



EUROPEAN COUNCIL

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COVER NOTE

from : General Secretariat of the Council
to : Delegations
Subject : **EUROPEAN COUNCIL**
24/25 MARCH 2011

CONCLUSIONS

Delegations will find attached the revised version of the conclusions of the European Council (24/25 March 2011).

We express our deepest condolences for the large-scale loss of life in Japan and our solidarity with the Japanese people and government. The thoughts of EU citizens are with the many thousands of bereaved families and the hundreds of thousands of people who now have to rebuild their lives and communities. We commend the swift and decisive action taken by the Japanese authorities. Recalling the enduring friendship and close political and economic relations that link the EU to Japan, we are determined to stand by Japan as it strives to overcome the challenges it faces.

Over recent months, Europe has gone through a serious financial crisis. Although economic recovery in Europe is now on track, risks remain and we must continue our determined action. We adopted today a comprehensive package of measures which should allow us to turn the corner of the financial crisis and continue our path towards sustainable growth. This package will strengthen the economic governance of the European Union and ensure the lasting stability of the euro area as a whole. We also agreed robust action at the EU level to stimulate growth by strengthening the Single Market, reducing the overall burden of regulation and promoting trade with third countries. We discussed the grave situation in Libya, expressing our satisfaction after the adoption of UNSCR 1973 and underlining our determination to contribute to its implementation. Regarding the Southern Neighbourhood, we reiterated our determination to develop a new partnership with the region and called for a rapid implementation of the orientations set on 11 March 2011; we agreed on first concrete steps to support the countries of the Southern Neighbourhood in the short term. Finally, we discussed the lessons to be drawn from the events that occurred in Japan, notably as regards nuclear safety.

I. ECONOMIC POLICY

1. The European Council today adopted a comprehensive package of measures to respond to the crisis, preserve financial stability and lay the ground for smart, sustainable, socially inclusive and job-creating growth. This will strengthen the economic governance and competitiveness of the euro area and of the European Union.

Implementing the European Semester: Europe 2020, fiscal consolidation and structural reform

2. Within the new framework of the European semester, the European Council endorsed the priorities for fiscal consolidation and structural reform.¹ It underscored the need to give priority to restoring sound budgets and fiscal sustainability, reducing unemployment through labour market reforms and making new efforts to enhance growth. All Member States will translate these priorities into concrete measures to be included in their Stability or Convergence Programmes and National Reform Programmes. On this basis, the Commission will present its proposals for country-specific opinions and recommendations in good time for their adoption before the June European Council.
3. In particular, Member States will present multi-annual consolidation plans including specific deficit, revenue and expenditure targets, the strategy envisaged to reach these targets and a timeline for its implementation. Fiscal policies for 2012 should aim to restore confidence by bringing debt trends back onto a sustainable path and ensuring that deficits are brought back below 3 % of GDP in the timeframe agreed upon by the Council. This requires in most cases an annual structural adjustment well above 0.5% of GDP. Consolidation should be frontloaded in Member States facing very large structural deficits or very high or rapidly increasing levels of public debt.

¹ In line with the Council's conclusions of 15 February and 7 March 2011 and further to the Commission's Annual Growth Survey. See also the Presidency's synthesis report of 16 March 2011.

4. Fiscal consolidation efforts must be complemented by growth-enhancing structural reforms. To that end, Member States emphasise their commitment to the Europe 2020 Strategy. In particular, they will implement measures in order to:
 - make work more attractive;
 - help the unemployed get back to work;
 - combat poverty and promote social inclusion;
 - invest in education and training;
 - balance security and flexibility;
 - reform pension systems;
 - attract private capital to finance growth;
 - boost research and innovation;
 - and allow cost-effective access to energy and step up energy efficiency policies.

5. Member States will set out the main measures required to move towards the Europe 2020 headline targets as agreed in June 2010. They will also present policy measures to correct harmful and persistent macroeconomic imbalances and improve competitiveness.

6. In implementing these policies, and in order to ensure wide ownership, close cooperation will be maintained with the European Parliament and other EU institutions and advisory bodies (ESC, CoR), with the full involvement of national parliaments, social partners, regions and other stakeholders.

7. The Single Market has a key role to play in delivering growth and employment and promote competitiveness. The European Council welcomes the Commission's intention to present the Single Market Act and invites the European Parliament and the Council to adopt by the end of 2012 a first set of priority measures to bring a new impetus to the Single Market. Particular emphasis should be laid on measures which create growth and jobs and bring tangible results to citizens and businesses. Emphasis should also be put on completing the Digital Single Market. The overall regulatory burden, in particular for SMEs, should be reduced at both European and national levels. The Commission will report on this issue by the summer. The European Council also welcomed the intention of the Commission to propose ways of exempting micro-enterprises from certain future regulations. On the basis of the Commission's communication "Towards a better functioning single market for services", the European Council calls on Member States to fully implement the services Directive and on the Commission and Member States to take further actions where necessary to improve the internal market for services.

8. The external dimension of the Single Market is also important and the focus should be on promoting free, fair and open trade, with a focus on concluding the WTO Doha Round and Free Trade Agreements in 2011 in line with the conclusions of the 16 September 2010 European Council. Work should be rapidly taken forward, following the Commission report setting out priorities for dismantling barriers to trade in third countries.

Strengthening governance

9. The package of six legislative proposals on economic governance is key to ensuring enhanced fiscal discipline and avoiding excessive macroeconomic imbalances. It includes a reform of the Stability and Growth Pact aimed at enhancing the surveillance of fiscal policies and applying enforcement measures more consistently and at an earlier stage, new provisions on national fiscal frameworks and a new surveillance of macroeconomic imbalances.

10. The European Council welcomes the general approach reached on the proposals in the Council, opening the way for negotiations with the European Parliament. It called for work to be taken forward with a view to their adoption in June 2011.

Providing a new quality of economic policy coordination: the Euro Plus Pact

11. The Euro Plus Pact as agreed by the euro area Heads of State or government and joined by Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (see Annex I) will further strengthen the economic pillar of EMU and achieve a new quality of economic policy coordination, with the objective of improving competitiveness and thereby leading to a higher degree of convergence reinforcing our social market economy. The Pact remains open for other Member States to join. The Pact will fully respect the integrity of the Single Market.

12. The Member States that have signed up to the Pact are committed, on the basis of the indicators and principles it contains, to announce a set of concrete actions to be achieved within the next twelve months. A number of Member States have already announced first commitments. All participating Member States will present their commitments as soon as possible and in any event in time for their inclusion in their Stability or Convergence Programmes and National Reform Programmes to be submitted in April and for their assessment at the June European Council.

Restoring the health of the banking sector

13. The European Banking Authority and relevant authorities are carrying out stress tests. The European Council underlines the importance of the peer review process to be conducted in close cooperation with national supervisors, the European Systemic Risk Board, the Commission and the European Central Bank in order to increase the consistency and quality of the results. A high level of disclosure for banks will be ensured, including on sovereign debt holdings.

14. Member States will prepare, ahead of the publication of the results, specific and ambitious strategies for the restructuring of vulnerable institutions, including private sector solutions (direct financing from the market or asset sales) but also a solid framework in line with State aid rules for the provision of government support in case of need.
15. As agreed by the European Council in June 2010, the introduction of a global financial transaction tax should be explored and developed further. The European Council notes the intention of the Commission to produce a report on taxation of the financial sector by autumn 2011 at the latest.

Strengthening the stability mechanisms of the euro area

16. Recalling the importance of ensuring financial stability in the euro area, the European Council adopted the decision amending the TFEU with regard to the setting up of the European Stability Mechanism. It calls for the rapid launch of national approval procedures with a view to its entry into force on 1 January 2013.
17. The European Council welcomes the decisions taken by the euro area Heads of State or government on 11 March and endorses the features of the ESM (see Annex II). The preparation of the ESM treaty and the amendments to the EFSF agreement, to ensure its EUR 440 billion effective lending capacity, will be finalised so as to allow signature of both agreements at the same time before the end of June 2011.

II. LIBYA / SOUTHERN NEIGHBOURHOOD

18. The European Council discussed the situation in Libya and endorsed the conclusions adopted by the Foreign Affairs Council on 21 March. Recalling its March 11 Declaration, the European Council expressed its satisfaction after the adoption of UN Security Council Resolution 1973, which expresses the principle of the responsibility to protect, and underlined its determination to contribute to its implementation. It also welcomed the Paris Summit of 19 March as a decisive contribution to its implementation. It condemned the continued defiance by the Libyan regime of UN Security Council Resolutions 1970 and 1973, and the violent and brutal repression the regime continues to inflict upon its own citizens. It noted that the actions taken in conformity with the mandate from the Security Council significantly contributed to protecting civilians and civilian-populated areas under threat of attack and helped to save lives of civilians. When the civilian populations are safe and secure from the threat of attack and the objectives of UNSCR 1973 are met, military operations will come to an end.

The European Council emphasised the key role of Arab countries, and particularly the Arab League, in actively supporting the implementation of UNSCR 1973, and in finding a political solution to the crisis.

19. In line with UNSCR 1973, the European Union, together with the League of Arab States, the United Nations and the African Union, will intensify its efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people. The European Council reiterated its call on Colonel Kadhafi to relinquish power immediately in order to allow Libya to rapidly embark on an orderly and Libyan-led transition to democracy through a broad-based dialogue, also taking into consideration the need to ensure Libya's sovereignty and territorial integrity. The EU stands ready to help foster this dialogue, including with the National Transition Council, and to assist a new Libya economically and in the building of its new institutions, in cooperation with the United Nations, the Arab League, the African Union and others.

20. The European Union has acted swiftly to implement the sanctions imposed by UNSC resolutions 1970 and 1973, including the designation of additional persons and entities in the EU autonomous list of persons and entities subject to restrictive measures. The European Union stands ready to initiate and adopt further sanctions, including measures to ensure that oil and gas revenues do not reach the Kadhafi regime. Member States will take similar proposals to the UNSC.

21. The humanitarian situation in Libya and on its borders remains a source of serious concern. The EU will continue to provide humanitarian assistance to all those affected, in close cooperation with all the humanitarian agencies and NGOs involved. The EU has stepped up and will continue its planning on support for humanitarian assistance / civil protection operations, including by maritime means.

22. The European Council noted with satisfaction the smooth conduct of the referendum on constitutional amendments held in Egypt on 19 March as a significant step towards a more open and democratic political system.

23. Noting that the situation in each country is different, the European Council expressed its utmost concern at the situation in Syria, Yemen and Bahrain, strongly condemned the escalation of violence and the use of force against demonstrators, and urged all parties concerned to engage in meaningful and constructive dialogue without delay or preconditions. It endorsed the conclusions adopted by the Foreign Affairs Council on 21 March.

24. Work should be rapidly taken forward to develop a new partnership with the region, in line with the European Council's declaration of 11 March 2011. This partnership will be founded on deeper economic integration, broader market access and closer political cooperation, and will follow a differentiated and performance-based approach. As first steps in the implementation of the 11 March package, and on the basis of the joint Commission/High Representative communication, the European Council calls for rapid progress to be made along the following lines:

- the EU and its Member States will step up their humanitarian assistance;
- ongoing aid programmes in the Southern Mediterranean countries will be screened and refocused, where possible in dialogue with the countries concerned;
- the ceiling for EIB operations for Mediterranean countries undertaking political reform should be increased by EUR 1 billion, without reducing operations in the EU's Eastern neighbours;
- EBRD shareholders should consider the possible extension of the Bank's activities to countries in the Southern Neighbourhood;
- the proposals on pan-Euro-Mediterranean rules of origin should be adopted without delay and the Commission is invited to present proposals on further means to enhance trade and foreign direct investment in the region in the short, medium and long term.

25. The European Council welcomes the recent visit of the Presidency and the Commission to Egypt as part of a first phase of consultations to promote a comprehensive approach to migration between the countries of the Southern Neighbourhood region and the European Union. In this context the European Council invites the Commission to present its proposals on the Global Approach to Migration as well as on the Mobility Partnership well in advance of the June European Council.

26. The European Council also looks forward to the presentation by the Commission of a Plan for the development of capacities to manage migration and refugee flows in advance of the June European Council. Agreement should be reached by June 2011 on the regulation enhancing the capabilities of Frontex. In the meantime the Commission will make additional resources available in support to the agency's 2011 Hermes and Poseidon operations and Member States are invited to provide further human and technical resources. The EU and its Member States stand ready to demonstrate their concrete solidarity to Member States most directly concerned by migratory movements and provide the necessary support as the situation evolves.

III. JAPAN

27. The European Union will support Japan as it strives to overcome the challenges it faces after the earthquake and the tsunami that struck it with such tragic consequences.
28. Following an initial request from the Japanese government, it is mobilising relief supplies for the affected population. It stands ready to provide further support if requested. More generally, the EU is interested in developing its cooperation with Japan on disaster relief.
29. The European Union commends the swift and decisive action taken by the Japanese authorities in response to disorder on financial markets. It welcomes the action taken by the G7 on the yen. It stands ready to cooperate fully with Japan to address the economic and financial consequences of these events, including in the framework of the G8 and the G20.
30. Looking to the future, the European Council reiterates the strategic importance of the EU/Japan relationship. The forthcoming summit must be used to strengthen this relationship and bring forward our common agenda, including through the potential launch of negotiations for a free trade agreement on the basis that Japan is willing to tackle *inter alia* the issue of non-tariff barriers and restrictions on public procurement.

31. In this connection, the European Council stresses the need to fully draw the lessons from these events, and to provide all necessary information to the public. Recalling that the energy mix is the competence of Member States, it calls for work to be taken forward as a matter of priority on the following aspects:
- the safety of all EU nuclear plants should be reviewed, on the basis of a comprehensive and transparent risk and safety assessment ("stress tests"); the European Nuclear Safety Regulatory Group (ENSREG) and the Commission are invited to develop as soon as possible the scope and modalities of these tests in a coordinated framework in the light of lessons learned from the accident in Japan and with the full involvement of Member States, making full use of available expertise (notably from the Western European Nuclear Regulators Association); the assessments will be conducted by independent national authorities and through peer review; their outcome and any necessary subsequent measures that will be taken should be shared with the Commission and within the ENSREG and should be made public; the European Council will assess initial findings by the end of 2011, on the basis of a report from the Commission;
 - the priority of ensuring the safety of nuclear plants obviously cannot stop at our borders; the EU will request that similar "stress tests" be carried out in the neighbouring countries and worldwide, regarding both existing and planned plants; in this regard full use should be made of relevant international organisations;
 - the highest standards for nuclear safety should be implemented and continuously improved in the EU and promoted internationally;
 - the Commission will review the existing legal and regulatory framework for the safety of nuclear installations and will propose by the end of 2011 any improvements that may be necessary. Member States should ensure the full implementation of the Directive on the safety of nuclear installations. The proposed Directive on the management of spent fuel and radioactive waste should be adopted as soon as possible. The Commission is invited to reflect on how to promote nuclear safety in neighbouring countries;

- consequences for the world and for the EU need to be closely monitored, paying particular attention to the volatility of energy and commodity prices, in particular in the context of the G20.
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**THE EURO PLUS PACT
STRONGER ECONOMIC POLICY COORDINATION FOR
COMPETITIVENESS AND CONVERGENCE**

This Pact has been agreed by the euro area Heads of State or government and joined by Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania to strengthen the economic pillar of the monetary union, achieve a new quality of economic policy coordination, improve competitiveness, thereby leading to a higher degree of convergence. This Pact focuses primarily on areas that fall under national competence and are key for increasing competitiveness and avoiding harmful imbalances. Competitiveness is essential to help the EU grow faster and more sustainably in the medium and long term, to produce higher levels of income for citizens, and to preserve our social models. Other Member States are invited to participate on a voluntary basis.

This renewed effort for stronger economic policy coordination for competitiveness and convergence rests on **four guiding rules**:

- a. It will be *in line with and strengthen the existing economic governance* in the EU, while providing added value. It will be consistent with and build on existing instruments (Europe 2020, European Semester, Integrated Guidelines, Stability and Growth Pact and new macro-economic surveillance framework). It will involve a special effort going beyond what already exists and include concrete commitments and actions that are more ambitious than those already agreed, and accompanied with a timetable for implementation. These new commitments will thereafter be included in the National Reform and Stability Programmes and be subject to the regular surveillance framework, with a strong central role for the Commission in the monitoring of the implementation of the commitments, and the involvement of all the relevant formations of the Council and the Eurogroup. The European Parliament will play its full role in line with its competences. Social partners will be fully involved at the EU level through the Tripartite Social Summit.
- b. It will be focused, action oriented, and cover *priority policy areas that are essential for fostering competitiveness and convergence*. It will concentrate on actions where the competence lies with the Member States. In the chosen policy areas *common objectives will be agreed upon at the Heads of State or Government level. Participating Member States will pursue these objectives with their own policy-mix, taking into account their specific challenges*.
- c. *Each year, concrete national commitments will be undertaken by each Head of State or Government*. In doing so, Member States will take into account best practices and benchmark against the best performers, within Europe and vis-à-vis other strategic partners.

The implementation of commitments and progress towards the common policy objectives will be *monitored politically by the Heads of State or Government* of the euro area and participating countries on a yearly basis, on the basis of a report by the Commission. In addition, Member States commit to consult their partners on each major economic reform having potential spill-over effects before its adoption.

- d. Participating Member States are fully committed to the completion of the Single Market which is key to enhancing the competitiveness in the EU and the euro area. This process will be fully in line with the treaty. *The Pact will fully respect the integrity of the Single Market.*

Our goals

Participating Member States undertake to take all necessary measures to pursue the following objectives:

- Foster competitiveness
- Foster employment
- Contribute further to the sustainability of public finances
- Reinforce financial stability

Each participating Member State will present the specific measures it will take to reach these goals. If a Member State can show that action is not needed on one or the other areas, it will not include it. The choice of the specific policy actions necessary to achieve the common objectives *remains the responsibility of each country, but particular attention will be paid to the set of possible measures mentioned below.*

Concrete policy commitments and monitoring

Progress towards the common objectives above will be politically monitored by the Heads of State or Government on the basis of a series of indicators covering competitiveness, employment, fiscal sustainability and financial stability. Countries facing major challenges in any of these areas will be identified and will have to commit to addressing these challenges in a given timeframe.

a. Foster competitiveness

Progress will be assessed on the basis of wage and productivity developments and competitiveness adjustment needs. To assess whether wages are evolving in line with productivity, unit labour costs (ULC) will be monitored over a period of time, by comparing with developments in other euro area countries and in the main comparable trading partners. For each country, ULCs will be assessed for the economy as a whole and for each major sector (manufacturing; services; as well as tradable and non-tradable sectors). Large and sustained increases may lead to the erosion of competitiveness, especially if combined with a widening current account deficit and declining market shares for exports. Action to raise competitiveness is required in both all countries, but particular attention will be paid to those facing major challenges in this respect. To ensure that growth is balanced and widespread in the whole euro area, specific instruments and common initiatives will be envisaged to foster productivity in regions lagging behind.

Each country will be responsible for the specific policy actions it chooses to foster competitiveness, but the following reforms will be given particular attention:

(i) respecting national traditions of social dialogue and industrial relations, measures to ensure costs developments in line with productivity, such as:

- review the wage setting arrangements, and, where necessary, the degree of centralisation in the bargaining process, and the indexation mechanisms, while maintaining the autonomy of the social partners in the collective bargaining process;
- ensure that wages settlements in the public sector support the competitiveness efforts in the private sector (bearing in mind the important signalling effect of public sector wages).

(ii) measures to increase productivity, such as:

- further opening of sheltered sectors by measures taken at the national level to remove unjustified restrictions on professional services and the retail sector, to foster competition and efficiency, in full respect of the Community *acquis*;
- specific efforts to improve education systems and promote R&D, innovation and infrastructure;
- measures to improve the business environment, particularly for SMEs, notably by removing red tape and improving the regulatory framework (e.g. bankruptcy laws, commercial code).

b. Foster employment

A well functioning labour market is key for the competitiveness of the euro area. Progress will be assessed on the basis of the following indicators: long term and youth unemployment rates, and labour participation rates.

Each country will be responsible for the specific policy actions it chooses to foster employment, but the following reforms will be given particular attention:

- labour market reforms to promote “flexicurity”, reduce undeclared work and increase labour participation;
- life long learning;
- tax reforms, such as lowering taxes on labour to make work pay while preserving overall tax revenues, and taking measures to facilitate the participation of second earners in the work force.

c. Enhance the sustainability of public finances

In order to secure the full implementation of the Stability and Growth Pact, the highest attention will be paid to:

▪ Sustainability of pensions, health care and social benefits

This will be assessed notably on the basis of the sustainability gap indicators¹. These indicators measure whether debt levels are sustainable based on current policies, notably pensions schemes, health care and benefit systems, and taking into account demographic factors.

Reforms necessary to ensure the sustainability and adequacy of pensions and social benefits could include:

- aligning the pension system to the national demographic situation, for example by aligning the effective retirement age with life expectancy or by increasing participation rates;
- limiting early retirement schemes and using targeted incentives to employ older workers (notably in the age tranche above 55).

¹ The sustainability gap are indicators agreed by the Commission and Member States to assess fiscal sustainability.

▪ National fiscal rules

Participating Member States commit to translating EU fiscal rules as set out in the Stability and Growth Pact into national legislation. Member States will retain the choice of the specific national legal vehicle to be used, but will make sure that it has a sufficiently strong binding and durable nature (e.g. constitution or framework law). The exact formulation of the rule will also be decided by each country (e.g. it could take the form of a "debt brake", rule related to the primary balance or an expenditure rule), but it should ensure fiscal discipline at both national and sub-national levels. The Commission will have the opportunity, in full respect of the prerogatives of national parliaments, to be consulted on the precise fiscal rule before its adoption so as to ensure it is compatible with, and supportive of, the EU rules.

d. Reinforce financial stability

A strong financial sector is key for the overall stability of the euro area. A comprehensive reform of the EU framework for financial sector supervision and regulation has been launched.

In this context, Member States commit to putting in place national legislation for banking resolution, in full respect of the Community *acquis*. Strict bank stress tests, coordinated at EU level, will be undertaken on a regular basis. In addition, the President of the ESRB and the President of the Eurogroup will be invited to regularly inform Heads of State or Government on issues related to macro-financial stability and macroeconomic developments in the euro area requiring specific action. In particular, for each Member State, the level of private debt for banks, households and non-financial firms will be closely monitored.

In addition to the issues mentioned above, attention will be paid to **tax policy coordination**.

Direct taxation remains a national competence. Pragmatic coordination of tax policies is a necessary element of a stronger economic policy coordination in the euro area to support fiscal consolidation and economic growth. In this context, Member States commit to engage in structured discussions on tax policy issues, notably to ensure the exchange of best practices, avoidance of harmful practices and proposals to fight against fraud and tax evasion.

Developing a common corporate tax base could be a revenue neutral way forward to ensure consistency among national tax systems while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European businesses.

The Commission has presented a legislative proposal on a common consolidated corporate tax base.

Concrete yearly commitments

In order to demonstrate a real commitment for change and ensure the necessary political impetus to reach our common objectives, each year participating Member States will agree at the highest level on a set of concrete actions to be achieved within 12 months. The selection of the specific policy measures to be implemented will remain the responsibility of each country, but the choice will be guided by considering in particular the issues mentioned above. These commitments will also be reflected in the National Reform Programmes and Stability Programmes submitted each year which will be assessed by the Commission, the Council, and the Eurogroup in the context of the European Semester.

Term Sheet on the ESM

The European Council has decided to add to Article 136 of the Treaty the following paragraph:

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

Further to this decision, the European Council has agreed on the need for euro-area Member States to establish a permanent stability mechanism: the European Stability Mechanism (ESM). The ESM will be activated by mutual agreement¹, if indispensable to safeguarding the financial stability of the euro area as a whole. The ESM will assume the role of the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM) in providing external financial assistance to euro-area Member States after June 2013.

Access to ESM financial assistance will be provided on the basis of strict policy conditionality under a macro-economic adjustment programme and a rigorous analysis of public-debt sustainability, which will be conducted by the Commission together with the IMF and in liaison with the ECB. The beneficiary Member State will be required to put in place an appropriate form of private-sector involvement, according to the specific circumstances and in a manner fully consistent with IMF practices.

The ESM will have an effective lending capacity of € 500 billion². The adequacy of the lending capacity will be reviewed on a regular basis and at least every five years. The ESM will seek to supplement its lending capacity through the participation of the IMF in financial assistance operations, while non-euro area Member States may also participate on an ad hoc basis.

¹ A decision taken by mutual agreement is a decision taken by unanimity of the Member States participating to the vote, i.e. abstentions do not prevent the decision from being adopted.

² During the transition from EFSF to ESM, the combined lending capacity will not exceed this amount.

The remainder of this term sheet sets out the key structural features of the ESM:

Institutional form

The ESM will be established by a treaty among the euro-area Member States as an intergovernmental organisation under public international law and will be located in Luxembourg. The statute of the ESM will be set out in an annex to the treaty.

Function and funding strategy

The function of the ESM will be to mobilise funding and provide financial assistance, under strict conditionality, to the benefit of euro-area Member States, which are experiencing or are threatened by severe financing problems, in order to safeguard the financial stability of the euro area as a whole.

The Member States of the euro area will give to the ESM the financial sanctions received under the Stability and Growth Pact and the Macroeconomic Imbalances procedures. Such sanctions will form part of the paid-in capital.

The ESM will use an appropriate funding strategy so as to ensure access to broad funding sources and enable it to extend financial assistance packages to Member States under all market conditions. Any associated risk will be contained through adequate asset and liability management.

Governance

The ESM will have a Board of Governors consisting of the Ministers of Finance of the euro-area Member States (as voting members), with the European Commissioner for Economic and Monetary Affairs and the President of the ECB as observers. The Board of Governors will elect a Chairperson from among its voting members.

The Board of Governors will be the highest decision-making body of the ESM and will take the following major decisions by mutual agreement:

- the granting of financial assistance;
- the terms and conditions of financial assistance;
- the lending capacity of the ESM;
- changes to the menu of instruments.

All other decisions by the Board of Governors will be taken by qualified majority, unless stated otherwise.

The ESM will have a Board of Directors, which will carry out specific tasks as delegated by the Board of Governors. Each euro-area Member state will appoint one Director and one alternate Director. In addition, the Commission and the ECB will each nominate an observer and an alternate to the Board of Directors. All decisions by the Board of Directors will be taken by qualified majority, unless otherwise stated.

Voting weights within the Board of Governors and the Board of Directors will be proportional to the Member States' respective subscriptions to the capital of the ESM. A qualified majority is defined as 80 percent of the votes.

The Board of Governors will appoint a Managing Director responsible for the day-to-day management of the ESM. The Managing Director will chair the Board of Directors.

Capital structure

The ESM will aim to obtain and maintain the highest credit rating from the major credit rating agencies.

The ESM will have a total subscribed capital of € 700 billion. Of this amount, € 80 billion will be in the form of paid-in capital provided by the euro-area Member States being phased in from July 2013 in five equal annual instalments. In addition, the ESM will also dispose of a combination of committed callable capital and of guarantees from euro area Member States to a total amount of € 620 billion. During the transitional phase from 2013 to 2017, Member States commit to accelerate, in the unlikely event that this is needed, the provision of appropriate instruments in order to maintain a minimum 15 percent ratio between paid-in capital and the outstanding amount of ESM issuances.

The contribution key of each Member State in the total subscribed capital of the ESM will be based on the paid-in capital key of the ECB as annexed. By ratifying the Treaty establishing the ESM, Member States legally commit to provide their contribution to the total subscribed capital.

The Board of Governors will decide by mutual agreement when adapting the amount of total subscribed capital or when calling capital, except in the specific cases described below. First, the Board of Directors can decide, by simple majority, to restore -by calling in capital- the level of paid-in capital in the event that the amount of paid-in capital is reduced by the absorption of losses³. Second, an on-demand guarantee procedure will be put in place that allows calling in capital automatically from the shareholders of the ESM if needed to avoid a payment shortfall to the creditors of the ESM. The liability of each shareholder will in all circumstances be limited to its share in the subscribed capital.

Any contribution to subscribed capital by a Member State⁴ joining the ESM after July 2013 will be made according to the same terms applied for the original contributions. The practical implications for the overall amount of subscribed capital and the distribution of capital among the Member States will be decided by the Board of Governors by mutual agreement.

³ The vote of the Member State whose default is at the origin of the loss to be covered is suspended for this decision.

⁴ As a consequence of joining the euro area, a Member State shall become a member of the ESM with full rights and obligations.

As long as the ESM has not been activated and provided that the effective lending capacity is not less than 500 billion, the proceeds from the investment of the ESM paid-in capital will be returned to the Member States, after deductions for operational costs. Following the first activation of the ESM, the proceeds from the investment of ESM capital and financial assistance activity will be retained within the ESM. However, in the event that paid-in capital exceeds the level required to maintain the lending capacity of the ESM, the Board of Directors can decide, by simple majority to distribute a dividend to the euro-area Member States based on the contribution key.

Instruments

If indispensable to safeguard the stability of the euro area as a whole, in line with the amendment to Article 136 of the Treaty, the ESM will provide financial assistance subject to strict conditionality under a macro-economic adjustment programme, commensurate with the severity of the imbalances of the Member State. It will be provided through loans. However, it may intervene, as an exception, in debt primary markets on the basis of a macro-economic adjustment programme with strict conditionality and if agreed by the Board of Governors by mutual agreement.

- ESM stability support (ESS)

The ESM can grant short-term or medium term stability support to a euro-area Member State, which is experiencing severe financing problems. Access to an ESS will imply a macroeconomic adjustment programme with adequate policy conditionality commensurate with the severity of the underlying imbalances in the beneficiary Member State. The length of the programme and maturity of the loans will depend on the nature of the imbalances and the prospects of the beneficiary Member States regaining access to financial markets within the time that ESM resources are available.

▪ Primary market support facility

The ESM can purchase the bonds of a Member State, which is experiencing severe financing problems, on the primary market, with the objective of maximizing the cost efficiency of the support. Conditions and modalities under which bond purchasing would be conducted will be specified in the Decision on the terms and conditions of financial assistance.

The Board of Governors may review the instruments at the ESM's disposal and may decide to make changes to the menu of instruments.

IMF involvement

The ESM will cooperate very closely with the IMF in providing financial assistance⁵. In all circumstances, active participation of the IMF will be sought, both on the technical and the financial level. The debt sustainability analysis will be jointly conducted by the Commission and the IMF, in liaison with the ECB. The policy conditions attached to a joint ESM/IMF assistance will be negotiated jointly by the Commission and the IMF, in liaison with the ECB.

⁵ It is however understood that any IMF involvement will be consistent with its mandate under the Articles of Agreement and by applicable decision and policies of the IMF Board.

Activation of financial assistance, programme monitoring and follow-up

Financial assistance from the ESM will in all cases be activated on a request from a Member State to the other Members States of the euro area. The Eurogroup will inform the Council that a request for activation of support has been made. On receipt of such a request, the Board of Governors will ask the Commission to assess, in liaison with the ECB, the existence of a risk to the financial stability of the euro area as a whole and to undertake a rigorous analysis of the sustainability of the public debt of the Member State concerned, together with the IMF and in liaison with the ECB. The subsequent steps in the activation of ESM financial assistance will be as follows:

- If an ESS is requested, the Commission, together with the IMF and in liaison with the ECB, will assess the actual financing needs of the beneficiary Member State and the nature of the required private sector involvement, which should be consistent with IMF practices.
- On the basis of this assessment, the Board of Governors will mandate the Commission to negotiate, together with the IMF and in liaison with the ECB, a macro-economic adjustment programme with the Member State concerned, detailed in a MoU.
- The Commission will propose to the Council a decision endorsing the macro-economic adjustment programme. The Board of Governors will decide on the granting of financial assistance and the terms and conditions under which assistance is provided. When the programme has been adopted by the Council, the Commission will sign the MoU on behalf of the euro area Member States subject to prior mutual agreement by the Board of Governors. The Board of Directors will then approve the financial assistance agreement which would contain the technical aspects of the financial assistance to be provided.
- The Commission, together with the IMF and in liaison with the ECB, will be responsible for monitoring compliance with the policy conditionality required by a macroeconomic adjustment programme. It will report to the Council and to the Board of Directors. On the basis of this report, the Board of Directors will decide by mutual agreement on the disbursement of the new tranches of the loan.

- After discussion in the Board of Governors, the Council can decide, on a proposal by the Commission, to implement post-programme surveillance, which can be maintained for as long as a specified amount of the financial assistance has not been repaid.

Consistency with the EU multilateral surveillance framework

Approval by the EU Member States will be sought to allow the euro-area Member States to task the Commission, together with the IMF and in liaison with the ECB, the analysis of the debt sustainability of the Member State requesting financial support, the preparation of the adjustment programme accompanying the financial assistance, as well as with the monitoring of its implementation.

While the Board of Governors has the autonomy to decide on the existence and modalities of financial assistance under an intergovernmental framework, the policy conditionality established under an enhanced surveillance or a macroeconomic adjustment programme should be consistent with the EU surveillance framework and must guarantee the respect of EU procedures. To this end, the Commission intends to propose a Regulation clarifying the necessary procedural steps under Article 136 of the Treaty in order to enshrine the policy conditionality in Council decisions and ensure consistency with the EU multilateral surveillance framework. The Council and the Commission will inform the European Parliament on a regular basis about the establishment and the operations of the ESM.

Pricing

The Board of Governors will decide on the pricing structure for financial assistance to a beneficiary Member State.

The ESM will be able to lend at a fixed or variable rate. The pricing of the ESM will be in line with IMF pricing principles and, while remaining above the funding costs of ESM, will include an adequate mark up for risks.

The following pricing structure will apply to ESM loans:

- 1) ESM funding cost
- 2) A charge of 200 bps applied on the entire loans
- 3) A surcharge of 100 bps for loan amounts outstanding after 3 years

For fixed rate loans with maturities above 3 years, the margin will be a weighted average of the charge of 200 bps for the first 3 years and 200 bps plus 100 bps for the following years.

The pricing structure will be defined in the pricing policy of the ESM, which will be reviewed periodically.

Private sector involvement

1. Modalities for involving the private sector

An adequate and proportionate form of private-sector involvement will be expected on a case by case basis where financial assistance is received by the beneficiary State. The nature and extent of this involvement will be determined on a case-by-case basis and will depend on the outcome of a debt sustainability analysis, in line with IMF practice⁶, and on potential implications for euro-area financial stability.

⁶ In line with the IMF, debt is considered sustainable when a borrower is expected to be able to continue servicing its debts without an unrealistically large correction to its income and expenditure. This judgement determines the availability and the appropriate scale of financing.

(a) **If, on the basis of a sustainability analysis, it is concluded that a macro-economic adjustment programme can realistically restore the public debt to a sustainable path**, the beneficiary Member State will take initiatives aimed at encouraging the main private investors to maintain their exposures (e.g. a "Vienna Initiative" approach). The Commission, the IMF, the ECB and the EBA will be closely involved in monitoring the implementation of such initiatives.

(b) **If, on the basis of a sustainability analysis, it is concluded that a macro-economic programme cannot realistically restore the public debt to a sustainable path**, the beneficiary Member State will be required to engage in active negotiations in good faith with its creditors to secure their direct involvement in restoring debt sustainability. The granting of the financial assistance will be contingent on the Member State having a credible plan and demonstrating sufficient commitment to ensure adequate and proportionate private sector involvement. Progress in the implementation of the plan will be monitored under the programme and will be taken into account in the decision on disbursements.

In negotiating with creditors, the beneficiary Member State will adhere to the following principles:

- *Proportionality*: the Member State will seek solutions proportionate to its debt sustainability problem.
- *Transparency*: the Member State concerned will engage in an open dialogue with creditors and share relevant information with them on a timely basis.
- *Fairness*: the Member State will consult creditors on the design of any rescheduling or restructuring of public debt with a view to reaching negotiated solutions. Measures reducing the net present value of the debt will be considered only when other options are unlikely to deliver the expected results.

- *Cross-border co-ordination*: the risk of contagion and potential spill over effects on other Member States and third countries will be duly taken into account in the design of measures to involve the private sector. The measures taken will be accompanied with a proper communication by the Member State concerned aimed at preserving the financial stability of the Euro Area as a whole.

2. Collective Action Clauses

Collective Action Clauses (CACs) will be included in all new euro area government securities, with maturity above one year, from July 2013. The objective of such CACs will be to facilitate agreement between the sovereign and its private-sector creditors in the context of private sector involvement. The inclusion of CACs in a bond will not imply a higher probability of default or of debt restructuring relating to that bond. Accordingly, the creditor status of sovereign debt will not be affected by the inclusion of CACs.

The main features of the CACs will be consistent with those commonly used in the US and the UK markets since the G10 report on CACs. CACs will be introduced in a way which preserves a level playing field among euro area Member States. This implies the use of **identical and standardised clauses** for all euro area Member States, harmonised in the terms and conditions of securities issued by the Members States. Their basis will be **consistent with the CACs that are common in New York and English law**.

CACs will include an **aggregation clause**, enabling a super majority of bondholders across multiple bond issues subject to such a clause and subject to the law of a single jurisdiction to include a majority action clause where the needed majority of creditors for the restructuration would not be attained within a single bond issue. **Appropriate representation** will be put in place. Most important issues – the reserve matters – (e.g. key payment terms, conversion or exchange of bonds) will be decided with a larger **majority** than non-reserve matters. Appropriate **quorum** requirements will apply. Changes agreed by the relevant majorities are binding on all bondholders.

An appropriate **disenfranchisement** clause will apply to ensure a proper voting process. Appropriate clauses to prevent disruptive legal action will be considered.

CACs will be introduced in a standardised manner, which ensures that their legal impact is identical in all euro-area jurisdictions and so preserves a level playing field among euro-area Member States. The euro area Member States will adopt the necessary measures to give effect to the CACs.

Euro area Member States will be allowed to continue to “tap” outstanding debt without CACs under pre-determined conditions after June 2013 in order to preserve the necessary liquidity of old bonds and to give sufficient time to euro area Member States to create, in an orderly fashion, new bonds on all benchmark maturities. The detailed legal arrangements for including CACs in euro-area government securities will be decided on the basis of work to be undertaken by the EFC Sub-Committee on EU Sovereign Debt Markets, following appropriate consultation with market participants and other stakeholders, and be finalised by the end of 2011.

3. Preferred Creditor Status of the ESM

Like the IMF, the ESM will provide financial assistance to a Member State when its regular access to market financing is impaired. Reflecting this, Heads of State or Government have stated that the ESM will enjoy preferred creditor status in a similar fashion to the IMF, while accepting preferred creditor status of IMF over ESM.

This shall be effective as of 1 July 2013 without prejudice to the terms and conditions of any other agreement provided under the EFSF and the Greek facility.

Transitional arrangements between EFSF and ESM

As originally foreseen, the EFSF will remain in place after June 2013 so as to administer the outstanding bonds. It will remain operational until it has received full payment of the financing granted to the Member States and has repaid its liabilities under the financial instruments issued and any obligations to reimburse guarantors. Undisbursed and unfunded portions of existing loan facilities should be transferred to the ESM (e.g. payment and financing of instalments that would become due only after the entry into force of ESM). The consolidated EFSF and ESM lending shall not exceed € 500 bn.

To ensure a smooth transition from the EFSF to the ESM, the CEO of the EFSF will be tasked with the practical preparation of the establishment of the ESM. He will regularly report on the progress made to the Eurogroup Working Group.

Participation of the non euro area Member States

Non euro area Member States can participate on an *ad hoc* basis alongside the ESM in financial assistance operations for euro area Member States. If non-euro area Member States participate in such operations, they will be represented in the relevant meetings of the ESM boards that will decide on the granting and the monitoring of the assistance. They will have access to all relevant information in a timely manner and be appropriately consulted. The euro area Member States will support equivalent creditor status of the ESM and that of other Member States lending bilaterally alongside the ESM.

Dispute settlement

If a dispute arises between a euro area Member State and the ESM in connection with the interpretation and application of the treaty establishing the ESM, the Board of Governors will decide on this dispute. If the Member State contests this decision, such dispute shall be submitted to the European Court of Justice in accordance with Art. 273 TFEU.

With regard to the relationship between the ESM and third parties, the applicable governing law and jurisdiction will be dealt with by the legal and contractual documentation which will then be put in place between the ESM and those third parties.

Annex: ESM contribution key based on the ECB key

Country	ISO	ESM key
Austria	AT	2.783
Belgium	BE	3.477
Cyprus	CY	0.196
Estonia	EE	0.186
Finland	FI	1.797
France	FR	20.386
Germany	DE	27.146
Greece	EL	2.817
Ireland	IE	1.592
Italy	IT	17.914
Luxembourg	LU	0.250
Malta	MT	0.073
Netherlands	NL	5.717
Portugal	PT	2.509
Slovakia	SK	0.824
Slovenia	SI	0.428
Spain	ES	11.904
Total	EA17	100.0

Notes: The ESM key is based on the ECB capital contribution key.

Member States with a GDP per capita of less than 75% of the EU average will benefit from a temporary correction for a period of 12 years after their entry in the euro area.

This temporary correction will be three quarters of the difference between GNI and ECB capital shares (effectively comprising of 75% of GNI share and 25% of ECB capital share) as follows: $ESM\ share = ECB\ key\ share - 0,75*(ECB\ key\ share - GNI\ share)$

The downwards compensation on those countries is redistributed among all the other countries according to their ECB key share.

GNI and GDP per capita in 2010.

Sources: ECB, Ameco and DG ECFIN calculations.