

Treaty on the Functioning of the EU (TFEU): stability mechanism for Member States whose currency is the euro (amend. Article 136 TFEU)

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OPINION OF THE EUROPEAN CENTRAL BANK on a draft European Council Decision amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro.

In a monetary union, strengthened fiscal and macroeconomic surveillance is the appropriate instrument to minimise risks of sovereign debt crises of the magnitude and severity that the European Union has experienced in the recent past. To this end, the ECB has called for a ‘quantum leap’ in the economic governance of economic and monetary union (EMU), which should lead towards a deeper economic union that is commensurate with the degree of economic integration and interdependency already achieved by the Member States whose currency is the euro.

Reiterating its call for the further strengthening of fiscal and macroeconomic surveillance, **the ECB welcomes the draft decision.** Following approval by all Member States of the draft decision a new Article 136(3) will feature in the Treaty on the Functioning of the European Union (TFEU). In accordance with it, Member States whose currency is the euro are expected to establish a permanent mechanism, known as European Stability Mechanism (ESM).

ESM effectiveness: the necessary preparations are under way. There are four features that would **enhance the effectiveness and facilitate the functioning of the ESM:**

- it should be established by means of a Treaty subject to international public law approved by the Member States whose currency is the euro so that national laws have to be made compatible with the provisions of the Treaty;
- the rules for decision-making in the ESM should favour efficiency, for instance by providing for the activation of the ESM by mutual agreement of the Member States whose currency is the euro;
- in full compliance with the Treaties, the ESM should be granted the capacity to employ an appropriate range of instruments in order to be able to effectively fight against contagion in situations of acute market instability; and
- the ESM has to observe the principles of cautious and sound financial management and be subject to auditing by external and internal auditors.

Moral hazard: the ECB considers that there is a fundamental need for the **ESM to be safeguarded against the moral hazard** inherent in any crisis management mechanism. Safeguards such as IMF involvement in debt sustainability analysis, programme negotiations and financing, non-concessional terms consistent with IMF practice and regular and strict surveillance on compliance by the assisted Member States with the programme of fiscal and macroeconomic adjustment on which financial assistance is conditional, are indispensable for providing strong and lasting incentives for sound fiscal and economic policies in the Member States whose currency is the euro. Furthermore, such safeguards support the effectiveness of the abovementioned strengthened fiscal and macroeconomic surveillance framework of the Union.

Intergovernmental mechanism: the draft decision is that it provides for an intergovernmental mechanism instead of a Union mechanism. The ECB supports recourse to the Union method and would

welcome that, with the benefit of the experience gained, the ESM would become a **Union mechanism** at an appropriate point in time. In the meantime, the ECB encourages that regarding the assessment of circumstances leading to the activation of the ESM and regarding conditions on financial assistance, Union institutions are granted a prominent role given their expertise and their focus on the collective Union interest.

Role of the ECB and the Eurosystem: the ECB recalls that while the ECB may act as fiscal agent for the ESM pursuant to the Statute of the ESCB, in the same way as under the Union's Medium-Term Financial Assistance Facility, the EFSM and the EFSF, Article 123 TFEU would not allow the ESM to become a counterparty of the Eurosystem under the Statute of the ESCB.

In this latter element, the ECB recalls that the monetary financing prohibition in the TFEU is one of the basic pillars of the legal architecture of EMU both for reasons of fiscal discipline of the Member States and in order to preserve the integrity of the single monetary policy as well as the independence of the ECB and the Eurosystem.

The ECB encourages Member States to approve the draft decision promptly in order for it to enter into force at the date provided in it, which is 1 January 2013.