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GENERAL TERMS

1. INTRODUCTORY PROVISIONS

These General Terms set out the terms and conditions generally applicable to all Financial Assistance Facility Agreements and, subject to Clauses 1.1 to 1.3 of these General Terms, shall form an integral part of the Agreement.

- 1.1 These General Terms may be varied, supplemented or replaced by specific terms and conditions which are set out in the relevant Financial Assistance Facility Agreement and Facility Specific Terms.
- 1.2 In case of any inconsistency or conflict:
 - (a) the terms and conditions set out in a Financial Assistance Facility Agreement shall prevail over the terms and conditions set out in these General Terms and any applicable Facility Specific Terms; and
 - (b) the terms and conditions set out in any applicable Facility Specific Terms shall prevail over the terms and conditions set out in these General Terms.
- 1.3 If the Board of Directors of ESM adopts new General Terms or adopts any amendments to these terms, these shall not be incorporated automatically into existing Financial Assistance Facility Agreements. If ESM and each of the Parties to the Financial Assistance Facility Agreement intend to incorporate into an existing Financial Assistance Facility Agreement the new or amended General Terms, this shall be effected by an amendment in writing to the relevant Financial Assistance Facility Agreement entered into pursuant to Clause 4 of the Financial Assistance Facility Agreement (following the receipt of all approvals required under the ESM Treaty to authorise such amendment).

2. DEFINITIONS AND INTERPRETATION

- 2.1 Capitalised terms shall, unless otherwise specified in the Financial Assistance Facility Agreement or in relation to a Facility in the relevant Facility Specific Terms, have the meanings set out below:

"Acceptance Notice" means, in relation to a Facility, ESM's written notice to the Beneficiary Member State substantially in the form of Schedule 4 setting out the amount and the provisional financial terms of the Financial Assistance under the relevant Tranche or Disbursement that ESM is willing to extend to the Beneficiary Member State under the Agreement or, in the case of Financial Assistance provided under a DRI Facility, the financial terms of the relevant Financial

Assistance made available to a DRI Beneficiary under this Agreement.

"Affiliate Investment Entity" means, in accordance with Article 13 of the DRI Guideline, a sub-entity established by ESM upon approval by the Board of Governors, dedicated to the financing, implementation, and ownership of the capital instruments related to the recapitalisation of a DRI Beneficiary in accordance with the provisions of the DRI Guideline in order to facilitate the participation of the private sector, which to this effect may participate in the dedicated vehicles or funds.

"Aggregate DRI Facility Amount" where applicable, has the meaning given to such term in the Financial Assistance Facility Agreement.

"Aggregate ECCL Facility Amount" where applicable, has the meaning given to such term in the Financial Assistance Facility Agreement.

"Aggregate Financial Assistance Amount" has the meaning given to such term in the Financial Assistance Facility Agreement.

"Aggregate Financial Institution Recapitalisation Facility Amount" where applicable, has the meaning given to such term in the Financial Assistance Facility Agreement.

"Aggregate Loan Facility Amount" where applicable, has the meaning given to such term in the Financial Assistance Facility Agreement.

"Aggregate PCCL Facility Amount" where applicable, has the meaning given to such term in the Financial Assistance Facility Agreement.

"Agreement" means the relevant Financial Assistance Facility Agreement, these General Terms (as varied, supplemented or replaced by the terms of the Financial Assistance Facility Agreement and/or the applicable Facility Specific Terms), the applicable Facility Specific Terms (as varied, supplemented or replaced by the terms of the Financial Assistance Facility Agreement), each Request for Funds, Acceptance Notice and Confirmation Notice issued under that Financial Assistance Facility Agreement, all preambles and schedules to each of the foregoing including any Pre-Funding Agreement, and any other document which is designated as forming part of the Agreement.

"AMC" means an asset management company, bridge institution, transitional credit institution, transitional financial institution or other transitional entity which is created for the purpose of acquiring assets from an institution under a national regulatory framework for institutions experiencing financial difficulties.

"**Applicable Facilities**" means the Facilities designated as such in the relevant Financial Assistance Facility Agreement.

"**Availability Period**" means, in relation to a Facility, the period specified in relation to that Facility in the Financial Assistance Facility Agreement.

"**Availability Period Termination Date**" has, where applicable, in relation to a Facility, the meaning given to such term in the Financial Assistance Facility Agreement.

"**Average Maturity**" means, in relation to any Facility, the weighted average maturity of all the Disbursements made available under such Facility where the maturity of each Disbursement is determined by reference to its final scheduled repayment date (for Disbursements where the principal is repaid in full in one single payment at its maturity) or the scheduled amortisations of Financial Assistance (or Disbursements thereof) (for any Disbursements the principal of which is repayable in scheduled instalments).

"**Back-to-Back Financed Financial Assistance**" means any Tranche or Disbursement of Financial Assistance which is financed by a dedicated issue or issues of Funding Instruments (including any Tranche or Disbursement which has been disbursed by ESM in the form of delivery *in specie* of ESM Debt Securities).

"**Beneficiary Member State**" has the meaning given to such term in the Financial Assistance Facility Agreement.

"**Board of Directors**" means the board of directors of ESM established pursuant to the ESM Treaty.

"**Board of Governors**" means the board of governors of ESM established pursuant to the ESM Treaty.

"**Bond Interest Amount**" means, in respect of a Bond Interest Payment Date, the aggregate interest amount for such Bond Interest Payment Date received by ESM in respect of Purchased Bonds held by ESM or, in the case of a sale of Purchased Bonds, the portion of the net sale proceeds which corresponds to accrued interest on the Purchased Bonds.

"**Bond Interest Payment Date**" means, in relation to Purchased Bonds, each date on which payment of interest under such Purchased Bonds is or is scheduled to be received by ESM acting as bondholder and each date on which ESM receives sale proceeds of Purchased

Bonds which include an amount corresponding to accrued interest on the Purchased Bonds.

"**Bond Interest Period**" means each interest period by reference to which interest is calculated in relation to a series of Purchased Bonds (including in the case of sale of Purchased Bonds the period from the last interest payment date to the date of sale).

"**BRRD**" means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"**Business Day**" means a day on which the TARGET2 payment system is open for business.

"**Calculation Date**" in relation to each PMP Operation or SMP Operation shall be the date or dates specified in the relevant Confirmation Notice.

"**Capital Instruments**" means the common shares, contingent convertibles or such other instruments which qualify as regulatory capital of an Institution or which constitute comparable instruments of an AMC, in each case as ESM may in its absolute discretion approve, and which are (i) issued to and acquired by the Beneficiary Member State or the Recapitalisation Fund from certain Institutions or AMCs in consideration for payments made out of the proceeds of Financial Assistance provided under the Agreement or (ii) in the case of a DRI Facility, issued by a DRI Beneficiary and acquired by ESM.

"**Central Bank**" has the meaning given to such term in the Financial Assistance Facility Agreement.

"**Chairperson**" means the chairperson of the Board of Governors appointed pursuant to the ESM Treaty.

"**Co-Investment Agreement**" means, in relation to a DRI Beneficiary and the related DRI Facility, the agreement (if any) entered into between ESM and the relevant Beneficiary Member State and other investors in such DRI Beneficiary, which may include provisions on all or some of the following: (i) commitment(s) of the Beneficiary Member State and other investors (if any) to acquire Capital Instruments and the investment participation ratio between ESM and other investors, (ii) payment of the subscription price by the Beneficiary Member State and such other investors, (iii) cooperation on governance of the DRI Beneficiary and on the exercise of voting rights in relation to the DRI Beneficiary, (iv) any drag-along or tag-along rights, (v) lock-up covenants in relation to the Capital Instruments, (vi) put or call options

in respect of Capital Instruments between ESM, the Beneficiary Member State and/or other investors in relation to the Capital Instruments being acquired by or on behalf of ESM, (vii) cooperation on the exit strategy of ESM, (viii) procedures for joint conduct of sale of Capital Instruments and (ix) such other provisions as are appropriate in the circumstances.

"Commission" means the European Commission.

"Commitment Fee" means the fee allocated to the relevant Beneficiary Member State in accordance with the ESM Pricing Policy and related to:

- (i) the Negative Carry resulting from the issuance or roll-over of Funding Instruments by ESM (including to fund the Liquidity Buffer);
- (ii) Issuance Costs related to funding raised by ESM that are not otherwise recoverable from the Beneficiary Member State or any other beneficiary member state under any other financial assistance facility agreement;
- (iii) any commitment commissions arising under DMO Lines or committed or un-committed credit lines as may be made available to ESM, and
- (iv) any other liquidity costs of ESM (such as utilisation fees, agency fees, account bank fees or other costs incurred in relation to the items referred to in paragraphs (i) to (iii) above) that are not otherwise attributable to the Beneficiary Member State or any other beneficiary member state under any other financial assistance facility agreement,

in each case according to the ESM Pricing Policy.

The Beneficiary Member State shall pay its allocation of the Commitment Fee either (a) within five (5) calendar days of receipt of an invoice, or (b) on the first Payment Date under any Tranche or Disbursement following the determination of the amount to be paid as annual Commitment Fee, expressed as a number of basis points per annum that shall be applied over the relevant Tranche or Disbursement to result in the amount of the Commitment Fee that would otherwise have been payable upon receipt of an invoice.

The method of the determination and the allocation of the Commitment Fee to a

Beneficiary Member State may be changed from time to time by the Board of Governors.

"Competent Authority" has the meaning given to such term in the CRR.

"Conditions of Capital Instruments" means, in relation to Capital Instruments acquired by ESM, the terms and conditions of the relevant Capital Instruments.

"Conditions of the Purchased Bonds" means, in relation to Purchased Bonds acquired under a PMP Operation or a SMP Operation, the terms and conditions of such Series of Bonds.

"Confirmation Notice" means ESM's written notice to the Beneficiary Member State substantially in the form of Schedule 5 setting out the specified financial terms of the Financial Assistance under the relevant Tranche or Disbursement that ESM is willing to extend to the Beneficiary Member State under the Agreement, or, in the case of Financial Assistance provided under a DRI Facility the financial terms of the relevant Financial Assistance made available to a DRI Beneficiary under the Agreement.

"Cost of Carry" means, in relation to Funding Instruments, the difference between (i) the interest accrued under the relevant Funding Instruments: (a) in the case of a Pre-Funding Operation, during the period from the date ESM commences incurring liability for interest under the relevant Funding Instruments under the Pre-Funding Operation until the relevant Disbursement Date (or the date on which the proceeds of the relevant Funding Instruments are used to refinance any other Funding Instruments) or, if the proceeds of the Pre-Funding Operation are not partly or entirely disbursed, until the maturity of the relevant Funding Instruments for the undisbursed proceeds; (b) in the case of amounts raised to fund the Liquidity Buffer, during the period when ESM incurs liability for interest under the relevant Funding Instruments but is not able to recover any amount from the Beneficiary Member State or any other beneficiary member state in respect of such amount as part of the ESM Cost of Funding under any financial assistance facility agreement; (c) in the case of any re-financing of any financing, during the period from the date ESM commences incurring liability for interest under the new financing until the new financing is disbursed (or the date on which the proceeds of the relevant Funding Instruments are used to refinance any other Funding Instruments) and (d) in the case of any Funding Instruments issued in order to permit ESM to comply with liquidity tests during the period when ESM incurs liability for interest

under the relevant Funding Instruments but is not able to recover such amount from one or more beneficiary member states as part of ESM Cost of Funding under any financial assistance facility agreement; and (ii) any return on the proceeds of those Funding Instruments actually received by ESM, if ESM invested the amount pre-funded, the residual amount under a financing or the amount raised to fund the Liquidity Buffer. The Cost of Carry shall be allocated to the relevant Beneficiary Member State in accordance with the ESM Borrowing Guidelines and the ESM Pricing Policy.

"**CRR**" means Regulation (EU) N° 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

"**Debt Agency**" has the meaning given to such term in the Financial Assistance Facility Agreement.

"**Deemed Loan Notice**" means ESM's written notice to the Beneficiary Member State setting out the specified financial terms applicable to any deemed loan under a DRI Facility provided under this Agreement.

"**Deferral Notice**" means ESM's written notice to the Beneficiary Member State setting out the specified financial terms applicable to any deferral of payment under a DRI Facility provided under this Agreement.

"**Designated Euro Account**" has the meaning given to such term in the Financial Assistance Facility Agreement.

"**Disbursement**" means a disbursement of funds to, or at the direction of, the Beneficiary Member State under a Facility including, where permitted by the ESM Borrowing Guidelines and the relevant Facility Specific Terms, by way of the delivery of Funding Instruments issued by ESM or by way of the payment of the subscription price or purchase price of bonds or other debt securities issued by the Beneficiary Member State and acquired in the primary or secondary markets or, in the case of a DRI Facility, by way of the payment of the acquisition price of Capital Instruments issued by a DRI Beneficiary and acquired by ESM.

"**Disbursement Date**" means, in relation to any Financial Assistance made under any Facility by way of a Disbursement, the date on which funds or Funding Instruments issued by ESM in respect of the relevant Financial Assistance (i) are paid, advanced or delivered to the Beneficiary Member State (or its nominee or to any third party as expressly contemplated by the Agreement) or (ii) are used to purchase debt

securities issued by the Beneficiary Member State in the primary market or the secondary market in accordance with the relevant Facility Specific Terms, **provided that** in relation to any PMP Operation made under a PMP Facility or any SMP Operation made under an SMP Facility, Disbursement Date means the date on which a PMP Operation or SMP Operation is made by ESM, being the date on which ESM purchases the relevant Purchased Bonds in the primary market or the secondary market or (iii) in the case of a DRI Facility are used to discharge the acquisition price of Capital Instruments issued by a DRI Beneficiary. Each such Disbursement Date under a given Facility must be a date selected by ESM which is: (i) a Business Day; (ii) a day (other than a Saturday or Sunday) when banks are open for general business in Luxembourg and in the Beneficiary Member State; (iii) a day which falls during the Availability Period of the relevant Facility; and (iv) which otherwise complies with the relevant Facility Specific Terms.

"**Dispute**" means any dispute, controversy or claim arising out of or relating to the Agreement or the breach, termination, invalidity, interpretation or performance thereof.

"**Diversified Funding Strategy**" means ESM's funding strategy, which includes the use of the Liquidity Buffer, a pool of short term Funding Instruments and a pool of long term Funding Instruments and the methodology for allocation of Funding Instruments, funding and other costs and expenses between the Beneficiary Member State and each other beneficiary member state which shall be made in accordance with the ESM Borrowing Guidelines and the ESM Pricing Policy.

"**DMO Lines**" means treasury, money market or cash management operations between ESM and the debt management agencies of euro-area Member States.

"**DRI Beneficiary**" means, in relation to a DRI Facility, the Institution or AMC established in the Beneficiary Member State designated to benefit from a Direct Recapitalisation pursuant to such DRI Facility and identified in the Institution Specific Agreement and in the Financial Assistance Facility Agreement.

"**DRI Facility**" means a facility to which the DRI Facility Specific Terms set out in Section 7 of the Standard ESM Facility Specific Terms apply.

"**ECB**" means the European Central Bank.

"**ECCL Facility**" means a facility to which the Enhanced Conditioned Credit Line: Facility

Specific Terms set out in Section 3 of the Standard ESM Facility Specific Terms apply.

"**EFSF**" means the European Financial Stability Facility, a *société anonyme* incorporated in Luxembourg with its registered office at 6a, Circuit de la Foire Internationale, L-1347 Luxembourg (R.C.S. Luxembourg B153.414).

"**EFSM**" means the European Financial Stabilisation Mechanism.

"**ESA**" means a European Supervisory Authority.

"**ESM Borrowing Guidelines**" means the document entitled "ESM Borrowing Guidelines" as the same may be varied, supplemented or replaced by the Board of Directors.

"**ESM Cost of Funding**" means, in relation to any Financial Assistance under a Facility, the effective (after hedging) average cost of funding incurred by ESM in funding such Financial Assistance as determined by ESM either under the Diversified Funding Strategy in the case of Pool Funded Financial Assistance or by reference to specific series of Funding Instruments in the case of Back-to-Back Financed Financial Assistance where the Financial Assistance is funded by one or more dedicated issue(s) of Funding Instruments, expressed as a rate per annum and applied to the relevant Financial Assistance Amounts on a daily basis by ESM. The ESM Cost of Funding shall be calculated by ESM in accordance with the ESM Pricing Policy by adding:

- (a) ESM's (after hedging) average cost of funding the relevant Financial Assistance as determined by ESM in accordance with the ESM Pricing Policy, expressed as a rate per annum (and in the case of discount Funding Instruments (e.g. zero-coupon notes), cost of funding shall be calculated with reference to the nominal value of the relevant Funding Instrument); plus
- (b) the annual Service Fee; plus
- (c) the Commitment Fee; plus
- (d) if applicable, liquidity costs incurred in respect of Back-to-Back Financed Financial Assistance (in particular, in order to comply with applicable liquidity tests); plus
- (e) any other financing costs, margin, losses, hedging costs or other costs, fees or expenses incurred by ESM that are not otherwise recoverable from the Beneficiary Member State or any other beneficiary

member state under any other financial assistance facility agreement,

such ESM Cost of Funding shall be adjusted to eliminate the effect of rounding in the calculation of interest on Funding Instruments in the form of bonds or notes with a fixed denomination and (if appropriate) to take into account any potential difference in the periods by reference to which interest is calculated under the Agreement and under the related Funding Instruments and the proceeds of any temporary re-investment of interest receipts by ESM when such interest periods differ. Costs and expenses incurred by ESM as part of the ESM Cost of Funding will, where possible, be deducted up-front in determining the Net Disbursement Amount, or alternatively invoiced separately. To avoid double counting, the ESM Cost of Funding shall not include any amounts which have been deducted in establishing the Net Disbursement Amount.

"**ESM Debt Securities**" means Funding Instruments issued by ESM in the form of long term notes with maturity of up to the longest maturity of the relevant Facility, issued under the ESM Debt Issuance Programme on or around the time of the corresponding Disbursement under the Agreement and which pay interest at a rate comparable to the market rate which would be payable by ESM for instruments with the same maturity as such ESM Debt Securities.

"**ESM Facility Guideline**" means the ESM guideline applicable to the relevant category of Facility as at the date of signature of the relevant Financial Assistance Facility Agreement (unless otherwise agreed).

"**ESM Interest Amount**" means, (i) in relation to a PMP Outstanding Amount and a Bond Interest Period, the amount which results from accruing interest at the Interest Rate on such PMP Outstanding Amount during the relevant Bond Interest Period, as determined by ESM; and (ii) in relation to an SMP Outstanding Amount and a Bond Interest Period, the amount which results from accruing interest at the Interest Rate on such SMP Outstanding Amount during the relevant Bond Interest Period, as determined by ESM.

"**ESM Investment Policy**" means the document entitled "European Stability Mechanism Investment Policy" as the same may be varied, supplemented or replaced by the Board of Directors.

"**ESM Member**" means each euro area Member State which is a contracting party to the ESM Treaty.

"**ESM Pricing Policy**" means the document entitled "ESM Pricing Policy" as the same may be varied, supplemented or replaced by the Board of Governors.

"**ESM Treaty**" means the Treaty Establishing the European Stability Mechanism entered into between the euro area Member States.

"**EU**" means the European Union.

"**EUR**", "**euro**" and "**€**" denote the single currency unit of the Participating Member States.

"**EURIBOR**" means, in relation to a period:

- (a) the applicable Screen Rate; or
- (b) if no Screen Rate is available, the arithmetic mean of the rates (rounded upwards to four decimal places) quoted by the EURIBOR Reference Banks as the rates at which they could borrow funds in the European interbank market,

As of 11:00 a.m. (Luxembourg time) on the date falling two TARGET Days before the first day of that period for offering of deposits in euro and for a period comparable to the period for which EURIBOR is to be determined.

"**EURIBOR Reference Banks**" means Deutsche Bank AG, BNP Paribas and Rabobank.

"**Event of Default**" means an event defined in Clause 10.1.

"**External Indebtedness**" means all indebtedness which constitutes General Government Debt (including all indebtedness of the Beneficiary Member State and the Debt Agency) (i) which is denominated or payable in a currency other than the lawful currency of the Beneficiary Member State or (ii) which was not originally incurred or assumed under an agreement or instrument made with or issued to creditors substantially all of who are residents of the Beneficiary Member State or entities having their head office or principal place of business within the territory of the Beneficiary Member State.

"**Facility**" means a facility made available under a Financial Assistance Facility Agreement.

"**Facility Specific Terms**" has the meaning given to such term in the Financial Assistance Facility Agreement.

"**Financial Assistance Amount**" means the aggregate principal amount of any Financial Assistance made available under a Facility, as

more particularly determined in accordance with the relevant Facility Specific Terms.

"**Financial Institution Recapitalisation Facility**" means a facility to which the Financial Institution Recapitalisation: Facility Specific Terms set out in Section 4 of the Standard ESM Facility Specific Terms apply.

"**Financial Support Provider**" means any sovereign State or other creditor (other than the IMF or the European Union) granting a bilateral loan to the Beneficiary Member State in parallel with ESM.

"**Financing for a Specific Investment Project**" means any financing of the acquisition, construction or development of any properties in connection with a project if the providing entity for such financing expressly agrees to look to the properties financed and the revenues to be generated by the operation of, or loss or damage to, such properties as the principal source of repayment for the moneys advanced.

"**First Interest Period**" means, with regard to any Financial Assistance provided under a Facility, the period commencing on (and including) its Disbursement Date and ending on (but excluding) the first Interest Payment Date.

"**Funding Excess**" has the meaning ascribed to such term in Clause 7.1 of the Facility Specific Terms for a PMP Facility.

"**Funding Instruments**" has the meaning given to that term in Preamble (C) to the Agreement.

"**Funding Shortfall**" has the meaning ascribed to such term in Clause 7(a) of the Facility Specific Terms for a PMP facility or as the case may be a SMP Facility.

"**General Government Debt**" means indebtedness comprising general government debt as determined in accordance with the European System of Accounts 1995 ("ESA 95") as laid down by Council Regulation No (EC) 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community as amended from time to time.

"**General Terms**" means these General Terms for ESM Financial Assistance Facility Agreements dated [●], which shall apply to all Financial Assistance made available by ESM under the Agreement.

"**IMF**" means the International Monetary Fund.

"**IMF Arrangement**" means any agreement, programme, facility or other arrangement between the Beneficiary Member State and the IMF whereby the IMF provides financing or

financial support to such Beneficiary Member State.

“**Institution**” means: (i) a financial institution or (ii) in the case of a DRI Facility, an institution as defined in Article 2(3) to (5) of Council Regulation 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions.

“**Institution Specific Agreement**” means, in relation to a DRI Beneficiary and the related DRI Facility, an agreement entered into between ESM, the Beneficiary Member State, the Recapitalisation Fund (if applicable) and the DRI Beneficiary.

“**Interest Payment Date**” means any Payment Date on which interest is payable under the Agreement.

“**Interest Period**” means, in relation to any Financial Assistance provided under a Facility, the First Interest Period and each consecutive period of twelve (12) months (or such other shorter period which may be specified in the Confirmation Notice or otherwise agreed) thereafter, commencing on (and including) in the case of the First Interest Period, the Disbursement Date and for all subsequent Interest Periods, the date of the preceding Interest Payment Date for such Financial Assistance and ending on (but excluding) the earlier of (a) each subsequent Interest Payment Date and (b) final payment of principal in relation to such Financial Assistance, in each case as determined in accordance with the relevant Facility Specific Terms for that Facility.

“**Interest Rate**” for any Tranche or Disbursement means the rate at which interest will accrue on that Tranche or Disbursement during each Interest Period as determined by ESM, which is equal to the sum of: (a) the ESM Cost of Funding; and (b) the Margin (if any) applicable to such Financial Assistance Amount.

“**Issuance Costs**” means any costs, fees or expenses incurred in relation to ESM issuing or entering into Funding Instruments to finance a Financial Assistance under any Facility (including a portion of the Funding Instruments issued or entered into to fund the Liquidity Buffer) and which are due and payable on or about the date of issue of such Funding Instruments or, as applicable, the date such Funding Instruments are entered into, and any adjustment corresponding to the difference in the net proceeds of Funding Instruments due to such Funding Instruments not being issued at par value.

“**Legal Officer**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Liquidity Buffer**” means the proceeds of issuance of, or entry into, the pool of short term Funding Instruments (including, without limitation, the proceeds of issuance of, or entry into, short term notes, bills, commercial paper, treasury operations, DMO Lines, committed and un-committed credit lines, sale and repurchase operations) and any other instruments approved by the Board of Directors from time to time for inclusion in the Liquidity Buffer which are issued by ESM in accordance with the ESM Borrowing Guidelines and which, from time to time, have not been used to finance a Disbursement (or a disbursement to any other beneficiary member states) or to refinance an existing Pre-Funding Operation or financing (or similar operations or financings in respect of any other beneficiary member states).

“**Loan Facility**” means a facility to which the Loan Facility: Facility Specific Terms set out in Section 1 of the Standard ESM Facility Specific Terms apply.

“**Loss of Interest**” means the difference (if it is a positive amount) between the amount of interest ESM would receive at the Interest Rate (excluding for these purposes only the Margin component, if any, of the Interest Rate) on the relevant principal amount of Financial Assistance and the interest ESM would receive (as determined by ESM) from the reinvestment of the amounts pre-paid or repaid early in each case for the period commencing on (and including) the date of the prepayment or early repayment and ending on (but excluding) the date on which the relevant Financial Assistance was scheduled to be repaid.

“**Managing Director**” means the managing director of ESM appointed in accordance with the ESM Treaty.

“**Margin**” means, unless otherwise agreed, the margin in relation to the relevant category of facility specified in the ESM Pricing Policy. The level of the Margin applicable to any Facility may be changed by the Board of Governors.

“**Market Disruption Event**” means, at the time of a proposed issuance of Funding Instruments, the occurrence of events or circumstances affecting the national or international financial, political or economic conditions or international capital markets or currency exchange rates or exchange controls which in the reasonable view of ESM (as approved by the Board of Directors) are likely to prejudice materially the ability of

ESM to achieve a successful issue, offering or distribution of Funding Instruments or dealings in such Funding Instruments in the secondary market.

“**Maturity**” means, as the context requires, the remaining period to maturity of a Purchased Bond or the period to maturity of a Disbursement of Financial Assistance.

“**Maximum Average Maturity**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Maximum ECCL Disbursement Amount**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Maximum Maturity**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Maximum PCCL Disbursement Amount**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Maximum PMP Amount**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Minimum Cancellation Amount**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Minimum Voluntary Prepayment Amount**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**MoU**” has the meaning given to such term in the Financial Assistance Facility Agreement.

“**Negative Carry**” means in relation to any Financial Assistance the negative Cost of Carry (if any) incurred by ESM and allocated by ESM to the funding of that Financial Assistance in accordance with the ESM Pricing Policy.

“**Net Disbursement Amount**” means:

- (a) in relation to any Financial Assistance under a Facility other than a DRI Facility, the Financial Assistance Amount thereof less the sum of (without double counting):
 - (i) any Issuance Costs;
 - (ii) any portion of the Service Fee which is to be deducted up-front;
 - (iii) the costs, charges and expenses referred to in Clause 7.10; and
 - (iv) any costs, fees, expenses, interest (including pre-paid interest or discount) or costs of Negative Carry,incurred under or in connection with that Financial Assistance, any other Financial

Assistance provided by ESM to the Beneficiary Member State or any Pre-Funding Operation; and

- (b) in relation to a DRI Facility, the Financial Assistance Amount.

“**Note Issuance Documents**” means any documentation relating to an issue of Purchased Bonds including any Prospectus, Conditions subscription or dealer agreement, agency agreements, trust deed or other related or ancillary document.

“**Participating Member States**” means the member states of the European Union that have the euro as their lawful currency in accordance with the legislation of the European Union relating to Economic and Monetary Union.

“**Party**” means a party to the Financial Assistance Facility Agreement.

“**Payment Date**” means, in relation to any Tranche or Disbursement made available under a Facility, each scheduled date for payment of principal, interest or fees due to ESM.

“**PCCL Facility**” means a facility to which the Precautionary Conditioned Credit Line: Facility Specific Terms set out in Section 2 of the Standard ESM Facility Specific Terms apply.

“**Permitted Encumbrances**” means:

- (a) encumbrances upon any property incurred to secure the purchase price of such property and any renewal or extension of any such encumbrance which is limited to the original property covered thereby and which secures any renewal or extension of the original secured financing; and
- (b) encumbrances on commercial goods arising in the course of ordinary commercial transactions (and expiring at the latest within one year thereafter) to finance the import or export of such goods into or from the country of the Beneficiary Member State; and
- (c) encumbrances securing or providing for the payment of Relevant Indebtedness incurred exclusively in order to provide Financing for a Specific Investment Project, provided that the properties to which any such encumbrances apply are properties which are the subject of such project financing, or which are revenues or claims which arise from the project; and
- (d) any other encumbrances in existence on the date of the signing of the Agreement, provided that such encumbrances remain confined to the properties presently

affected thereby and properties which become affected by such encumbrances under contracts in effect on the date of the signing of the Agreement (including the crystallisation of any floating charge which had been entered into at the date of the Agreement) and provided further that such encumbrances secure or provide for the payment of only those obligations so secured or provided for on the date hereof or any refinancing of such obligations; and

- (e) all other statutory encumbrances and privileges which operate solely by virtue of law and which cannot be reasonably avoided by the Beneficiary Member State; and
- (f) any encumbrance granted or consented to under a securitisation transaction which has been consented to in advance by ESM provided that such transaction is consistent with the policy conditions of the MoU and is accounted for in national accounts in accordance with ESA 95 principles and Eurostat guidance on securitisation operations conducted by Member States' governments; and
- (g) any encumbrance securing the Beneficiary Member State's obligations to any central securities depository, such as Euroclear or Clearstream, given in the ordinary course of business; and
- (h) any encumbrance granted by an agency of the Beneficiary Member State (other than the Debt Agency) to secure indebtedness incurred by it in the ordinary course of its business to finance the ordinary and customary activities of such agency and provided that the proceeds of such financing are not on-lent or otherwise made available to the central government or the Debt Agency;
- (i) any encumbrance securing an indebtedness of less than EUR 3 million, **provided that** the maximum aggregate of all indebtedness secured by such encumbrances shall not exceed EUR 50 million; and
- (j) any security created by the Recapitalisation Fund (if applicable) in favour of ESM in accordance with the terms of a financial assistance facility agreement.

"**PMP Amount**" means the aggregate purchase price together with related fees, commissions and costs (except to the extent such fees, commissions and costs have been reimbursed by the Beneficiary Member State) of the relevant Purchased Bonds acquired pursuant a

PMP Operation entered into under the PMP Facility.

"**PMP Facility**" means a facility to which the Primary Market Bond Purchase Facility: Facility Specific Terms set out in Section 5 of the Standard ESM Facility Specific Terms apply.

"**PMP Facility Final Maturity Date**" has the meaning given to such term in the Financial Assistance Facility Agreement.

"**PMP Operation**" means a primary market purchase of bonds of a Series of Bonds, such purchase being made for a purchase price per bond equal to (i) in relation to bonds issued by way of an auction process, the weighted average price of all bonds issued, and (ii) in relation to bonds issued in the context of a syndicated transaction, the re-offer price of any such bond.

"**PMP Operation Maturity Date**" means in relation to a PMP Operation the date specified in the relevant Confirmation Notice.

"**PMP Outstanding Amount**" means the aggregate of the subscription price together with related fees commissions and costs paid by ESM to acquire Purchased Bonds under a PMP Operation (except to the extent such commissions, fees and expenses have been reimbursed by the Beneficiary Member State) *less* the aggregate of (i) the principal amount reimbursed by the Beneficiary Member State in respect of such Purchased Bonds and (ii) the proceeds of re-sale of such Purchased Bonds net of any commissions, fees or expenses (and excluding any portion of the sale proceeds that relates to accrued interest).

"**PMP Principal Amount**" means the aggregate principal amount of a Series of Bonds to be acquired by ESM in a PMP Operation.

"**PMP Reserve Buffer**" means a reserve maintained by ESM to provide a reserve against losses or shortfalls (between interest received on Purchased Bonds and ESM's funding and related costs of financing its PMP Operations (such as hedging costs and transaction costs including back office costs, custodian costs, agent fees and service fees)) incurred in relation to the PMP Facility in accordance with the ESM Pricing Policy and which shall be invested in accordance with the ESM Investment Policy.

"**Pool Funded Financial Assistance**" means each Facility, Tranche or Disbursement of Financial Assistance to the Beneficiary Member State (or, in the case of a DRI Facility, to a DRI Beneficiary) which is not a Back-to-Back Financed Financial Assistance and is funded on

a pooled basis by ESM's pools of short term and long term Funding Instruments.

"Precautionary Facility" means a PCCL Facility or an ECCL Facility.

"Pre-Funding Agreement" means an agreement substantially in the form of Schedule 1 (*Form of Pre-Funding Agreement*) executed by the Beneficiary Member State and ESM to authorise ESM to enter into Pre-Funding Operations: (i) prior to the receipt by ESM of a Request for Funds; or (ii) following receipt by ESM of a Request for Funds but prior to the satisfaction of all the conditions to disbursement and the issuance by ESM of an Acceptance Notice.

"Pre-Funding Operation" means an advanced borrowing transaction as described in Clause 5.7 pursuant to which ESM, if it deems necessary and with the agreement of the Beneficiary Member State, issues or enters into Funding Instruments to pre-finance a specific Financial Assistance on the basis of a Pre-Funding Agreement, which Pre-Funding Operation may occur prior to the time when the conditions precedent to the disbursement of such Financial Assistance are satisfied.

"Pre-Subscription or Subscription Agreement" means a contract for the pre-subscription or the subscription of Capital Instruments (issued by an Institution or AMC) by the Recapitalisation Fund or, in the case of a DRI Facility, by ESM, in the form agreed between, as applicable, ESM, the Recapitalisation Fund, the Beneficiary Member State and the relevant Institution or AMC.

"Prospectus" means any prospectus, offering circular or other marketing document relating to an issue of Purchased Bonds.

"Public Internal Indebtedness" means all General Government Debt (including all indebtedness of the Beneficiary Member State (and the Debt Agency) and which (i) is denominated in the lawful currency of the Beneficiary Member State, but is not External Indebtedness; (ii) is in the form of or represented by bonds, notes or other securities or any guarantee thereof; and (iii) is or may be quoted or listed or ordinarily purchased and sold on any stock exchange, automated trading system, over-the-counter or other securities market.)

"Purchased Bonds" means any debt securities in the form of notes, bonds or bills forming part of any Series of Bonds where such notes, bonds or bills are subscribed or purchased by ESM under a PMP Operation under the PMP Facility or under a SMP operation under a SMP Facility.

"Recapitalisation Fund" has the meaning given to such term in the Financial Assistance Facility Agreement and refers to a national financial institution recapitalisation fund.

"Recapitalisation Fund Laws" means the laws and/or regulations constituting the Recapitalisation Fund and/or setting out the parameters under which the Recapitalisation Fund may participate in the recapitalisation of Institutions, capitalise AMCs and manage or participate in the re-organisation or resolution of Institutions, as such laws or regulations may be amended, supplemented or replaced from time to time.

"Relevant Indebtedness" means all External Indebtedness and Public Internal Indebtedness.

"Relevant Stock Exchange" has the meaning given to such term in the Financial Assistance Facility Agreement.

"Request for Funds" means the Beneficiary Member State's request for a Tranche or Disbursement under a Facility to be made substantially in the form of Schedule 3 under which such request is to be made.

"Resolution Authority" means the competent resolution authority in accordance with BRRD and the SRM Regulation.

"Resolution Fund" has the meaning given to such term in the Financial Assistance Facility Agreement and may refer to a national resolution fund or a national financing arrangement established in accordance with BRRD.

"Resolution Fund Laws" has the meaning given to such term in the Financial Assistance Facility Agreement.

"Restructuring Plan" means, in respect of a DRI Beneficiary, a plan to ensure the viability of such DRI Beneficiary after recapitalisation and restructuring, drawn up by ESM, jointly with such DRI Beneficiary and the Beneficiary Member State, in consultation with the ECB in its capacity as supervisor, and in conjunction with the Resolution Authority, the main elements of which are approved by the Board of Directors before submission to the Commission.

"Schedule" means a Schedule to the Agreement.

"Screen Rate" means the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, ESM may specify another page or service displaying the

appropriate rate after consultation with the Beneficiary Member State.

"Series of Bonds" means, on any date, debt securities in the form of notes or bonds which belong to the same series and are issued by the Beneficiary Member State in the primary market on such date, either by way of an auction process or in the context of a syndicated transaction.

"Service Fee" represents the source of general revenues and resources to cover operational costs of ESM, comprising:

- (a) the upfront service fee as applies under the ESM Pricing Policy calculated on the amount of a Disbursement and deducted upfront (without double counting) on the Financial Assistance Amounts under a Tranche or Disbursement; and
- (b) the annual service fee as applies under the ESM Pricing Policy, which will accrue from day to day on the outstanding principal amount under each Facility in each Interest Period,

each as determined in accordance with the ESM Pricing Policy as the same may be modified from time to time.

The upfront service fee shall be deducted from the amount to be disbursed to the Beneficiary Member State under any Facility provided on the terms of the Agreement or, if not so deducted, paid in arrears by the Beneficiary Member State upon receipt of an invoice from ESM, **provided that:**

- (a) if ESM makes a Disbursement by delivery of ESM Debt Securities, the upfront service fee shall be deducted from the next Disbursement in cash made under any Facility provided by ESM to that Beneficiary Member State or may be invoiced separately to that Beneficiary Member State;
- (b) in the case of a PCCL Facility or a ECCL Facility, (x) the upfront service fee will be invoiced at the inception of the programme based on the maximum agreed amount of a single Disbursement and, once paid, will be deducted from any subsequent upfront service fee obligations which may become due as a result of an actual Disbursement under the PCCL Facility or the ECCL Facility, as the case may be, and (y) the annual service fee will be calculated based on amounts outstanding under such Facility;
- (c) in the case of a SMP Facility, an advance payment of the service fee of up to EUR 50

million (in an amount determined by the Board of Directors) will be invoiced initially and upon any Disbursement under the SMP Facility the service fee will be invoiced on the basis of actual Disbursements after giving credit for such advance payment; and

- (d) in the case of a DRI Facility: (a) an up-front service fee calculated, in accordance with the ESM Pricing Policy, on the amount of the Disbursement, shall be paid by the Beneficiary Member State within five (5) Business Days of receipt of an invoice from ESM; and (b) an annual service fee in accordance with the ESM Pricing Policy, shall accrue and be payable by reference to the principal amount of the Financial Assistance Amounts outstanding.

The inclusion of the annual service fee as a component of the ESM Cost of Funding is without prejudice to any faculty of a Beneficiary Member State to treat this fee as an operating cost in its national accounts. The level of the Service Fee applicable to the Facilities may be amended from time to time by the Board of Directors and approved by the Board of Governors.

"Single Resolution Board" means the Union agency established pursuant to Article 42 of the SRM Regulation.

"Single Resolution Fund" means the resolution fund established pursuant to Article 67 of the SRM Regulation.

"SMP Amount" means the aggregate of the purchase prices together with related fees, commissions and costs of the relevant Purchased Bonds acquired pursuant to a SMP Operations entered into under the SMP Facility.

"SMP Facility" means a facility to which the Secondary Market Bond Purchase Facility: Facility Specific Terms set out in Section 6 of the Standard ESM Facility Specific Terms apply.

"SMP Operation Maturity Date" means in relation to each SMP Operation the date specified in the relevant Confirmation Notice.

"SMP Operation" means a secondary market purchase in relation to a Series of Bonds, such purchase being made for a purchase price per bond which reflects the parameters set by the Board of Directors and the Technical Sub-Committee.

"SMP Outstanding Amount" means, in relation to a SMP Operation, the aggregate of the purchase price together with related fees

commissions and costs paid by ESM to acquire Purchased Bonds under such SMP Operation (except to the extent such commissions, fees and expenses have been reimbursed by the Beneficiary Member State) less the aggregate of (i) the principal amount reimbursed by the Beneficiary Member State in respect of such Purchased Bonds and (ii) the proceeds of re-sale of such Purchased Bonds net of any commissions, fees or expenses (and excluding any portion of the sale proceeds that relates to accrued interest).

"SMP Principal Amount" means the aggregate principal amount of a Series of Bonds to be acquired by ESM in a SMP Operation.

"SRM Regulation" means Regulation (EU) No 806/2014 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.

"SSM" means the system of financial supervision composed by the ECB and national competent authorities of participating Member States as described in Article 6 of Council Regulation (EU) N°1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

"Standard ESM Facility Specific Terms" means the Standard ESM Facility Specific Terms for ESM Financial Assistance Facility Agreements dated 8 December 2014.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"Technical Sub-Committee" means the technical sub-committee of the Board of Directors which will be established for the purpose of deciding on the means of implementation of secondary market interventions as contemplated by the ESM Guideline on the Secondary Market Support Facility.

"Term" means the tenor of any Financial Assistance provided under a Facility which may not exceed the period from the Disbursement Date of the relevant Financial Assistance to the final Payment Date or dates as specified in the relevant Confirmation Notice.

"TFEU" means the Treaty on the Functioning of the European Union.

"Tranche" means for any Facility, the sums under that relevant Facility which have been the subject of a Request for Funds and a related Acceptance Notice; a Tranche may be disbursed in one or more Disbursements.

2.2 Construction

2.2.1 Unless a contrary indication appears, a reference in this Agreement to:

- (a) a provision of law is a reference to that provision as amended or re-enacted;
- (b) a time of day is a reference to Luxembourg time;
- (c) **"amendment"** includes any amendment, supplement, variation, novation, modification, replacement or restatement and "amend", "amending" and "amended" shall be construed accordingly;
- (d) an **"approval"** (or to any other decision, however described, under the Agreement) by the Board of Governors or the Board of Directors means an approval or decision by the relevant majority of such body required under the ESM Treaty;
- (e) **"assets"** includes present and future properties, revenues and rights of every description;
- (f) a **"guarantee"** includes any guarantee, first demand guarantee, performance bond, letter of credit, indemnity or similar assurance in respect of loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (g) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (h) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (i) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law compliance with which is customary for those to whom it is addressed) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (j) "**recapitalisation**" refers to the recapitalisation of an Institution or the capitalisation of an AMC;
 - (k) "**resolution**" refers to the resolution of an Institution pursuant to BRRD or the SRM Regulation; and
 - (l) a "**security interest**" includes any type of security and transfer by way of security.
- 2.2.2 It is acknowledged and agreed that ESM shall make Facilities available under the Agreement subject to the terms of the ESM Treaty and that any obligations of ESM to make available Facilities or Disbursements are subject to the terms of and constitute an application of the ESM Treaty.
- 2.2.3 The Table of Contents, Section, Clause and Schedule headings are for ease of reference only and shall not be taken into consideration in interpreting the Agreement.

3. THE FINANCIAL ASSISTANCE FACILITY AND SPECIFIC FACILITIES

- 3.1 ESM shall make available to the Beneficiary Member State Financial Assistance in the form of a Facility or Facilities under the terms of the Agreement. The Financial Assistance Facility Agreement shall specify which of the Facility Specific Terms are applicable and set out the specific terms and conditions applicable to the relevant Beneficiary Member State. At least one (1) of the Facility Specific Terms must apply to each Financial Assistance Facility

Agreement. It is acknowledged and agreed that a DRI Facility is provided to a Beneficiary Member State but that all Disbursements thereunder shall be made by the acquisition by ESM of Capital Instruments issued by a DRI Beneficiary.

- 3.2 The availability of financial assistance under the Agreement is subject to the terms and conditions of the MoU.

- 3.3 In the event that the Beneficiary Member State wishes to obtain Financial Assistance in the form of an additional or alternative form of Facility not then included in the Agreement (other than a DRI Facility in which case Clause 3.4 below applies), it shall request such other Facility in writing by a letter addressed to the Chairperson provided that the Availability Period of the existing Facility has not yet expired and that the amount of such other Facility when aggregated with all other Financial Assistance Amounts [(with the exception of any SMP Outstanding Amounts)] that ESM has made available to the Beneficiary Member State under the Agreement shall not exceed the Aggregate Financial Assistance Amount. Following any such written request:

- 3.3.1 the Board of Governors shall decide, in principle, whether or not an additional or alternative Facility may be made available;

- 3.3.2 following any such approval by the Board of Governors, the Board of Governors shall entrust the Commission (in liaison with the ECB and, where appropriate, the IMF) to negotiate any necessary modification or supplement to the MoU (if applicable) and the Managing Director shall make a proposal to the Board of Governors of the Facility Specific Terms for the relevant Facility including the financial terms and conditions;

- 3.3.3 following a decision of the Board of Governors to approve the proposal, the Managing Director shall negotiate the detailed terms of the Facility Specific Terms and any modification to the Agreement;

- 3.3.4 subject to completion of the procedures in Clauses 3.3.1 and 3.3.2 and approval of the amended MoU by the Board of Governors, the Commission shall sign the MoU (as modified or supplemented) on behalf of ESM;

- 3.3.5 following the approval by the Board of Directors, ESM, the Beneficiary Member State, the Central Bank and the

- Recapitalisation Fund (if applicable) shall enter into such amendments and/or supplements to the Agreement as are necessary to provide the relevant Facility.
- 3.4 In the event that the Beneficiary Member State wishes to obtain Financial Assistance for a DRI Beneficiary in the form of a DRI Facility, and such form of DRI Facility is not then included in the Agreement and the Availability Period of the existing Facility has not yet expired, it shall request such DRI Facility in writing by a letter addressed to the Chairperson, in the form required by Article 4(1) of the DRI Guideline. Following any such written request:
- 3.4.1 the Board of Governors shall address without delay to the ECB the request foreseen in Article 33(3) of Council Regulation 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions, if the ECB is not already the supervisor of the DRI Beneficiary concerned pursuant to Article 6(4) of Council Regulation 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions;
- 3.4.2 the Chairperson shall entrust the Commission, in liaison with the ECB and, wherever appropriate, the IMF - to conduct the assessments referred to in Article 13(1) of the ESM Treaty and to assess compliance with Article 3(2) of the DRI Guideline and with the Managing Director, the Resolution Authority and the ECB in its capacity as supervisor, to assess compliance with the eligibility criteria under Article 3(1) of the DRI Guideline;
- 3.4.3 on the basis of the assessments under Clause 3.4.2 above, the Board of Governors, acting on a proposal from the Managing Director, shall decide whether, in principle, the eligibility criteria are met, and whether or not additional Financial Assistance in the form of a DRI Facility may be made available;
- 3.4.4 following any such approval by the Board of Governors, the Beneficiary Member State shall, for itself and on behalf of all ESM Members, notify, pursuant to Article 108(3) TFEU, the Commission of the intention to grant State aid within the meaning of Article 107(1) TFEU;
- 3.4.5 ESM shall draw up, jointly with the DRI Beneficiary and the Beneficiary Member State concerned and in consultation with the ECB in its capacity as supervisor and the Resolution Authority, a Restructuring Plan. The main elements of the draft Restructuring Plan shall be presented to the Board of Directors for approval before submission to the Commission;
- 3.4.6 in parallel, the Managing Director shall, in liaison with the Commission and the ECB in its capacity as supervisor, conduct a due diligence exercise, as a rule with the assistance of independent experts aimed at primarily determining the DRI Beneficiary's viability in line with Article 7 of the DRI Guideline and its loss absorption potential;
- 3.4.7 in addition, the Board of Governors shall, in accordance with Article 13(3) of the ESM Treaty, entrust:
- (a) the Commission, in liaison with the ECB, the Managing Director and, wherever appropriate, the IMF, with the task of revising and negotiating, with the Beneficiary Member State, the existing MoU, so as to include the conditionality needed for such DRI Facility and to assess whether the conditionality already stated therein is still appropriate or whether changes are required;
 - (b) the Managing Director, in liaison with the Commission, the ECB in its capacity as supervisor and the requesting Beneficiary Member State, to establish institution-specific conditions not required under the framework of Article 107 and 108 TFEU. Such conditions together with the financial instruments to be utilised for the recapitalisation, shall be described in a proposal, to be adopted by the Board of Governors, for an Institution Specific Agreement to be established between ESM, the requesting Beneficiary Member State, the Recapitalisation Fund (if applicable) and the DRI Beneficiary concerned;
 - (c) the Managing Director with the task of preparing in parallel, in liaison with the Commission, the ECB, and the Beneficiary Member

- State a proposal, to be adopted by the Board of Governors, for the amendments and/or supplements to the Agreement as are necessary to provide the DRI Facility;
- 3.4.8 the proposal for the institution-specific conditions and the amendments/supplements to the Agreement shall be submitted for approval to the Board of Governors in parallel. In case Financial Assistance has been required for several Institutions and the finalisation of an Institution Specific Agreement is delayed, the related proposal will be submitted at a later stage in parallel with a proposal to further amend the Agreement, if required;
- 3.4.9 the Commission shall sign the revised MoU on behalf of the ESM, subject to prior compliance with the conditions set out in Clause 3.4.7 above and to approval by the Board of Governors;
- 3.4.10 subsequent to the decision of the Commission under Articles 107 and 108 TFEU setting out State aid conditionality, the Board of Directors shall approve amendments / supplements to the Agreement and shall approve the Institution Specific Agreement to be signed by the Managing Director;
- 3.4.11 following the approval by the Board of Directors under Clause 3.4.10 above, ESM, the Beneficiary Member State, the Central Bank and the Recapitalisation Fund (if applicable) shall enter into such amendments and/or supplements to the Agreement as are necessary to provide the DRI Facility, and also into the Institution Specific Agreement.
- 3.5 In the event that the Beneficiary Member State desires that an unused amount under one Facility be made available for disbursement under another Facility (other than a DRI Facility in which case Clause 3.6 below applies) and if the Availability Period for such Facility has not yet expired, it shall request that such unused amount be made available under such other Facility (other than a DRI Facility in which case Clause 3.6 below applies) in writing by a letter addressed to the Chairperson. Following any such written request:
- 3.5.1 the Board of Governors shall decide whether or not, in principle, any unused amount under one Facility may be made available under another Facility;
- 3.5.2 following any such approval by the Board of Governors, the Board of Governors shall entrust the Commission (in liaison with the ECB and, where appropriate, the IMF) to negotiate any necessary modification or supplement to the MoU (if applicable) and the Managing Director shall make a proposal to the Board of Governors regarding any adaptations to the Agreement to permit such unused amount be made available under such other Facility;
- 3.5.3 following a decision by the Board of Governors to approve the proposal, the Managing Director shall negotiate any modification to the Agreement;
- 3.5.4 subject to completion of the procedures in Clauses 3.5.1 and 3.5.2 and approval by the Board of Governors, the Commission shall sign the MoU (as modified or supplemented) on behalf of ESM; and
- 3.5.5 following the approval by the Board of Directors, ESM, the Beneficiary Member State, the Central Bank and the Fund (if applicable) shall enter into such amendments and/or supplements to the Agreement in accordance with Clause 4 of the Financial Assistance Facility Agreement as are necessary to provide that such unused amount is available for disbursement under such other Facility.
- 3.6 In the event that the Beneficiary Member State desires that an unused amount under one Facility be made available for disbursement under a DRI Facility and if the Availability Period for such Facility has not yet expired:
- 3.6.1 the Chairperson shall entrust the Commission, in liaison with the ECB and, wherever appropriate, the IMF - to conduct the assessments referred to in Article 13(1) of the ESM Treaty and to assess compliance with Article 3(2) of the DRI Guideline and with the Managing Director, the Resolution Authority and the ECB in its capacity as supervisor, to assess compliance with the eligibility criteria under Article 3(1) of the DRI Guideline;
- 3.6.2 on the basis of the assessments under Clause 3.6.1 above, the Board of Governors acting on a proposal from the Managing Director, shall decide

- whether, in principle, the eligibility criteria are met, and whether or not any unused amount under one Facility (other than a DRI Facility) may be made available under the DRI Facility;
- 3.6.3 following any such approval by the Board of Governors, the Beneficiary Member State shall, for itself and on behalf of all ESM Members, notify, pursuant to Article 108(3) TFEU, the Commission of the intention to grant State aid within the meaning of Article 107(1) TFEU;
- 3.6.4 ESM shall draw up, jointly with the DRI Beneficiary and the Beneficiary Member State concerned and in consultation with the ECB in its capacity as supervisor and the Resolution Authority, the Restructuring Plan(s) or the amendment(s) to the Restructuring Plan(s), as the case may be, in respect of such DRI Beneficiary. The main elements of such draft(s) shall be presented to the Board of Directors for approval before submission to the Commission;
- 3.6.5 in parallel, the Managing Director shall, in liaison with the Commission and the ECB in its capacity as supervisor, conduct a due diligence exercise, as a rule with the assistance of independent experts aimed at primarily determining the DRI Beneficiary's viability in line with Article 7 of the DRI Guideline and its loss absorption potential;
- 3.6.6 in addition, the Board of Governors shall, in accordance with Article 13(3) of the ESM Treaty, entrust:
- (a) the Commission, in liaison with the ECB, the Managing Director and, wherever appropriate, the IMF, with the task of revising and negotiating, with the Beneficiary Member State, the existing MoU, so as to include the conditionality needed for making available any unused amounts under the DRI Facility and to assess whether the conditionality already stated therein is still appropriate or whether changes are required;
 - (b) the Managing Director, in liaison with the Commission, the ECB in its capacity as supervisor and the requesting Beneficiary Member State, to establish any institution-specific conditions not required under the framework of Article 107 and 108 TFEU. Such conditions together with the financial instruments to be utilised for the recapitalisation, shall be described in a proposal, to be adopted by the Board of Governors, for the Institution Specific Agreement(s) or for the amendments to the Institution Specific Agreement(s) to be established between ESM, the requesting Beneficiary Member State, the Recapitalisation Fund (if applicable) and the DRI Beneficiary concerned;
 - (c) the Managing Director with the task of preparing in parallel, in liaison with the Commission, the ECB, and the Beneficiary Member State a proposal, to be adopted by the Board of Governors, for the amendments and/or supplements to the Agreement as are necessary to provide the additional amounts under the DRI Facility;
- 3.6.7 the proposal for the institution-specific conditions and for the amendments to the Agreement shall be submitted for approval to the Board of Governors in parallel. In case Financial Assistance has been required for several Institutions and the finalisation of the Institution Specific Agreement(s) or of the amendment(s) to the Institution Specific Agreement(s) is delayed, the related proposal will be submitted at a later stage in parallel with a proposal to further amend the Agreement, if required;
- 3.6.8 subject to completion of the procedures in Clauses 3.6.1 and 3.6.6(a) and approval by the Board of Governors, the Commission shall sign the MoU (as modified or supplemented) on behalf of ESM;
- 3.6.9 subsequent to the decision of the Commission under Articles 107 and 108 TFEU setting out State aid conditionality and following the approval by the Board of Directors, ESM, the Beneficiary Member State, the Central Bank, the DRI Beneficiary, and the Recapitalisation Fund (if applicable), as the case may be, shall enter into such amendments and/or supplements to the Agreement in accordance with Clause 4 of the

- Financial Assistance Facility Agreement as are necessary to provide that such unused amount under the Facility (other than a DRI Facility) is available for disbursement under the DRI Facility, as well as into any Institution Specific Agreement(s) or into any amendments to the Institution Specific Agreement(s).
- 3.7 The Beneficiary Member State shall apply all amounts made available to it under the Agreement in conformity with its obligations under the MoU. In case of a DRI Facility, the Beneficiary Member State shall procure, to the extent possible, that Financial Assistance Amounts are applied by the DRI Beneficiary in conformity with the obligations of the Beneficiary Member State under the MoU and the applicable State aid decision.
- 3.8 All Financial Assistance will be denominated solely in euro, which shall be the currency of account and payment.
- 3.9 Subject to Clauses 3.5 and 3.6, any amounts not disbursed under a Facility on or prior to the last day of the Availability Period of that Facility shall be immediately cancelled.
4. **ENTRY INTO FORCE AND CONDITIONS PRECEDENT**
- 4.1 Following its signature by all Parties, a Financial Assistance Facility Agreement shall enter into force on the date on which each of the following conditions (together with the further conditions (if any) set out in such Financial Assistance Facility Agreement) have been satisfied:
- 4.1.1 ESM has received a legal opinion satisfactory to it given by the Legal Officer of the Beneficiary Member State (and, where applicable, the legal counsel to the Recapitalisation Fund and/or to the Resolution Fund) in respect of the Agreement and in the form set out in Schedule 2 (*Forms of Legal Opinion*);
- 4.1.2 ESM has received from the Minister of Finance of the Beneficiary Member State, the Central Bank, the Recapitalisation Fund or the Resolution Fund as the case may be, or from any other person acceptable to ESM in its sole discretion, an official document indicating the persons authorised to sign the Agreement, any Request for Funds and any other documents to be delivered under any Facility Specific Terms (and thus validly commit the Beneficiary Member State and such other entities) and containing the specimen signatures of these persons;
- 4.1.3 the signature of the MoU or of a supplement to the MoU (as the case may be) by all parties thereto; and
- 4.1.4 the Board of Directors has approved the terms of the Agreement (including the relevant Facility Specific Terms for the Applicable Facilities signed on the date of the Agreement).
- 4.2 The Facility Specific Terms relating to a Facility shall enter into force on the date determined in accordance with the terms of such Facility Specific Terms.
- 4.3 The Beneficiary Member State's right to request Financial Assistance under any Facility expires on the relevant Availability Period Termination Date following which any undisbursed amount of the Aggregate Financial Assistance Amount under that Facility shall be considered as immediately cancelled.
5. **REQUESTS, DISBURSEMENTS AND CONDITIONS TO DISBURSEMENTS**
- 5.1 Subject to the terms and conditions of the Financial Assistance Facility Agreement, the relevant Facility Specific Terms and the MoU, the Beneficiary Member State may, after consultation with ESM, request a Tranche or Disbursement under the relevant Facility by delivering to ESM a duly completed and valid Request for Funds.
- 5.2 A Request for Funds will only be considered as duly completed and valid if:
- 5.2.1 it specifies the aggregate of the Financial Assistance Amounts to be made available under the relevant Facility in respect of that Request for Funds;
- 5.2.2 it specifies the latest Disbursement Date by which date all Financial Assistance requested in that Request for Funds under the relevant Facility shall have been disbursed or made available; and
- 5.2.3 it specifies such other matters required by the Facility Specific Terms applicable to that Request for Funds.
- 5.3 Following receipt of a duly completed and valid Request for Funds, ESM's obligation to make Financial Assistance under a Facility available to the Beneficiary Member State (or, in the case of a DRI Facility, to the DRI Beneficiary) shall be subject to:

- 5.3.1 the conditions precedent referred to in Clause 4.1.1 to 4.1.4 being satisfied;
- 5.3.2 the signature of a supplement to the MoU, if applicable;
- 5.3.3 the Beneficiary Member State, and, if applicable, also the Recapitalisation Fund and the Resolution Fund, confirming in writing and ESM being satisfied that no event has occurred (which has not been cured to the satisfaction of ESM) that constitutes an Event of Default or renders incorrect or inaccurate any statement made in the legal opinion(s) received by ESM under Clause 4.1.1. or in any representation or warranty made under the Agreement;
- 5.3.4 the Board of Directors, after considering the most recent periodic assessment of the Beneficiary Member State by the Commission in liaison with the ECB, being satisfied with the compliance by the Beneficiary Member State with the terms of the MoU, including prior actions (if any);
- 5.3.5 ESM being satisfied that the conditions to drawdown under the Agreement are satisfied;
- 5.3.6 the Board of Directors having approved the Tranche or Disbursement under the relevant Facility Specific Terms (including in the case of the Financial Institution Recapitalisation Facility the conditions set out in Clause 4 (*Requests, Disbursements and Conditions to Disbursements*) of Section 4 of the Facility Specific Terms) are satisfied and in case of the DRI Facility the conditions set out in Clause 4 (*Requests, Disbursements and Conditions to Disbursements*) of Section 7 of the Facility Specific Terms are satisfied);
- 5.3.7 ESM being satisfied that no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which have a reasonable likelihood of success and which may prejudice the Beneficiary Member State's performance of the MoU, the Agreement or the transactions contemplated therein or which would be reasonably likely to have a material adverse effect on the Beneficiary Member State's ability to perform its obligations under the MoU, the Agreement, or the transactions contemplated therein, have been started or threatened in writing against the Beneficiary Member State; and
- 5.3.8 no material adverse change having occurred since the date of the Agreement such as would, in the opinion of ESM, after consultation with the Beneficiary Member State, be likely to prejudice materially the ability of the Beneficiary Member State to fulfil its payment obligations under the Agreement, *i.e.* to service the Financial Assistance and to repay it when due hereunder.
- 5.4 If the conditions in Clause 5.3 (or, in the case of a DRI Facility, the conditions in Clause 5.3.1. to Clause 5.3.6) are satisfied, ESM shall send the Beneficiary Member State an Acceptance Notice (with a copy to the DRI Beneficiary, in case of a DRI Facility) setting out the provisional terms on which ESM is willing to make available the relevant Tranche or a particular Disbursement or Disbursements to the Beneficiary Member State (or to the DRI Beneficiary, in the case of a DRI Facility). Following the acknowledgement of an Acceptance Notice by the Beneficiary Member State, the Beneficiary Member State and ESM shall irrevocably be bound by the terms of the Acceptance Notice, subject to however in all cases the non-occurrence of a Market Disruption Event or of an Event of Default (and in the case of a DRI Facility, subject to the non-occurrence of a Market Disruption Event, an Event of Default, or a Termination Event under the Institution Specific Agreement or a similar event under the Co-Investment Agreement (if applicable)) prior to the date of each Disbursement referred to on such Acceptance Notice.
- 5.5 If no acknowledgement from the Beneficiary Member State is received by ESM within one (1) Business Day of delivery by ESM of an Acceptance Notice, such notice shall be cancelled and shall be of no further effect, and the Beneficiary Member State shall be required to submit a new Request for Funds.
- 5.6 After serving the Acceptance Notice and receiving the Beneficiary Member State's acknowledgement of the terms set out therein, ESM shall either:
- 5.6.1 disburse the relevant funds or make the relevant Financial Assistance available to the Beneficiary Member State (or, in the case of a DRI Facility, to the DRI Beneficiary) by use of any proceeds previously obtained from Pre-Funding Operations or from the Liquidity Buffer; or

- 5.6.2 for any amount not raised through Pre-Funding Operations or from the Liquidity Buffer, ESM shall, at its discretion, launch the issue or enter into Funding Instruments to permit the funding of the relevant Tranche, or Disbursement; or
- 5.6.3 for any disbursement to be made *in specie*, deliver ESM Debt Securities to the Beneficiary Member State (or, in the case of a DRI Facility, to the DRI Beneficiary), to the Recapitalisation Fund (if applicable), or to the legal person designated for this purpose by the Beneficiary Member State.
- 5.7 If ESM considers that a Pre-Funding Operation is necessary in respect of any Tranche and the Beneficiary Member State and ESM agree (or, in the case of a DRI Facility, the Beneficiary Member State, the relevant DRI Beneficiary and ESM agree) to and enter into a Pre-Funding Agreement (i) prior to the receipt of a Request for Funds or (ii) following a receipt of a Request for Funds but prior to the satisfaction of all the conditions to disbursement and the issuance of an Acceptance Notice, in each case in respect of that Tranche, the Beneficiary Member State further expressly authorises (or, in the case of a DRI Facility, the Beneficiary Member State and the DRI Beneficiary authorise) ESM to enter into Pre-Funding Operations to pre-finance all such Financial Assistance up to the maximum aggregate amount of principal set out in the Pre-Funding Agreement. ESM shall inform the Beneficiary Member State (or, in the case of a DRI Facility, the Beneficiary Member State and the relevant DRI Beneficiary) in writing of the financial terms of all such Pre-Funding Operations. The Beneficiary Member State shall pursuant to Clause 7.7 bear all costs incurred by ESM in relation to Pre-Funding Operations (including any financing costs, margin, Negative Carry, losses, costs, hedging costs or other fees or expenses) regardless of whether any Financial Assistance is in fact made available and such amounts shall be paid to ESM on the Disbursement Date or within five (5) Business Days of demand by ESM. However, in the case of a DRI Facility all such costs shall be paid to ESM by the DRI Beneficiary within five (5) Business Days of receipt of an invoice from ESM, but with recourse on the Beneficiary Member State.
- 5.8 In the event that ESM, subject to compliance with the then applicable ESM Borrowing Guidelines, can only raise funds to finance or refinance the relevant Tranche or Disbursement by issuing Funding Instruments denominated in a currency other than euros and by entering into related currency hedging arrangements, any additional costs incurred by ESM in connection with currency hedging arrangements shall be borne by the Beneficiary Member State. However, in case of a DRI Facility, such amounts shall be paid by the DRI Beneficiary within five (5) Business Days of receipt of an invoice from ESM, but with recourse on the Beneficiary Member State.
- 5.9 After serving an Acceptance Notice in respect of a Tranche or Disbursement and receiving the Beneficiary Member State's written acknowledgement of the terms set out therein, subject to any conditions applicable to the provision of Financial Assistance under the relevant Facility as set out in the applicable Facility Specific Terms, ESM shall issue to the Beneficiary Member State a Confirmation Notice setting out the financial terms applicable to each Tranche or Disbursement, as the case may be. In the case of a Tranche made up of a series of Disbursements, a separate Confirmation Notice shall be issued for each Disbursement. By acknowledging the terms of an Acceptance Notice, the Beneficiary Member State shall be deemed to have accepted in advance the terms of the Financial Assistance set out in each Confirmation Notice. The Beneficiary Member State shall bear its share of the allocation of all costs incurred by ESM in relation to the financing (including any financing costs, margin, Negative Carry, losses, costs, hedging costs or other fees or expenses) as further provided in Clause 7.7.
- 5.10 If ESM, due to prevailing market conditions at the time of launching an issue of or seeking to enter into Funding Instruments to fund Financial Assistance, is not able to obtain funding, then ESM shall not be under any obligation to make further disbursements of Financial Assistance in respect of such Tranche.
- 5.11 The disbursement of any Financial Assistance shall under no circumstances commit any of the Parties to proceed with the provision and acceptance of any further Financial Assistance whether under the Agreement or any other agreement between the Parties. ESM is under no obligation to consider favourably any request by the Beneficiary Member State at any time to amend or reschedule the financial terms of any Financial Assistance.
- 5.12 Subject to the terms of a Financial Assistance Facility Agreement, on each Disbursement Date, ESM shall make the relevant Financial Assistance Amount (or the relevant portion thereof) available to the Beneficiary Member State (or, in the case of a DRI Facility, the DRI Beneficiary):

5.12.1 by instructing the ECB no later than 11:00 a.m. (Frankfurt time) on the Disbursement Date to transfer the Net Disbursement Amount on the Disbursement Date to the Designated Euro Account of the Beneficiary Member State, or in the case of a Disbursement other than by the disbursement of funds, by making available the Disbursement in accordance with the relevant Facility Specific Terms, or in the case of a DRI Facility, in accordance with Clause 4.6 of Section 7 of the Facility Specific Terms; and

5.12.2 any Issuance Costs shall be paid by ESM out of the sums retained in respect of the Issuance Costs or may be recovered under Clause 7.7.

6. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

6.1 Representations

Each of the Beneficiary Member State and, where applicable, the Recapitalisation Fund and the Resolution Fund represents and warrants to ESM on the date of execution of the Financial Assistance Facility Agreement, on any subsequent date when any Facility Specific Terms become incorporated into the Agreement, on the date of execution of any Pre-Funding Agreement, and on each Disbursement Date that:

6.1.1 the legal opinion of the Legal Officer or of the legal counsel provided in accordance with Clause 4.1.1 is accurate and correct;

6.1.2 the law of the Beneficiary Member State does not require ESM to be authorised as a credit institution or to obtain any licence, consent, or regulatory or administrative authorisation as a condition to providing any Financial Assistance or to be able to enforce (i) the Beneficiary Member State's obligations in relation to such Financial Assistance against the Beneficiary Member State, or (ii) the Recapitalisation Fund's obligations in relation to such Financial Assistance against the Recapitalisation Fund, or (iii) in the case of a DRI Facility, the obligations of the DRI Beneficiary in relation to such Financial Assistance against such DRI Beneficiary or (iv) if applicable, that an exemption to such requirement exists for ESM under the law of the Beneficiary Member State;

6.1.3 the entry into and performance by it of, and the transactions contemplated by, the Agreement and the MoU (and the transactions contemplated therein) does not and will not (i) violate any applicable law, regulation or ruling of any competent authority or any agreement, contract or treaty binding on it or any of its agencies; (ii) constitute a default or termination event (howsoever described) under any of the matters listed in sub-paragraph (i); or (iii) result in the creation of security or give rise to an obligation to grant security or transfer assets (by way of collateral or economically similar arrangements) in favour of any other person, other than security to be created by the Recapitalisation Fund (if applicable) in favour of ESM as expressly contemplated in the Agreement; and

6.1.4 to the best of its knowledge and belief (having made due and careful enquiry), no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which have a reasonable likelihood of success and which may prejudice its execution or performance of the MoU, the Agreement or the transactions contemplated therein or which, if adversely determined are reasonably likely to have a material adverse effect on its ability to perform its obligations under the MoU, the Agreement, or the transactions contemplated therein, have been started or threatened in writing against it.

6.2 Undertakings

The Beneficiary Member State undertakes, in relation to General Government Debt, until such time as all commitments of ESM under the Agreement have ceased, all Financial Assistance has been fully reimbursed and all interest and additional amounts, if any, due under the Agreement have been fully paid:

6.2.1 with the exception of Permitted Encumbrances:

- (a) not to secure by mortgage, pledge or any other encumbrance upon its own assets or revenues any present or future Relevant Indebtedness and any guarantee or indemnity given in respect thereof, unless the Financial Assistance

- shall, at the same time, share rateably in such security; and
- (b) not to grant to any other creditor or holder of its sovereign debt any priority over its obligations to ESM under the Agreement;
- 6.2.2 to utilise all Financial Assistance in accordance with the Financial Assistance Facility Agreement and the MoU (as the same has been modified or supplemented as at the date of the relevant Request for Funds applicable to such Financial Assistance);
- 6.2.3 in case of Financial Assistance provided for recapitalising an Institution or AMC (other than under a DRI Facility):
- (A) to utilise any cash or ESM Debt Securities received under a Financial Institution Recapitalisation Facility or under a Loan Facility in circumstances where the purpose of a Disbursement is to recapitalise Institutions or AMCs, solely for the purpose of financing the recapitalisation of Institutions or AMCs or (if applicable) to provide financing to the Recapitalisation Fund to subscribe Capital Instruments issued by the relevant Institutions or AMCs in each case as specified and in accordance with the Agreement and the MoU; and
- (B) not to and to procure that the Recapitalisation Fund (if applicable) shall not sell, transfer, grant security over or otherwise deal with these ESM Debt Securities other than in accordance with the Agreement and the MoU provided that prior to funds (in the form of cash or ESM Debt Securities) being disbursed to the Recapitalisation Fund (if applicable) or contributed to the Recapitalisation Fund (if applicable) by the Beneficiary Member State, ESM shall have confirmed that it is satisfied in relation to the legal instruments and documentation between the Beneficiary Member State and the Recapitalisation Fund setting out the legal basis of such disbursement and/or contribution of funds to such entity by the Beneficiary Member State;
- 6.2.4 in case of Financial Assistance provided for recapitalising an Institution or AMC (other than under a DRI Facility), to use and to procure (if applicable) that the Recapitalisation Fund shall use ESM Debt Securities which are delivered to the Beneficiary Member State or the Recapitalisation Fund solely for the purposes of pre-subscribing or subscribing for Capital Instruments in an Institution or AMC and subject to obtaining the prior written approval of ESM including confirmation by ESM that it is satisfied in relation to the legal mechanism, instruments and documentation between the Beneficiary Member State (if applicable) and/or the Recapitalisation Fund and the relevant Institution or AMC setting out the terms on which Capital Instruments in such Institution or AMC are being subscribed or pre-subscribed;
- 6.2.5 in case of Financial Assistance provided for recapitalising an Institution or AMC (other than under a DRI Facility), not to subscribe and to procure that the Recapitalisation Fund shall not subscribe for Capital Instruments in an Institution or an AMC by using ESM Debt Securities as consideration unless the Recapitalisation Fund and the relevant Institution or AMC have entered into a Pre-Subscription or Subscription Agreement substantially in the form agreed between ESM, the Beneficiary Member State, the Institution or AMC and the Recapitalisation Fund (if applicable);
- 6.2.6 to procure (and to cause the Recapitalisation Fund to procure) that the Institutions or AMCs which are recapitalised with ESM Debt Securities delivered pursuant to a Financial Institution Recapitalisation Facility, a DRI Facility or any other Disbursement to recapitalise Institutions or AMCs, shall enter into legally binding undertakings (i) to use such ESM Debt Securities solely: for the purpose of obtaining liquidity through repurchase transactions with market counterparties (ensuring the right of repurchasing the same securities or securities of the same series and nominal amount at the term of the repurchase transaction), for the purpose of obtaining liquidity from the ECB or the Central Bank of the relevant Beneficiary Member State as part of the Eurosystem, and/or as security or for such other arrangements (as approved in advance by ESM) and (ii) to return or sell such ESM Debt

- Securities to the Recapitalisation Fund (if applicable) or the Beneficiary Member State pursuant to call options or other similar arrangements upon any sale by the Recapitalisation Fund of all or part of the Capital Instruments which the Recapitalisation Fund holds in the relevant Institutions (unless the Institution no longer holds or cannot obtain re-delivery of such ESM Debt Securities as a consequence of transactions entered into which comply with the terms of this Agreement). Such undertakings shall be in terms such that they are directly enforceable by ESM as a third party beneficiary of such undertakings;
- 6.2.7 to comply and to procure that the Recapitalisation Fund (if applicable) complies with the additional undertakings set out in the Financial Assistance Facility Agreement, any applicable Facility Specific Terms and any Acceptance Notice;
- 6.2.8 to obtain and maintain and to procure (if applicable) that the Recapitalisation Fund obtains and maintains in full force and effect all authorisations necessary for it and (if applicable) the Recapitalisation Fund to comply with its or their respective obligations under the Agreement;
- 6.2.9 to comply and (if applicable) to procure that the Recapitalisation Fund complies in all respects with applicable laws which might affect its ability to perform the Agreement;
- 6.2.10 to pay the amount allocated by ESM to the Beneficiary Member State of any fees, costs and expenses, including in particular Issuance Costs, breakage or termination costs, and Cost of Carry incurred in respect of any Funding Instruments or hedging contract which ESM may have undertaken (including in relation to the amounts raised to fund the Liquidity Buffer, financings and/or Pre-Funding Operations) in accordance with any applicable ESM guidelines, but regardless of whether the provision of any Financial Assistance or any disbursement under a Facility takes place;
- 6.2.11 to indemnify and hold harmless ESM, and/or any officers or staff members of ESM on demand from and against any interest, cost, claim, loss, damage, liability and expense (including fees and disbursements of legal, accounting and professional advisers, costs of investigation) and any value added tax (if applicable) or equivalent thereof incurred or suffered by ESM, and/or any officers or staff members of ESM which results from (i) any incorrect, inaccurate or misleading information which is received from the Beneficiary Member State in connection with the Agreement, the transactions contemplated therein or in the MoU; (ii) any breach of the representations, warranties and/or undertakings in the Agreement, any Co-Investment Agreement, and/or any Institution Specific Agreement, or any Event of Default under this Agreement and/or any Termination Event under the Institution Specific Agreement; (iii) any action, claim, demand, proceeding, investigation, arbitration or judgment brought against ESM, and/or any officers or staff members of ESM in connection with the entering into and the performance by ESM of the Agreement, of any Co-Investment Agreement, or of any Institution Specific Agreement, or in connection with the transactions contemplated therein, with the acquisition of the Capital Instruments, with the MoU and with the activities of the DRI Beneficiary while ESM holds the Capital Instruments, and (iv) in case of a DRI Facility, the negotiation, documentation and implementation by the ESM of its exit from the operation;
- 6.2.12 agrees and accepts the limitation of liability in respect of any person nominated by or on behalf of ESM and subsequently appointed as director or manager of the Institution and/or AMC, for damages suffered by the Beneficiary Member State arising from acts and omissions of such person in the discharge of his or her duties as director or manager of such DRI Beneficiary, except where damages caused by such person are the direct consequence of acts and omissions committed with wilful misconduct, fraud or gross negligence by such person, provided that such limitation of liability will only be requested by ESM in cases where it is justified and upon an approval by the Board of Directors;
- 6.2.13 to notify ESM in case any representation or warranty, legal

- opinion or other information provided to ESM is or becomes inaccurate, incorrect or misleading in any respect; and
- 6.2.14 in case of Financial Assistance provided for recapitalising an Institution or AMC (other than under a DRI Facility), to procure, subject to any qualification or limitation set out in the Financial Assistance Facility Agreement, that the Recapitalisation Fund (if any) guarantees (in form satisfactory to ESM) that portion of the facility and to provide upon the request of ESM first ranking security (in form satisfactory to ESM) over all Capital Instruments or other rights acquired with the proceeds of such Facility or enters into such other arrangements or documents (in form acceptable to ESM) in relation to such assets or rights.
- 6.3 The Recapitalisation Fund (if applicable and if Financial Assistance is provided to recapitalise an Institution or AMC (other than under a DRI Facility)) undertakes until such time as all principal under the Agreement has been fully reimbursed and all interest and additional amounts, if any, due under the Agreement have been fully paid:
- 6.3.1 not to secure by mortgage, pledge or any other encumbrance upon the Capital Instruments or assets or revenues of the Recapitalisation Fund in relation thereto, any present or future indebtedness of the Beneficiary Member State, the Recapitalisation Fund or any other entity or person or any guarantee or indemnity given in respect thereof, unless the Financial Assistance shall, at the same time, share rateably in such security, provided that this Clause 6.3.1 shall not apply to any security granted over the ESM Debt Securities which secures any arrangement which has been approved in advance by ESM;
- 6.3.2 not to grant to any other creditor (other than IMF) any priority over ESM;
- 6.3.3 to obtain and maintain in full force and effect all authorisations necessary for it to comply with its obligations under the Agreement;
- 6.3.4 to comply with the terms of Clauses 6.2.3, 6.2.4, 6.2.5 and 6.2.14 above; and
- 6.3.5 to comply in all respects with applicable laws which might affect its ability to perform the Agreement.
- 6.4 The Recapitalisation Fund (if applicable and if Financial Assistance is provided to recapitalise an Institution or AMC (other than under a DRI Facility)) undertakes, that, until such time as all principal under the Agreement has been fully reimbursed and all interest and additional amounts, if any, due under the Agreement have been fully paid, it will, upon the request of ESM, following consultation with the Beneficiary Member State and, subject to any qualification or limitation set out in the Financial Assistance Facility Agreement, assign or grant valid first ranking security over all of its rights and interest in and in relation to the Capital Instruments (or other rights acquired with the proceeds of the Facility) as security for the performance of its obligations under the Agreement or enter into such other arrangements or documents (in form acceptable to ESM) in relation to such assets or rights.
- 6.5 The Beneficiary Member State shall ensure that, until all principal under the Agreement has been fully repaid, all Capital Instruments acquired pursuant to recapitalisations or financial support of Institutions or AMCs in the Beneficiary Member State using the proceeds of Financial Assistance provided for recapitalising an Institution or AMC (other than under a DRI Facility)), shall be acquired by the Recapitalisation Fund.
- 6.6 Each of the Beneficiary Member State and, if applicable, the Central Bank undertakes that, following a request by ESM pursuant to Clause 6.4 above, subject to any qualification or limitation set out in the Financial Assistance Facility Agreement, it will do all things necessary (including in relation to the registration of such security interest and the payment of any fees, costs, expenses or taxes in relation thereto) in order to procure that such a security interest is validly and properly granted in favour of ESM and is legally binding on each of the Recapitalisation Fund, the Beneficiary Member State and the Central Bank. Each of the Beneficiary Member State and the Recapitalisation Fund shall indemnify ESM in relation to any amounts paid by ESM in connection with the establishment, perfection, registration or enforcement of any security granted pursuant to Clause 6.4 and any such amounts shall be payable to ESM on demand from either or each of the Beneficiary Member State and the Recapitalisation Fund. For the avoidance of doubt, this Clause 6.6 shall not apply in case of a DRI Facility.
- 6.7 If Financial Assistance is made available under this Agreement to recapitalise Institutions or to capitalise AMCs then, until the time when all commitments of ESM under this Agreement

have terminated, all Financial Assistance made available under this Agreement has been repaid and all interest and other amounts outstanding under this Agreement have been paid in full to ESM:

- (a) The Beneficiary Member State and the Recapitalisation Fund (if applicable) shall procure that ESM shall be entitled to appoint an observer to attend and observe the meetings and discussions of the board of the Recapitalisation Fund, provided that:
- (i) the ESM observer shall not be required to attend and to observe all discussions and meetings of the relevant board but is entitled at his/her discretion to select which meetings and discussions he/she shall attend;
 - (ii) if required in writing by the Recapitalisation Fund the ESM observer shall enter into a confidentiality undertaking in the customary form;
 - (iii) the ESM observer shall be supplied with the calendar and agenda of all meetings and discussions of the board of the Recapitalisation Fund and shall be given notice of all meetings of the board of the Recapitalisation Fund in the same manner and with the same documents and information as are supplied to the members of such board.
- (b) The Beneficiary Member State undertakes that:
- (i) any changes which are needed to any laws or regulations of the Beneficiary Member State, in order to give full effect to the parties to this Agreement or the parties envisaged by the MoU, including, without limitation, to:
 - (A) provide security to ESM (in whatever form) or to enter into such other arrangements or documents (in form acceptable to ESM) as contemplated by this Agreement; or
 - (B) perform undertakings (including information undertakings),shall be promptly implemented following consultation with ESM; and
 - (ii) other than as required:
 - (A) under paragraph (b)(i) above; and/or
 - (B) in order to give effect to EU law,

it shall not make any change to any laws or regulations of the Beneficiary Member State where such change could adversely affect ESM's rights or interests under this Agreement or are in contradiction with the obligations of the parties to this Agreement or the parties envisaged by the MoU.

7. INTEREST, COSTS, FEES AND EXPENSES

- 7.1 In respect of each Financial Assistance under a Facility, interest shall accrue on the Financial Assistance Amounts at a rate equal to the applicable Interest Rate during each Interest Period. In the case of Back-to-Back Financed Financial Assistance, ESM shall issue an invoice for interest due and payable in respect of Back-to-Back Financed Financial Assistance under the Facilities for each Interest Period at least ten (10) calendar days prior to each Payment Date. In the case of Pool Funded Financial Assistance, ESM shall issue an estimate of interest to become due and payable in respect of Pool Funded Financial Assistance under the Facilities for each Interest Period at least ten (10) Business Days prior to the last day of such Interest Period and shall issue an invoice for interest due and payable in respect of Pool Funded Financial Assistance under the Facilities in respect of each Interest Period one (1) Business Day prior to the last day of such Interest Period.
- 7.2 On each Payment Date under a Facility; the Beneficiary Member State shall pay in cleared funds to the account designated to it in writing by ESM for this purpose (or to such other account as the Parties may agree from time to time) an amount equal to the interest due and payable in respect of such Facility on such Payment Date.
- 7.3 The Beneficiary Member State shall pay its annual allocation of the Commitment Fee either (i) following the receipt of an invoice or (ii) on the first Payment Date under any Tranche or Disbursement following the determination of the amount to be paid as annual Commitment Fee. However, in the case of a DRI Facility, the payment obligation of the Beneficiary Member State in respect to the Commitment Fee only applies to the extent that such Commitment Fee has not been recovered from coupons, dividends or other distributions received by ESM on the Capital Instruments.
- 7.4 Without prejudice to the terms of Clause 10 (*Events of Default*), if the Beneficiary Member State fails to pay any sum payable under a Facility on its due date, the Beneficiary Member State shall pay in addition default interest on

such sum (or, as the case may be, the amount thereof for the time being due and unpaid) to ESM from the Payment Date (or other due date) to the date of actual payment in full, calculated by reference to successive interest periods (each of such length as ESM may from time to time select, the first period beginning on the relevant Payment Date (or other due date) and, wherever possible, the length of such period shall be that of one week) at the rate per annum which is equal to the number of basis points per annum specified for such purpose in the ESM Pricing Policy over the higher of (a) the EURIBOR rate applicable to the relevant period selected by ESM and (b) the Interest Rate which would have been payable if the overdue amount had, during the period of non-payment, constituted Financial Assistance under the relevant Facility (if any). So long as the failure to pay continues, such rate shall be re-fixed in accordance with the provisions of this Clause 7.4 on the last day of each such interest period and unpaid interest under this Clause 7.4 concerning previous interest periods shall be added to the amount of interest due at the end of each such interest period. The default interest is immediately due and payable.

- 7.5 On each Payment Date the Beneficiary Member State shall pay to ESM any Commitment Fees, Service Fees and other fees then due as may be specified in the relevant Facility Specific Terms accrued on the relevant Facility during the Interest Period ending on such Payment Date (except as otherwise paid).
- 7.6 ESM shall, during each Interest Period, provide to the Beneficiary Member State on a regular basis details of the Interest Rate and any other amounts accrued under the Facilities during the relevant Interest Period.
- 7.7 Except to the extent deducted pursuant to Clause 7.8, the Negative Carry, Loss of Interest, Issuance Costs and all other commissions, fees and costs incurred by ESM in respect of Pre-Funding Operations or financings shall be promptly paid by the Beneficiary Member State within five (5) Business Days following the receipt of invoices which ESM will periodically provide, such payment to be made to the account designated in writing by ESM for this purpose. However, in the case of a DRI Facility such amounts shall be paid by the DRI Beneficiary within five (5) Business Days of receipt of an invoice from ESM.
- 7.8 ESM shall be entitled to deduct the Negative Carry together with all other commissions, fees and costs related to any Pre-Funding Operations and all other amounts that may be deducted in determining the Net Disbursement Amount in relation to any Financial Assistance (whether under the Agreement or any other facility provided by ESM to the Beneficiary Member State) when calculating the Net Disbursement Amount to be made available in relation to a disbursement of funds settled in cash (whether or not the amounts deducted relate to that disbursement of funds).
- 7.9 In the event that any hedging instrument in relation to a Funding Instrument which is financing any Financial Assistance is terminated early for any reason (including early termination by ESM in accordance with the hedging instrument documentation) then the Beneficiary Member State or the relevant beneficiary member states shall indemnify ESM in respect of the cost of servicing the relevant Funding Instrument on a non-hedged basis and any costs incurred as a consequence of such early termination (to the extent such costs are not already included in ESM Cost of Funding). There shall not be any double counting between amounts due to ESM under Clause 6.2.10 and this Clause 7.9.
- 7.10 The Beneficiary Member State shall pay within five (5) Business Days of demand by ESM all costs, charges and expenses, including legal, professional, banking or exchange charges incurred in connection with the preparation, execution, implementation and termination of the Agreement and any related document, any amendment or waiver in respect of the Agreement and any related document including the costs and expenses payable by ESM in relation to the preparation and issuance of Funding Instruments to finance the Financial Assistance provided hereunder, and authorises ESM to deduct such costs, charges and expenses from any Financial Assistance Amount in determining the Net Disbursement Amount. These costs and expenses to be borne by the Beneficiary Member State include legal costs (such as costs incurred to obtain legal opinions and drafting documentation where applicable), rating agency costs, listing costs, travel costs (if applicable), commissions related to the Funding Instruments, fees of service providers and clearance systems, taxes, registration fees and publication costs.
- 7.11 The Beneficiary Member State shall in addition bear all such other costs charges, fees and expenses in connection with the Facilities at such times and in such manner as is set out in any Facility Specific Terms. However, in the case of a DRI Facility such amounts shall be paid by the DRI Beneficiary within five (5) Business Days of receipt of an invoice from ESM.

7.12 Any amount payable by the Beneficiary Member State in respect of costs, charges, fees and expenses or otherwise in accordance with this Clause 7 (*Interest, Costs, Fees and Expenses*) for which no due date for payment is specified in this Clause 7 (*Interest, Costs, Fees and Expenses*) shall be payable within five (5) Business Days of demand by ESM.

8. REPAYMENT, EARLY REPAYMENT, MANDATORY REPAYMENT AND CANCELLATION

8.1 This Clause 8 is subject to the specific terms applying to a Facility as set out in the Financial Assistance Facility Agreement or in the applicable Facility Specific Terms.

8.2 The Beneficiary Member State:

8.2.1 shall repay the principal amount of each Financial Assistance Amount in cleared funds to the account designated to it in writing by ESM for this purpose (or to such other account as the Parties may agree from time to time for the purpose of the Agreement) on the date(s) (each of which must be an Interest Payment Date) and under the conditions notified to it by ESM in the relevant Confirmation Notice; and

8.2.2 may voluntarily repay any Financial Assistance Amount together with accrued interest and all other amounts due in respect thereof before its due date (but after the end of the Availability Period) in a minimum principal amount equal to or greater than the Minimum Voluntary Prepayment Amount if:

(a) it requests permission to make such voluntary prepayment in writing by a letter addressed to the Managing Director which is made at least thirty (30) Business Days prior to the proposed voluntary prepayment date, and any such request shall be irrevocable and binding on the Beneficiary Member State subject to the terms of this Clause 8.2.2, and

(b) the Board of Directors approves the principal amount of such voluntary prepayment, the date of such voluntary prepayment and the Facility or Facilities to which such prepayment will be applied and informs the Beneficiary Member State of the amount of all costs, expenses, fees, Loss of Interest, Negative Carry, breakage costs and costs of termination of

any hedging which will become payable by the Beneficiary Member State in connection with such voluntary prepayment and any other amounts due under Clause 8.4 in respect thereof.

The Beneficiary Member State shall make such voluntary prepayment and pay the related costs in the amounts determined by the Board of Directors on the approved voluntary repayment date. Amounts repaid may not be re-borrowed.

8.3 If financing granted to the Beneficiary Member State under the IMF Arrangement or under any of the facilities provided by the Financial Support Providers, the IMF, the European Union (or any body or institution thereof) is repaid by the Beneficiary Member State in advance in whole or in part on a voluntary or mandatory basis, a proportional amount of the Financial Assistance Amounts of the Financial Assistance provided under the Agreement together with accrued interest and all other amounts due in respect thereof shall become immediately due and repayable in a proportionate amount established by reference to the proportion which the principal sum repaid in advance in respect of the IMF Arrangement or the relevant facility represents to the aggregate principal amount outstanding in respect of the IMF Arrangement or such facility immediately prior to such repayment in advance.

8.4 The Beneficiary Member State shall pay on the date of any early repayment of any Financial Assistance (whether such early repayment is voluntary or mandatory) all accrued interest and all other amounts due in respect of the amount repaid and shall reimburse all costs, expenses, fees, hedge or other breakage costs, Loss of Interest incurred and/or payable by ESM as a consequence of an early repayment in respect of such Financial Assistance (including without limitation fees, costs and expenses, including prepayment premiums or Costs of Carry incurred by ESM in connection with the continued holding or early repayment or call of short term and/ or long term Funding Instruments).

8.5 The Beneficiary Member State may cancel, on not less than ten (10) Business Days' prior written notice, the whole or any part (being equal to or greater than the Minimum Cancellation Amount) of the undisbursed amount of a Facility, provided that no Request for Funds for that amount has been made under the relevant Facility. ESM will maintain the right to assess the adequacy of the remaining

programme in the circumstances where a Beneficiary Member State cancels the whole or any part of the undisbursed amount of a Facility. The Beneficiary Member State shall remain fully liable to ESM in respect of any costs, expenses, fees, hedge, breakage costs or liquidity costs incurred in connection with the cancelled portion of a Facility.

8.6 ESM may by written notice to the Beneficiary Member State:

8.6.1 cancel the whole or any part of the undisbursed amount of a Facility if the Beneficiary Member State notifies its intention not to draw anymore under the Agreement;

8.6.2 cancel the whole or any part of the reduced amount of a Facility if the MoU or the Proposal is amended in a way that reduces the amount of the Financial Assistance available to the Beneficiary Member State;

8.6.3 cancel the whole or any part of the undisbursed amount of a Facility and request immediate repayment in full of all Facilities, including all amounts referred to in Clause 8.4, if the Beneficiary Member State is found to have failed to comply with Clause 12.3; and

8.6.4 suspend the whole or any part of the undisbursed amount of a Facility if the Beneficiary Member State fails to fulfil its obligations under Articles 8, 9 and 10 of the ESM Treaty.

8.7 ESM may also cancel as it deems appropriate the whole or any part of the undisbursed amount of any or all Facilities to the Beneficiary Member State if the IMF cancels the IMF Arrangement or any other Financial Support Provider or the European Union (or any body or institution thereof) cancels in whole or in part any support facility entered into with, or in respect of, the Beneficiary Member State. In this case the cancellation of a Facility shall be proportionate to (a) in the case of cancellation by the IMF, the proportion which the sum cancelled represents to the aggregate initial principal amount of such IMF Arrangement and (b) in the case of cancellation of any of the other facilities, the proportion which the cancelled amount represents to the aggregate of the initial amounts of the Agreement and each of the facilities provided by each of the other Financial Support Providers or the European Union (or any body or institution thereof).

8.8 If the proceeds of any Disbursement are to be used by the Beneficiary Member State to

finance the recapitalisation of an Institution or an AMC (other than under a DRI Facility)):

8.8.1 the Beneficiary Member State shall either

(a) itself subscribe for such Capital Instruments; or

(b) shall provide the proceeds of such disbursement to the Recapitalisation Fund (if applicable) for it to recapitalise the relevant Institutions or AMC(s) by way of subscribing Capital Instruments .

8.8.2 the Beneficiary Member State shall notify ESM in writing in the event that

(a) it receives a payment from the Recapitalisation Fund (if applicable), (b) it or the Recapitalisation Fund (if applicable) receives a payment from a recapitalised Institution, or if (c) it or the Recapitalisation Fund (if applicable) sells to a third party any loan, bond, debt security, shares or capital or other instrument (including, *inter alia*, Capital Instruments) which it or the Recapitalisation Fund holds in relation to the relevant Institution or AMC (or any of their affiliates). The Beneficiary Member State shall, upon written notice from ESM, having given reasonable consideration to losses under the portfolio of the Beneficiary Member State and the Recapitalisation Fund (if applicable) related to the recapitalisation of Institutions or AMCs (provided that such consideration shall only reduce the principal amount that will be payable in respect of any Facility at maturity to the extent a principal repayment has actually been made upon such sale), repay a portion of any Facility demanded by ESM (together with accrued interest on such portion), such portion not to exceed the amount received by the Beneficiary Member State from the Recapitalisation Fund or received by the Beneficiary Member State or by the Recapitalisation Fund from the relevant Institution or AMC by way of reimbursement or redemption or received from a third party in the case of the proceeds of sale of the relevant loan, bond, debt security, shares or capital or other instrument realised by the Beneficiary Member State or the Recapitalisation Fund. The Recapitalisation Fund (if applicable)

- shall not unnecessarily delay the payment to the Beneficiary Member State of undistributed profit resulting from its operations;
- 8.8.3 in the event that the Beneficiary Member State or the Recapitalisation Fund realises a profit upon re-sale or placement of any loan, bond, debt security, share, capital or other instrument which it holds in relation to that Institution or AMC (or any of their affiliates), in connection with the recapitalisation of such Institution or AMC then the Beneficiary Member State shall promptly (and in any event within five (5) Business Days of receipt of such profit by the Beneficiary Member State or the Recapitalisation Fund) repay a portion of any Facility demanded by ESM (together with accrued interest on such portion) in an amount equal to such realised profit; and
- 8.8.4 in the event that a repayment under this Clause 8.8 gives rise to an obligation to repay or pre-pay financing which may be granted to the Beneficiary Member State by the IMF (if any), under any of the facilities provided by the Financial Support Providers, the European Union (or any institution thereof), ESM acknowledges and agrees that the amount to be repaid to ESM under this Clause 8.8 shall be reduced proportionately using the methodology set out in Clause 8.7 (except that references to cancellations in Clause 8.7 shall be deemed to be references to principal repayments for the purposes of such reduction). A repayment under this Clause 8.8 shall constitute a scheduled repayment and not a voluntary or mandatory re-payment.

9. PAYMENTS

- 9.1 All payments to be made by the Beneficiary Member State under the Agreement shall be paid without set-off or counterclaim, free and clear of, and without deduction for and on account of, any taxes, commissions and any other charges for the entire term of the Agreement.
- 9.2 The Beneficiary Member State declares that all payments and transfers under the Agreement are not subject to any tax or any other impost in the country of the Beneficiary Member State and shall not be so subject for the entire term of the Agreement. If nevertheless the Beneficiary Member State or the Central Bank is required
- by law to make any such deductions, the Beneficiary Member State shall pay the requisite additional amounts so that, after making any deduction as is required by law, ESM receives in full the amounts specified by the Agreement.
- 9.3
- 9.3.1 All repayments shall be made in cleared funds in euro except in the circumstances set out in the Acceptance Notice where a Disbursement was made by delivery of ESM Debt Securities in which event reimbursement shall where possible be made by re-delivery of ESM Debt Securities of the same series and in the same nominal amount as the ESM Debt Securities which were delivered in satisfaction of the relevant disbursement provided that if two or more series of ESM Debt Securities were used to make a disbursement, the reimbursement shall be made by redelivering proportionate amounts of each such series.
- 9.3.2 If the Beneficiary Member State is required to discharge a Financial Assistance (or disbursement) by redelivery of ESM Debt Securities which have a maturity date which is the same as the date for repayment of such Financial Assistance (or disbursement) or with a maturity date which is fourteen (14) Business Days or less prior to such repayment date, then the Beneficiary Member State shall transfer such ESM Debt Securities into a dedicated securities account no less than fourteen (14) Business Days prior to the date for repayment and shall only withdraw such ESM Securities from such dedicated securities account for the purpose of making the relevant redelivery of ESM Debt Securities to ESM under the Agreement.
- 9.4 All payments by the Beneficiary Member State to ESM shall be made via SWIFT message MT202 in TARGET2 on the due date before 11:00 a.m. (Frankfurt time) to the TARGET2 participant SWIFT-BIC: [●] in favour of the account designated to it in writing by ESM for this purpose (or to such other bank or securities account as the Parties may agree from time to time for the purpose of the Agreement).
- 9.5 ESM shall advise the Beneficiary Member State and the Central Bank no later than the dates specified in Clause 7.1 of the amount of principal and interest due and payable on the

relevant Payment Dates and of the details (Interest Rate, Interest Period) on which the interest calculation is based.

9.6 The Beneficiary Member State shall send to ESM and to the ECB a copy of the payment instructions sent by the Beneficiary Member State or such DRI Beneficiary and relating to a payment due to ESM under the Agreement at least two (2) Business Days prior to the relevant due date.

9.7 If the Beneficiary Member State shall pay, on a given date, an amount in relation to any Financial Assistance which is less than the total amount due and payable on such date under the relevant Facility Specific Terms, the Beneficiary Member State hereby waives any rights it may have to make any appropriation of the amount so paid as to the amounts due.

The amount so paid in respect of such Financial Assistance shall be applied in or towards satisfaction of payments due in relation to such Financial Assistance in the following sequence:

9.7.1 *first* against any fees, costs, expenses and indemnities (including but not limited to any Issuance Costs and Commitment Fees);

9.7.2 *second* against any interest for late payments as determined under Clause 7.4;

9.7.3 *third* against other interest; and

9.7.4 *fourth* against principal,

provided that these amounts are due, accrued or overdue for payment on that date.

9.8 Any calculation by ESM under the Agreement:

9.8.1 by ESM shall be made in a commercially reasonable manner; and

9.8.2 by the ECB or ESM shall, absent manifest error, be binding on ESM and the Beneficiary Member State.

10. EVENTS OF DEFAULT

10.1 ESM, may, by written notice to the Beneficiary Member State cancel all or any part of the Facilities (or any of them) and/or declare the aggregate principal amount of any or all Financial Assistance made and outstanding under the Facilities to be immediately due and payable, together with accrued interest and all other amounts due in respect thereof and/or exercise any or all of its rights, remedies, powers or discretions under the Agreement or under the applicable law, if:

10.1.1 the Beneficiary Member State, the Recapitalisation Fund shall fail to pay

to ESM any amount of principal or interest in relation to any Financial Assistance or any other amounts due under the Agreement on its due date, whether in whole or in part, in the manner and currency as agreed in the Agreement; or

10.1.2 the Beneficiary Member State, or, if applicable, the Central Bank, the Recapitalisation Fund or the Resolution Fund shall default in the performance of any obligation under the Agreement (including the obligation set out in Clause 3.7 to apply any Financial Assistance in accordance with the terms of the MoU (but excluding any other obligations under the MoU) other than the obligations referred to in Clause 10.1.1, and such default shall continue for a period of one month after written notice thereof shall have been given to the Beneficiary Member State by ESM; or

10.1.3 ESM sends the Beneficiary Member State a declaration of default in circumstances where obligations of the Beneficiary Member State, the Central Bank, the Resolution Fund and/or (if applicable) the Recapitalisation Fund under the Agreement are declared by a court of competent jurisdiction not to be binding on or enforceable against the Beneficiary Member State, the Central Bank, the Resolution Fund or the Recapitalisation Fund (if applicable) or are declared by a court of competent jurisdiction to be illegal; or

10.1.4 ESM sends the Beneficiary Member State a declaration of default in circumstances where (i) it has been established that in relation to the Agreement or the MoU, the Beneficiary Member State, the Central Bank, the Resolution Fund or (if applicable) the Recapitalisation Fund has engaged in any act of fraud or corruption or any other illegal activity, or any other actions detrimental to ESM or (ii) any representation or warranty made by the Beneficiary Member State under the Agreement is inaccurate, untrue or misleading and which in the opinion of ESM could have a negative impact on the capacity of the Beneficiary Member State, the Central Bank, the Resolution Fund or (if applicable) the Recapitalisation Fund to fulfil its obligations under the Agreement or

- prejudice the rights of ESM under the Agreement; or
- 10.1.5 any agreement for the provision of a loan or any other financial assistance between the Beneficiary Member State, the Recapitalisation Fund or the Resolution Fund (if applicable), the Central Bank and ESM, EFSF, EFSM, IMF, any EU institution or body or any other Financial Support Provider, regardless of amount, is the subject of a declaration of default or there is a default on any payment obligation of any kind towards ESM, EFSF or any EU institution or body by the Beneficiary Member State and such payment default gives rise to a declaration of default; or
- 10.1.6 Relevant Indebtedness of the Beneficiary Member State, or (if applicable) the Recapitalisation Fund having an aggregate principal amount in excess of EUR 250,000,000 is the subject of a declaration of default as defined in any instrument governing or evidencing such indebtedness and as a result of such a declaration of default there is an acceleration of such indebtedness or a *de facto* moratorium on payments; or
- 10.1.7 (if applicable) the Beneficiary Member State does not make timely repurchases from the IMF in relation to the IMF Arrangement of any outstanding purchases in accordance with the applicable repurchase obligation schedule or has overdue charges on outstanding purchases and the managing director of the IMF has notified the Executive Board of the IMF that such repurchases or such payment of charges have become overdue; or
- 10.1.8 the Beneficiary Member State does not pay a substantial portion of its Relevant Indebtedness as it falls due or declares or imposes a moratorium on the payment of its Relevant Indebtedness or of Relevant Indebtedness assumed or guaranteed by it.
- 10.2 ESM may, but is not obliged to, exercise its rights under this Clause 10 and may also exercise them only in part without prejudice to the future exercise of such rights.
- 10.3 The Beneficiary Member State shall pay default interest, as provided in Clause 7.4 above, which shall accrue as from the date when the outstanding principal amount in respect of such
- Financial Assistance has been declared immediately due and payable, until the date of actual payment in full.
- 11. INFORMATION UNDERTAKINGS**
- 11.1 With effect from the date of the Agreement and for so long as any amount is outstanding under the Agreement or any commitment under the Agreement is in force, the Beneficiary Member State shall supply to ESM:
- 11.1.1 all documents dispatched by the Beneficiary Member State to its creditors generally at the same time as they are dispatched and shall supply to ESM as soon as reasonably practicable following receipt, all documents issued generally to creditors of any other entities which incur indebtedness which constitutes General Government Debt;
- 11.1.2 all documents dispatched by the Beneficiary Member State to the IMF under an IMF Arrangement or any Financial Support Provider;
- 11.1.3 each periodic report on the progress made in fulfilment of the terms of the MoU;
- 11.1.4 promptly, such further information regarding its fiscal and economic condition as ESM may reasonably request;
- 11.1.5 any information pertaining to any event which could reasonably be expected to cause an Event of Default to occur (and the steps, if any, being taken to remedy it); and
- 11.1.6 a declaration that the Beneficiary Member State no longer intends to request any more Financial Assistance under the Agreement, as soon as that is the case.
- 11.2 The Beneficiary Member State undertakes to provide ESM promptly with all information reasonably requested by ESM in connection with the warning system established pursuant to Article 13(6) of the ESM Treaty.
- 11.3 Each party to the Agreement (other than ESM) undertakes to inform ESM promptly if any event occurs that would render incorrect any statement made in the legal opinion provided by it in accordance with Clause 4.1.1 above.
- 11.4 The Beneficiary Member State undertakes to promptly notify ESM in the event that it becomes actually aware that litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral

body or agency which may prejudice its execution or performance of the MoU, the Agreement or the transactions contemplated therein or which, if adversely determined, would be reasonably likely to have a material adverse effect on its ability to perform its obligations under the MoU, the Agreement, or the transactions contemplated therein, have been started or threatened in writing against it.

11.5 If Financial Assistance is used for the purpose of recapitalisation of Institutions or capitalising AMCs, the Beneficiary Member State and the Recapitalisation Fund (if applicable) undertake to provide to ESM promptly information regarding:

- (a) any actual or proposed change to the Recapitalisation Fund Laws;
- (b) the occurrence of any event or circumstances (including any change to laws or regulations, any litigation, claim or liability) which could have a material adverse effect on the ability of the Recapitalisation Fund to perform its obligations as contemplated under this Agreement and/or the MoU; and
- (c) such further information regarding the Capital Instruments and the recapitalised Institutions or AMCs, as ESM may reasonably request.

11.6 If Financial Assistance is provided in the form of a DRI Facility, the Beneficiary Member State and (if applicable) the Recapitalisation Fund undertake to:

- 11.6.1 promptly inform ESM in case of any circumstances or events which have (or which could potentially have) a material negative impact on the DRI Beneficiary's viability, financial situation or on its ability to perform the Institution Specific Agreement;
- 11.6.2 promptly inform ESM in case of any material breach of the DRI Beneficiary with its obligations under the Restructuring Plan;
- 11.6.3 promptly inform ESM in case it becomes aware of any fraudulent or criminal activities within the DRI Beneficiary, its subsidiaries and affiliates, or among the staff and/or members of the board of directors and/or senior managers of such DRI Beneficiary and its subsidiaries and affiliates; and
- 11.6.4 provide ESM with any information reasonably required by ESM in respect

of the DRI Beneficiary, including, but not limited to information regarding the Capital Instruments and results of any inspections or conclusions of any reports conducted or requested by such party in relation to such DRI Beneficiary.

12. UNDERTAKINGS RELATING TO INSPECTIONS, FRAUD PREVENTION AND AUDITS

12.1 The Beneficiary Member State shall permit ESM to send its own agents or duly authorised representatives to carry out any technical or financial assessments, due diligence, controls or audits that it considers necessary in relation to the management of the Agreement and any Financial Assistance provided thereunder.

12.2 The Beneficiary Member State directly or through the Recapitalisation Fund (if applicable) and/ or the Resolution Fund and/or the Central Bank (if relevant) or the Debt Agency shall supply to ESM, ECB, the Commission and (where appropriate) IMF relevant information and documents which may be requested for the purpose of such assessments, controls or audits, provide full cooperation and take all suitable measures to facilitate the work of persons instructed to carry them out. The Beneficiary Member State, the Resolution Fund, the Recapitalisation Fund (if applicable) and the Central Bank (if relevant) undertake to give to the persons referred to in this Clause 12 (*Undertakings relating to Inspections, Fraud Prevention and Audits*) (or to procure the giving to such persons of) access to sites and premises where the relevant information and documents are kept.

12.3 The Beneficiary Member State, the Resolution Fund, the Recapitalisation Fund (if applicable) and the Central Bank (if relevant) shall ensure investigation and satisfactory treatment of any suspected and actual cases of fraud, corruption or any other illegal activity in relation to the management of the Agreement and any Financial Assistance provided thereunder. All such cases as well as measures related thereto taken by national competent authorities shall be reported to ESM and the Commission without delay.

13. NOTICES

13.1 All notices in relation to the Agreement shall be validly given if in writing and sent to the addressees listed in Schedule 1 (*List of Contacts*) to the Financial Assistance Facility Agreement. Each Party will update the details of addressees and notify the same to each other Party hereto upon the same being amended from time to time.

13.2 All notices shall be given by registered mail. In case of urgency, they can be given by electronic mail, fax, SWIFT message or by hand-delivered letter to the addressees above mentioned and confirmed by registered mail without undue delay. Notices shall become effective upon the actual receipt by the relevant addressee of the fax, the SWIFT message or the hand-delivered letter.

13.3 All documents, information and materials to be furnished under the Agreement shall be in the English language.

13.4 Each Party to the Agreement will notify to the other Parties the list and specimen signatures of the persons authorised to act on its behalf under the Agreement, prior to its signature of the Agreement. Likewise, each Party will update such list and notify the other Parties hereto upon the same being amended from time to time.

14. GUARANTEE AND INDEMNITY

14.1 If a Financial Assistance Facility Agreement or the MoU contemplates that Financial Assistance made available to a Beneficiary Member State will be used to finance the recapitalisation of Institutions or AMCs via the Recapitalisation Fund under a Financial Institution Recapitalisation Facility or under any other Facility in circumstances where the purpose of a Disbursement is to recapitalise Institutions or AMCs, this Clause 14 shall apply.

14.2 The Recapitalisation Fund irrevocably and unconditionally:

14.2.1 guarantees to ESM punctual performance by the Beneficiary Member State of the Beneficiary Member State's obligations under the Agreement in connection with Financial Assistance used to finance the recapitalisation of Institutions or AMCs in the Beneficiary Member State (including the Financial Institution Recapitalisation Facility);

14.2.2 undertakes with ESM that whenever the Beneficiary Member State does not pay any amount when due under or in connection with the Agreement, the Recapitalisation Fund (if applicable) shall immediately on demand pay that amount as if it was the principal obligor provided that such amount is due in connection with Financial Assistance used to finance the recapitalisation of Institutions or AMCs in the Beneficiary Member State (including the Financial Institution Recapitalisation Facility); and

14.2.3 agrees with ESM that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify ESM immediately on demand against any cost, loss or liability it incurs as a result of the Beneficiary Member State not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Agreement in connection with Financial Assistance used to finance the recapitalisation of Institutions or AMCs (including the Financial Institution Recapitalisation Facility) in the Beneficiary Member State on the date when it would have been due. The amount payable by the Recapitalisation Fund under this indemnity will not exceed the amount it would have had to pay under this Clause 14 if the amount claimed had been recoverable on the basis of a guarantee.

14.3 The guarantee set out in Clause 14.1 is a continuing guarantee and will extend to the ultimate balance of sums payable by the Beneficiary Member State under the Agreement, regardless of any intermediate payment or discharge in whole or in part.

14.4 If any discharge, release or arrangement (whether in respect of the obligations of the Beneficiary Member State or any security for those obligations or otherwise) is made by ESM in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Recapitalisation Fund under this Clause 14 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

14.5 The obligations of the Recapitalisation Fund under this Clause 14 will not be affected by any act, omission, matter or thing which, but for this Clause 14.5, would reduce, release or prejudice any of its obligations under this Clause 14 (without limitation and whether or not known to it or to ESM) including:

14.5.1 any time, waiver or consent granted to, or composition with, the Beneficiary Member State or other person;

14.5.2 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Beneficiary Member State or other person or any non-

- presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 14.5.3 any incapacity or lack of power or authority of the Beneficiary Member State or any other person;
- 14.5.4 any amendment, novation, supplement, extension or restatement (however fundamental and whether or not more onerous) or replacement of the Agreement or any other document or security including without limitation any change in the purpose of, any extension of, or any increase in, any facility or the addition of any new facility under the Agreement or other document;
- 14.5.5 any unenforceability, illegality or invalidity of any obligation of any person under the Agreement or any other document or security; or
- 14.5.6 any moratorium in relation to the Beneficiary Member State or any insolvency or similar proceedings in relation to any other person.
- 14.6 The Recapitalisation Fund waives any right it may have of first requiring ESM to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Recapitalisation Fund under this Clause 14. This waiver applies irrespective of any law or any provision of any document to the contrary.
- 14.7 Until all amounts which may be or become payable by the Beneficiary Member State under or in connection with the Agreement have been irrevocably paid in full, ESM may:
- 14.7.1 refrain from applying or enforcing any other moneys, security or rights held or received by it in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Recapitalisation Fund shall not be entitled to the benefit of the same; and
- 14.7.2 hold in an interest-bearing suspense account any moneys received from the Recapitalisation Fund or on account of any of the Recapitalisation Fund's liability under this Clause 14.
- 14.8 Until all amounts which may be or become payable by the Beneficiary Member State under or in connection with the Agreement have been irrevocably paid in full, the Recapitalisation Fund will not exercise any rights which it may have by reason of performance by it of its obligations under the Agreement or by reason of any amount being payable, or liability arising, under this Clause 14:
- 14.8.1 to be indemnified by the Beneficiary Member State;
- 14.8.2 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary Member State under the Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Agreement;
- 14.8.3 to bring legal or other proceedings for an order requiring the Beneficiary Member State to make any payment, or perform any obligation, in respect of which the Fund has given a guarantee, undertaking or indemnity under Clause 14.1;
- 14.8.4 to exercise any right of set-off against the Beneficiary Member State; and/or
- 14.8.5 to claim or prove as a creditor of the Beneficiary Member State in competition with ESM.
- If the Recapitalisation Fund receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to ESM by the Beneficiary Member State under or in connection with the Agreement to be repaid in full on trust for ESM and shall promptly pay or transfer the same to ESM.
- 14.9 This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by ESM.
- 15. MISCELLANEOUS**
- 15.1(a) The Parties to the Agreement acknowledge and undertake to comply with the terms of the MoU and the ESM Facility Guidelines.
- (b) The Parties to the Agreement acknowledge and agree to the terms of the ESM Borrowing Guidelines, the ESM Investment Policy and the ESM Pricing Policy and acknowledge and agree that they shall apply to this Agreement as they are varied, supplemented or replaced from time to time in accordance with the ESM Treaty.
- 15.2 Neither the Beneficiary Member State, nor the Recapitalisation Fund (if applicable) shall have

any right to assign or transfer any of its rights or obligations under the Agreement without the prior written consent of ESM.

16. GOVERNING LAW AND JURISDICTION

16.1 The Agreement and any non-contractual obligations arising out of or in connection with the Agreement shall be governed by and shall be construed in accordance with public international law, the sources of which shall be taken for these purposes to include:

- (a) the ESM Treaty and any other relevant treaty obligations that are binding reciprocally on the Parties;
- (b) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognised as having codified or ripened into binding rules of law applicable to states and to international financial institutions, as appropriate, including, without limitation, the Vienna Convention on the Law of Treaties Between States and International Organizations or between International Organizations done at Vienna on 21 March 1986; and
- (c) applicable general principles of law.

16.2 The rights and obligations of the Parties under the Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any state or political subdivision thereof to the contrary. Neither the Beneficiary Member State, nor the Central Bank, nor the Resolution Fund, nor the Recapitalisation Fund (if applicable) shall be entitled in any proceeding under this Clause 16 to assert any claim that any provision of this Agreement is invalid or unenforceable for any reason.

16.3 Any Dispute between ESM and the Beneficiary Member State shall be submitted for settlement in accordance with Article 37 of the ESM Treaty and where applicable, the Beneficiary Member State assumes responsibility for the acts or omissions of the Resolution Fund, the Central Bank and the Recapitalisation Fund under this Agreement.

16.4 The parties agree that the dispute resolution mechanism in this Clause 16 is exclusive and prevents the exercise of any other right a party may have in connection with the resolution of a Dispute. The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under applicable law.

16.5 No delay in exercising, or omission to exercise, any right, power or remedy by ESM under the Agreement shall impair any such right, power or remedy or be construed to be a waiver or acquiescence.

17. SCHEDULES

The Schedules of these General Terms shall constitute an integral part of these General Terms, shall constitute an integral part of the Agreement and comprise:

- Schedule 1: Form of Pre-Funding Agreement
- Schedule 2: Form of Legal Opinions
- Schedule 3: Form of Request for Funds
- Schedule 4: Form of Acceptance Notice
- Schedule 5: Form of Confirmation Notice

SCHEDULE 1
Form of Pre-Funding Agreement¹

AUTHORISATION FOR PRE-FUNDING AND INDEMNITY AGREEMENT (THE "PRE-FUNDING AGREEMENT")

This **Authorisation for Pre-funding and Indemnity Agreement** is made by and between:

(1) **EUROPEAN STABILITY MECHANISM ("ESM")**, an intergovernmental organisation established by the Treaty Establishing the European Stability Mechanism entered into between the euro area Member States, having offices at 6a, Circuit de la Foire Internationale, L-1347 Luxembourg, represented by Mr. Klaus Regling, Managing Director; and

(2) [●] represented by [●], as the Beneficiary Member State (the "**Beneficiary Member State**").

1. The Parties and the Central Bank are parties to a Financial Assistance Facility Agreement dated [●] under which ESM has agreed to make available to the Beneficiary Member State a Financial Assistance Facility in an Aggregate Financial Assistance Amount of up to EUR [●] billion, as amended and supplemented by the General Terms dated [●] and the Facility Specific Terms dated [●] in respect of the EUR [●] Facility (together, the "**FFA**"). Terms defined in the FFA shall have the same meaning in this Pre-Funding Agreement.

2. The Financial Assistance will be made available in one or more Tranches each of which may be disbursed in one or more Disbursements. ESM and the Beneficiary Member State hereby acknowledge and agree that advance borrowings in the form of Pre-Funding Operations may be effected by ESM for the purpose of pre-funding a future Tranche whether or not a written Request for Funds from the Beneficiary Member State has been delivered to ESM and prior to the issuance of an Acceptance Notice by ESM. The Beneficiary Member State hereby authorise ESM to enter into such Pre-Funding Operations in a maximum aggregate amount of principal of EUR [●] in respect of the Tranche to be made available following the periodic review by the Commission in liaison with the ECB of compliance with policy conditionality by the Beneficiary Member State.

3. The Beneficiary Member State hereby undertakes to pay to ESM all costs (including the Negative Carry, as defined in the FFA, and all commissions, fees and costs) resulting from such Pre-Funding Operations, even if for whatever reason, in particular due to time needed for decision-making relating to the provision of the Financial Assistance based on the compliance with Clauses 4 (*Entry into Force and Conditions Precedent*) and 5 (*Requests, Disbursements and Conditions to Disbursements*) of the General Terms, the disbursement to the Beneficiary Member State of the net proceeds of the relevant Pre-Funding Operations is delayed or it does not take place.

4. For a pre-funded Tranche that is subsequently disbursed (becoming thereafter treated as a financing), the Cost of Carry accrues from the date ESM commences incurring liability for interest under the relevant Funding Instruments until the relevant Disbursement Date (or the date on which the proceeds of the relevant Funding Instruments are used to refinance any other Funding Instruments) or, if the proceeds of the Pre-Funding Operation are not partly or entirely disbursed, until the maturity of the relevant Funding Instrument for the undisbursed proceeds. For a pre-funded Tranche where the disbursement is delayed, for whichever reason, the Cost of Carry accrues from the date ESM commences incurring liability for interest under the relevant Funding Instruments and until the date that a final decision on the use of the funds has been taken by ESM, after consultation with the Beneficiary Member State. For a pre-funded Tranche that is not subsequently disbursed, the Beneficiary Member State remains liable for all the costs incurred by ESM in relation to the Pre-Funding Operations, in accordance with Clause 5.7 of the General Terms.

5. The Beneficiary Member State shall, on the Disbursement Date specified in the relevant Acceptance Notice (if any) or within five (5) Business Days of demand by ESM, pay all costs incurred by ESM in relation to Pre-Funding Operations (including financing costs, margin, Negative Carry, losses, costs, hedging costs or other fees or expenses) regardless of whether any Financial Assistance is in fact made available provided that the maximum aggregate amount of principal for Pre-Funding Operations is the amount specified in paragraph 1 above.

¹ Note: This form is subject to being amended or supplemented to the satisfaction of ESM during the preparation of each Financial Assistance Facility Agreement to take into account the provisions of each Financial Assistance Facility Agreement and the Facilities provided thereunder (including for DRI Facilities where the relevant

DRI Beneficiary will need to be made a party and Facilities where Financial Assistance is to be applied to recapitalise Institutions, capitalise AMCs where it will be necessary to add other entities as parties).

6. If the Beneficiary Member State fails to pay any amount under this Pre-Funding Agreement on the date it is due for payment, this shall constitute an Event of Default under Clause 10.1 of the General Terms.
7. The fact that ESM is prepared to carry out and enter into a Pre-Funding Operation will not condition in any respect its decision regarding the compliance by the Beneficiary Member State with the economic policy conditions of the MoU or on whether the conditions precedent to the provision of any Financial Assistance under any Tranche have been satisfied.
8. Once the conditions foreseen in Clause 4 (*Entry into Force and Conditions Precedent*) and Clause 5 (*Requests, Disbursements and Conditions to Disbursements*) of the General Terms are fulfilled and an Acceptance Notice has been issued and acknowledged, ESM will issue a Confirmation Notice for the Financial Assistance prefunded.
9. Clauses 13 (*Notices*), 14 (*Guarantee and Indemnity*), 15 (*Miscellaneous*) and 16 (*Governing Law and Jurisdiction*) of the General Terms shall also apply to this Pre-Funding Agreement as if references to "the Agreement" were to this Pre-Funding Agreement.
10. This Pre-Funding Agreement enters into force upon the signature by each of the Parties.

This Pre-Funding Agreement is provided to the Central Bank for information.

EUROPEAN STABILITY MECHANISM

Represented by:

[●]

The Beneficiary Member State

[●]

Represented by:

SCHEDULE 2
Forms of Legal Opinions²

PART I

[Form of Legal Opinion for Beneficiary Member State]

Office of [●]

(to be issued on official letterhead of the Office of the Legal Officer)

[place, date]

To: European Stability Mechanism
6a, Circuit de la Foire Internationale
L-1347 Luxembourg
Attention: Chief Financial Officer

Re: **EUR [●] Financial Assistance Facility Agreement between European Stability Mechanism (as ESM), [●] (as Beneficiary Member State), [●] as Central Bank, [●] as the Resolution Fund and [●] as the Recapitalisation Fund] signed on [●]**

Dear Sirs,

In my capacity as [●], I refer to the above referenced Financial Assistance Facility Agreement and all its Schedules which constitute an integral part thereof (hereinafter together referred to as the "**Agreement**") entered into between the European Stability Mechanism (hereinafter referred to as "**ESM**"), [●] (hereinafter referred to as the "**Beneficiary Member State**"), the Central Bank of [●], [*insert name of national financial institution recapitalisation fund*] (hereinafter referred to as the "**Recapitalisation Fund**") and [*national resolution fund or national financial arrangement*] on [●] (hereinafter referred to as the "**Resolution Fund**"). I also refer to the Memorandum of Understanding signed on [●] [*insert date*] [and its subsequent updates the most recent of which was signed on [●],] between the Commission, the Beneficiary Member State [and [●]] (hereinafter referred to as the "**MoU**").

I warrant that I am fully competent to issue this legal opinion in connection with the Agreement on behalf of the Beneficiary Member State.

I have examined originals or copies of the executed versions of the Agreement and of the MoU. I have also examined the relevant provisions of national and international law applicable to the Beneficiary Member State and the Central Bank of [●], the powers of signatories and such other documents as we have deemed necessary or appropriate. Furthermore, I have made such other investigations

and reviewed such matters of law as I have considered relevant to the opinion expressed herein.

I have assumed (i) the genuineness of all signatures (except those on behalf of the Beneficiary Member State and the Central Bank of [●]) and the conformity of all copies to originals, (ii) the capacity and power to enter into the Agreement of, and their valid authorisation and signing by, each Party other than the Beneficiary Member State and the Central Bank of [●] and (iii) the validity, binding effect and enforceability of the Agreement on each Party under the laws of [●].

Terms used and not defined in this opinion shall have the meaning set out in the Agreement in the MoU.

This opinion is limited to [●] law as it stands at the date of this opinion.

Subject to the foregoing, I am of the opinion that:

1. With respect to the laws, regulations and legally binding decisions currently in force in [●], the Beneficiary Member State is by the execution of the Agreement by [●], validly and irrevocably committed to fulfil all of its obligations under it. In particular, the provisions of the Agreement relating to the provision of Financial Assistance are fully valid.
2. The Beneficiary Member State's execution, delivery and performance of the Agreement and signature of the MoU: (i) have been duly authorised by all necessary consents, actions, approvals and authorisations; and (ii) have not and will not violate any applicable law, regulation or ruling of any competent authority or any agreement or treaty binding on it.
3. The representations and warranties given by the Beneficiary Member State in the Agreement are true and accurate.
4. Nothing in the Agreement contravenes or limits the rights of the Beneficiary Member State to make punctual and effective payment of any sum due for the principal, interest or other charges under the Agreement.
5. The Agreement is in proper legal form under [●] law for enforcement against the Beneficiary Member State and the Central Bank of [●]. The enforcement of the Agreement would not be contrary to mandatory provisions of [●] law, to the *ordre public* of [●], to international treaties or to generally accepted principles of international law binding on the Beneficiary Member State and [●].

² Note: These forms are subject to being amended or supplemented to the satisfaction of ESM during the preparation of each Financial Assistance Facility Agreement to take into account the provisions of each Financial

Assistance Facility Agreement and the Facilities provided thereunder and, in case of a DRI Facility, further opinions may be required.

6. It is not necessary in order to ensure the legality, validity or enforceability of the Agreement that it be filed, recorded, or enrolled with any court or authority in [●].
7. No taxes, duties, fees or other charges imposed by [●] or any taxing authority thereof or therein are payable in connection with the execution and delivery of the Agreement and with any payment or transfer of principal, interest, commissions and other sums due under the Agreement.
8. No exchange control authorisations are required and no fees or other commission are to be paid on the transfer of any sum due under the Agreement.
9. [The signature of the Agreement by [●] legally and validly binds the Central Bank of [●]].
10. The choice of public international law as the governing law for the Agreement is a valid choice of law binding on the Beneficiary Member State and the Central Bank of [●] in accordance with [●] law.
11. The dispute resolution provisions contained in the Agreement are valid and effective and are binding on the Beneficiary Member State and the Central Bank.
12. The Agreement and the MoU as executed comply with all domestic constitutional requirements for the Agreement and the MoU to be operative as a matter of [●] law and binding on the Beneficiary Member State and the Central Bank of [●].
13. The Agreement and the MoU are fully valid and have been properly ratified in accordance with the provisions of the [●] Constitution.
14. [The Courts of the Beneficiary Member State retain jurisdiction to decide on whether individual future legislative measures passed with a view to compliance with the MoU are themselves compatible with the Constitution of the Beneficiary Member State and international law binding the Beneficiary Member State. However, this does not in any way detract from the opinions expressed in this opinion regarding the validity, binding nature, enforceability and compatibility with the Constitution of (i) the Agreement and (ii) the MoU.]
15. In conclusion, the Agreement has been duly executed on behalf of the Beneficiary Member State and the Central Bank of [●] and all the obligations of the Beneficiary Member State and the Central Bank of [●] in relation to the Agreement are valid, binding and enforceable in accordance with their terms and nothing further is required to give effect to the same.

[Signatory]

PART II
[Form of Legal Opinion for the Recapitalisation Fund / Resolution Fund]

(to be issued on official letterhead of the counsel to the [*insert name of national financial institution recapitalisation fund*] or to the [*national resolution fund or national financing arrangement*])

[*place, date*]

To: ESM
 6a, Circuit de la Foire Internationale
 L-1347 Luxembourg
 Attention: Chief Financial Officer

Re: EUR [●] Financial Assistance Facility Agreement between European Stability Mechanism (as ESM), [●] (as Beneficiary Member State), the [*insert name of national financial institution recapitalisation fund*] (the "Recapitalisation Fund") / the [*national resolution fund or national financing arrangement*] (the "Resolution Fund") and the Central Bank of [●] signed on [●]

Dear Sirs,

In my capacity as special counsel to the [*insert name of national financial institution recapitalisation fund*] / the [*insert name of national resolution fund / national financing arrangement*], specifically in connection with its entry into the Agreement (as defined below) [as Guarantor (as defined below)], I refer to the above referenced Financial Assistance Facility Agreement and all its Schedules which constitute an integral part thereof (hereinafter together referred to as the "**Agreement**") entered into between the European Stability Mechanism (hereinafter referred to as "**ESM**"), [●] (hereinafter referred to as the "**Beneficiary Member State**"), the [*insert name of national financial institution recapitalisation fund*] (hereinafter referred to as the "**Recapitalisation Fund**"), the [*national resolution fund or national financing arrangement*] (hereinafter referred to as the "**Resolution Fund**") / and Central Bank on [*insert date*]. I also refer to the Memorandum of Understanding signed on [*insert date*] [and its subsequent updates the most recent of which was signed on [●]] between the Commission, the Beneficiary Member State and the Central Bank (hereinafter referred to as the "**MoU**").

I warrant that I am fully competent to issue this legal opinion in connection with the Agreement on behalf of the [Recapitalisation Fund] / [Resolution Fund] /.

I have examined originals or copies of the executed versions of the Agreement and of the MoU. I have also examined the relevant provisions of national and international law applicable to the [Recapitalisation Fund] / [Resolution Fund], the powers of signatories and such other documents as I have deemed necessary or appropriate. Furthermore, I have reviewed such matters of law as I have considered relevant to the opinion expressed herein.

I have assumed (i) the genuineness of all signatures (except those on behalf of the [Recapitalisation Fund] / [Resolution Fund] /) and the conformity of all copies to originals, (ii) the capacity and power to enter into the Agreement of, and their valid authorisation and signing by, each Party other than the [Recapitalisation Fund] / [Resolution Fund] and (iii) the validity, binding effect and enforceability of the Agreement on each Party under the laws of [●].

Terms used and not defined in this opinion shall have the meaning set out in the Agreement and in the MoU.

This opinion is limited to [●] law as it stands at the date of this opinion and no opinion is expressed as to the laws of any other jurisdiction.

Subject to the foregoing, I am of the opinion that:

1. With respect to the laws, regulations and legally binding decisions currently in force in [●], the [Recapitalisation Fund] / [Resolution Fund] is by the execution of the Agreement by [●], validly and irrevocably committed to fulfil all of its obligations under it.
1. The [Recapitalisation Fund] / [Resolution Fund]'s execution, delivery and performance of the Agreement: (i) has been duly authorised by all necessary consents, actions, approvals and authorisations; and (ii) has not and will not violate any applicable law, regulation or ruling of any competent authority or any agreement or treaty binding on it or any of its agencies.
2. The representations and warranties given by the [Recapitalisation Fund] / [Resolution Fund] / in the Agreement are true and accurate.
3. The Agreement is in proper legal form under [●] law for enforcement against the [Recapitalisation Fund] / [Resolution Fund]. The enforcement of the Agreement would not be contrary to mandatory provisions of [●] law, to the *ordre public* of the Beneficiary Member State, to international treaties or to generally accepted principles of international law binding on the [Recapitalisation Fund] / [Resolution Fund].
4. The signature of the Agreement by [*name*], [*signatory on behalf of the Recapitalisation Fund / Resolution Fund*] legally and validly

binds the [Recapitalisation Fund] / [Resolution Fund].

5. The choice of public international law as the governing law for the Agreement is a valid choice of law binding on the [Recapitalisation Fund] / [Resolution Fund] / in accordance with [●] law.
6. The dispute resolution provisions contained in the Agreement are valid and effective and are binding on the [Recapitalisation Fund] / [Resolution Fund].
7. Neither the [Recapitalisation Fund] / [Resolution Fund] nor any of its property is immune on the grounds of sovereignty or otherwise from jurisdiction, attachment – whether before or after judgement or arbitral award– or execution in respect of any action or proceeding relating to the Agreement.
8. The execution of the Agreement has been made upon the provisions of law [●] of the Beneficiary Member State, as currently in effect.
9. In conclusion, the Agreement has been duly executed on behalf of the [Recapitalisation Fund] / [Resolution Fund] and all the obligations of the [Recapitalisation Fund] / [Resolution Fund] in relation to the Agreement are valid, binding and enforceable in accordance with their terms and nothing further is required to give effect to the same.

The opinions set out above are subject to the following reservations and qualifications:

- (a) this opinion is subject to all insolvency, bankruptcy, liquidation, reorganisation, moratorium, resolution of credit institutions and other laws affecting the rights of creditors or secured creditors generally;
- (b) [a [●] court if seized to hear a case based on the Agreement may not treat as conclusive those certificates and determinations which the Agreement states are to be so treated; and]
- (c) no opinion is expressed on matters of fact.

[Signatory]

[*name of national financial institution recapitalisation fund*] / [*national resolution fund or national financing arrangement*]

SCHEDULE 3
Form of Request for Funds³

[on letterhead of the Beneficiary Member State]

By fax followed by registered mail:

European Stability Mechanism
6a, Circuit de la Foire Internationale
L-1347 Luxembourg

Attention: Chief Financial Officer

Tel: [●]
Fax: [●]
SWIFT address: [●]

Copies to:
European Commission
[Insert address]
Fax: [●]

European Central Bank
[Insert address]
Fax: [●]

Central Bank of [●]
[Insert address]
Fax: [●]

[Recapitalisation Fund]
[Insert address]
Fax: [●]

[The DRI Beneficiary]
[Insert address]
Fax: [●]

Subject: EUR [●] Financial Assistance Facility Agreement - Request for Funds for the Tranche of EUR [●]

Dear Sirs,

We refer to the Financial Assistance Facility Agreement made between the European Stability Mechanism ("ESM") as ESM, the [●] as Beneficiary Member State, [and] the Central Bank of [●] [and the Recapitalisation Fund and the Resolution Fund] signed on [●], to the General Terms and the Facility Specific Terms incorporated therein (together, the "Agreement"). Terms defined in the Agreement shall have the same meaning herein.

1. We hereby irrevocably request that a Tranche of the [●] Facility be disbursed under and in

accordance with the Agreement upon the following terms:

- (a) the aggregate of the Financial Assistance Amounts of the Financial Assistance to be made in respect of the Tranche shall be EUR [●], which may be disbursed in one or more Disbursements within the Availability Period;
- (b) the latest of the Disbursement Date(s) of [any Disbursement /the Financial Assistance Amount] to be provided under this Tranche shall be [●];
- (c) [we acknowledge that the Financial Assistance Amounts [will/may] be made available by delivery of ESM Debt Securities;]
- (d) [[the proceeds of the Financial Assistance shall be used by the [Recapitalisation Fund]] to subscribe] / [ESM] Capital Instruments in the following Institutions / AMCs in accordance with the terms of the MoU and the Financial Assistance Facility Agreement as set out in the table below:

Institution or AMC	Category of Capital Instruments	Amount (EUR)	Date of Subscription

]⁴; and

- (e) [we confirm that the Commission has authorised the subscription of the above mentioned Capital Instruments [by the Recapitalisation Fund] in compliance with the State aid regime.]
2. We acknowledge and agree that ESM may make use of the Diversified Funding Strategy.
 3. We acknowledge and agree that the provision of any Financial Assistance made available shall be in accordance with and subject to:
 - (a) the issue by ESM of an Acceptance Notice, our acknowledgement of the terms set out therein and, in due course, the issue by ESM of a Confirmation Notice;
 - (b) the non-occurrence of a Market Disruption Event or an Event of Default; and
 - (c) the conditions precedent to the [●] Facility being satisfied [and, in the case of a DRI

³ Note: This form is subject to being amended or supplemented to the satisfaction of ESM during the preparation of each Financial Assistance Facility Agreement to take into account the provisions of each Financial Assistance Facility Agreement and the Facilities provided thereunder.

⁴ Paragraphs (c), (d) and (e) may be included according to the nature of the Disbursement and whether the Disbursement is being used under a Financial Institution Recapitalisation Facility or DRI Facility.

Facility, the conditions to disbursement of such DRI Facility being satisfied] .

4. We irrevocably undertake to pay any fees, costs or expenses including in particular any Issuance Costs, breakage or termination costs and Cost of Carry incurred in respect of any Funding Instruments or hedging contract which ESM may have undertaken (including in relation to amounts raised to fund the Liquidity Buffer, financings and/or Pre-Funding Operations) regardless of whether the provision of the relevant Financial Assistance or any disbursement under the [●] Facility takes place. [provided, in the case of a DRI Facility, that such amounts have not been recovered in full from the relevant DRI Beneficiary].
5. We confirm that:
 - (a) The list of authorised signatories sent on behalf of the Beneficiary Member State by the Minister of Finance on [●] remains valid and applicable.
 - (b) No event has occurred that would render incorrect any statement made in the legal opinion dated [●] issued by [●] dated [●].
 - (c) No event or circumstance has occurred which would permit ESM to declare that an Event of Default has occurred.
 - (d) [The proceeds of the Tranche will be used to finance the recapitalisation of an [Institution].]

Yours faithfully,

[●]

Represented by: [●]

SCHEDULE 4
Form of Acceptance Notice⁵

EUROPEAN STABILITY MECHANISM

By fax followed by registered mail:

[Insert Beneficiary Member State's contact details]

Copies to:

European Commission

[Insert address]

Fax: [●]

European Central Bank

[Insert address]

Fax: [●]

Central Bank of [●]

[Insert address]

Fax: [●]

[Recapitalisation Fund]

[Insert address]

Fax: [●]

[The DRI Beneficiary]

[Insert address]

Fax: [●]

Subject: EUR [●] Financial Assistance Facility Agreement - Acceptance Notice for the [Tranche/Disbursement] of EUR [●]

Dear Sirs,

We refer to: (i) the Financial Assistance Facility Agreement between the European Stability Mechanism ("ESM") as ESM, the [●] as Beneficiary Member State, [the [●] as Recapitalisation Fund], [the [●] as Resolution Fund] and the Central Bank of [●] signed on [date] and to the General Terms and Facility Specific Terms incorporated therein (together, the "**Agreement**"); and (ii) the Request for Funds notified to ESM by the Beneficiary Member State on [date]. Terms defined in the Agreement shall have the same meaning herein.

1. We hereby confirm the provisional financial terms applicable to the [Tranche/Disbursement] requested by the Beneficiary Member State in the above Request for Funds:

(a) the principal amount of Financial Assistance to be provided under the

[Tranche/Disbursement] is up to EUR [●]; and

(b) the latest of the Disbursement Date(s) of all Financial Assistance to be made under this [Tranche] shall be on or prior to [●].

2. [We acknowledge that the proceeds of the [Tranche/Disbursement] will be used to finance [the recapitalisation of [an Institution]/[an AMC]. *[Details]*.
3. By signing the acknowledgement of this Acceptance Notice, the Beneficiary Member State expressly acknowledges and agrees that ESM may, at its discretion, enter into any Funding Instrument that it considers appropriate in accordance with the Diversified Funding Strategy. This authorisation to enter into Funding Instruments and the acceptance by the Beneficiary Member State of ESM's right, at its discretion, to enter into any Funding Instrument that it considers appropriate in accordance with the Diversified Funding Strategy is irrevocable until the final maturity of the latest Disbursement under this Tranche.
4. By acknowledging the terms of this Acceptance Notice, the Beneficiary Member State shall be deemed to have accepted in advance the terms of the Financial Assistance set out in each Confirmation Notice relating thereto. [The Beneficiary Member State shall bear its share of the allocation of all costs incurred by ESM in relation to the financing (including any financing costs, margin, Negative Carry, losses, costs, hedging costs or other fees or expenses) [provided, in the case of a DRI Facility, that such amounts have not been recovered in full from the DRI Beneficiary].]
5. This Acceptance Notice is subject to ESM having obtained funds in the international capital or loan markets or from the Liquidity Buffer on terms and conditions that are acceptable to it and which are consistent with the terms indicated in this Acceptance Notice and the non-occurrence of a Market Disruption Event, an Event of Default. If ESM cannot obtain these terms or is subject to a Market Disruption Event then ESM shall not be under any obligation to deliver the funds by way of provision of Financial Assistance in relation to the [Tranche/Disbursement] and shall notify the Beneficiary Member State of such circumstances in writing and as from the date of receipt of such notice the Beneficiary Member State is no longer bound by the Request for

⁵ Note: This form is subject to being amended or supplemented to the satisfaction of ESM during the preparation of each Financial Assistance Facility Agreement to take into account the provisions of each Financial

Assistance Facility Agreement and the Facilities provided thereunder.

Funds for the provision of any further Financial Assistance in respect of such [Tranche/Disbursement]. [In case of a DRI Facility, disbursement will be subject to the satisfaction of the conditions to disbursement of the DRI Facility.]

6. [In consideration of ESM agreeing to issue this Acceptance Notice and to provide the [Tranche/Disbursement(s)] requested in the Request for Funds it is agreed and accepted as follows:⁶

- (a) ESM shall discharge its obligation to provide the Financial Assistance requested in the Request for Funds by delivering [to the Recapitalisation Fund (if applicable) (on behalf of and as requested by the Beneficiary Member State)]/[to the DRI Beneficiary] EUR [●] of ESM Debt Securities [Series [●]] in an aggregate nominal principal amount which (subject to any adjustment for rounding) is equal to the aggregate principal amount requested in the Request for Funds [which is equal to the subscription or acquisition price of the Capital Instruments to be issued by the DRI Beneficiary] and for all the purposes of the Agreement, including calculation of interest and repayment, the amount outstanding in respect of the Financial Assistance requested in the Request for Funds shall be determined by reference to the aggregate principal amount of such Financial Assistance and shall not be affected by any change in the market value of the ESM Debt Securities;
- (b) [the Beneficiary Member State shall use the ESM Debt Securities or cash disbursements to provide financing to the Recapitalisation Fund for the purpose of the re-capitalisation, resolution, and/or the participation in liability management exercises of Institutions and the Recapitalisation Fund shall use such ESM Debt Securities exclusively [as the consideration for the subscription of or pre-subscription of Capital Instruments in such Institutions] / [to capitalise AMCs] in accordance with the MoU and the Financial Assistance Facility Agreement or as security for such other arrangements as are approved in advance by ESM;]
- (c) [at the written request of the Beneficiary Member State, ESM may discharge its obligations to make disbursements by the

payment of Financial Assistance Amounts or delivery of the requisite amount of ESM Debt Securities to the Recapitalisation Fund as agent of the Beneficiary Member State;]

- (d) [the Recapitalisation Fund shall retain all amounts or ESM Debt Securities distributed directly or indirectly to the Recapitalisation Fund under the Facility and not transfer such amounts or ESM Debt Securities to [an Institution] / [an AMC] until ESM consents and approves such transfer after the assessment and confirmation by the Commission on the conformity with the EU State aid provisions of the recapitalisation programme for the relevant Institution and on the nature and terms of the Financial Institution Recapitalisation Instruments of such Institution which will be acquired;]
- (e) [the Recapitalisation Fund shall, upon request of ESM and, in accordance with the undertakings in the General Terms, grant valid first ranking security over all their rights under the undertakings they receive from the Institutions as described in subparagraphs 6(c) and 6(d) above as well as in any Capital Instruments which it acquires in the relevant Beneficiary Member State Institutions or AMCs;]
- (f) [any ESM Debt Securities which are not used [by the Recapitalisation Fund] [to subscribe for Capital Instruments in Institutions] / [to capitalise AMCs] in accordance with the MoU and the Financial Assistance Facility Agreement on or by [●] shall be re-delivered to ESM and this shall result in a reduction in the outstanding principal amount of the Financial Assistance Amount by an amount equal to the nominal principal amount of such ESM Debt Securities. For the avoidance of doubt, the Financial Assistance Amount corresponding to the reduction of the outstanding principal nominal amount of the Financial Assistance Amount may not be re-borrowed, unless otherwise agreed with ESM (with the approval of the Board of Governors);]
- (g) [in the event of any early repayment under the Agreement and this Acceptance Notice in cash, the Beneficiary Member State shall pay on the date of such early repayment all accrued interest and all other amounts due

⁶ Additional paragraph 6 and the alternative signature block (below) would be included where ESM Debt Securities are being delivered under a Financial Institution Recapitalisation Facility. This may need to be adapted if

Financial Assistance is used to capitalise AMCs or to fund bank resolution costs. In the case of a DRI Facility only paragraph 6(a) would be included.

in respect of the amount repaid and shall reimburse all costs, expenses, fees and Loss of Interest incurred and/or payable by ESM as a consequence of the early repayment;]

- (h) [the Guarantee set out in Clause 14 of the General Terms shall apply to the obligations of the Beneficiary Member State under and in connection with the Financial Assistance provided as described in the Acceptance Notice (including the terms of this Acceptance Notice).]

Please acknowledge your acceptance and agreement to the terms of this Acceptance Notice by signing where indicated below.

Yours faithfully,

EUROPEAN STABILITY MECHANISM

[The terms of this Acceptance Notice are hereby acknowledged by:

[insert name of Beneficiary Member State]

Represented by: [●]]

OR

[The terms of this Acceptance Notice are hereby acknowledged, agreed and accepted by:

[insert name of Beneficiary Member State]

Represented by: [●]]

CENTRAL BANK OF [●]

Represented by:

[insert name of Recapitalisation Fund]

Represented by:^{7]}

⁷ The additional party or parties may be needed where the Disbursement is by a delivery of ESM Notes or to be used

under a Facility to recapitalise Institutions / to capitalise AMCs .

SCHEDULE 5
Form of Confirmation Notice⁸

EUROPEAN STABILITY MECHANISM

By fax followed by registered mail:

Ministry of Finance
[Street address]
[City]
[Country]
Attn: Mr/Ms [●]

Copies to:

European Commission
[Insert address]
Fax: [●]

European Central Bank
[Insert address]
Fax: [●]

Central Bank of [●]
[Insert address]
Fax: [●]

[Recapitalisation Fund]
[Insert address]
Fax: [●]

[Resolution Fund]
[Insert address]
Fax: [●]

[The DRI Beneficiary]
[Insert address]
Fax: [●]

Subject: EUR [●] Financial Assistance Facility Agreement - Disbursement of the Financial Assistance of EUR [●] under the [Tranche/Disbursement] of EUR [●]

Dear Sirs,

We refer to: (i) the Financial Assistance Facility Agreement between the European Stability Mechanism ("ESM") as ESM, [●] as Beneficiary Member State [and] the Central Bank of [●] [and] [the [●] as Recapitalisation Fund] [and] [the [●] as the Resolution Fund] signed on [date] and to the General Terms and the Facility Specific Terms incorporated therein (together, the "Agreement"); and (ii) the Request for Funds notified to ESM by

the Beneficiary Member State on [date]. Terms defined in the Agreement shall have the same meaning herein.

1. We hereby confirm the definitive financial terms applicable to the Financial Assistance requested by the Beneficiary Member State in the Request for Funds for the above [Tranche/Disbursement]:
 - (a) The Financial Assistance Amount shall be EUR [●].
 - (b) The [principal amount of the [Tranche/Financial Assistance Amount] is equal to EUR [●].
 - (c) The up-front portion of the Service Fee is EUR [●] which is to be deducted up-front.
 - (d) The Disbursement Date in relation to the [Tranche/ Financial Assistance Amount] shall be: [●].
 - (e) The Net Disbursement Amount of the Financial Assistance shall be EUR [●].
2. We hereby confirm the definitive financial terms applicable to [the portion no. [●] of] the [Tranche/Disbursement]:

- (a) The Interest Rate on such [Tranche/ Financial Assistance Amount] shall be the ESM Cost of Funding (including [●] basis points per annum in respect of the annual Service Fee) plus the Margin.
- (b) The Term of the Financial Assistance shall be [●] years.
- (c) [The totality of the principal shall be repaid on [●] in one payment]/[The scheduled [interest and] principal repayments in relation to the Financial Assistance shall be as set out in the following amortisation table]:

Payment Date	Principal Repayment ⁹	Total	Outstanding Financial Assistance Amount

- (d) Each payment of principal shall be accompanied by the payment of all interest then due and payable, as invoiced by ESM to the Beneficiary Member State in accordance with Clause 7.1 of the General Terms.

⁸ Note: This form is subject to being amended or supplemented to the satisfaction of ESM during the preparation of each Financial Assistance Facility Agreement to take into account the provisions of each Financial Assistance Facility Agreement and the Facilities provided thereunder.

⁹ Principal repayment in bullet loans will only apply to the last portion of a Tranche.

3. *[Insert in the case of Back-to-Back Financed Financial Assistance.]* [We hereby confirm that in order to finance amounts outstanding under the above Facility, on *[date]* ESM issued Funding Instruments with the following financial terms:

Principal Amount: [●].
Maturity: [●].
Interest Rate: [●].
Interest Payment Dates: [●].

4. We confirm that the financial terms of these Funding Instruments shall be used in calculating the ESM Cost of Funding under the Facility.]

Please note that ESM and/or the ECB may deem it necessary to contact directly [●] on the further modalities in relation to the disbursement transfer.

Yours faithfully,

EUROPEAN STABILITY MECHANISM

Signed for the purpose of authentication on [●] in Luxembourg and on [●] in [●].

EUROPEAN STABILITY MECHANISM

Represented by

[●]
[●]

The Beneficiary Member State

[●]

Represented by

[●]

The Central Bank of [●]

Represented by

[●]
[●]

[The Recapitalisation Fund

[[insert name of national financial institution recapitalisation fund]

Represented by

[●]
[●]]

[The Resolution Fund

[[insert name of national resolution fund or national financing arrangement]

Represented by

[●]
[●]]

and

Signed for acknowledgment and acceptance by

[The DRI Beneficiary

[[insert name of the DRI Beneficiary]

Represented by

[●]]