



14880/18

COVER NOTE

From:	Mr Boris Kisselevsky, Representative Office of the ECB in Brussels
date of receipt:	19 November 2018
To:	Austrian Presidency
Subject:	OPINION OF THE EUROPEAN CENTRAL BANK of 9 November 2018 on a proposal for a regulation on the establishment of a European Investment Stabilisation Function (CON/2018/51)

Delegations will find attached the abovementioned opinion.

EN



EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 November 2018

**on a proposal for a regulation on the establishment of a European Investment Stabilisation
Function
(CON/2018/51)**

Introduction and legal basis

On 10 July 2018 the European Central Bank (ECB) received a request from the European Parliament for an opinion on a proposal for a regulation of the European Parliament and of the Council on the establishment of a European Investment Stabilisation Function¹ (hereinafter the ‘proposed regulation’).

The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation, in its macroeconomic stabilisation objective, is relevant to the primary objective of the European System of Central Banks (ESCB) to maintain price stability and, without prejudice to the objective of maintaining price stability, to support the general economic policies in the Union, as referred to in Articles 127(1) and 282(2) of the Treaty and Article 2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’). The proposed regulation also contains provisions affecting the ECB’s role as fiscal agent for public entities under Article 21.2 of the Statute of the ESCB.

In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The establishment of the European Investment Stabilisation Function (EISF) aims to protect national public investment in the presence of large asymmetric macroeconomic shocks in Member States whose currency is the euro and in non-euro area Member States participating in the exchange rate mechanism (ERM II) (hereinafter collectively referred to as the ‘participating Member States’), and to prevent the risk of negative spill-overs.² The EISF would be part of a broader set of new instruments for a more resilient euro area within the Union framework. This resilience would contribute to the deepening of Economic and Monetary Union (EMU). The proposed regulation envisages that support under the EISF would be conditional upon compliance with selected decisions and recommendations under the Union’s fiscal and macroeconomic surveillance framework³. In this context, it is noted that the EU’s fiscal framework aims to

¹ COM(2018) 387 final.

² See the explanatory memorandum to the proposed regulation, pp. 2-3.

³ Article 3(1) of the proposed regulation.

ensure that Member States pursue sound fiscal policies and build up fiscal buffers in good economic times⁴.

The Five Presidents' Report of 22 June 2015⁵ emphasised the need to complete the EMU's economic and institutional architecture. Given the experience with the financial and economic crisis, further integrational steps were advocated to improve Member States' resilience to severe economic downturns. Member States were expected to support initiatives to make national economies more resilient, and to supplement those efforts with additional steps aimed at completing Fiscal and Economic Union – notably the creation of a common macroeconomic stabilisation function. Such a function exists in all monetary unions, to better deal with economic shocks that cannot be managed at the national level. If appropriately designed, a common macroeconomic stabilisation function would increase the economic resilience of the individual participating Member States and of the euro area as a whole, thereby also supporting the single monetary policy.

Against that background, the ECB welcomes the new impetus to the discussion on how to establish a common macroeconomic stabilisation function for the participating Member States. In establishing such a function, it is important to ensure that it provides effective macroeconomic stabilisation, particularly in the presence of deep euro area-wide recessions. To that end, a fiscal stabilisation function should be sufficient in size. In this context, it should be noted that the EISF proposal envisages a financial envelope of back-to-back loans of up to EUR 30 billion, representing approximately only 0.3% of the euro area's gross domestic product (GDP). Effective stabilisation also requires that EISF support is triggered and implemented in a timely manner. Appropriate activation criteria for EISF support should distinguish effectively between cyclical and structural developments. The EISF trigger that is envisaged is related to average unemployment over a 60-quarter period. This long period of time appears unwarranted, given that the current unemployment could be far from the 60-quarter average for countries that have experienced a strong upward or downward trend in unemployment over the preceding fifteen years. The envisaged EISF trigger would not take sufficient account, on the one hand, of labour market rigidities which have not been addressed by reforms in some Member States, or on the other hand, of resilience-enhancing reforms adopted by other Member States. It is important that EISF support complements incentives for sound national fiscal and economic policies and, in particular, for reforms aimed at addressing national structural challenges and strengthening compliance with the Union's fiscal and macroeconomic surveillance framework. EISF support should be linked to the participating Member State's past track record of full respect for the Union's fiscal and macroeconomic surveillance framework. Against this background, the envisaged eligibility criteria appear weak – particularly the criterion requiring the absence of a decision of the Council establishing that no effective action has been taken to correct an excessive deficit under Articles 126(8) or 126(11) of the Treaty in the two years prior to requesting EISF support⁶. This eligibility criterion would allow the granting of EISF support to Member States that have been able to avoid non-compliance with the Stability and Growth Pact (SGP), despite the presence of

⁴ See 'Completing Europe's Economic and Monetary Union', Report by Jean-Claude Juncker, in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, 22 June 2015, p. 4, available on the Commission's website at www.ec.europa.eu.

⁵ 'Completing Europe's Economic and Monetary Union', Report by Jean-Claude Juncker, in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, 22 June 2015.

⁶ In this respect it should be noted that according to Article 126 of the Treaty on the Functioning of the European Union, where a Member State has not responded to recommendations that the Council had addressed to it in the

persistent shortfalls as regards structural adjustment requirements. It is important that a prospective stabilisation function provides incentives for Member States to build fiscal buffers in good economic times, which may suffer depletion in recessions. Finally, clarity would be required regarding the interaction between the proposed regulation and the use of flexibility within the SGP, notably as regards the provisions of the so-called ‘investment clause’⁷, which has a similar objective to the EISF, i.e. to maintain investment in difficult economic times. Importantly, a provision is needed to ensure that the level of EISF support is commensurate with the level required to maintain debt sustainability.

Specific observations

1. Use of monetary income as the basis for calculating national contributions to the Stabilisation Support Fund

The Stabilisation Support Fund would be almost entirely endowed with annual contributions from the participating Member States. These contributions would be calculated in accordance with an Agreement on the Transfer of Contributions to the Stabilisation Support Fund between the participating Member States⁸ (hereinafter the ‘draft agreement’). Under the draft agreement, the annual contribution of each Member State whose currency is the euro to the Stabilisation Support Fund would be equivalent to 6 per cent of the amount of monetary income allocated to its NCB at the end of the preceding financial year in accordance with Article 32 of the Statute of the ESCB. The annual contribution of the non-euro area Member States participating in ERM II would be calculated by using a formula that takes into account the total monetary income of the Eurosystem, and determines the share which is allocated to a non-euro area Member State participating in ERM II on the basis only of GDP, and not population.

1.1 *Institutional independence*

The principle of institutional independence is expressly referred to in Article 130 of the Treaty and Article 7 of the Statute of the ESCB. These two articles prohibit the NCBs in the ESCB and the members of their decision-making bodies from seeking or taking instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. In addition, the Union institutions, bodies, offices or agencies, and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the NCBs’ decision-making bodies in the performance of their ESCB-related tasks.⁹ While the draft agreement makes it clear that the contributions to the Stabilisation Support Fund are payment obligations of the participating Member States, the principle of institutional independence requires that the governments of the Member States do not exercise any pressure on their respective

context of an earlier decision by the Council that the Member State had not fulfilled the requirements of the Treaty’s deficit criterion, the Council must issue a decision establishing that no effective action has been taken.

7 The ‘investment clause’ is contained in Article 5 of Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209, 2.8.1997, p. 1).

8 The draft form of the agreement is available at https://ec.europa.eu/commission/sites/beta-political/files/budgetmay2018-contributions-stabilisation-fund_en.pdf.

9 See ECB Convergence Report, May 2018, p. 21.

NCBs. In this respect, the reference in the draft agreement to the national contribution of a Member State being ‘equivalent to 6 per cent of the amount of monetary income allocated to its national

central bank' indicates that this is merely a formula to be used for the calculation of a participating Member State's payment obligations. This reduces the risk of potential exercise of pressure on the NCBs' decision-making bodies as regards their independent decision-making processes relating to investment and risk strategies, and distribution of profits. Finally, the ECB would welcome the deletion of the duty imposed on it by the proposed regulation whereby it is required to communicate to the Commission, by 30 April at the latest in any given year, the amount of monetary income allocated to the NCBs of the Eurosystem pursuant to Article 32 of the Statute of the ESCB for the purpose of calculating the participating Member States' contributions. This deletion would avoid any risk of interference with the institutional independence of the ECB. The ECB stands ready to cooperate with the Commission in this respect, consistently with recital 27 of the proposed regulation which clarifies that the ECB should communicate to the Commission the amount of monetary income to which the Eurosystem NCBs are entitled.

1.2 *Financial independence*

The principle of financial independence requires that NCBs have sufficient means to perform their ESCB-related and national tasks. Member States may not put their NCBs in a position whereby they have insufficient financial resources to carry out these tasks⁷. In the proposed regulation, the national contributions to the Stabilisation Support Fund referred to in the draft agreement must be paid by the participating Member States. They do not represent contributions or obligations from the NCBs or the ECB. Therefore, the proposed regulation does not appear to affect the NCBs' ability to autonomously avail themselves of sufficient financial resources to fulfil their mandate.

1.3 *Additional considerations*

- 1.3.1 The ECB understands that the calculation of the national contributions to the Stabilisation Support Fund is decoupled from any actual central bank income or profits. The amount of monetary income allocated to the NCBs can be regarded as a calculation parameter that changes annually. Accordingly, the amount of 6 per cent indicated in the draft agreement as a reference point for the calculation of the national contributions to the Stabilisation Support Fund should only refer to the final amount of monetary income allocated to the NCBs. This should be the case even where a loss incurred by the ECB is to be offset, either partially or totally, against the monetary income of the relevant financial year in accordance with Article 33.2 of the Statute of the ESCB.⁸
- 1.3.2 The ECB notes that linking the contributions of participating Member States to the Stabilisation Support Fund with monetary income by applying a predetermined percentage rate leads automatically to volatility of participating Member States' contributions. This volatility may affect the transfer of new resources to the Stabilisation Support Fund.
- 1.3.3 The proposed regulation uses the annual monetary income of the Eurosystem as a basis for calculating the annual contributions both of Member States whose currency is the euro and of noneuro area Member States participating in ERM II. Regarding the Member States whose currency is the euro, the monetary income is allocated among their NCBs in accordance with their

⁷ See ECB Convergence Report, May 2018, p. 25.

⁸ Article 33.2 of the Statute of the ESCB provides that in the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5 of the Statute of the ESCB.

respective shares in the ECB capital key, which are weighted in equal measure according to the share of each respective Member State in the population and GDP of the Union, as established in Article 29 of the Statute of the ESCB. However, the contributions of non-euro area Member States participating in ERM II to the Stabilisation Support Fund are calculated based on the Eurosystem's monetary income that is scaled per Member State on the basis only of its GDP data. This discrepancy may result in comparatively larger or smaller contributions from non-euro area Member States participating in ERM II.

2. Administration of loans

2.1 The ECB stands ready to establish with the Commission the necessary arrangements for the administration of the loans, and to receive from the Member State concerned the principal and interest due under an EISF loan into an account held with the ECB, as envisaged by the proposed regulation. In this respect, the ECB notes that in accordance with Article 21.2 of the Statute of the ESCB, the ECB may act as fiscal agent for the Union institutions, in the same manner as for the administration of loans with the ECB within the framework of the European Financial Stabilisation Mechanism⁹.

2.2 Any EISF amounts deposited in the special accounts to be opened by the Member State concerned with its NCB for the management of EISF support received would be treated in accordance with the terms established in the relevant legal acts, such as Guideline ECB/2014/9 of the European Central Bank¹⁰.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 9 November 2018.

[signed]

The President of the ECB

Mario DRAGHI

⁹ See Article 8 of Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

¹⁰ Guideline ECB/2014/9 of the European Central Bank of 20 February 2014 on domestic asset and liability management operations by national central banks (OJ L 159, 28.5.2014, p. 56).

Technical working document
produced in connection with ECB Opinion CON/2018/511
Proposal for a regulation on the establishment of a
European Investment Stabilisation Function
Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>Amendment 1</p> <p>Recital 27</p>	
<p>‘(27)</p> <p>Both the determination of the amount of the national contributions to the Stabilisation Support Fund and their transfer should be governed by an intergovernmental agreement to be concluded between Member States whose currency is the euro and other Member States that participate in the exchange rate mechanism (ERM II). That agreement should provide that the national contributions for all the Member States are calculated based on the share of the national central banks of those Member States whose currency is the euro in the monetary income of the Eurosystem. For Member States which participate in ERM II a specific key should be foreseen to determine the national contributions. The Commission should assist the Member States for the calculation of those contributions. To that end, the European Central Bank (ECB) should communicate to the Commission the amount of monetary income the national central banks of the Eurosystem are entitled to.’</p>	<p>‘(27)</p> <p>Both the determination of the amount of the national contributions to the Stabilisation Support Fund and their transfer should be governed by an intergovernmental agreement to be concluded between Member States whose currency is the euro and other Member States that participate in the exchange rate mechanism (ERM II). That agreement should provide that the national contributions for all the Member States are calculated based on the share of the national central banks of those Member States whose currency is the euro in the monetary income of the Eurosystem, without prejudice to the principle of central bank independence pursuant to Article 130 of the Treaty. For Member States which participate in ERM II a specific key should be foreseen to determine the national contributions. The Commission should assist the Member States for the calculation of those contributions. To that end, the European Central Bank (ECB) should communicate to the Commission the amount of monetary income the national central banks of the Eurosystem are entitled to.’</p>

- 1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published in the Legal framework section of the ECB's website alongside the opinion itself.
- 2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB ²
<p><u>Explanation</u></p> <p><i>The principle of central bank independence referred to in Article 130 of the Treaty on the Functioning of the European Union and Article 7 of the Statute of the ESCB requires that the governments of the Member States do not provide instructions to their respective NCBs, and do not to seek to influence the members of the NCBs' decision-making bodies. This should be explicitly reflected in Recital 27, in order to underline that the reference to the Eurosystem's monetary income is only for purposes of calculating the national contributions to the Stabilisation Support Fund.</i></p>	
<p>Amendment 2</p> <p>Article 7</p>	
<p>'Article 7</p> <p>Maximum amount of loans</p> <p>The outstanding amount of loans granted to Member States under this Regulation shall be limited to EUR 30 billion in principal.'</p>	<p>'Article 7</p> <p>Maximum amount of loans</p> <p>The outstanding amount of loans granted to Member States under this Regulation shall be limited to EUR 30[] billion in principal.'</p>
<p><u>Explanation</u></p> <p><i>A fiscal stabilisation function should be sufficient in size. See paragraph 4 of the section of the opinion headed 'General observations'.</i></p>	
<p>Amendment 3</p> <p>Article 17(4)</p>	
<p>'4. For the purpose of calculating the contributions referred to in point (a) of paragraph 2, the ECB shall, by 30 April at the latest in any given year, communicate to the Commission the amount of monetary income allocated to the national central banks of the Eurosystem pursuant to Article 32 of Protocol No 4 on the Statute of the European System of Central Banks and the European Central Bank.'</p>	<p>'4. For the purpose of calculating the contributions referred to in point (a) of paragraph 2, the ECB shall, by 30 April at the latest in any given year, communicate to the Commission the amount of monetary income allocated to the national central banks of the Eurosystem pursuant to Article 32 of Protocol No 4 on the Statute of the European System of Central Banks and the European Central Bank.'</p>

Explanation

Taking account of the principle of central bank independence under Article 130 of the Treaty on the Functioning of the European Union, it is suggested that this explicit obligation on the ECB be deleted. As noted in recital 27 of the proposed regulation, the ECB should communicate to the Commission the amount of monetary income the national central banks of the Eurosystem are entitled to. The ECB

Text proposed by the Commission

Amendments proposed by the ECB²

stands ready to cooperate with the Commission in this respect, consistently with the obligation of the Union institutions to practice mutual sincere cooperation pursuant to Article 13(2) of the Treaty on European Union. However, it is not legally necessary or desirable to impose a legally binding obligation on the ECB in order to achieve this cooperation.