

Anlage 1: Beschlussvorlage für den Gouverneursrat für die Einrichtung des Instruments zur direkten Rekapitalisierung von Instituten (englische Fassung)

European Stability Mechanism

SG/BoG/2014/[●]/[●]**EUROPEAN STABILITY MECHANISM****BOARD OF GOVERNORS****Meeting of dd Month 2014****RESOLUTION No. [●]***Establishment of the instrument for the direct recapitalisation of institutions*

THE BOARD OF GOVERNORS,

Having regard to the Euro Area Summit Statement of 29 June 2012, stating that, “when an effective single supervisory mechanism is established, involving the ECB, [...] the ESM could, following a regular decision, have the possibility to recapitalise banks directly”,

Having regard to the establishment of such a single supervisory mechanism through Council Regulation (EU) No 1024/2013,

Having regard to the purpose of the ESM, pursuant to Article 3 of the Treaty, to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States,

Having regard to the limitation, pursuant to Article 8(5) of the Treaty, of the liability of each ESM Member which, in any circumstance, is set through its portion of the authorised capital stock at its issue price,

Having regard to the principles as set out in Article 12 of the Treaty,

Having regard to the framework set through Council Regulation (EU) No 1024/2013, and aiming at consistency with the definitions therein,

RESOLVES, pursuant to Article 19 of the Treaty, to establish the ESM instrument for the direct recapitalisation of institutions in the meaning of Article 2(3) to (5) Council Regulation (EU) No 1024/2013 (“institutions”) as a financial assistance instrument and to define the

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framework following Article 13 of the Treaty, including, in particular, the procedure for granting financial assistance under this instrument:

1. While the procedure for granting financial assistance in the form of direct recapitalisation follows Article 13 of the Treaty, additional procedural steps and provisions as well as tasks allocated to the Managing Director, the European Commission, the ECB and, wherever appropriate, the IMF, specific to this instrument, are detailed hereinafter and in the specific guideline mentioned in paragraph (5) below.
2. The Board of Governors may decide to grant financial assistance in the form of direct recapitalisation of institutions in accordance with Article 12 of the Treaty. The financial assistance shall be subject to specific conditionality relevant to this instrument.
3. The Board of Governors shall not decide to grant or to implement financial assistance through the instrument for the direct recapitalisation of institutions when the emergency voting procedure pursuant to Article 4(4) of the Treaty applies, unless mutual agreement can be reached.
4. Without prejudice to Articles 107 and 108 TFEU, the financial terms and conditions of financial assistance in the form of direct recapitalisation of institutions shall be specified in a financial assistance facility agreement, to be signed by the Managing Director. The institution specific conditions for each institution and the details of the recapitalisation operation shall be set out in an institution specific agreement, to be based on a proposal by the Managing Director which is approved by the Board of Governors, and in full compliance with the provisions of Article 13 of the Treaty. The institution specific agreement and, where applicable, the first tranche of the assistance shall be approved by the Board of Directors. The institution specific agreement shall be signed by the Managing Director.
5. The Board of Directors shall adopt a detailed guideline on the modalities, including, in particular, the eligibility criteria for the requesting ESM Member and the institution concerned, and the allocation of specific tasks to the Managing Director, the European Commission, the ECB and, wherever appropriate, the IMF, for implementing financial assistance in the form of direct recapitalisation of institutions ("Guideline on Financial Assistance for the Direct Recapitalisation of Institutions").
6. Where applicable, the Board of Directors shall decide by mutual agreement, on a proposal by the Managing Director and, after having received the report indicated in the Guideline on Financial Assistance for the Direct Recapitalisation of Institutions, on the disbursement of the tranches of the financial assistance subsequent to the first tranche.

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7. The ESM shall, through a Board of Governors' Resolution to be adopted by mutual agreement, establish, as an integral part of the instrument for the direct recapitalisation of institutions, a subsidiary body for assisting the ESM in implementing financial assistance in the form of direct recapitalisation of institutions. In this respect, it shall amend the By-Laws accordingly.

Based on a general framework, to be approved by the Board of Governors, setting out the conditions for the establishment of sub-entities for the purpose of implementing financial assistance in the form of direct recapitalisation of institutions, and in order to facilitate private participation, the Board of Directors or the Board of Governors, as the case will be according to the provisions of the Treaty, might approve the establishment of such sub-entities and their statutes or constituent documents.

The ESM, including the subsidiary body mentioned in the first sub-paragraph above, and any sub-entity shall ensure an effective flow of information to the ESM Members.

8. This Resolution will enter into force on the day of its adoption.

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