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European Stability Mechanism Guideline on Loans

Article 1

Aim

1. The objective of loans is to assist ESM 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 provide financing only at excessive prices that would adversely impact the sustainability of public finances. In order to ensure a return to full market financing and a sustainable economic and financial situation, all loans shall be subject to a macroeconomic adjustment programme. Such stability support shall include appropriate conditionality prepared in agreement with both (i) the Managing Director and (ii) the European Commission in liaison with the European Central Bank (ECB), together and, wherever possible, also together with the IMF.¹ The macroeconomic adjustment programme must have been approved by the Council, according to procedures established in European Union (EU) law.
2. The collaboration between the European Commission and the MD whenever the ESM Treaty or this guideline confers tasks to both of them shall follow the modalities in the Memorandum of Cooperation.

Article 2

Procedure

1. An ESM Member may address a request for stability support to the Chairperson of the Board of Governors.² Such a request shall indicate whether a loan is to be considered as the financial assistance instrument to be used. On receipt of such a request, both (i) the Managing Director and (ii) the European Commission in liaison with the ECB, shall be entrusted by the Chairperson of the Board of Governors to together discharge the following tasks:
 - (a) to assess the existence of a risk to the financial stability of the euro area as a whole or of its Member States;
 - (b) to assess whether public debt is sustainable and whether stability support can be repaid. This assessment shall be conducted in a transparent and predictable manner while allowing for sufficient margin of judgment. Wherever appropriate and possible, such an assessment is expected to be conducted together with the IMF;
 - (c) to assess the actual or potential financing needs of the ESM Member concerned.

¹ Loans for the purpose of re-capitalising financial institutions are treated in a separate guideline.

² This should be done taking into account Recital 8 of the ESM Treaty.



2. On the basis of the request of the ESM Member, the assessments referred to in paragraph 1 of this Article and a proposal by the Managing Director based on those assessments and taking into account the financial situation of the ESM, the Board of Governors may decide whether to grant, in principle, stability support to the ESM Member concerned in the form of a loan in accordance with Article 13(2) of the ESM Treaty.
3. If a decision is adopted pursuant to paragraph 2 of this Article, the Board of Governors shall, in accordance with Article 13(3) of the ESM Treaty, entrust:
 - (a) (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together and, wherever possible, also together with the IMF, with the task of negotiating, with the ESM Member concerned, a memorandum of understanding (an MoU) detailing the policy conditions attached to the loan. The content of the MoU shall reflect the severity of the weaknesses to be addressed and the fact that the financial instrument chosen is a loan. It shall include the details of the macroeconomic adjustment programme and the policy conditions to be applied to the support and implemented in the beneficiary ESM Member. Where bank re-capitalisation is conducted using a portion of the loan, the provisions applicable therein should be in keeping with the monitoring, general principles of State-aid and involvement of the relevant competent authorities and bodies, as laid out in the Guideline on Financial Assistance for the Re-capitalisation of Financial Institutions.
 - (b) The Managing Director, with the task of preparing a proposal for a financial assistance facility agreement (FFA), including the financial terms and conditions of the loan, to be adopted by the Board of Governors.
4. The MoU shall be signed on behalf of the ESM by the European Commission and the Managing Director, subject to prior compliance with the conditions set out in Article 13(3) of the ESM Treaty and approval by the Board of Governors. The Managing Director shall sign the FFA, subject to approval by the Board of Directors.
5. The Board of Directors shall decide by mutual agreement, on a proposal from the Managing Director and after having received a report from the Managing Director and the European Commission in accordance with Article 13(7) of the ESM Treaty, the disbursement of the tranches of the loan subsequent to the first tranche.

Article 3

Disbursement of loans

1. Loans shall be provided in one or more tranches, which may each consist of one or more disbursements.
2. The disbursement of the first tranche of the loan shall be decided by the Board of Directors together with the approval of the FFA, in line with Article 13(5) of the ESM Treaty.
3. On a proposal from the Managing Director and after having received a report from (i) the Managing Director and (ii) the European Commission in liaison with the ECB on the monitoring of and compliance by the beneficiary ESM Member with the policy conditionality attached to the financial assistance facility – in line with Articles 13(7), and 16(5) of the ESM Treaty – the Board of Directors shall decide to disburse tranches of the financial assistance subsequent to the first tranche. The proposal of the Managing Director shall remain consistent with the aforementioned report and take into account the financial situation of the ESM. The Managing Director shall immediately inform the European Commission of a request for funds.



4. When the FFA foresees that possibility, a disbursement of tranches may be made partially or entirely through primary market purchases, in line with the Primary Market Purchase Guideline adopted by the Board of Directors.

Article 4 ***Monitoring***

1. Both (i) the Managing Director and (ii) the European Commission in liaison with the ECB, together and, wherever possible, also together with the IMF, shall be entrusted with monitoring compliance with the policy conditionality attached to the financial assistance facility.
2. The beneficiary ESM Member shall give the European Commission, as well as the ECB, the ESM, and where appropriate the IMF, its full cooperation. It shall, in particular, provide to both (i) the Managing Director and (ii) the European Commission in liaison with the ECB, all the information that they deem necessary for the monitoring of the policy conditionality as agreed in the MoU; it shall also provide the ESM all information the ESM deems necessary to conduct its financial due diligence.
3. If the applicable monitoring highlights significant deviations from the policy conditions attached to the loan instrument, the Board of Governors, acting on a joint proposal from the (i) Managing Director and (ii) the European Commission in liaison with the ECB, may decide that the beneficiary ESM Member does not comply with the policy conditionality. Disbursements of a tranche shall stop until the Board of Governors decides to re-authorise them, at which time the standard procedure laid down in Article 3(3) above shall again be applicable.

Article 5 ***Warning system***

The ESM shall establish an appropriate warning system, in accordance with Article 13(6) of the ESM Treaty, to ensure that the ESM receives any repayments due by the ESM Member under the stability support in a timely manner.