses that a less significant supervised entity or a less significant supervised group fulfils any of the criteria provided for in Article 6(4) of the SSM Regulation, the relevant NCA shall, without undue delay, inform the ECB.
5. At the request of the ECB or an NCA, the ECB and the relevant NCA shall cooperate in determining whether any of the criteria provided for in Article 6(4) of the SSM Regulation are fulfilled in respect of a supervised entity or a supervised group.
6. If the ECB (a) decides to assume the direct supervision of a supervised entity or supervised group or (b) decides that the direct supervision of a supervised entity or supervised group by the ECB shall end, the ECB and the relevant NCA shall

cooperate in order to ensure the smooth transition of supervisory competences. In particular, a report setting out the supervisory history and risk profile of the supervised entity shall be prepared by the relevant NCA when the ECB assumes the direct supervision of a supervised entity, and by the ECB when the relevant NCA becomes competent to supervise the entity concerned.

7. The ECB shall determine whether a supervised entity or a supervised group is significant using the criteria provided for in Article 6(4) of the SSM Regulation in the order set out therein, namely: (a) size; (b) importance for the economy of the Union or any participating Member State; (c) significance of cross-border activities; (d) request for or receipt of public financial assistance directly from the ESM; (e) the fact that it is one of the three most significant credit institutions in a participating Member State.

Article 44

Procedure to be applied in determining the significance of a supervised entity

1. When taking decisions on the classification of a supervised entity or a supervised group as significant under this Title, and unless otherwise provided, the ECB shall apply the procedural rules of Title 2 of Part III of this Regulation.
2. The ECB shall notify in writing, within the timeframe laid down in Article 45, an ECB decision on the classification as significant of a supervised entity or a supervised group to each supervised entity concerned and shall also communicate that decision to the relevant NCA. For supervised entities that are part of a significant supervised group, the ECB shall notify the ECB decision to the supervised entity at the highest level of consolidation within the participating Member States and shall ensure that all supervised entities within the significant supervised group are duly informed.
3. For supervised entities that are not notified by the ECB pursuant to paragraph 1, the list referred to in Article 49(2) shall serve as notification of their classification as less significant.
4. The ECB shall give each relevant supervised entity the opportunity to make submissions in writing prior to the adoption of an ECB decision pursuant to paragraph 1.
5. The ECB shall, in addition, give the relevant NCAs, in accordance with Article 39(6), the opportunity to provide observations and comments in writing, and these shall be duly considered by the ECB.

6. A supervised entity or a supervised group shall be classified as a significant supervised entity or a significant supervised group from the date of notification of the ECB decision determining that it is a significant supervised entity or a significant supervised group.

CHAPTER 2

Beginning and end of direct supervision by the ECB

Article 45

Beginning of direct supervision by the ECB

1. The ECB shall specify in an ECB decision the date on which it is to assume direct supervision of a supervised entity or a supervised group that has been classified as a significant supervised entity or significant supervised group. That ECB decision may be the same decision as the one referred to in Article 44(2). Subject to paragraph 2 the ECB shall notify that ECB decision to each supervised entity concerned, at least one month prior to the date on which it will assume direct supervision.

2. If the ECB assumes direct supervision of a supervised entity or a supervised group either on the basis of a request for or receipt of direct public financial assistance from the ESM, the ECB shall notify the ECB decision referred to in paragraph 1 to each supervised entity concerned in due time, at least one week prior to the date on which it will assume direct supervision.

3. The ECB shall provide copies of the ECB decisions referred to in paragraph 1 to the relevant NCAs.

4. The ECB shall assume direct supervision of a supervised entity or supervised group at the latest 12 months after the date on which the ECB notifies to that supervised entity or supervised group an ECB decision pursuant to Article 44(2).

5. For the purposes of this Article, in the case of a supervised group, the ECB shall notify the ECB decision to the supervised entity at the highest level of consolidation within the participating Member States and shall ensure that all supervised entities within that group are duly informed by the relevant deadline.

Article 46

End of direct supervision by the ECB

1. When the ECB determines that direct supervision by the ECB of a supervised entity or a supervised group will end, the ECB shall issue an ECB decision to each supervised entity concerned specifying the date and reasons why the direct supervision will end. The ECB shall adopt such decision at least one month prior to the date on which direct supervision by the ECB will end. The ECB shall also provide a copy of this ECB decision to the relevant NCAs. Article 45(5) shall apply accordingly.
2. The ECB shall give each relevant supervised entity the opportunity to make submissions in writing prior to the adoption of an ECB decision pursuant to paragraph 1.
3. Any ECB decision specifying the date on which direct supervision of a supervised entity by the ECB is to end may be issued together with the decision classifying that supervised entity as less significant.

Article 47

Reasons for ending direct supervision by the ECB

1. In the case of a significant supervised entity that is classified as such on the basis of its (a) size, (b) importance for the economy of the Union or any participating Member State, or (c) significance of cross border activities, or because it is part of a supervised group that fulfils at least one of these criteria, the ECB shall adopt an ECB decision ending its classification as a significant supervised entity and direct supervision if, for three consecutive calendar years, none of the above criteria provided for in Article 6(4) of the SSM Regulation has been met either on an individual basis or by the supervised group to which the supervised entity belongs.
2. In the case of a supervised entity that is classified as significant on the basis that direct public financial assistance from the ESM has been requested in respect of (a) itself, (b) the supervised group to which the supervised entity belongs, or (c) any supervised entity belonging to that group and which is not significant on other grounds, the ECB shall adopt an ECB decision ending its classification as a significant supervised entity and direct supervision, if the direct public financial assistance has been denied, fully returned or is terminated. Such decision may, in the case of the return or termination of direct public financial assistance, only be taken three calendar years after the complete return or termination of direct public financial assistance.

3. In the case of a supervised entity that is classified as significant on the basis that it is one of the three most significant credit institutions in a participating Member State, as determined in accordance with Articles 65 to 66, or belongs to the supervised group of such a credit institution, and which is not significant on other grounds, the ECB shall adopt an ECB decision ending its classification as a significant supervised entity and direct supervision if, for three consecutive calendar years, the relevant supervised entity has not been one of the three most significant credit institutions in a participating Member State.

4. In the case of a supervised entity that is directly supervised by the ECB under an ECB decision adopted pursuant to Article 6(5)(b) of the SSM Regulation and which is not significant on other grounds, the ECB shall adopt an ECB decision ending direct supervision by the ECB if in its reasonable discretion direct supervision is no longer necessary to ensure consistent application of high supervisory standards.

Article 48

Pending procedures

1. If a change in competence between the ECB and an NCA is to take place, the authority whose competence is to end (hereinafter the ‘authority whose competence ends’) shall inform the authority which is to become competent (hereinafter the ‘the authority assuming supervision’) of any supervisory procedure formally initiated, which requires a decision. The authority whose competence ends shall provide this information immediately after becoming aware of the imminent change in competence. The authority whose competence ends shall update this information on a continual basis, and as a general rule on a monthly basis, when there is new information on a supervisory procedure to report. The authority assuming supervision may, in duly justified cases, allow reporting on a less frequent basis. For the purpose of Articles 48 and 49, a supervisory procedure shall mean an ECB or NCA supervisory procedure.

Prior to the change in competence, the authority whose competence ends shall liaise with the authority assuming supervision without undue delay after the formal initiation of any new supervisory procedure which requires a decision.

2. If the supervisory competence changes, the authority whose competence ends shall undertake efforts to complete any pending supervisory procedure which requires a decision prior to the date on which the change in the supervisory competence is to occur.

3. If a formally initiated supervisory procedure, which requires a decision, cannot be completed prior to the date on which a change in the supervisory competence occurs, the authority whose competence ends shall remain competent to complete such

pending supervisory procedure. For this purpose, the authority whose competence ends shall also retain all relevant powers until the supervisory procedure has been completed. The authority whose competence ends shall complete the pending supervisory procedure in question in accordance with the applicable law under its retained powers. The authority whose competence ends shall inform the authority assuming supervision prior to taking any decision in a supervisory procedure which was pending prior to the change in competence. It shall provide to the authority assuming supervision a copy of the decision taken and any relevant documents relating to that decision.

4. By way of derogation from paragraph 3, the ECB may decide within one month of receiving the information necessary to complete its assessment of the relevant formally initiated supervisory procedure, and in consultation with the relevant NCA, to take over the supervisory procedure concerned. If, due to reasons of national law, an ECB decision is required prior to the end of the assessment period referred to in the preceding sentence, the NCA shall provide the ECB with the necessary information and specify in particular the timeframe within which the ECB has to decide whether or not it intends to take over the procedure. Where the ECB takes over a supervisory procedure, it shall notify the relevant NCA and the parties of its decision to take over the supervisory procedure concerned. The ECB shall specify in its ECB decision the consequences of taking over such supervisory procedure.

5. The ECB and the relevant NCA shall cooperate with regard to the completion of any pending procedure and may exchange any relevant information for this purpose.

6. This Article shall not apply to common procedures.

CHAPTER 3

List of supervised entities

Article 49

Publication

1. The ECB shall publish a list containing the name of each supervised entity and supervised group which is directly supervised by the ECB, indicating where relevant for the supervised entity the supervised group to which it belongs, and the specific legal basis for such direct supervision. The list shall include, in the case of a classification as significant on the basis of the size criterion, the total value of the supervised entity's or the supervised group's assets. The ECB shall also publish the name of supervised entities which, although they meet one of the criteria referred to in Article 6(4) of the SSM Regulation and would therefore qualify as significant, are

nevertheless considered less significant by the ECB because of particular circumstances in accordance with Title 9 of Part IV, and therefore are not directly supervised by the ECB.

2. The ECB shall publish a list containing the name of each supervised entity which is supervised by an NCA and the name of the relevant NCA.
3. The lists referred to in paragraphs 1 and 2 shall be published electronically and shall be accessible on the ECB's website.
4. The lists referred to in paragraphs 1 and 2 shall be updated on a regular basis.

TITLE 3

DETERMINING SIGNIFICANCE ON THE BASIS OF SIZE

Article 50

Determining significance on the basis of size

1. Whether or not a supervised entity or a supervised group is significant on the basis of the size criterion shall be determined by reference to the total value of its assets.
2. A supervised entity or a supervised group shall be classified as significant if the total value of its assets exceeds EUR 30 billion (hereinafter the 'size threshold').

Article 51

Basis for determining whether or not a supervised entity is significant on the basis of size

1. If the supervised entity is part of a supervised group, the total value of its assets shall be determined on the basis of the year-end prudential consolidated reporting for the supervised group in accordance with applicable law.
2. If total assets cannot be determined on the basis of the data referred to in paragraph 1, the total value of assets shall be determined on the basis of the most recent audited consolidated annual accounts prepared in accordance with International Financial Reporting Standards (IFRS) as applicable within the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of

the Council ⁽¹²⁾ and, if those annual accounts are not available, the consolidated annual accounts prepared in accordance with applicable national accounting laws.

3. If the supervised entity is not part of a supervised group, the total value of assets shall be determined on the basis of the year-end prudential individual reporting in accordance with applicable law.

4. If total assets cannot be determined using the data referred to in paragraph 3, the total value of assets shall be determined on the basis of the most recent audited annual accounts prepared in accordance with IFRS, as applicable within the Union in accordance with Regulation (EC) No 1606/2002 and, if those annual accounts are not available, the annual accounts prepared in accordance with applicable national accounting laws.

5. If the supervised entity is a branch of a credit institution which is established in a non-participating Member State, the total value of its assets shall be determined on the basis of the statistical data reported pursuant to Regulation (EC) No 25/2009 (ECB/2008/32) of the European Central Bank ⁽¹³⁾.

Article 52

Basis for determining significance on the basis of size in specific or exceptional circumstances

1. If, in respect of a less significant supervised entity, there is an exceptional substantial change in circumstances relevant for determining significance on the basis of the size criterion, the relevant NCA shall review whether or not the size threshold continues to be met.

If such a change occurs in respect of a significant supervised entity, the ECB shall review whether or not the size threshold continues to be met.

An exceptional substantial change in circumstances relevant for determining significance on the basis of the size criterion shall include any of the following: (a) the merger of two or more credit institutions, (b) the sale or transfer of a substantial business division, (c) the transfer of shares in a credit institution such that it no longer belongs to a supervised group to which it belonged prior to the sale, (d) the final decision to carry out an orderly winding up of the supervised entity (or group), (e) comparable factual situations.

⁽¹²⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1)

⁽¹³⁾ Regulation (EC) No 25/2009 of the European Central Bank of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32) (OJ L 15, 20.1.2009, p. 14).

2. A less significant supervised entity, and, in the case of a less significant supervised group, the less significant supervised entity at the highest level of consolidation within the participating Member States shall inform the relevant NCA of any change as referred to in paragraph 1.

A significant supervised entity and, in the case of a significant supervised group, the supervised entity at the highest level of consolidation within the participating Member States shall inform the ECB of any change as referred to in paragraph 1.

3. By way of derogation from the three-year rule provided for in Article 47(1) to (3), and in the case of exceptional circumstances, including those referred to in paragraph 1, the ECB shall decide, in consultation with NCAs, whether the affected supervised entities are significant or less significant and the date from which supervision shall be carried out by the ECB or NCAs.

Article 53

Groups of consolidated undertakings

1. For the purpose of determining significance on the basis of the size criterion, the supervised group of consolidated undertakings shall consist of the undertakings which have to be consolidated for prudential purposes in accordance with Union law.

2. For the purpose of determining significance on the basis of the size criterion, the supervised group of consolidated undertakings shall include subsidiaries and branches in non-participating Member States and third countries.

Article 54

Method of consolidation

The method of consolidation shall be the method of consolidation applicable in accordance with Union law for prudential purposes.

Article 55

Method for calculating total assets

For the purpose of determining the significance of a credit institution on the basis of the size criterion, the ‘total value of assets’ shall be derived from the line ‘total assets’ on a balance sheet prepared in accordance with Union law for prudential purposes.

TITLE 4

DETERMINING SIGNIFICANCE ON THE BASIS OF IMPORTANCE FOR THE ECONOMY OF THE UNION OR ANY PARTICIPATING MEMBER STATE

Article 56

National economic importance threshold

A supervised entity established in a participating Member State or a supervised group whose parent undertaking is established in a participating Member State shall be classified as significant on the basis of its importance for the economy of the relevant participating Member State if:

$A : B \geq 0,2$ (national economic importance threshold)

and

$A \geq$ EUR 5 billion

whereby

A is the total value of assets determined in accordance with Articles 51 to 55 for a given calendar year, and

B is the gross domestic product at market prices as defined in point 8.89 of Annex A to Regulation (EU) No 549/2013 of the European Parliament and of the Council ⁽¹⁴⁾ (ESA 2010) and published by Eurostat for the given calendar year.

Article 57

Criteria for determining significance on the basis of importance for the economy of the Union or any participating Member State

1. The ECB shall take into account the following criteria, in particular, when assessing whether or not a supervised entity or a supervised group is significant for the economy of the Union or a participating Member State for reasons other than those set out in Article 56:

¹⁴ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1).

- (a) the significance of the supervised entity or supervised group for specific economic sectors in the Union or a participating Member State;
- (b) the interconnectedness of the supervised entity or supervised group with the economy of the Union or a participating Member State;
- (c) the substitutability of the supervised entity or supervised group as both a market participant and client service provider;
- (d) the business, structural and operational complexity of the supervised entity or supervised group.

2. Article 52(3) shall apply accordingly.

Article 58

Determining significance on the basis of importance for the economy of any participating Member State at the request of an NCA

1. An NCA may notify the ECB that it considers a supervised entity to be significant with regard to its domestic economy.
2. The ECB shall assess the NCA's notification on the basis of the criteria set out in Article 57(1).
3. Article 57 shall apply accordingly.

TITLE 5

DETERMINING SIGNIFICANCE ON THE BASIS OF THE SIGNIFICANCE OF CROSS-BORDER ACTIVITIES

Article 59

Criteria for determining significance on the basis of the significance of cross-border activities of a supervised group

1. A supervised group may be considered significant by the ECB on the basis of its cross-border activities only when the parent undertaking of a supervised group has established subsidiaries, which are themselves credit institutions, in more than one other participating Member State.

2. A supervised group may be considered significant by the ECB on the basis of its cross-border activities only if the total value of its assets exceeds EUR 5 billion and:

(a) the ratio of its cross-border assets to its total assets is above 20 %; or

(b) the ratio of its cross-border liabilities to its total liabilities is above 20 %.

3. Article 52(3) shall apply accordingly.

Article 60

Cross-border assets and liabilities

1. ‘Cross- border assets’, in the context of a supervised group, means the part of the total assets in respect of which the counterparty is a credit institution or other legal or natural person located in a participating Member State other than the Member State in which the parent undertaking of the relevant supervised group has its head office.

2. ‘Cross-border liabilities’, in the context of a supervised group, means the part of the total liabilities in respect of which the counterparty is a credit institution or other legal or natural person located in a participating Member State other than the Member State in which the parent undertaking of the relevant supervised group has its head office.

TITLE 6

DETERMINING SIGNIFICANCE ON THE BASIS OF A REQUEST FOR OR THE RECEIPT OF PUBLIC FINANCIAL ASSISTANCE FROM THE ESM

Article 61

Request for or receipt of direct public financial assistance from the ESM

1. Direct public financial assistance to a supervised entity is requested when a request is made by an ESM member for financial assistance to be granted by the ESM to that entity in accordance with a decision taken by the Board of Governors of the ESM under Article 19 of the Treaty establishing the European Stability Mechanism regarding the direct recapitalisation of a credit institution and with the instruments adopted under that decision.

2. Direct public financial assistance is received by a credit institution when the financial assistance has been received by the credit institution pursuant to the decision and instruments referred to in paragraph 1.

Article 62

Obligation of NCAs to inform the ECB of a possible request for or receipt of public financial assistance by a less significant supervised entity

1. Without prejudice to the obligation set out in Article 96 to inform the ECB of the deterioration of the financial situation of a less significant supervised entity, the NCA shall inform the ECB as soon as it becomes aware of the possible need for public financial assistance for a less significant supervised entity to be granted at national level indirectly from the ESM and/or by the ESM.

2. The NCA shall submit its assessment of the financial situation of the less significant supervised entity to the ECB, for its consideration, before submitting it to the ESM, except in duly justified cases of urgency.

Article 63

Beginning and end of direct supervision

1. A supervised entity in respect of which direct public financial assistance is requested from the ESM or which has received direct public financial assistance from the ESM shall be classified as a significant supervised entity from the date on which direct public financial assistance was requested on its behalf.

2. The date on which the ECB shall assume the direct supervision shall be specified in an ECB decision in accordance with Title 2.

3. Article 52(3) shall apply accordingly.

Article 64

Scope

If direct public financial assistance is requested in respect of a supervised entity which is part of a supervised group, all supervised entities which are part of that supervised group shall be classified as significant.

TITLE 7

DETERMINING SIGNIFICANCE ON THE BASIS THAT THE SUPERVISED ENTITY IS ONE OF THE THREE MOST SIGNIFICANT CREDIT INSTITUTIONS IN A PARTICIPATING MEMBER STATE

Article 65

Criteria for determining the three most significant credit institutions in a participating Member State

1. A credit institution or a supervised group shall be classified as significant if it is one of the three most significant credit institutions or supervised groups in a participating Member State.
2. For the purposes of identifying the three most significant credit institutions or supervised groups in a participating Member State, the ECB and the relevant NCA shall take into account the size of the supervised entity and supervised group respectively, as determined in accordance with Articles 50 to 55.

Article 66

Review process

1. With regard to each participating Member State, the ECB shall establish by 1 October of each calendar year whether or not three credit institutions or supervised groups with a parent undertaking established in such participating Member State should be classified as significant supervised entities.
2. At the request of the ECB, the NCAs shall inform the ECB of the three most significant credit institutions or supervised groups established in their respective participating Member States by 1 October of the calendar year in question. The three most significant credit institutions or supervised groups shall be determined by the NCAs on the basis of the criteria laid down in Articles 50 to 55.
3. For each of the three most significant credit institutions or supervised groups in the participating Member States, the relevant NCA shall provide the ECB with a report setting out the supervisory history and risk profile in each case, unless the credit institution or supervised group is already classified as significant.

On receipt of the information referred to in paragraph 2, the ECB shall carry out its own assessment. The ECB may, for this purpose, request the relevant NCA to provide any relevant information.

4. If, on 1 October of a given year, one or more of the three most significant credit institutions or supervised groups in a participating Member State are not classified as significant supervised entities, the ECB shall adopt a decision in accordance with Title 2 in respect of any of the three most significant credit institutions or supervised groups which are not classified as significant.

5. Article 52(3) shall apply accordingly.

TITLE 8

ECB DECISION TO DIRECTLY SUPERVISE LESS SIGNIFICANT SUPERVISED ENTITIES PURSUANT TO ARTICLE 6(5)(B) OF THE SSM REGULATION

Article 67

Criteria for an ECB decision pursuant to Article 6(5)(b) of the SSM Regulation

1. The ECB may, pursuant to Article 6(5)(b) of the SSM Regulation, decide at any time, by means of an ECB decision, to exercise directly the supervision of a less significant supervised entity or less significant supervised group where this is necessary to ensure consistent application of high supervisory standards.

2. Before taking the ECB decision referred to in paragraph 1, the ECB shall take into account, inter alia, any of the following factors:

- (a) whether or not the less significant supervised entity or less significant supervised group is close to meeting one of the criteria contained in Article 6(4) of the SSM Regulation;
- (b) the interconnectedness of the less significant supervised entity or less significant supervised group with other credit institutions;
- (c) whether or not the less significant supervised entity concerned is a subsidiary of a supervised entity which has its head office in a non-participating Member State or a third country and has established one or more subsidiaries, which are also credit institutions, or one or more branches in participating Member States, of which one or more is significant;
- (d) the fact that the ECB's instructions have not been followed by the NCA;

- (e) the fact that the NCA has not complied with the acts referred to in the first subparagraph of Article 4(3) of the SSM Regulation;
- (f) the fact that the less significant supervised entity has requested or received indirectly financial assistance from the EFSF or the ESM.

Article 68

Procedure for preparing an ECB decision pursuant to Article 6(5)(b) of the SSM Regulation at the request of an NCA

1. The ECB shall, at the request of an NCA, assess whether or not it is necessary to exercise direct supervision in accordance with the SSM Regulation in respect of a less significant supervised entity or less significant supervised group in order to ensure the consistent application of high supervisory standards.
2. The NCA's request shall: (a) identify the less significant supervised entity or less significant supervised group in respect of which the NCA is of the view that the ECB should assume direct supervision, and (b) state why supervision of the less significant supervised entity or less significant supervised group by the ECB is necessary in order to ensure the consistent application of high supervisory standards.
3. The NCA's request shall be accompanied by a report indicating the supervisory history and risk profile of the relevant less significant supervised entity or less significant supervised group.
4. If the ECB does not agree with the NCA's request, it shall consult with the NCA concerned prior to its final assessment as to whether supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards.
5. If the ECB decides that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB decision in accordance with Title 2.

Article 69

Procedure for preparing ECB decisions pursuant to Article 6(5)(b) of the SSM Regulation on the ECB's own initiative

1. The ECB may request an NCA to provide a report setting out the supervisory history and risk profile of a less significant supervised entity or less significant

supervised group. The ECB shall specify the date by which such report should be submitted to it.

2. The ECB shall consult with the NCA prior to its final assessment as to whether supervision of the less significant supervised entity or the less significant supervised group by the ECB is necessary in order to ensure the consistent application of high supervisory standards.

3. If the ECB concludes that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB decision in accordance with Title 2.

TITLE 9

PARTICULAR CIRCUMSTANCES THAT MAY JUSTIFY THE CLASSIFICATION OF A SUPERVISED ENTITY AS LESS SIGNIFICANT ALTHOUGH THE CRITERIA FOR CLASSIFICATION AS SIGNIFICANT ARE FULFILLED

Article 70

Particular circumstances leading to the classification of a significant supervised entity as less significant

1. Particular circumstances, as referred to in the second and fifth subparagraphs of Article 6(4) of the SSM Regulation (hereinafter the ‘particular circumstances’) exist where there are specific and factual circumstances that make the classification of a supervised entity as significant inappropriate, taking into account the objectives and principles of the SSM Regulation and, in particular, the need to ensure the consistent application of high supervisory standards.

2. The term ‘particular circumstances’ shall be strictly interpreted.

Article 71

Assessment of the existence of particular circumstances

1. Whether particular circumstances exist that justify classifying what would otherwise be a significant supervised entity as less significant shall be determined on a case-by-case basis and specifically for the supervised entity or supervised group concerned, but not for categories of supervised entities.

2. Article 40 shall apply accordingly.

3. Articles 44 to 46 and Articles 48 and 49 shall apply accordingly. The ECB shall state in an ECB decision the reasons leading to its conclusion that particular circumstances exist.

Article 72

Review

1. The ECB shall, with the support of the relevant NCAs, review at least once a year whether particular circumstances continue to exist with respect to a supervised entity or a supervised group that is classified as less significant because of particular circumstances.

2. The supervised entity concerned shall provide any information and documents requested by the ECB in order to carry out a review as referred to in paragraph 1.

3. If the ECB considers that particular circumstances no longer exist it shall adopt an ECB decision addressed to the relevant supervised entity determining that it is classified as significant and that particular circumstances no longer exist.

4. Title 2 of Part IV shall apply accordingly.

PART V

COMMON PROCEDURES

TITLE 1

COOPERATION WITH REGARD TO AN APPLICATION FOR AN AUTHORISATION TO TAKE UP THE BUSINESS OF A CREDIT INSTITUTION

Article 73

Notification of the ECB of an application for an authorisation to take up the business of a credit institution

1. An NCA that receives an application for an authorisation to take up the business of a credit institution to be established in a participating Member State shall notify the ECB of the receipt of such application within 15 working days.

2. The NCA shall also inform the ECB of the time limit within which a decision on the application has to be taken and notified to the applicant in accordance with the relevant national law.

3. If the application is not complete, the NCA, either at its own initiative or at the ECB's request, shall ask the applicant to provide the required additional information. The NCA shall send any such additional information that it receives to the ECB within 15 working days following receipt thereof by the NCA.

Article 74

NCAs' assessment of applications

The NCA to which an application is submitted shall assess whether the applicant complies with all conditions for authorisation laid down in the relevant national law of the NCA's Member State.

Article 75

NCAs' decisions rejecting an application

NCAs shall reject applications that do not comply with the conditions for authorisation laid down in the relevant national law and send a copy of their decision to the ECB.

Article 76

NCAs' draft decisions on the authorisation to take up the business of a credit institution

1. If the NCA is satisfied that the application complies with all conditions for authorisation laid down in the relevant national law, it shall prepare a draft decision proposing that the ECB grant the applicant authorisation to take up the business of a credit institution (hereinafter a 'draft authorisation decision').

2. The NCA shall ensure that the draft authorisation decision is notified to the ECB and the applicant at least 20 working days before the end of the maximum assessment period provided for by the relevant national law.

3. The NCA may propose attaching recommendations, conditions and/or restrictions to a draft authorisation decision in accordance with national and Union law. In such cases, the NCA shall be responsible for assessing compliance with the conditions and/or restrictions.

Article 77

ECB's assessment of applications and hearing of applicants

1. The ECB shall assess the application on the basis of the conditions for authorisation laid down in the relevant Union law. If, in its view, these conditions are not met, the ECB shall give the applicant the opportunity to comment in writing on the facts and objections relevant to the assessment, in accordance with Article 31.
2. If a meeting is considered necessary and in any other cases that are duly justified, the ECB may extend the maximum period for deciding on an application in accordance with Article 14(3) of the SSM Regulation. The extension shall be notified to the applicant in accordance with Article 35 of this Regulation.

Article 78

ECB decisions on applications

1. The ECB shall take a decision on a draft authorisation decision it receives from the NCA within 10 working days, unless a decision on the extension of the maximum period has been taken in accordance with Article 77(2). It may support the draft authorisation decision and thereby agree to the authorisation or object to the draft authorisation decision.
2. The ECB shall base its decision on its assessment of the application, the draft authorisation decision and any comments provided by the applicant pursuant to Article 77.
3. If the ECB does not take a decision within the period referred to in paragraph 1, the draft authorisation decision prepared by the NCA shall be deemed to be adopted.
4. The ECB shall adopt a decision granting authorisation if the applicant complies with all the conditions for the authorisation in accordance with the relevant Union law and national law of the Member State in which the applicant is established.
5. The decision granting authorisation shall cover the applicant's activities as a credit institution as provided for in the relevant national law, without prejudice to any additional requirements for authorisation under the relevant national law for activities other than the business of taking deposits or other repayable funds from the public and granting credits for its own account.

Article 79

Procedure for the lapsing of the authorisation

The authorisation lapses in the situations referred to in Article 18(a) of Directive 2013/36/EU where the relevant national law so provides. NCAs shall inform the ECB of the individual cases where an authorisation lapses. The ECB shall then make public the lapsing of the authorisation in accordance with the relevant national law, after having informed the relevant NCA and the supervised entity concerned.

TITLE 2

**COOPERATION WITH REGARD TO THE WITHDRAWAL OF AN
AUTHORISATION**

Article 80

NCAs' proposal to withdraw an authorisation

1. If the relevant NCA considers that a credit institution's authorisation should be withdrawn in whole or in part in accordance with relevant Union or national law, including a withdrawal at the credit institution's request, it shall submit to the ECB a draft decision proposing the withdrawal of the authorisation (hereinafter a 'draft withdrawal decision'), together with any relevant supporting documents.
2. The NCA shall coordinate with the national authority competent for the resolution of credit institutions (hereinafter the 'national resolution authority') with regard to any draft withdrawal decision that is relevant to the national resolution authority.

Article 81

ECB's assessment of a draft withdrawal decision

1. The ECB shall assess the draft withdrawal decision without undue delay. In particular, it shall take into account reasons for urgency put forward by the NCA.
2. The right to be heard, as provided for in Article 31, shall apply.

Article 82

Assessment on the ECB's own initiative and consultation of NCAs

1. If the ECB becomes aware of circumstances that may warrant the withdrawal of an authorisation, it shall assess, on its own initiative, whether the authorisation should be withdrawn in accordance with the relevant Union law.
2. The ECB may consult at any time with the relevant NCAs. If the ECB intends to withdraw an authorisation, it shall consult with the NCA of the Member State where the credit institution is established at least 25 working days before the date on which it plans to make its decision. In duly justified urgent cases, the time limit for the consultation may be reduced to five working days.
3. If the ECB intends to withdraw an authorisation, it shall inform the relevant NCAs of any comments provided by the credit institution. The credit institution's right to be heard, as provided for in Article 31, shall apply.
4. The ECB shall coordinate with the national resolution authority with regard to a proposal to withdraw an authorisation in accordance with Article 14(5) of the SSM Regulation. The ECB shall inform the NCA immediately after initiating contact with the national resolution authority.

Article 83

ECB decision on the withdrawal of an authorisation

1. The ECB shall take a decision on the withdrawal of an authorisation without undue delay. In doing so it may accept or reject the relevant draft withdrawal decision.
2. In taking its decision, the ECB shall take into account all of the following: (a) its assessment of the circumstances justifying withdrawal; (b) where applicable, the NCA's draft withdrawal decision; (c) consultation with the relevant NCA and, where the NCA is not the national resolution authority, the national resolution authority (together with the NCA, the 'national authorities'); (d) any comments provided by the credit institution pursuant to Articles 81(2) and 82(3).
3. The ECB shall also take a decision in the cases described in Article 84 if the relevant national resolution authority does not object to the withdrawal of the authorisation, or the ECB determines that proper actions necessary to maintain financial stability have not been implemented by the national authorities.

Article 84

Procedure in case of potential resolution measures to be taken by national authorities

1. If the national resolution authority notifies its objection to the ECB's intention to withdraw an authorisation, the ECB and the national resolution authority shall agree on a time period during which the ECB shall abstain from proceeding with the withdrawal of the authorisation. The ECB shall inform the NCA immediately after initiating contact with the national resolution authority in order to reach this agreement.
2. After the expiry of the agreed time period, the ECB shall assess whether it intends to proceed to withdraw the authorisation or to extend the agreed time period in accordance with Article 14(6) of the SSM Regulation, taking into account any progress made. The ECB shall consult with both the relevant NCA and the national resolution authority, if different from the NCA. The NCA shall inform the ECB of the measures taken by these authorities and its assessment of the consequences of a withdrawal.
3. If the national resolution authority does not object to the withdrawal of an authorisation, or the ECB determines that proper actions necessary to maintain financial stability have not been implemented by national authorities, then Article 83 shall apply.

TITLE 3

COOPERATION WITH REGARD TO THE ACQUISITION OF QUALIFYING HOLDINGS

Article 85

Notification to NCAs of the acquisition of a qualifying holding

1. An NCA that receives a notification of an intention to acquire a qualifying holding in a credit institution established in that participating Member State shall notify the ECB of such notification no later than five working days following the acknowledgement of receipt in accordance with Article 22(2) of Directive 2013/36/EU.
2. The NCA shall notify the ECB if it has to suspend the assessment period due to a request for additional information. The NCA shall send any such additional

information to the ECB within 5 working days following receipt thereof by the NCA.

3. The NCA shall also inform the ECB of the date by which the decision to oppose or not to oppose the acquisition of a qualifying holding has to be notified to the applicant pursuant to the relevant national law.

Article 86

Assessment of potential acquisitions

1. The NCA to which an intention to acquire a qualifying holding in a credit institution is notified shall assess whether the potential acquisition complies with all the conditions laid down in the relevant Union and national law. Following this assessment, the NCA shall prepare a draft decision for the ECB to oppose or not to oppose the acquisition.

2. The NCA shall submit the draft decision to oppose or not to oppose the acquisition to the ECB at least 15 working days before the expiry of the assessment period as defined by the relevant Union law.

Article 87

ECB decision on acquisition

The ECB shall decide whether or not to oppose the acquisition on the basis of its assessment of the proposed acquisition and the NCA's draft decision. The right to be heard, as provided for in Article 31, shall apply.

TITLE 4

NOTIFICATION OF DECISIONS ON COMMON PROCEDURES

Article 88

Procedures for notification of decisions

1. The ECB shall notify the parties of the following decisions without undue delay in accordance with Article 35:

- (a) an ECB decision on the withdrawal of an authorisation as a credit institution;

- (b) an ECB decision on the acquisition of a qualifying holding in a credit institution.
2. The ECB shall notify the relevant NCA without undue delay of any of the following decisions:
- (a) an ECB decision on an application for authorisation as a credit institution;
 - (b) an ECB decision on the withdrawal of an authorisation as a credit institution;
 - (c) an ECB decision on the acquisition of a qualifying holding in a credit institution.
3. The NCA shall notify the applicant for authorisation of the following decisions:
- (a) a draft authorisation decision;
 - (b) an NCA decision to reject the application for authorisation where the applicant does not comply with the conditions for authorisation set out in the relevant national law;
 - (c) an ECB decision to object to the draft authorisation decision referred to in (a);
 - (d) an ECB decision of authorisation.
4. The NCA shall notify the relevant national resolution authority of the ECB decision on the withdrawal of an authorisation as a credit institution.
5. The ECB shall notify the European Banking Authority (EBA) of every ECB decision to grant or to withdraw an authorisation as a credit institution as well as of each lapsing of an authorisation. In doing so, the ECB shall specify the reasons for the decisions on the withdrawal of an authorisation or for the lapsing of an authorisation.

PART VI

PROCEDURES FOR THE SUPERVISION OF SIGNIFICANT SUPERVISED ENTITIES

TITLE 1

SUPERVISION OF SIGNIFICANT SUPERVISED ENTITIES AND ASSISTANCE BY NCAS

Article 89

Supervision of significant supervised entities

The ECB shall perform the direct supervision of significant supervised entities in accordance with the procedures set out in Part II, in particular in respect of the tasks and the composition of joint supervisory teams.

Article 90

Role of the NCAs in assisting the ECB

1. An NCA shall assist the ECB in the performance of its tasks under the conditions set out in the SSM Regulation and this Regulation, and shall, in particular, perform all the following activities:

- (a) submit draft decisions to the ECB in respect of significant supervised entities established in its participating Member State, in accordance with Article 91;
- (b) assist the ECB in preparing and implementing any acts relating to the exercise of the tasks conferred on the ECB by the SSM Regulation, including assisting in verification activities and the day-to-day assessment of the situation of a significant supervised entity;
- (c) assist the ECB in enforcing its decisions, using when necessary the powers referred to in the third subparagraph of Article 9(1) and Article 11(2) of the SSM Regulation.

2. When assisting the ECB, an NCA shall follow the ECB's instructions in relation to significant supervised entities.

*Article 91***Draft decisions to be prepared by NCAs for the ECB's consideration**

1. In accordance with Article 6(3) and Article 6(7)(b) of the SSM Regulation, the ECB may request an NCA to prepare a draft decision regarding the exercise of the tasks referred to in Article 4 of the SSM Regulation for its consideration.

The request shall specify the time limit for sending the draft decision to the ECB.

2. An NCA may also, on its own initiative, submit a draft decision in respect of a significant supervised entity to the ECB for its consideration through the joint supervisory team.

*Article 92***Exchange of information**

The ECB and the NCAs shall, without undue delay, exchange information relating to significant supervised entities where there is a serious indication that those significant supervised entities can no longer be relied on to fulfil their obligations towards their creditors and, in particular, can no longer provide security for the assets entrusted to them by their depositors, or where there is a serious indication of circumstances that could lead to a determination that the credit institution concerned is unable to repay the deposits as referred to in Article 1(3)(i) of Directive 94/19/EC of the European Parliament and of the Council (¹⁵). The ECB and the NCAs shall do so prior to a decision relating to such a determination.

TITLE 2**COMPLIANCE WITH FIT AND PROPER REQUIREMENTS FOR PERSONS RESPONSIBLE FOR MANAGING CREDIT INSTITUTIONS***Article 93***Assessment of the suitability of members of the management bodies of significant supervised entities**

1. To ensure that institutions have in place robust governance arrangements, and without prejudice to relevant Union and national law and Part V, a significant supervised entity shall notify the relevant NCA of any change to the members of its management bodies in their managerial and supervisory functions (hereinafter the

¹⁵ Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5).

‘managers’) within the meaning of Articles 3(1)(7) and 3(2) of Directive 2013/36/EU, including the renewal of the managers’ term of office. The relevant NCA shall notify the ECB of any such change without undue delay informing it of the time limit within which a decision has to be taken and notified in accordance with the relevant national law.

2. To assess the suitability of managers of significant supervised entities, the ECB shall have the supervisory powers that competent authorities have under the relevant Union and national law.

Article 94

On-going review of managers’ suitability

1. A significant supervised entity shall inform the relevant NCA of any new facts that may affect an initial assessment of suitability or any other issue which could impact on the suitability of a manager without undue delay once these facts or issues are known to the supervised entity or the relevant manager. The relevant NCA shall notify the ECB of such new facts or issues without undue delay.

2. The ECB may initiate a new assessment based on the new facts or issues referred in paragraph 1 or if the ECB becomes aware of any new facts that may have an impact on the initial assessment of the relevant manager or any other issue which could impact on the suitability of a manager. The ECB shall then decide on the appropriate action in accordance with the relevant Union and national law and shall inform the relevant NCA of such action without undue delay.

TITLE 3

OTHER PROCEDURES TO BE APPLIED BY SIGNIFICANT SUPERVISED ENTITIES

Article 95

Requests, notifications or applications by significant supervised entities

1. Without prejudice to the specific procedures provided for in particular in Part V and to its ordinary interaction with its NCA, a significant supervised entity shall address to the ECB all its requests, notifications or applications relating to the exercise of the tasks conferred on the ECB.

2. The ECB shall make any such request, notification or application available to the relevant NCA and may request the NCA to prepare a draft decision in accordance with Article 91.

3. In case of substantial changes compared to the authorisation given for the initial request, notification or application, the significant supervised entity shall address a new request, notification or application to the ECB in accordance with the procedure referred to in paragraph 1.

PART VII

PROCEDURES FOR THE SUPERVISION OF LESS SIGNIFICANT SUPERVISED ENTITIES

TITLE 1

NCAs' NOTIFICATION TO THE ECB OF MATERIAL NCA SUPERVISORY PROCEDURES AND MATERIAL DRAFT SUPERVISORY DECISIONS

Article 96

Deterioration of the financial situation of a less significant supervised entity

NCAs shall inform the ECB where the situation of any less significant supervised entity deteriorates rapidly and significantly, especially if such deterioration could lead to a request for direct or indirect financial assistance from the ESM, without prejudice to the application of Article 62.

Article 97

NCAs' notification to the ECB of material NCA supervisory procedures

1. To enable the ECB to exercise oversight over the functioning of the system, as laid down in Article 6(5)(c) of the SSM Regulation, NCAs shall provide the ECB with information relating to material NCA supervisory procedures concerning less significant supervised entities. The ECB shall define general criteria, in particular taking into account the risk situation and potential impact on the domestic financial system of the less significant supervised entity concerned, to determine for which less significant supervised entities which information shall be notified. The information shall be provided by the NCAs ex ante or in duly justified cases of urgency simultaneously to opening a procedure.

2. The material NCA supervisory procedures referred to in paragraph 1 shall consist of:

- (a) the removal of members of the management boards of the less significant supervised entities and the appointment of special managers to take over the management of the less significant supervised entities; and
- (b) the procedures which have a significant impact on the less significant supervised entity.

3. In addition to the information requirements set out by the ECB in accordance with this Article, the ECB may, at any time, request from NCAs information on the performance of the tasks carried out by them in respect of less significant supervised entities.

4. In addition to the information requirements set out by the ECB in accordance with this Article, NCAs shall, on their own initiative, notify the ECB of any other NCA supervisory procedure which:

- (a) they consider material; or
- (b) may negatively affect the reputation of the SSM.

5. If the ECB requests an NCA to further assess specific aspects of a material NCA supervisory procedure, this request shall specify which aspects are concerned. The ECB and the NCA shall respectively ensure that the other party has sufficient time to enable the procedure and the SSM as a whole to function efficiently.

Article 98

Notification by NCAs to the ECB of material draft supervisory decisions

1. To enable the ECB to exercise oversight over the functioning of the system, as laid down in Article 6(5)(c) of the SSM Regulation, NCAs shall send to the ECB draft supervisory decisions that fulfil the criteria laid down in paragraphs 2 and 3 where the draft decision concerns the less significant supervised entities for which the ECB considers that, based on the general criteria defined by the ECB regarding their risk situation and potential impact on the domestic financial system, the information shall be notified to it.

2. Subject to paragraph 1, draft supervisory decisions shall be sent to the ECB prior to being addressed to less significant supervised entities if such decisions:

- (a) relate to the removal of members of the management boards of the less significant supervised entities and the appointment of special managers; or
- (b) have a significant impact on the less significant supervised entity.

3. In addition to the information requirements laid down in paragraphs 1 and 2, NCAs shall transmit to the ECB any other draft supervisory decisions:

- (a) on which the ECB's views are sought; or
- (b) which may negatively affect the reputation of the SSM.

4. NCAs shall send draft decisions meeting the criteria laid down in paragraphs 1, 2 and 3, and that therefore are deemed material draft supervisory decisions, to the ECB at least 10 days in advance of the planned date of adoption of the decision. The ECB shall express its views on the draft decision within a reasonable time before the planned adoption of the decision. In cases of urgency, a reasonable time period for sending a draft decision which meets the criteria laid down in paragraphs 1, 2 and 3 to the ECB shall be defined by the relevant NCA.

TITLE 2

EX-POST REPORTING BY NCAS TO THE ECB REGARDING LESS SIGNIFICANT SUPERVISED ENTITIES

Article 99

General obligation of NCAs to report to the ECB

1. To enable the ECB to exercise oversight over the functioning of the SSM pursuant to Article 6(5)(c) of the SSM Regulation, and without prejudice to Chapter 1, the ECB may require NCAs to report to the ECB on a regular basis on the measures they have taken and on the performance of the tasks they are to carry out in accordance with Article 6(6) of the SSM Regulation. The ECB shall inform the NCAs annually of the categories of less significant supervised entities and the nature of the information required.

2. The requirements laid down in accordance with paragraph 1 shall be without prejudice to the ECB's right to make use of the powers referred to in Articles 10 to 13 of the SSM Regulation in respect of less significant supervised entities.

Article 100

Frequency and scope of reports to be submitted by NCAs to the ECB

NCAs shall submit to the ECB an annual report on less significant supervised entities, less significant supervised groups or categories of less significant supervised entities in accordance with the ECB's requirements.

PART VIII

**COOPERATION BETWEEN THE ECB, NCAs AND NDAs WITH REGARD
TO MACRO-PRUDENTIAL TASKS AND TOOLS**

TITLE 1

DEFINITION OF MACRO-PRUDENTIAL TOOLS

Article 101

General provisions

1. For the purpose of this Part, macro-prudential tools means any of the following instruments:

- (a) the capital buffers within the meaning of Articles 130 to 142 of Directive 2013/36/EU;
- (b) the measures for domestically authorised credit institutions, or a subset of those credit institutions pursuant to Article 458 of Regulation (EU) No 575/2013;
- (c) any other measures to be adopted by NDAs or NCAs aimed at addressing systemic or macro-prudential risks provided for, and subject to the procedures set out, in Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law.

2. The macro-prudential procedures referred to in Articles 5(1) and (2) of the SSM Regulation shall not constitute ECB or NCA supervisory procedures within the meaning of this Regulation, without prejudice to Article 22 of the SSM Regulation in relation to decisions addressed to individual supervised entities.

*Article 102***Application of macro-prudential tools by the ECB**

The ECB shall apply the macro-prudential tools referred to in Article 101 in accordance with this Regulation and with Articles 5(2) and 9(2) of the SSM Regulation, and where the macro-prudential tools are provided for in a directive, subject to implementation of that directive into national law. If an NDA does not set a buffer rate, this does not prevent the ECB from setting a buffer requirement in accordance with this Regulation and Article 5(2) of the SSM Regulation.

TITLE 2**PROCEDURAL PROVISIONS FOR THE USE OF MACRO-PRUDENTIAL TOOLS***Article 103***List of NCAs and NDAs responsible for macro-prudential tools**

The ECB shall collect from NCAs and NDAs of participating Member States information regarding the identity of the authorities designated for the respective macro-prudential tools referred to in Article 101 and the macro-prudential tools that these authorities can use.

*Article 104***Exchange of information and cooperation in respect of the use of macro-prudential tools by an NCA or an NDA**

1. In accordance with Article 5(1) of the SSM Regulation, the relevant NCA or NDA, when it intends to apply such tools, shall notify its intention to the ECB ten working days prior to taking such a decision. This notwithstanding, if an NCA or NDA intends to make use of a macro-prudential tool, it shall inform the ECB as early as possible of its identification of a macro-prudential or systemic risk for the financial system and, where possible, of the details of the intended tool. Such information shall as far as possible include specificities of the intended measure, including the intended date of application.
2. The notification of intent shall be provided by the NCA or NDA to the ECB.
3. If the ECB objects to the intended measure of an NCA or NDA, the ECB shall state its reasons for doing so within five working days after the day of receipt of the notification of intent. Such objection shall be in writing and state the reasons for the

objection. The NCA or NDA shall duly consider the ECB's reasons prior to proceeding with the decision as appropriate.

Article 105

Exchange of information and cooperation in respect of the ECB's use of macro-prudential tools

1. In accordance with Article 5(2) of the SSM Regulation, when the ECB intends on its own initiative, or on the proposal of an NCA or NDA, to apply higher requirements for capital buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks it shall cooperate closely with the NDAs in the Member States concerned and, in particular, notify its intention to the NDA or NCA 10 working days prior to taking such a decision. This notwithstanding, if the ECB intends to apply higher requirements for capital buffers or to apply more stringent measures aimed at addressing systemic or macro-prudential risks at the level of credit institutions subject to the procedures set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in Union law, it shall inform the relevant NCA or NDA as early as possible of its identification of a macro-prudential or systemic risk to the financial system and, where possible, of the details of the intended tool. Such information shall, as far as possible, include the specificities of the intended measure, including the intended date of application.

2. If any of the concerned NCAs or NDAs objects to the intended measure of the ECB, it shall state its reasons to the ECB within five working days after the day of receipt of the ECB's notification of intent. Such objection shall be in writing and state the reasons for the objection. The ECB shall duly consider those reasons prior to proceeding with the decision as appropriate.

PART IX

PROCEDURES FOR CLOSE COOPERATION

TITLE 1

GENERAL PRINCIPLES AND COMMON PROVISIONS

Article 106

Procedure for the establishment of a close cooperation

The ECB shall assess requests from non-euro area Member States for the establishment of a close cooperation in accordance with the procedure set out in Decision ECB/2014/5 ⁽¹⁶⁾.

Article 107

Principles to be applied when a close cooperation has been established

1. From the date on which an ECB decision pursuant to Article 7(2) of the SSM Regulation establishing close cooperation between the ECB and an NCA of a non-euro area Member State applies, and until the termination or suspension of such close cooperation, the ECB shall carry out the tasks referred to in Article 4(1) and (2) and Article 5 of the SSM Regulation in relation to supervised entities and groups established in the relevant participating Member State in close cooperation, in accordance with Article 6 of the SSM Regulation.

2. If a close cooperation has been established pursuant to Article 7(2) of the SSM Regulation the ECB and the NCA in close cooperation shall, in respect of significant supervised entities and groups and less significant supervised entities and groups established in the participating Member State in close cooperation, be in a position comparable to significant supervised entities and groups and less significant supervised entities and groups established in euro area Member States, taking into account that the ECB does not have directly applicable powers over significant supervised entities and groups and less significant supervised entities and groups established in the participating Member State in close cooperation.

3. In accordance with Article 6 of the SSM Regulation, the ECB may issue to an NCA in close cooperation instructions in respect of significant supervised entities and groups and only general instructions in respect of less significant supervised entities and groups.

4. Close cooperation shall end on the date on which the derogation pursuant to Article 139 TFEU is abrogated in respect of a participating Member State in close cooperation in accordance with Article 140(2) TFEU, and the provisions of this Part shall then cease to apply.

Article 108

Legal instruments related to supervision in connection with close cooperation

1. With respect to the tasks referred to in Article 4(1) and (2) and Article 5 of the SSM Regulation, the ECB may give instructions, make requests or issue guidelines.

¹⁶ Decision ECB/2014/5 of 31 January 2014 on the close cooperation with the national competent authorities of participating Member States whose currency is not the euro (not yet published in the Official Journal).

2. If the ECB considers that a measure relating to the tasks referred to in Article 4(1) and (2) of the SSM Regulation should be adopted by the NCA in close cooperation in relation to a supervised entity or group, it shall address to that NCA:

- (a) in respect of a significant supervised entity or significant supervised group, a general or specific instruction, a request or a guideline requiring the issuance of a supervisory decision in relation to that significant supervised entity or significant supervised group in the participating Member State in close cooperation, or
- (b) in respect of a less significant supervised entity or less significant supervised group, a general instruction or a guideline.

3. If the ECB considers that a measure relating to the tasks referred to in Article 5 of the SSM Regulation should be adopted by the NCA or NDA in close cooperation, it may address to that NCA or NDA a general or specific instruction, a request or a guideline requiring the application of higher requirements for capital buffers or the application of more stringent measures aimed at addressing systemic or macro-prudential risks.

4. The ECB shall specify in the instruction, request or guideline a relevant time limit for the adoption of the measure by the NCA in close cooperation, which shall be no less than 48 hours, unless earlier adoption is necessary to prevent irreparable damage. When determining the time limit, the ECB shall take into account the administrative and procedural law with which the relevant NCA in close cooperation has to comply.

5. An NCA in close cooperation shall take all necessary measures to comply with the ECB's instructions, requests or guidelines and it shall inform the ECB without undue delay of the measures it has taken.

TITLE 2

CLOSE COOPERATION IN RELATION TO PARTS III, IV, V, VIII, X AND XI

Article 109

Language regime under the regime of close cooperation

The arrangements referred to in Article 23 shall apply *mutatis mutandis* in respect of NCAs in close cooperation.

Article 110

Assessment of significance of credit institutions under the regime of close cooperation

1. The provisions of Part IV on the determination of the status of supervised entities or supervised groups as significant or less significant shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation in accordance with the provisions of this Article.
2. An NCA in close cooperation shall ensure that the procedures laid down in Part IV can be applied in respect of supervised entities and supervised groups established in its Member State.
3. In circumstances where Part IV provides for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.

Article 111

Common procedures under the regime of close cooperation

1. The provisions of Part V on common procedures shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in the participating Member States in close cooperation, subject to the provisions of this Article.
2. An NCA in close cooperation shall ensure that the procedures laid down in Part V can be applied in respect of supervised entities established in its Member State. In particular, the NCA in close cooperation shall ensure that the ECB receives any information and documentation needed to carry out the tasks conferred on it by the SSM Regulation.
3. In circumstances where Part V provides for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.
4. In circumstances where Part V provides for the relevant NCA to prepare a draft decision, an NCA in close cooperation shall submit a draft decision to the ECB and request instructions.

Article 112

Macro-prudential tools under the regime of close cooperation

The provisions of Part VIII on cooperation between the ECB, NCAs and NDAs with regard to macro-prudential tasks and tools shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.

Article 113

Administrative penalties under the regime of close cooperation

1. The provisions of Part X on administrative penalties shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.

2. In circumstances where Article 18 of the SSM Regulation in connection with Part X of this Regulation provide for the ECB to address a decision to a supervised entity or supervised group, the ECB shall, instead of addressing a decision to a supervised entity or supervised group, issue instructions to the NCA in close cooperation and that NCA shall address a decision to a supervised entity or supervised group in accordance with such instructions.

3. In cases where Article 18 of the SSM Regulation or Part X of this Regulation provides for the relevant NCA to address a decision to a significant supervised entity or significant supervised group, an NCA in close cooperation shall initiate proceedings with a view to taking action to ensure that appropriate administrative penalties are imposed only on the ECB's instructions. The NCA in close cooperation shall inform the ECB once a decision has been adopted.

Article 114

Investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation under the regime of close cooperation

1. The provisions of Part XI which relate to cooperation with regard to Articles 10 to 13 of the SSM Regulation shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation.

2. An NCA in close cooperation shall make use of the investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation in accordance with the ECB's instructions.

3. An NCA in close cooperation shall provide the ECB with findings resulting from the use of the investigatory powers pursuant to Articles 10 to 13 of the SSM Regulation.

4. An NCA in close cooperation shall ensure that designated ECB staff members can participate as observers in any investigation pursuant to Articles 10 to 13 of the SSM Regulation.

TITLE 3

CLOSE COOPERATION IN RESPECT OF SIGNIFICANT SUPERVISED ENTITIES

Article 115

Supervision of significant supervised entities in a participating Member State in close cooperation

1. Parts II and VI shall apply mutatis mutandis to significant supervised entities and significant supervised groups established in a participating Member State in close cooperation in accordance with the provisions of this Article.

2. An NCA in close cooperation shall ensure that the ECB receives all the information and reporting from and in respect of significant supervised entities and significant supervised groups which the NCA in close cooperation itself receives and which are necessary to carry out the tasks conferred on the ECB by the SSM Regulation.

3. A joint supervisory team shall be established to supervise each significant supervised entity or significant supervised group established in a participating Member State in close cooperation. The members of the joint supervisory team shall be appointed in accordance with Article 4. The NCA in close cooperation shall appoint the NCA sub-coordinator to act directly in relation to the significant supervised entity or significant supervised group, in accordance with the instructions of the JST coordinator.

4. An NCA in close cooperation shall ensure that designated ECB staff members are invited to participate in any on-site inspection carried out in respect of a significant supervised entity or significant supervised group. The ECB may determine the number of ECB staff members who will participate as observers.

5. In the context of consolidated supervision and colleges of supervisors, in circumstances where a parent undertaking is established in a euro area Member State or in a non-euro area participating Member State, the ECB, as competent authority, shall be the consolidating supervisor and shall chair the college of supervisors. The ECB shall invite the relevant NCA in close cooperation to appoint an NCA staff member as observer. The ECB may act by giving instructions to the relevant NCA in close cooperation.

Article 116

Decisions in respect of significant supervised entities and significant supervised groups

1. Without prejudice to the powers of NCAs in respect of tasks not conferred on the ECB pursuant to the SSM Regulation, an NCA in close cooperation shall adopt decisions in respect of significant supervised entities and significant supervised groups in its Member State only on the ECB's instructions. The NCA in close cooperation may also request instructions from the ECB.

2. An NCA in close cooperation shall make any decision in respect of a significant supervised entity or significant supervised group available to the ECB immediately.

3. An NCA in close cooperation shall inform the ECB in relation to both: (a) decisions it adopts under its powers in respect of tasks not conferred on the ECB pursuant to the SSM Regulation; and (b) decisions it adopts pursuant to the ECB's instructions, or as provided for in this Part.

TITLE 4

CLOSE COOPERATION IN RESPECT OF LESS SIGNIFICANT SUPERVISED ENTITIES AND LESS SIGNIFICANT SUPERVISED GROUPS

Article 117

Supervision of less significant supervised entities and less significant supervised groups

1. Part VII shall apply mutatis mutandis to less significant supervised entities and less significant supervised groups in participating Member States in close cooperation in accordance with the following provisions.

2. For the purposes of ensuring the consistency of supervisory outcomes within the SSM, the ECB may issue general instructions and guidelines and make requests to an NCA in close cooperation requiring it to adopt a supervisory decision in respect of less significant supervised entities or less significant supervised groups established in the participating Member State in close cooperation. Such general instructions, guidelines or requests may refer to groups or categories of credit institutions.

3. The ECB may also address to an NCA in close cooperation a request to further assess aspects of a material NCA procedure as provided for in Article 6(7)(c)(ii) of the SSM Regulation.

TITLE 5

PROCEDURE IN CASE OF DISAGREEMENT OF A PARTICIPATING MEMBER STATE IN CLOSE COOPERATION

Article 118

Procedure in case of disagreement with the Supervisory Board's draft decision pursuant to Article 7(8) of the SSM Regulation

1. The ECB shall inform the NCA in close cooperation of the Supervisory Board's complete draft decision in relation to a supervised entity or supervised group located in a participating Member State in close cooperation, subject to confidentiality requirements under Union law.

2. If the NCA in close cooperation disagrees with the Supervisory Board's complete draft decision, it shall, within five working days of receipt of the complete draft decision, notify the Governing Council in writing of the reasons for its disagreement.

3. The Governing Council shall decide on the matter within five working days of receipt of such notification, taking the reasons stated for the disagreement fully into account, and it shall provide the NCA in close cooperation with written reasons for its decision.

4. A participating Member State in close cooperation may request the ECB to terminate its close cooperation with immediate effect and shall then not be bound by any ensuing decision of the Governing Council.

Article 119

Procedure in case of disagreement with an objection of the Governing Council to a Supervisory Board's draft decision pursuant to Article 7(7) of the SSM Regulation

1. The ECB shall inform an NCA in close cooperation of any objection of the Governing Council to a complete draft decision of the Supervisory Board.
2. If the NCA in close cooperation disagrees with the Governing Council's objection to the Supervisory Board's complete draft decision it shall, within five working days of receiving the Governing Council's objection, notify the ECB of its reasons for its disagreement.
3. The Governing Council shall give its written opinion on the reasoned disagreement expressed by the NCA in close cooperation within 30 days of receipt of the reasoned disagreement and, stating its reasons for doing so, shall either confirm or withdraw its objection. The ECB shall inform the NCA in close cooperation thereof.
4. If the Governing Council confirms its objection, the NCA in close cooperation may, within five days of being informed that the Governing Council has confirmed its objection, notify the ECB that it will not be bound by any decision taken following amendment of the initial complete draft decision to which the Governing Council objects.

The ECB shall then consider suspending or terminating the close cooperation with the NCA in close cooperation, taking due account of supervisory effectiveness, and shall take a decision in that respect. The ECB shall take into account, in particular, the factors referred to in Article 7(7) of the SSM Regulation.

PART X

ADMINISTRATIVE PENALTIES

TITLE 1

DEFINITIONS AND RELATIONSHIP TO COUNCIL REGULATION (EC) NO 2532/98 ⁽¹⁷⁾

Article 120

Definition of administrative penalties

For the purposes of this Part, ‘administrative penalties’ means either of the following:

- (a) administrative pecuniary penalties provided for and imposed under Article 18(1) of the SSM Regulation;
- (b) fines and periodic penalty payments provided for in Article 2 of Regulation (EC) No 2532/98 and imposed under Article 18(7) of the SSM Regulation.

Article 121

Relationship to Regulation (EC) No 2532/98

1. For the purposes of the procedures provided for in Article 18(1) of the SSM Regulation, the procedural rules contained in this Regulation shall apply, in accordance with Article 18(4) of the SSM Regulation.
2. For the purposes of the procedures provided for in Article 18(7) of the SSM Regulation, the procedural rules contained in this Regulation shall complement those laid down in Regulation (EC) No 2532/98 and shall be applied in accordance with Articles 25 and 26 of the SSM Regulation.

Article 122

ECB powers to impose administrative penalties under Article 18(7) of the SSM Regulation

The ECB shall impose administrative penalties, as defined in Article 120(b), if there is a failure to comply with obligations under ECB regulations or decisions on:

- (a) significant supervised entities, or
- (b) less significant supervised entities where the relevant ECB regulations or decisions impose obligations on less significant supervised entities vis-à-vis the ECB.

¹⁷ Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).

TITLE 2

PROCEDURAL RULES FOR THE IMPOSITION OF ADMINISTRATIVE PENALTIES, OTHER THAN PERIODIC PENALTY PAYMENTS, ON SUPERVISED ENTITIES IN EURO AREA MEMBER STATES

Article 123

Establishment of an independent investigating unit

1. The ECB shall establish an internal independent investigating unit (hereinafter the ‘investigating unit’) which shall be composed of investigating officers designated by the ECB.
2. The investigating officers shall not be involved, and shall not for the two years before taking up the position of investigating officer, have been involved in the direct or indirect supervision or authorisation of the relevant supervised entity.
3. The investigating officers shall perform their investigative functions independently of the Supervisory Board and Governing Council and shall not take part in the deliberations of the Supervisory Board and Governing Council.

Article 124

Referral of alleged breaches to the investigating unit

Where the ECB, in carrying out its tasks under the SSM Regulation, considers that there is reason to suspect that one or more breaches

- (a) under relevant directly applicable Union law, as referred to in Article 18(1) of the SSM Regulation, are being, or have been, committed by a significant supervised entity having its head office in a euro area Member State, or
- (b) (b) of an ECB regulation or decision as referred to in Article 18(7) of the SSM Regulation are being or have been, committed by a supervised entity having its head office in an euro area Member State, the ECB shall refer the matter to the investigating unit.

Article 125

Powers of the investigating unit

1. For the purpose of investigating alleged breaches as referred to in Article 124, the investigating unit may exercise the powers granted to the ECB under the SSM Regulation.
2. Where a request is made to the supervised entity concerned under the powers granted to the ECB pursuant to the SSM Regulation in the context of an investigation, the investigating unit shall specify the subject matter and the purpose of the investigation.
3. When carrying out its tasks, the investigating unit shall have access to all documents and information gathered by the ECB and, where appropriate, by the relevant NCAs in the course of their supervisory activities.

Article 126

Procedural rights

1. On completion of an investigation and before a proposal for a complete draft decision is prepared and submitted to the Supervisory Board, the investigating unit shall notify the supervised entity concerned in writing of the findings under the investigation carried out and of any objections raised thereto.
2. In the notification referred to in paragraph 1, the investigating unit shall inform the supervised entity concerned of its right to make submissions in writing to the investigating unit on the factual results and the objections raised against the entity as set out therein, including the individual provisions which have been allegedly infringed, and it shall set a reasonable time limit for receipt of such submissions. The ECB shall not be obliged to take into account written submissions received after the time limit set by the investigating unit has expired.
3. The investigating unit may also, following notification in accordance with paragraph 1, invite the supervised entity concerned to attend an oral hearing. The parties subject to investigation may be represented and/or assisted by lawyers or other qualified persons at the hearing. Oral hearings shall not be held in public.
4. The right of access to the file of the investigating unit by the supervised entity under investigation shall be determined in accordance with Article 32.

Article 127

Examination of the file by the Supervisory Board

1. If an investigating unit considers that an administrative penalty should be imposed on a supervised entity, the investigating unit shall submit a proposal for a complete

draft decision to the Supervisory Board, determining that the supervised entity concerned has committed a breach and specifying the administrative penalty to be imposed. The investigating unit shall also submit its file on the investigation to the Supervisory Board.

2. The investigating unit shall base its proposal for a complete draft decision only on facts and objections on which the supervised entity has had the opportunity to comment.

3. If the Supervisory Board considers that the file submitted by the investigating unit is incomplete, it may return the file to the investigating unit together with a reasoned request for additional information. Article 125 shall apply accordingly.

4. If the Supervisory Board, on the basis of a complete file, agrees with the proposal for a complete draft decision of the investigating unit in respect of one or more breaches and the factual basis for such decision, it shall adopt the complete draft decision proposed by the investigating unit regarding the breach or breaches it agrees have taken place. To the extent that the Supervisory Board does not agree with the proposal, a decision shall be taken pursuant to the relevant paragraphs of this Article.

5. If the Supervisory Board, on the basis of a complete file, considers that the facts described in the proposal for a complete draft decision as referred to in paragraph 1 do not appear to reveal sufficient evidence of a breach as referred to in Article 124, it may adopt a complete draft decision closing the case.

6. If the Supervisory Board, on the basis of a complete file, agrees with the determination in the proposal for a complete draft decision of the investigating unit that the supervised entity concerned has committed a breach, but disagrees with the proposed recommendation concerning administrative penalties, it shall adopt the complete draft decision, specifying the administrative penalty it considers appropriate.

7. If the Supervisory Board, on the basis of a complete file, does not agree with the proposal of the investigating unit, but concludes that a different breach has been committed by a supervised entity, or that there is a different factual basis for the proposal of the investigating unit, it shall inform the supervised entity concerned in writing of its findings and of the objections raised against the supervised entity concerned. Article 126(2) to (4) shall apply accordingly with regard to the Supervisory Board.

8. The Supervisory Board shall prepare a complete draft decision determining whether or not the supervised entity concerned has committed a breach and specifying the administrative penalties to be imposed, if any.

9. Complete draft decisions adopted by the Supervisory Board and to be proposed to the Governing Council shall be based only on facts and objections on which the supervised entity has had the opportunity to comment.

Article 128

Definition of total annual turnover for the purpose of determining the upper limit for administrative pecuniary penalties

The total annual turnover as referred to in Article 18(1) of the SSM Regulation shall mean the annual turnover, as defined in Article 67 of Directive 2013/36/EU, of a supervised entity according to the most recent available annual financial accounts of such supervised entity. Where the supervised entity that has committed the breach belongs to a supervised group, the relevant total annual turnover shall be the total annual turnover resulting from the most recent available consolidated annual financial accounts of the supervised group.

TITLE 3

PERIODIC PENALTY PAYMENTS

Article 129

Procedural rules applicable to periodic penalty payments

1. In the event of a continuing breach of a regulation or supervisory decision of the ECB, the ECB may impose a periodic penalty payment with a view to compelling the persons concerned to comply with the regulation or supervisory decision. The ECB shall apply the procedural rules of Article 22 of the SSM Regulation and Title 2 of Part III of this Regulation.
2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be calculated for each day of infringement until the person concerned complies with the ECB regulation or supervisory decision concerned.
3. The upper limits for periodic penalty payments shall be as specified in Regulation (EC) No 2532/98. The relevant period shall begin to run on the date stipulated in the decision imposing the periodic penalty payment. The earliest date stipulated in the decision shall be the date on which the person concerned is notified in writing of the ECB's reasons for imposing a periodic penalty payment.
4. Periodic penalty payments may be imposed for periods of no longer than six months following the date specified in the decision referred to in paragraph 3.

TITLE 4

TIME LIMITS

Article 130

Limitation periods for imposing administrative penalties

1. The ECB's power to impose administrative penalties on supervised entities shall be subject to a limitation period of five years, which shall begin to run on the day on which the breach is committed. In the case of on-going or repeated breaches, the limitation period shall begin to run on the day on which the breach ceases.
2. Any action taken by the ECB for the purposes of the investigation or proceedings in respect of a breach under Article 124 shall cause the limitation period for imposing administrative pecuniary penalties to be interrupted. The limitation period shall be interrupted with effect from the date on which the action is notified to the supervised entity concerned.
3. Each interruption shall cause the limitation period to begin to run afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the duration of the limitation period has elapsed without the ECB having imposed an administrative penalty. That period shall be extended by any period of time for which the limitation period is suspended pursuant to paragraph 5.
4. The limitation period for imposing administrative penalties shall be suspended for any period during which the decision of the ECB's Governing Council is subject to review proceedings before the Administrative Board of Review or appeal proceedings before the Court of Justice.
5. The limitation period shall also be suspended for such period as criminal proceedings are pending against the supervised entity in connection with the same facts.

Article 131

Limitation periods for the enforcement of administrative penalties

1. The ECB's power to enforce a decision taken pursuant to Article 18(1) and (7) of the SSM Regulation shall be subject to a limitation period of five years, which shall begin to run on the date of adoption of the decision in question.

2. Any action of the ECB designed to enforce payment or payment terms and conditions under the administrative penalty concerned shall cause the limitation period for the enforcement of administrative penalties to be interrupted.

3. Each interruption shall cause the limitation period to begin to run afresh.

4. The limitation period for the enforcement of administrative penalties shall be suspended for such period as:

- (a) time to pay is allowed;
- (b) enforcement of payment is suspended pursuant to a decision of either the ECB's Governing Council or the Court of Justice.

TITLE 5

PUBLICATION OF DECISIONS AND EXCHANGE OF INFORMATION

Article 132

Publication of decisions regarding administrative penalties

1. The ECB shall publish on its website without undue delay, and after the decision has been notified to the supervised entity concerned, any decision imposing an administrative penalty, as defined in Article 120, on a supervised entity in a participating Member State, including information on the type and nature of the breach and the identity of the supervised entity concerned, unless publication in this manner would either:

- (a) jeopardise the stability of the financial markets or an on-going criminal investigation; or
- (b) cause, insofar as it can be determined, disproportionate damage to the supervised entity concerned.

In these circumstances, decisions regarding administrative penalties shall be published on an anonymised basis. Alternatively, where such circumstances are likely to cease within a reasonable period of time, publication under this paragraph may be postponed for such period of time.

2. If an appeal to the Court of Justice in respect of a decision under paragraph 1 is pending, the ECB shall, without undue delay, also publish on its official website information on the status of the appeal in question and the outcome thereof.

3. The ECB shall ensure that information published under paragraphs 1 and 2 remains on its official website for at least five years.

Article 133

Informing the EBA

Subject to the professional secrecy requirements referred to in Article 27 of the SSM Regulation, the ECB shall inform the EBA of all administrative penalties, as defined in Article 120, which are imposed on a supervised entity in a euro area Member State, including any appeal in relation to such penalties and the outcome thereof.

TITLE 6

**COOPERATION BETWEEN THE ECB AND NCAs IN EURO AREA
MEMBER STATES UNDER ARTICLE 18(5) OF THE SSM REGULATION**

Article 134

Significant supervised entities

1. In respect of significant supervised entities, an NCA shall open proceedings only at the request of the ECB where necessary for the purpose of carrying out the tasks conferred on the ECB under the SSM Regulation, with a view to taking action to ensure that appropriate penalties are imposed in cases not covered by Article 18(1) of the SSM Regulation. Such cases include the application of:

- (a) non-pecuniary penalties in the event of a breach of directly applicable Union law by legal or natural persons, as well as any pecuniary penalties in the event of a breach of directly applicable Union law by natural persons;
- (b) any pecuniary or non-pecuniary penalties in the event of a breach by legal or natural persons of any national law transposing relevant Union directives;
- (c) any pecuniary or non-pecuniary penalties to be imposed in accordance with relevant national legislation which confers specific powers on the NCAs in euro area Member States which are currently not required by the relevant Union law.

The provisions of this paragraph shall be without prejudice to the possibility for an NCA to open proceedings on its own initiative regarding the application of national law for tasks not conferred on the ECB.

2. An NCA may ask the ECB to request it to open proceedings in the cases referred to in paragraph 1.

3. An NCA of a participating Member State shall notify the ECB of the completion of a penalty procedure initiated at the request of the ECB pursuant to paragraph 1. In particular, the ECB shall be informed of the penalties imposed, if any.

Article 135

Reporting in respect of less significant supervised entities

The relevant NCA shall notify the ECB on a regular basis of all administrative penalties imposed on less significant supervised entities in connection with the exercise of its supervisory tasks.

TITLE 7

CRIMINAL OFFENCES

Article 136

Evidence of facts potentially giving rise to a criminal offence

Where, in carrying out its tasks under the SSM Regulation, the ECB has reason to suspect that a criminal offence may have been committed, it shall request the relevant NCA to refer the matter to the appropriate authorities for investigation and possible criminal prosecution, in accordance with national law.

TITLE 8

PROCEEDS FROM PENALTIES

Article 137

Proceeds from penalties

The proceeds from administrative penalties imposed by the ECB under Article 18(1) and (7) of the SSM Regulation shall be the ECB's property.

PART XI

ACCESS TO INFORMATION, REPORTING, INVESTIGATIONS AND ON-SITE INSPECTIONS

TITLE 1

GENERAL PRINCIPLES

Article 138

Cooperation between the ECB and NCAs as regards the powers referred to in Articles 10 to 13 of the SSM Regulation

The provisions laid down in this Part shall apply to significant supervised entities. They shall also apply to less significant supervised entities if the ECB decides, pursuant to Article 6(5)(d) of the SSM Regulation, to make use of the powers referred to in Articles 10 to 13 of the SSM Regulation with respect to a less significant supervised entity. This shall however be without prejudice to the NCAs' competence to supervise less significant supervised entities directly pursuant to Article 6(6) of the SSM Regulation.

TITLE 2

COOPERATION IN RESPECT OF REQUESTS FOR INFORMATION

Article 139

Ad-hoc requests for information under Article 10 of the SSM Regulation

1. In accordance with Article 10 of the SSM Regulation and subject to and in compliance with relevant Union law, the ECB may require a legal or natural person referred to in Article 10(1) thereof to provide all information that is necessary to exercise the tasks conferred on it by the SSM Regulation. The ECB shall specify the information concerned and a reasonable time limit within which it is to be provided to the ECB.
2. Before requiring information to be provided in accordance with Article 10(1) of the SSM Regulation, the ECB shall first take account of information already available to NCAs.
3. The ECB shall make available to the relevant NCA a copy of any information received from the legal or natural person to whom the request for information has been addressed.

TITLE 3

REPORTING

Article 140

Tasks related to supervisory reporting to competent authorities

1. The ECB shall be responsible for ensuring compliance with relevant Union law which imposes requirements on credit institutions in the field of reporting to competent authorities.
2. For this purpose, the ECB shall have the tasks and powers with regard to significant supervised entities as laid down in relevant Union law on supervisory reporting. NCAs shall have the tasks and powers with regard to less significant supervised entities as laid down in relevant Union law on reporting to competent authorities.
3. Notwithstanding paragraph 2 and unless provided otherwise, each supervised entity shall communicate to its relevant NCA the information to be reported on a regular basis in accordance with relevant Union law. Unless specifically otherwise provided for, all information reported by supervised entities shall be submitted to the NCAs. They shall perform the initial data checks and make the information available to the ECB.
4. The ECB shall organise the processes relating to collection and quality review of data reported by supervised entities subject to, and in compliance with, relevant Union law and EBA implementing technical standards.

Article 141

Requests for information at recurring intervals under Article 10 of the SSM Regulation

1. In accordance with Article 10 of the SSM Regulation, in particular the power of the ECB to require information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes, and subject to and in compliance with relevant Union law, the ECB may require supervised entities to report additional supervisory information whenever such information is necessary for the ECB to carry out the tasks conferred on it by the SSM Regulation. Subject to the conditions set out in relevant Union law, the ECB may specify in particular the categories of information that should be reported as well as the processes, formats, frequencies and time limits for provision of the information concerned.

2. If the ECB requires legal or natural persons as specified in Article 10(1) of the SSM Regulation to provide information at recurring intervals, Article 140(3) and (4) of this Regulation shall apply accordingly.

TITLE 4

COOPERATION WITH REGARD TO GENERAL INVESTIGATIONS

Article 142

Launch of a general investigation under Article 11 of the SSM Regulation

The ECB shall conduct an investigation of any legal or natural person referred to in Article 10(1) of the SSM Regulation on the basis of an ECB decision. Such decision shall specify all of the following:

- (a) the legal basis for the decision and its purpose;
- (b) the intention to exercise the powers laid down in Article 11(1) of the SSM Regulation;
- (c) the fact that any obstruction of the investigation by the person being investigated constitutes a breach of an ECB decision within the meaning of Article 18(7) of the SSM Regulation, without prejudice to national law as laid down in Article 11(2) of the SSM Regulation.

TITLE 5

ON-SITE INSPECTIONS

Article 143

ECB decision to conduct an on-site inspection under Article 12 of the SSM Regulation

1. Pursuant to Article 12 of the SSM Regulation, in order to carry out the tasks assigned to it by the SSM Regulation, the ECB shall appoint on-site inspection teams as laid down in Article 144 to conduct all necessary on-site inspections on the premises of a legal person as referred to in Article 10(1) of the SSM Regulation.

2. Without prejudice to Article 142 and pursuant to Article 12(3) of the SSM Regulation, on-site inspections shall be conducted on the basis of an ECB decision, which shall at a minimum specify the following:

- (a) the subject matter and the purpose of the on-site inspection; and
- (b) the fact that any obstruction to the on-site inspection by the legal person subject thereto shall constitute a breach of an ECB decision within the meaning of Article 18(7) of the SSM Regulation, without prejudice to national law as laid down in Article 11(2) of the SSM Regulation.

3. If the on-site inspection follows an investigation conducted on the basis of an ECB decision, as referred to in Article 142, and provided that the on-site inspection has the same purpose and scope as the investigation, the officials and other persons authorised by the ECB and by an NCA shall be granted access to the business premises and land of the legal person subject to the investigation on the basis of the same decision, in accordance with Article 12(2) and (4) of the SSM Regulation and without prejudice to Article 13 thereof.

Article 144

Establishment and composition of on-site inspection teams

1. The ECB shall be in charge of the establishment and the composition of on-site inspection teams with the involvement of NCAs, in accordance with Article 12 of the SSM Regulation.
2. The ECB shall designate the head of the on-site inspection team from among ECB and NCA staff members.
3. The ECB and NCAs shall consult with each other and agree on the use of NCA resources with regard to the on-site inspection teams.

Article 145

Procedure and notification of an on-site inspection

1. The ECB shall notify the legal person subject to an on-site inspection of the ECB decision referred to in Article 143(2), and of the identity of the members of the on-site inspection team, at least five working days before the start of the on-site inspection. It shall notify the NCA of the Member State where the on-site inspection is to be conducted at least one week before notifying the legal person subject to the on-site inspection of such inspection.
2. If the proper conduct and efficiency of the inspection so require, the ECB may carry out an on-site inspection without notifying the supervised entity concerned beforehand. The NCA shall be notified as soon as possible before the start of such on-site inspection.

Article 146

Conduct of the on-site inspections

1. Those carrying out the on-site inspection shall follow the instructions of the head of the on-site inspection team.
2. Where the entity subject to the on-site inspection is a significant supervised entity, the head of the on-site inspection team shall be responsible for the coordination between the on-site inspection team and the joint supervisory team in charge of the supervision of that significant supervised entity.

PART XII

TRANSITIONAL AND FINAL PROVISIONS

Article 147

Start of direct supervision by the ECB when the ECB assumes its tasks for the first time

1. At least two months before 4 November 2014, the ECB shall address a decision to each supervised entity in respect of which it assumes the tasks conferred on it by the SSM Regulation confirming that it is a significant supervised entity. For entities that are members of a significant supervised group, the ECB shall notify the ECB decision to the supervised entity at the highest level of consolidation within the participating Member States and shall ensure that all supervised entities within the significant supervised group are duly informed. These decisions shall take effect from 4 November 2014.
2. Notwithstanding paragraph 1, if the ECB starts carrying out the tasks conferred on it before 4 November 2014, it shall address a decision to the entity concerned and to the relevant NCAs. Unless otherwise provided for therein, such decision shall take effect on notification. The relevant NCAs shall be informed in advance of the intention to issue such a decision as soon as possible.
3. Prior to adopting a decision pursuant to paragraph 1, the ECB shall provide the relevant supervised entity with an opportunity to make submissions in writing.

Article 148

Defining the format of the report on supervisory history and risk profile to be provided by NCAs to the ECB

1. The NCAs shall, by 4 August 2014 at the latest, communicate to the ECB the identity of the credit institutions they have authorised as well as a report on these credit institutions in a format specified by the ECB.
2. Notwithstanding paragraph 1, if the ECB starts carrying out the tasks conferred on it before 4 November 2014, it may request NCAs to communicate to the ECB the identity of the relevant credit institutions as well as a report in a format specified by the ECB within a reasonable time limit, which shall be stated in the request.

Article 149

Continuity of existing procedures

1. Unless the ECB decides otherwise, if an NCA has initiated supervisory procedures for which the ECB becomes competent on the basis of the SSM Regulation, and this occurs before 4 November 2014, then the procedures laid down in Article 48 shall apply.
2. By derogation from Article 48, this Article shall apply to common procedures.

Article 150

Supervisory decisions taken by NCAs

Without prejudice to the exercise by the ECB of the powers conferred on it by the SSM Regulation, supervisory decisions taken by NCAs before 4 November 2014 shall remain unaffected.

Article 151

Member States whose currency becomes the euro

1. Subject to paragraph 2, in circumstances where a derogation pursuant to Article 139 TFEU is abrogated for a Member State in accordance with Article 140(2) TFEU, Articles 148 to 150 shall apply accordingly in respect of supervisory procedures or decisions initiated or taken by the NCA of such Member State.
2. The reference to 4 November 2014 in Articles 149 and 150 shall be construed as a reference to the date on which the euro is adopted in the relevant Member State.

Article 152

Continuity of existing arrangements

All existing cooperation arrangements with other authorities entered into by an NCA prior to 4 November 2014 that cover at least in part tasks transferred to the ECB by the SSM Regulation shall continue to apply. The ECB may decide to participate in such existing cooperation arrangements in accordance with the procedure applicable to the arrangements in question or establish new cooperation arrangements with third parties for the tasks transferred to it by the SSM Regulation. An NCA shall continue to apply existing cooperation arrangements only to the extent they are not replaced by ECB cooperation arrangements. Where necessary for the execution of the existing cooperation arrangements, the NCA shall be responsible for assisting the ECB, in particular by exercising its rights and performing its responsibilities under the arrangements in coordination with the ECB.

Article 153

Final provisions

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 16 April 2014.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

6. SINGLE RESOLUTION BOARD

REGULATIONS

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) Over the past decades the Union has made progress in creating an internal market for banking services. A better integrated internal market for banking services is

¹ OJ C 109, 11.4.2014, p. 2.

² OJ C 67, 6.3.2014, p. 58.

³ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 14 July 2014.

essential in order to foster economic growth in the Union and adequate funding of the real economy. However, the financial and economic crisis has shown that the functioning of the internal market in this area is under threat and that there is an increasing risk of financial fragmentation. This is a real source of concern in an internal market in which banks should be able to carry out significant cross-border activities. Interbank markets have become less liquid and cross-border bank activities are decreasing due to fear of contagion, lack of confidence in other national banking systems and in the ability of Member States to support banks.

(2) Divergences between national resolution rules in different Member States and corresponding administrative practices and the lack of a unified decision-making process for resolution in the banking union contribute to that lack of confidence and market instability, as they do not ensure predictability as to the possible outcome of a bank failure.

(3) In particular, the different incentives and practices of Member States in the treatment of creditors of banks under resolution and in the bail-out of failing banks with tax payers' money have an impact on the perceived credit risk, financial soundness and solvency of their banks and thus create an unlevel playing field. This undermines public confidence in the banking sector and obstructs the exercise of the freedom of establishment and the free provision of services within the internal market because financing costs would be lower without such differences in practices of Member States.

(4) Divergences between national resolution rules in different Member States and corresponding administrative practices may lead banks and customers to have higher borrowing costs only because of their place of establishment and irrespective of their real creditworthiness. In addition, customers of banks in some Member States face higher borrowing rates than customers of banks in other Member States, irrespective of their own creditworthiness.

(5) The European Council on 18 October 2012 concluded that, 'In the light of the fundamental challenges facing it, the Economic and Monetary Union needs to be strengthened to ensure economic and social welfare as well as stability and sustained prosperity' and 'that the process towards deeper economic and monetary union should build on the Union institutional and legal framework and be characterised by openness and transparency towards Member States whose currency is not the euro and by respect for the integrity of the internal market'. To that end a banking union is established, underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole. The process towards establishing a banking union is characterised by openness and transparency towards non-participating Member States and by respect for the integrity of the internal market.

(6) The European Parliament, in its resolution of 7 July 2010 with recommendations to the Commission on Cross- Border Crisis Management in the Banking Sector, requested the Commission to submit ‘on the basis of Articles 50 and 114 of the Treaty on the Functioning of the European Union, one or more legislative proposals relating to an EU crisis-management framework, an EU financial stability fund, and a resolution unit’ and, in its resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup ‘Towards a genuine Economic and Monetary Union’, stated that ‘breaking up the negative feedback loops between sovereigns, banks and the real economy is crucial for a smooth functioning of the EMU’, stressed the ‘urgent need for additional and far-reaching measures to solve the crisis in the banking sector’ and for the ‘realisation of a fully operational European banking union’ while ensuring ‘the continued proper functioning of the internal market for financial services and the free movement of capital’.

(7) As a first step towards a banking union, the single supervisory mechanism established by Council Regulation (EU) No 1024/2013⁴ (the ‘SSM’) is to ensure that the Union’s policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in the euro area Member States and those non-euro area Member States who choose to participate in the SSM (the ‘participating Member States’), and that those credit institutions are subject to supervision of the highest quality.

(8) More efficient resolution mechanisms are an essential instrument to avoid damages that have resulted from failures of banks in the past.

(9) As long as resolution rules, practices and approaches to burden-sharing remain national and the financial resources needed for funding resolution are raised and spent at national level, the internal market will remain fragmented. Moreover, national supervisors have strong incentives to minimise the potential impact of bank crises on their national economies by adopting unilateral action to ring-fence banking operations, for instance by limiting intra-group transfers and lending, or by imposing higher liquidity and capital requirements on subsidiaries in their jurisdictions of potentially failing parent undertakings. This restricts the cross-border activities of banks and thus creates obstacles to the exercise of fundamental freedoms and distorts competition in the internal market. Contentious home-host issues, although addressed in the context of

⁴ 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 (OJ L 287, 29.10.2013, p. 63).

SSM and of Directive 2014/59/EU of the European Parliament and of the Council ⁽⁵⁾, may still reduce efficiency in cross-border resolution processes.

(10) In order to address those issues it has been necessary to intensify the integration of the resolution framework for credit institutions and investment firms ('institutions') in order to bolster the Union, restore financial stability and lay the basis for economic recovery. Directive 2014/59/EU is a significant step towards harmonisation of the rules relating to the resolution of banks across the Union and provides for cooperation among resolution authorities when dealing with the failure of cross-border banks. However, that Directive establishes minimum harmonisation rules and does not lead to centralisation of decision making in the field of resolution. It essentially provides for common resolution tools and resolution powers available for the national authorities of every Member State, but leaves discretion to national authorities in the application of the tools and in the use of national financing arrangements in support of resolution procedures. This ensures that authorities have the tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions while minimising the impact of an institution's failure on the economy and financial system.

(11) Although it confers regulatory and mediation tasks on the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁶⁾, Directive 2014/59/EU does not completely avoid the taking of separate and potentially inconsistent decisions by Member States regarding the resolution of cross-border groups which may affect the overall costs of resolution. Moreover, as it provides for national financing arrangements, it does not sufficiently reduce the dependence of banks on the support from national budgets and does not completely prevent different approaches by Member States to the use of the financing arrangements.

(12) For participating Member States, in the context of the Single Resolution Mechanism (SRM), a centralised power of resolution is established and entrusted to the Single Resolution Board established in accordance with this Regulation ('the Board') and to the national resolution authorities. That establishment is an integral part of the process of harmonisation in the field of resolution operated by Directive 2014/59/EU and by the set of uniform provisions on resolution laid down in this Regulation. The

⁵ 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, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁶ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

uniform application of the resolution regime in the participating Member States will be enhanced as a result of it being entrusted to a central authority such as the SRM. Furthermore, the SRM is interwoven with the process of harmonisation in the field of prudential supervision, brought about by the establishment of EBA, the single rulebook on prudential supervision (Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁷⁾) and Directive 2013/36/EU of the European Parliament and of the Council ⁽⁸⁾), and, in the participating Member States, the establishment of the SSM to which the application of Union prudential supervision rules is entrusted. Supervision and resolution are two complementary aspects of the establishment of the internal market for financial services whose application at the same level is regarded as mutually dependent.

(13) Ensuring effective resolution decisions for failing banks within the Union, including on the use of funding raised at Union level, is essential for the completion of the internal market in financial services. Within the internal market, the failure of banks in one Member State may affect the stability of the financial markets of the Union as a whole. Ensuring effective and uniform resolution rules and equal conditions of resolution financing across Member States is in the best interests not only of the Member States in which banks operate but also of all Member States in general as a means of ensuring a level competitive playing field and improving the functioning of the internal market. Banking systems in the internal market are highly interconnected, bank groups are international and banks have a large percentage of foreign assets. In the absence of the SRM, bank crises in Member States participating in the SSM would have a stronger negative systemic impact also in non-participating Member States. The establishment of the SRM will ensure a neutral approach in dealing with failing banks and therefore increase stability of the banks of the participating Member States and prevent the spill-over of crises into non-participating Member States and will thus facilitate the functioning of the internal market as a whole. The mechanisms for cooperation regarding institutions established in both participating and non-participating Member States should be clear, and no Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for financial services.

(14) In order to restore trust and credibility in the banking sector, the European Central Bank (ECB) is currently conducting a comprehensive balance sheet assessment of all banks supervised directly. Such an assessment should assure all stakeholders that banks entering the SSM, and therefore falling within the scope of the SRM, are fundamentally sound and trustworthy.

⁷ 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 (OJ L 176, 27.6.2013, p. 1).

⁸ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(15) Following the establishment of the SSM by Regulation (EU) No 1024/2013 pursuant to which banks in the participating Member States are supervised either centrally by the ECB or by the national competent authorities within the framework of the SSM, there is a misalignment between the Union supervision of such banks and the national treatment of those banks in the resolution proceedings pursuant to Directive 2014/59/EU which will be addressed by the establishment of the SRM.

(16) This Regulation applies only in respect of banks whose home supervisor is the ECB or the national competent authority in Member States whose currency is the euro or in Member States whose currency is not the euro which have established a close cooperation in accordance with Article 7 of Regulation (EU) No 1024/2013. The scope of application of this Regulation is linked to the scope of application of Regulation (EU) No 1024/2013. Indeed, bearing in mind the significant level to which the supervisory tasks attributed to the SSM and resolution action are interwoven, the establishment of a centralised system of supervision operated under Article 127(6) of the Treaty on the Functioning of the European Union (TFEU) is fundamentally important to the process of harmonisation of resolution in participating Member States. The fact of being subject to supervision by the SSM constitutes a specific attribute that places the entities falling within the scope of application of Regulation (EU) No 1024/2013 in an objectively and characterised distinct position for resolution purposes. It is necessary to adopt measures to create an SRM for all Member States participating in the SSM in order to facilitate the proper and stable functioning of the internal market.

(17) Whilst banks in Member States remaining outside the SSM are subject to supervision, resolution and financial backstop arrangements which are aligned at national level, banks in Member States participating in the SSM are subject to Union arrangements for supervision and national arrangements for resolution and financial backstops. Because supervision and resolution are at two different levels within the SSM, intervention and resolution in banks in the Member States participating in the SSM would not be as rapid, consistent and effective as in banks in the Member States outside of the SSM. Therefore, a centralised resolution mechanism for all banks operating in the Member States participating in the SSM is essential to guarantee a level playing field.

(18) As long as supervision in a Member State remains outside the SSM, that Member State should remain responsible for the financial consequences of a bank failure. The SRM should therefore extend only to banks and financial institutions established in Member States participating in the SSM and subject to the supervision of the ECB and the national authorities within the framework of the SSM. Banks established in the Member States not participating in the SSM should not be subject to the SRM. Subjecting such Member States to the SRM would create the wrong

incentives for them. In particular, supervisors in those Member States may become more lenient towards banks in their jurisdictions as they would not have to bear the full financial risk of their failures. Therefore, in order to ensure parallelism with the SSM, the SRM should apply to Member States participating in the SSM. As Member States join the SSM, they should also automatically become subject to the SRM. Ultimately, the SRM could potentially extend to the entire internal market.

(19) In order to ensure a level playing field within the internal market as a whole, this Regulation is consistent with Directive 2014/59/EU. It therefore adapts the rules and principles of that Directive to the specificities of the SRM and ensures that appropriate funding is available to the latter. When the Board, the Council and the Commission exercise the powers conferred on them by this Regulation, they should be subject to the delegated acts, and regulatory and implementing technical standards, guidelines and recommendations adopted by EBA on the basis of respectively Articles 10 to 15 and Article 16 of Regulation (EU) No 1093/2010 within the scope of Directive 2014/59/EU. The Board, the Council and the Commission, in their respective capacities, should also cooperate with EBA in accordance with Articles 25 and 30 of Regulation (EU) No 1093/2010 and respond to requests of collection of information addressed to them by EBA in accordance with Article 35 of that Regulation. It is recalled that, according to the last sentence of Recital 32 of that Regulation, ‘in cases where the relevant Union legislation confers discretion on [...] competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion’. The same principle should extend to this Regulation, while fully respecting the principles enshrined in primary Union law. In the light of those key elements EBA should be able to perform its tasks effectively and to secure the equality of treatment between the Board, the Council, the Commission and the national authorities when performing similar tasks.

(20) A single resolution fund (‘Fund’) is an essential element without which the SRM could not work properly. If the funding of resolution were to remain national in the longer term, the link between sovereigns and the banking sector would not be fully broken, and investors would continue to establish borrowing conditions according to the place of establishment of the banks rather than to their creditworthiness. The Fund should help to ensure a uniform administrative practice in the financing of resolution and to avoid the creation of obstacles for the exercise of fundamental freedoms or the distortion of competition in the internal market due to divergent national practices. The Fund should be financed by bank contributions raised at national level and should be pooled at Union level in accordance with an intergovernmental agreement on the transfer and progressive mutualisation of those contributions (the ‘Agreement’), thus increasing financial stability and limiting the link between the perceived fiscal position of individual Member States and the funding costs of banks and undertakings operating in those Member States. To further break that link, decisions taken within the SRM should not impinge on the fiscal responsibilities of the Member States. In that regard,

only extraordinary public financial support should be considered to be an impingement on the budgetary sovereignty and fiscal responsibilities of the Member States. In particular, decisions that require the use of the Fund or of a deposit guarantee scheme should not be considered to impinge on the budgetary sovereignty or fiscal responsibilities of the Member States.

(21) This Regulation, together with Directive 2014/59/EU, establishes the modalities for the use of the Fund and the general criteria to determine the fixing and calculation of ex-ante and ex-post contributions. Participating Member States remain competent to levy the contributions from the entities located in their respective territories in accordance with Directive 2014/59/EU and with this Regulation. By means of the Agreement, the participating Member States will assume the obligation to transfer to the Fund the contributions that they raise at national level in accordance with Directive 2014/59/EU and this Regulation. During a transitional period, the contributions will be allocated to different compartments corresponding to each participating Member State (national compartments). Those compartments will be subject to a progressive merger so that they will cease to exist at the end of the transitional period. The Agreement will lay down the conditions upon which the parties thereto agree to transfer the contributions that they raise at national level to the Fund and to progressively merge the compartments. The entry into force of the Agreement will be necessary for the contributions raised by the parties to be transferred to the national compartments of the Fund. This Regulation lays down the powers of the Board for using and managing the Fund. The Agreement will determine how the Board is able to dispose of the national compartments that are progressively merged.

(22) A centralised application of the resolution rules for institutions laid down in Directive 2014/59/EU by a single Union resolution authority in the participating Member States can be ensured only where the rules governing the establishment and functioning of the SRM are directly applicable in the Member States to avoid divergent interpretations across the Member States. Such direct applicability should bring benefits to the internal market as a whole because it will contribute to ensuring fair competition and to preventing obstacles to the free exercise of fundamental freedoms not only in the participating Member States but in the internal market as a whole.

(23) Mirroring the scope of Regulation (EU) No 1024/2013, the SRM should cover all credit institutions established in the participating Member States. However, within the framework of the SRM, it should be possible to resolve directly any credit institution of a participating Member State in order to avoid asymmetries within the internal market in respect of the treatment of failing institutions and creditors during a resolution process. To the extent that parent undertakings, investment firms and financial institutions are included in the consolidated supervision by the ECB, they should be included in the scope of the SRM. Although the ECB will not supervise those

institutions on a solo basis, it will be the only supervisor that will have a global perception of the risk which a group, and indirectly its individual members, is exposed to. To exclude entities which form part of the consolidated supervision within the scope of the ECB from the scope of the SRM would make it impossible to plan for the resolution of groups and to adopt a group resolution strategy, and would make any resolution decisions much less effective.

(24) Within the SRM, decisions should be taken at the most appropriate level. When adopting decisions under this Regulation, the Board and the national resolution authorities should apply the same material rules.

(25) Since only institutions of the Union may establish the resolution policy of the Union and since a margin of discretion remains in the adoption of each specific resolution scheme, it is necessary to provide for the adequate involvement of the Council and the Commission, as institutions which may exercise implementing powers, in accordance with Article 291 TFEU. The assessment of the discretionary aspects of the resolution decisions taken by the Board should be exercised by the Commission. Given the considerable impact of the resolution decisions on the financial stability of Member States and on the Union as such, as well as on the fiscal sovereignty of Member States, it is important that implementing power to take certain decisions relating to resolution be conferred on the Council. It should therefore be for the Council, on a proposal from the Commission, to exercise effective control on the assessment by the Board of the existence of a public interest and to assess any material change to the amount of the Fund to be used in a specific resolution action. Moreover, the Commission should be empowered to adopt delegated acts to specify further criteria or conditions to be taken into account by the Board in the exercise of its different powers. Such a conferral of resolution tasks should not in any way hamper the functioning of the internal market for financial services. EBA should therefore maintain its role and retain its existing powers and tasks: it should develop and contribute to the consistent application of the Union legislation applicable to all Member States and enhance convergence of resolution practices across the Union as a whole.

(26) In order to ensure conformity with the principles established in Article 3(3) of Directive 2014/59/EU, the Union institutions, when performing the tasks conferred on them by this Regulation, should ensure that appropriate organisational arrangements are in place.

(27) The ECB, as the supervisor within the SSM, and the Board, should be able to assess whether a credit institution is failing or is likely to fail and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable timeframe. The Board, if it considers all the criteria relating to the triggering of resolutions to be met, should adopt the resolution scheme. The procedure relating to the adoption of the resolution scheme, which

involves the Commission and the Council, strengthens the necessary operational independence of the Board while respecting the principle of delegation of powers to agencies as interpreted by the Court of Justice of the European Union (the ‘Court of Justice’). Therefore, this Regulation provides that the resolution scheme adopted by the Board enters into force only if, within 24 hours after its adoption by the Board, there are no objections from the Council or the Commission or the resolution scheme is approved by the Commission. The grounds on which the Council is permitted to object, on a proposal by the Commission, to the Board's resolution scheme should be strictly limited to the existence of a public interest and to material modifications by the Commission of the amount of the use of the Fund as proposed by the Board. A change of 5 % or more to the amount of the Fund compared with the original proposal of the Board should be considered to be material. The Council should approve or object to the Commission's proposal without amending it. As an observer to the meetings of the Board, the Commission should, on an ongoing basis, check that the resolution scheme adopted by the Board complies fully with this Regulation, balances appropriately the different objectives and interests at stake, respects the public interest and that the integrity of the internal market is preserved. Considering that the resolution action requires a very speedy decision-making process, the Council and the Commission should cooperate closely and the Council should not duplicate the preparatory work already undertaken by the Commission. The Board should instruct the national resolution authorities which should take all necessary measures to implement the resolution scheme.

(28) The production of a group resolution scheme should facilitate coordinated resolution that is more likely to deliver the best result for all entities of a group. The Board or, where relevant, the national resolution authorities should have the power to apply the bridge institution tool at group level (which may involve, where appropriate, burden-sharing arrangements) to stabilise a group as a whole. Ownership of subsidiaries could be transferred to the bridge institution with a view to onward sale, either as a package or individually, when market conditions are appropriate. In addition, the Board or, where relevant, the national resolution authority should have the power to apply the bail-in tool at parent level.

(29) The Board should, in particular, be empowered to take decisions in relation to significant entities or groups, entities or groups directly supervised by the ECB or cross-border groups. The national resolution authorities should assist the Board in resolution planning and in the preparation of resolution decisions. For entities and groups which are not significant and not cross-border, the national resolution authorities should be responsible, in particular, for resolution planning, the assessment of resolvability, the removal of impediments to resolvability, the measures that the resolution authorities are entitled to take during early intervention, and resolution actions. Under certain circumstances the national resolution authorities should perform

their tasks on the basis of and in accordance with this Regulation while exercising the powers conferred on them by, and in accordance with, the national law transposing Directive 2014/59/EU in so far as it is not in conflict with this Regulation.

(30) It is essential for the good functioning of the internal market that the same rules apply to all resolution actions, regardless of whether they are taken by the resolution authorities under Directive 2014/59/EU or within the framework of the SRM. The Commission should assess those measures under Article 107 TFEU.

(31) Where resolution action would involve the granting of State aid pursuant to Article 107(1) TFEU or as Fund aid, a resolution decision can be adopted after the Commission has adopted a positive or conditional decision concerning the compatibility of the use of such aid with the internal market. The decision of the Commission on Fund aid may impose conditions, commitments or undertakings in respect of the beneficiary. The conditions which may be imposed by the Commission may include, but are not limited to, burden-sharing requirements, including a requirement that losses are first absorbed by equity, and requirements as to contributions by hybrid capital holders, subordinated debt holders and senior creditors, including in accordance with the requirements of Directive 2014/59/EU; restrictions on the payment of dividends on shares or coupons on hybrid capital instruments, on the repurchase of own shares or hybrid capital instruments, or on capital management transactions; restrictions on acquisitions of stakes in any undertaking either through an asset or share transfer; prohibitions against aggressive commercial practices or strategies, or advertising support from public aid; requirements concerning market shares, pricing, product features or other behavioural requirements; requirements for restructuring plans; governance requirements; reporting and disclosure requirements, including as regards compliance with such conditions as may be specified by the Commission; requirements relating to the sale of the beneficiary or of all or part of its assets, rights and liabilities; requirements relating to the liquidation of the beneficiary.

(32) In order to ensure a swift and effective decision-making process in resolution, the Board should be a specific Union agency with a specific structure, corresponding to its specific tasks, and which departs from the model of all other agencies of the Union. Its composition should ensure that due account is taken of all relevant interests at stake in resolution procedures. Taking into account the missions of the Board, a Chair, a Vice-Chair and four further full-time members of the Board should be appointed on the basis of merit, skills, knowledge of banking and financial matters, and experience relevant to financial supervision, regulation and resolution of institutions. The Chair, the Vice-Chair and the four further full-time members of the Board should be chosen on the basis of an open selection procedure of which the European Parliament and the Council should be kept duly informed and which should respect the principle of gender balance, experience and qualification. The Commission should provide the competent committee of the European Parliament with the shortlist of candidates for the positions

of Chair, Vice-Chair and the four further full-time members of the Board. The Commission should submit a proposal for the appointment of the Chair, the Vice-Chair and the four further full-time members of the Board to the European Parliament for approval. Following the European Parliament's approval of that proposal, the Council should adopt an implementing decision to appoint the Chair, the Vice-Chair and the four further full-time members of the Board.

(33) The Board should operate in executive and plenary sessions. In its executive session, it should be composed of its Chair, its four further independent full-time members, which should act independently and objectively in the interest of the Union as a whole, and permanent observers appointed by the Commission and by the ECB. When deliberating on the resolution of an institution or group established within a single participating Member State, the executive session of the Board should convene and involve in the decision-making process the member appointed by the Member State concerned representing its national resolution authority. When deliberating on a cross-border group, the members appointed by the home and all host Member States concerned representing the relevant national resolution authorities should be convened and involved in the decision-making process of the executive session of the Board.

(34) The Board, in its executive session, should prepare all decisions concerning resolution procedure and, to the fullest extent possible, adopt those decisions. Because of the institution-specific nature of the information contained in the resolution plans, decisions concerning the drawing up, assessment, and approval of the resolution plans should be taken by the Board in its executive session. Regarding the use of the Fund, it is important that there is no first-mover advantage and that the outflows of the Fund are monitored. In order to ensure corresponding decision making by the Board, where resolution action is required above the threshold of EUR 5 000 000 000, any member of the plenary should be able, within a strict deadline, to request that the plenary session decide. Where liquidity support involves no or significantly less risk than other forms of support, in particular in the case of a short-term, one-off extension of credit to solvent institutions against adequate collateral of high quality, it is justified to give such a form of support a lower weight of only 0,5. Once the net accumulated use of the Fund in the previous consecutive 12 months reaches the threshold of EUR 5 000 000 000 per year, the plenary session should evaluate the application of the resolution tools, including the use of the Fund, and should provide guidance which the executive session should follow in subsequent resolution decisions. Guidance to the executive session should, in particular, focus on ensuring the non-discriminatory application of resolution tools, on avoiding a depletion of the Fund and differentiating appropriately between no-risk or low-risk liquidity and other forms of support.

(35) Since the participants in the decision-making process of the Board in its executive sessions would change depending on the Member State where the relevant

institution or group operates, the permanent participants should ensure that the decisions throughout the different formations of the executive sessions of the Board are consistent, appropriate and proportionate.

(36) The Board should be able to invite observers to its meetings. The conferral of resolution tasks on the Board should be consistent with the framework of the European System of Financial Supervision ('ESFS') and its underlying objective to develop the single rulebook and enhance convergence of supervisory and resolution practices across the Union as a whole. In particular, EBA should assess and coordinate initiatives, in accordance with Regulation (EU) No 1093/2010, on resolution plans with a view to promoting convergence in that area. Therefore, as a general rule, the Board should always invite EBA when matters are discussed for which, in accordance with Directive 2014/59/EU, EBA is required to develop technical standards or to issue guidelines. Other observers, such as a representative of the European Stability Mechanism (ESM), may, where appropriate, also be invited to attend the meetings of the Board.

(37) The observers should be subject to the same requirements of professional secrecy as the members and the staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties.

(38) The Board should be able to establish internal resolution teams composed of its own staff and staff of the national resolution authorities, including, where appropriate, observers from non-participating Member States. Those internal resolution teams should be headed by coordinators appointed from the Board's senior staff, who might be invited as observers to participate in the executive sessions of the Board.

(39) The Board and the resolution authorities and competent authorities of the non-participating Member States should conclude memoranda of understanding describing in general terms how they will cooperate with one another in the performance of their tasks under Directive 2014/59/EU. The memoranda of understanding could, inter alia, clarify the consultation relating to decisions of the Board that have effect on subsidiaries established or branches located in the non-participating Member States, where the parent undertaking is established in a participating Member State. The memoranda should be reviewed on a regular basis.

(40) The Board should act independently. It should have the capacity to deal with large groups and to act swiftly and impartially. The Board should ensure that appropriate account is taken of national financial stability, financial stability of the Union and the internal market. Members of the Board should have the necessary expertise on bank restructuring and insolvency.

(41) When making decisions or taking actions in the exercise of the powers conferred by this Regulation, due account should be given to the importance for the

internal market of the exercise of the right of establishment provided for in the TFEU, and, in particular, where possible, to the effects on the continuation of cross-border activities.

(42) In the light of the Board's missions and the resolution objectives which include the protection of public funds, the functioning of the SRM should be financed from contributions paid by the institutions established in the participating Member States.

(43) The Board, the Council where relevant, and the Commission should replace the national resolution authorities designated under Directive 2014/59/EU in respect of all aspects relating to the resolution decision-making process. The national resolution authorities designated under that Directive should continue to carry out activities relating to the implementation of resolution schemes adopted by the Board. In order to ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of this Regulation. For reasons of transparency and democratic control, national parliaments should have certain rights to obtain information about the activities of, and to engage in a dialogue with, the Board.

(44) The national parliament of a participating Member State, or the competent committee thereof, should be able to invite the Chair to participate in an exchange of views in relation to the resolution of institutions in that Member State together with a representative of the national resolution authority. Such a role for national parliaments is appropriate given the potential impact that resolution actions may have on public finances, institutions, their customers and employees, and the markets in the participating Member States. The Chair and the national resolution authorities should respond positively to such invitations to exchange views with the national parliaments.

(45) To ensure a uniform approach for institutions and groups the Board should be empowered to draw up resolution plans for such institutions and groups, after consulting the national competent and resolution authorities. It should be the general rule that the group resolution plans are prepared for the group as a whole and identify measures in relation to a parent undertaking as well as all individual subsidiaries that are part of a group. The group resolution plans should take into account the financial, technical and business structure of the relevant group. If individual resolution plans for entities that are a part of a group are prepared, the Board or, where relevant, the national resolution authorities should aim to achieve, to the extent possible, consistency with resolution plans for the rest of the group. The Board or, where relevant, the national resolution authorities should transmit the resolution plans and any changes thereto to the competent authority, in order to permanently keep it fully informed. The Board should assess the resolvability of institutions and groups, and take measures

aimed at removing impediments to resolvability, if any. The Board should require the national resolution authorities to apply such appropriate measures designed to remove impediments to resolvability in order to ensure consistency and the resolvability of the institutions concerned. Given the sensitivity of the information contained in them, resolution plans should be subject to the requirements of professional secrecy laid down in this Regulation.

(46) When applying resolution tools and exercising resolution powers, the principle of proportionality and the particularities of the legal form of an institution should be taken into account.

(47) Resolution planning is an essential component of effective resolution. The Board should therefore have the power to require changes to the structure and organisation of institutions or groups to take measures which are necessary and proportionate to reduce or remove material impediments to the application of resolution tools and ensure the resolvability of the entities concerned. Due to the potentially systemic nature of all institutions, it is crucial, in order to maintain financial stability, that the Board, or, where relevant, the national resolution authorities, have the possibility to resolve any institution. In order to respect the right to conduct business laid down by Article 16 of the Charter of Fundamental Rights of the European Union (the 'Charter'), the Board's discretion should be limited to what is necessary to simplify the structure and operations of the institution solely to improve its resolvability. In addition, any measure imposed for such purposes should be consistent with Union law. Measures should neither directly nor indirectly be discriminatory on grounds of nationality, and should be justified by the overriding reason of being conducted in the public interest in financial stability. To determine whether an action was taken in the general public interest, the Board, acting in the general public interest, should be able to achieve the resolution objectives without encountering impediments to the application of resolution tools or its ability to exercise the powers conferred on it by this Regulation. Furthermore, action should not go beyond the minimum necessary to attain the objectives sought. When determining the measures to be taken, the Board or, where applicable, the national resolution authorities should take into account the warnings and recommendations of the European Systemic Risk Board ('ESRB') established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council⁹.

(48) Due to the potentially systemic nature of all institutions, it is crucial that the Board, where appropriate in cooperation with the national resolution authorities, is able to adopt resolution plans, assess the resolvability of any institution and group and, where necessary, take measures to address or remove impediments to the resolvability of any institution in the participating Member States. The failure of systemically

⁹ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

important institutions, including those referred to in Article 131 of Directive 2013/36/EU, could pose a considerable risk to the functioning of the financial markets and could have a negative impact on financial stability. The Board should take due care, as a matter of priority, to establish the resolution plans of those systemically important institutions, as well as to assess their resolvability and to take all action necessary to address or remove all of the impediments to their resolvability, without prejudice to its independence and to its obligation to plan for the resolution and assess the resolvability of all of the institutions subject to its powers.

(49) Resolution plans should include procedures for informing and consulting employee representatives throughout the resolution processes where appropriate. Where applicable, collective agreements or other arrangements provided for by social partners, as well as by Union and national law on the involvement of trade unions and workers' representatives in company restructuring processes, should be complied with in that regard.

(50) In relation to the obligation of drafting resolution plans, the Board, or, where relevant, the national resolution authorities, in the context of resolution plans and when using the different powers and tools at their disposal, should take into account the nature of an entity's business, shareholding structure, legal form, risk profile, size and legal status and interconnectedness to other institutions or to the financial system in general, the scope and complexity of its activities, whether it is a member of an institutional protection scheme (IPS) or other cooperative mutual solidarity systems, whether it exercises any investment services or activities and whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy, ensuring that the regime is applied in an appropriate and proportionate way and that the administrative burden relating to resolution plan preparation obligations is minimised. Whereas the contents and information specified in Section A of the Annex to Directive 2014/59/EU establish a minimum standard for entities with evident systemic relevance, it is permitted to apply different or significantly reduced resolution planning and information requirements on an institution-specific basis, and at a lower frequency for updates than one year. For a small entity of little interconnectedness and complexity, the resolution plan could be reduced. Further, the regime should be applied so as not to jeopardise the stability of financial markets. In particular, in situations characterised by broader problems or even doubts about the resilience of many entities, it is essential to consider the risk of contagion from the actions taken in relation to any individual entity.

(51) Where Directive 2014/59/EU provides for the possibility of applying simplified obligations or waivers by the national resolution authorities in relation to the requirement of drafting resolution plans, a procedure should be provided for whereby

the Board or, where relevant, the national resolution authorities could authorise the application of such simplified obligations.

(52) In line with the capital structure of entities affiliated to a central body, for the purposes of this Regulation, the Board, or, where relevant, the national resolution authorities, should not be obliged to draw up separate resolution plans solely on the grounds that the central body to which those entities are affiliated is under direct supervision of the ECB. In the case of group resolution plans, the potential impact of the resolution actions in all the Member States where the group operates should be specifically taken into account in the drawing up of the plans.

(53) The SRM should be based on the frameworks of Regulation (EU) No 1024/2013 and of Directive 2014/59/EU. Therefore, the Board should be empowered to intervene at an early stage where the financial situation or the solvency of an entity is deteriorating. The information that the Board receives from the national resolution authorities or the ECB at that stage is instrumental in making a determination on the action it might take in order to prepare for the resolution of the entity concerned.

(54) In order to ensure rapid resolution action when it becomes necessary, the Board should closely monitor, in cooperation with the ECB or with the relevant national competent authority, the situation of the entities concerned and the compliance of those entities with any early intervention measure taken in their respect. In determining whether a private sector action could prevent within a reasonable timeframe the failure of an entity, the appropriate authority should take into account the effectiveness of early intervention measures undertaken within a timeframe set by the competent authority.

(55) The Board, the national resolution authorities and the competent authorities, including the ECB, should, where necessary, conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their respective tasks under Union law. The memorandum should be reviewed on a regular basis.

(56) When making decisions or taking actions, in particular regarding entities established both in participating Member States and in non-participating Member States, possible adverse effects on those Member States, such as threats to the financial stability of their financial markets, and on the entities established in those Member States, should also be taken into consideration.

(57) In order to minimise disruption of the financial market and of the economy, the resolution process should be accomplished in a short time. Depositors should be granted access at least to the guaranteed deposits as promptly as possible, and in any event within the same deadlines as provided for in Directive 2014/49/EU of the

European Parliament and of the Council¹⁰). The Commission should, throughout the resolution procedure, have access to any information which it deems to be necessary to take an informed decision in the resolution process.

(58) The decision to place an entity under resolution should be taken before a financial entity is balance sheet insolvent and before all equity has been fully wiped out. Resolution should be initiated after the determination that an entity is failing or is likely to fail and that no alternative private sector measures would prevent such failure within a reasonable timeframe. The fact that an entity does not meet the requirements for authorisation should not justify per se the entry into resolution, especially if the entity remains or is likely to remain viable. An entity should be considered to be failing or likely to fail where it infringes or is likely, in the near future, to infringe the requirements for continuing authorisation, where the assets of the entity are, or are likely in the near future to be, less than its liabilities, where the entity is, or is likely in the near future to be, unable to pay its debts as they fall due, or where the entity requires extraordinary public financial support except in the particular circumstances laid down in this Regulation. The need for emergency liquidity assistance from a central bank should not, per se, be a condition that sufficiently demonstrates that an entity is, or is likely in the near future to be, unable to pay its liabilities as they fall due. If that facility were guaranteed by a State, an entity accessing such a facility would be subject to State aid rules. In order to preserve financial stability, in particular in the event of a systemic liquidity shortage, State guarantees of liquidity facilities provided by central banks or State guarantees of newly issued liabilities to remedy a serious disturbance in the economy of a Member State should not trigger the resolution framework provided that a number of conditions are met. In particular, the State guarantee measures should be approved under the State aid framework and should not be part of a larger aid package, and the use of the guarantee measures should be strictly limited in time. Member States' guarantees for equity claims should be prohibited.

(59) When providing a guarantee, a Member State should ensure that the guarantee is sufficiently remunerated by the entity. Furthermore, the provision of extraordinary public financial support should not trigger resolution where, as a precautionary measure, a Member State takes an equity stake in an entity, including an entity which is publicly owned, which complies with its capital requirements. That may be the case, for example, where an entity is required to raise new capital due to the outcome of a scenario-based stress test or of the equivalent exercise conducted by macroprudential authorities which includes a requirement that is set to maintain financial stability in the context of a systemic crisis, but the entity is unable to raise capital privately in markets. An entity should not be considered to be failing or likely to fail solely on the basis that extraordinary public financial support was provided before the entry into force of this

¹⁰ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

Regulation. Finally, access to liquidity facilities including emergency liquidity assistance by central banks may constitute State aid pursuant to the State aid framework.

(60) Liquidation of a failing entity under normal insolvency proceedings could jeopardise financial stability, interrupt the provision of essential services, and affect the protection of depositors. In such a case there is a public interest in applying resolution tools. The objectives of resolution should therefore be to ensure the continuity of essential financial services, to maintain the stability of the financial system, to reduce moral hazard by minimising reliance on public financial support to failing entities, and to protect depositors.

(61) However, the winding up of an insolvent entity through normal insolvency proceedings should always be considered before a decision is taken to maintain the entity as a going concern. An insolvent entity should be maintained as a going concern for financial stability purposes and with the use, to the extent possible, of private funds. That may be achieved either through sale to or merger with a private sector purchaser, or after having written down the liabilities of the entity, or after converting its debt to equity in order to effect a recapitalisation.

(62) When taking or preparing decisions relating to resolution powers, the Board, the Council and the Commission should ensure that resolution action is taken in accordance with certain principles, including that shareholders and creditors bear an appropriate share of the losses, that the management should in principle be replaced, that the costs of the resolution of the entity are minimised, and that creditors of the same class are treated in an equitable manner. In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions should be justified in the public interest and should be neither directly nor indirectly discriminatory on the grounds of nationality.

(63) The limitations on the rights of shareholders and creditors should comply with Article 52 of the Charter. The resolution tools should therefore be applied only to those entities that are failing or likely to fail, and only where necessary to pursue the objective of financial stability in the general interest. In particular, resolution tools should be applied where the entity cannot be wound up under normal insolvency proceedings without destabilising the financial system and the measures are necessary in order to ensure the rapid transfer and continuation of systemically important functions and where there is no reasonable prospect for any alternative private solution, including any increase of capital by the existing shareholders or by any third party, sufficient to restore the full viability of the entity.

(64) Interference with property rights should not be disproportionate. As a consequence, affected shareholders and creditors should not incur greater losses than

those which they would have incurred had the entity been wound up at the time that the resolution decision is taken. In the event of partial transfer of assets of an institution under resolution to a private purchaser or to a bridge institution, the residual part of the institution under resolution should be wound up under normal insolvency proceedings. In order to protect shareholders and creditors of the entity during the winding up proceedings, they should be entitled to receive in payment of their claims not less than what it is estimated they would have recovered if the entity as a whole had been wound up under normal insolvency proceedings.

(65) For the purpose of protecting the rights of shareholders and creditors, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution under resolution and, where required under this Regulation, the valuation of the treatment that shareholders and creditors would have received if the entity had been wound up under normal insolvency proceedings. It should be possible to commence a valuation already in the early intervention phase. Before any resolution action is taken, a fair, prudent and realistic valuation of the assets and liabilities of the entity should be carried out. Such valuation should be subject to a right of appeal only together with the resolution decision. In addition, where required under this Regulation, an ex-post comparison between the treatment that shareholders and creditors have received and the treatment they would have received under normal insolvency proceedings should be carried out after resolution tools have been applied. If it is determined that shareholders and creditors have received, in payment of their claims, less than the amount that they would have received under normal insolvency proceedings, they should be entitled to the payment of the difference where required under this Regulation. That difference, if any, should be paid by the Fund established in accordance with this Regulation.

(66) It is important that losses be recognised upon failure of the entity. The valuation of assets and liabilities of failing entities should be based on fair, prudent and realistic assumptions at the moment when the resolution tools are applied. The value of liabilities should not, however, be affected in the valuation by the entity's financial state. It should be possible, for reasons of urgency, that the Board makes a rapid valuation of the assets or the liabilities of a failing entity. That valuation should be provisional and should apply until an independent valuation is carried out.

(67) In order to ensure that the resolution process remains objective and certain, it is necessary to lay down the order in which unsecured claims of creditors against an institution under resolution should be written down or converted. In order to limit the risk of creditors incurring greater losses than if the institution had been wound up under normal insolvency proceedings, the order to be laid down should be applicable both in normal insolvency proceedings and in the write-down or conversion process under resolution. This would also facilitate the pricing of debt.

(68) The Board should decide on the detailed resolution scheme. The relevant resolution tools should include the sale of business tool, the bridge institution tool, the bail-in tool and the asset separation tool, which are also provided for in Directive 2014/59/EU. The scheme should also make it possible to assess whether the conditions for the write-down and conversion of capital instruments are met.

(69) When taking resolution actions, the Board should take into account and follow the measures provided for in the resolution plans unless the Board assesses, taking into account the circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in those resolution plans.

(70) The resolution tools should include the sale of the business or shares of the institution under resolution, the setting up of a bridge entity, the separation of the performing assets from the impaired or under-performing assets of the failing entity, and the bail-in of the shareholders and creditors of the failing entity.

(71) Where the resolution tools have been used to transfer the systemically important services or viable business of an entity to a sound entity such as a private sector purchaser or bridge entity, the residual part of the entity should be liquidated.

(72) The sale of business tool should enable the sale of the entity or parts of its business to one or more purchasers without the consent of shareholders.

(73) Any net proceeds from the transfer of assets or liabilities of the institution under resolution when applying the sale of business tool should benefit the entity left in the winding-up proceedings. Any net proceeds from the transfer of instruments of ownership issued by the institution under resolution when applying the sale of business tool should benefit the owners of those instruments of ownership in the entity left in the winding up proceedings. Proceeds should be calculated net of the costs arisen from the failure of the entity and from the resolution process.

(74) The asset separation tool should enable authorities to transfer assets, rights or liabilities of an institution under resolution to a separate vehicle. That tool should be used only in conjunction with other tools to prevent an undue competitive advantage for the failing entity.

(75) An effective resolution regime should minimise the costs of the resolution of a failing entity borne by the taxpayers. It should also ensure that systemic entities can be resolved without jeopardising financial stability. The bail-in tool achieves that objective by ensuring that shareholders and creditors of the failing entity suffer appropriate losses and bear an appropriate part of the costs arising from the failure of the entity. The bail-in tool will therefore give shareholders and creditors of entities a

stronger incentive to monitor the health of an entity during normal circumstances. It also meets the Financial Stability Board recommendation that statutory debt write-down and conversion powers be included in a framework for resolution, as an additional option in conjunction with other resolution tools.

(76) In order to ensure the necessary flexibility to allocate losses to creditors in a range of circumstances, it is appropriate that the bail-in tool be applicable both where the objective is to resolve the failing entity as a going concern if there is a realistic prospect that the entity viability may be restored, and where systemically important services are transferred to a bridge entity and the residual part of the entity ceases to operate and is wound down.

(77) Where the bail-in tool is applied with the objective of restoring the capital of the failing entity to enable it to continue to operate as a going concern, the resolution through bail-in should be accompanied by replacement of management, except where retention of management is appropriate and necessary for the achievement of the resolution objectives, and a subsequent restructuring of the entity and its activities in a way that addresses the reasons for its failure. That restructuring should be achieved through the implementation of a business reorganisation plan. Where applicable, such plans should be compatible with the restructuring plan that the entity is required to submit to the Commission under the Union State aid framework. In particular, in addition to measures aiming at restoring the long term viability of the entity, the plan should include measures limiting the aid to the minimum burden sharing, and measures limiting distortions of competition.

(78) It is not appropriate to apply the bail-in tool to claims in so far as they are secured, collateralised or otherwise guaranteed. However, in order to ensure that the bail-in tool is effective and achieves its objectives, it is desirable that it can be applied to as wide a range of the unsecured liabilities of a failing entity as possible. Nevertheless, it is appropriate to exclude certain kinds of unsecured liability from the scope of application of the bail-in tool. In order to protect holders of covered deposits, the bail-in tool should not apply to those deposits that are protected under Directive 2014/49/EU. In order to ensure continuity of critical functions, the bail-in tool should not apply to certain liabilities to employees of the failing entity or to commercial claims that relate to goods and services critical for the daily functioning of the entity. In order to honour pension entitlements and pension amounts owed or owing to pension trusts and pension trustees, the bail-in tool should not apply to the failing entity's liabilities to a pension scheme, except for liabilities for pension benefits attributable to variable remuneration which do not arise from collective bargaining agreements. To reduce risk to systemic contagion, the bail-in tool should not apply to liabilities arising from a participation in payment systems which have a remaining maturity of less than seven

days, or liabilities to entities, excluding entities that are part of the same group, with an original maturity of less than seven days.

(79) It should be possible to exclude or partially exclude liabilities in a number of circumstances, including where it is not possible to bail-in such liabilities within a reasonable timeframe, where the exclusion is strictly necessary and is proportionate to achieving the continuity of critical functions and core business lines, or where the application of the bail-in tool to liabilities would cause a destruction in value such that losses borne by other creditors would be higher than if those liabilities were not excluded from bail-in. It should also be possible to exclude or partially exclude liabilities where necessary to avoid the spreading of contagion and financial instability which may cause serious disturbance to the economy of a Member State. When carrying out the assessments, the Board or, where relevant, the national resolution authorities should give consideration to the consequences of a potential bail-in of liabilities stemming from eligible deposits held by natural persons and micro, small and medium-sized enterprises above the coverage level provided for in Directive 2014/49/EU.

(80) Where those exclusions are applied, the level of write-down or conversion of other eligible liabilities may be increased to take account of such exclusions subject to the ‘no creditor worse off than under normal insolvency proceedings’ principle being respected. Where the losses cannot be passed to other creditors, the Fund may make a contribution to the institution under resolution subject to a number of strict conditions including the requirement that losses totalling not less than 8 % of total liabilities including own funds have already been absorbed, and the funding provided by the Fund is limited to the lower of 5 % of total liabilities including own funds or the means available to the Fund and the amount that can be raised through ex-post contributions within three years.

(81) In extraordinary circumstances, where liabilities have been excluded and the Fund has been used to contribute to bail-in in lieu of those liabilities up to the permissible cap, the Board should be able to seek funding from alternative funding means.

(82) The minimum amount of bail-in of 8 % of total liabilities referred to in this Regulation should be calculated based on the valuation conducted in accordance with this Regulation. Historical losses which have already been absorbed by shareholders through a reduction in own funds prior to that valuation should not be included in that percentage.

(83) As the protection of covered depositors is one of the most important objectives of resolution, covered deposits should not be subject to the exercise of the bail-in tool. The deposit guarantee scheme, however, contributes to funding the

resolution process by absorbing losses to the extent of the net losses that it would have had to suffer after compensating depositors in normal insolvency proceedings. The exercise of the bail-in powers would ensure that depositors continue to have access to their deposits which is the main reason why the deposit guarantee schemes have been established. Not providing for the involvement of those schemes in such cases would constitute an unfair advantage with respect to the remaining creditors which would be subject to the exercise of the powers by the resolution authority.

(84) Where deposits are transferred to another entity in the context of the resolution of an entity, depositors should not be insured beyond the coverage level provided for in Directive 2014/49/EU. Therefore, claims with regard to deposits remaining in the institution under resolution should be limited to the difference between the funds transferred and the coverage level provided for in Directive 2014/49/EU. Where transferred deposits are superior to the coverage level, the depositor should have no claim against the deposit guarantee scheme with regard to deposits remaining in the institution under resolution.

(85) To avoid entities structuring their liabilities in a manner that impedes the effectiveness of the bail-in tool, it is appropriate to establish that the entities should meet at all times a minimum requirement for own funds and eligible liabilities which may be subject to the bail-in tool, expressed as a percentage of the total liabilities and own funds of the entity.

(86) A top-down approach should be adopted when determining the minimum requirement for own funds and eligible liabilities within a group. That approach should recognise that resolution action is applied at the level of the individual legal entity, and that it is imperative that loss absorbing capacity is located in, or is accessible to, the entity within the group where losses occur. To that end, it should be ensured that loss absorbing capacity within a group is distributed across the group in accordance with the level of risk in its constituent legal entities. The minimum requirement for own funds and eligible liabilities necessary for each individual subsidiary should be separately assessed. Furthermore, it should be ensured that all capital and liabilities which are counted towards the consolidated minimum requirement for own funds and eligible liabilities are located in entities where losses are likely to occur, or are otherwise available to absorb losses. This Regulation should allow for a multiple-point-of-entry or a single-point-of-entry resolution. The minimum requirement for own funds and eligible liabilities should reflect the resolution strategy which is appropriate to a group in accordance with the resolution plan. In particular, the minimum requirement for own funds and eligible liabilities should be required at the appropriate level in the group in order to reflect a multiple-point-of-entry or a single-point-of-entry approach contained in the resolution plan while keeping in mind that there could be circumstances where an approach different from that contained in the plan is used as it would allow, for

instance, reaching the resolution objectives more efficiently. Against that background, regardless of whether a group has chosen the multiple-point-of entry or the single-point-of-entry approach, all entities of the group should have at any time a robust minimum requirement for own funds and eligible liabilities so as to avoid the risk of contagion or of a bank run.

(87) The best method of resolution should be chosen depending on the circumstances of the case and, for that purpose, all of the resolution tools provided for in Directive 2014/59/EU should be available. When deciding on the resolution scheme, the Board, the Council and the Commission should, to the extent possible, respectively opt for the scheme that is the least costly for the Fund.

(88) Directive 2014/59/EU confers power on the national resolution authorities to write down and convert capital instruments, since the conditions for the write-down and conversion of capital instruments may coincide with the conditions for resolution and in such a case, an assessment is to be made of whether the sole write-down and conversion of the capital instruments is sufficient to restore the financial soundness of the entity concerned or whether it is also necessary to take resolution action. As a rule, it will be used in the context of resolution. The Board, under the control of the Commission or, where relevant, of the Council, should replace the national resolution authorities also in that function and should therefore be empowered to assess whether the conditions for the write-down and conversion of capital instruments are met and to decide whether to place an entity under resolution, if the requirements for resolution are also fulfilled.

(89) The efficiency and uniformity of resolution action should be ensured in all of the participating Member States. For that purpose, where a national resolution authority has not applied or has not complied with a decision by the Board pursuant to this Regulation or has applied it in a way which poses a threat to any of the resolution objectives or to the efficient implementation of the resolution scheme, the Board should be empowered to transfer to another person specified rights, assets or liabilities of an institution under resolution, to require the conversion of debt instruments which contain a contractual term for conversion in certain circumstances or to adopt any necessary action which significantly addresses the threat to the relevant resolution objective. Any action by a national resolution authority that would restrain or affect the exercise of powers or functions of the Board should be excluded.

(90) The relevant entities, bodies and authorities involved in the application of this Regulation should cooperate with each other in accordance with the duty of sincere cooperation enshrined in the Treaties.

(91) In order to enhance the effectiveness of the SRM, the Board should closely cooperate with EBA in all circumstances. Where appropriate the Board should also

cooperate with the ESRB, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (¹¹), the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (¹²), and the other authorities which constitute the ESFS. Moreover, the Board should closely cooperate with the ECB and the other authorities empowered to supervise entities within the SSM, in particular for groups subject to the consolidated supervision by the ECB. To effectively manage the resolution process of failing banks, the Board should cooperate with the national resolution authorities at all stages of the resolution process. Thus, that cooperation is necessary not only for the implementation of resolution decisions taken by the Board, but also prior to the adoption of any resolution decision, at the stage of resolution planning or during the phase of early intervention. The Board should be able to cooperate with relevant resolution authorities and facilities financing direct or indirect public financial assistance.

(92) When applying resolution tools and exercising resolution powers, the Board should instruct the national resolution authorities to ensure that the representatives of the employees of the entities concerned are informed and, where appropriate, are consulted, as provided for in Directive 2014/59/EU.

(93) Since the Board replaces the national resolution authorities of the participating Member States in their resolution decisions, the Board should also replace those authorities for the purposes of the cooperation with non-participating Member States, including in the resolution colleges as referred to in Directive 2014/59/EU as far as the resolution functions are concerned.

(94) As many institutions operate not only within the Union, but internationally, an effective resolution mechanism needs to set out principles of cooperation with the relevant third-country authorities. Support to third-country authorities should be provided in accordance with the legal framework provided for in Article 88 of Directive 2014/59/EU. In order to ensure a coherent approach vis-à-vis third countries, the taking of divergent decisions in the participating Member States with respect to the recognition of resolution proceedings conducted in third countries in relation to institutions or parent undertakings which have subsidiaries or other assets, rights or liabilities located in the participating Member States should be avoided as far as

¹¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Investment and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

¹² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

possible. The Board should therefore be enabled to issue recommendations in that regard.

(95) In order to perform its tasks effectively, the Board should have appropriate investigatory powers. It should be able to require all necessary information either through the national resolution authorities, or directly, after informing them, and to conduct investigations and on-site inspections, where appropriate in cooperation with national competent authorities, making full use of all information available to the ECB and the national competent authorities. In the context of resolution, on-site inspections should be available for the Board to ensure that decisions are taken on the basis of fully accurate information and to monitor implementation by national authorities effectively.

(96) In order to ensure that the Board has access to all relevant information, the relevant entities and their employees or third parties to whom the entities concerned have outsourced functions or activities should not be able to invoke the requirements of professional secrecy to prevent the disclosure of information to the Board. At the same time, the disclosure of such information to the Board should not be deemed to infringe the requirements of professional secrecy.

(97) In order to ensure compliance with decisions adopted within the framework of the SRM, proportionate and dissuasive fines should be imposed in the event of an infringement. The Board should be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with its decisions addressed to them.

(98) Where a national resolution authority infringes the rules of the SRM by not using the powers conferred on it under national law to implement an instruction by the Board, the Member State concerned may be liable to make good any damage caused to individuals, including, where applicable, to the institution or group under resolution, or any creditor of any part of that entity or group in any Member State, in accordance with the relevant case-law.

(99) In order to guarantee its full autonomy and independence, the Board should have an autonomous budget with revenues from obligatory contributions from the institutions in the participating Member States. Appropriate rules should be laid down governing the budget of the Board, the preparation of the budget, the adoption of internal rules specifying the procedure for the establishment and implementation of the budget, and the internal and external audit of the accounts.

(100) This Regulation should be without prejudice to the ability of Member States to levy fees to cover the administrative expenses of their national resolution authorities.

(101) Participating Member States have jointly agreed to ensure that non-participating Member States are to be reimbursed promptly and with interest for the

amount that a non-participating Member State has paid in own resources in respect of any application of the Union budget for the purposes of meeting non-contractual liabilities and costs relating thereto in relation to the performance of tasks under this Regulation. Participating Member States have concluded an agreement to implement that commitment.

(102) There are circumstances in which the effectiveness of the resolution tools applied may depend on the availability of short-term funding for the entity or a bridge entity, the provision of guarantees to potential purchasers, or the provision of capital to the bridge entity. Notwithstanding the role of central banks in providing liquidity to the financial system even in times of stress, it is therefore important to set up a fund to avoid that the funds needed for such purposes come from the national budgets. It should be the financial industry, as a whole, that finances the stabilisation of the financial system.

(103) It is necessary to ensure that the Fund is fully available for the purpose of the resolution of failing institutions. Therefore, the Fund should not be used for any other purpose than the efficient implementation of resolution tools and resolution powers. Furthermore, it should be used only in accordance with the applicable resolution objectives and principles. Accordingly, the Board should ensure that any losses, costs or other expenses incurred in connection with the use of the resolution tools are first borne by the shareholders and the creditors of the institution under resolution. Only where the resources from shareholders and creditors are exhausted should the losses, costs or other expenses incurred with the resolution tools be borne by the Fund.

(104) As a principle, contributions should be collected from the industry prior to, and independently of, any operation of resolution. When prior funding is insufficient to cover the losses or costs incurred by the use of the Fund, additional contributions should be collected to bear the additional cost or loss. Moreover, the Fund should be able to contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that the ex-ante and ex-post contributions are not immediately accessible or do not cover the expenses incurred by the use of the Fund in relation to resolution actions.

(105) In order to avoid double payments, Member States should be able to make use of available financial means resulting from national bank levies, taxes or resolution contributions established between 17 June 2010 and 2 July 2014 for the purpose of the ex-ante contributions.

(106) In order to reach a critical mass and to avoid pro-cyclical effects which would arise if the Fund had to rely solely on ex-post contributions in a systemic crisis, it is

indispensable that the ex-ante available financial means of the Fund amount at least to a certain minimum target level.

(107) The target level of the Fund should be established as a percentage of the amount of covered deposits of all credit institutions authorised in the participating Member States. However, since the amount of the total liabilities of those institutions would be, taking into account the functions of the Fund, a more adequate benchmark, the Commission should assess whether covered deposits or total liabilities is a more appropriate basis and if a minimum absolute amount for the Fund should be introduced in the future, maintaining a level playing field with Directive 2014/59/EU.

(108) An appropriate time frame should be set to reach the target level for the Fund. However, it should be possible for the Board to adjust the contribution period to take into account significant disbursements made from the Fund.

(109) Ensuring effective and sufficient financing of the Fund is of paramount importance to the credibility of the SRM. The capacity of the Board to contract alternative funding means for the Fund should be enhanced in a manner that optimises the cost of funding and preserves the creditworthiness of the Fund. Immediately after the entry into force of this Regulation, the necessary steps should be taken by the Board in cooperation with the participating Member States to develop the appropriate methods and modalities permitting the enhancement of the borrowing capacity of the Fund that should be in place by the date of application of this Regulation.

(110) Where participating Member States have already established national resolution financing arrangements, they should be able to provide that the national resolution financing arrangements use their available financial means, collected from entities in the past by way of ex-ante contributions, to compensate entities for the ex-ante contributions which those entities should pay into the Fund. Such restitution should be without prejudice to the obligations of Member States under Directive 2014/49/EU.

(111) In order to ensure a fair calculation of contributions and provide incentives to operate under a model which presents less risk, contributions to the Fund should take account of the degree of risk incurred by the credit institution in accordance with Directive 2014/59/EU and with the delegated acts adopted pursuant thereto.

(112) In order to ensure the proper sharing of resolution costs between deposit guarantee schemes and the Fund, the deposit guarantee scheme to which an institution under resolution is affiliated should be required to make a contribution not greater than the amount of losses that it would have had to bear if the entity had been wound up under normal insolvency proceedings.

(113) So as to protect the value of the amounts held in the Fund, those amounts should be invested in sufficiently safe, diversified and liquid assets.

(114) Where close cooperation of a participating Member State whose currency is not the euro with the ECB is terminated in accordance with Article 7 of Regulation (EU) No 1024/2013, a fair partition of the cumulated contributions of the participating Member State concerned should be decided taking into account the interests of the participating Member State concerned and the Fund.

(115) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in order to determine the rules for the calculation of the interest rate to be applied in the event of a decision on the recovery of misused amounts from the Fund and to guarantee the rights to good administration and of access to documents of beneficiaries in procedures in respect of such a recovery; determine the type of contributions to the Fund and the matters for which contributions are due, and the manner in which the amount of the contributions is calculated and the way in which they are to be paid; specify registration, accounting, reporting and other rules necessary to ensure that the contributions are paid fully and in a timely manner; determine the annual contributions necessary to cover the administrative expenditure of the Board before it becomes fully operational; determine the contribution system for institutions that have been authorised to operate after the Fund has reached its target level; determine the criteria for the spreading out in time of the contributions; determine the criteria for determining the number of years by which the initial period for reaching the target level can be extended; determine the criteria for establishing the annual contributions when the available financial means of the Fund diminishes below its target level after the initial period; determine the measures to specify the circumstances and conditions under which ex-post contributions may be temporarily deferred for individual institutions; and determine the detailed rules for the administration of the Fund and general principles and criteria for its investment strategy.

(116) The Council should, within the framework of the delegated acts adopted under Directive 2014/59/EU, adopt implementing acts to specify the application of the methodology for the calculation of individual contributions to the Fund, as well as the technical modalities for computing the flat contribution and the risk-adjusted contribution. That methodology should ensure that both the flat and the risk-adjusted elements in the formula for the calculation of individual contributions are accounted in a way that is consistent with resolution principles and in line with the delegated acts adopted pursuant to Article 103(7) of Directive 2014/59/EU. The methodology should take into account the principle of proportionality, without creating distortions between banking sector structures of the Member States.

(117) As reflected in the Declaration No 39 on Article 290 of the TFEU, the Commission, in accordance with the established practice, in preparation of draft delegated acts provided for in this Regulation, should continue to consult experts appointed by the Member States. It is also of particular importance in this area that the Commission, where relevant, carry out appropriate consultations during its preparatory work with the ECB and the Board in their fields of competence.

(118) Resolution actions should be properly notified and, subject to the limited exceptions laid down in this Regulation, made public. However, as information obtained by the Board, the national resolution authorities and their professional advisers during the resolution process is likely to be sensitive, before the resolution decision is made public that information should be subject to the requirements of professional secrecy. The fact that information on the contents and details of resolution plans and the result of any assessment of those plans may have far-reaching effects, in particular on the undertakings concerned, must be taken into account. Any information provided in respect of a decision before it is taken, be it on whether the conditions for resolution are satisfied, on the use of a specific tool or of any action during the proceedings, must be presumed to have effects on the public and private interests concerned by the action. However, information that the Board and the national resolution authorities are examining a specific entity could be enough to have negative effects on that entity. It is therefore necessary to ensure that there are appropriate mechanisms for maintaining the confidentiality of such information, such as the content and details of resolution plans and the result of any assessment carried out in that context.

(119) To preserve the confidentiality of the work of the Board, its members and its staff, including the staff exchanged with or seconded by participating Member States for the purpose of carrying out resolution duties, should be subject to requirements of professional secrecy, even after their duties have ceased. Those requirements should also apply to other persons authorised by the Board, to persons authorised or appointed by the national resolution authorities of the Member States to conduct on-site inspections, and to observers invited to attend the plenary and executive sessions' meetings of the Board and to observers from non-participating Member States that take part in internal resolution teams. For the purpose of performing the tasks conferred on it by this Regulation, the Board should be authorised, subject to conditions, to exchange information with national or Union authorities and bodies.

(120) In order to ensure that the Board is assimilated in the ESFS, Regulation (EU) No 1093/2010 should be amended in order to include the Board in the concept of competent authorities established by that Regulation. Such assimilation of the Board and competent authorities pursuant to Regulation (EU) No 1093/2010 is consistent with the functions attributed to EBA pursuant to Article 25 of Regulation (EU) No 1093/2010 to contribute to and participate actively in the development and coordination

of recovery and resolution plans and to aim to facilitate the resolution of failing entities and in particular cross-border groups.

(121) Until the Board is fully operational, the Commission should be responsible for the initial operations including the designation of an interim Chair to authorise all necessary payments on behalf of the Board.

(122) The SRM brings together the Board, the Council, the Commission and the resolution authorities of the participating Member States. The Court of Justice has jurisdiction to review the legality of decisions adopted by the Board, the Council and the Commission, in accordance with Article 263 TFEU, as well as for determining their non-contractual liability. Furthermore, the Court of Justice has, in accordance with Article 267 TFEU, competence to give preliminary rulings upon request of national judicial authorities on the validity and interpretation of acts of the institutions, bodies or agencies of the Union. National judicial authorities should be competent, in accordance with their national law, to review the legality of decisions adopted by the resolution authorities of the participating Member States in the exercise of the powers conferred on them by this Regulation, as well as to determine their non-contractual liability.

(123) This Regulation respects the fundamental rights and observes the rights, freedoms and principles recognised in particular by the Charter, and, in particular, the right to property, the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial and the right of defence, and should be implemented in accordance with those rights and principles.

(124) Since the objectives of this Regulation, namely setting up an efficient and effective single European framework for the resolution of entities and ensuring the consistent application of resolution rules, cannot be sufficiently achieved by the Member States but can rather be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(125) The Commission should review the application of this Regulation in order to assess its impact on the internal market and to determine whether any modifications or further developments are needed in order to improve the efficiency and the effectiveness of the SRM, in particular whether the banking Union needs to be completed with the harmonisation at Union level of insolvency proceedings for failed institutions.

(126) The transfer of contributions raised at national level under this Regulation should allow the Fund to operate and thus the resolution tools to be applied in an effective manner. Therefore, the provisions of this Regulation relating to resolution tools and the contributions should apply from 1 January 2016. From December 2015, it should be possible to postpone that date by periods of one month where the conditions allowing the transfer of the contributions raised at national level have not been met,

HAVE ADOPTED THIS REGULATION:

PART I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes uniform rules and a uniform procedure for the resolution of the entities referred to in Article 2 that are established in the participating Member States referred to in Article 4.

Those uniform rules and that uniform procedure shall be applied by the Single Resolution Board established in accordance with Article 42 (the ‘Board’), together with the Council and the Commission and the national resolution authorities within the framework of the single resolution mechanism (‘SRM’) established by this Regulation. The SRM shall be supported by a single resolution fund (‘the Fund’).

The use of the Fund shall be contingent upon the entry into force of an agreement among the participating Member States (‘the Agreement’) on transferring the funds raised at national level towards the Fund as well as on a progressive merger of the different funds raised at national level to be allocated to national compartments of the Fund.

Article 2

Scope

This Regulation shall apply to the following entities: (a) credit institutions established in a participating Member State; (b) parent undertakings, including financial holding companies and mixed financial holding companies, established in a participating Member State, where they are subject to consolidated supervision carried out by the ECB in accordance with Article 4(1)(g) of Regulation (EU) No 1024/2013; (c) investment firms and financial institutions established in a participating Member State,

where they are covered by the consolidated supervision of the parent undertaking carried out by the ECB in accordance with Article 4(1)(g) of Regulation (EU) No 1024/2013.

Article 3

Definitions

1. For the purposes of this Regulation the following definitions apply:

- (1) ‘competent authority’ means any national competent authority as defined in Article 2(2) of Regulation (EU) No 1024/2013
- (2) ‘competent authority’ means a competent authority as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010;
- (3) ‘national resolution authority’ means an authority designated by a participating Member State in accordance with Article 3 of Directive 2014/59/EU;
- (4) ‘relevant national resolution authority’ means the national resolution authority of a participating Member State in which an entity or a group's entity is established;
- (5) ‘conditions for resolution’ means the conditions referred to in Article 18(1);
- (6) ‘resolution plan’ means a plan drawn up in accordance with Article 8 or 9;
- (7) ‘group resolution plan’ means a plan for group resolution drawn up in accordance with Articles 8 and 9;
- (8) ‘resolution objectives’ means the objectives referred to in Article 14;
- (9) ‘resolution tool’ means a resolution tool referred to in Article 22(2);
- (10) ‘resolution action’ means the decision to place an entity referred to in Article 2 under resolution pursuant to Article 18, the application of a resolution tool or the exercise of one or more resolution powers;
- (11) ‘covered deposits’ means deposits as defined in Article 2(1)(5) of Directive 2014/49/EU;

- (12) 'eligible deposits' means eligible deposits as defined in Article 2(1)(4) of Directive 2014/49/EU
- (13) 'institution' means a credit institution, or an investment firm covered by consolidated supervision in accordance with Article 2(c)
- (14) 'institution under resolution' means an entity referred to in Article 2 in respect of which a resolution action is taken;
- (15) 'financial institution' means a financial institution as defined in Article 4(1)(26) of Regulation (EU) No 575/2013;
- (16) 'financial holding company' means a financial holding company as defined in Article 4(1)(20) of Regulation (EU) No 575/2013;
- (17) 'mixed financial holding company' means a mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;
- (18) 'Union parent financial holding company' means an EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;
- (19) 'Union parent institution' means an EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;
- (20) 'parent undertaking' means a parent undertaking as defined in Article 4(1)(15)(a) of Regulation (EU) No 575/2013;
- (21) 'subsidiary' means a subsidiary as defined in Article 4(1)(16) of Regulation (EU) No 575/2013;
- (22) 'branch' means a branch as defined in Article 4(1)(17) of Regulation (EU) No 575/2013;
- (23) 'group' means a parent undertaking and its subsidiaries that are entities as referred to in Article
- (24) 'cross-border group' means a group that has entities as referred to in Article 2 established in more than one participating Member State;
- (25) 'consolidated basis' means the basis of the consolidated situation as defined in Article 4(1)(47) of Regulation (EU) No 575/2013;

- (26) ‘consolidating supervisor’ means consolidating supervisor as defined in Article 4(1)(41) of Regulation (EU) No 575/2013;
- (27) ‘group-level resolution authority’ means the resolution authority in the participating Member State in which the institution or parent undertaking subject to consolidated supervision at the highest level of consolidation within participating Member States in accordance with Article 111 of Directive 2013/36/EU is established;
- (28) ‘institutional protection scheme’ or ‘IPS’ means an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;
- (29) ‘extraordinary public financial support’ means State aid within the meaning of Article 107(1) TFEU or any other public financial support at supra-national level, which, if provided at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an entity referred to in Article 2 of this Regulation or of a group of which such an entity forms part;
- (30) ‘sale of business tool’ means the mechanism for effecting a transfer by a resolution authority of instruments of ownership issued by an institution under resolution, or assets, rights or liabilities of an institution under resolution, to a purchaser that is not a bridge institution, in accordance with Article 24;
- (31) ‘bridge institution tool’ means the mechanism for transferring instruments of ownership issued by an institution under resolution, or assets, rights or liabilities of an institution under resolution, to a bridge institution, in accordance with Article 25; ‘asset separation tool’ means the mechanism for effecting a transfer of assets, rights or liabilities of an institution under resolution to an asset management vehicle in accordance with Article 26;
- (32) ‘asset separation tool’ means the mechanism for effecting a transfer of assets, rights or liabilities of an institution under resolution to an asset management vehicle in accordance with Article 26;
- (33) ‘bail-in tool’ means the mechanism for effecting the exercise of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with Article 27;

- (34) ‘available financial means’ means the cash, deposits, assets and irrevocable payment commitments available to the Fund for the purposes listed under Article 76(1);
- (35) ‘target level’ means the amount of available financial means to be reached under Article 69(1);
- (36) ‘Agreement’ means the agreement on the transfer and mutualisation of contributions to the Fund;
- (37) ‘transitional period’ means the period from the date of application of this Regulation as determined under Article 99(2) and (6) until the Fund reaches the target level or 1 January 2024, whichever is earlier;
- (38) ‘financial instrument’ means financial instrument as defined in point (50) of Article 4(1) of Regulation (EU) No 575/2013;
- (39) ‘debt instruments’ means bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;
- (40) ‘own funds’ means own funds as defined in Article 4(1)(118) of Regulation (EU) No 575/2013;
- (41) ‘own funds requirements’ means the requirements laid down in Articles 92 to 98 of Regulation (EU) No 575/2013;
- (42) ‘winding up’ means the realisation of assets of an entity referred to in Article 2;
- (43) ‘derivative’ means a derivative as defined in Article 2(5) of Regulation (EU) No 648/2012;
- (44) ‘write-down and conversion powers’ means the powers referred to in Article 21;
- (45) ‘Common Equity Tier 1 instruments’ means capital instruments that meet the conditions laid down in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of Regulation (EU) No 575/2013;
- (46) ‘Additional Tier 1 instruments’ means capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013;

- (47) ‘Tier 2 instruments’ means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013;
- (48) ‘aggregate amount’ means the aggregate amount by which the resolution authority has assessed that eligible liabilities are to be written down or converted, in accordance with Article 27(13);
- (49) ‘eligible liabilities’ means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an entity referred to in Article 2 that are not excluded from the scope of the bail-in tool pursuant to Article 27(3);
- (50) ‘deposit guarantee scheme’ means a deposit guarantee scheme introduced and officially recognised by a Member State pursuant to Article 4 of Directive 2014/49/EU;
- (51) ‘relevant capital instruments’ means Additional Tier 1 instruments and Tier 2 instruments;
- (52) ‘covered bond’ means an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council (¹³);
- (53) ‘depositor’ means a depositor as defined in Article 2(1)(6) of Directive 2014/49/EU;
- (54) ‘investor’ means an investor within the meaning of Article 1(4) of Directive 97/9/EC of the European Parliament and of the Council (¹⁴).

2. In the absence of a relevant definition in paragraph 1 of this Article, the definitions referred to in Article 2 of Directive 2014/59/EU apply. In the absence of a relevant definition in paragraph 1 of this Article or in Article 2 of Directive 2014/59/EU, the definitions referred to in Article 3 of Directive 2013/36/EU apply.

¹³ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

¹⁴ Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

*Article 4***Participating Member States**

1. Participating Member States within the meaning of Article 2 of Regulation (EU) No 1024/2013 shall be considered to be participating Member States for the purposes of this Regulation.

2. Where close cooperation between a Member State and the ECB is suspended or terminated in accordance with Article 7 of Regulation (EU) No 1024/2013, entities established in that Member State shall cease to be covered by this Regulation from the date of application of the decision to suspend or terminate close cooperation.

3. In the event that the close cooperation with the ECB of a Member State whose currency is not the euro is terminated in accordance with Article 7 of Regulation (EU) No 1024/2013, the Board shall decide within three months after the date of adoption of the decision to terminate close cooperation, in agreement with that Member State, on the modalities for the recoupment of contributions that the Member State concerned has transferred to the Fund and any conditions applicable.

Recoupments shall include the part of the compartment corresponding to the Member State concerned not subject to mutualisation. If during the transitional period, as laid down in the Agreement, recoupments of the non-mutualised part are not sufficient to permit the funding of the establishment by the Member State concerned of its national financial arrangement in accordance with Directive 2014/59/EU, recoupments shall also include the totality or a part of the part of the compartment corresponding to that Member State subject to mutualisation in accordance with the Agreement or otherwise, after the transitional period, the totality or a part of the contributions transferred by the Member State concerned during the close cooperation, in an amount sufficient to permit the funding of that national financial arrangement.

When assessing the amount of financial means to be recouped from the mutualised part or otherwise, after the transitional period, from the Fund, the following additional criteria shall be taken into account:

- (a) the manner in which termination of close cooperation with the ECB has taken place, whether voluntarily, in accordance with Article 7(6) of Regulation (EU) No 1024/2013, or not;
- (b) the existence of ongoing resolution actions on the date of termination;
- (c) the economic cycle of the Member State concerned by the termination. Recoupments shall be distributed during a limited period commensurate to the

duration of the close cooperation. The relevant Member State's share of the financial means from the Fund used for resolution actions during the period of close cooperation shall be deducted from those recoupments.

4. This Regulation shall continue to apply to resolution proceedings which are ongoing on the date of application of a decision as referred to in paragraph 2.

Article 5

Relation to Directive 2014/59/EU and applicable national law

1. Where, pursuant to this Regulation, the Board performs tasks and exercises powers, which, pursuant to Directive 2014/59/EU are to be performed or exercised by the national resolution authority, the Board shall, for the application of this Regulation and of Directive 2014/59/EU, be considered to be the relevant national resolution authority or, in the event of cross-border group resolution, the relevant group-level resolution authority.

2. The Board, the Council and the Commission and, where relevant, the national resolution authorities, shall take decisions subject to and in compliance with the relevant Union law and in particular any legislative and non-legislative acts, including those referred to in Articles 290 and 291 TFEU.

The Board, the Council and the Commission shall be subject to binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010 and to any guidelines and recommendations issued by EBA under Article 16 of that Regulation. They shall make every effort to comply with any guidelines and recommendations of EBA which relate to tasks of a kind to be performed by those bodies. Where they do not comply or do not intend to comply with such guidelines or recommendations EBA shall be informed thereof in accordance with Article 16(3) of that Regulation. The Board, the Council and the Commission shall cooperate with EBA in the application of Articles 25 and 30 of that Regulation. The Board shall also be subject to any decisions of EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 where Directive 2014/59/EU provides for such decisions.

Article 6

General principles

1. No action, proposal or policy of the Board, the Council, the Commission or a national resolution authority shall discriminate against entities, deposit holders,

investors or other creditors established in the Union on grounds of their nationality or place of business.

2. Every action, proposal or policy of the Board, the Council, the Commission, or of a national resolution authority in the framework of the SRM shall be undertaken with full regard and duty of care for the unity and integrity of the internal market.

3. When making decisions or taking action which may have an impact in more than one Member State, and in particular when taking decisions concerning groups established in two or more Member States, due consideration shall be given to the resolution objectives referred to in Article 14 and all of the following factors:

- (a) the interests of the Member States where a group operates and in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, the economy, the financing arrangements, the deposit guarantee scheme or the investor compensation scheme of any of those Member States and on the Fund;
- (b) the objective of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of a Member State;
- (c) the need to minimise a negative impact for any part of a group of which an entity referred to in Article 2, which is subject to a resolution, is a member.

4. When making decisions or taking actions, in particular regarding entities or groups established both in a participating Member State and in a non-participating Member State, possible negative effects on non-participating Member States, including on entities established in those Member States, shall be taken into consideration.

5. The Board, the Council and the Commission shall balance the factors referred to in paragraph 3 with the resolution objectives referred to in Article 14 as appropriate to the nature and circumstances of each case and shall comply with the decisions made by the Commission under Article 107 TFEU and Article 19 of this Regulation.

6. Decisions or actions of the Board, the Council or the Commission shall neither require Member States to provide extraordinary public financial support nor impinge on the budgetary sovereignty and fiscal responsibilities of the Member States.

7. Where the Board takes a decision that is addressed to a national resolution authority, the national resolution authority shall have the right to specify further the measures to be taken. Such specifications shall comply with the decision of the Board in question.

Article 7

Division of tasks within the SRM

1. The Board shall be responsible for the effective and consistent functioning of the SRM.

2. Subject to the provisions referred to in Article 31(1), the Board shall be responsible for drawing up the resolution plans and adopting all decisions relating to resolution for:

(a) the entities referred to in Article 2 that are not part of a group and for groups:

- i. which are considered to be significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013; or
- ii. in relation to which the ECB has decided in accordance with Article 6(5)(b) of Regulation (EU) No 1024/2013 to exercise directly all of the relevant powers; and

(b) other cross-border groups.

3. In relation to entities and groups other than those referred to in paragraph 2, without prejudice to the responsibilities of the Board for the tasks conferred on it by this Regulation, the national resolution authorities shall perform, and be responsible for, the following tasks:

- (a) adopting resolution plans and carrying out an assessment of resolvability in accordance with Articles 8 and 10 and with the procedure laid down in Article 9;
- (b) adopting measures during early intervention in accordance with Article 13(3);
- (c) applying simplified obligations or waiving the obligation to draft a resolution plan, in accordance with Article 11;
- (d) setting the level of minimum requirement for own funds and eligible liabilities, in accordance with Article 12;
- (e) adopting resolution decisions and applying resolution tools referred to in this Regulation, in accordance with the relevant procedures and safeguards, provided that the resolution action does not require any use of the Fund and is

financed exclusively by the tools referred to in Articles 21 and 24 to 27 and/or by the deposit guarantee scheme, in accordance with Article 79, and with the procedure laid down in Article 31;

- (f) writing down or converting relevant capital instruments pursuant to Article 21, in accordance with the procedure laid down in Article 31.

If the resolution action requires the use of the Fund, the Board shall adopt the resolution scheme.

When adopting a resolution decision, the national resolution authorities shall take into account and follow the resolution plan as referred to in Article 9, unless they assess, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plan. When performing the tasks referred to in this paragraph, the national resolution authorities shall apply the relevant provisions of this Regulation. Any references to the Board in Article 5(2), Article 6(5), Article 8(6), (8), (12) and (13), Article 10(1) to (10), Articles 11 to 14, Article 15(1), (2) and (3), Article 16, the first subparagraph of Article 18(1), Article 18(2) and (6), Article 20, Article 21(1) to (7), the second subparagraph of Article 21(8), Article 21(9) and (10), Article 22(1), (3) and (6), Articles 23 and 24, Article 25(3), Article 27(1) to (15), the second sentence of the second subparagraph, the third subparagraph, and the first, third and fourth sentences of the fourth subparagraph of Article 27(16), and Article 32 shall be read as references to the national resolution authorities with regard to groups and entities referred to in the first subparagraph of this paragraph. For that purpose the national resolution authorities shall exercise the powers conferred on them under national law transposing Directive 2014/59/EU in accordance with the conditions laid down in national law.

The national resolution authorities shall inform the Board of the measures referred to in this paragraph that are to be taken and shall closely coordinate with the Board when taking those measures.

The national resolution authorities shall submit to the Board the resolution plans referred to in Article 9, as well as any updates, accompanied by a reasoned assessment of the resolvability of the entity or group concerned in accordance with Article 10.

4. Where necessary to ensure the consistent application of high resolution standards under this Regulation, the Board may:

- (a) further to the notification by a national resolution authority of a measure under paragraph 3 of this Article pursuant to Article 31(1), within the appropriate timeframe having regard to the urgency of the circumstances, issue a warning to the relevant national resolution authority where the Board

considers that the draft decision with regard to any entity or group referred to in paragraph 3 of this Article does not comply with this Regulation or with its general instructions referred to in Article 31(1)(a);

- (b) at any time decide, in particular if its warning referred to in point (a) is not being appropriately addressed, on its own initiative, after consulting the national resolution authority concerned, or upon request from the national resolution authority concerned, to exercise directly all of the relevant powers under this Regulation also with regard to any entity or group referred to in paragraph 3 of this Article.

5. Notwithstanding paragraph 3 of this Article, participating Member States may decide that the Board exercise all of the relevant powers and responsibilities conferred on it by this Regulation in relation to entities and to groups, other than those referred to in paragraph 2, established in their territory. If so, paragraphs 3 and 4 of this Article, Article 9, Article 12(2), and Article 31(1) shall not apply. Member States that intend to make use of this option shall notify the Board and the Commission accordingly. The notification shall take effect from the day of its publication in the *Official Journal of the European Union*.

PART II

SPECIFIC PROVISIONS

TITLE I

FUNCTIONS WITHIN THE SRM AND PROCEDURAL RULES

CHAPTER 1

Resolution planning

Article 8

Resolution plans drawn up by the Board

1. The Board shall draw up and adopt resolution plans for the entities and groups referred to in Article 7(2), and for the entities and groups referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met.

2. The Board shall draw up the resolution plans, after consulting the ECB or the relevant national competent authorities and the national resolution authorities, including the group-level resolution authority, of the participating Member States in which the entities are established, and the resolution authorities of non-participating Member States in which significant branches are located insofar as relevant to the significant branch. To that end, the Board may require the national resolution authorities to prepare and submit to the Board draft resolution plans and the group-level resolution authority to prepare and submit to the Board a draft group resolution plan.

3. In order to ensure effective and consistent application of this Article, the Board shall issue guidelines and address instructions to the national resolution authorities for the preparation of draft resolution plans and draft group resolution plans relating to specific entities or groups.

4. For the purposes of paragraph 1 of this Article, the national resolution authorities shall submit to the Board all information necessary to draw up and implement the resolution plans, as obtained by them in accordance with Article 11 and Article 13(1) of Directive 2014/59/EU, without prejudice to Chapter 5 of this Title.

5. The resolution plan shall set out options for applying the resolution tools and exercising resolution powers referred to in this Regulation to the entities and groups referred to in paragraph 1.

6. The resolution plan shall provide for the resolution actions which the Board may take where an entity or a group referred to in paragraph 1 meets the conditions for resolution.

The information referred to in paragraph 9 shall be disclosed to the entity concerned.

When drawing up and updating the resolution plan, the Board shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed, in accordance with Article 10.

The resolution plan shall take into consideration relevant scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events.

The resolution plan shall not assume any of the following:

- (a) any extraordinary public financial support besides the use of the Fund established in accordance with Article 67;

(b) any central bank emergency liquidity assistance; or

(c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

7. The resolution plan shall include an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and shall identify those assets which would be expected to qualify as collateral.

8. The Board may require institutions to assist it in the drawing up and updating of the plans.

9. The resolution plan for each entity shall include, quantified where appropriate and possible:

(a) a summary of the key elements of the plan;

(b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed;

(c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;

(d) an estimation of the timeframe for executing each material aspect of the plan;

(e) a detailed description of the assessment of resolvability carried out in accordance with Article 10;

(f) a description of any measures required pursuant to Article 10(7) to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 10;

(g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;

(h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 11 of Directive 2014/59/EU is up to date and at the disposal of the resolution authorities at all times;

- (i) an explanation as to how the resolution options could be financed without the assumption of any of the following:
 - i. any extraordinary public financial support besides the use of the Fund established in accordance with Article 67;
 - ii. any central bank emergency liquidity assistance; or
 - iii. any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales; (k) a description of critical interdependencies;
- (k) a description of options for preserving access to payments and clearing services and other infrastructures and an assessment of the portability of client positions;
- (l) an analysis of the impact of the plan on the employees of the institution, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, taking into account national systems for dialogue with social partners, where applicable;
- (m) a plan for communicating with the media and the public;
- (n) the minimum requirement for own funds and eligible liabilities required pursuant to Article 12 and a deadline to reach that level, where applicable;
- (o) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 12, and a deadline to reach that level, where applicable;
- (p) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
- (q) where applicable, any opinion expressed by the institution in relation to the resolution plan.

10. Group resolution plans shall include a plan for the resolution of the group, headed by the Union parent undertaking established in a participating Member State, as a whole, either through resolution at the level of the Union parent undertaking or through

break up and resolution of the subsidiaries. The group resolution plan shall identify measures for the resolution of:

- (a) the Union parent undertaking;
- (b) the subsidiaries that are part of the group and that are established in the Union;
- (c) the entities referred to in Article 2(b); and
- (d) subject to Article 33, the subsidiaries that are part of the group and that are established outside the Union.

11. The group resolution plan shall:

- (a) set out the resolution actions to be taken in relation to group entities, both through resolution actions in respect of the entities referred to in Article 2(b) and subsidiary institutions and through coordinated resolution actions in respect of subsidiary institutions, in the scenarios provided for in paragraph 6;
- (b) examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities established in the Union, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities, and identify any potential impediments to a coordinated resolution;
- (c) include a detailed description of the assessment of resolvability carried out in accordance with Article 10;
- (d) where a group includes entities incorporated in third countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the Union;
- (e) identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution where the conditions for resolution are met;
- (f) identify how the group resolution actions could be financed and, where the Fund and the financing arrangements from non-participating Member States established in accordance with Article 100 of Directive 2014/59/EU would be

required, set out principles for sharing responsibility for that financing between sources of funding in different participating and non-participating Member States. The plan shall not assume any of the following:

- i. any extraordinary public financial support besides the use of the Fund established in accordance with Article 67 of this Regulation and the financing arrangements from non-participating Member States established in accordance with Article 100 of Directive 2014/59/EU;
- ii. any central bank emergency liquidity assistance; or
- iii. any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

Those principles shall be set out on the basis of equitable and balanced criteria and shall take into account in particular Article 107(5) of Directive 2014/59/EU and the impact on financial stability in all Member States concerned.

The group resolution plan shall not have a disproportionate impact on any Member State.

12. The Board shall determine the date by which the first resolution plans shall be drawn up. Resolution plans and group resolution plans shall be reviewed, and where appropriate updated, at least annually and after any material changes to the legal or organisational structure or to the business or the financial position of the entity or, in the case of group resolution plans, of the group including any group entity that could have a material effect on the effectiveness of the plan or that otherwise necessitates a revision of the resolution plan.

For the purpose of the revision or update of the resolution plans referred to in the first subparagraph, the institutions, the ECB or the national competent authorities shall promptly communicate to the Board any change that necessitates such revision or update.

13. The Board shall transmit the resolution plans and any changes thereto to the ECB or to the relevant national competent authorities.

Article 9

Resolution plans drawn up by national resolution authorities

1. The national resolution authorities shall draw up and adopt resolution plans for the entities and for the groups, other than those referred to in Article 7(2), (4)(b) and (5), in accordance with Article 8(5) to (13).
2. The national resolution authorities shall prepare resolution plans, after consulting the relevant national competent authorities and the national resolution authorities of the participating and non-participating Member States, in which significant branches are located, insofar as relevant to the significant branch.

Article 10

Assessment of resolvability

1. When drafting and updating resolution plans in accordance with Article 8, the Board, after consulting the competent authorities, including the ECB, and the resolution authorities of non-participating Member States in which significant branches are located insofar as relevant to the significant branch, shall conduct an assessment of the extent to which institutions and groups are resolvable without the assumption of any of the following:
 - (a) any extraordinary public financial support besides the use of the Fund established in accordance with Article 67;
 - (b) any central bank emergency liquidity assistance; or
 - (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.
2. The ECB or the relevant national competent authority shall provide the Board with a recovery plan or group recovery plan. The Board shall examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the institution or group and make recommendations to the ECB or the national competent authority on those matters.
3. When drafting a resolution plan, the Board shall assess the extent to which such an entity is resolvable in accordance with this Regulation. An entity shall be deemed to be resolvable if it is feasible and credible for the Board to either liquidate it under normal insolvency proceedings or to resolve it by applying to it resolution tools and exercising

resolution powers while avoiding, to the maximum extent possible, any significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member State in which the entity is situated, or other Member States, or the Union and with a view to ensuring the continuity of critical functions carried out by the entity.

The Board shall notify EBA in a timely manner where an institution is deemed not to be resolvable.

4. A group shall be deemed to be resolvable if it is feasible and credible for the Board to either liquidate group entities under normal insolvency proceedings or to resolve them by applying resolution tools and exercising resolution powers in relation to group entities while avoiding, to the maximum extent possible, any significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member States in which group entities are established, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by those group entities, where they can be easily separated in a timely manner or by other means.

The Board shall notify EBA in a timely manner where a group is deemed not to be resolvable.

5. For the purposes of paragraphs 3, 4 and 10, significant adverse consequences for the financial system or threat to financial stability refers to a situation where the financial system is actually or potentially exposed to a disruption that may give rise to financial distress liable to jeopardise the orderly functioning, efficiency and integrity of the internal market or the economy or the financial system of one or more Member States. In determining the significant adverse consequences the Board shall take into account the relevant warnings and recommendations of the ESRB and the relevant criteria developed by EBA in considering the identification and measurement of systemic risk.

6. For the purpose of the assessment referred to in this Article, the Board shall examine the matters specified in Section C of the Annex to Directive 2014/59/EU.

7. If, pursuant to an assessment of resolvability for an entity or a group carried out in accordance with paragraph 3 or 4, the Board, after consulting the competent authorities, including the ECB, determines that there are substantive impediments to the resolvability of that entity or group, the Board shall prepare a report, in cooperation with the competent authorities, addressed to the institution or the parent undertaking analysing the substantive impediments to the effective application of resolution tools and the exercise of resolution powers. That report shall consider the impact on the institution's business model and recommend any proportionate and targeted measures

that, in the Board's view, are necessary or appropriate to remove those impediments in accordance with paragraph 10.

8. The report shall also be notified to the competent authorities and to the resolution authorities of non-participating Member States in which significant branches of institutions which are not part of a group are located. It shall be supported by reasons for the assessment or determination in question and shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in Article 6.

9. Within four months from the date of receipt of the report, the entity or the parent undertaking shall propose to the Board possible measures to address or remove the substantive impediments identified in the report. The Board shall communicate any measure proposed by the entity or parent undertaking to the competent authorities, to EBA and, where significant branches of institutions that are not part of a group are located in non-participating Member States, to the resolution authorities of those Member States.

10. The Board, after consulting the competent authorities, shall assess whether the measures referred to in paragraph 9 effectively address or remove the substantive impediments in question. If the measures proposed by the entity or parent undertaking concerned do not effectively reduce or remove the impediments to resolvability, the Board shall take a decision, after consulting the competent authorities and, where appropriate, the designated macro-prudential authority, indicating that the measures proposed do not effectively reduce or remove the impediments to resolvability, and instructing the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to take any of the measures listed in paragraph 11.

In identifying alternative measures, the Board shall demonstrate how the measures proposed by the institution would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The Board shall take into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the institution, its stability and its ability to contribute to the economy, on the internal market for financial services and on the financial stability in other Member States and the Union as a whole.

The Board shall also take into account the need to avoid any impact on the institution or the group concerned which would go beyond what is necessary to remove the impediment to resolvability or would be disproportionate.

11. For the purpose of paragraph 10, the Board, where applicable, shall instruct the national resolution authorities to take any of the following measures:

- (a) to require the entity to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
- (b) to require the entity to limit its maximum individual and aggregate exposures;
- (c) to impose specific or regular additional information requirements relevant for resolution purposes;
- (d) to require the entity to divest specific assets;
- (e) to require the entity to limit or cease specific existing or proposed activities;
- (f) to restrict or prevent the development of new or existing business lines or sale of new or existing products;
- (g) to require changes to legal or operational structures of the entity or any group entity, either directly or indirectly under their control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
- (h) to require an entity to set up a parent financial holding company in a Member State or a Union parent financial holding company;
- (i) to require an entity to issue eligible liabilities to meet the requirements of Article 12;
- (j) to require an entity to take other steps to meet the requirements referred to in Article 12, including in particular to attempt to renegotiate any eligible liability, Additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the Board to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument.

Where applicable, the national resolution authorities shall directly take the measures referred to in points (a) to (j) of the first subparagraph.

12. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29.

13. A decision made pursuant to paragraphs 10 and 11 shall meet the following requirements:

- (a) it shall be supported by reasons for the assessment or determination in question;
- (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in paragraph 10.

Article 11

Simplified obligations for certain institutions

1. The Board, on its own initiative after consulting a national resolution authority or upon proposal by a national resolution authority, may apply simplified obligations in relation to the drafting of resolution plans referred to in Article 8 or may waive the obligation of drafting those plans in accordance with paragraphs 3 to 9 of this Article.

2. National resolution authorities may propose to the Board to apply simplified obligations to institutions or groups pursuant to paragraphs 3 and 4 or to waive the obligation of drafting resolution plans pursuant to paragraph 7. That proposal shall be reasoned and shall be supported by all of the relevant documentation.

3. On receiving a proposal to apply simplified obligations pursuant to paragraph 2 of this Article, or when acting on its own initiative, the Board shall conduct an assessment of the institution or group concerned and shall apply simplified obligations, if the failure of the institution or group is not likely to have significant adverse consequences for the financial system or be a threat to financial stability within the meaning of Article 10(5).

For those purposes, the Board shall take into account:

- (a) the nature of the institution's or group's business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and complexity of its activities;
- (b) its membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013;

- (c) (c)any exercise of investment services or activities as defined in Article 4(1)(2) of Directive 2014/65/EU of the European Parliament and of the Council (¹⁵); and
- (d) (d)whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy.

The Board shall make the assessment referred to in the first subparagraph after consulting, where appropriate, the national macroprudential authority and, where appropriate, the ESRB.

4. When applying simplified obligations, the Board shall determine:

- (a) the contents and details of resolution plans provided for in Article 8;
- (b) the date by which the first resolution plans are to be drawn up and the frequency for updating resolution plans which may be lower than that provided for in Article 8(12);
- (c) (c)the contents and details of the information required from institutions as provided for in Article 8(9) of this Regulation and in Section B of the Annex to Directive 2014/59/EU;
- (d) the level of detail for the assessment of resolvability provided for in Article 10 of this Regulation, and in Section C of the Annex to Directive 2014/59/EU.

5. The application of simplified obligations shall not in itself affect the Board's power to take any resolution action.

6. Where simplified obligations are applied, the Board shall impose full, unsimplified obligations at any time if any of the circumstances that justified them no longer exist.

7. Without prejudice to Articles 9 and 31, on receiving a proposal to waive the obligation of drafting resolution plans pursuant to paragraph 2 of this Article, or when acting on its own initiative, the Board shall, pursuant to paragraph 3 of this Article, waive the application of the obligation of drafting resolution plans to institutions affiliated to a central body and wholly or partially exempt from prudential requirements in national law in accordance with Article 10 of Regulation (EU) No 575/2013.

¹⁵ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Where a waiver is granted in accordance with the first subparagraph, the obligation of drafting the resolution plan shall apply on a consolidated basis to the central body and institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013. For that purpose, any reference in this Chapter to a group shall include a central body and institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013 and their subsidiaries, and any reference to parent undertakings or institutions that are subject to consolidated supervision pursuant to Article 111 of Directive 2013/36/EU shall include the central body.

8. Institutions that are subject to direct supervision by the ECB pursuant to Article 6(4) of Regulation (EU) No 1024/2013 or that constitute a significant share in the financial system of a participating Member State shall be the subject of individual resolution plans.

For the purposes of this paragraph, the operations of an institution shall be considered to constitute a significant share of that participating Member State's financial system where:

- (a) the total value of its assets exceeds EUR 30 000 000 000; or
- (b) the ratio of its total assets over the GDP of the Member State of establishment exceeds 20 %, unless the total value of its assets is below EUR 5 000 000 000.

9. Where the national resolution authority which has proposed the application of simplified obligations or the grant of a waiver in accordance with paragraph 2 considers that the decision to apply simplified obligations or to grant the waiver must be withdrawn, it shall submit a proposal to the Board to that end. In that case, the Board shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national resolution authority in the light of the factors or circumstances referred to in paragraph 3 or in paragraphs 7 and 8.

10. The Board shall inform EBA of its application of this Article.

Article 12

Minimum requirement for own funds and eligible liabilities

1. The Board shall, after consulting competent authorities, including the ECB, determine the minimum requirement for own funds and eligible liabilities as referred to in paragraph 4, subject to write-down and conversion powers, which the entities and groups referred to in Article 7(2), and the entities and groups referred to in Article

7(4)(b) and (5) where the conditions for the application of these paragraphs are met, are required to meet at all times.

2. When drafting resolution plans in accordance with Article 9, national resolution authorities shall, after consulting competent authorities, determine the minimum requirement for own funds and eligible liabilities, as referred to in paragraph 4, subject to write-down and conversion powers, which the entities referred to in Article 7(3) are required to meet at all times. In that regard the procedure established in Article 31 shall apply.

3. In order to ensure effective and consistent application of this Article, the Board shall issue guidelines and address instructions to national resolution authorities relating to specific entities or groups.

4. The minimum requirement for own funds and eligible liabilities shall be calculated as the amount of own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds of the institution.

For the purpose of the first subparagraph derivative liabilities shall be included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

5. Notwithstanding paragraph 1, the Board shall exempt mortgage credit institutions financed by covered bonds which, according to national law, are not allowed to receive deposits, from the obligation to meet, at all times, a minimum requirement for own funds and eligible liabilities, as:

(a) those institutions will be wound up through national insolvency procedures, or other type of procedures implemented in accordance with Article 38, 40 or 42 of Directive 2014/59/EU, provided for those institutions; and

(b) such national insolvency procedures, or other type of procedures, will ensure that creditors of those institutions, including holders of covered bonds where relevant, will bear losses in a way that meets the resolution objectives.

6. The minimum requirement for own funds and eligible liabilities referred to in paragraph 4 shall not exceed the amount of own funds and eligible liabilities sufficient to ensure that, if the bail-in tool were to be applied, the losses of an institution or a parent undertaking as referred to in Article 2, as well as of the ultimate parent undertaking of that institution or parent undertaking and any institution or financial institution included in the consolidated accounts of that ultimate parent undertaking, could be absorbed, and the Common Equity Tier 1 ratio of those entities could be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to continue to carry out the activities for which they are authorised

under Directive 2013/36/EU or equivalent legislation and to sustain sufficient market confidence in the institution or parent undertaking referred to in Article 2 and the ultimate parent undertaking of that institution or parent undertaking and any institution or financial institution included in the consolidated accounts of that ultimate parent undertaking.

Where the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 27(5), or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, the minimum requirement for own funds and eligible liabilities referred to in paragraph 4 shall not exceed the amount of own funds and eligible liabilities necessary to ensure that the institution or parent undertaking referred to in Article 2 has sufficient other eligible liabilities to ensure that losses of the institution or the parent undertaking referred to in Article 2 as well as of the ultimate parent undertaking of that institution or parent undertaking and any institution or financial institution included in the consolidated accounts of that ultimate parent undertaking could be absorbed and the Common Equity Tier 1 ratio of those entities could be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry out the activities for which they are authorised under Directive 2013/36/EU or equivalent legislation and to sustain sufficient market confidence in the institution or parent undertaking and the ultimate parent undertaking of that institution or parent undertaking and any institution or financial institution included in the consolidated accounts of that ultimate parent undertaking.

The minimum requirement for own funds and eligible liabilities referred to in paragraph 4 shall not be inferior to the total amount of any own funds requirements and buffer requirements under Regulation (EU) No 575/2013 and Directive 2013/36/EU.

7. Within the limits laid down in paragraph 6 of this Article, in order to ensure that an entity referred to in Article 2 can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives, the determination referred to in paragraph 1 of this Article shall be made on the basis of the following criteria:

- (a) the size, the business model, the funding model and the risk profile of the institution and parent undertaking referred to in Article 2;
- (b) the extent to which the deposit guarantee scheme could contribute to the financing of resolution in accordance with Article 79;
- (c) the extent to which the failure of the institution and parent undertaking referred to in Article 2 would have significant adverse consequences for the

financial system or would be a threat to financial stability within the meaning of Article 10(5), including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.

8. The determination shall specify the minimum requirement for own funds and eligible liabilities that the institutions are to comply with on an individual basis, and that parent undertakings are to comply with on a consolidated basis. The minimum aggregate amount requirement for own funds and eligible liabilities at consolidated level of a Union parent undertaking established in a participating Member State shall be determined by the Board, after consulting the consolidating supervisor, on the basis of the criteria laid down in paragraph 7, and of whether the third-country subsidiaries of the group are to be resolved separately in accordance with the resolution plan.

9. The Board shall set the minimum requirement for own funds and eligible liabilities to be applied to the group's subsidiaries on an individual basis. Those minimum requirements for own funds and eligible liabilities shall be set at a level appropriate for the subsidiary having regard to:

- (a) the criteria listed in paragraph 7, in particular the size, business model and risk profile of the subsidiary, including its own funds; and
- (b) the consolidated requirement that has been set for the group.

10. The Board may decide to waive the minimum requirement for own funds and eligible liabilities on an individual basis to a parent institution provided that the conditions laid down in points (a) and (b) of Article 45(11) of Directive 2014/59/EU are met. The Board may decide to waive the minimum requirement for own funds and eligible liabilities on an individual basis to a subsidiary provided that the conditions laid down in points (a), (b) and (c) of Article 45(12) of Directive 2014/59/EU are met.

11. The Board, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, may decide that the minimum requirement for own funds and eligible liabilities as referred to in paragraph 1 is partially met on a consolidated or on an individual basis through contractual bail-in instruments, in full compliance with the criteria laid down in the first and second subparagraphs of paragraph 5 and in paragraph 7.

12. To qualify as a contractual bail-in instrument under paragraph 11, the Board must be satisfied that the instrument:

- (a) contains a contractual term providing that, where the Board decides that the bail-in tool be applied to that institution, the instrument shall be written down

or converted to the extent required before other eligible liabilities are written down or converted; and

- (b) is subject to a binding subordination agreement, undertaking or provision under which in the event of normal insolvency proceedings, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.

13. The Board shall make any determination referred to in paragraph 1 of this Article, and, where relevant, in paragraph 11 of this Article, in parallel with the development and maintenance of the resolution plans pursuant to Article 8.

14. The Board shall address its determination to the national resolution authorities. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29. The Board shall require that the national resolution authorities verify and ensure that institutions and parent undertakings maintain the minimum requirement for own funds and eligible liabilities laid down in paragraph 1 of this Article.

15. The Board shall inform the ECB and EBA of the minimum requirement for own funds and eligible liabilities that it has determined for each institution and parent undertaking under paragraph 1 and, where relevant, the requirements laid down in paragraph 11.

16. Eligible liabilities, including subordinated debt instruments and subordinated loans that do not qualify as Additional Tier 1 instruments or Tier 2 instruments, shall be included in the amount of own funds and eligible liabilities referred to in paragraph 1 only if they satisfy the following conditions:

- (a) the instrument is issued and fully paid up;
- (b) the liability is not owed to, secured by or guaranteed by the institution itself;
- (c) the purchase of the instrument was not funded either directly or indirectly by the institution;
- (d) the liability has a remaining maturity of at least one year;
- (e) the liability does not arise from a derivative;

- (f) the liability does not arise from a deposit which benefits from preference in the national insolvency hierarchy in accordance with Article 108 of Directive 2014/59/EU.

For the purpose of point (d) of the first subparagraph, where a liability confers upon its owner a right to early reimbursement, the maturity of that liability shall be the first date where such right arises.

17. Where a liability is governed by the law of a jurisdiction outside the Union, the Board may instruct national resolution authorities to require the institution to demonstrate that any decision of the Board to write down or convert that liability would be effected under the law of that jurisdiction, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters. If the Board is not satisfied that any decision would be effected under the law of that jurisdiction, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

18. If the Commission submits a legislative proposal pursuant to Article 45(18) of Directive 2014/59/EU, it shall, if appropriate, submit a legislative proposal amending this Regulation in the same way.

CHAPTER 2

Early intervention

Article 13

Early intervention

1. The ECB or national competent authorities shall inform the Board of any measure that they require an institution or group to take or that they take themselves pursuant to Article 16 of Regulation (EU) No 1024/2013, to Article 27(1) or Article 28 or 29 of Directive 2014/59/EU, or to Article 104 of Directive 2013/36/EU.

The Board shall notify the Commission of any information which it has received pursuant to the first subparagraph.

2. From the date of receipt of the information referred to in paragraph 1, and without prejudice to the powers of the ECB and national competent authorities in accordance with other Union law, the Board may prepare for the resolution of the institution or group concerned.

For the purposes of the first subparagraph, the ECB or the relevant national competent authority shall closely monitor, in cooperation with the Board, the conditions of the institution or the parent undertaking and their compliance with any early intervention measure that was required of them.

The ECB or the relevant national competent authority shall provide the Board with all of the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with Article 20(1) to (15).

3. The Board shall have the power to require the institution, or the parent undertaking, to contact potential purchasers in order to prepare for the resolution of the institution, subject to the criteria specified in Article 39(2) of Directive 2014/59/EU and the requirements of professional secrecy laid down in Article 88 of this Regulation.

The Board shall also have the power to require the relevant national resolution authority to draft a preliminary resolution scheme for the institution or group concerned.

The Board shall inform the ECB, the relevant national competent authorities and the relevant national resolution authorities of any action it takes pursuant to this paragraph.

4. If the ECB or the national competent authorities intend to impose on an institution or a group any additional measure under Article 16 of Regulation (EU) No 1024/2013, under Article 27(1), 28 or 29 of Directive 2014/59/EU or under Article 104 of Directive 2013/36/EU, before the entity or group has fully complied with the first measure notified to the Board, they shall inform the Board before imposing such additional measure on the institution or group concerned.

5. The ECB or the national competent authority, the Board and the relevant national resolution authorities shall ensure that the additional measure referred to in paragraph 4 and any action of the Board aimed at preparing for resolution under paragraph 2 are consistent.

CHAPTER 3

Resolution

Article 14

Resolution objectives

1. When acting under the resolution procedure referred to in Article 18, the Board, the Council, the Commission, and, where relevant, the national resolution authorities, in respect of their respective responsibilities, shall take into account the resolution objectives, and choose the resolution tools and resolution powers which, in their view, best achieve the resolution objectives that are relevant in the circumstances of the case.

2. The resolution objectives referred to in paragraph 1 are the following:

- (a) to ensure the continuity of critical functions;
- (b) to avoid significant adverse effects on financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
- (c) to protect public funds by minimising reliance on extraordinary public financial support;
- (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC;
- (e) to protect client funds and client assets.

When pursuing the objectives referred to in the first subparagraph, the Board, the Council, the Commission and, where relevant, the national resolution authorities, shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

3. Subject to different provisions of this Regulation, the resolution objectives are of equal significance, and shall be balanced, as appropriate, to the nature and circumstances of each case.

Article 15

General principles governing resolution

1. When acting under the resolution procedure referred to in Article 18, the Board, the Council, the Commission and, where relevant, the national resolution authorities, shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

- (a) the shareholders of the institution under resolution bear first losses;
- (b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims pursuant to Article 17, save as expressly provided otherwise in this Regulation;
- (c) the management body and senior management of the institution under resolution are replaced, except in those cases where the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;
- (d) the management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
- (e) natural and legal persons are made liable, subject to national law, under civil or criminal law, for their responsibility for the failure of the institution under resolution;
- (f) except where otherwise provided in this Regulation, creditors of the same class are treated in an equitable manner;
- (g) no creditor shall incur greater losses than would have been incurred if an entity referred to in Article 2 had been wound up under normal insolvency proceedings in accordance with the safeguards provided for in Article 29;
- (h) covered deposits are fully protected; and

- (i) resolution action is taken in accordance with the safeguards in this Regulation.

2. Where an institution is a group entity, without prejudice to Article 14, the Board, the Council and the Commission, when deciding on the application of resolution tools and the exercise of resolution powers, shall act in a way that minimises the impact on other group entities and on the group as a whole and minimises the adverse effect on financial stability in the Union and its Member States, in particular in the countries where the group operates.

3. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an entity referred to in Article 2 of this Regulation, that entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Council Directive 2001/23/EC¹⁶.

4. When deciding on the application of resolution tools and the exercise of resolution powers, the Board shall instruct national resolution authorities to inform and consult employee representatives where appropriate.

This is without prejudice to provisions on the representation of employees in management bodies as provided for by national law or practice.

Article 16

Resolution of financial institutions and parent undertakings

1. The Board shall decide on a resolution action in relation to a financial institution established in a participating Member State, where the conditions laid down in Article 18(1) are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidating supervision.

2. The Board shall take a resolution action in relation to a parent undertaking referred to in point (b) of Article 2, where the conditions laid down in Article 18(1) are met with regard to both that parent undertaking and with regard to one or more subsidiaries which are institutions or, where the subsidiary is not established in the Union, the third-country authority has determined that it meets the conditions for resolution under the law of that third country.

3. By way of derogation from paragraph 2 and notwithstanding the fact that a parent undertaking does not meet the conditions established in Article 18(1), the Board may

¹⁶ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

decide on resolution action with regard to that parent undertaking when one or more of its subsidiaries which are institutions meet the conditions established in Article 18(1), (4) and (5) and their assets and liabilities are such that their failure threatens an institution or the group as a whole and resolution action with regard to that parent undertaking is necessary for the resolution of such subsidiaries which are institutions or for the resolution of the group as a whole. Where a national resolution authority informs the Board that the insolvency law of the Member State provides that groups be treated as a whole and resolution action with regard to the parent undertaking is necessary for the resolution of such subsidiaries which are institutions or for the resolution of the group as a whole, the Board may also decide on resolution action with regard to the parent undertaking.

For the purposes of the first subparagraph, when assessing whether the conditions in Article 18(1) are met in respect of one or more subsidiaries which are institutions, the Board may disregard any intra-group capital or loss transfers between the entities, including the exercise of write-down or conversion powers.

Article 17

Order of priority of claims

1. When applying the bail-in tool to an entity referred to in Article 2 of this Regulation, and without prejudice to liabilities excluded from the bail-in tool under Article 27(3) of this Regulation, the Board, the Commission, or, where applicable, the national resolution authorities, shall decide on the exercise of the write-down and conversion powers, including on any possible application of Article 27(5) of this Regulation, and the national resolution authorities shall exercise those powers in accordance with Articles 47 and 48 of Directive 2014/59/EU and in accordance with the reverse order of priority of claims laid down in their national law, including the provisions transposing Article 108 of that Directive.

2. Participating Member States shall notify to the Commission and to the Board the ranking of claims against entities referred to in Article 2 in national insolvency proceedings on 1 July of every year or immediately, where there is a change of the ranking.

Where the bail-in tool is applied, the relevant deposit guarantee scheme shall be liable in the terms provided for in Article 79.

*Article 18***Resolution procedure**

1. The Board shall adopt a resolution scheme pursuant to paragraph 6 in relation to entities and groups referred to in Article 7(2), and to the entities and groups referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met, only when it assesses, in its executive session, on receiving a communication pursuant to the fourth subparagraph, or on its own initiative, that the following conditions are met:

- (a) the entity is failing or is likely to fail;
- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write-down or conversion of relevant capital instruments in accordance with Article 21, taken in respect of the entity, would prevent its failure within a reasonable timeframe;
- (c) a resolution action is necessary in the public interest pursuant to paragraph 5.

An assessment of the condition referred to in point (a) of the first subparagraph shall be made by the ECB, after consulting the Board. The Board, in its executive session, may make such an assessment only after informing the ECB of its intention and only if the ECB, within three calendar days of receipt of that information, does not make such an assessment. The ECB shall, without delay, provide the Board with any relevant information that the Board requests in order to inform its assessment.

Where the ECB assesses that the condition referred to in point (a) of the first subparagraph is met in relation to an entity or group referred to in the first subparagraph, it shall communicate that assessment without delay to the Commission and to the Board.

An assessment of the condition referred to in point (b) of the first subparagraph shall be made by the Board, in its executive session, or, where applicable, by the national resolution authorities, in close cooperation with the ECB. The ECB may also inform the Board or the national resolution authorities concerned that it considers the condition laid down in that point to be met.

2. Without prejudice to cases where the ECB has decided to exercise directly supervisory tasks relating to credit institutions pursuant to Article 6(5)(b) of Regulation

(EU) No 1024/2013, in the event of receipt of a communication pursuant to paragraph 1 or where the Board intends to make an assessment under paragraph 1 on its own initiative in relation to an entity or group referred to in Article 7(3), the Board shall communicate its assessment to the ECB without delay.

3. The previous adoption of a measure pursuant to Article 16 of Regulation (EU) No 1024/2013, to Article 27(1) or Article 28 or 29 of Directive 2014/59/EU, or to Article 104 of Directive 2013/36/EU is not a condition for taking a resolution action.

4. For the purposes of point (a) of paragraph 1, the entity shall be deemed to be failing or to be likely to fail in one or more of the following circumstances:

- (a) the entity infringes, or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB, including but not limited to the fact that the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
- (b) the assets of the entity are, or there are objective elements to support a determination that the assets of the entity will, in the near future, be less than its liabilities;
- (c) the entity is, or there are objective elements to support a determination that the entity will, in the near future, be unable to pay its debts or other liabilities as they fall due;
- (d) extraordinary public financial support is required except where, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, that extraordinary public financial support takes any of the following forms:
 - (i) a State guarantee to back liquidity facilities provided by central banks in accordance with the central banks' conditions;
 - (ii) a State guarantee of newly issued liabilities; or
 - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the entity, where neither the circumstances referred to in points (a), (b) and (c) of this paragraph nor the circumstances referred to in Article 21(1) are present at the time the public support is granted.

In each of the cases referred to in points (i), (ii) and (iii) of point (d) of the first subparagraph, the guarantee or equivalent measures referred to therein shall be confined to solvent entities and shall be conditional on final approval under the Union State aid framework. Those measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the entity has incurred or is likely to incur in the near future.

Support measures under point (d)(iii) of the first subparagraph shall be limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the ECB, EBA or national authorities, where applicable, confirmed by the competent authority.

If the Commission submits a legislative proposal pursuant to Article 32(4) of Directive 2014/59/EU, it shall, if appropriate, submit a legislative proposal amending this Regulation in the same way.

5. For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of, and is proportionate to one or more of the resolution objectives referred to in Article 14 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.

6. If the conditions laid down in paragraph 1 are met, the Board shall adopt a resolution scheme. The resolution scheme shall:

- (a) place the entity under resolution;
- (b) determine the application of the resolution tools to the institution under resolution referred to in Article 22(2), in particular any exclusions from the application of the bail-in in accordance with Article 27(5) and (14);
- (c) determine the use of the Fund to support the resolution action in accordance with Article 76 and in accordance with a Commission decision taken in accordance with Article 19.

7. Immediately after the adoption of the resolution scheme, the Board shall transmit it to the Commission.

Within 24 hours from the transmission of the resolution scheme by the Board, the Commission shall either endorse the resolution scheme, or object to it with regard to

the discretionary aspects of the resolution scheme in the cases not covered in the third subparagraph of this paragraph.

Within 12 hours from the transmission of the resolution scheme by the Board, the Commission may propose to the Council:

- (a) to object to the resolution scheme on the ground that the resolution scheme adopted by the Board does not fulfil the criterion of public interest referred to in paragraph 1(c);
- (b) to approve or object to a material modification of the amount of the Fund provided for in the resolution scheme of the Board. For the purposes of the third subparagraph, the Council shall act by simple majority.

The resolution scheme may enter into force only if no objection has been expressed by the Council or by the Commission within a period of 24 hours after its transmission by the Board.

The Council or the Commission, as the case may be, shall provide reasons for the exercise of their power of objection.

Where, within 24 hours from the transmission of the resolution scheme by the Board, the Council has approved the proposal of the Commission for modification of the resolution scheme on the ground referred to in point (b) of the third subparagraph or the Commission has objected in accordance with the second subparagraph, the Board shall, within eight hours modify the resolution scheme in accordance with the reasons expressed.

Where the resolution scheme adopted by the Board provides for the exclusion of certain liabilities in the exceptional circumstances referred to in Article 27(5), and where such exclusion requires a contribution by the Fund or an alternative financing source, in order to protect the integrity of the internal market, the Commission may prohibit or require amendments to the proposed exclusion setting out adequate reasons based on an infringement of the requirements laid down in Article 27 and in the delegated act adopted by the Commission on the basis of Article 44(11) of Directive 2014/59/EU.

8. Where the Council objects to the placing of an institution under resolution on the ground that the public interest criterion referred to in paragraph 1(c) is not fulfilled, the relevant entity shall be wound up in an orderly manner in accordance with the applicable national law.

9. The Board shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The resolution scheme shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement it in accordance with Article 29, by exercising resolution powers. Where State aid or Fund aid is present, the Board shall act in conformity with a decision on that aid taken by the Commission.

10. The Commission shall have the power to obtain from the Board any information which it deems to be relevant for performing its tasks under this Regulation. The Board shall have the power to obtain from any person, in accordance with Chapter 5 of this Title, any information necessary for it to prepare and decide upon a resolution action, including updates and supplements of information provided in the resolution plans.

Article 19

State aid and Fund aid

1. Where resolution action involves the granting of State aid pursuant to Article 107(1) TFEU or of Fund aid in accordance with paragraph 3 of this Article, the adoption of the resolution scheme under Article 18(6) of this Regulation shall not take place until such time as the Commission has adopted a positive or conditional decision concerning the compatibility of the use of such aid with the internal market.

In performing the tasks conferred on them by Article 18 of this Regulation, Union institutions shall act in conformity with the principles established in Article 3(3) of Directive 2014/59/EU and shall make public in an appropriate manner all relevant information on their internal organisation in this regard.

2. On receiving a communication pursuant to Article 18(1) of this Regulation or on its own initiative, if the Board considers that resolution actions could constitute State aid pursuant to Article 107(1) TFEU, it shall invite the participating Member State or Member States concerned to immediately notify the envisaged measures to the Commission under Article 108(3) TFEU. The Board shall notify the Commission of any case in which it invites one or more Member States to make a notification under Article 108(3) TFEU.

3. To the extent that the resolution action as proposed by the Board involves the use of the Fund, the Board shall notify the Commission of the proposed use of the Fund. The Board's notification shall include all of the information necessary to enable the Commission to make its assessments pursuant to this paragraph.

The notification under this paragraph shall trigger a preliminary investigation by the Commission during the course of which the Commission may request further

information from the Board. The Commission shall assess whether the use of the Fund would distort, or threaten to distort, competition by favouring the beneficiary or any other undertaking so as, insofar as it would affect trade between Member States, to be incompatible with the internal market. The Commission shall apply to the use of the Fund the criteria established for the application of State aid rules as enshrined in Article 107 TFEU. The Board shall provide the Commission with the information that the Commission deems to be necessary to carry out that assessment.

If the Commission has serious doubts as to the compatibility of the proposed use of the Fund with the internal market, or where the Board has failed to provide the necessary information pursuant to a request of the Commission under the second subparagraph, the Commission shall open an in-depth investigation and shall notify the Board accordingly. The Commission shall publish its decision to open an in-depth investigation in the *Official Journal of the European Union*. The Board, any Member State or any person, undertaking or association whose interests may be affected by the use of the Fund, may submit comments to the Commission within such timeframe as may be specified in the notification. The Board may submit observations on the comments submitted by Member States and interested third parties within such timeframe as may be specified by the Commission. At the end of the period of investigation the Commission shall make its assessment as to whether the use of the Fund would be compatible with the internal market.

In making its assessments and conducting its investigations pursuant to this paragraph, the Commission shall be guided by all of the relevant regulations adopted under Article 109 TFEU as well as relevant communications, guidance and measures adopted by the Commission in application of the rules of the Treaties relating to State aid as are in force at the time the assessment is to be made. Those measures shall be applied as though references to the Member State responsible for notifying the aid were references to the Board, and with any other necessary modifications.

The Commission shall adopt a decision on the compatibility of the use of the Fund with the internal market, which shall be addressed to the Board and to the national resolution authorities of the Member State or Member States concerned. That decision may be contingent on conditions, commitments or undertakings in respect of the beneficiary.

The decision may also lay down obligations on the Board, the national resolution authorities in the participating Member State or Member States concerned or the beneficiary to enable compliance with it to be monitored. This may include requirements for the appointment of a trustee or other independent person to assist in monitoring. A trustee or other independent person may perform such functions as may be specified in the Commission decision.

Any decision pursuant to this paragraph shall be published in the *Official Journal of the European Union*.

The Commission may issue a negative decision, addressed to the Board, where it decides that the proposed use of the Fund would be incompatible with the internal market and cannot be implemented in the form proposed by the Board. On receipt of such a decision the Board shall reconsider its resolution scheme and prepare a revised resolution scheme.

4. Where the Commission has serious doubts as to whether its decision under paragraph 3 is being complied with, it shall conduct the necessary investigations. For that purpose, the Commission may exercise such powers as are available to it under the regulations and other measures referred to in the fourth subparagraph of paragraph 3, and shall be guided by them.

5. If, on the basis of the investigations carried out by the Commission, and after giving notice to the parties concerned to submit their comments, the Commission considers that the decision under paragraph 3 has not been complied with, it shall issue a decision to the national resolution authority in the participating Member State concerned requiring that authority to recover the misused amounts within a period to be determined by the Commission. The Fund aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission and shall be paid over to the Board.

The Board shall pay any amounts received under the first subparagraph into the Fund and take such amounts into consideration when determining contributions in accordance with Articles 70 and 71.

The recovery procedure referred to in the first subparagraph shall respect the right to good administration and the right of access to documents, of the beneficiaries, as laid down in Articles 41 and 42 of the Charter.

6. Without prejudice to the reporting obligations that the Commission may establish in its decision under paragraph 3 of this Article, the Board shall submit to the Commission annual reports assessing the compliance of the use of the Fund with the decision under that paragraph, for the drawing up of which the Board shall make use of its powers under Article 34.

7. Any Member State or any person, undertaking or association whose interests may be affected by the use of the Fund, in particular the entities referred to in Article 2, shall have the right to inform the Commission of any suspected misuse of the Fund incompatible with the decision under paragraph 3 of this Article.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 93 concerning detailed rules of procedure concerning:

- (a) the calculation of the interest rate to be applied in the event of a recovery decision in accordance with paragraph 5;
- (b) the guarantees of the right to good administration and the right of access to documents referred to in paragraph 5.

9. Where the Commission, following a recommendation of the Board or on its own initiative, considers that the application of resolution tools and actions does not respond to the criteria on the basis of which its initial decision under paragraph 3 was made, it may review such a decision and adopt the appropriate amendments.

10. By way of derogation from paragraph 3, on application by a Member State, the Council may, acting unanimously, decide that the use of the Fund shall be considered to be compatible with the internal market, if such a decision is justified by exceptional circumstances. If, however, the Council has not made its attitude known within seven days of the said application being made, the Commission shall give its decision on the case.

11. Participating Member States shall ensure that their national resolution authorities have the powers necessary to ensure compliance with any conditions laid down in a Commission decision pursuant to paragraph 3 and to recover misused amounts pursuant to a Commission decision under paragraph 5.

Article 20

Valuation for the purposes of resolution

1. Before deciding on resolution action or the exercise of the power to write down or convert relevant capital instruments, the Board shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of an entity referred to in Article 2 is carried out by a person independent from any public authority, including the Board and the national resolution authority, and from the entity concerned.

2. Subject to paragraph 15, where all of the requirements laid down in paragraphs 1 and 4 to 9 are met, the valuation shall be considered to be definitive.

3. Where an independent valuation in accordance with paragraph 1 is not possible, the Board may carry out a provisional valuation of the assets and liabilities of the entity referred to in Article 2, in accordance with paragraph 10 of this Article.

4. The objective of the valuation shall be to assess the value of the assets and liabilities of an entity referred to in Article 2 that meets the conditions for resolution of Articles 16 and 18.

5. The purposes of the valuation shall be:

- (a) to inform the determination of whether the conditions for resolution or the conditions for the write-down or conversion of capital instruments are met;
- (b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of an entity referred to in Article 2;
- (c) when the power to write down or convert relevant capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of instruments of ownership, and the extent of the write-down or conversion of relevant capital instruments;
- (d) when the bail-in tool is applied, to inform the decision on the extent of the write-down or conversion of eligible liabilities;
- (e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the instruments of ownership;
- (f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or instruments of ownership to be transferred and to inform the Board's understanding of what constitutes commercial terms for the purposes of Article 24(2)(b);
- (g) in all cases, to ensure that any losses on the assets of an entity referred to in Article 2 are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments is exercised.

6. Without prejudice to the Union State aid framework, where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of any extraordinary public financial support, any central bank emergency liquidity assistance, or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to an entity referred to in Article 2 from the point at which resolution action is taken or the power to write down or convert relevant capital

instruments is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

- (a) the Board may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Article 22(6);
- (b) the Fund may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 76.

7. The valuation shall be supplemented by the following information as appearing in the accounting books and records of an entity referred to in Article 2:

- (a) an updated balance sheet and a report on the financial position of an entity referred to in Article 2;
- (b) an analysis and an estimate of the accounting value of the assets;
- (c) the list of outstanding on-balance-sheet and off-balance-sheet liabilities shown in the books and records of an entity referred to in Article 2, with an indication of the respective credits and priority of claims referred to in Article 17.

8. Where appropriate, to inform the decisions referred to in paragraph 5(e) and (f) of this Article, the information in paragraph 7(b) of this Article may be complemented by an analysis and estimate of the value of the assets and liabilities of an entity referred to in Article 2 on a market value basis.

9. The valuation shall indicate the subdivision of the creditors in classes in accordance with the priority of claims referred to in Article 17 and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if an entity referred to in Article 2 were wound up under normal insolvency proceedings. That estimate shall not affect the application of the ‘no creditor worse off’ principle referred to in Article 15(1)(g).

10. Where, due to urgency in the circumstances of the case, either it is not possible to comply with the requirements laid down in paragraphs 7 and 9, or paragraph 3 applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements laid down in paragraph 4 and, in so far as reasonably practicable in the circumstances, with the requirements laid down in paragraphs 1, 7 and 9.

The provisional valuation referred to in the first subparagraph shall include a buffer for additional losses, with appropriate justification.

11. A valuation that does not comply with all of the requirements laid down in paragraphs 1 and 4 to 9 shall be considered to be provisional until an independent person as referred to in paragraph 1 has carried out a valuation that is fully compliant with all of the requirements laid down in those paragraphs. That *ex-post* definitive valuation shall be carried out as soon as practicable. It may be carried out either separately from the valuation referred to in paragraphs 16, 17 and 18, or simultaneously with and by the same independent person as that valuation, but shall be distinct from it.

The purposes of the *ex-post* definitive valuation shall be:

- (a) to ensure that any losses on the assets of an entity referred to in Article 2 are fully recognised in the books of accounts of that entity;
- (b) to inform the decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 12 of this Article.

12. In the event that the *ex-post* definitive valuation's estimate of the net asset value of an entity referred to in Article 2 is higher than the provisional valuation's estimate of the net asset value of that entity, the Board may request the national resolution authority to:

- (a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool;
- (b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights or liabilities to an institution under resolution, or as the case may be, in respect of the instruments of ownership to the owners of those instruments of ownership.

13. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 10 and 11 shall be a valid basis for the Board to decide on resolution actions, including instructing national resolution authorities to take control of a failing institution or on the exercise of the write-down or conversion power of relevant capital instruments.

14. The Board shall establish and maintain arrangements to ensure that the assessment for the application of the bail-in tool in accordance with Article 27 and the valuation referred to in paragraphs 1 to 15 of this Article are based on information about the assets and liabilities of the institution under resolution that is as up to date and complete as is reasonably possible.

15. The valuation shall be an integral part of the decision on the application of a resolution tool or on the exercise of a resolution power or the decision on the exercise of the write-down or conversion power of capital instruments. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision of the Board.

16. For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, the Board shall ensure that a valuation is carried out by an independent person as referred to in paragraph 1 as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under paragraphs 1 to 15.

17. The valuation referred to in paragraph 16 shall determine:

- (a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if an institution under resolution with respect to which the resolution action or actions have been effected, had entered normal insolvency proceedings at the time when the decision on the resolution action was taken;
- (b) the actual treatment that shareholders and creditors have received in the resolution of an institution under resolution; and
- (c) whether there is any difference between the treatment referred to in point (a) of this paragraph and the treatment referred to in point (b) of this paragraph.

18. The valuation referred to in paragraph 16 shall:

- (a) assume that an institution under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision on the resolution action was taken;
- (b) assume that the resolution action or actions had not been effected;
- (c) disregard any provision of extraordinary public financial support to an institution under resolution.

*Article 21***Write-down and conversion of capital instruments**

1. The Board shall exercise the power to write down or convert relevant capital instruments acting under the procedure laid down in Article 18, in relation to the entities and groups referred to in Article 7(2), and to the entities and groups referred to in Article 7(4)(b) and (5), where the conditions for the application of those paragraphs are met, only where it assesses, in its executive session, on receiving a communication pursuant to the second subparagraph or on its own initiative, that one or more of the following conditions are met:

- (a) where the determination has been made that the conditions for resolution specified in Articles 16 and 18 have been met, before any resolution action is taken;
- (b) the entity will no longer be viable unless the relevant capital instruments are written down or converted into equity;
- (c) in the case of relevant capital instruments issued by a subsidiary and where those relevant capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis and on a consolidated basis, unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- (d) in the case of relevant capital instruments issued at the level of the parent undertaking and where those relevant capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- (e) extraordinary public financial support is required by the entity or group, except in any of the circumstances set out in point (d)(iii) of Article 18(4).

The assessment of the conditions referred to in points (a), (c) and (d) of the first subparagraph shall be made by the ECB, after consulting the Board. The Board, in its executive session, may also make such assessment.

2. Regarding the assessment of whether the entity or group is viable, the Board, in its executive session, may make such an assessment only after informing the ECB of its intention and only if the ECB, within three calendar days of receipt of such information, does not make such an assessment. The ECB shall, without delay, provide

the Board with any relevant information that the Board requests in order to inform its assessment.

3. For the purposes of paragraph 1 of this Article, an entity referred to in Article 2 or a group shall be deemed to be no longer viable only if both of the following conditions are met:

- (a) that entity or group is failing or is likely to fail;
- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write-down or conversion of relevant capital instruments, independently or in combination with resolution action, would prevent the failure of that entity or group within a reasonable timeframe.

4. For the purposes of point (a) of paragraph 3 of this Article, that entity shall be deemed to be failing or to be likely to fail where one or more of the circumstances referred to in Article 18(4) occur.

5. For the purposes of point (a) of paragraph 3, a group shall be deemed to be failing or to be likely to fail where the group infringes, or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the ECB or the national competent authority, including but not limited to the fact that the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

6. A relevant capital instrument issued by a subsidiary shall not be written down to a greater extent or converted on worse terms pursuant to Article 59(3)(c) of Directive 2014/59/EU than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

7. If one or more of the conditions referred to in paragraph 1 are met, the Board, acting under the procedure laid down in Article 18, shall determine whether the powers to write down or convert relevant capital instruments are to be exercised independently or, in accordance with the procedure under Article 18, in combination with a resolution action.

8. Where the Board, acting under the procedure laid down in Article 18 of this Regulation, determines that one or more of the conditions referred to in paragraph 1 of this Article are met, but the conditions for resolution in accordance with Article 18(1) of this Regulation are not met, it shall instruct, without delay, the national resolution

authorities to exercise the write-down or conversion powers in accordance with Articles 59 and 60 of Directive 2014/59/EU.

The Board shall ensure that before national resolution authorities exercise the power to write down or convert relevant capital instruments, a valuation of the assets and liabilities of an entity referred to in Article 2 or a group is carried out in accordance with Article 20(1) to (15). That valuation shall form the basis of the calculation of the write-down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalise the entity referred to in Article 2 or the group.

9. Where one or more of the conditions referred to in paragraph 1 are met, and the conditions referred to in Article 18(1) are also met, the procedure laid down in Article 18(6), (7) and (8) shall apply.

10. The Board shall ensure that the national resolution authorities exercise the write-down or conversion powers without delay, in accordance with the priority of claims pursuant to Article 17 and in a way that produces the following results:

- (a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity;
- (b) the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 14 or to the extent of the capacity of the relevant capital instruments, whichever is lower;
- (c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 14 or to the extent of the capacity of the relevant capital instruments, whichever is lower.

11. The national resolution authorities shall implement the instructions of the Board and exercise the write-down or conversion of relevant capital instruments in accordance with Article 29.

Article 22

General principles of resolution tools

1. Where the Board decides to apply a resolution tool to an entity or group referred to in Article 7(2) or to an entity or group referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met, and that resolution action would result in losses being borne by creditors or their claims being converted, the Board shall instruct the national resolution authorities to exercise the power to write down and convert relevant capital instruments in accordance with Article 21 immediately before or together with the application of the resolution tool.
2. The resolution tools referred to in point (b) of Article 18(6) are the following:
 - (a) the sale of business tool;
 - (b) the bridge institution tool;
 - (c) the asset separation tool;
 - (d) the bail-in tool.
3. When adopting the resolution scheme referred to in Article 18(6), the Board shall take into consideration the following factors:
 - (a) the assets and liabilities of the institution under resolution on the basis of the valuation pursuant to Article 20;
 - (b) the liquidity position of the institution under resolution;
 - (c) the marketability of the franchise value of the institution under resolution in the light of the competitive and economic conditions of the market;
 - (d) the time available.
4. The resolution tools shall be applied to meet the resolution objectives specified in Article 14, in accordance with the resolution principles specified in Article 15. They may be applied either individually or in any combination, except for the asset separation tool which may be applied only together with another resolution tool.

5. Where the resolution tools referred to in point (a) or (b) of paragraph 2 of this Article are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual entity referred to in Article 2 from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings.

6. The Board may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers in one or more of the following ways:

- (a) as a deduction from any consideration paid by a recipient to the institution under resolution or, as the case may be, to the owners of instruments of ownership;
- (b) from the institution under resolution, as a preferred creditor; or
- (c) from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle, as a preferred creditor.

Any proceeds received by national resolution authorities in connection with the use of the Fund shall be reimbursed to the Board.

Article 23

Resolution Scheme

The resolution scheme adopted by the Board under Article 18 shall establish, in accordance with any decision on State aid or Fund aid, the details of the resolution tools to be applied to the institution under resolution concerning at least the measures referred to in Article 24(2), Article 25(2), Article 26(2) and Article 27(1), to be implemented by the national resolution authorities in accordance with the relevant provisions of Directive 2014/59/EU as transposed into national law, and determine the specific amounts and purposes for which the Fund shall be used.

The resolution scheme shall outline the resolution actions that should be taken by the Board in relation to the Union parent undertaking or particular group entities established in the participating Member States with the aim of meeting the resolution objectives and principles as referred to in Articles 14 and 15.

When adopting a resolution scheme, the Board, the Council and the Commission shall take into account and follow the resolution plan as referred to in Article 8 unless the Board assesses, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plan.

In the course of the resolution process, the Board may amend and update the resolution scheme as appropriate in light of the circumstances of the case. For amendments and updates the procedure laid down in Article 18 shall apply.

In addition, the resolution scheme shall provide, where appropriate, for the appointment by the national resolution authorities of a special manager for the institution under resolution pursuant to Article 35 of Directive 2014/59/EU. The Board may establish that the same special manager is appointed for all of the entities affiliated to a group where that is necessary in order to facilitate solutions redressing the financial soundness of the entities concerned.

Article 24

Sale of business tool

1. Within the resolution scheme, the sale of business tool shall consist of the transfer to a purchaser that is not a bridge institution of the following:

- (a) instruments of ownership issued by an institution under resolution; or
- (b) all or any assets, rights or liabilities of an institution under resolution.

2. Concerning the sale of business tool, the resolution scheme shall establish:

- (a) the instruments, assets, rights and liabilities to be transferred by the national resolution authority in accordance with Article 38(1) and (7) to (11) of Directive 2014/59/EU;
- (b) the commercial terms, having regard to the circumstances and the costs and expenses incurred in the resolution process, pursuant to which the national resolution authority shall make the transfer in accordance with Article 38(2), (3) and (4) of Directive 2014/59/EU;
- (c) whether the transfer powers may be exercised by the national resolution authority more than once in accordance with Article 38(5) and (6) of Directive 2014/59/EU;
- (d) the arrangements for the marketing by the national resolution authority of that entity or those instruments, assets, rights and liabilities in accordance with Article 39(1) and (2) of Directive 2014/59/EU;

- (e) whether the compliance with the marketing requirements by the national resolution authority is likely to undermine the resolution objectives in accordance with paragraph 3 of this Article.

3. The Board shall apply the sale of business tool without complying with the marketing requirements laid down in point (e) of paragraph 2 when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular where the following conditions are met:

- (a) it considers that there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution; and
- (b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective specified in point (b) of Article 14(2).

Article 25

Bridge institution tool

1. Within the resolution scheme, the bridge institution tool shall consist of the transfer to a bridge institution of any of the following:

- (a) instruments of ownership issued by one or more institutions under resolution;
- (b) all or any assets, rights or liabilities of one or more institutions under resolution.

2. With regard to the bridge institution tool, the resolution scheme shall establish:

- (a) the instruments, assets, rights and liabilities to be transferred to a bridge institution by the national resolution authority in accordance with Article 40(1) to (12) of Directive 2014/59/EU;
- (b) the arrangements for the setting up, the operation and the termination of the bridge institution by the national resolution authority in accordance with Article 41(1), (2), (3) and (5) to (9) of Directive 2014/59/EU;

- (c) the arrangements for the marketing of the bridge institution or its assets or liabilities by the national resolution authority in accordance with Article 41(4) of Directive 2014/59/EU.

3. The Board shall ensure that the total value of liabilities transferred by the national resolution authority to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

Article 26

Asset separation tool

1. Within the resolution scheme, the asset separation tool shall consist of the transfer of assets, rights or liabilities of an institution under resolution or a bridge institution to one or more asset management vehicles.
2. Concerning the asset separation tool, the resolution scheme shall establish:
 - (a) the assets, rights and liabilities to be transferred by the national resolution authority to an asset management vehicle in accordance with Article 42(1) to (5) and (8) to (13) of Directive 2014/59/EU;
 - (b) the consideration for which the assets, rights and liabilities are to be transferred by the national resolution authority to the asset management vehicle in accordance with the principles established in Article 20 of this Regulation, with Article 42(7) of Directive 2014/59/EU and with the Union State aid framework.

Point (b) of the first subparagraph shall not prevent the consideration having nominal or negative value.

Article 27

Bail-in tool

1. The bail-in tool may be applied for any of the following purposes:
 - (a) to recapitalise an entity referred to in Article 2 of this Regulation that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation (to the extent that those

conditions apply to the entity) and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU, where the entity is authorised under those Directives, and to sustain sufficient market confidence in the institution or entity;

- (b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred:
 - i. to a bridge institution with a view to providing capital for that bridge institution; or
 - ii. under the sale of business tool or the asset separation tool.

Within the resolution scheme, concerning the bail-in tool, the following shall be established:

- (a) the aggregate amount by which eligible liabilities must be reduced or converted, in accordance with paragraph 13;
- (b) the liabilities that may be excluded in accordance with paragraphs 5 to 14;
- (c) the objectives and minimum content of the business reorganisation plan to be submitted in accordance with paragraph 16.

2. The bail-in tool may be applied for the purpose referred to in point (a) of paragraph 1 only if there is a reasonable prospect that the application of that tool, together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by paragraph 16 will, in addition to achieving relevant resolution objectives, restore the entity in question to financial soundness and long-term viability.

Any of the resolution tools referred to in Article 22(2)(a), (b) and (c), and the bail-in tool referred to in point (d) of that paragraph, shall apply, as appropriate, where the conditions laid down in the first subparagraph are not met.

3. The following liabilities, whether they are governed by the law of a Member State or of a third country, shall not be subject to write-down or conversion:

- i. covered deposits;
- (b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part

of the cover pool and which, in accordance with national law, are secured in a way similar to covered bonds;

- (c) any liability that arises by virtue of the holding by an institution or entity referred to in Article 2 of this Regulation of client assets or client money, including client assets or client money held on behalf of UCITS as defined in Article 1(2) of Directive 2009/65/EC or of AIFs as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council ⁽¹⁷⁾, provided that such client is protected under the applicable insolvency law;
- (d) any liability that arises by virtue of a fiduciary relationship between an entity referred to in Article 2 (as fiduciary) and another person (as beneficiary), provided that such beneficiary is protected under the applicable insolvency or civil law;
- (e) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;
- (f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Directive 98/26/EC of the European Parliament and of the Council ⁽¹⁸⁾ or their participants and arising from the participation in such a system;
- (g) a liability to any one of the following:
 - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;
 - (ii) a commercial or trade creditor arising from the provision to the institution or entity referred to in Article 2 of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
 - (iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;

¹⁷ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

¹⁸ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

- (iv) deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU.

Point (g)(i) of the first subparagraph shall not apply to the variable component of the remuneration of material risk takers as identified in Article 92(2) of Directive 2013/36/EU.

4. The scope of the bail-in tool referred to in paragraph 3 of this Article shall not prevent, where appropriate, the exercise of the bail-in powers to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured or to any amount of a deposit that exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU.

The Board shall ensure that all secured assets relating to a covered bond cover pool remain unaffected, segregated and with enough funding.

Without prejudice to the large exposure rules in Regulation (EU) No 575/2013 and Directive 2013/36/EU, and in order to provide for the resolvability of entities and groups, the Board shall instruct the national resolution authorities to limit, in accordance with Article 10(11)(b) of this Regulation, the extent to which other institutions hold liabilities eligible for a bail-in tool, save for liabilities that are held at entities that are part of the same group.

5. In exceptional circumstances, where the bail-in tool is applied, certain liabilities may be excluded or partially excluded from the application of the write-down or conversion powers where:

- (a) it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the relevant national resolution authority;
- (b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;
- (c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium-sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or

- (d) the application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

Where an eligible liability or class of eligible liabilities is excluded or partially excluded under this paragraph, the level of write-down or conversion applied to other eligible liabilities may be increased to take account of such exclusions provided that the level of write-down and conversion applied to other eligible liabilities complies with the principle laid down in point (g) of Article 15(1).

6. Where an eligible liability or class of eligible liabilities is excluded or partially excluded pursuant to paragraph 5, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, a contribution from the Fund may be made to the institution under resolution to do one or both of the following:

- (a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the institution under resolution to zero in accordance with point (a) of paragraph 13;
- (b) purchase instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with point (b) of paragraph 13.

7. The Fund may make a contribution referred to in paragraph 6 only where:

- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 20(1) to (15), has been made by shareholders, the holders of relevant capital instruments and other eligible liabilities through write-down, conversion or otherwise; and
- (b) the contribution from the Fund does not exceed 5 % of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 20(1) to (15).

8. The contribution of the Fund referred to in paragraph 7 of this Article may be financed by:

- (a) the amount available to the Fund which has been raised through contributions by entities referred to in Article 2 of this Regulation in accordance with the

rules laid down in Directive 2014/59/EU and in Article 67(4) and Articles 70 and 71 of this Regulation;

- (b) where the amounts referred to in point (a) of this paragraph are insufficient, amounts raised from alternative funding means in accordance with Articles 73 and 74.

9. In extraordinary circumstances, further funding may be sought from alternative financing sources after:

- (a) the 5 % limit specified in point (b) of paragraph 7 has been reached; and
- (b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

10. As an alternative or in addition, where the conditions laid down in points (a) and (b) of paragraph 9 are met, a contribution may be made from resources which have been raised through *ex-ante* contributions in accordance with Article 70 and which have not yet been used.

11. For the purposes of this Regulation, Article 44(8) of Directive 2014/59/EU shall not apply.

12. When taking the decision referred to in paragraph 5, due consideration shall be given to:

- (a) the principle that losses should be borne first by shareholders and next, in general, by creditors of the institution under resolution in order of preference;
- (b) the level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded; and
- (c) the need to maintain adequate resources for resolution financing.

13. The Board shall assess, on the basis of a valuation that complies with the requirements of Article 20(1) to (15), the aggregate of:

- (a) where relevant, the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and

- (b) where relevant, the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either:
 - i. the institution under resolution; or
 - ii. the bridge institution.

The assessment referred to in the first subparagraph shall establish the amount by which eligible liabilities need to be written down or converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution, or, where applicable, establish the ratio of the bridge institution taking into account any contribution of capital by the Fund pursuant to point (d) of Article 76(1), and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU.

Where the Board intends to use the asset separation tool referred to in Article 26, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

14. Exclusions under paragraph 5 may be applied either to completely exclude a liability from write-down or to limit the extent of the write-down applied to that liability.

15. The write-down and conversion powers shall comply with the requirements on the priority of claims laid down in Article 17 of this Regulation.

16. The national resolution authority shall immediately submit to the Board the business reorganisation plan received in accordance with Article 52(1), (2) and (3) of Directive 2014/59/EU from the management body or the person or persons appointed in accordance with Article 72(1) thereof.

Within two weeks from the date of submission of the business reorganisation plan, the relevant national resolution authority shall provide the Board with its assessment of the plan. Within one month from the date of submission of the business reorganisation plan, the Board shall assess the likelihood that the plan, if implemented, will restore the long term viability of an entity referred to in Article 2. The assessment shall be completed in agreement with the national competent authority or the ECB, where relevant.

Where the Board is satisfied that the plan would achieve that objective, it shall allow the national resolution authority to approve the plan in accordance with Article 52(7) of Directive 2014/59/EU. Where the Board is not satisfied that the plan would achieve that objective, it shall instruct the national resolution authority to notify the management body or the person or persons appointed in accordance with Article 72(1) of that Directive of its concerns and require the amendment of the plan in a way that addresses those concerns in accordance with Article 52(8) of that Directive. In both cases this shall be done in agreement with the national competent authority or the ECB, where relevant.

Within two weeks from the date of receipt of such a notification, the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU shall submit an amended plan to the national resolution authority for approval. The national resolution authority shall submit to the Board the amended plan and its assessment of such plan. The Board shall assess the amended plan, and shall instruct the national resolution authority to notify the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.

The Board shall communicate the group business reorganisation plan to EBA.

Article 28

Monitoring by the Board

1. The Board shall closely monitor the execution of the resolution scheme by the national resolution authorities. For that purpose, the national resolution authorities shall:

- (a) cooperate with and assist the Board in the performance of its monitoring duty;
- (b) provide, at regular intervals established by the Board, accurate, reliable and complete information on the execution of the resolution scheme, the application of the resolution tools and the exercise of the resolution powers, that might be requested by the Board, including on the following:
 - (i) the operation and financial situation of the institution under resolution, the bridge institution and the asset management vehicle;
 - (ii) the treatment that shareholders and creditors would have received in the liquidation of the institution under normal insolvency proceedings;

- (iii) any ongoing court proceedings relating to the liquidation of the assets of the institution under resolution, to challenges to the resolution decision and to the valuation or relating to applications for compensation filed by the shareholders or creditors;
- (iv) the appointment, removal or replacement of evaluators, administrators, accountants, lawyers and other professionals that may be necessary to assist the national resolution authority, and on the performance of their duties;
- (v) any other matter that is relevant for the execution of the resolution scheme including any potential infringement of the safeguards provided for in Directive 2014/59/EU that may be referred to by the Board;
- (vi) the extent to which, and manner in which, the powers of the national resolution authorities referred to in Articles 63 to 72 of Directive 2014/59/EU are exercised by them;
- (vii) the economic viability, feasibility, and implementation of the business reorganisation plan provided for in Article 27(16).

The national resolution authorities shall submit to the Board a final report on the execution of the resolution scheme.

2. On the basis of the information provided, the Board may give instructions to the national resolution authorities as to any aspect of the execution of the resolution scheme, and in particular the elements referred to in Article 23 and to the exercise of the resolution powers.

3. Where necessary in order to achieve the resolution objectives, the resolution scheme may be amended. The procedure laid down in Article 18 shall apply.

Article 29

Implementation of decisions under this Regulation

1. National resolution authorities shall take the necessary action to implement decisions referred to in this Regulation, in particular by exercising control over the entities and groups referred to in Article 7(2), and the entities and groups referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met, by taking the necessary measures in accordance with Article 35 or 72 of Directive 2014/59/EU and by ensuring that the safeguards provided for in that Directive are

complied with. National resolution authorities shall implement all decisions addressed to them by the Board.

For those purposes, subject to this Regulation, they shall exercise their powers under national law transposing Directive 2014/59/EU and in accordance with the conditions laid down in national law. National resolution authorities shall fully inform the Board of the exercise of those powers. Any action they take shall comply with the Board's decisions pursuant to this Regulation.

When implementing those decisions, the national resolution authorities shall ensure that the applicable safeguards provided for in Directive 2014/59/EU are complied with.

2. Where a national resolution authority has not applied or has not complied with a decision by the Board pursuant to this Regulation or has applied it in a way which poses a threat to any of the resolution objectives under Article 14 or to the efficient implementation of the resolution scheme, the Board may order an institution under resolution:

- (a) in the event of action pursuant to Article 18, to transfer to another person specified rights, assets or liabilities of an institution under resolution;
- (b) in the event of action pursuant to Article 18, to require the conversion of any debt instruments which contain a contractual term for conversion in the circumstances provided for in Article 21;
- (c) to adopt any other necessary action to comply with the decision in question.

The Board shall adopt a decision referred to in point (c) of the first subparagraph only if the measure significantly addresses the threat to the relevant resolution objective or to the efficient implementation of the resolution scheme.

Before deciding to impose any measure the Board shall notify the national resolution authorities concerned and the Commission of the measure it intends to take. That notification shall include details of the envisaged measures, the reasons for those measures and details of when the measures are intended to take effect.

The notification shall be made not less than 24 hours before the measures are to take effect. In exceptional circumstances where it is not possible to give 24 hours' notice, the Board may make the notification less than 24 hours before the measures are intended to take effect.

3. The institution under resolution shall comply with any decision taken referred to in paragraph 2. Those decisions shall prevail over any previous decision adopted by the national resolution authorities on the same matter.
4. When taking action in relation to issues which are subject to a decision taken pursuant to paragraph 2, national resolution authorities shall comply with that decision.
5. The Board shall publish on its official website either a copy of the resolution scheme or a notice summarising the effects of the resolution action, and in particular the effects on retail customers. The national resolution authorities shall comply with the applicable procedural obligations provided for in Article 83 of Directive 2014/59/EU.

CHAPTER 4

Cooperation

Article 30

Obligation to cooperate and information exchange within the SRM

1. The Board shall inform the Commission of any action it takes in order to prepare for resolution. With regard to any information received from the Board, the members of the Council, the Commission as well as the Council and the Commission staff shall be subject to the requirements of professional secrecy laid down in Article 88.
2. In the exercise of their respective responsibilities under this Regulation, the Board, the Council, the Commission, the ECB and the national resolution authorities and national competent authorities shall cooperate closely, in particular in the resolution planning, early intervention and resolution phases pursuant to Articles 8 to 29. They shall provide each other with all information necessary for the performance of their tasks.
3. The ECB or the national competent authorities shall transmit to the Board and the national resolution authorities the group financial support agreements authorised and any changes thereto.
4. For the purposes of this Regulation, the ECB may invite the Chair of the Board to participate as an observer in the Supervisory Board of the ECB established in accordance with Article 19 of Regulation (EU) No 1024/2013. Where deemed to be

appropriate the Board may appoint another representative to replace the Chair for that purpose.

5. For the purposes of this Regulation, the Board shall appoint a representative which shall participate in the Resolution Committee of EBA established in accordance with Article 127 of Directive 2014/59/EU.

6. The Board shall endeavour to cooperate closely with any public financial assistance facility including the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), in particular in the extraordinary circumstances referred to in Article 27(9) and where such a facility has granted, or is likely to grant, direct or indirect financial assistance to entities established in a participating Member State.

7. Where necessary, the Board shall conclude a memorandum of understanding with the ECB and the national resolution authorities and the national competent authorities describing in general terms how they will cooperate under paragraphs 2 and 4 in the performance of their respective tasks under Union law. The memorandum shall be reviewed on a regular basis and shall be published subject to the requirements of professional secrecy.

Article 31

Cooperation within the SRM

1. The Board shall perform its tasks in close cooperation with national resolution authorities. The Board shall, in cooperation with national resolution authorities, approve and make public a framework to organise the practical arrangements for the implementation of this Article.

In order to ensure effective and consistent application of this Article, the Board:

- (a) shall issue guidelines and general instructions to national resolution authorities according to which the tasks are performed and resolution decisions are adopted by national resolution authorities;
- (b) may at any time exercise the powers referred to in Articles 34 to 37;
- (c) may request, on an ad hoc or continuous basis, information from national resolution authorities on the performance of the tasks carried out by them under Article 7(3);
- (d) shall receive from national resolution authorities draft decisions on which it may express its views, and, in particular, indicate the elements of the draft

decision that do not comply with this Regulation or with the Board's general instructions.

For the purposes of evaluating resolution plans, the Board may request national resolution authorities to submit to the Board all information necessary, as obtained by them in accordance with Article 11 and Article 13(1) of Directive 2014/59/EU, without prejudice to Chapter 5 of this Title.

2. Article 13(4) to (10) and Articles 88 to 92 of Directive 2014/59/EU shall not apply to relations between national resolution authorities. The joint decision and any decision taken in the absence of a joint decision as referred to in Article 45(9) to (13) of Directive 2014/59/EU shall not apply. The relevant provisions of this Regulation shall apply instead.

Article 32

Consultation of, and cooperation with, non-participating Member States and third countries

1. Where a group includes entities established in participating Member States as well as in non-participating Member States or third countries, without prejudice to any approval by the Council or the Commission required under this Regulation, the Board shall represent the national resolution authorities of the participating Member States for the purposes of consultation and cooperation with non-participating Member States or third countries in accordance with Articles 7, 8, 12, 13, 16, 18, 55, and 88 to 92 of Directive 2014/59/EU.

Where a group includes entities established in participating Member States and subsidiaries established, or significant branches located, in non-participating Member States, the Board shall communicate any plans, decisions or measures referred to in Articles 8, 10, 11, 12 and 13 relevant to the group to the competent authorities and/or the resolution authorities of the non-participating Member State, as appropriate.

2. The Board, the ECB and the resolution authorities and competent authorities of the non-participating Member States shall conclude memoranda of understanding describing in general terms how they will cooperate with one another in the performance of their tasks under Directive 2014/59/EU.

Without prejudice to the first subparagraph, the Board shall conclude a memorandum of understanding with the resolution authority of each non-participating Member State that is home to at least one global systemically important institution, identified as such pursuant to Article 131 of Directive 2013/36/EU.

3. Each memorandum shall be reviewed on a regular basis and shall be published subject to the requirements of professional secrecy.

4. The Board shall conclude, on behalf of the national resolution authorities of participating Member States, non-binding cooperation arrangements in line with the EBA framework cooperation arrangements referred to in Article 97(2) of Directive 2014/59/EU. The Board shall notify EBA of any such cooperation arrangement.

Article 33

Recognition and enforcement of third-country resolution proceedings

1. This Article shall apply in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 93(1) of Directive 2014/59/EU enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement as referred to in Article 93(1) of that Directive with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

2. The Board shall assess and issue a recommendation addressed to the national resolution authorities on the recognition and enforcement of resolution proceedings conducted by third-country resolution authorities in relation to a third-country institution or a third-country parent undertaking that has:

- (a) one or more Union subsidiaries established in one or more participating Member States; or
- (b) assets, rights or liabilities located in one or more participating Member States or governed by the law of participating Member States.

The Board shall conduct its assessment, after consulting the national resolution authorities and, where a European resolution college is established pursuant to Article 89 of Directive 2014/59/EU, with the resolution authorities of non-participating Member States.

The assessment shall give due consideration to the interests of each individual participating Member State where a third-country institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and the financial stability in those Member States.

3. The Board shall recommend to refuse the recognition or enforcement of the resolution proceedings referred to in paragraph 1, if it considers that:

- (a) the third-country resolution proceedings would have an adverse effect on financial stability in a participating Member State;
 - (b) creditors, including in particular depositors located or payable in a participating Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;
 - (c) recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the participating Member State; or
 - (d) the effects of such recognition or enforcement would be contrary to the national law of the participating Member State.
4. National resolution authorities shall implement the recommendation of the Board and ask for the recognition or enforcement of the resolution proceedings in their respective territories, or shall explain in a reasoned statement to the Board why they cannot implement the recommendation of the Board.
5. When exercising resolution powers in relation to third-country entities, national resolution authorities shall, where relevant, exercise the powers conferred on them on the basis of the provisions referred to in Article 94(4) of Directive 2014/59/EU.

CHAPTER 5

Investigatory powers

Article 34

Requests for information

1. For the purpose of performing its tasks under this Regulation, the Board may, through the national resolution authorities or directly, after informing them, making full use of all of the information available to the ECB or to the national competent authorities, require the following legal or natural persons to provide all of the information necessary to perform the tasks conferred on it by this Regulation:

- (a) the entities referred to in Article 2;

- (b) employees of the entities referred to in Article 2;
- (c) third parties to whom the entities referred to in Article 2 have outsourced functions or activities.

2. The entities and persons referred to in paragraph 1 shall supply the information requested pursuant to that paragraph. The requirements of professional secrecy shall not exempt those entities and persons from the duty to supply that information. The supply of the information requested shall not be deemed to infringe the requirements of professional secrecy.

3. Where the Board obtains information directly from those entities and persons, it shall make that information available to the national resolution authorities concerned.

4. The Board shall be able to obtain, including on a continuous basis, any information necessary for the exercise of its functions under this Regulation, in particular on capital, liquidity, assets and liabilities concerning any institution subject to its resolution powers.

5. The Board, the ECB, the national competent authorities and the national resolution authorities may draw up memoranda of understanding with a procedure concerning the exchange of information. The exchange of information between the Board, the ECB, the national competent authorities and the national resolution authorities shall not be deemed to infringe the requirements of professional secrecy.

6. National competent authorities, the ECB where relevant, and national resolution authorities shall cooperate with the Board in order to verify whether some or all of the information requested is already available. Where such information is available, national competent authorities, the ECB where relevant, or national resolution authorities shall provide that information to the Board.

Article 35

General investigations

1. For the purpose of performing its tasks under this Regulation, and subject to any other conditions laid down in relevant Union law, the Board may, through the national resolution authorities or directly, after informing them, conduct all necessary investigations of any legal or natural person referred to in Article 34(1) established or located in a participating Member State.

To that end, the Board may:

- (a) require the submission of documents;
- (b) examine the books and records of any legal or natural person referred to in Article 34(1) and take copies or extracts from such books and records;
- (c) obtain written or oral explanations from any legal or natural person referred to in Article 34(1) or their representatives or staff;
- (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.

2. The natural or legal persons referred to in Article 34(1) shall be subject to investigations launched on the basis of a decision of the Board.

Where a person obstructs the conduct of the investigation, the national resolution authorities of the participating Member State where the relevant premises are located shall afford, in accordance with national law, the necessary assistance including facilitating the access by the Board to the business premises of the natural or legal persons referred to in Article 34(1), so that those rights can be exercised.

Article 36

On-site inspections

1. For the purpose of performing its tasks under this Regulation, and subject to other conditions laid down in relevant Union law, the Board may, in accordance with Article 37 and subject to prior notification to the national resolution authorities and the relevant national competent authorities concerned, and, where appropriate, in cooperation with them, conduct all necessary on-site inspections at the business premises of the natural or legal persons referred to in Article 34(1). Where the proper conduct and efficiency of the inspection so require, the Board may carry out the on-site inspection without prior announcement to those legal persons.

2. The officials of and other persons authorised by the Board to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by the Board pursuant to Article 35(2) and shall have all of the powers referred to in Article 35(1).

3. The legal persons referred to in Article 34(1) shall be subject to on-site inspections on the basis of a decision of the Board.

4. Officials of, and other accompanying persons authorised or appointed by, the national resolution authorities of the Member States where the inspection is to be conducted shall, under the supervision and coordination of the Board, actively assist the officials of, and other persons authorised by, the Board. To that end, they shall enjoy the powers referred to in paragraph 2. Officials of, and other accompanying persons authorised or appointed by, the national resolution authorities of the participating Member States concerned shall also have the right to participate in the on-site inspections.

5. Where the officials of and other accompanying persons authorised or appointed by the Board find that a person opposes an inspection ordered pursuant to paragraph 1, the national resolution authorities of the participating Member States concerned shall afford them the necessary assistance in accordance with national law. To the extent necessary for the inspection, that assistance shall include the sealing of any business premises and books or records. Where that power is not available to the national resolution authorities concerned, it shall exercise its powers to request the necessary assistance of other national authorities.

Article 37

Authorisation by a judicial authority

1. If an on-site inspection provided for in Article 36(1) and (2) or the assistance provided for in Article 36(5) requires authorisation by a judicial authority in accordance with national rules, such authorisation shall be applied for.

2. Where authorisation as referred to in paragraph 1 of this Article is applied for, the national judicial authority shall control that the decision of the Board is authentic and that the coercive measures envisaged are neither arbitrary nor excessive, taking into account the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Board for detailed explanations, in particular relating to the grounds the Board has for suspecting that an infringement of the decisions referred to in Article 29 has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the Board's file. The lawfulness of the Board's decision shall be subject to review only by the Court of Justice.

CHAPTER 6

Penalties

Article 38

Fines

1. Where the Board finds that an entity referred to in Article 2 has intentionally or negligently committed one of the infringements listed in paragraph 2, the Board shall take a decision imposing a fine in accordance with paragraph 3.

An infringement by such an entity shall be considered to have been committed intentionally if there are objective factors which demonstrate that the entity or its management body or senior management acted deliberately to commit the infringement.

2. The fines shall be imposed on entities referred to in Article 2 for the following infringements:

- (a) where they do not supply the information requested in accordance with Article 34;
- (b) where they do not submit to a general investigation in accordance with Article 35 or an on-site inspection in accordance with Article 36;
- (c) where they do not comply with a decision addressed to them by the Board pursuant to Article 29.

3. The basic amount of the fines referred to in paragraph 1 of this Article shall be a percentage of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 19 August 2014, and included within the following limits:

- (a) for the infringements referred to in paragraph 2(a) and (b), the basic amount shall amount to at least 0,05 % and shall not exceed 0,15 %;

- (b) for the infringements referred to in paragraph 2(c), the basic amount shall amount to at least 0,25 % and shall not exceed 0,5 %.

In order to decide whether the basic amount of the fines should be set at the lower, the middle or the higher end of the limits referred to in the first subparagraph, the Board shall take into account the annual turnover in the preceding business year of the entity concerned. The basic amount shall be at the lower end of the limit for entities whose annual turnover is below EUR 1 000 000 000, the middle of the limit for the entities whose annual turnover is between EUR 1 000 000 000 and 5 000 000 000 and the higher end of the limit for the entities whose annual turnover is higher than EUR 5 000 000 000.

4. The basic amounts referred to in paragraph 3 shall be adjusted, if necessary, by taking into account the aggravating or mitigating factors referred to in paragraphs 5 and 6, in accordance with the relevant coefficients referred to in paragraph 9.

The relevant mitigating coefficient shall be applied one by one to the basic amount. If more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

The relevant aggravating coefficient shall be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

5. The following aggravating factors shall apply in respect of the fines referred to in paragraph 1:

- (a) the infringement has been committed intentionally;
- (b) the infringement has been committed repeatedly;
- (c) the infringement has been committed over a period exceeding three months;
- (d) the infringement has revealed systemic weaknesses in the organisation of the entity, in particular in its procedures, management systems or internal controls;
- (e) no remedial action has been taken since the infringement was identified;
- (f) the entity's senior management has not cooperated with the Board in carrying out its investigations.

6. The following mitigating factors shall apply in respect of the fines referred to in paragraph 1:

- (a) the infringement has been committed over a period of less than 10 working days;
- (b) the entity's senior management can demonstrate that they have taken all measures necessary to prevent the infringement;
- (c) the entity has brought quickly, effectively and completely the infringement to the Board's attention;
- (d) the entity has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future.

7. Notwithstanding paragraphs 2 to 6, the fines applied shall not exceed 1 % of the annual turnover of the entity referred to in paragraph 1 concerned in the preceding business year.

By way of derogation from the first subparagraph, where the entity has directly or indirectly benefited financially from that infringement and where profits gained or losses avoided because of the infringement can be determined, the fine shall be at least equal to that financial benefit.

Where an act or omission of an entity referred to in paragraph 1 constitutes more than one infringement listed in paragraph 2, only the higher fine calculated in accordance with this Article and relating to one of those infringements shall apply.

8. In the cases not covered by paragraph 2, the Board may recommend to national resolution authorities to take action in order to ensure that appropriate penalties are imposed in accordance with Articles 110 to 114 of Directive 2014/59/EU and with any relevant national legislation.

9. The Board shall apply the following adjustment coefficients linked to aggravating factors when calculating the fines:

- (a) if the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1,1 shall apply;
- (b) if the infringement has been committed over a period exceeding three months, a coefficient of 1,5 shall apply;

- (c) if the infringement has revealed systemic weaknesses in the organisation of the entity, in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall apply;
- (d) if the infringement has been committed intentionally, a coefficient of 2 shall apply;
- (e) if no remedial action has been taken since the infringement was identified, a coefficient of 1,7 shall apply;
- (f) if the entity's senior management has not cooperated with the Board in carrying out its investigations, a coefficient of 1,5 shall apply.

The Board shall apply the following adjustment coefficients linked to mitigating factors when calculating the fines:

- (a) if the infringement has been committed over a period of less than 10 working days, a coefficient of 0,9 shall apply;
- (b) if the entity's senior management can demonstrate that they have taken all measures necessary to prevent the infringement, a coefficient of 0,7 shall apply;
- (c) if the entity has brought quickly, effectively and completely the infringement to the Board's attention, a coefficient of 0,4 shall apply;
- (d) if the entity has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

Article 39

Periodic penalty payments

1. The Board shall, by a decision, impose a periodic penalty payment in respect of an entity referred to in Article 2 in order to compel:

- (a) that entity to comply with a decision adopted under Article 34;
- (b) a person referred to in Article 34(1) to supply complete information which has been required by a decision pursuant to that Article;

- (c) a person referred to in Article 35(1) to submit to an investigation and, in particular, to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision taken pursuant to that Article;
 - (d) a person referred to in Article 36(1) to submit to an on-site inspection ordered by a decision taken pursuant to that Article.
2. A periodic penalty payment shall be effective and proportionate. A periodic penalty payment shall be imposed on a daily basis until the entity referred to in Article 2 or person concerned complies with the relevant decisions referred to in points (a) to (d) of paragraph 1 of this Article.
3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 0,1 % of the average daily turnover in the preceding business year. A periodic penalty payment shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.
4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Board's decision.

Article 40

Hearing of the persons subject to the proceedings

1. Before taking any decision imposing a fine and/or periodic penalty payment under Article 38 or 39, the Board shall give the natural or legal persons subject to the proceedings the opportunity to be heard on its findings. The Board shall base its decisions only on findings on which the natural or legal persons subject to the proceedings have had the opportunity to comment.
2. The rights of defence of the natural or legal persons subject to the proceedings shall be fully complied with during the proceedings. They shall be entitled to have access to the Board's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Board.

Article 41

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. The Board shall publish the decisions imposing penalties referred to in Article 38(1) and Article 39(1), unless such disclosure could endanger the resolution of the entity concerned. The publication shall be on an anonymous basis, in any of the following circumstances:

- (a) where the information published contains personal data and following an obligatory prior assessment, such publication of personal data is found to be disproportionate;
- (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- (c) where publication would cause, insofar as it can be determined, disproportionate damage to the natural or legal persons involved.

Alternatively, in such cases, the publication of the data in question may be postponed for a reasonable period if it is foreseeable that the reasons for anonymous publication will cease to exist within that period.

The Board shall inform EBA of all fines and periodic penalty payments imposed by it under Articles 38 and 39 and shall provide information on the appeal status and outcome thereof.

2. Fines and periodic penalty payments imposed pursuant to Articles 38 and 39 shall be of an administrative nature.

3. Fines and periodic penalty payments imposed pursuant to Articles 38 and 39 shall be enforceable.

Enforcement shall be governed by the applicable procedural rules in force in the participating Member State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision without any other formality than verification of the authenticity of the decision by the authority which the government of each participating Member State shall designate for that purpose and which it shall make known to the Board and to the Court of Justice.

When those formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the participating Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

4. The amounts of the fines and periodic penalty payments shall be allocated to the Fund.

PART III

INSTITUTIONAL FRAMEWORK

TITLE I

THE BOARD

Article 42

Legal status

1. The Board is hereby established. The Board shall be a Union agency with a specific structure corresponding to its tasks. It shall have legal personality.
2. In each Member State, the Board shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Board shall be represented by its Chair.

Article 43

Composition

1. The Board shall be composed of:
 - (a) the Chair appointed in accordance with Article 56;

- (b) four further full-time members appointed in accordance with Article 56;
- (c) a member appointed by each participating Member State, representing their national resolution authorities.

2. Each member, including the Chair, shall have one vote.

3. The Commission and the ECB shall each designate a representative entitled to participate in the meetings of executive sessions and plenary sessions as a permanent observer.

The representatives of the Commission and the ECB shall be entitled to participate in the debates and shall have access to all documents.

4. In the event of more than one national resolution authority in a participating Member State, a second representative shall be allowed to participate as observer without voting rights.

5. The Board's administrative and management structure shall comprise:

- (a) a plenary session of the Board, which shall perform the tasks referred to in Article 50;
- (b) an executive session of the Board, which shall perform the tasks referred to in Article 54;
- (c) a Chair, which shall perform the tasks referred to in Article 56;
- (d) a Secretariat, which shall provide the necessary administrative and technical support on the performing of all the tasks assigned to the Board.

Article 44

Compliance with Union law

The Board shall act in compliance with Union law, in particular with the Council and the Commission decisions pursuant to this Regulation.

Article 45

Accountability

1. The Board shall be accountable to the European Parliament, the Council and the Commission for the implementation of this Regulation, in accordance with paragraphs 2 to 8.
2. The Board shall submit an annual report to the European Parliament, the national parliaments of participating Member States in accordance with Article 46, the Council, the Commission and the European Court of Auditors on the performance of the tasks conferred on it by this Regulation. Subject to the requirements of professional secrecy, that report shall be published on the Board's website.
3. The Chair shall present that report in public to the European Parliament, and to the Council.
4. At the request of the European Parliament, the Chair shall participate in a hearing by the competent committee of the European Parliament on the performance of the resolution tasks by the Board. A hearing shall take place at least annually.
5. The Chair may be heard by the Council, at the Council's request, on the performance of the resolution tasks by the Board.
6. The Board shall reply orally or in writing to questions addressed to it by the European Parliament or by the Council, in accordance with its own procedures and in any event within five weeks of receipt of a question.
7. Upon request, the Chair shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament where such discussions are required for the exercise of the European Parliament's powers under the TFEU. An agreement shall be concluded between the European Parliament and the Board on the detailed modalities of organising such discussions, with a view to ensuring full confidentiality in accordance with the requirements of professional secrecy imposed on the Board by this Regulation and when the Board is acting as a national resolution authority under the relevant Union law.
8. During any investigations by the European Parliament, the Board shall cooperate with the European Parliament, subject to the TFEU and regulations referred to in Article 226 thereof. Within six months of the appointment of the Chair, the Board and

the European Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Board by this Regulation. Subject to the power of the European Parliament pursuant to Article 226 TFEU, those arrangements shall cover, inter alia, access to information, including rules on the handling and protection of classified or otherwise confidential information, cooperation in hearings, as referred to in Article 45(4) of this Regulation, confidential oral discussions, reports, responding to questions, investigations and information on the selection procedure of the Chair, the Vice- Chair, and the four members referred to in Article 43(1)(b) of this Regulation.

Article 46

National parliaments

1. Due to the specific tasks that are conferred on the Board by this Regulation, national parliaments of the participating Member States, by means of their own procedures, may request the Board to reply and the Board is obliged to reply in writing to any observations or questions submitted by them to the Board in respect of the functions of the Board under this Regulation.
2. When submitting the report provided for in Article 45(2), the Board shall simultaneously submit that report directly to the national parliaments of the participating Member States. National parliaments may address to the Board their reasoned observations on that report. The Board shall reply orally or in writing to any observations or questions addressed to it by the national parliaments of the participating Member States, in accordance with its own procedures.
3. The national parliament of a participating Member State may invite the Chair to participate in an exchange of views in relation to the resolution of entities referred to in Article 2 in that Member State together with a representative of the national resolution authority. The Chair is obliged to follow such invitation.
4. This Regulation shall be without prejudice to the accountability of national resolution authorities to national parliaments in accordance with national law for the performance of tasks not conferred on the Board, the Council or the Commission by this Regulation and for the performance of activities carried out by them in accordance with Article 7(3).

Article 47

Independence

1. When performing the tasks conferred on them by this Regulation, the Board and the national resolution authorities shall act independently and in the general interest.

2. The Chair, the Vice-Chair and the members referred to in Article 43(1)(b) shall perform their tasks in conformity with the decisions of the Board, the Council and the Commission. They shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the Union's institutions or bodies, from any government of a Member State or from any other public or private body.

In the deliberations and decision-making processes within the Board, they shall express their own views and vote independently.

3. Neither the Member States, the Union's institutions or bodies, nor any other public or private body shall seek to influence the Chair, the Vice-Chair or the members of the Board.

4. In accordance with the Staff Regulations of Officials as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁹⁾ (the 'Staff Regulations') referred to in Article 87(6) of this Regulation, the Chair, the Vice-Chair and the members referred to in Article 43(1)(b) of this Regulation shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Article 48

Seat

The Board shall have its seat in Brussels, Belgium.

¹⁹ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

TITLE II

PLENARY SESSION OF THE BOARD

Article 49

Participation in plenary sessions

All members of the Board referred to in Article 43(1) shall participate in its plenary sessions.

Article 50

Tasks

1. In its plenary session, the Board shall:

- (a) adopt, by 30 November each year, the Board's annual work programme for the following year, based on a draft put forward by the Chair and shall transmit it for information to the European Parliament, the Council, the Commission, and the ECB;
- (b) adopt and monitor the annual budget of the Board in accordance with Article 61(2), and approve the Board's final accounts and give discharge to the Chair in accordance with Article 63(4) and (8);
- (c) subject to the procedure referred to in paragraph 2, decide on the use of the Fund, if the support of the Fund in that specific resolution action is required above the threshold of EUR 5 000 000 000 for which the weighting of liquidity support is 0,5;
- (d) once the net accumulated use of the Fund in the last consecutive 12 months reaches the threshold of EUR 5 000 000 000, evaluate the application of the resolution tools, in particular the use of the Fund, and provide guidance which the executive session shall follow in subsequent resolution decisions, in particular, if appropriate, differentiating between liquidity and other forms of support;
- (e) decide on the necessity to raise extraordinary *ex-post* contributions in accordance with Article 71, on the voluntary borrowing between financing arrangements in accordance with Article 72, on alternative financing means in accordance with Articles 73 and 74, and on the mutualisation of national

financing arrangements in accordance with Article 78, involving support of the Fund above the threshold referred to in point (c) of this paragraph;

- (f) decide on the investments in accordance with Article 75;
- (g) adopt the annual activity report on the Board's activities referred to in Article 45, which shall present detailed explanations on the implementation of the budget;
- (h) adopt the financial rules applicable to the Board in accordance with Article 64;
- (i) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- (j) adopt rules for the prevention and management of conflicts of interest in respect of its members;
- (k) adopt its rules of procedure and those of the Board in its executive session;
- (l) in accordance with paragraph 3 of this Article, exercise, with respect to the staff of the Board, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants of the European Union as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68 ('Conditions of Employment') on the Authority Empowered to Conclude a Contract of Employment ('the appointing authority powers');
- (m) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations;
- (n) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment, who shall be functionally independent in the performance of his or her duties;
- (o) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-Fraud Office (OLAF);
- (p) take all decisions on the establishment of the Board's internal structures and, where necessary, their modification;

- (q) approve the framework referred to in Article 31(1) to organise the practical arrangements for the cooperation with the national resolution authorities.

2. When taking decisions, the plenary session of the Board shall act in accordance with the objectives as specified in Articles 6 and 14.

For the purposes of point (c) of paragraph 1, the resolution scheme prepared by the executive session is deemed to be adopted unless, within three hours from the submission of the draft by the executive session to the plenary session, at least one member of the plenary session has called a meeting of the plenary session. In the latter case, a decision on the resolution scheme shall be taken by the plenary session.

3. In its plenary session, the Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment, delegating relevant appointing authority powers to the Chair and establishing the conditions under which the delegation of powers can be suspended. The Chair shall be authorised to sub-delegate those powers.

In exceptional circumstances, the Board in its plenary session may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Chair and any sub-delegation by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Chair.

Article 51

Meeting of the plenary session of the Board

1. The Chair shall convene and chair meetings of the plenary session of the Board in accordance with Article 56(2)(a).
2. The Board in its plenary session shall hold at least two ordinary meetings per year. In addition, it shall meet on the initiative of the Chair, or at the request of at least one-third of its members. The representative of the Commission may request the Chair to convene a meeting of the Board in its plenary session. The Chair shall provide reasons in writing if he or she does not convene a meeting in due time.
3. Where relevant, the Board may invite observers in addition to those referred in Article 43(3) to participate in the meetings of its plenary session on an ad hoc basis, including a representative of EBA.
4. The Board shall provide for the secretariat of the plenary session of the Board.

Article 52

General provisions on the decision-making process

1. The Board, in its plenary session, shall take its decisions by a simple majority of its members, unless otherwise provided for in this Regulation. Each voting member shall have one vote. In the event of a tie, the Chair shall have a casting vote.

2. By way of derogation from paragraph 1, decisions referred to in Article 50(1)(c) and (d) as well as on the mutualisation of national financing arrangements in accordance with Article 78, limited to the use of the financial means available in the Fund, shall be taken by a simple majority of the Board members, representing at least 30 % of contributions. Each voting member shall have one vote. In the event of a tie, the Chair shall have a casting vote.

3. By way of derogation from paragraph 1 of this Article, decisions referred to in Article 50(1), which involve the raising of *ex-post* contributions in accordance with Article 71, on voluntary borrowing between financing arrangements in accordance with Article 72, on alternative financing means in accordance with Article 73 and Article 74, as well as on the mutualisation of national financing arrangements in accordance with Article 78, exceeding the use of the financial means available in the Fund, shall be taken by a majority of two thirds of the Board members, representing at least 50 % of contributions during the eight-year transitional period until the Fund is fully mutualised and by a majority of two thirds of the Board members, representing at least 30 % of contributions from then on. Each voting member shall have one vote. In the event of a tie, the Chair shall have a casting vote.

4. The Board shall adopt and make public its rules of procedure. The rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member and including, where appropriate, the rules governing quorums.

TITLE III

EXECUTIVE SESSION OF THE BOARD

Article 53

Participation in the executive sessions

1. The Board in its executive session is composed of the Chair and the four members referred to in Article 43(1)(b). The Board, in its executive session, shall meet as often as necessary.

Meetings of the Board in its executive session shall be convened by the Chair on his or her own initiative or at the request of any of the members, and shall be chaired by the Chair.

Where relevant, the Board in its executive session may invite observers in addition to those referred to in Article 43(3), including a representative of EBA, and shall invite national resolution authorities of non-participating Member States, when deliberating on a group that has subsidiaries or significant branches in those non-participating Member States, to participate at its meetings. The participation shall be on an ad hoc basis.

2. In accordance with paragraphs 3 and 4, the members of the Board referred to in Article 43(1)(c) shall participate in the executive sessions of the Board.

3. When deliberating on an entity referred to in Article 2 or a group of entities established only in one participating Member State, the member appointed by that Member State shall also participate in the deliberations and in the decision-making process, and the rules laid down in Article 55(1) shall apply.

4. When deliberating on a cross-border group, the member appointed by the Member State in which the group-level resolution authority is situated, as well as the members appointed by the Member States in which a subsidiary or entity covered by consolidated supervision is established, shall also participate in the decision-making process, and the rules laid down in Article 55(2) shall apply.

5. The members of the Board referred to in Article 43(1)(a) and (b) shall ensure that the resolution decisions and actions, in particular with regard to the use of the Fund, across the different formations of the executive sessions of the Board are coherent, appropriate and proportionate.

Article 54

Tasks

1. The Board, in its executive session, shall:

- (a) prepare all of the decisions to be adopted by the Board in its plenary session;
- (b) take all of the decisions to implement this Regulation, unless this Regulation provides otherwise.

2. In exercising its duties pursuant to paragraph 1 of this Article, the Board shall:

- (a) prepare, assess and approve resolution plans for entities and groups referred to in Article 7(2), and for the entities and groups referred to in Article 7(4)(b) and (5), where the conditions for the application of those paragraphs are met, in accordance with Articles 8, 10 and 11;
- (b) apply simplified obligations to certain entities and groups referred to in Article 7(2), and entities and groups referred to in Article 7(4)(b) and (5), where the conditions for the application of those paragraphs are met, in accordance with Article 11;
- (c) determine the minimum requirement for own funds and eligible liabilities that entities and groups referred to in Article 7(2), and entities and groups referred to in Article 7(4)(b) and (5), where the conditions for the application of those paragraphs are met, need to meet at all times in accordance with Article 12;
- (d) provide the Commission, as early as possible, with a resolution scheme in accordance with Article 18 accompanied by all relevant information allowing in due time the Commission to assess and decide or, where appropriate, propose a decision to the Council, pursuant to Article 18(7);
- (e) decide upon the Board's part II of the budget on the Fund, in accordance with Article 60.

3. Where necessary because of urgency, the Board in its executive session may take certain provisional decisions on behalf of the Board in its plenary session, in particular on administrative management matters, including budgetary matters.

4. The Board in its executive session shall keep the Board in its plenary session informed of the decisions it takes on resolution.

Article 55

Decision-making

1. When deliberating on an individual entity or a group established only in one participating Member State, if all members referred to in Article 53(1) and (3) are not able to reach a joint agreement by consensus within a deadline set by the Chair, the Chair and the members referred to in Article 43(1)(b) shall take a decision by a simple majority.

2. When deliberating on a cross-border group, if all members referred to in Article 53(1) and (4) are not able to reach a joint agreement by consensus within a deadline set by the Chair, the Chair and the members referred to in Article 43(1)(b) shall take a decision by a simple majority.

3. In the event of a tie, the Chair shall have a casting vote.

TITLE IV

CHAIR

Article 56

Appointment and tasks

1. The Board shall be chaired by a full-time Chair.

2. The Chair shall be responsible for:

- (a) preparing the work of the Board, in its plenary and executive sessions, and convening and chairing its meetings;
- (b) all staff matters;
- (c) matters of day-to-day administration;
- (d) the establishment of a draft budget of the Board in accordance with Article 61(1) and the implementation of the budget of the Board, in accordance with Article 63;

- (e) the management of the Board;
- (f) the implementation of the annual work programme of the Board;
- (g) the preparation, each year, of a draft of the annual report referred to in Article 45 with a section on the resolution activities of the Board and a section on financial and administrative matters.

In the performance of the tasks referred to in this Article, the Chair shall be assisted by a dedicated staff.

3. The Chair shall be assisted by a Vice-Chair.

The Vice-Chair shall carry out the functions of the Chair in his or her absence or reasonable impediment, in accordance with this Regulation.

4. The Chair, the Vice-Chair and the members referred to in Article 43(1)(b) shall be appointed on the basis of merit, skills, knowledge of banking and financial matters, and of experience relevant to financial supervision, regulation as well as bank resolution. The Chair, the Vice-Chair and the members referred to in Article 43(1)(b) shall be chosen on the basis of an open selection procedure, which shall respect the principles of gender balance, experience and qualification. The European Parliament and the Council shall be kept duly informed at every stage of that procedure in a timely manner.

5. The term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1)(b) shall be five years. Subject to paragraph 7 of this Article, that term shall not be renewable.

The Chair, the Vice-Chair and the members referred to in Article 43(1)(b) shall not hold office at national, Union, or international level.

6. After hearing the Board, in its plenary session, the Commission shall provide to the European Parliament a shortlist of candidates for the positions of Chair, Vice-Chair and members referred to in Article 43(1)(b) and inform the Council of the shortlist.

By way of derogation from the first subparagraph, for the appointment of the first members of the Board following the entry into force of this Regulation, the Commission shall provide the shortlist of candidates without hearing the Board.

The Commission shall submit a proposal for the appointment of the Chair, the Vice-Chair and the members referred to in Article 43(1)(b) to the European Parliament for approval. Following the approval of that proposal, the Council shall adopt an

implementing decision to appoint the Chair, the Vice-Chair and the members referred to in Article 43(1)(b). The Council shall act by qualified majority.

7. By way of derogation from paragraph 5, the term of office of the first Chair appointed after the entry into force of this Regulation shall be three years. That term shall be renewable once for a period of five years. The Chair, the Vice-Chair, and the members referred to in Article 43(1)(b) shall remain in office until their successors are appointed.

8. A Chair whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the overall period.

9. If the Chair or the Vice-Chair or a member referred to in Article 43(1)(b) no longer fulfil the conditions required for the performance of his or her duties or has been guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt an implementing decision to remove him or her from office. The Council shall act by qualified majority.

For those purposes, the European Parliament or the Council may inform the Commission that it considers the conditions for the removal of the Chair, the Vice-Chair or the members referred to in Article 43(1)(b) from office to be fulfilled, to which the Commission shall respond.

TITLE V

FINANCIAL PROVISIONS

CHAPTER 1

General provisions

Article 57

Resources

1. The Board shall be responsible for devoting the necessary financial and human resources to the performance of the tasks conferred on it by this Regulation.

2. The funding of the Board's budget or its resolution activities under this Regulation may under no circumstances engage the budgetary liability of the Member States.

Article 58

Budget

1. The Board shall have an autonomous budget which is not part of the Union budget. Estimates of all of the Board's revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the Board's budget.
2. The Board's budget shall be balanced in terms of revenue and expenditure.
3. The budget shall comprise two parts: Part I for the administration of the Board and Part II for the Fund.

Article 59

Part I of the budget on the administration of the Board

1. The revenues of Part I of the budget shall consist of the annual contributions necessary to cover the annual estimated administrative expenditure.
2. The expenditure of Part I of the budget shall include at least staff, remuneration, administrative, infrastructure, professional training and operational expenses.
3. This Article is without prejudice to the right of the national resolution authorities to levy fees in accordance with national law, in respect of their administrative expenditures of the types referred to in paragraphs 1 and 2, including expenditures for cooperating with and assisting the Board.

Article 60

Part II of the budget on the Fund

1. The revenues of Part II of the budget shall consist, in particular, of the following:
 - (a) contributions paid by institutions established in the participating Member States in accordance with Article 67(4) and Articles 69, 70 and 71;
 - (b) loans received from other resolution financing arrangements in non-participating Member States in accordance with Article 72(1);

- (c) loans received from financial institutions or other third parties in accordance with Articles 73 and 74;
 - (d) returns on the investments of the amounts held in the Fund in accordance with Article 75;
 - (e) any part of the expenses incurred for the purposes indicated in Article 76 which are recovered in the resolution proceedings.
2. The expenditure of Part II of the budget shall consist of the following:
- (a) expenses for the purposes indicated in Article 76;
 - (b) investments in accordance with Article 75;
 - (c) interest paid on loans received from other resolution financing arrangements in non-participating Member States in accordance with Article 72(1);
 - (d) interest paid on loans received from financial institutions or other third parties in accordance with Articles 73 and 74.

Article 61

Establishment and implementation of the budget

1. By 15 February each year, the Chair shall draw up a draft budget of the Board, including a statement of estimates of the Board's revenue and expenditure for the following year together with the establishment plan and shall submit it to the Board for adoption.
2. By 31 March each year, the Board in its plenary session shall, where necessary, adjust the draft submitted by the Chair and adopt the final budget of the Board together with the establishment plan.

Article 62

Internal audit and control

1. An internal audit function shall be set up within the Board, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the Board, shall be responsible to it for verifying the proper operation of budget implementation systems and budgetary procedures of the Board.

2. The internal auditor shall advise the Board on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

3. The responsibility for putting in place internal control systems and procedures suitable for performing the tasks of the internal auditor shall lie with the Board.

Article 63

Implementation of the budget, presentation of accounts and discharge

1. The Chair shall act as authorising officer and shall implement the Board's budget.

2. By 1 March of the following financial year, the Board's Accounting Officer shall send the provisional accounts, accompanied by the report on budgetary and financial management during the financial year, to the Court of Auditors for observations.

By 31 March of the following financial year, the Board's Accounting Officer shall submit the report on budgetary and financial management to the members of the Board, and to the European Parliament, the Council and the Commission.

3. By 31 March each year, the Chair shall transmit to the European Parliament, the Council and the Commission the Board's provisional accounts for the preceding financial year.

4. On receipt of the Court of Auditors' observations on the Board's provisional accounts, the Chair, acting on his or her own responsibility, shall draw up the Board's final accounts and shall send them to the Board in its plenary session, for approval.

5. The Chair shall, following the approval by the Board, by 1 July each year, send the final accounts for the preceding financial year to the European Parliament, the Council, the Commission, and the Court of Auditors.

6. Where observations are received from the Court of Auditors, the Chair shall send a reply by 30 September.

7. By 15 November each year, the final accounts for the preceding financial year shall be published in the *Official Journal of the European Union*.

8. The Board, in its plenary session, shall give discharge to the Chair in respect of the implementation of the budget.

9. The Chair shall submit at the request of either the European Parliament or the Council, any information referred to in the Board's accounts to the requesting Union institution, subject to the requirements of professional secrecy laid down in this Regulation.

Article 64

Financial rules

The Board shall, after consulting the Court of Auditors and the Commission, adopt internal financial provisions specifying, in particular, the detailed procedure for establishing and implementing its budget in accordance with Articles 61 and 63. As far as is compatible with the particular nature of the Board, the financial provisions shall be based on the framework financial Regulation adopted for bodies set up under the TFEU in accordance with Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽²⁰⁾.

Article 65

Contributions to the administrative expenditures of the Board

1. Entities referred to in Article 2 shall contribute to part I of the budget of the Board in accordance with this Regulation and the delegated acts on contributions adopted pursuant to paragraph 5 of this Article.
2. The amounts of the contributions shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for part I of the budget of the Board to be balanced each year.
3. The Board shall determine and raise, in accordance with the delegated acts referred to in paragraph 5 of this Article, the contributions due by each entity referred to in Article 2 in a decision addressed to the entity concerned. The Board shall apply procedural, reporting and other rules ensuring that contributions are paid fully and in a timely manner.
4. The amounts raised in accordance with paragraphs 1, 2, 3 shall be used only for the purposes of this Regulation.

²⁰ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

5. The Commission shall be empowered to adopt delegated acts on contributions in accordance with Article 93 in order to:

- (a) determine the type of contributions and the matters for which contributions are due, the manner in which the amount of the contributions is calculated, and the way in which they are to be paid;
- (b) specify registration, accounting, reporting and other rules referred to in paragraph 3 necessary to ensure that the contributions are paid fully and in a timely manner;
- (c) determine the annual contributions necessary to cover the administrative expenditure of the Board before it becomes fully operational.

Article 66

Anti-fraud measures

1. For the purposes of combating fraud, corruption and any other unlawful activity under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council (²¹), within six months from the day the Board becomes operational, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and shall immediately adopt appropriate provisions applicable to all staff of the Board using the template set out in the Annex to that Interinstitutional Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over the beneficiaries, contractors and subcontractors who have received funds from the Board.

3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or other illegal activity affecting the financial interests of the Union in connection with a contract funded by the Board in accordance with the provisions and procedures laid down in

²¹ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

Council Regulation (Euratom, EC) No 2185/96⁽²²⁾ and Regulation (EU, Euratom) No 883/2013.

CHAPTER 2

The Single Resolution Fund

Section 1

Constitution of the Fund

Article 67

General provisions

1. The Single Resolution Fund ('the Fund') is hereby established. It shall be filled in accordance with the rules on transferring the funds raised at national level towards the Fund as laid down in the Agreement.
2. The Board shall use the Fund only for the purpose of ensuring the efficient application of the resolution tools and exercise of the resolution powers referred to in Part II, Title I and in accordance with the resolution objectives and the principles governing resolution referred to in Articles 14 and 15. Under no circumstances shall the Union budget or the national budgets be held liable for expenses or losses of the Fund.
3. The owner of the Fund shall be the Board.
4. Contributions referred to in Articles 69, 70 and 71 shall be raised from entities referred to in Article 2 by the national resolution authorities and transferred to the Fund in accordance with the Agreement.

Article 68

Requirement to establish resolution financing arrangements

Participating Member States shall establish financing arrangements in accordance with Article 100 of Directive 2014/59/EU and with this Regulation.

²² Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

Article 69

Target level

1. By the end of an initial period of eight years from 1 January 2016 or, otherwise, from the date on which this paragraph is applicable by virtue of Article 99(6), the available financial means of the Fund shall reach at least 1 % of the amount of covered deposits of all credit institutions authorised in all of the participating Member States.
2. During the initial period referred to in paragraph 1, contributions to the Fund calculated in accordance with Article 70, and raised in accordance with Article 67(4), shall be spread out in time as evenly as possible until the target level is reached, but with due account of the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions.
3. The Board shall extend the initial period referred to in paragraph 1 for a maximum of four years in the event that the Fund has made cumulative disbursements in excess of 0,5 % of the total amount of covered deposits referred to in paragraph 1 and where the criteria of the delegated act referred in paragraph 5(b) are met.
4. If, after the initial period referred to in paragraph 1, the available financial means diminish below the target level specified in that paragraph, the regular contributions calculated in accordance with Article 70 shall be raised until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two-thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

The regular contribution shall take due account of the phase of the business cycle, and the impact pro-cyclical contributions may have when setting annual contributions in the context of this paragraph.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 93 to specify the following:
 - (a) criteria for the spreading out in time of the contributions to the Fund calculated under paragraph 2;
 - (b) criteria for determining the number of years by which the initial period referred to in paragraph 1 can be extended under paragraph 3;
 - (c) criteria for establishing the annual contributions provided for in paragraph 4.

*Article 70***Ex-ante contributions**

1. The individual contribution of each institution shall be raised at least annually and shall be calculated pro-rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits, of all of the institutions authorised in the territories of all of the participating Member States.

2. Each year, the Board shall, after consulting the ECB or the national competent authority and in close cooperation with the national resolution authorities, calculate the individual contributions to ensure that the contributions due by all of the institutions authorised in the territories of all of the participating Member States shall not exceed 12,5 % of the target level.

Each year the calculation of the contributions for individual institutions shall be based on:

- (a) a flat contribution, that is pro-rata based on the amount of an institution's liabilities excluding own funds and covered deposits, with respect to the total liabilities, excluding own funds and covered deposits, of all of the institutions authorised in the territories of the participating Member States; and
- (b) a risk-adjusted contribution, that shall be based on the criteria laid down in Article 103(7) of Directive 2014/59/EU, taking into account the principle of proportionality, without creating distortions between banking sector structures of the Member States.

The relation between the flat contribution and the risk-adjusted contributions shall take into account a balanced distribution of contributions across different types of banks.

In any case, the aggregate amount of individual contributions by all of the institutions authorised in the territories of all of the participating Member States, calculated under points (a) and (b), shall not exceed annually the 12,5 % of the target level.

3. The available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in Article 76(1). The share of those irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised in accordance with this Article.

4. The duly received contributions of each entity referred to in Article 2 shall not be reimbursed to those entities.

5. Where participating Member States have already established national resolution financing arrangements, they may provide that those arrangements use their available financial means, collected from institutions between 17 June 2010 and the date of entry into force of Directive 2014/59/EU, to compensate institutions for the *ex-ante* contributions which those institutions may be required to pay into the Fund. Such restitution shall be without prejudice to the obligations of Member States laid down in Directive 2014/49/EU.

6. The delegated acts specifying the notion of adjusting contributions in proportion to the risk profile of institutions, adopted by the Commission under Article 103(7) of Directive 2014/59/EU, shall be applied.

7. The Council, acting on a proposal from the Commission, shall, within the framework of the delegated acts referred to in paragraph 6, adopt implementing acts to determine the conditions of implementation of paragraphs 1, 2, and 3, and in particular in relation to:

- (a) the application of the methodology for the calculation of individual contributions;
- (b) the practical modalities for allocating to institutions the risk factors specified in the delegated act.

Article 71

Extraordinary ex-post contributions

1. Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the Fund in resolution actions, extraordinary *ex-post* contributions from the institutions authorised in the territories of participating Member States shall be raised, in order to cover the additional amounts. Those extraordinary *ex-post* contributions shall be calculated and allocated between institutions in accordance with the rules laid down in Articles 69 and 70.

The total amount of extraordinary *ex-post* contributions per year shall not exceed three times the annual amount of contributions determined in accordance with Article 70.

2. The Board shall, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, defer, in whole or in part,

in accordance with the delegated acts referred to in paragraph 3, an institution's payment of extraordinary *ex-post* contributions in accordance with paragraph 1 if it is necessary to protect its financial position. Such a deferral shall not be granted for a period of longer than six months but may be renewed on request of the institution. The contributions deferred pursuant to this paragraph shall be made later at a point in time when the payment no longer jeopardises the institution's financial position.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 93 to specify the circumstances and conditions under which the payment of *ex-post* contributions by an entity referred to in Article 2 may be partially or entirely deferred pursuant to paragraph 2 of this Article.

Article 72

Voluntary borrowing between resolution financing arrangements

1. The Board shall decide to make a request to voluntarily borrow for the Fund from resolution financing arrangements within non-participating Member States, in the event that:

- (a) the amounts raised under Article 70 are not sufficient to cover the losses, costs or other expenses incurred by the use of the Fund in relation to resolution actions;
- (b) the extraordinary *ex-post* contributions provided for in Article 71 are not immediately accessible; and
- (c) the alternative funding means provided for in Article 73 are not immediately accessible on reasonable terms.

2. Those resolution financing arrangements shall decide on such a request in accordance with Article 106 of Directive 2014/59/EU. The borrowing conditions shall be subject to Article 106(4), (5) and (6) of Directive 2014/59/EU.

3. The Board may decide to lend to other resolution financing arrangements within non-participating Member States if a request is made in accordance with Article 106 of Directive 2014/59/EU. The lending conditions shall be subject to Article 106(4), (5) and (6) of Directive 2014/59/EU.

Article 73

Alternative funding means

1. The Board may contract for the Fund borrowings or other forms of support from those institutions, financial institutions or other third parties, which offer better financial terms at the most appropriate time so as to optimise the cost of funding and preserve its reputation in the event that the amounts raised in accordance with Articles 70 and 71 are not immediately accessible or do not cover the expenses incurred by the use of the Fund in relation to resolution actions.
2. The borrowing or other forms of support referred to in paragraph 1 shall be fully recouped in accordance with Articles 69, 70 and 71 within the maturity period of the loan.
3. Any expenses incurred by the use of the borrowings specified in paragraph 1 shall be borne by Part II of the budget of the Board and not by the Union budget or the participating Member States.

Article 74

Access to financial facility

The Board shall contract for the Fund financial arrangements, including, where possible, public financial arrangements, regarding the immediate availability of additional financial means to be used in accordance with Article 76, where the amounts raised or available in accordance with Articles 70 and 71 are not sufficient to meet the Funds' obligations.

Section 2

Administration of the Fund

Article 75

Investments

1. The Board shall administer the Fund in accordance with this Regulation and delegated acts adopted under paragraph 4.

2. The amounts received from an institution under resolution or a bridge institution, the interests and other earnings on investments and any other earnings shall benefit only the Fund.

3. The Board shall have a prudent and safe investment strategy that is provided for in the delegated acts adopted pursuant to paragraph 4 of this Article, and shall invest the amounts held in the Fund in obligations of the Member States or intergovernmental organisations, or in highly liquid assets of high creditworthiness, taking into account the delegated act referred to in Article 460 of Regulation (EU) No 575/2013 as well as other relevant provisions of that Regulation. Investments shall be sufficiently sectorally, geographically and proportionally diversified. The return on those investments shall benefit the Fund.

4. The Commission shall be empowered to adopt delegated acts on the detailed rules for the administration of the Fund and general principles and criteria for its investment strategy, in accordance with the procedure laid down in Article 93.

Section 3

Use of the Fund

Article 76

Mission of the Fund

1. Within the resolution scheme, when applying the resolution tools to entities referred to in Article 2, the Board may use the Fund only to the extent necessary to ensure the effective application of the resolution tools for the following purposes:

- (a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (c) to purchase assets of the institution under resolution;
- (d) to make contributions to a bridge institution and an asset management vehicle;

- (e) to pay compensation to shareholders or creditors if, following an evaluation pursuant to Article 20(5) they have incurred greater losses than they would have incurred, following a valuation pursuant to Article 20(16), in a winding up under normal insolvency proceedings;
- (f) to make a contribution to the institution under resolution in lieu of the write-down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the decision is made to exclude certain creditors from the scope of bail-in in accordance with Article 27(5);
- (g) to take any combination of the actions referred to in points (a) to (f).

2. The Fund may be used to take the actions referred to in paragraph 1 also with respect to the purchaser in the context of the sale of business tool.

3. The Fund shall not be used directly to absorb the losses of an entity referred to in Article 2 or to recapitalise such an entity. In the event that the use of the Fund for the purposes in paragraph 1 of this Article indirectly results in part of the losses of an entity referred to in Article 2 being passed on to the Fund, the principles governing the use of the Fund set out in Article 27 shall apply.

4. The Board may not hold the capital contributed to in accordance with point (f) of paragraph 1 for a period exceeding five years.

Article 77

Use of the Fund

The use of the Fund shall be contingent upon the Agreement whereby the participating Member States agree to transfer to the Fund the contributions that they raise at national level in accordance with this Regulation and with Directive 2014/59/EU and shall comply with the principles laid down in that Agreement.

Article 78

Mutualisation of national financing arrangements in the case of group resolution involving institutions in non-participating Member States

In the case of a group resolution involving institutions established in one or more participating Member States on the one hand, and institutions established in one or more non-participating Member States on the other hand, the Fund shall contribute to

the financing of the group resolution in accordance with the provisions laid down in Article 107(2) to (5) of Directive 2014/59/EU.

Article 79

Use of deposit guarantee schemes in the context of resolution

1. Participating Member States shall ensure that when the Board takes resolution action, provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated shall be liable for the amounts specified in Article 109(1) and (4) of Directive 2014/59/EU.

The relevant deposit guarantee scheme shall subrogate to the rights and obligations of covered depositors in liquidation proceedings for an amount equal to its payment.

2. The determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article shall comply with the conditions referred to in Article 20.

3. Before deciding, in accordance with paragraph 2 of this Article, the amount by which the deposit guarantee scheme is liable, the Board shall consult the concerned designated authority within the meaning of Article 2(1)(18) of Directive 2014/49/EU, taking fully into account the urgency of the matter.

4. Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6 of that Directive.

5. Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two-thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years.

The liability of a deposit guarantee scheme shall not be greater than the amount equal to 50 % of its target level pursuant to Article 10(2) of Directive 2014/49/EU.

In any circumstances, the deposit guarantee scheme's participation under this Regulation shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

TITLE VI

OTHER PROVISIONS

Article 80

Privileges and Immunities

Protocol No 7 on the Privileges and Immunities of the European Union annexed to the TEU and to the TFEU shall apply to the Board and its staff.

Article 81

Language arrangements

1. Council Regulation No 1⁽²³⁾ shall apply to the Board.
2. The Board shall decide on the internal language arrangements for the Board.
3. The Board may decide which of the official languages to use when sending documents to Union institutions or bodies.
4. The Board may agree with each national resolution authority on the language or languages in which the documents to be sent to or by the national resolution authorities shall be drafted.
5. The translation services required for the functioning of the Board shall be provided by the Translation Centre of the bodies of the European Union.

Article 82

Staff

1. The Staff Regulations, the Conditions of Employment and the rules adopted jointly by the Union institutions, for the purpose of applying them shall apply to the staff of the Board. By way of derogation from the first subparagraph, the Chair, the Vice-Chair and the four members referred to in Article 43(1)(b) shall, respectively, be on a par with a Vice-President, Judge and Registrar of the Court of Justice regarding emoluments and pensionable age, as defined in Regulation (EC) No 422/67/EEC,

²³ Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

5/67/Euratom of the Council (²⁴). They shall not be subject to a maximum retirement age. For aspects not covered by this Regulation or by Regulation (EC) No 422/67/EEC, 5/67/Euratom, the Staff Regulations and the Conditions of Employment shall apply by analogy.

2. The Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

3. In respect of its staff, the Board shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment.

Article 83

Staff exchange

1. The Board may make use of seconded national experts or other staff not employed by the Board.

2. The Board in its plenary session shall adopt appropriate decisions laying down rules on the exchange and secondment of staff from and among the national resolution authorities to the Board.

3. The Board may establish internal resolution teams composed of its own staff and staff of the national resolution authorities, as well as observers from non-participating Member States' resolution authorities, where appropriate.

4. Where the Board establishes internal resolution teams as provided for in paragraph 3 of this Article, it shall appoint coordinators of those teams from its own staff. In accordance with Article 51(3), the coordinators may be invited as observers to attend the meetings of the executive session of the Board in which the members appointed by the respective Member States participate in accordance with Article 53(3) and (4).

²⁴ Regulation (EC) No 422/67/EEC, No 5/67/Euratom of the Council of 25 July 1967 determining the emoluments of the President and Members of the Commission, of the President, Judges, Advocates-General and Registrar of the Court of Justice, of the President, Members and Registrar of the General Court and of the President, Members and Registrar of the European Union Civil Service Tribunal (OJ L 187, 8.8.1967, p. 1).

Article 84

Internal committees

The Board may establish internal committees to provide it with advice and guidance on the discharge of its functions under this Regulation.

Article 85

Appeal Panel

1. The Board shall establish an Appeal Panel for the purposes of deciding on appeals submitted in accordance with paragraph 3.

2. The Appeal Panel shall be composed of five individuals of high repute, from the Member States and with a proven record of relevant knowledge and professional experience, including resolution experience, to a sufficiently high level in the fields of banking or other financial services, excluding current staff of the Board, as well as current staff of resolution authorities or other national or Union institutions, bodies, offices and agencies who are involved in performing the tasks conferred on the Board by this Regulation. The Appeal Panel shall have sufficient resources and expertise to provide expert legal advice on the legality of the Board's exercise of its powers. Members of the Appeal Panel and two alternates shall be appointed by the Board for a term of five years, which may be extended once, following a public call for expressions of interest published in the *Official Journal of the European Union*. They shall not be bound by any instructions.

3. Any natural or legal person, including resolution authorities, may appeal against a decision of the Board referred to in Article 10(10), Article 11, Article 12(1), Articles 38 to 41, Article 65(3), Article 71 and Article 90(3) which is addressed to that person, or which is of direct and individual concern to that person.

The appeal, together with a statement of grounds, shall be filed in writing at the Appeal Panel within six weeks of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the decision came to the knowledge of the person concerned.

4. The Appeal Panel shall decide upon the appeal within one month after the appeal has been lodged.

The Appeal Panel shall decide on the basis of a majority of at least three of its five members.

5. The members of the Appeal Panel shall act independently and in the public interest. For that purpose, they shall make a public declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered to be prejudicial to their independence or the absence of any such interest.

6. An appeal lodged pursuant to paragraph 3 shall not have suspensive effect. However, the Appeal Panel may, if it considers that circumstances so require, suspend the application of the contested decision.

7. If the appeal is admissible, the Appeal Panel shall examine whether it is well founded. It shall invite the parties to the appeal proceedings to file observations on its own notifications or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

8. The Appeal Panel may confirm the decision taken by the Board, or remit the case to the latter. The Board shall be bound by the decision of Appeal Panel and it shall adopt an amended decision regarding the case concerned.

9. The decisions of the Appeal Panel shall be reasoned and notified to the parties.

10. The Appeal Panel shall adopt and make public its rules of procedure.

Article 86

Actions before the Court of Justice

1. Proceedings may be brought before the Court of Justice in accordance with Article 263 TFEU contesting a decision taken by the Appeal Panel or, where there is no right of appeal to the Appeal Panel, by the Board.

2. Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice against decisions of the Board, in accordance with Article 263 TFEU.

3. In the event that the Board has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice in accordance with Article 265 TFEU.

4. The Board shall take the necessary measures to comply with the judgment of the Court of Justice.

Article 87

Liability of the Board

1. The Board's contractual liability shall be governed by the law applicable to the contract in question.

2. The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Board.

3. In the case of non-contractual liability, the Board shall, in accordance with the general principles common to the laws concerning the liability of public authorities of the Member States, make good any damage caused by it or by its staff in the performance of their duties, in particular their resolution functions, including acts and omissions in support of foreign resolution proceedings.

4. The Board shall compensate a national resolution authority for the damages which it has been ordered to pay by a national court, or which it has, in agreement with the Board, undertaken to pay pursuant to an amicable settlement, which are the consequences of an act or omission committed by that national resolution authority in the course of any resolution under this Regulation of entities and groups referred to in Article 7(2), and of entities and groups referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met or pursuant to the second subparagraph of Article 7(3). That obligation shall not apply where that act or omission constituted an infringement of this Regulation, of another provision of Union law, of a decision of the Board, of the Council, or of the Commission, committed intentionally or with manifest and serious error of judgement.

5. The Court of Justice shall have jurisdiction in any dispute relating to paragraphs 3 and 4. Proceedings in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto.

6. The personal liability of its staff towards the Board shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

*Article 88***Professional secrecy and exchange of information**

1. Members of the Board, the Vice-Chair, the members of the Board referred to in Article 43(1)(b), the staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased. They shall in particular be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with their functions under this Regulation, to any person or authority, unless it is in the exercise of their functions under this Regulation or in summary or collective form such that entities referred to in Article 2 cannot be identified or with the express and prior consent of the authority or the entity which provided the information.

Information subject to the requirements of professional secrecy shall not be disclosed to another public or private entity except where such disclosure is due for the purpose of legal proceedings.

Those requirements shall also apply to potential purchasers contacted in order to prepare for the resolution of an entity pursuant to Article 13(3).

2. The Board shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the discharge of its duties, including officials and other persons authorised by the Board or appointed by the national resolution authorities to conduct on-site inspections, are subject to the requirements of professional secrecy equivalent to those referred to in paragraph 1.

3. The requirements of professional secrecy referred to in paragraph 1 shall also apply to observers who attend the Board's meetings and to observers from non-participating Member States who take part in internal resolution teams in accordance with Article 83(3).

4. The Board shall take the necessary measures to ensure the safe handling and processing of confidential information.

5. Before any information is disclosed, the Board shall ensure that it does not contain confidential information, in particular, by assessing the effects that the disclosure could have on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on

investigations and on audits. The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of resolution plans as referred to in Articles 8 and 9, the result of any assessment carried out under Article 10 or the resolution scheme referred to in Article 18.

6. This Article shall not prevent the Board, the Council, the Commission, the ECB, the national resolution authorities or the national competent authorities, including their employees and experts, from sharing information with each other and with competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, resolution and competent authorities from non-participating Member States, EBA, or, subject to Article 33, third-country authorities that carry out functions equivalent to those of a resolution authority, or, subject to strict confidentiality requirements, with a potential purchaser for the purposes of planning or carrying out a resolution action.

Article 89

Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC of the European Parliament and of the Council ⁽²⁵⁾ or the obligations of the Board, the Council and the Commission relating to their processing of personal data under Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁶⁾ when fulfilling their responsibilities.

Article 90

Access to documents

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽²⁷⁾ shall apply to documents held by the Board.

²⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31)

²⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

²⁷ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2. The Board shall, within six months of the date of its first meeting, adopt the practical measures for applying Regulation (EC) No 1049/2001.

3. Decisions taken by the Board under Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the European Ombudsman or of proceedings before the Court of Justice, following an appeal to the Appeal Panel, referred to in Article 85 of this Regulation, as appropriate, under the conditions laid down in Articles 228 and 263 TFEU respectively.

4. Persons who are the subject of the Board's decisions shall be entitled to have access to the Board's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Board.

Article 91

Security rules on the protection of classified and sensitive non-classified information

The Board shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom ⁽²⁸⁾. Applying the security principles shall include applying provisions for the exchange, processing and storage of such information.

Article 92

Court of Auditors

1. The Court of Auditors shall produce a special report for each 12-month period, starting on 1 April each year.

2. Each report shall examine whether:

- (a) sufficient regard was had to economy, efficiency and effectiveness with which the Fund has been used, in particular the need to minimise the use of the Fund;
- (b) the assessment of Fund aid was efficient and rigorous.

²⁸ Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure (OJ L 317, 3.12.2001, p. 1).

3. Each report under paragraph 1 shall be produced within six months of the end of the period to which the report relates.

4. Following consideration of the final accounts prepared by the Board in accordance with Article 63, the Court of Auditors shall prepare a report on its findings by 1 December following each financial year. The Court of Auditors shall, in particular, report on any contingent liabilities (whether for the Board, the Council, the Commission or otherwise) arising as a result of the performance by the Board, the Council and the Commission of their tasks under this Regulation.

5. The European Parliament and the Council may request that the Court of Auditors examine any other relevant matters falling within their competence set out in Article 287(4) TFEU.

6. The reports referred to in paragraphs 1 and 4 shall be sent to the Board, the European Parliament, the Council and the Commission and shall be made public without delay.

7. Within two months of the date on which each report under paragraph 1 is made public the Commission shall provide a detailed written response which shall be made public.

Within two months of the date on which each report under paragraph 4 is made public the Board, the Council and the Commission shall each provide a detailed written response which shall be made public.

8. The Court of Auditors shall have the power to obtain from the Board, the Council and the Commission any information relevant for performing the tasks conferred on it by this Article. The Board, the Council and the Commission shall provide any relevant information requested within such a timeframe as may be specified by the Court of Auditors.

PART IV

POWERS OF EXECUTION AND FINAL PROVISIONS

Article 93

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 19(8), Article 65(5), Article 69(5), Article 71(3) and Article 75(4) shall be conferred for an indeterminate period of time from the relevant dates referred to in Article 99.

3. The Commission shall ensure consistency between delegated acts adopted pursuant to this Regulation and delegated acts adopted pursuant to Directive 2014/59/EU.

4. The delegation of power referred to in Article 19(8), Article 65(5), Article 69(5), Article 71(3) and Article 75(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 19(8), Article 65(5), Article 69(5), Article 71(3) and Article 75(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

7. The Commission shall not adopt delegated acts where the scrutiny time of the European Parliament is reduced through recess to less than five months, including any extension.

Article 94

Review

1. By 31 December 2018, and every three years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate:

- (a) the functioning of the SRM, its cost efficiency, as well as the impact of its resolution activities on the interests of the Union as a whole and on the coherence and integrity of the internal market for financial services, including its possible impact on the structures of the national banking systems within the Union, in comparison with other banking systems, and regarding the

effectiveness of cooperation and information sharing arrangements within the SRM, between the SRM and the SSM, and between the SRM, national resolution authorities, competent authorities and resolution authorities of non-participating Member States, in particular assessing whether:

- (i) there is a need that the functions allocated by this Regulation to the Board, to the Council and to the Commission, be exercised exclusively by an independent Union institution and, if so, whether any changes of the relevant provisions are necessary including at the level of primary law;
 - (ii) cooperation between the SRM, the SSM, the ESRB, EBA, ESMA and EIOPA, and the other authorities which form part of the ESFS, is appropriate;
 - (iii) the investment portfolio in accordance with Article 75 is made of sound and diversified assets;
 - (iv) the link between sovereign debt and banking risk has been broken;
 - (v) governance arrangements, including the division of tasks within the Board and the composition of the voting arrangements both in the executive and the plenary sessions of the Board and its relations with the Commission and the Council are appropriate;
 - (vi) the reference point for setting the target level for the Fund is adequate and in particular, whether covered deposits or total liabilities is a more appropriate basis and if a minimum absolute amount for the Fund should be established in order to avoid volatility in the flow of financial means to the Fund and to ensure the stability and adequacy of the financing of the Fund over time;
 - (vii) it is necessary to modify the target level established for the Fund and the level of contributions in order to ensure a level playing field within the Union;
- (b) the effectiveness of independence and accountability arrangements;
 - (c) the interaction between the Board and EBA;
 - (d) the interaction between the Board and the national resolution authorities of non-participating Member States and the effects of the SRM on those Member

States, and the interaction between the Board and relevant third-country authorities as defined in Article 2(1)(90) of Directive 2014/59/EU;

- (e) the necessity of taking steps in order to harmonise insolvency proceedings for failed institutions.

2. The report shall be submitted to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

3. When reviewing Directive 2014/59/EU, the Commission is invited also to review this Regulation, as appropriate.

Article 95

Amendment to Regulation (EU) No 1093/2010

Regulation (EU) No 1093/2010 is amended as follows:

(1) In Article 4, point (2) is replaced by the following:

‘(2) “competent authorities” means:

- (i) competent authorities as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013, in Directive 2007/64/EC, and as referred to in Directive 2009/110/EC;
- (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;
- (iii) with regard to deposit guarantee schemes, bodies which administer deposit guarantee schemes pursuant to Directive 2014/49/EU of the European Parliament and of the Council (*), or, where the operation of the deposit guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive; and
- (iv) with regard to Directive 2014/59/EU of the European Parliament and of the Council (**), and to Regulation (EU) No 806/2014 of the European Parliament and of the Council (***), the resolution authorities, defined in Article 3 of Directive 2014/59/EU, the Single Resolution Board, established by

Regulation (EU) No 806/2014, and the Council and the Commission when taking actions under Article 18 of Regulation (EU) No 806/2014, except where they exercise discretionary powers or make policy choices.

(2) In Article 25, the following paragraph is inserted:

‘1a. The Authority may organise and conduct peer reviews of the exchange of information and of the joint activities of the Board referred to in Regulation (EU) No 806/2014 and national resolution authorities of Member States non-participating in the Single Resolution Mechanism in the resolution of cross-border groups to strengthen effectiveness and consistency in outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison.’;

(3) In Article 40(6), the following subparagraph is added:

‘For the purpose of acting within the scope of Directive 2014/59/EU, the Chair of the Single Resolution Board shall be an observer to the Board of Supervisors.’

Article 96

Replacement of national resolution financing arrangements

From the date of application referred to in Article 99(2) and (6) of this Regulation, the Fund shall be considered to be the resolution financing arrangement of the participating Member States under Articles 99 to 109 of Directive 2014/59/EU.

Article 97

Headquarters Agreement and operating conditions

1. The necessary arrangements concerning the accommodation to be provided for the Board in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the Chair, members of the Board in its plenary session, Board staff and members of their families shall be laid down in a Headquarters Agreement between the Board and that Member State, concluded after obtaining the approval of the Board in its plenary session and no later than 20 August 2016.

2. The Member State where the Board's seat is located shall provide the best possible conditions to ensure the proper functioning of the Board, including multilingual, European-oriented schooling and appropriate transport connections.

Article 98

Start of the Board's activities

1. The Board shall become fully operational by 1 January 2015.
2. The Commission shall be responsible for the establishment and initial operation of the Board until the Board has the operational capacity to implement its own budget. For that purpose:
 - (a) until the Chair takes up his or her duties following his or her appointment by the Council in accordance with Article 56, the Commission may designate a Commission official to act as interim Chair and exercise the duties assigned to the Chair;
 - (b) by way of derogation from Article 50(1)(1) and until the adoption of a decision as referred to in Article 50(3), the interim Chair shall exercise the appointing authority powers;
 - (c) the Commission may offer assistance to the Board, in particular by seconding Commission officials to carry out the activities of the agency under the responsibility of the interim Chair or the Chair.
3. The interim Chair may authorise all payments covered by appropriations entered in the Board's budget and may conclude contracts, including staff contracts.

Article 99

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. With the exceptions set out in paragraphs 3 to 5, this Regulation shall be applicable from 1 January 2016.
3. By way of derogation from paragraph 2 of this Article, the provisions relating to the powers of the Board to collect information and cooperate with the national resolution authorities for the elaboration of resolution planning, under Articles 8 and 9 and all of the other related provisions shall apply from 1 January 2015.

4. By way of derogation from paragraph 2 of this Article, Articles 1 to 4, 6, 30, 42 to 48, 49, Article 50(1)(a), (b) and (g) to (p), Article 50(3), Article 51, Article 52(1) and (4), Article 53(1) and (2), Articles 56 to 59, 61 to 66, 80 to 84, 87 to 95 and 97 and 98 shall apply from 19 August 2014.

5. By way of derogation from paragraph 2 of this Article, Article 69(5), Article 70(6) and (7) and Article 71(3), which empower the Council to adopt implementing acts and the Commission to adopt delegated acts, shall apply from 1 November 2014.

6. From 1 January 2015, the Board shall submit a monthly report approved in its plenary session to the European Parliament, to the Council and to the Commission on whether the conditions for the transfer of contributions to the Fund have been met.

From 1 December 2015, where those reports show that the conditions for the transfer of contributions to the Fund have not been met, the application of the provisions referred to in paragraph 2 shall be postponed by one month each time. The Board shall submit a further report each time at the end of that month.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 15 July 2014.

For the European Parliament

For the Council

The President

The President

M. SCHULZ

S. GOZI

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