



Eurogroup
The President

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Brussels, 23 October 2019
[ecfin.cef.cpe\(2019\)7057314](https://ecfin.cef.cpe(2019)7057314)

To the members of the Eurogroup in inclusive format

Subject: Eurogroup meeting in inclusive format of 9 October 2019

Dear colleagues,

I would like to share with you the main content and course of our discussions at the Eurogroup meeting in inclusive format held on 9 October in Luxembourg.

The Commission was represented by Vice-President Dombrovskis and Commissioner Moscovici. Our meeting was attended by ECB Director General for Economics Frank Smets and by ESM Managing Director Klaus Regling.

1. Budgetary instrument for convergence and competitiveness

The Eurogroup in inclusive format prepared the reporting to Leaders on the open issues on the budgetary instrument for convergence and competitiveness (BICC) for the euro area and for ERM II Member States on a voluntary basis, in line with the mandate received from the Euro Summit of 21 June 2019.

We reached an agreement on all the critical elements of governance and financing, on the allocation methodology and the key features of the modulation of the national co-financing rate. The BICC will be a stand-alone instrument dedicated to the euro area. ERM II countries can join on a voluntary basis. It is aimed at strengthening the potential growth and enhancing the resilience and adjustment capacities of euro area economies as well as the mechanisms of economic governance. The Eurosummit and the Eurogroup will set the direction and strategic priorities for the instrument, and the Commission will be in charge of its implementation.

These aspects are set out in a Eurogroup term sheet, enclosed in annex 1. In the course of our discussion the Council Legal Service provided its opinion on the legal implications of the financing solutions considered, enclosed in annex 2.

This complements the June agreement on the main features of the instrument. Work will continue in specific areas identified in the term sheet in the Eurogroup and at technical level.

We also agreed that appropriate arrangements should be defined for non-euro area Member States not participating in the BICC. These arrangements should take the form of a dedicated instrument or a financial arrangement to address their full financial liability in relation to the BICC, depending on the circumstances of each Member State, and should be reflected in the negotiating box.

Yours sincerely,

Mario Centeno



Annex 1: Term sheet on the budgetary instrument for convergence and competitiveness

<p>Governance</p>	<p><u>Key principles building on draft Regulation under Art. 136:</u></p> <ul style="list-style-type: none"> - Process kick-started by a discussion on strategic priorities by the Eurosummit and Eurogroup, followed by a strengthened Euro Area Recommendation (EAR) including priorities relevant to the BICC - Member States to submit in spring proposals which should as a rule consist of packages of reforms and investments, linked to the NRP and compatible with the national budgetary process - Involvement of relevant preparatory committees and, if warranted, of the Eurogroup in the assessment of the proposals, based on Commission initial feed-back - Approval by the Commission, taking into account the strategic priorities included in the EAR and the previous year's Country Specific Recommendations <p><u>ERM II participation in Art. 136 process:</u></p> <ul style="list-style-type: none"> - Eurogroup commits to ensure the participation of ERM II MS in meetings and to take their views into account to the largest extent possible.
<p>Financing</p>	<ul style="list-style-type: none"> - The size of the instrument will be defined in the context of the MFF. The Finnish Presidency informed the Eurogroup of its intention to take into account the euro area share of the financial envelope of the Reform Delivery Tool, as in the Commission original MFF proposal, in setting the size of the contribution to the BICC in its proposed negotiating box. - Discussions on an IGA, whose legal status will be explained in an annex to the summing up letter by the Council Legal Service, will continue at the level of the EWG. The EWG should submit a report covering the need, the content, modalities and the size of an IGA in due time to allow for a final decision in the context of the MFF. - An enabling clause to be included in the Regulation based on Art 175

Allocation and modulation	<ul style="list-style-type: none"> - For at least 80% of the funds, allocation key to be based on population and inverse of GDP per capita, with a 70% floor - Up to 20% of the funds could be used on a more flexible basis to react to country specific challenges by supporting packages of reforms and investments that are especially ambitious as measured against the euro area priorities - National co-financing rate of 25% - Modulation of the national co-financing rate based on a trigger related to severe economic circumstances, as defined in the SGP, to be applied in a transparent and predictable manner by the Commission following a discussion in the Eurogroup. The modalities will be defined in the context of the legislative process, following further discussions in the Eurogroup. - When warranted, based on the trigger, national co-financing rate should be reduced to half
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Appropriate arrangements should be defined for non-euro area Member States not participating in the BICC. These arrangements should take the form of a dedicated instrument or a financial arrangement to address their full financial liability in relation to the BICC, depending on the circumstances of each Member State*, and should be reflected in the negotiating box.

* Sweden and Denmark are expected to decide on the latter option subject to decision in the national Parliaments



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Annex 2: Contribution of the Council Legal Service - Budgetary instrument for convergence and competitiveness: examination of the legal status, relationship and effects of the enabling clause and the intergovernmental agreement



**Council of the
European Union**

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CONTRIBUTION

From: Legal Service

To: Eurogroup in inclusive format

Subject: Budgetary instrument for convergence and competitiveness: examination of the legal status, relationship and effects of the enabling clause and the intergovernmental agreement.

I. INTRODUCTION

1. The term sheet on the Budgetary Instrument for convergence and competitiveness (BICC), as endorsed by the Eurogroup (inclusive format) on 9 October 2019, contains, amongst others, the following text regarding the financing of the instrument.

“Discussions on an IGA, whose legal status will be explained in an annex to the summing up letter by the Council Legal Service, will continue at the level of the EWG. The EWG should

submit a report covering the need, the content, modalities and the size of an IGA in due time to allow for a final decision in the context of the MFF.

An enabling clause to be included in the Regulation based on Art 175”

2. In the course of the meeting of the Eurogroup (inclusive format) of 9 October 2019, the Council Legal Service (CLS) was invited to clarify the legal status, the relationship and the effects of the enabling clause as well as of the Intergovernmental Agreement (IGA) to which reference is made in the term sheet. The Council Legal Service was further requested by the President of the Eurogroup to reflect its oral intervention in writing (as also recalled in the term sheet). This contribution follows up on that request.

II. LEGAL ANALYSIS

3. The purpose of the enabling clause that is to be introduced in the envisaged BICC Regulation is to authorise additional contributions by Member States to the budget of the Union and earmark them to finance expenditure arising from the BICC. Such additional contributions would be provided as external assigned revenue, as an exception to the budgetary principle of universality under Article 20 of the Financial Regulation, according to which all revenues finance indistinctly all items of expenditure. That exception should therefore be formulated by way of derogation to the principle of universality, a possibility which is open to the discretion of the EU legislator, as shown by the existing categories of external and internal assigned revenue referred to in Article 21 of the Financial Regulation itself.

4. However, the EU Treaties or an act of EU secondary law (as the BICC Regulation) cannot legally oblige Member States to conclude the IGA referred to in the term sheet, or compel them to contribute to the budget of the Union beyond the framework of their financial obligations as defined by the own resources system. Therefore, the enabling clause cannot be the basis for the negotiation, signature and conclusion of an IGA where Member States would legally commit to pool and to allocate external revenues to the BICC. The Member States, as subject of international public law, are free to decide to negotiate, sign and conclude the IGA¹.
5. Member States' consent to be bound by the provisions of the IGA depends therefore on their national constitutional requirements².

¹ See opinion of the Council Legal Service (document 5347/19) on the proposal on the European Investment Stabilisation Function where the Council Legal Service concluded that “*Union Law may not impose an obligation on a Member State to conclude an [IGA]*”. That opinion also underlined that “*Article 175(3) TFEU (...) may not be used to compel, directly or indirectly, Member State to make further contributions to the Union beyond the system of Own Resource Decision.*” (para.61).

² Even if, in the past, intergovernmental treaties in the field of the Economic and Monetary Union (such as the ESM Treaty, the Treaty on Stability, Convergence and Competitiveness, or the IGA on the transfer of contributions to the Single Resolution Fund) have been concluded by all euro area Member States, this fact is a consequence of a wish to maintain political coherence, rather than of a legal obligation that would stem from the EU Treaties or secondary law.