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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Proposal for a

COUNCIL REGULATION

on the establishment of the European Monetary Fund

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

It is almost sixteen years since the first euro coins and notes entered European citizens' daily lives. The currency is now used every day by 340 million Europeans in 19 Member States ("euro area"). The euro is the second most used currency worldwide. Sixty other countries and territories around the world, home to 175 million people, have chosen to use the euro as their currency or to peg their own currency to it.

The financial and economic crisis that hit Europe in 2008, the consequences of which are still felt to this day, did not start in the euro area but it laid bare some of its institutional weaknesses. As an emergency response to the immediate challenges, several instruments were adopted. They provided new financial firewalls, assisted the countries most affected and stepped up policy coordination at EU level. Apart from the European Financial Stabilisation Mechanism ("EFSM") based on Council Regulation (EU) No 407/2010, most of them were established outside of the Union legal framework. Member States provided bilaterally financial assistance to Greece and set up the European Financial Stabilisation Facility ("EFSF"). Still in 2010, the European Council concluded that the EFSF, established as a temporary mechanism only, should be replaced by a permanent institution, the European Stability Mechanism ("ESM"). They strengthened the fiscal and financial rules in order to prevent the crisis from escalating further. Monetary policy action by the European Central Bank has also proved decisive.

After years of low or no growth, determined efforts at all levels have started to pay off. Europe is now experiencing a robust recovery. All Member States are now growing and overall EU growth has stood at around 2% on average for several years in a row.[1] The economic sentiment indicator is at its highest in the EU and euro area since 2000. Unemployment is at its lowest since late 2008. Popular support for the euro is the highest in the euro area since since the introduction of the euro notes and coins in 2002.[2] However, as the current Commission said when taking office, the crisis is not over as long as unemployment remains so high, with 14.3 million people still without a job in the euro area in October 2017.

Important lessons needed to be drawn from the crisis years. The relevant issues were already clearly identified in the Five Presidents' Report of June 2015[3]. Since then, a lot has been done in order to "deepen" the Economic and Monetary Union ("EMU") by "doing". The European Semester of economic policy coordination has been strengthened with clearer guidance for the euro area as a whole and a stronger focus on social aspects. Economic governance has been improved, with the creation of a European Fiscal Board and National Productivity Boards. Technical assistance to Member States was boosted with the creation of the Structural Reform Support Service. Important steps towards completing the Banking Union[4] and Capital Markets Union[5] have been taken, notably by advancing in parallel on risk-reduction and risk-

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1 European Economic Forecast Autumn 2017; Institutional Paper 63.
2 Flash Eurobarometer 458, 4 December 2017.
3 "Completing Europe's Economic and Monetary Union", Report by Jean-Claude Juncker, in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, 22 June 2015.
4 See in particular COM(2017) 592 final, 11 October 2017.
5 COM(2017) 292 final, 8 June 2017.

sharing measures in the banking sector. To increase ownership at all levels, the dialogue with national and European political actors and social partners has also been intensified.

As a result, the euro area architecture is much more robust than ever before but this does not mean that it is complete. The Reflection Paper on the deepening of the Economic and Monetary Union,[6] as well as the Reflection Paper on the future of EU finances[7] presented by the Commission as part of the follow-up to the White Paper on the Future of Europe,[8] recalls the state of play and outlines a possible ways forward to 2025.

Europe is now visibly regaining its strength. Both economically and politically, there is a window of opportunity and positive developments are further encouragements to act. There should be no complacency: one should always fix the roof when the sun is shining.

In his State of the Union address on 13 September 2017,[9] President Juncker set out his views for a More United, Stronger and More Democratic Union and made it clear that the completion of Europe's Economic and Monetary Union is an essential part of the roadmap leading to the meeting of Leaders in Sibiu, called by President Tusk for 9 May 2019, where important decisions on the future of Europe should take place.

This is also reflected in the Leaders' Agenda,[10] with EU Leaders planning a Euro Summit on 15 December 2017 to discuss a timeline for decisions on the Economic and Monetary Union and the Banking Union, and a dedicated meeting planned on 28-29 June 2018 with a view of reaching concrete decisions.

The call for unity, efficiency and democratic accountability of the State of the Union address is particularly relevant for the completion of the Economic and Monetary Union:

• Unity: The euro is the single currency of the EU and what is conceived for the euro area should also be conceived for and with those Member States that are expected to join the euro in the future. With the exception of the United Kingdom and Denmark, all non-euro Member States are legally committed to joining the euro eventually.[11] Moreover, with the United Kingdom's departure, euro area economies will represent about 85% of the EU's total Gross Domestic Product. The EU's political and economic integration, of which the single market is the core, means that the futures of both euro and non-euro Member States are already intertwined, and a strong and stable euro area is key to its members as well as to the EU as a whole.

This explains why it is important that the euro area Member States through the European Monetary Fund ("EMF") jointly with the non-euro Member States which participate in the Banking Union provide a backstop for the Single Resolution Board ("SRB") on equivalent terms and conditions to allow the Single Resolution Board to use such means if necessary for undertaking successfully a resolution action in the Banking Union.

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6 COM(2017) 291, 31 May 2017.
7 COM(2017) 358, 28 June 2017.
8 COM (2017) 2025, 1 March 2017.
9 President Jean-Claude Juncker's State of the Union Address 2017, 13 September 2017.
10 Leaders' Agenda: Building our future together, endorsed by the European Council on 20 October 2017.
11 To note that among the non-euro Member States, Denmark and Bulgaria have pegged their currency to the euro since the introduction of the latter in 1999. Unlike Denmark, Bulgaria does not participate in the Exchange Rate Mechanism II, but the lev is pegged to the euro within the framework of a currency board arrangement.

• Efficiency: A stronger Economic and Monetary Union requires stronger governance and a more efficient use of available resources. The current system still reflects a patchwork of decisions taken to face an unprecedented crisis. This has sometimes led to a multiplication of instruments and an increased sophistication of rules, which is a source of complexity and creates risks of duplications. Greater synergies, streamlined procedures and integration of intergovernmental arrangements within the EU legal framework would strengthen governance and decision-making. It is also for efficiency reasons that all the changes proposed by the Commission as part of today's package can be implemented within the framework of the current EU Treaties.

Experience has shown that it is difficult and cumbersome to articulate a collective action of the Member States with the competences of economic policy coordination conferred on the Union. More generally, the coexistence of the Union institutions and of a permanent intergovernmental mechanism such as the ESM generates a complex landscape where judicial protection, respect of fundamental rights and democratic accountability are fragmented and unevenly implemented. Furthermore, the decision-making process under an intergovernmental method usually requires cumbersome national procedures and is therefore often difficult to reconcile with the speed needed for ensuring an effective crisis management, as illustrated by the use in July 2015 of the EFSM to bridge finance an ESM support to Greece: amending an EU Regulation and deciding to use it proved in practice to be quicker than taking an ordinary ESM decision of disbursement. This also extends to the adaptation of actions to new circumstances. Since even minor modifications rely on the signature of all contracting parties at the highest political level, the approval of the national Parliaments may be necessary to modify them. Those procedures are time consuming and may prevent taking action at the time when it is needed. The EU legal framework, on the other hand, offers a potential range of methods for modifications of existing acts, with their complexity corresponding to the seriousness of the issue in question and the form of the measure to be adapted. Application of EU decision-making framework would therefore make the process of adjustments of relevant provisions faster, if needed. Greater synergies and a more streamlined decision-making would strengthen governance and procedures.

• Democratic accountability: Completing the Economic and Monetary Union also means greater political responsibility and transparency about who decides what and when at the different levels. This requires bringing the European dimension of decision-making closer to citizens and more to the forefront of national debates and making sure that both national Parliaments and the European Parliament have sufficient powers of oversight on the management of the EU's economic governance. This should also lead to greater ownership of collective decisions and openness on the way they are taken and communicated. This is in particular true for the EMF as successor to the ESM. Democratic accountability is a key aspect of the debate on the future of Europe. The ESM has acquired over the years a very important role. Its transformation into a EMF should be accompanied with an effort to anchor its functioning in the robust accountability framework of the Union together with a fully-fledged judicial control. The involvement of the European Parliament in particular would enhance democratic oversight, while the role for National Parliaments remains fully preserved, in view of the large contributions of the Member States to the EMF.

For all the abovementioned reasons, the necessary structures for providing financial stability support to euro area Member States are best placed in the Union framework and in the hands of a Union body created for such purpose. Given the financial constraints and challenges faced by the Union itself and the accumulated expertise in this area by the ESM, however,

setting up such a body from scratch would be prohibitively cost-inefficient. Hence, the proposed EMF should rather incorporate and absorb the already existing ESM with its current objectives, functions and instruments. The EMF now proposed by the Commission can be implemented within the framework of the current Treaties. Beyond such endeavour, this also offers the ideal occasion for creating a common backstop to the SRB. The creation of a backstop for the Single Resolution Fund ("SRF") was already agreed by Member States in 2013, as a complement to the political agreement on the Single Resolution Mechanism Regulation.[12] A common last-resort backstop would serve the purpose of providing enhanced confidence to all parties concerned with regard to the credibility of the actions to be taken by the SRB and to increase the financial capacity of the Single Resolution Fund. As a last resort tool, it would only be activated in case the Single Resolution Fund proved to be insufficient to finance the resolution of the bank or banks concerned. The backstop would be fiscally neutral over time, since any funds used would be recovered from the banking sectors in the Member States participating in the Banking Union.

Safeguarding the financial stability of euro area Member States is the rationale linking the SRB with the EMF and its predecessor, the ESM, created in order to safeguard the financial stability of the euro area. In fact, the now well-established sovereign-bank nexus implies that not only the financial soundness of sovereigns but also the one of systemic banks are a critical element for the financial stability of the euro area and the single currency itself. It is hence all the more natural that this proposal will provide the link between the activities of the SRB and of the EMF in the form of an instrument allowing for providing either a credit line or guarantees to the SRB in support of its activities.

In recent years, many views have been expressed on the completion of the Economic and Monetary Union. Opinions may differ but there is a broad consensus on the need to make further progress. There have also been very significant contributions from the European Parliament[13] and important discussions in the Eurogroup.[14]

The proposed Regulation on the establishment of the EMF is one of the initiatives announced in the Commission's Communication on "Further steps towards completing the economic and monetary union". This Communication gives a summary of the rationale and content of all the initiatives presented by the Commission. It then recalls how this package is embedded in a broad roadmap to complete the Economic and Monetary Union by 2025 and provides a timeline for action over the next 18 months.

This proposal builds on the well-established structure of the European Stability Mechanism by creating a European Monetary Fund anchored within the EU's legal framework. This was already announced in the Five Presidents' Report and has also been called for by the European Parliament which stressed the need for the European Monetary Fund to be equipped with adequate lending and borrowing capacities and a clearly defined mandate.[15]

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[12] Statement of Eurogroup and Economic and Financial Affairs Council Ministers on the Single Regulation Mechanism backstop, 18 December 2013.

[13] See in particular the European Parliament resolutions of 16 February 2017 on i) budgetary capacity for the euro area (2015/2344(INI)), ii) possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)) and iii) improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)).

[14] See in particular Eurogroup of 6 November 2017 on “Fiscal capacity and fiscal rules for the Economic and Monetary Union”, Eurogroup of 9 October 2017 on “Deepening Economic and Monetary Union – The role of the ESM” (ecfin.cef.cpe(2017)5598799) or Eurogroup of 10 July 2017 on “Follow-up on deepening of the Economic and Monetary Union” (ecfin.cef.cpe(2017)3980511).

[15] European Parliament's resolution of 16 February 2017 on a budgetary capacity for the euro area (2015/2344(INI)).

The European Stability Mechanism was set up in October 2012 at the height of the crisis. The pressure of events at the time led to an intergovernmental solution being found. However, it was already clear then that this could also be achieved within the framework of the EU Treaties, as indicated, for instance, in the Commission's Blueprint for a Deep and Genuine Economic and Monetary Union.[16]

Over the years, the European Stability Mechanism has proven decisive in helping to preserve the financial stability of the euro area. It has done so by providing additional financial support to euro area Member States in distress. Its transformation into a European Monetary Fund will further strengthen its institutional anchoring. It will help to create new synergies within the EU framework, notably in terms of transparency, judicial review and efficiency of the EU's financial resources and thus offering a better support to Member States. It will also help improve further the cooperation with the Commission and accountability to the European Parliament. This will be done without affecting the way in which national governments are held to account by their own national Parliaments and preserving the commitments of the existing European Stability Mechanism.

The initiative takes the form of a proposal for a Council Regulation, which is subject to the consent of the European Parliament, under Article 352 of the Treaty on the Functioning of the European Union. Article 352 allows for the integration of the European Stability Mechanism into the Union framework, as this action is necessary for the financial stability of the euro area[17] and the Treaties have not provided any other legal basis for the EU to reach this precise objective.[18] Paragraph 2 of that Article explicitly foresees a role for national Parliaments. Historically, several significant decisions paving the way towards the establishment of the Economic and Monetary Union have been based on the equivalent of Article 352. For instance, decisions on the European Monetary Cooperation Fund, the European Currency Unit and the first balance of payment mechanisms were taken under Article 235 of the Treaty on the European Economic Community, the predecessor to Article 352.

The proposal is complemented by a draft of what could become an intergovernmental agreement for euro area Member States to agree among themselves on the transfer of funds from the European Stability Mechanism to the European Monetary Fund. This also foresees that the Fund would succeed to and replace the ESM, including in its legal position, with all its rights and obligations.

Under today's proposal, the European Monetary Fund will be established as a unique legal entity under Union law. It will succeed the European Stability Mechanism, with its current financial and institutional structures essentially preserved. This means that the European Monetary Fund will continue to provide financial stability support to Member States in need, to raise funds by issuing capital market instruments and to engage in money market transactions. The membership will not change and the participation of additional Member States will remain possible, once they adopt the euro.

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[16] COM(2012)777 "Blueprint for a Deep and Genuine Economic and Monetary Union", 28 November 2012.

[17] The necessity of having a body like the European Stability Mechanism to safeguard the stability of the euro area is based on factual elements and confirmed by Article 136(3) Treaty on the Functioning of the EU, as well as the second recital of the European Stability Mechanism Treaty which refer to the current European Stability Mechanism as "a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole".

[18] The European Court of Justice has already considered the possibility that Article 352 could be used to establish a Union body in charge of providing financial support to ensure stability of the euro area. See "Pringle case"- judgment of 27 November 2012, Case C-370/12, EU:C:2012:756, paragraph 67.

Given that the European Monetary Fund would become a Union body, some targeted adjustments are necessary to the current structure of the European Stability Mechanism. They include an endorsement by the Council of discretionary decisions taken by the European Monetary Fund.[19]

In addition, today's proposal adds a limited number of new features.

First, the European Monetary Fund will be able to provide the common backstop to the Single Resolution Fund. This is an essential component of the second pillar of the Banking Union, the so-called Single Resolution Mechanism.[20] When the Single Resolution Mechanism was adopted in 2013, Member States also agreed to develop a backstop to the Single Resolution Fund. This was meant as a last resort to be activated if the Single Resolution Fund's immediately available resources proved to be insufficient for capital or liquidity purposes. Member States also agreed that it should be fiscally neutral over the medium term so that any potential deployment of the backstop would be recovered from the banking sector in the euro area.

New EU rules on banking supervision and resolution developed in the aftermath of the crisis have significantly reduced the likelihood and potential impact of bank failures. However, a common fiscal backstop continues to be needed to enhance the financial capacity of the Single Resolution Fund. Such a backstop will instil confidence in the banking system by underpinning the credibility of actions taken by the Single Resolution Board. In turn, this would actually reduce the likelihood of a situation in which a backstop would be to be called on.

There is now wide consensus that the European Stability Mechanism – the future European Monetary Fund – is best placed to provide such a backstop in the form of a credit line or guarantees to the Single Resolution Fund. This is reflected in today's proposal which also sets out appropriate decision-making processes to ensure that the backstop can be deployed quickly, if needed. Special arrangements are also proposed to cater for the legitimate interests of non-euro Member States having joined the Banking Union.

Second, in terms of governance, the proposal includes the possibility for faster decision-making in specific urgent situations. It is proposed to keep unanimity voting for all major decisions with financial impact (e.g. capital calls). However, reinforced qualified majority, in which 85% of the votes are required, is proposed for specific decisions on stability support, disbursements and the deployment of the backstop.

Third, as regards the management of financial assistance programmes, the proposal foresees a more direct involvement of the EMF, alongside the European Commission.

Fourth, the proposal refers to the possibility for the European Monetary Fund to develop new financial instruments. Over time, such instruments could supplement or support other EU

[19] This will ensure compliance with the "Meroni doctrine". The Meroni doctrine, which arose from Cases 9/56 and10/56 (Meroni v High Authority [1957/1958] ECR 133), relates to the extent to and conditions under which EU Institutions may delegate their tasks to regulatory agencies.

[20] Regulation (EU) No 806/2014. The Single Resolution Board (SRB) is the resolution authority for large and systemic banks in the euro area, operational since January 2016. The Single Resolution Fund (SRF) is financed via contributions from the euro area banking sector. It may be used to finance resolution costs, provided that all conditions of the regulatory framework are met, including the bail-in of 8% of total liabilities of the bank concerned.

financial instruments and programmes. Such synergies could prove particularly useful if the European Monetary Fund were to play a role in support to a possible stabilisation function in the future.

With these changes, the European Monetary Fund will establish itself as a robust crisis management body within the Union framework, working in full synergy with other EU Institutions. The Council and the Commission will retain their competences and responsibilities in terms of economic and fiscal surveillance and policy coordination, as set out in the EU Treaties.

Practical cooperation can also be stepped up to better serve Member States, engage with market participants and avoid duplications of activities. Further cooperation could be sought in the light of further progress towards the strengthening of Economic and Monetary Union.

- **Proposed improvements of the ESM set-up**

The proposed Regulation and its Annex containing the Statute of the EMF is based on the ESM Treaty and the ESM By-laws.

In particular the Annex largely mirrors the text of the ESM Treaty. It leaves a number of articles of the ESM Treaty broadly unchanged. It concerns articles related to the capital stock, capital calls as well as the contribution key (Articles 8, 9 and 11), the articles related to the instruments for providing financial stability support to EMF Members (Articles 14 to 18), the pricing policy (Article 20), the borrowing operations (Article 21), the financial management (Articles 25 to 28), the internal audit (Article 33), and the temporary correction of the contribution key (Article 44).

The proposal departs from the text of the current ESM Treaty for two reasons, legal consistency with the EU legal framework and limited changes with a view to enhance the operations and decision-making of the EMF.

1) Legal consistency with the EU legal framework:

First, the proposed Regulation itself includes articles with changes which are necessary for reasons of consistency with EU law: the establishment of the EMF (Article 1), its legal succession to and replacement of the EMF (Article 2), the introduction of an approval process by the Council for decisions taken by the Board of Governors or Board of Directors which exhibit political discretion (Article 3) and the related publication requirements (Article 4), and dedicated accountability provisions (Articles 5 and 6) towards the European Parliament and national Parliaments. Two final provision are also foreseen (Articles 7 and 8).

Second, the Annex to the proposed Regulation contains the Statute of the EMF. It contains changes in order to ensure consistency with Union law such as: the determination of the lending capacity (Article 8), the principles for stability operations (Article 12), inclusion of the instrument for providing assistance for the direct recapitalisation of credit institutions (Article 19), the procedure related to the EMF budget (Articles 29-30), the annual accounts (Article 31), the financial statements and the annual reports (Article 32), the external audit (Article 34), the Board of Auditors (Article 35), the seat agreement (Article 37), the privileges and immunities (Article 38), the staff provisions (Article 39), professional secrecy and exchange of information (Article 40), the management empowerment related to the EFSF (Article 42), anti-fraud measures (Article 45), access to documents (Article 46), language requirements (Article 47).

2) Enhancement of the operations and decision-making of the EMF:

Moreover, changes are introduced to articles of the ESM Treaty for achieving certain additional objectives: enhancing the voting procedures (Articles 5 and 6), the appointment procedure for the managing director (Article 7), establishment of the new function to support the SRB and amending the EMF objectives and principles accordingly (Articles 3, 22 to 24), providing more flexibility with regard to cooperation arrangements (Article 41).

3) Table of equivalence

The following correlation table provides an overview of the compared structure of the ESM Treaty on the left side and of the proposed Regulation and the Statute of the EMF on the right side:

Articles of the ESM Treaty	**Corresponding provisions of the proposed EMF Regulation and the Statute of the EMF ("Statute")**
Article 1 (establishment of the EMF)	Article 1 of the proposed Regulation (establishment of the EMF)
-	Article 2 of the proposed Regulation (succession to and replacement of the ESM)
-	Article 3 of the proposed Regulation (role of the Council)
-	Article 4 of the proposed Regulation (publication)
-	Article 5 of the proposed Regulation (European Parliament)
-	Article 6 of the proposed Regulation (national Parliaments)
-	Article 7 of the proposed Regulation (references to ESM in existing Union legislation)
-	Article 1 of the Statute (legal status of the EMF)
Article 2 (membership)	Article 2 of the Statute (membership)
Article 3 (purpose)	Article 3 of the Statute (objective and tasks)
Article 4 (structure and voting rules)	Article 4 of the Statute (structure and voting rules)
Article 5 (board of governors)	Article 5 of the Statute (board of governors)
Article 6 (board of directors)	Article 6 of the Statute (board of directors)
Article 7 (managing director)	Article 7 of the Statute (managing director)
Article 8 (authorised capital stock)	Article 8 of the Statute (initial authorised capital stock)
Article 9 (capital calls)	Article 9 of the Statute (capital calls)
Article 10 (changes in authorised capital stock)	Article 10 of the Statute (capital increases)
Article 11 (contribution key)	Article 11 of the Statute (contribution key)
Article 12 (principles)	Article 12 of the Statute (principles underlying stability operations of the EMF)
Article 13 (procedure for granting stability	Article 13 of the Statute (procedure for

support)	granting stability support to EMF Members)
Article 14 (ESM precautionary financial assistance)	Article 14 of the Statute (EMF precautionary financial assistance)
Article 15 ((financial assistance for the re-capitalisation of credit institutions of an ESM Member)	Article 15 of the Statute (financial assistance for the re-capitalisation of credit institutions of an EMF Member)
Article 16 (ESM loans)	Article 16 of the Statute (EMF loans)
Article 17 (primary market support facility)	Article 17 of the Statute (primary market support facility)
Article 18 (secondary market support facility	Article 18 of the Statute (secondary market support facility)
Article 19 (review of the list of financial instruments)	-
-	Article 19 of the Statute (instrument for the direct recapitalisation of credit institutions)
Article 20 (pricing policy)	Article 20 of the Statute (pricing policy)
Article 21 (borrowing operations)	Article 21 of the Statute (borrowing operations)
-	Article 22 of the Statute (credit line or guarantees to the SRB)
-	Article 23 of the Statute (rules applying to the EMF)
-	Article 24 of the Statute (rules applying to the participating Member States whose currency is not the euro, within the meaning of Article 2 of Regulation (EU) No 1024/2013)
Article 22 (investment policy)	Article 25 of the Statute (investment policy)
Article 23 (dividend policy)	Article 26 of the Statute (dividend policy)
Article 24 (reserve and other funds)	Article 27 of the Statute (reserve and other funds)
Article 25 (coverage of losses)	Article 28 of the Statute (coverage of losses)
Article 26 (budget)	Article 29 of the Statute (budget)
-	Article 30 of the Statute (establishment of the budget)
Article 27 (annual accounts)	Article 31 of the Statute (annual accounts)
-	Article 32 of the Statute (financial statements and annual report)
Article 28 (internal audit)	Article 33 of the Statute (internal audit)
Article 29 (external audit)	Article 34 of the Statute (external audit)
Article 30 (board of auditors)	Article 35 of the Statute (board of auditors)
Article 31 (location)	Article 36 of the Statute (location)
-	Article 37 of the Statute (seat agreement)
Article 32 (privileges and immunities)	Article 38 of the Statute (privileges and immunities)
Article 33 (staff of ESM)	Article 39 of the Statute (staff of the EMF)
Article 34 (professional secrecy)	Article 40 of the Statute (professional secrecy and exchange of information
Article 35 (immunities for persons)	-
Article 36 (exemption from taxation)	-
Article 37 (interpretation and dispute	-

settlement)	
Article 38 (international cooperation)	Article 41 of the Statute (cooperation)
Article 39 (relation with EFSF lending)	-
Article 40 (transfer of EFSF supports)	-
-	Article 42 of the Statute (management of the EFSF)
Article 41 (payment of the initial capital)	Article 43 of the Statute (payment of initial capital)
Article 42 (temporary correction of the contribution key)	Article 44 of the Statute (temporary correction of the contribution key)
Article 43 (first appointments)	-
Article 44 (accession)	-
Article 45 (annexes)	-
Article 46 (deposit)	-
Article 47 (ratification, approval or acceptance)	-
Article 48 (entry into force)	Article 8 of the proposed Regulation
-	Article 45 of the Statute (anti-fraud measures)
-	Article 46 of the Statute (access to documents)
-	Article 47 of the Statute (language requirements)

- **Consistency with existing policy provisions in the policy area**

With its proposal to establish the EMF, the Union would provide itself with a Union body to act decisively in order to safeguard the financial stability of its Member States. More specifically, in combination with the permanent facility for providing medium-term balance of payment support for non euro Member States, the Union would be equipped with a full range of permanent stabilisation facilities covering the entirety of the Member States, and drawing on considerable financial resources, over and beyond those accessible through the EFSM.

The proposed Regulation on the establishment of the EMF is also a logical step in addition to Regulation (EU) No 472/2013. In the latter Regulation the Union asserted its competence in the area of financial assistance and the economic policy coordination related thereto, while showing also its capacity to provide for appropriate arrangements, combining the democratic legitimacy of its framework with the efficiency of its decision-making structures. The establishment of the EMF within the Union framework is hence fully in line with the Union's past policy initiatives and complements previous action in that respect.

Furthermore, the creation of a backstop function in order to support the SRB complements recent initiatives to decisively weaken the link between Member States finances and their banking systems. By conferring to the SRB the design and execution of schemes to resolve credit institutions, Regulation (EU) No 806/2014 in addition to Directive 2014/59/EU was a major step into this direction. The Regulation empowers the SRB to contract financial arrangements to put into place funding arrangements. The proposal implements this while clarifying that any funds the SRB borrows from the EMF should be recouped fully from the banking system.

Also future policy initiatives such as for instance the establishment of a stabilisation function could be conceived in this context. A stabilisation function is defined by the possibility to rapidly activate resources in an automatic way, subject to eligibility criteria defined in advance. The objective would be to use these resources to attenuate the effects of large asymmetric shocks. In case of a downturn, Member States would first use their automatic stabilisers and discretionary fiscal policy in compliance with the Stability and Growth Pact (SGP). The SGP provides for additional buffers and the necessity for a smaller fiscal effort to be undertaken during difficult economic conditions. Only if these buffers and stabilisers are not sufficient in the case of large asymmetric shocks, the stabilisation function would be triggered. The EMF could support the implementation of such a function by means of organising and making available any necessary market financing associated with the triggering of the function.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 352 TFEU. To use that Article, three conditions must be fulfilled. The first two conditions are that no specific legal basis exists in the Treaties and that the action is within the framework of Union policies. The European Court of Justice has already ruled that both conditions are met as regards the ESM (in the Pringle case[21]). Within the framework of the economic policy of the Union, as provided for in Title VIII "Economic and Monetary Policy" of Part III of the TFEU, the necessary powers for the Union to establish a Union body in charge of providing financial support for ensuring the financial stability of the euro area have not been enshrined. In the absence of any such powers, Article 352 TFEU allows the Council to adopt unanimously on a proposal from the Commission and after obtaining the consent of the Parliament, the appropriate measures. The third condition is the necessity to attain a Treaty objective. The necessity of having a body like the ESM to safeguard the financial stability of the euro area is based on factual elements and confirmed by Article 136 (3) TFEU and the second recital of the ESM Treaty which refer to the current ESM as "a stability mechanism to be activated if indispensable to safeguard the financial stability of the euro area as a whole". The establishment of the EMF is necessary to contribute to the safeguarding of the financial stability of the euro area as a whole, its Member States and the non euro Member States which participate in the Banking Union on the basis of a close cooperation agreement with the ECB in accordance with Council Regulation (EU) No 1024/2013.

The integration of the ESM into the Union framework through a Regulation based on Article 352 TFEU would ensure a seamless continuation of activities and a direct legal succession between the existing ESM and the new Union body (the EMF). The euro area Member States would agree that the capital of the ESM is attached to this body, through a simplified multilateral act.

Article 352 TFEU could also be used to confer additional tasks on the ESM when it is integrated into the Union.

Although a measure based on Article 352 TFEU is adopted by unanimity in the Council (EU28), the application of such a measure can be limited to a subset of Member States

[21] Case C-370/12 *Pringle* EU:C:2012:756. The Court of Justice was asked by the Supreme Court of Ireland if euro area Member States were prevented from concluding the ESM Treaty amongst themselves by various provisions of the Treaties, including Articles 119 to 123 TFEU and 125 to 127 TFEU.

where the limitation rests on an objective reason. The fact that the ESM acts only to safeguard the financial stability of the euro area justifies that its membership is limited to euro area Member States. As a result, the proposed EMF could operate as the ESM currently does, with its support available only to euro area Member States and its internal governance structure made up of those same Member States.• Subsidiarity (for non-exclusive competence)

The financial stability of the economic and monetary union and the Member States which participate in the Banking Union has a Union wide dimension. Given the strong interconnections between euro area Member States, severe risks to the financial stability of Member States may put at risk the financial stability of other Member States and of the euro area as a whole.

The proposed Regulation sets out the framework for providing financial stability support to Member States whose currency is the euro and also foresees a new role which consists of providing the financial means to the SRB. Regarding the latter role, the EMF will be entitled to provide credit lines and guarantees to the SRB which could serve as a backstop for the Single Resolution Fund.

Member States and national authorities cannot unilaterally solve risks to financial stability posed to Member States by financial markets which operate on a cross-border basis beyond the scope of national jurisdictions. In addition, Member States have difficulties in mitigating on their own risks. Member States and national authorities cannot address on their own the systemic risks that another Member State or its credit institutions can pose to the financial stability of the Union as a whole.

The objectives of this Regulation cannot be sufficiently achieved by the Member States individually and can therefore, by reason of the scale of the action, be better achieved at Union level in accordance with the principle of subsidiarity as set out in Article 5(3) TFEU.

- **Proportionality**

The proposal aims to ensure the financial stability in the euro area and the EU as a whole, its Member States, and those Member States which participate in the Banking Union. The proposal sets out a streamlined framework for the provision of financial stability support to EMF Members and the provision of credit lines and guarantees in support of the SRB with respect to financing potential resolution actions undertaken in the Member States which participate in the Banking Union.

The proposal sets out the different roles and responsibilities for all the governance bodies of the EMF and other Union institutions involved. It also provides for the financial instruments at the disposal of the EMF to achieve its objectives.

By establishing a central authority within the Union in charge of providing financial assistance to Member States, the proposal contributes to addressing the risks to financial stability for the euro area and its Member States while preserving the fiscal responsibilities of the Member States by requiring the beneficiary EMF Member to comply with strict policy conditions, appropriate to the financial assistance instrument chosen and the weaknesses to be addressed. Moreover, the EMF would also be tasked with providing financial support to the SRB. The EMF's involvement will contribute to breaking the negative feedback loops between sovereigns, banks and the real economy, which is crucial for a smooth functioning of the EMU.

At the same time, the proposal does not go beyond what is necessary to achieve the EMF's objective of reducing risks to financial stability for the euro area and its Member States. Any

support provided by the EMF to EMF Members is subject to policy conditions aimed at addressing the weaknesses present in such Member with a view to rapidly re-establish a sound and sustainable economic and financial situation and restoring or enhancing the Member's capacity to finance itself fully on the financial markets.

- **Choice of the instrument**

This act takes the form of a Regulation because the act creates a new body within the Union framework contributing to safeguarding the financial stability and has to be binding in its entirety and directly applicable in Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal could have a direct impact on these rights, as listed in the Charter of Fundamental Rights of the European Union ("The Charter") which is an integral part of the EU Treaties, and the European Convention on Human Rights ("ECHR").

This Regulation respects the fundamental rights and observes the rights, freedoms and principles recognised in particular by the Charter, and, in particular, the right to negotiate conclude and enforce collective agreements or take collective actions, the protection of personal data, the right of access to documents, and should be implemented in accordance with those rights and principles. By integrating the current ESM within the Union framework, it expands the scope of application of the Charter accordingly.

4. BUDGETARY IMPLICATIONS

The proposal is not expected to have any budgetary implications. The EMF's capital will be subscribed by the euro area Member States. The Union budget will not be liable for any expenses or losses of the EMF. The EMF will also have a self-financed budget.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Part I of the proposed Regulation (Articles 1 and 2) provides for the establishment of the EMF within the Union framework. Furthermore, this part also provides for a provision catering for issues related to the succession of the EMF to the ESM. The euro area Member States would need to agree that the capital of the ESM is attached to this body, through individual pledges or a simplified multilateral act. As further developed in the Statute, the authorised capital of the EMF would remain unchanged in comparison to the capital of the ESM.

Part II of the proposed Regulation (Articles 3 to 6) contains for legal reasons and with a view to respect the *Meroni* case-law of the Court of Justice of the European Union, a role for the Council. The latter should approve discretionary decisions taken by the Board of Governors and the Board of Directors. It also provides for the accountability arrangements of the EMF towards the European Parliament, the Council and the Commission. Such arrangements currently do not exist for the ESM in the ESM Treaty. The EMF should be required to submit an annual report to the aforementioned Union institutions together with is annual accounts and its financial statements. The Managing Director can be invited by the Parliament or request to

be invited. The EMF should also respond to oral and written questions from the Parliament. The possibility for organising confidential oral discussions just like it is the case for the SRB and the SSM should be provided for in view of the sensitive and confidential nature of the discussions relating the performance of the EMF's tasks. Moreover, the Regulation also provides for a more explicit scrutiny role of national Parliaments in comparison to the current state of play in the ESM Treaty. Such a role is warranted in view of the impact of the EMF's decisions on the political constituencies of its Members.

Part III of the proposed Regulation (Article 7 and 8) caters for references to the ESM in Union legislation as well as the entry into force of the proposed Regulation.

Part I of the Statute of the EMF annexed to this proposed Regulation (Articles 1 to 3) refers to the legal status of the EMF. The EMF shall be a Union body with legal personality. Furthermore, reference is made to the EMF's membership (Article 2). The latter shall consist of euro area Member States. This reflects the current membership of the ESM. Moroever, a provision is foreseen regarding the objectives and tasks of the EMF. In the same way as in the ESM architecture, the EMF would provide financial stability support to its members (euro area Member States). In addition to the ESM's current sole mission, the EMF would also be given the new task of providing credit lines or guarantees in support of the SRB for backstopping the SRF. The latter could serve as a public financial arrangement (backstop) within the meaning of Article 74 of Regulation No 806/2014.

Part II of the Statute of the EMF annexed to this proposed Regulation (Articles 4 to 7) concerns the organisation and decision-making proceedings, including the applicable voting rules of the EMF. Similar to the ESM, the EMF will have a Board of Governors, a Board of Directors, and a Managing Director who would be assisted by a management board. The categories of voting rules enshrined in the ESM Treaty will remain the same in the EMF. Four types of voting rules should be distinguished: (i) unanimity; (ii) reinforced qualified majority (85%), (iii) qualified majority (80%), and (iv) a simple majority. Similar to the rules of the ESM Treaty, unanimity has been kept for decisions having a major direct financial impact on Member States (e.g. decisions on the lending capacity, on capital calls not urgently needed). However, decisions related to granting financial support or disbursements to EMF Members were moved from mutual agreement to a reinforced qualified majority (85%). Moreover, in contrast to the current appointment process of the Managing Director, a consultative role has been foreseen for the European Parliament. Further clarifications stemming from the ESM By-laws on the Managing Director's role and the management board of the ESM have been introduced. Finally, Part II also provides for the rules on the remuneration of members and alternates of the Board of Governors and Board of Directors.

Part III of the Statute of the EMF annexed to the proposed Regulation (Articles 8 to 11) concerns the the authorised capital stock of the EMF and the lending capacity. The lending capacity and the authorised capital stock of the EMF should be fully preserved compared to the current situation in the ESM. The existing possibility to amend the capital stock and lending capacity of the EMF is maintained.

Part IV of the Statute of the EMF annexed to this proposed Regulation (Articles 12 to 21) provides for the principles underlying the stability support operations of the EMF, the procedure for granting financial stability support to EMF Members and the related financial instruments at the disposal of the EMF. These principles and procedures are the same as those provided for in the ESM Treaty with the exception that the EMF will be given a role in negotiating and signing the memorandum of understanding which accompanies the financial

stability support operation. An explicit reference to Article 152 TFEU and the Charter of Fundamental Rights is also enshrined confirming that the Regulation in the context of providing financial stability support to EMF Members does not impinge on the right of collective bargaining and collective action. In addition to the instruments already provided for in the ESM Treaty with respect to the provision of financial stability support to euro area Member States, also integrates the instrument for the direct recapitalisation of credit institutions. This instrument was only created after the entry into force of the ESM Treaty on the basis of the enabling clause provide for in its Article 19.

Part V (Articles 22 to 24) of the Statute annexed to this proposed Regulation concerns the provision of a backstop by the EMF and non euro Member States which participate in the Banking Union. The provision of credit lines and guarantees to the SRB would be a totally new function for the EMF in comparison to the ESM's current objective and tasks. The combined amount of outstanding commitments for backstopping the SRF is subject to a ceiling of EUR 60 000 million. This ceiling can be increased. The Board of Governors in agreement with the non-euro Member States of the Banking Union should adopt the financial terms and conditions of such support to the SRB. To ensure a swift availability, the Managing Director shall be authorised to decide on the drawdown of the credit line or the provision of guarantees on liabilities of the SRB. In case the support is requested in relation to a resolution scheme, the SRB may ask such support before the adoption of the resolution scheme.

Part VI (Articles 25 to 28) of the Statute of the EMF annexed to this proposed Regulation deals with the financial management of the EMF. These provisions mirror those of the ESM Treaty.

Part VII (Articles 29 to 35) of the Statute of the EMF annexed to this proposed Regulation concerns the financial provisions of the EMF. Such rules reflect those of the ESM Treaty and the ESM By-laws. These rules concern the budget of the EMF and its establishment, the annual accounts, the financial statements and the annual report, the internal and external audit function and the role of the Board of Auditors.

Part VIII (Articles 36 to 41) of the Statute of the EMF annexed to this proposed Regulation provides for a number of provisions regarding the location of the EMF and its possibility to arrange for a seat agreement.Moreover, the EMF shall benefit from the privileges and immunities established in Protocol No 7. The current regime of privileges and immunities provided for in the ESM Treaty cannot be maintained for legal reasons. Part VIII also caters for the staff rules applicable to the EMF's staff. Rules regarding the confidentiality and exchange of information should be included. Such rules which differ in nature can also be found back in the By-laws of the ESM.

Part IX (Articles 42 to 44) of the Statute of the EMF annexed to this proposed Regulation provides for the transitional arrangements regarding the payment of new EMF members of their contribution to the authorised capital stock. The provision reflects the one provided for ESM Members in the ESM Treaty with the understanding that the article in this Regulation only applies to new EMF Members which would join once they adopt the euro in the future. The rule on the temporary correction of the capital key provided for in the ESM Treaty will also remain intact in the context of the EMF.

Part X (Articles 45 to 47) of the Statute of the EMF annexed to this proposed Regulation contains a number of provisions regarding transparency. Rules regarding anti-fraud measures, access to documents and language requirements are provided for.

2017/0333 (APP)

Proposal for a

COUNCIL REGULATION

on the establishment of the European Monetary Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Central Bank[22],

Having regard to the consent of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

(1) The unprecedented financial and economic crisis that hit the world and the Union since 2007 seriously threatened financial stability and damaged economic growth, resulting in a strong deterioration in the government deficit and debt position of several Member States, leading a number of them to seek financial assistance within and outside the framework of the Union.

(2) That crisis revealed that the Union lacked sufficiently solid instruments to act swiftly and decisively in response to challenges to its financial stability. Those instruments are essential for the stability of the euro area, its Member States, for its citizens and other economic actors, and are paramount to strengthen confidence in the single currency.

(3) In response to the exceptional situation of a severe deterioration of the borrowing conditions of several Member States, beyond what could be explained by economic fundamentals, threatening the financial stability of the Union, a number of measures were adopted, some of them outside the framework of the Union.

(4) Firstly, a European Financial Stabilisation Mechanism ('EFSM') through which the Union could provide financial assistance to Member States was established in 2010. That mechanism allowed the Union to respond in a coordinated, rapid and active manner to acute difficulties in a particular Member State but with a limited financial capacity and on a purely temporary basis.

(5) Secondly, in 2010, the Member States whose currency is the euro also established among themselves the European Financial Stability Facility ('EFSF'), on a temporary basis. The EFSF has provided financial assistance to Ireland, Portugal and Greece. The assistance was financed by the EFSF through the issuance of bonds and other debt instruments on capital markets. The EFSF does not provide any further financial

[22] OJ C , , p. .

assistance, as this task is currently performed solely by the European Stability Mechanism (‘ESM’).

(6) Thirdly, on 17 December 2010, the European Council agreed on the need for Member States whose currency is the euro to establish a permanent stability mechanism replacing the EFSF for granting possible new financial support.

(7) The ESM was established as an international financial institution by the Treaty establishing the European Stability Mechanism of 2 February 2012, concluded outside the framework of the Union. The ESM assumed the EFSF's task of providing financial assistance to Member States whose currency is the euro and became operational in October 2012.

(8) Over the years, the ESM has proven decisive in helping to preserve the financial stability of the euro area. It has done so by providing additional financial support to euro area Member States in distress. Its transformation into a European Monetary Fund ('EMF') will further strengthen its institutional anchoring. It will help to create new synergies within the EU framework, notably in terms of transparency, efficiency of the EU financial resources and legal review, thus offering a better support to Member States. It will also help improve further cooperation with the Commission and accountability to the European Parliament. This will be done without affecting the way in which national governments are held to account by their own national Parliaments and preserving the ESM commitments.

(9) The integration of the ESM into the Union framework by establishing the EMF also contributes to increasing transparency and accountability in the economic and monetary union (‘EMU’). At the height of the crisis, far-reaching decisions for Member States whose currency is the euro and for their citizens were taken. The pivotal role which the ESM played in providing financial stability subject to strict conditionality justifies its integration into the Union framework so as to ensure more dialogue, mutual trust and greater democratic accountability and legitimacy in the decision-making processes of the Union. The EMF should thus be accountable to the European parliament and to the Council.

(10) To enhance the democratic control by the European Parliament, the EMF should report annually on the execution of its tasks. The Parliament should be entitled to pose oral and written questions and to organise hearings. Given the sensitive nature of the activities of the EMF and their impact on financial markets, it should be possible for the Parliament to organise confidential oral discussions with the EMF's Managing Director on the progress made in relation to the process of providing or implementing financial stability support to an EMF Member as well as with respect to the provision of financial support to the Single Resolution Board (‘SRB’).

(11) For reasons of transparency and democratic control, national Parliaments should have rights to obtain information about the activities of, and to engage in a dialogue with the EMF. The national Parliament of an EMF Member should be able to invite the Managing Director to participate in a discussion in relation to progress made on the implementation of a financial stability support operation in view of the impact of such a measure on the EMF Member concerned. Such an exchange of views could help foster understanding between the EMF and the EMF Member concerned.

(12) The TEU and the TFEU have not provided the necessary powers, in the form of a specific legal basis, to establish a permanent Union body in charge of providing financial support for ensuring the financial stability of the euro area and of the

Member States whose currency is not the euro but which participate in the Banking Union.

(13) In absence of such a specific legal basis, the Council, with the consent of the European Parliament, is allowed to establish an EMF as a measure that is necessary to attain one of the objectives set out in the Treaties within the meaning of Article 352 TFEU.

(14) Given the strong interconnections between Member States whose currency is the euro, severe risks to the financial stability of those Member States could put at risk the financial stability of the euro area as a whole. Therefore, the EMF should provide financial stability support to Member States whose currency is the euro where it is indispensable to safeguard the financial stability of the euro area or its Member States.

(15) Action by the Union is hence necessary to attain the objectives of establishing an economic and monetary union whose currency is the Union in accordance with Article 3(4) TEU, and of securing a sustainable development of Europe based on balanced economic growth and price stability, and a highly competitive social market economy, aiming at full employment and social progress in accordance with Article 3(3) TEU. More concretely, safeguarding the financial stability of the euro area, of the Member States whose currency is the euro, and of the Member States whose currency is not the euro that participate in the Banking Union aims at achieving a deeper, fairer and more resilient economic and monetary union.

(16) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States acting individually but can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU.

(17) The EMF should be established, pursuant to Union law, as a Union body with legal personality.

(18) The EMF should be governed by this Regulation and the Statute of the EMF, which forms an integral part of it. The Statute of the EMF should contain the relevant provisions on the legal status, membership, objectives and tasks of the EMF, its organisation and internal decision-making, the EMF's lending capacity and capital, the rules governing the provision of stability support to Member States whose currency is the euro and the EMF's support to the SRB, the rules related to the EMF's financial provisions and financial management, and the transitional arrangements governing the payment of new EMF Members initial capital and the rules regarding the temporary correction of the EMF contribution key and a number of general provisions.

(19) In order to ensure a seamless continuation of activities and the required legal certainty, the EMF should replace the ESM succeeding it in its legal position, including in all its rights and obligations.

(20) The succession of the EMF to the ESM does not create any new financial obligations for Member States whose currency is the euro as regards their contribution to the authorised capital stock of the EMF, which they have already subscribed.

(21) Given the legal nature of the ESM as an international financial institution based on an international agreement between the Member States whose currency is the euro, the Board of Governors, as the highest decision-making body of the ESM representing the Contracting Parties to the ESM Treaty, should give its prior consent to such succession and transfer of the subscribed capital. The succession should be completed upon the entry into force of this Regulation and the consent of the ESM, whichever is the latest.

(22) All Member States whose currency is the euro and which are currently Contracting Parties to the ESM Treaty should be members of the EMF at the moment of the entry into force of this Regulation. As a consequence of adopting the euro, a Member State should become an EMF Member with full rights and obligations, in line with those of the existing EMF Members.

(23) The rights of a new EMF Member under this Regulation, including voting rights, should be conditional upon subscription of their contribution to the authorised capital stock.

(24) Transitional rules, similar to those provided for in the ESM Treaty, should be enshrined as regards new EMF Members which adopt the euro after the entry into force of this Regulation. It should be possible for those Members to pay-in the contribution to the EMF's capital in instalments. Those new EMF Members whose GDP per capita is below 75 percent of the Union GDP per capita in the year preceding its entry into the EMF should benefit from a temporary correction of the contribution key for paying in capital of the EMF. In such a case, the temporary correction should apply for a period of twelve years.

(25) The stability support provided for by the EMF should be subject to strict policy conditions. Such conditions should be appropriate to the financial assistance instrument chosen.

(26) The policy conditions attached to the financial assistance facility should be defined in a memorandum of understanding ('MoU') and should be fully consistent with any of the measures of economic policy coordination adopted on the basis of the TFEU. A social impact assessment should inform the negotiation of the MoU and guide the follow-up and monitoring of its implementation.

(27) The Single Supervisory Mechanism ('SSM') established by Council Regulation (EU) No 1024/2013[23] and the Single Resolution Mechanism ('SRM') established by Regulation No 806/2014 of the European Parliament and of the Council[24] were created in response to the crisis, as steps towards a Banking Union, to cover the Member States whose currency is the euro and those Member States whose currency is not the euro but choose to participate in the SSM (the 'participating Member States') in accordance with Article 7 of Regulation (EU) No 1024/2013, making them subject to the supervisory powers of the ECB and the resolution powers of the SRB in relation to their credit institutions.

(28) Supervisory control and resolution operations at Union level underpin the establishment of a Banking Union. The EMF should hence provide financial support to the SRB, the central resolution authority established by Regulation No 806/2014 by means of credit lines or guarantees for the tasks which the SRB executes or will execute in relation to credit institutions within the Banking Union.

(29) As part of the creation of the SRM, the Single Resolution Fund ('SRF') was established. It is financed by bank contributions raised at national level and pooled at Union level. Pursuant to Article 74 of Regulation No 806/2014, the SRB can contract

[23] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

[24] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

for the SRF public financial arrangements of additional financial means to be used where the ex-ante and ex-post contributions are not sufficient to meet the Funds' obligations.

(30) The EMF should have sufficient financial means to carry out its duties effectively. Given the Union's limited own resources, EMF Members should provide the necessary means in exchange for the rights provided in this Regulation. This should be reflected in appropriate governance arrangements and voting rules ensuring Members' sufficient oversight over the use of the funds that they provide.

(31) In view of the EMF's specific financial structure, the voting rights of each EMF Member should reflect the weight of their individual financial contribution to the EMF. The decision making within the EMF's governance bodies should therefore take place in accordance with voting rules that build upon those already existing in the ESM Treaty, to ensure to the largest extent possible a continuity of existing voting practice.

(32) Insofar as Member States whose currency is not the euro participate in the Banking Union, their representatives should participate in the meetings of the Board of Governors for any discussions as regards the use of credit lines or guarantees in support of the SRB.

(33) The Board of Governors and the Board of Directors should be able to establish permanent or ad hoc committees or subsidiary bodies as they consider necessary or appropriate to advise or otherwise assist them or the Managing Director in the performance of their respective duties. Rules on their tasks, composition and operation should be defined internally. Such committees or subsidiary bodies should not have any decision-making powers.

(34) Following established case-law, decisions taken within the framework of the EMF relating to economic policy and involving a considerable degree of discretion should only be taken with approval and under the responsibility of the Union institutions. In line with the powers enshrined in the Treaties for the coordination of the economic policies of the Member States and with other acts of secondary Union law, the power to approve such decisions pursuant to Article 291 TFEU should be conferred upon the Council.

(35) As regards the instruments aimed at granting stability support to EMF Members, the present Regulation is adopted pursuant to Article 352 TFEU as a necessary measure complementing the powers laid down by the Treaty provisions specific to Member States whose currency is the euro (Articles 136 to 138 TFEU). According to those provisions, for Council measures only the members representing Member States whose currency is the euro take part in the vote. For those instruments, this Regulation exclusively concerns the use of resources made available by the Member States whose currency is the euro for the sole benefit of those Member States, with a view to guaranteeing stability in the euro area. In consequence, for decisions of the Council to approve the acts referred to in the previous recital the votes of non-euro area Member States should be suspended and only members of the Council representing Member States whose currency is the euro should take part in the vote.

(36) An emergency procedure should be established for the Council to endorse or object to decisions of the EMF governing bodies where the urgent provision of financial stability support to EMF Members is required. In such a case, the Chairperson of the Board of Governors should be able to request the Council to endorse or object to a

decision within 24 hours from the transmission of the decision. The emergency procedure could be used for the approval of the financial terms and conditions and the financial assistance facility agreements regarding support to the SRB by means of credit lines or guarantees of the EMF.

(37) The Board of Governors should be entitled to adopt Rules of Procedure governing the practical aspects of the EMF's operations. Those Rules of Procedure should replace the ESM By-laws and the rules of procedure of the Board of Governors and Board of Directors.

(38) The lending capacity of the EMF should be no less than EUR 500 000 million. That amount reflects the current lending capacity of the ESM. The Board of Governors should be able to increase the lending capacity, if it deems that such a review is appropriate for enabling the EMF to pursue its objectives and related tasks. Since such a decision has a significant financial impact for EMF Members, it should be taken unanimously by the Board of Governors. In duly justified exceptional cases, the Board of Governors may also provisionally decrease the lending capacity if this is needed to ensure the ability of the EMF to fulfil its functions.

(39) At inception, the EMF's initial authorised capital stock should reflect the authorised capital stock of the ESM. Member States whose currency is the euro should be the sole subscribers of the EMF's authorised capital stock, which should amount to EUR 704 798.7 million, to be divided in equal shares. The liability of an EMF Member should be limited to its portion of the authorised capital stock. EMF Members should not be liable for the obligations of the EMF. The Union budget should not be liable for expenses or losses of the EMF.

(40) The Board of Governors should be able to increase the capital of the initial authorised capital stock if it deems such an increase appropriate for enabling the EMF to pursue its objectives and tasks. The ensuing capital and shares between the EMF Members should be published in the Official Journal of the European Union.

(41) Like the ESM, the EMF should provide stability support to its Members when their regular access to market financing is impaired or is at risk of being impaired.

(42) The EMF should be involved in the negotiation and signing of the MoU in view of the importance of the conditionality attached to the financial assistance for contributing to ensuring the repayment of EMF financial assistance.

(43) The range of financial instruments currently available for the ESM should also be available for the EMF, including the possibility to provide precautionary financial assistance, financial assistance for the recapitalisation of credit institutions in an EMF Member, the direct recapitalisation of credit institutions in an EMF Member, the provision of loans, and the purchasing bonds of an EMF Member on the primary and secondary markets.

(44) The objective of financial stability support in the form of precautionary financial assistance is to support sound policies and prevent crisis situations, allowing EMF Members the possibility to access EMF assistance before they face major difficulties raising funds in the capital markets. Precautionary financial assistance aims at helping EMF 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.

(45) Financial assistance to EMF Members in the form of a loan to recapitalise beneficiary credit institutions should address cases where financial or economic distress is linked

to the financial sector and not directly related to fiscal or structural policies. Therefore, financial assistance for the purpose of recapitalising financial institutions should be granted to an EMF Member outside the framework of a macroeconomic adjustment programme.

(46) The instrument of direct recapitalisation of credit institutions aims at preserving the financial stability of the euro area as a whole and of its Member States by catering for those specific cases in which an EMF Member experiences severe difficulties with its financial sector that cannot be remedied without significantly endangering its fiscal sustainability due to a severe risk of contagion from the financial sector to the sovereign. The use of that instrument could also be considered if other alternatives would have the effect of endangering the continuous market access of an EMF Member. As far as the use of the instrument of an EMF loan for the recapitalisation of financial institutions is not possible, such financial assistance seeks to help remove the risk of contagion from the financial sector to the sovereign by allowing for the direct recapitalisation of institutions, thereby reducing the risks of a vicious circle between a fragile financial sector and a deteriorating creditworthiness of the sovereign.

(47) There should be financial stability support in the form of loans to assist EMF 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 only provide financing at excessive prices that would adversely impact the sustainability of public finances.

(48) In the same way as ESM loans, future EMF loans and outstanding ESM loans should enjoy preferred creditor status in a similar fashion to those of the International Monetary Fund ('IMF'). However, they should rank second after IMF loans. That status should be effective as of the date of entry into force of this Regulation.

(49) In order for EMF Members to maintain or restore their market access, the EMF should be able to engage in purchases on the primary market of bonds or other debt securities issued by EMF Members under the primary market support facility, in addition to regular loans under a macroeconomic adjustment programme or to draw-downs of funds under the precautionary financial assistance instrument.

(50) The EMF should be able to buy bonds of an EMF Member on the secondary market. The secondary market support facility should aim at supporting the good functioning of the government debt markets of EMF 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 EMF Member concerned. An EMF secondary market intervention should enable market making that would ensure some debt market liquidity and incentivise investors to further participate in the financing of EMF Members.

(51) The Member States whose currency is the euro should support equivalent creditor status of the EMF and that of other Member States lending bilaterally in coordination with the EMF.

(52) This Regulation should not affect the commitment agreed between the Contracting Parties to the Treaty establishing the ESM pursuant to Article 12(3) of that Treaty, namely that collective action clauses must be included in all new euro area government securities, with a maturity above one year, in a way which ensures that their legal impact is identical.

(53) Support to the SRB, through credit lines or guarantees, should be made available in situations where the amounts raised under Article 70 of Regulation (EU) No 806/2014 are not sufficient to cover the losses, costs or other expenses incurred by the use of the SRF in relation to resolution actions and where the extraordinary ex-post contributions provided for in Article 71 of Regulation (EU) No 806/2014 are not immediately accessible.

(54) In order to ensure appropriate equivalent treatment within the Banking Union, participating Member States whose currency is not the euro should offer to the SRB, in parallel to the EMF, credit lines or guarantees on equivalent terms and conditions as those of the EMF.

(55) Other Member States whose currency is not the euro should provide for credit lines or guarantees when notifying to the other Member States, the Commission, the ECB, and European Banking Authority the request to enter into a close cooperation with the ECB in relation to the exercise of tasks conferred to it pursuant to Council Regulation (EU) No 1024/2013, subject to the adoption of the ECB decision.

(56) From 1 January 2024 the resources in the SRF will be fully mutualised. From that date, Regulation (EU) No 806/2014 stipulates that banks in all Member States participating in the Banking Union are to contribute to the SRF and provide extraordinary ex post contributions to repay borrowings from third parties, in line with a key established on the basis of their size and risk profile. As the support to the SRB is intended to complement the SRF's resources, the same key, applied to the level of the Member States whose currency is not the euro participating in the Banking Union and the EMF should be the basis for determining their respective participation in the support to be provided.

(57) The Board of Governors should adopt the applicable financial terms and conditions for the set-up of the backstop by the EMF. With a view to ensuring their appropriate involvement, the EMF and the participating Member States whose currency is not the euro should agree to the financial terms and conditions attached to the credit lines or guarantees to be provided to the SRB as well as the overall ceiling applicable, which should be revised proportionally when a Member State whose currency is not the euro joins the Banking Union.

(58) The Managing Director should have the authority to decide, within 12 hours from the reception of the SRB's request, on the drawdown of the credit line or the provision of guarantees on the liabilities of the SRB.

(59) In order to ensure the immediate availability of additional financial means to the SRF, the SRB should be able to issue a request for support prior to the adoption of a specific resolution scheme. That should be done in consultation with the Commission, in accordance with the procedure under Article 18 of Regulation (EU) No 806/2014. For decisions related to resolution schemes, the decision of the Managing Director should take effect only once a resolution scheme enters into force in accordance with Article 18 of that Regulation. The sequencing of the request and of the decision should not add to the existing timeline of the resolution procedure as established in Article 18 of Regulation (EU) No 806/2014.

(60) The Managing Director's decision regarding disbursement of funds or the granting of guarantees should only be contingent on the SRB conducting its activities pursuant to Regulation (EU) 806/2014, including the applicable bail-in rules. No further conditions should apply.

(61) In order to ensure that the EMF continues to be able to provide financial support to its Members when needed, the amount available for the purposes of support to the SRB should be subject to a ceiling of EUR 60 000 million. However, the EMF should be able to respond flexibly to unforeseen funding needs arising from resolution operations. Therefore, the Board of Governors should have the power to increase the ceiling accordingly.

(62) Any financial support provided to the SRB by the EMF and any financial support being provided by participating Member States whose currency is not the euro should be fully repaid by the SRB from its own resources, including contributions from the industry.

(63) Appropriate rules should be laid down as regards the budget of the EMF and the internal and external audit of its accounts. The EMF's financial statements and accounts should be audited and certified by independent external auditors since the EMF's is an actor in the financial markets. In addition, there should be an independent Board of Auditors which tasks should be to inspect and audit the EMF's accounts, and ensure compliance, performance and correct risk management of the EMF. It should also monitor and review the EMF's internal and external audit review processes.

(64) The powers of the independent external auditors and the Board of Auditors are without prejudice to the powers of the European Court of Auditors pursuant to Article 287 TFEU.

(65) Protocol No 7 on the Privileges and Immunities of the European Union annexed to the TEU and the TFUE should be applicable to the EMF. The Chairperson of the Board of Governors and in particular the Governors, alternate Governors, the Directors, and alternate Directors should, as representatives of EMF Members, enjoy the privileges and immunities granted by virtue of Article 10 of that Protocol.

(66) To enable the EMF to fulfil the tasks currently performed by the ESM as well as its new tasks, transitional measures should be laid down, in particular with regard to the Managing Director, the Management Board and staff which are currently employed under a contract with the ESM. This should also include nationals of third countries which are currently employed by the ESM. The existing contractual arrangements should continue to apply to staff employed by the ESM before the entry into force of this Regulation. Staff joining the EMF, after the entry force of this Regulation, shall be subject to the Staff Regulations, the Conditions of Employment of Other Servants and the rules of application.

(67) In order to preserve the confidentiality of the work of the EMF, the members of its governing bodies and its staff, including the staff exchanged with or seconded by EMF Members for the purpose of carrying out the EMF's tasks, should be subject to requirements of professional secrecy, even after their duties have ceased. A code of conduct should be established in that respect.

(68) The obligation of confidentiality should also apply to observers invited to attend the meetings of the Board of Governors and to participants in such meetings of participating Member States whose currency is not the euro. For the purpose of performing the tasks conferred to it by this Regulation, the EMF should be authorised, subject to conditions, to exchange information with its Members, other Union authorities and bodies as well as with certain national authorities.

(69) For the purpose of fulfilling its objectives, the EMF should cooperate with Union institutions and other bodies, offices or agencies as well as with third States which

provide financial assistance to an EMF Member. The EMF should also be entitled to cooperate with international organisations or entities having special responsibilities in fields related to the EMF's activities. This includes amongst others, the IMF and central banks.

(70) The EMF should be subject to the Union rules on public access to documents. When assessing the grounds for refusing access to a document set out in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council[25], the EMF should duly take into account the need to protect the confidentiality of the proceedings of the Board of Governors, the Board of Directors, any of their respective committees, the Management Board and the Board of Auditors, the internal finances of the EMF and the stability of the financial system in the euro area, of an EMF Member, or of a participating Member State as defined by Article 2 of Council Regulation (EU) No 1024/2013, and also of the international, financial, monetary or economic relations.

(71) In the future, the EMF could also be conferred new financial instruments, e.g. to support policy initiatives related to the establishment of a stabilisation function. A stabilisation function is intended to attenuate the effects of large asymmetric shocks. To this effect, it would rapidly activate countercyclical resources in an automatic way, subject to eligibility criteria defined in advance. The EMF could support the implementation of such a function by means of organising and making available any necessary market financing associated with the triggering of the function.

(72) A possible form of such support by the EMF to a stabilisation function would be that upon activation the EMF would provide loans to the beneficiary EMF Member. The loans provided by the EMF could be provided without conditionality while the activation of the stabilisation function itself would be made subject to the adherence of pre-defined eligibility criteria,

HAS ADOPTED THIS REGULATION:

PART I

THE EUROPEAN MONETARY FUND

Article 1

Establishment

1. This Regulation establishes the European Monetary Fund ("EMF").

2. The Statute of the EMF is set out in the Annex to this Regulation and forms an integral part thereof.

Article 2

Succession to and replacement of the European Stability Mechanism

1. The EMF shall succeed to and replace the European Stability Mechanism ("ESM"), including its legal position and assuming all its rights and obligations. The process shall be

[25] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

completed upon the entry into force of this Regulation or upon the consent of the ESM, whichever is the latest.
2. All existing appointments and mandates in the ESM shall be maintained for the remaining period of their terms of office, within the framework of the EMF.

PART II

ROLE OF THE COUNCIL AND ACCOUNTABILITY

Title I

Role of the Council

Article 3

Role of the Council

1. Decisions taken by the Board of Governors pursuant to Article 8(6), Article 9(1), Article 10, Article 11(4), Article 11(5), Article 11(6), Article 13(2), Article 13(4), Article 14(1), Article 14(2), Article 15(1), Article 15(2), Article 19(1), Article 19(4), Article 16(1), Article 16(2), Article 17(1), Article 17(2), Article 18(1), Article 18(3), Article 22(4), Article 22(5), and Article 23(1) of the Statute of the EMF, decisions taken by the Board of Governors regarding financial assistance facility agreements pursuant to Article 13(3) of the Statute of the EMF, and decisions taken by the Board of Directors pursuant to Article 9(2), Article 14(4), Article 15(4), Article 19(5), Article 16(4), Article 17(4), Article 18(5), and Article 23(3) of the Statute of the EMF, shall be transmitted to the Council immediately after their adoption, together with the reasons on which they are based. They may enter into force only if they are approved by the Council.

2. Where circumstances require the urgent provision of stability support to an EMF Member in accordance with Article 16, decisions may be taken by an emergency procedure. In such an event, the decision taken by the Board of Governors or the Board of Directors shall be transmitted to the Council immediately after its adoption together with the reasons on which it is based. Upon request of the Chairperson, the Council shall discuss the decision, within 24 hours of its transmission. The Council may object to the decision. In the event of an objection, the Council may itself adopt another decision on the matter, or refer the matter back to the Board of Governors for another decision.

The emergency procedure may also be used by the Board of Governors for the decision pursuant to Article 22(4) and (5), and Article 23(1).

3. The Council shall provide reasons for the exercise of its powers referred to in paragraph 1 where it does not approve a decision or the exercise of its powers referred to in paragraph 2 where it objects to a decision. Any new decision that the Board of Governors or the Board of Directors may take on the same subject matter shall respect the reasons given by the Council.

4. Where the Council acts in accordance with paragraphs 1 or 2, and with the exception of decisions taken pursuant to Article 22 to 23 of this Statute, the votes of members of the Council representing Member States whose currency is not the euro shall be suspended. A qualified majority shall be defined in accordance with Article 238(3) TFEU. The Chairperson of the Board of the Governors may attend the meetings of the Council.

Article 4

Publication

Decisions taken by the Board of Governors and approved by the Council pursuant to Article 3(1) shall be published in the *Official Journal of the European Union*.

Title II

Accountability

Article 5

Accountability towards the European Parliament and the Council

1. The EMF shall be accountable to the European Parliament and to the Council for the execution of its tasks.

2. The EMF shall submit on an annual basis to the European Parliament, to the Council, and to the Commission a report on the execution of its tasks, together with its annual accounts and its financial statement. The Managing Director shall present those documents to the European Parliament and to the Council, both of which may hold a general debate on that basis.

3. The Managing Director may, at the request of the European Parliament or on his or her own initiative, be heard by the competent committees of the European Parliament on the execution of the EMF's tasks.

4. The EMF shall reply orally or in writing to questions put to it by the European Parliament or by the Council in accordance with the EMF's own procedures.

5. Upon request, the Managing Director shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committees of the European Parliament concerning its tasks, including the social impact assessment, the implementation of financial stability support and the provision of credit lines or setting of guarantees in support of the SRB. An agreement shall be concluded between the European Parliament and the EMF outlining detailed arrangements for organising such discussions, with a view to ensuring full confidentiality.

Article 6

Accountability towards National Parliaments

1. When submitting the report provided for in Article 5(2), the EMF shall simultaneously forward it directly to the national Parliaments of the EMF Members and of the participating Member States as defined in Article 2 of Regulation (EU) No 1024/2013. National Parliaments may address their reasoned observations on that report to the EMF.

2. National Parliaments of the Member States referred to in paragraph 1 may request the EMF to reply in writing to any observations or questions submitted by them to the EMF in respect of the tasks of the EMF.

3. The national Parliament of an EMF Member may invite the Managing Director to participate in an exchange of views in relation to the progress made regarding the implementation of the financial stability support.

PART III

FINAL PROVISIONS

Article 7

References in Union law

References to the European Stability Mechanism or ESM in acts of Union law shall be construed as references to the European Monetary Fund or EMF.

Article 8

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President