EUROPEAN COUNCIL
THE PRESIDENT

Brussels, 22 MARS 2011

Dear Mr. Brok, Dear Mr Gualtieri,

Following your various meetings and discussions with myself and members of my cabinet about the proposed amendment to Article 136 of the Treaty with regard to a stability mechanism for Member States whose currency is the euro,, allow me send you the attached paper, drawn up by my cabinet, which examines and responds to the concerns you expressed.

Mr Juncker, President of the Euro Group, and Mr Ollie Rehn, Commissioner for Economic and Monetary Affairs, are writing to you separately on the outcome of the negotiations on the detail of the future Mechanism, which I fully endorse.

I am sure that you will agree that all this should give Parliament a broad level of satisfaction with regard to the points laid out in option b) of your report.

As you know, this treaty amendment is coming before the 24-25 March European Council. You will appreciate the importance and urgency of this matter.

Yours sincerely

Herman Van Rompuy

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Annex

Concerning **option a)** in paragraph 12 of the report, which proposes to redraft the treaty amendment, it should be pointed out that this draft treaty amendment has been very carefully drawn up to make it acceptable to all Member States, which must all ratify it. There is virtually no prospect of the text as such being amended and indeed the amendments suggested would preclude the use of the simplified revision procedure - or at the very least be subject to legal challenge on this ground. Legal certainty is the main reason for amending treaty in the first place, and anything that undermined that would be problematic.

As regards future treaty amendments, it is impossible to give any specific undertaking. It has, however, been agreed that there will be an evaluation of the overall effectiveness of this framework in 2016, to be carried out by the European Commission. This provision guarantees that any future evaluation - and possible suggestions for change - will in the first instance come from the Commission.

Turning to **option b)** of the report, concerns to the effect that the European Stability Mechanism might provide the nucleus of a future intergovernmental secretariat to manage the Eurozone economy are unfounded. The mechanism is for a specifically defined purpose. Its staff will be entirely devoted to the financial and treasury aspects of this mechanism. and will not be involved in the wider issues of economic governance. The ESM's role is to mobilise finance and provide financial assistance, but the assessment of the need for financial support and the definition of the conditionality will be done by the Commission.

Fears that the Commission may be excluded from the working of the mechanism can also be allayed. The experience with the temporary mechanisms demonstrates that Commission involvement is not only possible, but essential. Under the temporary mechanism, the conditionality measures regarding the recipient State was adopted using a Union procedure, i.e. a Decision adopted by the Council on a recommendation from the Commission based on Article 136 TFEU together with Article 126(9) TFEU (see Article 126 (13) which sets out the applicable procedure for decisions under Article 126 (9)). This is the procedure which has been followed for adopting the conditionality measures for Greece (see Council Decision (2010/320/EU) of 10 May 2010 (OJ L 145, 11.6.2010, p. 6) adopted on a recommendation from the Commission of 4 May 2010 (SEC(2010) 560 final)).

Regarding the permanent Mechanism, already in the conclusions of the European Council of 16 and 17 December, in Annex II outlining the "General Features of the Future Mechanism", Commission involvement is specified explicitly a number of times. Since then, the preparatory work carried out for the ESM has clarified that:

- If a Member State requests financial assistance, it is the Commission which will assess, in liaison with the ECB, the existence of a risk to the financial stability of the euro area as a whole and undertake an analysis of the sustainability of the public debt of the Member State concerned (together with the IMF and in liaison with the ECB).

- If stability support is requested, it is the Commission (together with the IMF and in liaison with the ECB) which will assess the actual financing needs of the beneficiary Member State and the nature of the required private sector involvement

- The Board of Governors will mandate the Commission to negotiate (together with the IMF and in liaison with the ECB) a macro-economic adjustment programme with the Member State concerned.

- The Commission will propose to the Council a decision endorsing the macro-economic adjustment programme. When the programme has been adopted by the Council, the Commission will sign the Memorandum of Understanding on behalf of the euro area Member States

- The Commission (together with the IMF and in liaison with the ECB) will be responsible for monitoring compliance with the policy conditionality required by a macroeconomic adjustment programme.

- After discussion in the Board of Governors, it is a proposal by the Commission that the Council can decide to implement post-programme surveillance.

- The policy conditionality established under an enhanced surveillance or a macroeconomic adjustment programme should be consistent with the EU surveillance framework and must guarantee the respect of EU procedures. To this end, the Commission intends to propose a Regulation clarifying the necessary procedural steps under Article 136 of the Treaty in order to enshrine the policy conditionality in Council decisions and ensure consistency with the EU multilateral surveillance framework.

- The Council and the Commission will inform the European Parliament on a regular basis about the establishment and the operations of the ESM.

- In the eventuality of certain disputes arising, it is the EU Court that will be responsible in accordance with Art. 273 TFEU.

RC/FVD