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NEW EUROPEAN TREATY ON "STABILITY, COORDINATION AND GOVERNANCE"

A new Treaty on "Stability, Coordination and Governance in the Economic and Monetary Union" (the "new Treaty") has been approved in substance by representatives of 25 Member States of the EU at a special session of the European Council on Monday, January 30. Among the Member States, only the UK and the Czech Republic decided not to participate.

The main substantive novelty is the insertion in the national law of the participants, preferably at Constitutional level, of the so-called "Golden rule", limiting the annual structural budget deficit of a Member State to 0.5 percent of GDP. Other provisions give a more binding character to fiscal discipline commitments already included in EU fiscal legislation.

The new Treaty is based on existing articles of the European Treaty (the Lisbon Treaty), in particular articles 121, 126 and 136, and gives Treaty status to some provisions of the so-called 'Six Pack on economic governance' that the European Parliament, Commission and Council agreed on last year. The Six Pack consists of measures and procedures which aim to prevent an excessive budget deficit, to ensure an effective budgetary surveillance, to correct excessive macro-economic imbalances and which provides for sanctions in case of non-compliance.

The fiscal discipline imposed by the new Treaty is expected to help Germany to accept more aggressive support for EU Member States facing financial difficulty and the ECB to intervene more ambitiously in actively defending the Euro.

When is the new Treaty expected to be signed? Are the terms final or still being drafted?

The new Treaty will be signed on the occasion of the next European Council meeting on March 1. It is expected that only minor technical changes will be made to the current draft before signature.

How many Member States must ratify the new Treaty in order for it to enter into force? What is the expected timing for ratification?

The new Treaty shall enter into force on January 1, 2013, provided that 12 of the 17 Eurozone Members have ratified it. It is possible for non-Euro Member States to sign and ratify the Treaty as well. Except the UK and the Czech Republic, all other EU Member States have indicated their readiness to sign and ratify the new Treaty.

Are any Member States planning on holding a referendum on the new Treaty? If so, what is the likelihood of affirmance/consequence of denial?

Only in Ireland is the possibility of a referendum in discussion. However, contrary to the past, no single Member State will be able to block the entry into force of the new Treaty. Although some countries might experience difficulties in reaching the required majority for ratification (the main opposition candidate in the French Presidential election that will take place in April this year declared that if elected, he would call for modifications in the new Treaty before sending it to Parliament), the new Treaty will enter into force as soon as 12 Member States ratify it. By requiring a qualified majority of the Contracting Parties to reject its proposals in the framework of an excessive deficit procedure, the new Treaty gives the Commission much more power than foreseen initially in the Franco German proposal (the Deauville proposal).

What benefits are expected to accrue from the new Treaty? Will we see those benefits prior to ratification?

The new Treaty will help the German Chancellor to convince the Bundestag and the German public to accept more aggressive support for EU Member States facing financial difficulty, through increased resources committed to bail out instruments and/or support to more ambitious interventions by the ECB. It looks already that the new Treaty has calmed the financial markets and the ECB has been able, through the provision of massive loan capacity for EU banks, to bring down interest rates for Italian and Spanish bonds in recent weeks. We need to see whether this is a more sustainable development. Even the issuing of Eurobonds, which is for the moment strongly opposed by Germany, could come back on the table if the new Treaty is successful in the coming year(s).

How does the completion of the new Treaty affect the implementation of the European Stability Mechanism (ESM) and the utilization of the European Financial Stability Facility (EFSF)?

The ESM Treaty has been signed on February 2 and should enter into force on July 1. It provides that only those having ratified the Treaty on Stability Coordination and Governance (the new Treaty) will be allowed to receive financial assistance from the Mechanism. Chancellor Merkel hinted that she would accept the continuation of the EFSF after the entry into force of the ESM, their combined funding creating a much more credible capacity of bail out action. But this outcome is not yet certain.

How does the completion of the Treaty affect the situation in Greece?

There is no direct link with the situation in Greece. Due to the magnitude of its sovereign debt, Greece will continue to be considered as a specific case, requiring actions (like the voluntary intervention of the private sector) which will not be used for other countries. But in ratifying the new Treaty, Greece would obviously reinforce the credibility of its commitment to reduce its huge debt to a sustainable level.

The policy of the EU regarding Greece follows a double track: To contain Greece and avoid contagion to Spain and Italy; and to push for structural reforms and deficit restructuring. It looks that the EU has to pay another € 12 – 15 billion above the second package of € 130 billion in order to keep Greece from default. However the next test case will be Portugal because this country has to address non sustainable interest rates for its debt. It remains to be determined whether, and to what extent, Eurozone Members are ready to take up this burden with or without a new Treaty.

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