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Valtiovarainministeriö E-KIRJE VM2012-00713

28.09.2012
KÄYTTÖ RAJOITETTU

E 109/2012 vp

EDUSKUNTAA PYYDETÄÄN NOUDATTAMAAN VAITELIAISUUTTA ASIAN KÄSITTELYSSÄ SUOMEN NEUVOTTELLUTAVOITTEIDEN TURVAAMISEKSI SEKÄ SISÄLTÖÄ KOSKEVIEN JULKAISEMATTOMIEN TIETOJEN PERUSTEELLA

Vaiteliaisuusmääräys kumottu 18.3.2015 SuV

SuV sihteeristö
Saapunut 28/9 2012

EDUSKUNTA
Suuri valiokunta

~~VAITELIAISUUSPYYNTÖ~~

Viite

Asia
Euroopan vakausmekanismin (EVM) rahoitustukivälineiden kapasiteetin tehostaminen (markkinatukijärjestelyt)

Vaiteliaisuusmääräys kumottu 18/3/2015

U/E-tunnus: **EUTORI-numero: EU/2012/0314**

Ohessa lähetetään perustuslain 97§:n mukaisesti selvitys Euroopan vakausmekanismin (EVM) rahoitustukivälineiden kapasiteetin tehostamisesta (markkinatukijärjestelyt).

~~VAITELIAISUUSMÄÄRÄYS annettu perustuslain ... 3 momentin nojalla~~

Vaiteliaisuusmääräys kumottu __/__/20__

Valtiovarainministeri Jutta Urpilainen

ARKISTOKAPPALE

LIITTEET Perusmuistio VM2012-00714;ESM Guideline on Precautionary Financial Assistance;ESM Guideline on the Primary Market Support Facility;ESM Guideline on Loans;ESM Market Access Support Facilities Terms and Conditions;ESM Guideline on the Secondary Market Support Facility

Asiasanat	**talouskriisi**
Hoitaa	**VM**
Tiedoksi	EUE, TEM, UM, VNEUS, VTV

Valtiovarainministeriö PERUSMUISTIO VM2012-00714

Tanninen Seppo, Kariniemi Pauli, Weuro Jaakko(VM), Passinen Tapio(VM), Kallio Aki(VM)

28.09.2012

KÄYTTÖ RAJOITETTU
EDUSKUNTAA PYYDETÄÄN NOUDATTAMAAN VAITELIAISUUTTA ASIAN KÄSITTELYSSÄ SUOMEN NEUVOTTELUTAVOITTEIDEN TURVAAMISEKSI SEKÄ SISÄLTÖÄ KOSKEVIEN JULKAISEMATTOMIEN TIETOJEN PERUSTEELLA

Vaiteliaisuusmääräys kumottu 18.3.2015 SuV

Asia

Euroopan vakausmekanismin (EVM) rahoitustukivälineiden kapasiteetin tehostaminen (markkinatukijärjestelyt)

Kokous

Liitteet

Viite

EUTORI/Eurodoc nro: EU/2012/0314

U-tunnus / E-tunnus:

Käsittelyn tarkoitus ja käsittelyvaihe:

EVM:n odotetaan aloittavan toimintansa lokakuussa 2012. EVM:n rahoitustukivalikoima ei nykyisellään sisällä ns. vivutusmalleja. Nyt niiden soveltamista kuitenkin esitetään ns. markkinatukijärjestelyinä (Market Access Support). Esitysten tavoitteena on löytää rahoitustukimalleja, joiden avulla haavoittuneiden maiden edellytyksiä saada markkinaehtoista rahoitusta voitaisiin parantaa.

Asiakirjat:

European Stability Mechanism Market Access Support – Terms and Conditions (Draft of 18 September 2012)
European Stability Mechanism Instrument Guidelines (modified, drafts of 18 September 2012)

EU:n oikeuden mukainen oikeusperusta/päätöksentekomenettely:

-

Käsittelijä(t):

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Suomen kanta/ohje:

Suomi katsoo, että eurovaltioiden kriisinhallinnan keskeinen tavoite on, että valtioiden markkinaehtoisen rahoituksen saatavuus pyritään turvaamaan. ERVV:n tai EVM:n mahdollisen rahoitustuen pitäisi osaltaan edesauttaa tämän tavoitteen saavuttamista. EKP:n uusi ns. OMT-ohjelma *(Outright Monetary Transactions)*, yhdessä EVM:n tukivälineiden kanssa voisi edesauttaa ohjelmavaltioiden rahoituksen saatavuutta velkakirjamarkkinoilta. Tähän vaikuttaa myös EKP:n *pari passu* -asema velkojana OMT-ohjelman kohdalla.

Ehdotuksia EVM:n markkinatukijärjestelyistä on arvioitava huolellisesti erityisesti niihin liittyvien riskien ja EVM:n etuoikeutetun velkojan aseman kannalta. Kannan muodostamiseen ei ole edellytyksiä tällä hetkellä saatavilla olevan tiedon perusteella. Lähtökohtana kuitenkin on, että ehdotetut markkinatukijärjestelyt voisivat vaikuttaa EVM:n velkoja-asemaan ja sijoittajan vastuuseen, koska EVM ottaisi nimenomaisesti kannettavakseen osan sijoittajien luottoriskistä.

Ehdotukset EVM:n markkinatukijärjestelyistä koskettavat myös EVM-sopimuksen tulkintaa ja sitä mikä on Suomen perustuslain mukaan hyväksyttävää. Suomi on virkamiestasolla alustavasti katsonut, että markkinatukijärjestelyissä kyseessä olisi uuden tukivälineen perustaminen, joka edellyttää yksimielistä päätöstä EVM:n hallintoneuvostossa EVM-sopimuksen 19 artiklan mukaisesti. Suomi katsoo, että Suomen riskeihin liittyvät päätökset on tehtävä yksimielisesti. Eduskunnan asema on turvattava myös markkinatukijärjestelyihin liittyvässä päätöksenteossa.

Ottaen huomioon perusteet, joiden nojalla eduskunta hyväksyi EVM-sopimuksen, Suomen lopullista kantaa muodostettaessa on arvioitava,

a) onko se, että tukivälineiden käytöstä (hätätilamenettelyä lukuun ottamatta) päätetään yksimielisesti ja ettei etuoikeutetun velkojan asemaan muodollisesti muuteta, perustuslain kannalta riittävä rajoite Suomen vastuiden muodostumiselle; ja
b) onko mahdollisuus muodollisesti teknisin päätöksin muokata EVM:ää rahoituslaitoksena eduskunnan antaman hyväksynnän mukaan mahdollista?

Suomi katsoo, että niin kauan kun EVM:n markkinatukijärjestelyistä ei ole sovittu, voidaan tarvittaessa arvioida mahdollisuuksia käyttää ERVV:n ns. vivutusmalleja.

Pääasiallinen sisältö:

Tausta

Euroalueen rahoitusvakauden kannalta haavoittuvimmassa asemassa ohjelmamaiden lisäksi ovat tällä hetkellä Espanja ja Italia. Lisäksi Portugalin ja Irlannin valtioiden edellytetään palaavan velkakirjamarkkinoille niiden talouden sopeutusohjelmien tavoitteiden mukaisesti vuodesta 2013 alkaen. Näiden valtioiden kohdalla kriisinhallinnan avainkysymys on markkinarahoituksen saatavuus.

Euroopan keskuspankki (EKP) ilmoitti 6.9.2012 valmiudestaan käynnistää valtioiden 1-3 vuoden velkakirjojen ostot rahapolitiikan välitysmekanismin tehostamiseksi *(Outright Monetary Transactions, OMT)*. Tämä EKP:n uusi OMT-ohjelma kuitenkin edellyttää, että mahdollinen ostojen kohdevaltio hakeutuu Euroopan rahoitusvakausvälineen (ERVV) tai Euroopan vakausmekanismin (EVM) ehdollisen tukiohjelman piiriin. EKP on osaltaan myös todennut, että se ei vaadi etuoikeutetun velkojan asemaa OMT-ohjelman kautta hankkimilleen velkakirjoille.

Nykyisten kriisimekanismien jäljellä oleva kapasiteetti, noin 400 miljardia euroa, ci olisi todennäköisesti riittävä perinteisten vakautusohjelmien rahoittamiseksi Espanjalle tai Italialle. Kriisirahastojen kokonaiskapasiteetista sovittiin maaliskuussa 2012. Tämän ns. palomuurin suoranaista korottamista nykyisestä 700 miljardista eurosta ei ole esitetty ja sitä olisikin erittäin vaikea toteuttaa. Tämän vuoksi ratkaisuksi esitetään kriisirahastojen nykykapasiteetin tehostamista ns. vivuttamalla yksityisiä sijoittajia mukaan rahoitukseen. Yksityisten sijoittajien houkuttelemiseksi heille ehdotetaan tarjottavaksi EVM:n rajoitettua suojausta sijoituksiin liittyvän luottoriskin realisoitumista vastaan.

ERVV:n osalta rahoituskapasiteettia on mahdollista kasvattaa kahdella eri mallilla: a) rajoitetulla suojaustodistuksella ja b) yksityisten sijoittajien kanssa sovittavalla yhteisrahoitusjärjestelyllä. EVM:n rahoitustukivalikoima ei kuitenkaan nykyisellään sisällä vivutusmalleja. Nyt niiden soveltamista kuitenkin siis esitetään myös EVM:ssä ns. markkinatukijärjestelyinä *(Market Access Support)*.

Ehdotetut markkinatukijärjestelyt

EVM:ssä ehdotetaan kahta eri toimintamallia markkinatukijärjestelyjen toteuttamiseksi. Ensimmäinen malli sisältää rajattujen suojaustodistusten myöntämisen sijoittajille ja toinen malli erityisrahoitusyhtiöiden hyväksikäytön. Kummatkin toimintamallit on jo hyväksytty osaksi ERVV:n instrumenttivalikoimaa ja niiden toimintaperiaatteet on kattavasti kuvattu Euroopan rahoitusvakausvälinettä koskevan lainsäädännön esitöissä (HE 150/2011 vp., s.6-7). ERVV:n kohdalla näitä vivutusinstrumentteja ei kuitenkaan ole vielä käytetty.

Valtionvelkakirjojen rajatun suojaustodistuksen toimintaperiaate

Ensimmäisessä toimintamallissa EVM:llä olisi ERVV:n tavoin mahdollisuus rahoittaa ja myöntää tukea hakevalle jäsenmaalle rajoitettu suojaustodistus *(Partial Protection Certificate, PPC)*, joka liitetään jäsenvaltion joukkovelkakirjojen liikkeeseenlaskuun. Sijoittajat saisivat liikkeeseenlaskun yhteydessä suojaustodistuksen, joka kattaisi suunnitelman mukaisesti tietyn osuuden (esim. 20–30 prosenttia) lainapääomasta maksuhäiriötilanteessa. Osuutta voitaisiin mahdollisesti muuttaa markkinatilanteen mukaan. Suojaustodistus olisi myös jälkimarkkinakelpoinen rahoitusväline. Saadakseen maksun kansainvälisen rahoitusmarkkinakäytännön mukaisesti määritellyssä maksuhäiriötilanteessa, suojaustodistuksen haltijalla tulee kuitenkin olla aina myös kyseessä olevan jäsenvaltion joukkovelkakirjoja hallussaan. Näiden joukkovelkakirjojen ei edellytetä olevan peräisin samasta liikkeeseenlaskusta, jonka yhteydessä suojaustodistus on annettu.

Järjestely toteutettaisiin käytännössä tätä varten perustettavan erillisyhtiön kautta. EVM:n nykyisiin rahoitustukivälineisiin liitettäisiin mahdollisuus suojaustodistusmallin soveltamiseen. Eräs avoin kysymys liittyy siihen, hankkiiko EVM suojausta vastaavat varat markkinoilta jo sen myöntämisen yhteydessä vai vasta maksuhäiriötilanteessa. Sijoittajat saattavat vaatia varojen hankkimista ennakolta, jotta heillä olisi varmuus suojauksen toteutumisesta maksuhäiriötilanteessa.

Suojaustodistukset liikkeeseen laskeva ja niitä hallinnoiva erillisyhtiö on Euroopan unionin oikeuden asettamien vaatimusten mukaan omistukseltaan ja päätöksenteoltaan riippumaton EVM:stä. Erillisyhtiön enemmistöomistajana toimii tätä tarkoitusta varten perustettu itsenäinen hallinnointisäätiö. Erillisyhtiön hallituksen enemmistö koostuu EVM:stä riippumattomista jäsenistä. EVM olisi erillisyhtiön vähemmistöosakkeenomistajana.

Yhteisrahoitusjärjestelyn ja siihen liittyvän rajatun riskinjakomekanismin toimintaperiaate

Toisessa toimintamallissa EVM:n perustama erityisrahoitusyhtiö ostaisi edunsaajavaltioiden joukkovelkakirjoja ensi- ja jälkimarkkinoilta. Edunsaajavaltion mahdollisessa maksuhäiriötilanteessa EVM kantaisi luottotappiot ensimmäisenä määrättyyn rajaan asti. Tämän rajatun riskinjakomekanismin on tarkoitus olla sijoittajille puhdasta markkinaehtoista velkakirjaostoa houkuttelevampi ja helpottaa siten haavoittuvien maiden markkinoilla pysymistä.

Tämä toinen toimintamalli toteutettaisiin käytännössä EVM:n perustaman erityisrahoitusyhtiön kautta. EVM antaa yhtiölle lainaa, jonka etuoikeusasema on kaikista heikoin. Yhtiön muu senioriaseman rahoitus hankittaisiin institutionaalisilta sijoittajilta, yksityisiltä sijoittajilta, valtioiden sijoitusrahastoilta, keskuspankeilta, pankeilta ja mahdollisesti IMF:ltä. Yhtiön joukkovelkakirjaostot noudattaisivat muiden sijoittajien kanssa sovittua sijoitusstrategiaa sekä EVM:n ensi- ja jälkimarkkinoiden joukkovelkakirjaostoja koskevia toimintaohjeita. Kaikkiin ostoihin liittyisi EVM:n tavoitteiden mukainen ehdollisuus.

Toimintamallien vaikutus EVM:n etuoikeutetun velkojan asemaan

EVM:n etuoikeutetun velkojan asema on ollut tärkeä Suomelle EVM -sopimusta neuvoteltaessa. Hallituksen esityksessä HE 34/2012 vp (s. 14) myös todetaan, että *"...jos ERVV:n tai EVM:n rahoituskapasiteettia velkavivutetaan, niin niiden alaskirjausriskit kasvavat. EVM:n velkavivutus olisi kuitenkin vastoin sen etuoikeutetun velkojan asemaa. Tämän takia se on epätodennäköinen vaihtoehto."* Suomessa tulkintana on ollut, että jos EVM vivutuksen myötä kattaisi mahdollisessa velkajärjestelyssä tappioita ennen muita sijoittajia, sillä ei samalla voi olla etuoikeutetun velkojan asemaa. Toisaalta ainakin ERVV:n vivutusmallien osalta on sovittu, että jos ERVV joutuisi kattamaan sijoittajien tappioita edunsaajamaan maksuhäiriötilanteessa, niin samalla syntyy vastaavan nimellisarvon määräinen velkasuhde edunsaajamaan ja ERVV:n välille. Tämä ERVV:n myöntämä laina peritään takaisin jäsenmaalta samaan tapaan kuin mikä tahansa muukin ERVV-laina.

Ehdotetuissa toimintamalleissa olisi siis kyse eräänlaisesta ennakollisesta EVM:n lainalupauksesta jäsenmaalle. Eli edunsaajavaltio itse antaa sijoittajille rajoitetun suojauksen mahdollisia tappioita vastaan, joka perustuu siihen, että edunsaajavaltio maksuhäiriötilanteessa saa tappion maksamista varten aina varmasti lainan EVM:ltä. Jos suojaustodistuksen laukeamisesta tai erityisrahoitusyhtiön tappioista syntyy lainasuhde EVM:n ja edunsaajamaan välille ja tämä velka pidetään velkajärjestelyn ulkopuolella, EVM voisi edelleen säilyttää etuoikeutetun velkojan asemansa. EVM:n aseman kannalta olisi tärkeää, että jos velkajärjestely toteutetaan, se toteutetaan mahdollisimman mittavana, jolloin maan maksukyvyn palautuminen parantaisi EVM:n asemaa velkojana.

Suomi on käydyissä keskusteluissa nostanut esille, että EVM:n etuoikeutetun velkoja-aseman turvaamiseksi ja riskien rajaamiseksi voitaisiin myös edellyttää edunsaajavaltion omaisuuden hyödyntämistä vakuutena mahdolliselle markkinatukijärjestelylle. Tällöin edunsaajamaa asettaisi EVM:lle vakuuden velkasuhteelle, joka syntyisi EVM:n ja edunsaajavaltion välille sellaisessa tilanteessa, jossa EVM joutuu tekemään maksun markkinatukijärjestelyjen perusteella.

Viimekädessä EVM:n etuoikeutettua velkoja-asemaa tarkasteltaessa on myös huomattava seuraavat kaksi seikkaa. Ensinnäkin, että EVM:n etuoikeutettu velkojan asema vähentää muiden sijoittajien kiinnostusta osallistua emissioiden rahoitukseen. Toiseksi, että EVM:n etuoikeutetun velkojan aseman merkitys on sitä pienempi, mitä suuremmalla osuudella velkojia on vastaava (tai parempi) etuoikeus. Toisin sanoen, jos kaikki ovat etuoikeutettuja velkojia, niin kukaan ei ole etuoikeutettu.

Ehdotusta koskeva päätöksentekomenettely EVM:ssä

EVM:n rahoitustukivälinevalikoima (EVM-sopimuksen 14–18 artiklat) ei sisällä viittausta markkinatukijärjestelyjen hyväksikäyttöön. Jäsenvaltiot ovat esittäneet kaksi toisistaan poikkeavaa näkemystä, minkä perusteella markkinatukijärjestelyt voitaisiin saattaa osaksi EVM:n tukijärjestelyitä.

Ensimmäisen tulkinnan mukaan markkinatukijärjestelyt eli rajatut suojaustodistukset ja erityisrahastot tulisi saattaa osaksi EVM:a EVM-sopimuksen 19 artikla mukaisen rahoitusapuvälineiden luettelon uudelleentarkastelun kautta, jolloin niiden hyväksyminen osaksi EVM:n rahoitustukivälineitä edellyttäisi hallintoneuvoston yksimielistä päätöstä.

Valtaosa jäsenmaista, komission ohella, tukee kuitenkin toista tulkintaa, jonka mukaan markkinatukijärjestelyt voitaisiin saattaa osaksi EVM:n toimintaa ilman EVM-sopimuksen 19 artiklan mukaista päätöksentekomenettelyä. Kyseinen tulkinta perustuu ERVV:n oikeudellisten neuvonantajien muistioon, jonka mukaan kyseessä ei ole niinkään uuden rahoitusapuvälineen käyttöönotto, vaan olemassa oleviin rahoitusapuvälineisiin jo valmiiksi sisältyvä piirre tai ominaisuus (modaliteetti). Tulkintaa perustellaan muun muassa sillä, että EVM-sopimuksen sanamuotoja voidaan pelkistetysti ja luonnollisesti lukea laajentavasti EVM-sopimuksen taustaa ja tarkoitusta vasten, jollaisena muistiossa esitetään muun muassa "rahoituksen hankkimista" vakaustuen antamiseksi "EVM:n taloudellisissa vaikeuksissa oleville jäsenille". Lisäksi EVM:n rooli ERVV:n toiminnan välittömänä jatkajana jo itsessään tukee ERVV:ssä nimenomaisesti sovittujen markkinatukijärjestelyjen sisällyttämistä myös EVM:n rahoitusapuvälineisiin. Yhtenä keskeisenä perusteluna muistiossa on esitetty se, että jos jäsenmaiden päämiesten nimenomaisena tarkoituksena ei ole ollut sisällyttää markkinatukijärjestelyjen käytön mahdollisuutta myös EVM:iin, niin heidän olisi tullut ottaa asiasta nimenomainen toteamus EVM-sopimukseen ja tätä he eivät ole tehneet.

ERVV:n oikeudelliset neuvonantajat esittävät muistiossaan että EVM-sopimuksen 14–18 artiklojen järkevä tulkinta johtaa siihen, että tarvittavat markkinatukijärjestelyjä koskevat lisäykset voidaan tehdä suoraan kyseisiä rahoitusapuvälineitä koskeviin toimintaohjeisiin EVM-sopimusta muuttamatta. Euroryhmän työryhmässä käytyjen keskustelujen perusteella valtaosa jäsenmaista yhtyy kyseiseen näkemykseen. Lisäksi markkinatukijärjestelyjä koskeva maininta ja niitä koskevat keskeiset ehdot ja määräykset tulee erikseen lisätä kulloinkin EVM:n ja jäsenmaan välillä allekirjoitettavaan rahoitustukisopimukseen. Koska kyse olisi ainoastaan rahoitusapuvälineitä koskeviin toimintaohjeisiin tehtävistä muutoksista, voisi EVM:n johtokunta tehdä kyseiset muutokset EVM-sopimuksen 6 artiklan mukaisesti määräenemmistöllä.

Kansallinen käsittely:

Valtiovarainministeriö
EU ministerivaliokunta 28.9.2012

Eduskuntakäsittely:

Suuri valiokunta

Käsittely Euroopan parlamentissa:

-

Kansallinen lainsäädäntö, ml. Ahvenanmaan asema:

-

Taloudelliset vaikutukset:

Ehdotetuilla markkinatukijärjestelyillä ei olisi vaikutuksia Suomen EVM-sopimuksen mukaisten vastuiden enimmäismäärään. Käytettävissä olevan tiedon perusteella ei kuitenkaan ole mahdollista arvioida esityksen liittyviä riskejä ja taloudellisia vaikutuksia. Markkinatukijärjestelyihin liittyvien EVM:n riskien suuruuteen vaikuttavat ratkaisevasti ainakin seuraavat tekijät:

- EVM:n saatavien määrä mahdollisessa edunsaajamaan velkajärjestelyssä,
- EVM:n ja edunsaajamaan välille mahdollisesti syntyvä lainasuhde, jos EVM joutuu kattamaan sijoittajien tappioita velkajärjestelyssä,
- mahdollisesti syntyvän EVM–lainan keskeiset ehdot (erityisesti korko, laina-aika, lyhennysvapaajakso) ja
- EVM:n velkoja-asema syntyvän saatavan osalta ja tämä saatavan kohtelu velkajärjestelytilanteessa.

Valtioneuvosto toimittaa eduskunnalle asiassa jatkoselvitykset, mukaan lukien selvityksen taloudellisista vaikutuksista, kun asian valmistelu on edennyt siten, että tämä on mahdollista.

Muut mahdolliset asiaan vaikuttavat tekijät:

Asian käsittelyaikataulun osalta olisi otettava huomioon seuraavat tekijät:

ERVV:n ns. vivutusmallit ovat tarvittaessa käytössä 30.6.2013 saakka.

Pankkien suoraa pääomittamista koskevan rahoitustukivälineen valmistelun odotetaan etenevän syksyn 2012 aikana. Kun asiaa koskeva ehdotus on tehty, valtioneuvosto tuo viipymättä sen eduskunnan käsittelyyn.

Asiasanat	
Hoitaa	**VM**
Tiedoksi	EK, EUE, TEM, UM, VNEUS, VTV

18 September 2012

KÄYTTÖ RAJOITETTU

EDUSKUNTAA PYYDETÄÄN NOUDATTAMAAN VAITELIAISUUTTA ASIAN KÄSITTELYSSÄ SUOMEN NEUVOTTELUTAVOITTEIDEN TURVAAMISEKSI SEKÄ SISÄLTÖÄ KOSKEVIEN JULKAISEMATTOIMIEN TIETOJEN PERUSTELLA.

European Stability Mechanism Guideline on Loans

Article 1
Aim

The objective of loans is to assist ESM Members that have significant financing needs but have to a large extent lost access to market financing, either because they cannot find lenders or because lenders will provide financing only at excessive prices that would adversely impact the sustainability of public finances. In order to ensure a return to full market financing and a sustainable economic and financial situation, all loans shall be subject to a macroeconomic adjustment programme that shall include appropriate conditionality prepared in agreement with the Commission, in liaison with the ECB and, where appropriate, the IMF.[1] The macroeconomic adjustment programme shall be approved by the Council, according to procedures established in EU law.

Article 2
Procedure

1. An ESM Member may address a request for stability support to the Chairperson of the Board of Governors.[2] Such a request shall indicate whether a loan is to be considered as the financial assistance instrument to be used. 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.

    (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 Managing Director shall prepare a proposal consistent with the

[1] Loans for the purpose of recapitalising financial institutions are treated in a separate guideline.
[2] This should be done taking into account Recital 8 of the ESM Treaty.

aforementioned assessment and taking into account the financial situation of the ESM for the adoption by the Board of Governors whether to grant, in principle, stability support to the ESM Member concerned in the form of a loan in accordance with Article 13(2) of the ESM Treaty.

3. The decision to grant a loan shall indicate whether a disbursement via PPCs is possible.

4. If a decision is adopted pursuant to paragraph 2, the Board of Governors shall, in accordance with Article 13(3) of the ESM Treaty, entrust:

   (a) 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 policy conditions attached to the loan. The content of the MoU shall reflect the severity of the weaknesses to be addressed and the fact that the financial instrument chosen is a loan. It shall include the details of the macroeconomic adjustment programme that shall specify the policy conditions to be applied to the support and implemented in the beneficiary ESM Member. Where bank recapitalisation is conducted using a portion of the loan, the provisions applicable therein should be in keeping with the monitoring, general principles of State-aid and involvement of the ESAs, as laid out in the Guideline on Financial Assistance for the Recapitalisation of Financial Institutions.

   (b) The Managing Director of the ESM, with the task of preparing a proposal for a financial assistance facility agreement (FFA), including the financial terms and conditions of the loan, to be adopted by the Board of Governors.

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

6. 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) of the ESM Treaty, the disbursement of the tranches of the loan subsequent to the first tranche and the nature of the disbursement.

Article 3
Disbursement of loans

1. Loans shall be provided in one or more tranches, which may each consist of one or more disbursements.

2. The disbursement of the first tranche shall be decided by the Board of Directors together with the approval of the financial assistance facility agreement, in line with Article 13(5) of the ESM Treaty.

3. On a proposal from the Managing Director, and after having received a report from the European Commission on the monitoring of and compliance by the beneficiary ESM Member with the policy conditionality attached to the financial assistance facility – in line with Articles 13(7) and 16(5) of the ESM Treaty – the Board of Directors shall decide to disburse subsequent tranches of the financial assistance. The proposal of the Managing Director shall remain consistent with the aforementioned report and take into account the

financial situation of the ESM. The Managing Director shall immediately inform the European Commission of a request for funds.

4. When the financial assistance facility agreement foresees that possibility, a disbursement of tranches may be made partially or entirely through primary market purchases, in line with the Primary Market Purchase Guideline adopted by the Board of Directors.

5. When the financial assistance facility agreement foresees that possibility, a disbursement of tranches may be substituted by the issuance of Partial Protection Certificates to be issued alongside a primary market issuance by the beneficiary ESM Member, in line with the Terms and Conditions for Market Access Support Facilities.

Article 4
Monitoring

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

2. The beneficiary ESM Member shall give the European Commission, as well as the ECB, ESM, and where appropriate the IMF, its full cooperation. It shall, in particular, provide to the European Commission, acting in liaison with the ECB, all the information that the latter deems necessary for the monitoring of the policy conditionality of the programme as agreed in the MoU; it shall also provide the ESM all information the latter deems necessary to conduct its financial due diligence.

3. If monitoring processes highlight significant deviations from the macroeconomic adjustment programme, the Board of Governors, acting on a proposal from the European Commission, may decide that the beneficiary ESM Member does not comply with the policy requirements contained in the programme. Disbursements of a tranche shall stop until the Board of Governors decides to re-authorise them, at which time the standard procedure laid down in Article 3(3) shall again be applicable.

Article 5
Warning system

The ESM shall establish an appropriate warning system, in accordance with Article 13(6) of the ESM Treaty, to ensure that the ESM receives any repayments due by the ESM Member under the stability support in a timely manner.

18 September 2012

KÄYTTÖ RAJOITETTU

EDUSKUNTAA PYYDETÄÄN NOUDATTAMAAN VAITELIAISUUTTA ASIAN KÄSITTELYSSÄ SUOMEN NEUVOTTELUTAVOITTEIDEN TURVAAMISEKSI SEKÄ SISÄLTÖÄ KOSKEVIEN JULKAISEMATTOMIEN TIETOJEN PERUSTEELLA.

European Stability Mechanism

Guideline on the Primary Market Support Facility

Article 1
Objective

The ESM may engage in Primary Market Purchases (PMP) of bonds or other debt securities issued by ESM Members under the Primary Market Support Facility (PMSF) as a complement to (a) regular loans under a macroeconomic adjustment programme within the meaning of Article 12(1) of the ESM Treaty or (b) to draw-downs of funds under precautionary financial assistance pursuant to Article 14 of the Treaty. The main objective of the PMSF shall be to allow the ESM Members to maintain or restore their market access.

Article 2

Procedure for using PMSF for the disbursement of a loan

1. An ESM Member may request the use of a PMSF either:

(a) when requesting a loan according to the procedures provided for in Article 2 of the Guideline on Loans.

or

(b) after having entered into a Loan Facility, in which case the procedures for granting support shall have already been completed in accordance with Article 2 of the Guideline on Loans. The Managing Director shall prepare a proposal within the overall financial limit of the loan facility for the adoption by the Board of Governors whether to grant the PMSF. The Managing Director of the ESM shall be entrusted with the task of preparing a proposal for a revised financial assistance facility agreement (FFA), covering the financial terms and conditions of the PMSF, to be adopted by the Board of Directors.

2. An ESM Member to which a PMSF has been granted shall inform the Managing Director of its intention to have one or several tranches under a loan facility disbursed via PMP.

3. On a proposal from the Managing Director, the Board of Directors shall allow the disbursement of a tranche under a loan facility via PMP, after having received the last report by the European

Commission in liaison with the ECB on the compliance by the beneficiary Member with the policy conditionality attached to the assistance facility. When the financial assistance facility agreement foresees that possibility, the Managing Director may propose to carry out PMP under a Co-investment Fund (CIF) in accordance with the Terms and Conditions for Market Access Support Facilities, and in full respect of all provisions of this guideline.

4. The Managing Director shall agree with the beneficiary ESM Member the detailed modalities for carrying out the PMP under a disbursement. These modalities can include the possibility to carry out PMP under a Co-investment Fund (CIF), in accordance with the Terms and Conditions for Market Access Support Facilities, and in full respect of all provisions of this guideline. The afore-mentioned agreement shall be in line with Article 4 and shall be updated regularly with a view to take into account the evolution of the market situation of the beneficiary ESM member.

5. Notwithstanding paragraph 3, a PMP shall not be conducted if the Managing Director concludes that the participation of other investors would be insufficient to comply with the minimum participation specified in Article 4 or that the rate would be excessively above the ESM funding rate. The purchase of bonds shall then be replaced by a regular disbursement of the loan, whenever needed to cover the financing gap of the beneficiary Member State.

Article 3

Procedure for using PMSF for drawing-down funds under a credit line

1. An ESM Member may request the use of a PMSF either:

(a) when requesting a credit line according to the procedure provided for in Article 3 of the Guideline on Precautionary Financial Assistance

or

(b) after having received a credit line, in which case the procedures for granting support shall have already been completed in accordance with Article 3 of the Guideline on Precautionary Financial Assistance. The Managing Director shall prepare a proposal for the adoption by the Board of Governors whether to grant the PMSF. The Managing Director of the ESM shall be entrusted with the task of preparing a proposal for a revised financial assistance facility agreement (FFA), covering the financial terms and conditions of the PMSF, to be adopted by the Board of Directors.

2. An ESM Member to which a stability support in the form of a credit line has been granted pursuant to the relevant ESM guideline shall inform at least a week, or as otherwise agreed in the facility agreement, in advance the ESM Board of Directors of its intention to draw-down funds via PMP.

3. The Managing Director shall agree with the beneficiary ESM Member the detailed modalities for carrying out the PMP. These modalities can include the possibility to carry out PMP under a Co-investment Fund (CIF), in accordance with the Terms and Conditions for Market Access Support Facilities, and in full respect of all provisions of this guideline. The afore-mentioned agreement shall be in line with Article 4 and shall be updated regularly with a view to taking into account the evolution of the market situation of the beneficiary ESM member.

4. Notwithstanding paragraph 2, a PMP shall not be conducted if the Managing Director concludes that the participation of other investors would be insufficient to comply with the minimum participation as specified under Article 4 or that the rate would be excessively above the ESM

funding rate. Where appropriate, the purchase of bonds shall then be replaced by a regular draw-down of funds.

5. The use of PMPs shall trigger a reassessment of the adequacy of the precautionary programme and the policy conditions attached to it.

Article 4

Implementation of the primary market purchases

1. PMP shall, as a rule, be conducted at market price. The Managing Director shall implement PMP in view of the issuance approach taken by the ESM member:

   (a) Via a participation in auctions, at the average weighted price of the auction. The amount purchased by the ESM shall, as a rule, be limited to a maximum of 50% of the final issued amount. This proportion shall, however, be increased if market bids at acceptable prices are insufficient, with a view to ensuring that the amount sold by the beneficiary ESM Member is equivalent to at least half of the originally targeted amount.

   or

   (b) Via participation in syndicated transactions, at the re-offer price. The amount purchased by the ESM shall, as a rule, be limited to a maximum of 50% of the final issued amount. This proportion shall, however, be increased if the order book is insufficient, with a view to ensuring that the amount sold by the beneficiary ESM Member is equivalent to at least half of the originally targeted amount.

2. Primary market purchases conducted via a CIF and the management of its bond portfolio shall follow its investment strategy, to be adopted by the ESM Board of Directors. The participation restrictions pursuant to paragraphs 1(a) and 1(b) shall not apply if a PMP is conducted by a CIF, in accordance with the Terms and Conditions for Market Access Support Facilities.

Article 5
Management of the portfolio of bonds

1. The bonds purchased under a PMSF by ESM can be managed in the following manner:

(a) Can be sold (i) if the bond market of the beneficiary ESM Member has returned to normal functioning and if it is unlikely to reduce the capacity of the ESM Member to lodge its issuances on the primary market, or (ii) to mitigate the risk of realising a loss in relation to its holdings of securities of the ESM Member concerned, irrespective of a possible decision to sell them;

(b) Can be held to maturity ;

(c) Can be sold back to the beneficiary ESM Member

(d) Can be used for repos to support the liquidity management of the ESM.

(e) Can be sold to the CIF in line with the Terms and Conditions for Market Access Support Facilities.

2. The Managing Director will propose options for the management of the bond portfolio to the Board of Directors.

3. The Managing Director shall be responsible for the management of the bond portfolio in accordance with the options agreed by the Board of Directors.

4. The beneficiary ESM Member shall be informed about the management of the bond portfolio and approve the conduct of operations under paragraph 1(a) in case they would create any liability for the concerned ESM Member, unless ESM would face a significant risk of realising a loss in relation to its holdings of securities of the ESM Member concerned, irrespective of a possible decision to sell them.

18 September 2012

KÄYTTÖ RAJOITETTU

EDUSKUNTAA PYYDETÄÄN NOUDATTAMAAN VAITELIAISUUTTA ASIAN KÄSITTELYSSÄ SUOMEN NEUVOTTELUTAVOITTEIDEN TURVAAMISEKSI SEKÄ SISÄLTÖÄ KOSKEVIEN JULKAISEMATTOMIEN TIETOJEN PERUSTEELLA.

European Stability Mechanism
Guideline on the Secondary Market Support Facility

Article 1
Objective

The Secondary Market Support Facility (SMSF), in accordance with article 18 of the ESM Treaty, aims to support the good functioning of the government debt markets of ESM Members in exceptional circumstances where the lack of market liquidity threatens financial stability, with a risk of pushing sovereign interest rates towards unsustainable levels and creating refinancing problems for the banking system of the ESM Member concerned. An ESM secondary market intervention is intended to enable market making that would ensure some debt market liquidity and incentivize investors to further participate in the financing of ESM Members.

Article 2
Eligibility

1. Access to a SMSF is open to an ESM Member under a macro-economic adjustment programme in which an ESM loan has been granted, as long as it continues to comply with the policy conditionality attached to the stability support.
2. Access to a SMSF may be open to an ESM Member outside of a macro-economic adjustment programme, but subject to financial market disruptions, as long as the Member's economic and financial situation remains sound and on the basis of a global assessment, conducted by the European Commission in liaison with the ECB, of the following criteria:
   - (a) Respect of the commitments under the Stability and Growth Pact. An ESM Member under excessive deficit procedure may still access a SMSF, provided it fully abides by the Council decisions and recommendations aimed at ensuring a smooth and accelerated correction of its excessive deficit.
   - (b) A sustainable general government debt.
   - (c) Respect of the commitments under the Excessive Imbalances Procedure (EIP). An ESM Member under EIP may still access a SMSF, provided it is established that the Member remains committed to and capable of addressing the imbalances identified by the Council.
   - (d) A track record of access to international capital markets on reasonable terms.
   - (e) A sustainable external position.
   - (f) The absence of financial institution solvency problems that would pose systemic threats to the stability of the euro area banking system or that of its Member States.

(g) The beneficiary ESM Member shall ensure a continuous respect of the eligibility criteria and adopt where appropriate corrective measures in consultation with the European Commission and the ECB.

Article 3
Procedure of activation for ESM Members under stability support

1. An ESM Member shall address a request to access the SMSF to the Chairperson of the Board of Governors. On receipt of such a request, the Board of Governors shall entrust:
   (a) The ECB to assess whether there are exceptional market circumstances and whether there is a risk to the financial stability of the euro area as a whole or of its Member States. The analysis shall be transmitted to the Board of Directors, unless the ECB has already submitted such analysis beforehand upon its own initiative.
   (b) The European Commission, in liaison with the ECB, to confirm compliance with conditions attached in the MoU before the ESM Member is able to access the SMSF.
2. On the basis of the request of the ESM Member and the assessments conducted under paragraphs 1(a) and 1(b), the Managing Director shall prepare a proposal for a SMSF consistent with the aforementioned assessments and taking into account the financial situation of the ESM. The Board of Governors may then grant, in principle, a SMSF in accordance with Article 13(2) of the ESM Treaty.
3. The Managing Director of the ESM shall prepare a financial assistance facility agreement (FFA) in the form of a SMSF, specifying the financial terms and conditions under which the secondary market purchases are to be conducted, to be adopted by the Board of Governors in accordance with Article 13(3) of the ESM Treaty. If foreseen in the FFA, the modalities for implementation of an SMSF can include the possibility to carry out secondary market purchases under a Co-investment Fund, in accordance with the Terms and Conditions for Market Access Support Facilities and in full respect of the provisions detailed in this guideline.
4. The Managing Director shall sign the financial assistance facility agreement (FFA), subject to approval by the Board of Directors.

Article 4
Procedure of activation for ESM Members which are not under stability support

1. An ESM Member shall address a request to access a SMSF to the Chairperson of the Board of Governors. Upon receipt of such a request, the Board of Governors shall entrust:
   (a) The ECB to assess whether there are exceptional market circumstances and whether there is a risk to the financial stability of the euro area as a whole or of its Member States. The analysis shall be transmitted to the Board of Directors unless the ECB has already submitted such analysis beforehand upon its own initiative.
   (b) The European Commission, in liaison with the ECB, to assess whether public debt is sustainable and the actual or potential financing needs of the ESM Member concerned
2. On the basis of the request of the ESM Member and the assessments conducted under paragraph 1, the Managing Director shall prepare a proposal for an SMSF consistent with the aforementioned assessments and taking into account the financial situation of the ESM. On this basis, the Board of Governors shall decide to grant, in principle, a SMSF in accordance with Article 13(2) of the ESM Treaty.
3. If a decision is adopted pursuant to paragraph 2, the Board of Governors shall, in accordance with article 13(3) of the ESM Treaty, entrust:
   (a) The European Commission in liaison with the ECB with the task of negotiating, with the ESM Member concerned, an MoU detailing the policy conditions attached to the SMSF. The MoU shall be completed within 2 business days and shall specify the actions needed.

(b) The Managing Director of the ESM, with the task of preparing, in parallel, a proposal for a financial assistance facility agreement (FFA), detailing the financial terms and conditions of the SMSF, to be adopted by the Board of Governors in accordance with Article 13(3) of the Treaty. The modalities for implementation of an SMSF can include the possibility to carry out secondary market purchases under a Co-investment Fund, in accordance with the Terms and Conditions for Market Access Support Facilities and in full respect of the provisions detailed in this guideline.

4. The European Commission shall sign the MoU on behalf of the ESM, subject to compliance with the conditions set out in paragraph 3(a) and approval by the Board of Governors. The Managing Director of the ESM shall sign the financial assistance facility agreement, subject to approval by the Board of Directors.

Article 5
Implementation of the SMSF

1. The Board of Directors shall establish pro-tempore intervention caps for the implementation of the facility. A technical sub-committee (TSC) shall be established to decide on the means of implementation of secondary market interventions under the SMSF. Its composition and operating rules shall be approved by the Board of Directors, acting on a proposal from the Managing Director. Market sensitive decisions are taken in secrecy.
2. The ESM Managing Director shall stop implementing secondary market interventions upon a request of the beneficiary ESM Member.
3. Secondary market purchases conducted by a CIF and the management of its bond portfolio shall follow its investment strategy to be adopted by the ESM Board of Directors.

Article 6
Monitoring and Reporting

1. The European Commission shall monitor, in liaison with the ECB, the compliance by the beneficiary ESM Member with the policy conditionality specified in the MoU and shall report to the Board of Directors.
2. The technical sub-committee referred to in Article 5(2) shall report on a monthly basis to the Board of Directors on the technical implementation of the facility. The Managing Director shall forward a monthly report to the Board of Governors on the implementation of the SMSF. The report shall be followed with reassessment of the programme, including a decision of the Board of Governors on its continuation.
3. Where necessary, the reports described in the paragraph 2 will be made available for the restricted committees in National Parliaments retaining the secrecy of market sensitive information.
4. The Managing Director of the ESM shall establish an appropriate warning system, in accordance with Article 13(6) of the ESM Treaty, to ensure that the ESM receives any repayments due by the ESM Member under the stability support in a timely manner.
5. In case (a) the assessment in paragraph 1 concludes that the beneficiary ESM Member deviates from its policy conditions or (b) the assessment in paragraph 2 concludes that the SMSF has become inadequate to contain the financial disturbance, the Board of Directors, acting on a proposal from the Managing Director, shall reconsider the adequacy of the SMSF.

Article 7
Management of the portfolio of bonds

1. The bonds purchased under a SMSF by ESM can be managed in the following manner. They:

   (a) Can be sold (i) if the bond market of the beneficiary ESM Member has returned to normal functioning and if it is unlikely to reduce the capacity of the ESM Member to lodge its issuances on the primary market, or (ii) to mitigate the risk of realising a loss in relation to its holdings of securities of the ESM Member concerned, irrespective of a possible decision to sell them;

   (b) Can be held to maturity;

   (c) Can be sold back to the beneficiary ESM Member;

   (d) Can be used for repos to support the liquidity management of the ESM.

   (e) Can be sold to a CIF in line with the Terms and Conditions for Market Access Support Facilities.

2. The Managing Director shall propose a portfolio investment options to the Board of Directors together with the proposal to disburse provided for in Article 3(2) and 4(2).
3. The Managing Director shall implement the agreed portfolio management strategy.
4. The beneficiary ESM Member shall be informed about the implementation of the strategy. It shall approve the conduct of operations under paragraph 1(a)) in case they would create any liability for the concerned ESM Member, unless the ESM were to face a significant risk of realising a loss in relation to its holding of securities of the ESM member concerned, irrespective of a possible decision to sell them.

18 September 2012

KÄYTTÖ RAJOITETTU

EDUSKUNTAA PYYDETÄÄN NOUDATAMAAN VAITELIAISUUTTA ASIAN KÄSITTELYSSÄ SUOMEN NEUVOTTELUTAVOITTEIDEN TURVAAMISEKSI SEKÄ SISÄLTÖÄ KOSKEVIEN JULKAISEMATTOMIEN TIETOJEN PERUSTEELLA.

European Stability Mechanism
Guideline on Precautionary Financial Assistance

Article 1

Aim and scope

The objective of precautionary financial assistance is to support sound policies and prevent crisis situations by allowing ESM Members to secure the possibility to access ESM assistance before they face major difficulties raising funds in the capital markets. Precautionary financial assistance aims at helping ESM Members whose economic conditions are still sound to maintain continuous access to market financing by reinforcing the credibility of their macroeconomic performance while ensuring an adequate safety-net.

Article 2

Types of precautionary financial assistance

1. Precautionary financial assistance may be provided via a Precautionary Conditioned Credit Line (PCCL) or via an Enhanced Conditions Credit Line (ECCL). A PCCL and an ECCL credit line can be drawn via a loan or a primary market purchase; an ECCL can also be drawn upon in the form of an undertaking by the ESM to back sovereign Partial Protection Certificates (PPCs) to be issued alongside the primary issuance of the beneficiary ESM Member, in accordance with the Terms and Conditions for Market Access Support Facilities. Both types of credit line shall have an initial availability period of one year and shall be renewable twice, each time for six months. In the event that PPCs are issued during the availability period, the ESM Member shall request the ESM to issue an undertaking to pay, in defined circumstances, in connection with the PPCs issued.

2. Access to a PCCL shall be based on pre-established conditions and limited to ESM Members where the economic and financial situation is still fundamentally sound. A global assessment shall be made on whether a potential beneficiary ESM Member qualifies for a PCCL, using as a basis the following criteria:

   (a) Respect of the commitments under the stability and growth pact. An ESM Member under excessive deficit procedure may still access a PCCL, provided it fully abides by the Council decisions and recommendations aimed at ensuring a smooth and accelerated correction of its excessive deficit.

(b) A sustainable general government debt.

(c) Respect of the commitments under the excessive imbalance procedure (EIP). An ESM Member under EIP may still access a PCCL, provided it is established that it remains committed to addressing the imbalances identified by the Council.

(d) A track record of access to international capital markets on reasonable terms.

(e) A sustainable external position.

(f) The absence of bank solvency problems that would pose systemic threats to the stability of the euro area banking system.

3. The beneficiary ESM Member shall ensure a continuous respect of the eligibility criteria after the PCCL is granted, which shall be monitored by the European Commission, in liaison with the ECB.

4. Access to an ECCL shall be open to ESM Members that do not comply with some of the eligibility criteria required for accessing a PCCL but whose general economic and financial situation remains sound. The beneficiary ESM Member shall, after consultation of the European Commission and of the ECB, adopt corrective measures aimed at addressing the above-mentioned weaknesses and avoiding any future problems in respect of access to market financing, while ensuring a continuous respect of the eligibility criteria which were considered met when the credit line was granted. The monitoring of the respect of the eligibility criteria and of any corrective measures shall be ensured by the European Commission, in liaison with the ECB, in line with the provisions foreseen in Article 5.

5. Access to an ECCL that can be drawn upon in the form of PPCs, in accordance with the Terms and Conditions for Market Access Support Facilities, shall, as a basis, respect the same eligibility criteria and conditionality as outlined in article 2.4, while reflecting the specific circumstances requiring the issuance of PPCs. The beneficiary ESM Member shall, after consultation of the European Commission and of the ECB, adopt corrective measures aimed at addressing the afore-mentioned weaknesses and avoiding any future problems in respect of access to market financing, while ensuring a continuous respect of the eligibility criteria which were considered met when the credit line was granted, for the duration of the PPCs. The monitoring of the respect of the eligibility criteria and of any corrective measures shall be ensured by the European Commission, in liaison with the ECB, in line with the provisions foreseen in Article 5.

Article 3

Procedures for granting precautionary financial assistance

In order to benefit from an ESM credit line, the request by the ESM Member shall follow the following steps:

1. An ESM Member may address a request for precautionary financial assistance to the Chairperson of the ESM Board of Governors.[1] 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:

[1] This should be done taking into account Recital 8 of the ESM Treaty.

(a) to assess the existence of a risk to the financial stability of the euro area as a whole or of its Member States;

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

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

2. In addition, the European Commission shall be requested to, in liaison with the ECB, assess whether the ESM Member concerned meets the conditions for accessing a PCCL or an ECCL as set out in Article 2(2) and 2(4), respectively.

3. On the basis of the request of the ESM Member and the assessments referred to in paragraphs 1 and 2, the Managing Director shall prepare a proposal for financial assistance consistent with the aforementioned assessment and taking into account the financial situation of the ESM. On this basis, the Board of Governors may decide to grant, in principle, precautionary financial assistance to the ESM Member concerned in the form of a PCCL or an ECCL as well as its amount and duration in accordance with Article 13(2) of the ESM Treaty.

4. The decision to grant an ECCL shall indicate whether a disbursement via primary market purchases or PPCs is allowed. The amount of the ECCL shall take this indication into account.

5. If a decision is adopted pursuant to paragraph 3, the Board of Governors shall, in accordance with article 13(3) of the ESM Treaty, entrust:

   a. 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, an MoU detailing the policy conditions attached to the precautionary financial assistance.

   b. The Managing Director of the ESM, with the task of preparing, in parallel, a proposal for a financial assistance facility agreement (FFA), detailing the financial terms and conditions of the precautionary financial assistance, to be adopted by the Board of Governors. Where it is expressly foreseen in a decision pursuant to paragraph 3 that a credit line can be drawn upon via a request to issue PPCs, the FFA shall also detail specifics relevant to the issuance of PPCs, including the fixed maximum level of credit protection to be provided.

6. The European Commission shall sign the MoU on behalf of the ESM, subject to compliance with the conditions set out in paragraph 4(a) and approval by the Board of Governors. The Managing Director of the ESM shall sign the financial assistance facility agreement, subject to approval by the Board of Directors.

Article 4

Activating a credit line

1. The activation of the credit line shall be at the initiative of the beneficiary ESM Member. The Member shall have the flexibility to request the draw-down of funds at any time during the availability period of the credit line according to the agreed terms. It shall

inform the ESM at least a week in advance of its intention to draw funds, depending on the intended size. .

2. The maximum size of a tranche or primary market purchase shall be set in the initial decision to grant a credit line.

Article 5

Enhanced surveillance

1. Where an ECCL is granted or a PCCL drawn, the ESM Member shall be subject to enhanced surveillance by the European Commission for the availability period of the credit line. An ESM Member under enhanced surveillance shall, in consultation and cooperation with the European Commission, acting in liaison with the ECB, the European Supervisory Authorities (ESA) and the European Systemic Risk Board (ESRB), and where appropriate the IMF, adopt measures aimed at addressing the sources or potential sources of difficulties.

2. On a request from the European Commission, the ESM Member under enhanced surveillance shall:

   a) Provide the ESM with all necessary information required for the execution of its lending activity and related risk management, such as monthly information regarding its financial condition, cash balance and other key information that would usually be provided for facilities of this type and any of the information mentioned in points (b) to (f);

   b) Communicate to the European Commission, the ECB, and the relevant ESA(s) at the requested frequency disaggregated information on developments in its financial system. The European Commission, the ECB, and the relevant ESA(s) shall preserve the confidentiality of the disaggregated data received;

   c) Carry out, under the supervision of the relevant ESA(s), 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 European Commission and the ECB in liaison with the relevant ESA(s) and the ESRB, and share the detailed results with them;

   d) Be subject to regular assessments of its supervisory capacities over the banking sector in the framework of a specific peer review carried out by the relevant ESA(s);

   e) Carry out and report on a comprehensive independent audit of the accounts of the general government conducted in coordination with national supreme audit institutions, aiming at assessing the reliability, completeness and accuracy of these public accounts for the purposes of the excessive deficit procedure. In this context, the European Commission (Eurostat) shall assess the quality of data reported by the beneficiary ESM Member in accordance with Regulation (EC) No 679/2010;

   f) Where appropriate, provide additional information for the purposes of monitoring the progress towards the correction of the excessive deficit.

3. The European Commission shall conduct, in liaison with the ECB and the ESA(s) as needed, and where appropriate the IMF, regular review missions in the ESM Member

under surveillance to verify the progresses made in the implementation of the adopted measures. It shall communicate, every quarter, its findings to the Board of Directors and assess notably whether further policy measures are needed.

Article 6

Warning system

The ESM shall establish an appropriate warning system, in accordance with Article 13(6) of the ESM Treaty, to ensure that the ESM receives any repayments due by the ESM Member under the stability support in a timely manner.

Article 7

Re-examination of the adequacy of the precautionary financial assistance

1. The adequacy of the precautionary financial assistance shall be assessed on a proposal from the ESM Managing Director based on the findings referred to in Article 5(3) or, where a PCCL has been granted but not drawn, the results of the regular EU multilateral surveillance procedure. The Board of Directors shall decide on the basis of this proposal whether the credit line should be maintained.

2. In case the beneficiary ESM Member deviates from its policy conditions or if those commitments have become clearly inadequate to resolve the threat of financial disturbance, the Board of Governors may decide to close the credit line. The beneficiary ESM Member would then be expected to request a regular stability support, with a full macroeconomic adjustment programme, following the procedure applicable to it.

3. After the beneficiary ESM Member has drawn funds, via a loan or primary market purchase, or requested that PPCs be issued for the first time, the Board of Directors shall decide 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.

18 September 2012

KÄYTTÖ RAJOITETTU

EDUSKUNTAA PYYDETÄÄN NOUDATTAMAAN VAITELIAISUUTTA ASIAN KÄSITTELYSSÄ SUOMEN NEUVOTTELUTAVOITTEIDEN TURVAAMISEKSI SEKÄ SISÄLTÖÄ KOSKEVIEN JULKAISEMATTOMIEN TIETOJEN PERUSTEELLA.

European Stability Mechanism Market Access Support Facilities

Terms and Conditions

Sovereign partial risk participation

1. The ESM – in accordance with the Treaty and with the guidelines on Loans and on Precautionary Financial Assistance – may provide credit enhancement to primary sovereign bonds issued by ESM Members aimed at increasing demand for new issues of the ESM Members' sovereign bond programmes and lowering the ESM Member's funding costs thereby supporting the sustainability of public finances.

2. The sovereign partial risk protection will be provided through Partial Protection Certificates (PPCs). PPCs will be issued in combination with an ESM Member's sovereign bond.

3. The sovereign bond and the PPC are initially offered together to investors. The sovereign bond is issued by an ESM Member in line with their normal issuance process for a maturity decided by the beneficiary ESM Member, in cooperation with the ESM.

4. The bond and the PPC will be detachable after initial issue and can be traded separately. At the time of claim or settlement, holders of the PPCs would be required demonstrate that they hold outstanding sovereign bonds of the beneficiary ESM Member of at least the same principal value as the original bond covered by the PPC.

5. PPCs give the holder of the certificate an amount of fixed credit protection equal to 20% – 30% ([or a different range] to be determined [by the Board of Governors] in the light of market circumstances) of the principal amount of the sovereign bond to which it was initially attached.

6. For any Member State to have the benefit of PPC, it will be necessary for the Member State to enter into a Memorandum of Understanding specifying inter alia conditionality, and a Financial Assistance Facility Agreement (FFA) with the ESM.

7. The PPC is issued by an entity which would not be legally connected to the ESM or Member States.

8. The PPC gives rise to a claim in the event that an ESM Member experiences a credit event under the full ISDA definition, which covers (i) failure by the Issuer to make full and timely payments of amounts scheduled to be due in respect of one or more bonds, subject to grace periods; or (ii) repudiation or moratorium; or(iii) restructuring.

Co-Investment Funds (CIFs)

1. The ESM may establish Co-Investment Funds (CIFs) that would purchase bonds in the primary and/or secondary markets and would follow the specified ESM guidelines on the Primary Market Support Facility and on Intervention in the Secondary Market. CIFs invest in bonds of ESM Members that have entered into a Memorandum of Understanding specifying inter alia conditionality and a FFA with the ESM. The CIF will issue Junior Notes, subscribed by the ESM to finance a first loss position, and Participating Notes subscribed by external investors.

2. The Junior Noteholder (ESM) is to be paid a return intended to be at least equal to ESM's cost of funding. Participating Noteholders are to be paid a return expressed either as a specified coupon or as all remaining interest proceeds after payment of all prior ranking items in the interest waterfall. These returns are subject to the specific terms agreed with each investor.

3. CIFs will be incorporated as a wholly owned subsidiary of ESM. Primary and secondary market purchases of bonds conducted by a CIF and the management of its bond portfolio shall follow its investment strategy, to be adopted by the ESM Board of Directors and agreed with the Participating Note investor. The purchase of bonds in the primary and secondary markets will be arranged by the ESM for CIFs, in line with such investment strategy and the specified ESM guidelines on the Primary Market Support Facility (PMSF) and on the Secondary Market Support Facility (SMSF).

4. A request for the CIF to start operations will be subject to a specific request to the ESM Board of Directors, once a Member State has signed the necessary agreements for a CIF to start purchasing its bonds.

5. The purchase of underlying ESM Member bonds will be made directly by the CIF (but with the ESM arranging such purchase) using cash proceeds from the subscription of Participating Notes by investors and the ESM's Junior Notes. Alternatively, bonds might be acquired by the ESM and sold into the CIF with settlement being timed to coincide with the issuance of Participating Notes and Junior Notes. The ESM has the option not to buy underlying ESM Member bonds, if it has concerns over market appetite for Participating Notes.

6. The occurrence of certain credit events/restructuring with respect to the underlying ESM Member bonds held by the CIF will result in the occurrence of a Relevant Event. The definition of Relevant Event is based on the standard list of reserved matters in the Collective Action Clause, as well as a determination by an ISDA committee that there has been a credit event.