

19.04.2012

~~EDUSKUNTA PYYDETÄÄN
NOUDATTAMAAN VAITELIAISUUTTA
TÄMÄN MUISTION KÄSITTELYSSÄ
SUOMEN NEUVOTTELUTAVOITTEIDEN
TURVAAMISEKSI.~~

*EDUSKUNTA
Suuri valiokunta*

Viite

Asia

Euroopan vakausmekanismin hallinto ja päätöksentekojärjestelmä

U/E-tunnus:

EUTORI-numero: EU/2012/0314

Ohessa lähetetään perustuslain 97§:n mukaisesti selvitys Euroopan vakausmekanismin hallinnosta ja päätöksentekojärjestelmästä.

Valtiovarainministeri

Jutta Urpilainen

LIITTEET Muistio VM2012-00343;

ESM - Rules of procedure of the Board of Directors, Draft of 4 April 2012;

ESM - Rules of procedure of the Board of Governors, Draft of 5 April 2012;

ESM - By-Laws, Draft of 5 April 2012;

Terms and conditions of capital calls for ESM, 04 April 2012

Asiasanat

Hoitaa

VM

Tiedoksi

EK, VNEUS

Tanninen Seppo, Kariniemi Pauli,
Weuro Jaakko(VM)

18.04.2012

~~EDUSKUNTAA PYYDETÄÄN
NOUDATTAMAAN VAITELIAISUUTTA
TÄMÄN MUISTION KÄSITTELYSSÄ
SUOMEN NEUVOTTELUTAVOITTEIDEN
TURVAAMISEKSI~~

Asia

Euroopan vakausmekanismin hallinto ja päätöksentekojärjestelmä

Kokous

EU-ministerivaliokunta 18.04.2012 - 20.04.2012

Liitteet

Viite

EUTORI/Eurodoc nro:

EU/2012/0314

U-tunnus / E-tunnus:

Käsittelyn tarkoitus ja käsittelyvaihe:

Euroryhmän työryhmän on tarkoitus lähiviikkojen kuluessa hyväksyä alustavasti Euroopan vakausmekanismin (EVM) ohjesääntö, hallintoneuvoston ja johtokunnan työjärjestykset sekä pääoman maksamista koskevat ehdot. EVM:n hallintoneuvosto hyväksyy ohjesäännön ja työjärjestykset sekä johtokunta pääoman maksamisen ehdot heinäkuussa EVM:n tultua perustetuksi.

Asiakirjat:

European Stability Mechanism By-Laws (Draft of 5 April 2012)
European Stability Mechanism Rules of Procedure of the Board of Governors
(Draft of 5 April 2012)
European Stability Mechanism Rules of Procedure of the Board of Directors
(Draft of 5 April 2012)
Terms and conditions of capital calls for ESM (4 April 2012)

EU:n oikeuden mukainen oikeusperusta/päätöksentekomenettely:

-

Käsittelijä(t):

VM/EAKR lainsäädäntöneuvos Seppo Tanninen p. 0295 5 30224
VM/RMO vanhempi finanssi sihteeri Pauli Kariniemi p. 0295 5 30210
VM/RMO hallitussihteeri Jaakko Weuro p. 0295 5 30302

Suomen kanta/ohje:

Suomi korostaa EVM:n ohjesääntöä, hallintoneuvoston ja johtokunnan työjärjestyksiä sekä pääoman maksamista koskevia ehtoja koskevilla neuvotteluilla seuraavia tekijöitä:

1. EVM:n ohjesäännön, hallintoneuvoston ja johtokunnan työjärjestysten sekä pääoman maksamista koskevien ehtojen tulee olla yhdenmukaisia EVM-sopimuksen kanssa.
2. EVM:n hallinto- ja päätöksentekojärjestelmää koskevien tarkentavien yksityiskohtaisten määräysten tulee mahdollistaa Suomessa eduskunnan oikea-aikainen ja asianmukainen osallistuminen eduskunnan toimivaltaan kuuluvien toimien ja päätösten valmisteluun sekä turvata eduskunnan tiedonsaanti.
3. EVM:n hallinto- ja päätöksentekojärjestelmän tulee olla muissa kansainvälisissä rahoituslaitoksissa sovellettavien parhaiden käytäntöjen mukainen.

Suomi katsoo, että pääoman maksamista koskevilla ehdoilla tulisi asettaa määräaika, jonka kuluessa EVM:n on palautettava jäsenvaltiolle näiden mahdollisesti yli oman osuutensa maksama pääoman määrä. Tämän määräajan tulisi olla mahdollisimman lyhyt.

Pääasiallinen sisältö:

Euroopan vakausmekanismin (EVM) on tarkoitus aloittaa toimintansa heinäkuun alussa 2012. EVM:n toimintakyky edellyttää, että sen sisäistä hallintoa, päätöksentekoa, henkilöstöä ja sen kautta myönnettävää rahoitustukea koskevat linjaukset on tehtävä kesäkuun 2012 loppuun mennessä.

Aikataulu EVM:n perustamiseen liittyvien tarkentavien määräysten valmisteluun on haastava sekä eurooppalaisen tason neuvottelujen että Suomen kannalta. Luonnoksia koskevat neuvottelut aloitettiin virkamiestasolla euroryhmän työryhmän alatyöryhmässä 13.4.2012.

EVM:n hallintoon ja päätöksentekojärjestelmään liittyvistä tarkentavista määräyksistä on toimitettu luonnokset EVM:n ohjesäännöksi, hallintoneuvoston ja johtokunnan työjärjestyksiksi sekä pääoman maksamista koskeviksi ehdoiksi.

EVM:n ohjesääntö ja hallintoneuvoston sekä johtokunnan työjärjestykset

EVM:n ohjesääntö täydentää EVM-sopimusta. Ohjesäännössä annetaan yksityiskohtaiset EVM:n hallintoa ja päätöksentekojärjestelmää koskevat määräykset. Määräykset koskevat erityisesti EVM:n hallintoneuvostoa ja johtokuntaa sekä niiden kokouskäytäntöjä. Lisäksi ohjesäännössä määrätään johtokunnan jäsenten yleisistä velvollisuuksista, käytäntösäännöistä ja toimitusjohtajan tehtävistä. Ohjesäännössä annetaan myös määräyksiä EVM:n tilivuodesta, ulkoisesta tarkastuksesta ja tilintarkastuskomiteasta. Ohjesäännön ulkoista tarkastusta koskevat määräykset perustuvat eurooppalaisten valtiontalouden tarkastusvirtojen yhteistyöelimen ehdotukseen. Ohjesäännön hyväksyy EVM:n hallintoneuvosto määräänemmistö päätöksellä.

EVM:n hallintoneuvoston ja johtokunnan työjärjestykset täydentävät lisää EVM-sopimusta ja ohjesääntöä. Työjärjestykset koskevat muun muassa hallintoneuvoston ja johtokunnan kokouskäytäntöjä, kuten asiakirjajakeluita ja teknisiä äänestyskäytäntöjä. Työjärjestykset hyväksyy ohjesäännön tavoin EVM:n hallintoneuvosto määräenemmistöpäätöksellä.

Pääoman maksamista koskevat ehdot

EVM:n perustamissopimuksen 8, 9 ja 41 artikloissa määrätään EVM:n peruspääoman ja vaadittaessa maksettavan pääoman maksamisen ehdoista. Johtokunta vahvistaa 9 artiklan 4 kohdan ja 10 artiklan 2 kohdan perusteella pääoman maksamisen yksityiskohtaiset ehdot. Pääomaa maksetaan EVM:n perustamisvaiheessa, pääomaa mahdollisesti korotettaessa sekä vaadittaessa maksettavan pääoman mahdollisen maksun yhteydessä (tappioiden kattamiseksi tai EVM:n maksukyvyttömyyden välttämiseksi.) Artiklassa 10 määrätään lisäksi, että hallintoneuvosto tarkastelee EVM:n pääoman riittävyttä vähintään viiden vuoden välein.

Pääoman maksaminen perustamisvaiheessa

EVM-sopimuksen 8 ja 41 artikloissa määrätään EVM:n peruspääomasta ja alkupääoman maksamisesta. Euroryhmän 30.3. tekemän periaatepäätöksen mukaisesti ehdotuksen 1 kohdassa todetaan, että eurovaltiot maksavat EVM:n 80 miljardin euron maksettavan osakepääoman neljässä erässä vuoden 2014 puoliväliin mennessä. Ensimmäinen maksuerä pitää maksaa 15 päivän kuluessa EVM-sopimuksen voimaantulosta. Suomi on sitoutunut maksamaan maksettavan pääomaosuutensa 1,44 miljardia euroa yhdessä erässä vuoden 2012 heinäkuussa osana Kreikka-vakuusjärjestelyä.

Vaadittaessa maksettavaa pääomaa koskevat maksuvaatimukset

EVM sopimuksen artikla 9 kohdan 1 mukaan hallintoneuvosto voi keskinäisellä sopimuksella (yksimielisyydellä) milloin tahansa vaatia vaadittaessa maksettavaa, vielä maksamatonta peruspääomaa maksettavaksi ja vahvistaa määräajan EVM:n jäsenten maksujen suorittamiselle. Ehdotuksen 2 kohdassa tarkennetaan menettelyä. Esityksen pääoman maksusta tekee toimitusjohtaja. Esityksessä on ehdotettava pääoman maksun tavoite, osakaskohtaiset tarkat määrät ja osuudet sekä maksuaikataulu. Esitys on toimitettava hallintoneuvostolle vähintään 3 viikkoa ennen hallintoneuvoston kyseistä kokousta. Pääoman maksulle asetettava määräaika voi olla enintään kolme kuukautta. Jäsen voi maksaa osuutensa nopeammin kuin mitä päätös edellyttää. Tällaisen jäsenen on ilmoitettava maksusta EVM:lle ja muille jäsenille vähintään seitsemän päivää ennen maksuajankohtaa.

Sopimuksen 9 artiklan 2 kohdan mukaan EVM:n johtokunta voi yksinkertaisella enemmistöllä tehtävällä päätöksellä vaatia maksettavaksi vaadittaessa maksettavaa, vielä maksamatonta peruspääomaa maksetun pääoman määrän palauttamiseksi ennalleen, jos maksetun pääoman määrä on tappioiden kattamisen takia laskenut alle vaaditun määrän. Tappioiden kattamisesta määrätään EVM-sopimuksen 25 artiklassa. Sen mukaan tappiot katetaan ensin vararahastosta, sen jälkeen maksetusta osakepääomasta ja viimeiseksi vaadittaessa maksettavasta pääomasta. Pääoman maksu perustuu toimitusjohtajan ehdotukseen. Johtokunnan päätöksenteossa noudatetaan EVM-sopimuksen, ohjesäännön ja johtokunnan työjärjestyksen määräyksiä. Pääoman maksulle asetettava määräaika olisi enintään kaksi kuukautta..

EVM-sopimuksen 25 artiklassa määrätään lisäksi, että jos joku jäsenistä ei maksa osuuttaan vaadittaessa maksettavasta pääomasta, muut jäsenet maksavat puuttuvan osan, jotta EVM:llä on riittävä maksettu pääoma. Hallintoneuvosto päättää tällöin toimista, joihin ryhdytään, jotta maksun laiminlyönyt jäsen täyttää velvollisuutensa. Viivästyneelle summalle voidaan vaatia maksettavaksi viivästyskorkoa. Maksuvelvollisuutensa laiminlyöneellä jäsenellä ei ole äänioikeutta EVM:n hallintoelinten päätöksissä. Kun EVM:n jäsen maksaa velkansa EVM:lle, ylimääräinen pääoma palautetaan muille EVM:n jäsenille hallintoneuvoston antamien sääntöjen mukaisesti. Luonnoksessa ehdotetaan, että viivästyskorko olisi osuutensa maksaneiden jäsenten painotettu keskimääräinen korko lisättynä 50 peruspisteellä.

EVM-sopimuksen artikla 9 kohdan 3 mukaan toimitusjohtajan on vaadittava jäseniä maksamaan vaadittaessa maksettavaa pääomaa, jos se on tarpeen sellaisen tilanteen välttämiseksi, jossa EVM tulee maksukyvyttömäksi tai se joutuisi laiminlyömään muita maksuvelvoitteitaan velkojilleen. Pyynnöstä on ilmoitettava johtokunnalle ja hallintoneuvostolle. Toimitusjohtajan on tehtävä pyyntö heti, kun hän havaitsee, että EVM:n varat eivät riitä velvoitteiden maksamiseen täysimääräisesti niiden eräpäivinä. Jäsenet ovat velvollisia maksamaan pääomat seitsemän päivän kuluessa siitä, kun toimitusjohtaja on esittänyt maksuvaatimuksen ja jäsen on vastaanottanut vaatimuksen. Luonnoksen 4 kohdassa todetaan, että EVM aikoo perustaa sisäisen riskikomitean avustamaan toimitusjohtajaa. Lisäksi ehdotetaan, että 3 kohdan määräyksiä viivästyskorosta ja mahdollisesti liikaa maksetun osuuden palauttamista noudatetaan myös tässä tapauksessa.

Kansallinen käsittely:

Valtiovarainministeriö
EU ministerivaliokunta, kirjallinen menettely 18.–20.4.2012

Eduskuntakäsittely:

Suuri valiokunta

Käsittely Euroopan parlamentissa:

-

Kansallinen lainsäädäntö, ml. Ahvenanmaan asema:

-

Taloudelliset vaikutukset:

EVM:n hallintoa ja päätöksentekojärjestelmää koskevilla teknisluonteisilla määräyksillä ei ole suoranaisia taloudellisia vaikutuksia eikä suoranaisia vaikutuksia Suomen vastuisiin tai niihin liittyviin riskeihin. Suomen osalta EVM:n rahoitustukipäätösten hyväksyminen edellyttää aina eduskunnan myötävaikutusta. Samoin EVM:n pääoman muutokset edellyttävät tappioiden kattamista ja maksukyvyttömyyden välttämistä koskevia tilanteita lukuun ottamatta aina eduskunnan myötävaikutusta.

Muut mahdolliset asiaan vaikuttavat tekijät:

Hallituksen on tarkoitus antaa eduskunnalle huhtikuun aikana esitys Euroopan vakausmekanismin (EVM) perustamisesta tehdyn sopimuksen hyväksymisestä ja laiksi sen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta. EVM:n ohjesääntö, hallintoneuvoston ja johtokunnan työjärjestykset sekä pääoman maksamista koskevat ehdot tarkentavat ja täydentävät EVM:n perustamissopimusta teknisillä määräyksillä.

Talous- ja rahoituskomitean sihteeristön alustavan työsuunnitelman mukaan lähiviikkojen aikana jäsenvaltioille toimitetaan luonnokset myös seuraavista EVM:n toimintaa ohjaavista politiikkalinjoista ja muista hallinnollisista asioista:

- rahoitustuen hinnoittelua koskevat suuntaviivat
- rahoituslaitosten pääomittamista koskevat suuntaviivat
- lainamuotoista rahoitustukea koskevat suuntaviivat
- valtionvelkakirjojen ensimarkkinaohjelmaa koskevat suuntaviivat
- valtionvelkakirjojen jälkimarkkinaohjelmaa koskevat suuntaviivat
- EVM:n varainhankintaa (ottolainausta) koskevat suuntaviivat
- EVM:n sijoituspolitiikkaa koskevat suuntaviivat
- EVM:n riskienhallintapolitiikka
- henkilöstön työehdot, eläkejärjestelmä ja verotus
- varainhankintavälineiden liikkeeseenlaskuasiakirjat
- rahastojen perustaminen ja hallinnointi

Nämä asiat tuodaan myös lähiviikkoina eduskunnan käsittelyyn vastaavalla tavalla.

Asiasanat

Hoitaa

VM

Tiedoksi

EK, VNEUS

**~~EDUSKUNTAA PYYDETÄÄN
NOUDATTAMAAN VAITTELLAISUUTTA
TÄMÄN MUISTION KÄSITTELYSSÄ
SUOMEN NEUVOTTELUTAVOITTEIDEN
TURVAAMISEKSI.~~**

**EUROPEAN STABILITY MECHANISM
RULES OF PROCEDURE OF THE BOARD OF DIRECTORS**

Article 1

Hierarchy of Rules

1. These are the Rules of Procedure of the Board of Directors (the “Board”) of the European Stability Mechanism (the “ESM”) adopted pursuant to Articles 5(7)(c) and 6(8) of the Treaty Establishing the European Stability Mechanism signed in Brussels on 2 February 2012 (the “Treaty”).
2. In the event of a conflict between any provision of these Rules of Procedure and any provision of the Treaty or the by-laws of the ESM (the “By-Laws”), the provision of the Treaty or of the By-Laws, as the case may be, shall prevail.
3. In these Rules of Procedure, and unless otherwise specified herein, capitalised terms shall have the same meanings as ascribed to them in the Treaty, and the terms “qualified majority” and “simple majority” shall have the same meanings as ascribed to them by Article 4(5) and (6) of the Treaty.

Article 2

Organisation of Meetings

1. Without prejudice to Article 6(1) of the By-Laws, the Board shall meet regularly in accordance with a schedule that it shall determine in good time before the start of each calendar year.
2. Except as otherwise specifically directed by the Board, the Managing Director shall have charge of all arrangements for the organisation of meetings of the Board.

Article 3

Attendance

1. Except as provided in paragraph 2 below, attendance at meetings of the Board shall be restricted to:
 - (a) the Managing Director, the Directors and alternate Directors;
 - (b) the observers appointed by the Member of the European Commission in charge of economic and monetary affairs and the President of the European Central Bank;
 - (c) the persons invited pursuant to Article 6(3) and (4) of the Treaty; and
 - (d) the Secretary General of the ESM, the person designated to serve as secretary of the meeting, the General Counsel of the ESM and any other member of the Management Board.

2. The Managing Director may invite experts to attend part or all of any given meeting of the Board.

Article 4

Advance Distribution of Documents

1. The following documents shall be sent in advance of any meeting of the Board in accordance with Article 6(5) of the By-Laws:
 - (a) any proposals for consideration at the relevant meeting;
 - (b) any reports of the Managing Director, the relevant Board committee or the Board of Auditors on the basis of which such proposals are to be considered;
 - (c) any amendments to said proposals; and
 - (d) any procedural motions.
2. The documents referred to in paragraph 1(a) and (b) above shall be sent no later than [three] calendar days prior to the date set for the meeting, and the documents referred to in paragraph 1(c) and (d) above no later than [24 hours] before the start of the meeting. The Managing Director may shorten these delays in urgent cases.

Article 5

Organisation of Debate

1. The Managing Director or, in his or her absence, the Director designated to preside over the meeting (the "Chair") shall establish the list of those wishing to speak on matters under consideration.
2. The Chair shall call upon speakers in the order in which they signify their wish to speak, except that:
 - (a) the Managing Director, the chairperson or rapporteur of a Board committee or the chairperson of the Board of Auditors may be accorded precedence for the purpose of explaining the conclusions of the report on the basis of which the relevant proposal is being considered; and
 - (b) a Director or his or her alternate shall have a prior right to speak if he or she asks leave to raise a point of order or to move a procedural motion in relation to the matter under consideration.
3. The Chair may, in the interest of an orderly debate, limit the time allowed to each speaker and the number of times each person may speak on any matter.

Article 6

Points of Order and Procedural Motions

1. Any Director or his or her alternate may raise a point of order during any meeting of the Board. Points of order must be confined to questions of procedure for a ruling from the Chair.
2. Any Director or his or her alternate may table a procedural motion calling for a decision by the Board:
 - (a) to rule on the competence of the Board to adopt a decision on the matter under consideration;

- (b) to defer the debate on a particular matter until a subsequent meeting of the Board or until one or more specified conditions relating to such matter are fulfilled;
 - (c) to close the debate on a particular matter;
 - (d) to divide a particular proposal or amendment; or
 - (e) to suspend or adjourn the meeting.
3. The procedural motions referred to in paragraph 2(b) and (e) are inadmissible in matters subject to the emergency voting procedure pursuant to Article 4(4) of the Treaty.

Article 7

Division of Proposals or Amendments

If a motion for division is carried, parts of the relevant proposal or amendment, as the case may be, shall be put to a vote separately. Those parts of the proposal or the amendment which are approved shall then be put to a vote as a whole. If all operative parts of the proposal or the amendment have been rejected, the proposal or the amendment shall be deemed to be rejected as a whole.

Article 8

Order of Voting

1. Procedural motions shall have precedence over all other proposals and shall be put to a vote according to the following order of priority:
- (a) a motion to suspend the meeting;
 - (b) a motion to adjourn the meeting;
 - (c) a motion to rule on the competence of the Board to adopt a decision on the matter under consideration;
 - (d) a motion to defer the debate on such matter;
 - (e) a motion to close the debate on such matter.

2. As between a proposal and an amendment thereto, the amendment shall be voted on first.

When two or more amendments are tabled in relation to the same proposal, the Board shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on, until all the amend-ments have been voted upon. In case of doubt as to the sequence, the Chair shall rule on the order to be followed.

If one or more amendments are adopted, the amended proposal shall then be voted upon.

Article 9

Voting

1. The Chair may ascertain the sense of the meeting in lieu of a formal vote. A formal vote shall, however, be taken whenever requested by any Director or his or her alternate.
2. Voting shall ordinarily be by show of hands.

At the request of any Director or his or her alternate, a vote shall be taken by roll call. The votes shall then be called in the English alphabetical order of the names of the ESM Members, beginning with the ESM Member whose name is drawn by lot by the Chair. The vote of each Director or his or her alternate shall be recorded in the minutes of the meeting.

Article 10

Participation in Meetings through Electronic Mode

1. The notice of the meeting shall specify the audio or audio-visual electronic communication facility that is available to participate in the meeting of the Board through electronic mode, as well as the necessary information to enable Directors, alternate Directors and other invitees to access such facility.
2. Directors, alternate Directors and other invitees wishing to participate in a given meeting of the Board through electronic mode shall advise the Secretary General of the ESM thereof by express courier, fax or electronic mail no later than 24 hours before the meeting.
3. Whenever persons participate in a meeting through electronic mode, the Chair shall, at the start of the meeting and whenever the meeting resumes after a suspension, make a roll call to confirm the identities of the persons so participating, to ensure that they can communicate clearly with the other participants and to verify that no unauthorised person is participating in the meeting.

Article 11

Amendment of these Rules of Procedure

These Rules of procedure may be amended from time to time by the Board of Governors acting by qualified majority.

**EDUSKUNTAA PYYDETÄÄN
NOUDATTAMAAN VAITTELLAISUUTTA
TÄMÄN MUISTION KÄSITTELYSSÄ
SUOMEN NEUVOTTELUTAVOITTEIDEN
TURVAAMISEKSI.**

**EUROPEAN STABILITY MECHANISM
RULES OF PROCEDURE OF THE BOARD OF GOVERNORS**

Article 1

Hierarchy of Rules

1. These are the Rules of Procedure of the Board of Governors (the “Board”) of the European Stability Mechanism (the “ESM”) adopted pursuant to Article 5(7)(c) and (9) of the Treaty Establishing the European Stability Mechanism signed in Brussels on 2 February 2012 (the “Treaty”).
2. In the event of a conflict between any provision of these Rules of Procedure and any provision of the Treaty or the by-laws of the ESM (the “By-Laws”), the provision of the Treaty or of the By-Laws, as the case may be, shall prevail.
3. In these Rules of Procedure, and unless otherwise specified herein, capitalised terms shall have the same meanings as ascribed to them in the Treaty, and the terms “qualified majority” and “simple majority” shall have the same meanings as ascribed to them by Article 4(5) and (6) of the Treaty.

Article 2

Organisation of Meetings

Except as otherwise specifically directed by the Board, the Managing Director, in consultation with the Chairperson and the authorities of the host ESM Member, shall have charge of all arrangements for the organisation of meetings of the Board.

Article 3

Attendance

1. Except as provided in paragraph 2 below, attendance at meetings of the Board shall be restricted to:
 - (a) the Chairperson, the Governors and alternate Governors;
 - (b) the member of the European Commission in charge of economic and monetary affairs and the President of the European Central Bank;
 - (c) the persons invited pursuant to Article 5(4) and (5) of the Treaty; and
 - (d) the Managing Director, the Secretary General of the ESM, the person designated to serve as secretary of the meeting (the “Secretary”), the General Counsel of the ESM and any other member of the Management Board.
2. The Chairperson may invite experts to attend part or all of any given meeting of the Board.

3. At the beginning of each meeting, the Secretary shall submit a current list of the Governors and alternate Governors whose appointment has theretofore been notified by the ESM Members to the ESM and not revoked.

Article 4

Advance Distribution of Documents

1. The following documents shall be sent in advance of any meeting of the Board in accordance with Article 3(6) of the By-Laws:
 - (a) any proposals for consideration at the relevant meeting;
 - (b) any reports of the Board of Directors, the Managing Director or the Board of Auditors on the basis of which such proposals are to be considered;
 - (c) any amendments to said proposals; and
 - (d) any procedural motions.
2. The documents referred to in paragraph 1(a) and (b) above shall be sent no later than 10 calendar days prior to the date set for the meeting, and the documents referred to in paragraph 1(c) and (d) above no later than three calendar days before said date. The Chairperson may shorten these delays in urgent cases.

Article 5

Organisation of Debate

1. The Chairperson or, in his or her absence, the Governor presiding over the meeting (the "Chair") shall establish the list of those wishing to speak on matters under consideration.
2. The Chair shall call upon speakers in the order in which they signify their wish to speak, except that:
 - (a) the Managing Director or the rapporteur of the relevant committee may be accorded precedence for the purpose of explaining the conclusions of the report on the basis of which the relevant proposal is being considered; and
 - (b) a Governor or his or her alternate shall have a prior right to speak if he or she asks leave to raise a point of order or to move a procedural motion in relation to the matter under consideration.
3. The Chair may, in the interest of an orderly debate, limit the time allowed to each speaker and the number of times each person may speak on any matter.

Article 6

Points of Order and Procedural Motions

1. Any Governor or his or her alternate may raise a point of order during any meeting of the Board. Points of order must be confined to questions of procedure for a ruling from the Chair.
2. Any Governor or his or her alternate may table a procedural motion calling for a decision by the Board:
 - (a) to rule on the competence of the Board to adopt a decision on the matter under consideration;

- (b) to defer the debate on a particular matter until a subsequent meeting of the Board or until one or more specified conditions relating to such matter are fulfilled;
 - (c) to close the debate on a particular matter;
 - (d) to divide a particular proposal or amendment; or
 - (e) to suspend or adjourn the meeting.
3. The procedural motions referred to in paragraph 2(b) and (e) are inadmissible in matters subject to the emergency voting procedure pursuant to Article 4(4) of the Treaty.

Article 7

Division of Proposals or Amendments

If a motion for division is carried, parts of the relevant proposal or amendment, as the case may be, shall be put to a vote separately. Those parts of the proposal or the amendment which are approved shall then be put to a vote as a whole. If all operative parts of the proposal or the amendment have been rejected, the proposal or the amendment shall be deemed to be rejected as a whole.

Article 8

Order of Voting

1. Procedural motions shall have precedence over all other proposals and shall be put to a vote according to the following order of priority:
- (a) a motion to suspend the meeting;
 - (b) a motion to adjourn the meeting;
 - (c) a motion to rule on the competence of the Board to adopt a decision on the matter under consideration;
 - (d) a motion to defer the debate on such matter;
 - (e) a motion to close the debate on such matter.

2. As between a proposal and an amendment thereto, the amendment shall be voted on first.

When two or more amendments are tabled in relation to the same proposal, the Board shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on, until all the amendments have been voted upon. In case of doubt as to the sequence, the Chair shall rule on the order to be followed.

If one or more amendments are adopted, the amended proposal shall then be voted upon.

Article 9

Voting

1. The Chair may ascertain the sense of the meeting in lieu of a formal vote. A formal vote shall, however, be taken whenever requested by any Governor or his or her alternate.
2. Voting shall ordinarily be by show of hands.

At the request of any Governor or his or her alternate, a vote shall be taken by roll call. The votes shall then be called in the English alphabetical order of the names of the ESM Members, beginning with the ESM Member whose name is drawn by lot by the Chair. The vote of each Governor or his or her alternate shall be recorded in the minutes of the meeting.

Article 10

Participation in Meetings through Electronic Mode

1. The notice of the meeting shall specify the audio or audio-visual electronic communication facility that is available to participate in the meeting of the Board through electronic mode, as well as the necessary information to enable Governors, alternate Governors and other invitees to access such facility.
2. Governors, alternate Governors and other invitees wishing to participate in a given meeting of the Board through electronic mode shall advise the Secretary General of the ESM thereof by express courier, fax or electronic mail no later than 24 hours before the meeting.
3. Whenever persons participate in a meeting through electronic mode, the Chair shall, at the start of the meeting and whenever the meeting resumes after a suspension, make a roll call to confirm the identities of the persons so participating, to ensure that they can communicate clearly with the other participants and to verify that no unauthorised person is participating in the meeting.

Article 11

Voting without Meeting

1. For the adoption of decisions by written procedure pursuant to Article 4 of the By-Laws, Governors or their alternates may cast their vote by signing the relevant motion and returning it to the Secretary General of the ESM by express courier, fax or electronic mail within [15] calendar days from transmission of the motion soliciting the vote.
2. In case of urgency duly justified in the motion soliciting the vote, the Chairperson may shorten the period prescribed for voting to [seven] calendar days.

Article 12

Amendment of these Rules of Procedure

These Rules of procedure may be amended from time to time by the Board of Governors acting by qualified majority.

**EDUSKUNTAA PYYDETÄÄN
NOUDATTAMAAN VAITTELLAISUUTTA
TÄMÄN MUISTION KÄSITTELYSSÄ
SUOMEN NEUVOTTELUTAVOITTEIDEN
TURVAAMISEKSI.**

**EUROPEAN STABILITY MECHANISM
BY-LAWS**

Article 1

Hierarchy of Rules

1. These By-Laws of the European Stability Mechanism (the “ESM”) are adopted under the authority of, and are intended to be complementary to, the Treaty Establishing the European Stability Mechanism signed in Brussels on 2 February 2012 (the “Treaty”); they shall be construed accordingly.
2. In the event of a conflict between any provision of these By-Laws and any provision of the Treaty, the provision of the Treaty shall prevail. In the event of a conflict between any provision of these By-Laws and any provision of any rules or guidelines adopted pursuant to the Treaty, the provision of these By-Laws shall prevail.
3. In these By-Laws, and unless otherwise specified herein, capitalised terms shall have the same meanings as ascribed to them in the Treaty, and the terms “qualified majority” and “simple majority” shall have the same meanings as ascribed to them by Article 4(5) and (6) of the Treaty.

Article 2

Chair of the Board of Governors

The Board of Governors shall, by qualified majority, decide:

- (a) 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 Treaty on the Functioning of the European Union,
- (b) or to elect a chairperson and a vice-chairperson from among its members, each for a renewable term of two years.

The chairperson of the Board of Governors shall hereafter be referred to as the “Chairperson”, and the vice-chairperson, if any, as the “Vice-Chairperson”.

Article 3

Meetings of the Board of Governors

1. The Board of Governors shall meet annually and whenever the affairs of the ESM so require, at the time and place specified in the notice of the meeting.
2. Meetings of the Board of Governors shall be called by the Chairperson, on his or her own initiative or at the written request of any Governor or the Managing Director.
3. The Chairperson shall cause notice of the meeting to be sent to all Governors and alternate Governors, as well as to the Member of the European Commission in charge of economic and monetary affairs, the President of the European Central Bank (the "ECB") and the President of the Euro Group (if he or she is not the Chairperson or a Governor).

Notice of the meeting shall specify the time and place of the meeting and its agenda.

Notice shall be sent by express courier, fax or electronic mail, not less than 15 calendar days prior to the date set for the meeting, except in urgent cases when notice shall be given as soon as possible.

4. The Chairperson shall send an invitation to each of the persons who should attend the meeting as observers pursuant to Article 5(4) or (5) of the Treaty.
Such invitation shall specify the time and place of the meeting, as well as the agenda item or items for which the addressee is invited to attend the discussion.
5. The agenda shall be prepared by the Chairperson in consultation with the Managing Director and shall include the items submitted by the person or persons requesting the meeting.

Additional subjects may be placed on the agenda by any Governor or the Managing Director, by written request submitted to the Chairperson not less than seven calendar days prior to the date set for the meeting. The Chairperson shall promptly inform all persons referred to in paragraph 3 above by letter sent by express courier, fax or electronic mail.

In urgent cases, additional subjects may be placed on the agenda until immediately before the start of the meeting: provided that additional items of which the Chairperson has informed the persons referred to in paragraph 3 above less than 24 hours before the start of the meeting, shall be included in the agenda only if so decided by the Board by qualified majority at the beginning of said meeting.

6. The Chairperson shall cause documents for discussion at the meeting to be sent to all persons referred to in paragraph 3 above in advance of the meeting, by express courier, fax or electronic mail, within the time limits defined in the rules of procedure of the Board of Governors.

The Chairperson shall determine which documents need to be sent to other invitees to the meeting.

7. Meetings of the Board of Governors shall be presided over by the Chairperson or, in his or her absence, by the Vice-Chairperson or, in his or her absence, by the Governor in attendance who is the most senior in years.
8. Governors and alternate Governors may take part in the discussion, and cast their votes, by means of teleconferencing or any other electronic means allowing real-time bidirectional or multidirectional communication enabling participants to hear all other participants and address the meeting from a remote location. Participation by such means shall constitute presence in person at said meeting for purposes of any quorum requirement.
9. Any alternate Governor may participate in meetings of the Board of Governors but may vote, make points of order or table motions only when he or she is replacing his or her principal.

Article 4

Voting without Meeting

1. Whenever the Chairperson, the Board of Directors or the Managing Director considers that one or more decisions on specific matters that are for the Board of Governors to determine should not be deferred until its next scheduled meeting but do not warrant the calling of an earlier meeting of the Board of Governors, the Chairperson shall solicit the vote of the Governors or their alternates on said matters without a meeting.
2. To this effect, the Chairperson shall promptly cause a motion embodying the proposed decisions to be transmitted to each Governor and alternate Governor by express courier, fax or electronic mail.
3. Votes shall be cast during such period and in such manner as the rules of procedure of the Board of Governors prescribe.
4. Upon expiration of the period prescribed for voting, the Chairperson shall record the results as if a meeting of the Board of Governors had been held and shall notify all Governors, alternate Governors and the Managing Director thereof.

If the replies received do not include the Governors or alternate Governors representing two-thirds of the ESM Members with voting rights representing at least two-thirds of the total voting rights, the motion shall be considered lost.

[Article 5

Delegation to the Board of Directors

1. Pursuant to Article 5(6)(m) of the Treaty, the Board of Governors delegates to the Board of Directors the tasks listed in Article [] of the Treaty.
2. The Board of Directors shall not take any action pursuant to powers delegated to it under paragraph 1 above which is inconsistent with any action taken by the Board of Governors.
3. The Board of Governors shall retain full power to exercise authority over any matter delegated to the Board of Directors under paragraph 1 above.]

Article 6

Meetings of the Board of Directors

1. The Board of Directors shall meet whenever the affairs of the ESM so require, at the time and place specified in the notice of the meeting.
2. Meetings of the Board of Directors shall be called by the Managing Director, on his or her own initiative or at the written request of any two Directors.
3. The Managing Director shall cause notice of the meeting to be sent to all Directors and alternate Directors, as well as to the observers appointed by the Member of the European Commission in charge of economic and monetary affairs and by the President of the ECB.

Notice of the meeting shall specify the time and place of the meeting and its agenda.

Notice shall be sent by express courier, fax or electronic mail, not less than seven calendar days prior to the date set for the meeting, except in urgent cases when notice shall be given as soon as possible.

4. The Managing Director shall send an invitation to each of the persons who should attend the meeting as observers pursuant to Article 6(3) and (4) of the Treaty.

Such invitation shall specify the time and place of the meeting, as well as the agenda item or items for which the addressee is invited to attend the discussion.

5. The agenda shall be prepared by the Managing Director and shall include the items submitted by the person or persons requesting the meeting.

Additional subjects may be placed on the agenda by any Director, by written request submitted to the Managing Director not less than three calendar days prior to the date set for the meeting. The Managing Director shall promptly inform all persons referred to in paragraph 3 above by letter sent by express courier, fax or electronic mail.

In urgent cases, additional subjects may be placed on the agenda until immediately before the start of the meeting; provided that additional items of which the Managing Director has informed the persons referred to in paragraph 3 above less than 24 hours before the start of the meeting, shall be included in the agenda only if so decided by the Board by qualified majority at the beginning of said meeting.

6. The Managing Director shall cause documents for discussion at the meeting to be sent to all persons referred to in paragraph 3 above in advance of the meeting, by express courier, fax or electronic mail, within the time limits defined in the rules of procedure of the Board of Directors.

The Managing Director shall determine which documents need to be sent to other invitees to the meeting.

7. Meetings of the Board of Directors shall be presided over by the Managing Director or, in his or her absence, by the Director designated by the Board, acting by simple majority.
8. Directors and alternate Directors may take part in the discussion, and cast their votes, by means of teleconferencing or any other electronic means allowing real-time bidirectional or multidirectional communication enabling participants to hear all other participants and address the meeting from a remote location. Participation by such means shall constitute presence in person at said meeting for purposes of any quorum requirement.
9. Any alternate Director may participate in meetings of the Board of Directors but may vote, make points of order or table motions only when he or she is replacing his or her principal.

Article 7

Emergency Voting Procedure

1. Whenever the European Commission and the ECB consider that a failure to urgently adopt one or more decisions to grant or implement financial assistance under the Treaty would threaten the economic and financial sustainability of the euro area, the Member of the European Commission in charge of economic and monetary affairs and the President of the ECB shall promptly advise the Chairperson and the Managing Director of such conclusion in writing and request application of the emergency voting procedure pursuant to Article 4(4) of the Treaty.
2. The Chairperson and the Managing Director shall thereupon consider the nature and content of the decision or decisions to be taken and call a meeting of the Board of Governors or the Board of Directors, as the case may be, on an urgent basis.

If a meeting of the relevant Board has already been called, the Chairperson and the Managing Director shall adapt the agenda, and may advance the date, of such meeting, as appropriate, and shall promptly inform all addressees of the original notice by letter sent by express courier, fax or electronic mail.

Notice of the meeting or said letter shall make specific reference to the emergency voting procedure pursuant to Article 4(4) of the Treaty and include a copy of the Commission's and ECB's request pursuant to paragraph 1 above.

3. Under the emergency voting procedure, any decision on the matters referred to in Article 5(6) (f) or (g) of the Treaty, to be taken by the Board of Governors or, pursuant to the powers delegated to it under Article 5 of these By-Laws, by the Board of Directors, shall require a qualified majority of 85% of the votes cast.

Article 8

Secretary

The Secretary General of the ESM or, in his or her absence, a member of the staff of the ESM designated by the Secretary General shall serve as secretary of the Board of Governors and the Board of Directors (the "Secretary").

Article 9

Minutes

1. The Secretary shall prepare minutes and a summary record of the proceedings of the meetings of the Board of Governors and the Board of Directors.

The draft minutes and summary record of proceedings shall be presented for approval at the next meeting of the Board of Governors or the Board of Directors, as the case may be, or, where necessary, by written procedure pursuant to Article 4.

They shall be signed by the Chairperson or the Managing Director, as the case may be, by the Secretary and by the General Counsel of the ESM.

2. The minutes of the meetings of the Board of Governors and the Board of Directors shall contain:
 - (a) the names of the persons present and represented;
 - (b) the agenda items;
 - (c) the decisions adopted;
 - (d) in the case of the Board of Directors, any declaration made under Article 13(1); and
 - (e) such other matters as may be specified in the rules of procedure of the Board of Governors or the Board of Directors, as the case may be.

Article 10

Management Board

1. The Management Board shall consist of the Managing Director, who shall chair the Board, and such other members as the Managing Director shall designate from time to time.
2. The Management Board shall:
 - (a) assist the Managing Director in conducting the current business of the ESM;
 - (b) prepare the decisions of the Board of Governors and the Board of Directors and see to their implementation; and
 - (c) carry out such additional tasks as may be delegated to it from time to time by the Board of Governors or the Board of Directors.

Article 11

Other Committees

The Board of Directors, acting by qualified majority, may establish such permanent or *ad hoc* advisory committees as it considers necessary or appropriate to facilitate its work. It shall define the tasks and determine the composition of such committees and adopt their rules of procedure.

Article 12

Duties of Directors

1. Each Director and alternate Director shall devote to the activities of the ESM such time and attention as the interest of the institution may require.
2. While holding office at the ESM and for a period of six months thereafter, a Director or alternate Director may not:
 - (a) hold any office or exercise any employment with, or perform any duties for, any credit institution, financial holding company or mixed-activity holding company (as such terms are defined in Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions) other than public international financial institutions; nor
 - (b) engage in such other activities as may be determined from time to time by the Board of Governors, acting by qualified majority, pursuant to Articles 5(7)(d) and 6(8) of the Treaty.

Article 13

Remuneration and Expenses

1. Governors, Directors and their respective alternates shall perform their duties without remuneration from the ESM.
2. Expenses incurred by the persons referred to in paragraph 1 above and in Articles 5(3) and (4) and 6(2) and (3) of the Treaty in attending meetings of the Board of Governors or the Board of Directors, as the case may be, shall not be borne by the ESM.

Article 14

Borrowings

1. The Board of Directors, acting by qualified majority, shall adopt detailed guidelines for the ESM's borrowing operations, and the Managing Director shall conduct such operations in accordance with said guidelines.
2. Any agreement, indenture or other document concerning the ESM's borrowing operations shall be signed on behalf of the ESM by the Managing Director or by any person acting within the limits of specific powers delegated by the Managing Director.

The General Counsel of the ESM shall have authority to provide such legal opinions and to certify such documents as may be required in connection with the ESM's borrowing operations.

3. Every security issued or guaranteed by the ESM shall bear on its face a conspicuous legend to the effect that it is not an obligation of any ESM Member.

Article 15

External Representation

Without prejudice to Articles 13(4), 14(3), 15(3), 16(3), 17(3) and 18(4) of the Treaty, the ESM shall be validly represented in dealings with third parties and in legal proceedings:

- (a) by the Managing Director or, in his or her absence, by any two Directors acting jointly; and
- (b) by any person acting within the limits of specific powers delegated by the Managing Director.

Article 16

Disclosure of Documents

1. The minutes and summary records of proceedings of the Board of Governors, the Board of Directors, the Management Board and the Board of Auditors shall be confidential and shall not be published or disclosed to third parties, except:
 - (a) as required by the Treaty; or
 - (b) as needed in connection with the legal documentation of borrowing operations or other transactions of the ESM; or
 - (c) insofar as the relevant board authorises the Managing Director to arrange for suitable publicity on any particular matter reflected therein.
2. Documents drawn up or held by the ESM may be communicated to public authorities of ESM Members, the European Commission, the ECB and the International Monetary Fund. They may be disclosed to other parties if and to the extent that the Managing Director authorises such disclosure.
3. The ESM shall not disclose documents or parts of documents drawn up or held by it that contain:
 - (a) personal data concerning individuals; or
 - (b) business secrets concerning financial institutions that are proposed to be, or have been, recapitalised under financial assistance granted pursuant to Article 15 of the Treaty.
4. The Managing Director may subject the communication of documents to special safeguards to ensure the confidentiality of:
 - (a) information communicated to the ESM by any party and expressly marked as confidential by such party; or
 - (b) non-public information the disclosure of which would prejudice the legitimate interests of an ESM Member that requests or has received stability support under the Treaty; or
 - (c) correspondence, draft reports or other documents prepared for internal deliberations; or
 - (d) legal advice received by the ESM.

Article 17

Staff

1. The Board of Directors shall set forth the terms and conditions of employment of the staff engaged by, or seconded to, the ESM in staff rules to be adopted by qualified

majority. These staff rules shall apply to the extent that the terms of individual employment agreements do not expressly derogate from said rules.

2. The staff rules shall also define:
 - (a) the rules regarding the internal tax referred to in Article 36(5) of the Treaty, on the basis of a benchmarking on the internal tax applied by comparable international institutions; and
 - (b) [appropriate procedures for the consideration of complaints and grievances of individual staff members on the terms of their employment or any other matters dealt with in this Article 18 or in the staff rules].
3. The Managing Director shall be the chief of the staff of the ESM. He or she shall engage, organise and dismiss the staff and generally manage the human resources of the ESM in accordance with the staff rules.

The Managing Director may issue general administrative orders on such personnel matters as are identified by the staff rules.
4. In recruiting and managing the human resources of the ESM, the Managing Director shall pay due regard to:
 - (a) the transfer and the optimal integration and utilisation of the human resources and know-how available at the European Financial Stability Facility with a view to ensuring efficiency and continuity; and
 - (b) the paramount importance of the personal ability, technical competence and qualifications of the relevant persons.
5. The recruiting, employment, classification, training, promotion and career development generally of persons on the staff of the ESM shall be made without discriminating against any person because of sex, race, ethnic or social origin, creed or nationality.
6. The Managing Director shall issue *laissez-passer* to persons on the staff of the ESM under the conditions set forth in the staff rules. The ESM Members shall recognize and accept such *laissez-passer* as valid travel documents within their respective territories.

Article 18

Code of Conduct

The Board of Directors, acting by qualified majority, shall adopt a code of conduct which shall be binding on the Managing Director and all Directors, alternate Directors and persons on the staff of the ESM and shall set forth their obligations on such matters as confidentiality, public statements and contacts with the media, personal investments and disclosure of financial and business interests.

Article 19

Financial Year

The financial year of the ESM shall begin on 1 January and end on 31 December of each year, except the first financial year, which shall begin on the date of entry into force of the Treaty and end on 31 December of the same year.

Article 20

Accounts and Audit

1. The Board of Directors shall keep the accounts of the ESM and draw up its annual accounts, as well as the quarterly summary statement and profit and loss statement referred to in Article 27(2) of the Treaty, both expressed in euro, in accordance with generally accepted accounting principles and such additional accounting conventions as are defined by the Board of Directors, acting by qualified majority, and approved by the Board of Auditors.
2. The accounts of the ESM shall be audited in accordance with generally accepted auditing standards at least once every year by independent external auditors.

Article 21

External Auditors

1. The ESM's independent external auditors shall be appointed by the Board of Governors, upon a recommendation of the Board of Auditors, for a term of three years, from among audit firms of good international repute, approved and subject to public oversight in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.
2. There shall be a mandatory rotation of the external auditors every [six] years.
The external audit firm shall not be eligible to provide non-audit related consulting services to the ESM. Its provision of audit-related consulting services shall be subject to the prior approval of the Board of Directors, and the remuneration for such services may not exceed one-third of the remuneration for the audit services.

Article 22

Financial Statements and Annual Report

1. The Board of Directors shall draw up the financial statements in respect of any given financial year no later than 31 March of the following year, in the form of a balance sheet, a statement of profit and loss and explanatory notes.
2. The Managing Director shall draw up an annual report in respect of each financial year and submit it to the Board of Governors for approval at its annual meeting.
The annual report shall contain:
 - (a) a discussion of the policies and activities of the ESM, as well as recommendations on issues confronting the ESM;
 - (b) the financial statements for the relevant financial year;
 - (c) the report of the external auditors in respect of their audit in respect of said financial statements; and
 - (d) the report of the Board of Auditors in respect of said financial statements pursuant to Article 24 (4).
3. Once approved by the Board of Governors, the annual report shall be published on the website of the ESM.

Article 23

Board of Auditors

1. The members of the Board of Auditors shall be appointed by the Board of Governors, acting by qualified majority, as follows:

- (a) two members upon the proposal of the Chairperson;
- (b) two members nominated by the supreme audit institutions of two ESM Members, one with a capital subscription in the upper half and the other with a capital subscription in the lower half of the table in Annex II to the Treaty, according to a rotation system [following the English alphabetical order of the names of the ESM Members in each group]; and
- (c) one member nominated by the European Court of Auditors.

The members shall be appointed for a non-renewable term of three years, except that, among the first members, one of the members referred to in subparagraph (a) above and one of those referred to in subparagraph (b) above shall be appointed for a non-renewable term of four years.

To be eligible for appointment to the Board of Auditors, persons must possess the professional knowledge, skills and auditing experience that are necessary for the proper performance of the Board's tasks.

- 2. The Board of Auditors shall elect a chairperson and a vice-chairperson from among its members, each for a [renewable] term of one year.
- 3. At least three members must be present in order for the Board of Auditors to validly deliberate. Decisions of the Board are adopted by simple majority of the votes cast.

Members may participate in meetings of the Board by means of teleconferencing or any other electronic means allowing real-time bidirectional or multidirectional communication enabling participants to hear all other participants and address the meeting from a remote location. Participation by such means shall constitute presence in person at said meeting for purposes of the quorum requirement.

The Board of Auditors shall establish rules of procedure to govern its proceedings.

- 4. The Board of Auditors shall carry out the audits with which it is charged by Article 30(3) of the Treaty independently. It shall audit regularity, compliance, performance and risk management of the ESM in accordance with international auditing standards. It shall monitor and review the ESM's internal and external audit processes and their results.

The Board of Auditors shall have full access to any document and information of the ESM, including data of internal and external audit processes, that are needed for the implementation of its tasks.

- 5. The Board of Auditors may have recourse to subject matter experts for supporting audit work.

The ESM shall provide the office facilities and resources which the Board of Auditors needs for the performance of its tasks.

The members of the Board of Auditors are entitled, at the ESM's expense, to the reimbursement of, or the payment of allowances for, travel and office expenses incurred by them in the performance of their duties, in the amounts determined, and adjusted from time to time, by the Board of Directors, acting by qualified majority.

- 6. The Board of Auditors shall draw up an annual report for the Board of Governors to report on its audit work, its audit findings in relation to the operational accounts and balance sheet and its conclusions and recommendations.

The Board of Governors shall make said annual report accessible to the national parliaments and supreme audit institutions of the ESM Members and to the European Court of Auditors no later than [30 days] after having received it from the Board of Auditors.

The Board of Auditors may, at the request of the Board of Governors or the Managing Director, draw up additional reports on any of the matters referred to in paragraph 4 above. Any such reports shall be confidential and shall not be published or disclosed to third parties except insofar as the Board of Governors or the Managing Director instructs otherwise.

7. The members of the Board of Auditors shall take care to avoid all conflicts of interests in the performance of their duties, both during and after their term of office.

The members of the Board and the experts appointed by it shall keep all non-public information obtained in the performance of their duties in the strictest confidence, both during and after their term of office or appointment.

Article 24

Annual Budget

1. The Managing Director shall draw up an administrative budget for each financial year and submit it to the Board of Directors for approval no later than 15 December of the preceding financial year. The Managing Director shall submit the budget for the first financial year of the ESM to the Board of Directors no later than three months after its inaugural meeting.
2. The annual budget, as approved by the Board of Directors, shall be presented to the Board of Governors at its next annual meeting.

Article 25

Service of Process

Process shall be validly served on the ESM if delivered to it at its seat in Luxembourg. The ESM may in any contract specify any other address for service of process, including in a State that is not an ESM Member.

Article 26

Language

1. The working language of the ESM, including for the conduct of meetings of the Board of Governors, the Board of Directors, the Management Board and the Board of Auditors, shall be English.
2. The authentic version of all records of the ESM shall be the English version, unless the Board of Directors decides otherwise in respect of a particular transaction.

Article 27

Amendment

These By-Laws may be amended from time to time by the Board of Governors acting by qualified majority [or, for any amendment of Article 5, by mutual agreement].

04 April 2012

**~~EDUSKUNTAA PYYDETÄÄN
NOUDATTAMAAN VAITELIAISUUTTA
TÄMÄN MUISTION KÄSITTELYSSÄ
SUOMEN NEUVOTTELUTAVOITTEIDEN
TURVAAMISEKSI.~~**

Terms and conditions of capital calls for ESM

Introduction

The ESM is an international financial institution based on authorized capital. The amount of authorized capital is set at EUR 700bn, of which EUR 80bn shall be paid in initially. ESM Members shall meet all capital calls on a timely basis in accordance with the terms set out in the Treaty (Article 8(4)). Capital calls can be launched under different conditions. Article 9 considers

- General capital calls
- Capital calls to restore the level of paid-in capital
- Capital calls to avoid default.

The terms and conditions of each type of capital call are set out below.

1. Initial level of paid-in capital and general review (Articles 8(2) and 41)

The Treaty sets the initial stock of authorized capital to be paid-in by ESM Members at EUR 80bn. According to Article 41, 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.

According to Article 41(3), an ESM Member may decide to accelerate the payment of its share of paid-in capital. On 30 March 2012, the Eurogroup declared that ESM Members intend to effectively accelerate the payment of the initial tranches, with a second tranche being paid in October 2012, the subsequent two tranches in the course of 2013 and the final tranche in the first half of 2014. Finland will pay in its entire contribution to the EUR 80bn paid-in capital in one instalment, when the first tranche is due.

Moreover, during the five-year period of capital payment by instalments, ESM Members moreover 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 500bn (Article 41(3)).

The stock of paid-in capital set in Article 8(2) can moreover be adjusted any time. Such a revision may occur in view of the adjustment of the authorized capital stock. According to

Article 10, 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 specifying the capital contributions accordingly. An adjustment of the amount of paid-in capital may also occur at any time irrespective of a change in the amount of authorized capital, among others, for prudential reasons.

2. General capital calls (Article 9(1))

Under Article 9.1, the Board of Governors, acting by mutual agreement may call in authorized capital any time. Unless otherwise foreseen in the Treaty or specified in these terms and conditions, capital calls for the payment of initial capital and related to the revision of the lending capacity as mentioned in Article 10 shall be conducted on the basis of Article 9.1. This does not apply to the acceleration of capital according to Article 41(2).

Approval procedure

A capital call under Article 9.1 shall be based on the proposal of the Managing Director to the Board of Governors. The proposal shall outline the objective of the capital call, the precise amounts and contributions of shareholders, and a proposed payment date or schedule. This proposal shall be sent to Governors at least [3] weeks ahead of the Board of Governors meeting where the item is scheduled to be approved.

Unless otherwise specified herein, the procedures for the preparation of the meeting, voting and documentation have to follow the provisions in the Treaty, the by-laws and the rules of procedure for the Board of Governors. According to Article 5(6)(c), decisions to call in capital pursuant of Article 9(1) can only be adopted by mutual agreement.

Payment

An appropriate schedule shall be set for the payment date which shall not exceed [3] months

Payments shall be made in cash.

Moreover, payments shall be made on a pro-rata basis in accordance with the contribution key referred to in Article 11.

According to Article 4(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 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.

Acceleration by ESM Member

An ESM Members may accelerate its payment of capital on its own initiative without a capital call being launched. The ESM Member shall notify the ESM and the other ESM members at least [7] days in advance of such accelerated payment.

3. Capital calls to replenish paid-in capital (Art 9.2)

Capital calls may also be made by the Board of Directors, acting by simple majority, under Article 9(2) in order to cover losses arising in the ESM operations. Article 25 stipulates that such losses should 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).

Approval procedure

A capital call under Article 9(2) shall be based on a proposal of the Managing Director to the Board of Directors. The proposal shall specify the losses to be covered in relation to the level of paid-in capital (set by Article 8(2) or adjusted afterwards in accordance with Article 10), the timeline required to replace the capital base in order to avoid

- a) a reduction in the lending capacity,
- b) emergency calls, or
- c) a credit rating action.

The Managing Director would propose a call of capital under Article 9(2), firstly, if paid-in capital has been used in line with Article 25 to cover a shortfall due to a non-payment by a beneficiary country.

Secondly, temporary fluctuations of the capital value may occur due to market prices. The investment strategy of ESM should ensure, for a very high level of confidence, that the paid-in capital market value will exceed a threshold of 15% compared to the outstanding amount of ESM issuance at the time. When the total amount of EUR 80bn paid-in capital is paid, fluctuations of the whole ESM capital value should be contained so that it remains above an absolute threshold of EUR 75bn (EUR 75bn = 15% of EUR 500 bn), over a giving period of time and for a very high level of confidence. Therefore, the Managing Director would not propose to make any capital calls under Article 9.2 as long as temporary market developments affect the value of capital investments within this limit, but only in the unlikely case that the limit is breached. *[Note: This paragraph is preliminary and may be discussed jointly with the investment strategy and adjusted]*

The proposal shall specify the precise amounts and contributions of shareholders, and a proposed payment date. It must be sent to the Directors at least [2] weeks ahead of the Board of Directors meeting, where the item is scheduled to be approved.

Unless otherwise specified herein, the procedures for the preparation of the meeting, voting and documentation have to follow the provisions in the Treaty, the by-laws and the rules of procedure of the Board of Directors. According to Article 9(2), decisions to call in capital to cover losses can be adopted by simple majority.

Payment

An appropriate deadline should be set for the payment date which shall not exceed [2] months the Board of Directors shall specify the terms and conditions of payment in accordance with the same rules as specified above for capital calls made under Article 9(1).

In addition, in accordance with Article 25(2), if an ESM Member fails to meet the required payment under a capital call made pursuant to Article 9(2), 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. This call shall be made by grossing up the contribution rate of the remaining ESM Members on a pro-rata basis, unless agreed otherwise by the ESM

Members. The renewed call shall be completed as closely as possible to the original payment date.

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 (Article 25). The default interest rate shall be set at the weighted average interest rate of the ESM Members serving the portion of the capital payments plus [50]bp.

When an ESM Member settles its debt to the ESM the excess capital shall be returned to the other ESM Members in proportion to the initial payment contribution provided to cover the shortfall. The same approach should apply to the distribution of the returns from the default interest payments.

4. Emergency capital calls (Art 9.3)

Finally, capital calls have to be made in accordance with Article 9(3) if needed to avoid a default of any scheduled or other payment obligation due to ESM creditors. 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. The Managing Director shall inform the Board of Directors and the Board of Governors of any such call.

Procedure

The ESM will establish an internal risk committee in the ESM governance structure, which shall regularly review the liquidity position and the planned repayment of loans, at least over the next quarter.

The risk committee shall form a view on market conditions and the financial situation of the borrower and assess the planned repayment schedule against likely scenarios taking into account the information provided by external parties (e.g. the Commission). If the risk committee concludes that there may be a doubt on timely repayment which could lead to a payment default by ESM, it shall notify the Managing Director, who in turn shall immediately inform the Board of Directors of this warning. The Managing Director will also indicate possible provisions or corrective measures, if feasible. Once a warning has been launched the Managing Director shall regularly update the Board of Directors on the situation of the borrower and market conditions, as well as any corrective measures taken.

In case the Managing Director concludes that a default would be inevitable, he shall launch the capital call in accordance with Article 9(3) and provide the necessary evidence on the financial situation of the ESM and the outcome of the measures taken to prevent the call.

Payment

The Managing Director shall specify the terms and conditions of payments in accordance with the same rules as specified above for capital calls under Article 9(2), except that ESM Members irrevocably and unconditionally undertake to pay on demand any capital call made on them by the Managing Director pursuant to Article 9(3) to be paid within seven days of receipt.

In addition, if an ESM Member fails to meet the required payment under the capital call made pursuant of Article 9(3), the procedure of Article 25(2), as described in section 3 above, shall apply.