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Draft resolution granting the backstop facility and determining the key financial terms and conditions thereof and for the termination of the backstop facility

THE BOARD OF GOVERNORS,

Having regard to Article 18a(1) of the ESM Treaty, specifying that the Board of Governors may decide to grant the backstop facility and shall determine the key financial terms and conditions of the backstop facility and the conditions upon which it may decide to terminate the facility,

Having regard to the Board of Governors' Resolution No. [●] on [●]/[●]/20[●●] (SG/BoG:[●]/[●]/20[●●]) setting the nominal cap for the backstop facility at €68 billion,

Having regard to the request of the SRB dated [●]/[●]/20[●●] and the proposal by the Managing Director attached to this resolution,

Recalling that the detailed financial terms and conditions shall be specified in a backstop facility agreement with the SRB, to be approved by the Board of Directors by mutual agreement and signed by the Managing Director,

RESOLVES, pursuant to Article 18a(1) of the ESM Treaty, to grant a backstop facility to the SRB covering all possible uses of the SRF as enshrined in European Union law, **[with effect from 1 January 2022,]**¹

DETERMINES, pursuant to Article 18a(1) of the ESM Treaty, the key financial terms and conditions of the backstop facility as follows:

1. The maximum amount of the backstop facility is at all times equal to or lower than the nominal cap.
2. The initial availability period of the backstop facility is ten years. It will be extended automatically for further ten-year periods, unless the SRB or the ESM notifies the other party, within a reasonable notice period determined in the backstop facility agreement, that it does not wish for the backstop facility to be renewed. For the ESM, such notification shall follow a decision of the Board of Governors by mutual agreement to terminate the backstop facility pursuant to a comprehensive review.

¹ The square brackets will be deleted (and the text will be kept) if the BoG resolution is adopted before 1 January 2022. The entire text in square brackets will be deleted if the BoG resolution is adopted on or after 1 January 2022.



3. Maturities of loans
 - a) The maturities of loans provided under the backstop facility shall be set by the Board of Directors or the Managing Director upon delegation by the Board of Directors on the occasion of approval of the loan and disbursement pursuant to Article 18a(5) of the ESM Treaty. As a rule, the loans provided under the backstop facility shall have an initial maturity of 3 years.
 - b) The Board of Directors may by mutual agreement extend the maturity determined pursuant to paragraph a) by a maximum of 2 years, upon a request by the SRB including updated information on projected inflows and outflows of the SRF.
 - c) By way of derogation from paragraph a), the Board of Directors or the Managing Director, as the case may be, may decide by mutual agreement that the initial maturity may be 5 years in case of a threat to financial stability of the Banking Union, as assessed and confirmed by the SRB in the request for the loan under the backstop facility.
 - d) In case the ESM provides loans to the SRB for the purposes of liquidity support from the SRF, the initial maturity shall be 12 months unless the Board of Directors decides differently by mutual agreement. The SRB undertakes on a best-endeavour basis towards the ESM to repay the loan within a period of 6 months in line with the adopted resolution scheme. If the loan to the SRB cannot be repaid within the initial maturity, the Board of Directors shall decide by mutual agreement whether to extend the initial maturity of the loan to the SRB by another 6 months each time based on the information provided by the SRB. If the loan cannot be repaid by the SRB within 12 (or such other initial maturity as agreed) or 6 months, as applicable, the SRB shall justify it to the Board of Directors and inform about the SRB's assessment of the Institution's solvency position and the expected recovery of the liquidity support injected, and include an updated repayment capacity assessment. In case there is no extension of the initial maturity, the Board of Directors shall decide on a remedy plan to be agreed with the SRB to ensure full repayment in line with paragraphs a), b) and c) above.
4. Disbursements under the backstop facility may be made in cash or in kind, as requested by the SRB and as available for the ESM.
5. The pricing of the backstop facility shall be detailed in the backstop facility agreement in line with the Pricing Policy, including but not limited to the following elements:
 - a) A margin of 35 basis points on outstanding amounts shall apply during the first three years of each loan, a margin of 50 basis points shall apply on outstanding amounts thereafter.
 - b) In case the ESM provides loans to the SRB for the purposes of liquidity support from the SRF, the margin paid by SRB on outstanding amounts that finance liquidity shall be 35 bps during the first six months and is thereafter increased by 15 bps every three months (the "Step-up Margin for Liquidity"). The Board of Directors may, by mutual agreement, waive the Step-up Margin for Liquidity, in part or in full.



- c) The service fee shall cover the ESM's operating costs in providing the backstop facility to the SRB, and amount to (i) € 570.000,- per year as SRB Annual Service Fee component and (ii) € 570.000,- per year as SRB Additional Service Fee component.
 - d) The Commitment Fee will accrue on prefunded cash amounts, as well as on outstanding loan amounts irrespective of their funding source. The Commitment Fee covers the net costs incurred by raising funds before disbursement to the SRB and of refinancing maturing funding instruments.
6. The backstop facility shall include appropriate safeguards, including acceleration rights for the ESM in case of events of default and undertakings to pledge by the SRB in favour of the ESM.

RESOLVES, pursuant to Article 5(6)(m) of the ESM Treaty, to delegate to the Board of Directors the competence to decide on adjustments of the maximum amount of the backstop facility within the limit established by the nominal cap for the backstop facility, so as to align the maximum amount (i) after the end of the transitional period (which ends, at the latest, on 31 December 2023), with the euro area pro-rata share of ex-ante contributions to the target level of the SRF or (ii) during the transitional period, with the euro area pro-rata share of ex-ante contributions to the actual level of the SRF (as increased each year with the collection of ex-ante contributions), not taking into account possible disbursements from the SRF.

Annex 1: Request of the SRB dated [●]/[●]/20[●●]

Annex 2: Proposal by the Managing Director for a backstop facility agreement