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|  | **European Schools**  Office of the Secretary-General  General Secretariat |

**Ref.: 2015-11-D-19-en-1**

**Orig.: EN**

**Contribution/Participation Agreement between the European Schools and the “ESM”.**

**Board of Governors of the European Schools**

Meeting on 1-3 December 2015 – Brussels

**INTRODUCTION**

As shown in Annexes I, II and III of the present document, the European Stability Mechanism has an interest in the operation of the European Schools of Luxembourg I and Luxembourg II, which provide schooling for the children of their staff as Category I pupils.

As an expression of this interest, the European Stability Mechanism is willing to directly contribute to the budget of both Schools and therefore conclude a Contribution Agreement, as well as signing a Participation Agreement within the meaning of Article 28 of the Convention defining the Statute of the European Schools.

Article 28 stipulates that: “The Board of Governors, acting unanimously, may conclude participation Agreements concerning an existing School or one to be established in accordance with Article 2 with any organizations governed by public law which, by reason of their location, have an interest in the operation of the Schools. By concluding such an Agreement, any such organization may then have a set and a vote on the Board of Governors for all matters regarding the School in question if its financial contribution is such as to finance the bulk of the School's budget. It may also obtain a seat and a vote on the Administrative Board of the School in question”.

**PROPOSITIONS**

As a result, the Board of Governors is requested:

to give a mandate to the Secretary-General to sign a Contribution Agreement concerning the financing of the European Schools of Luxembourg I and Luxembourg II with European Stability Mechanism represented by its Managing Director, Mr Klaus Regling, and the European Commission represented for the purpose of the present Agreement by its Vice-President, Ms Kristalina Georgieva.

to give a mandate to the Secretary-General to sign a Participation Agreement, based on Article 28 of the Convention defining the Statute of the European Schools of 21 June 1994, with the European Stability Mechanism represented by its Managing Director, Mr Klaus Regling ".

**ANNEX I**





ANNEX II

Contribution Agreementconcerning the financing of the European Schools of Luxembourg I and Luxembourg II

The European Stability Mechanism (hereinafter "the ESM"), represented by its Managing Director, Mr Klaus Regling,

and

the European Commission (hereinafter "the Commission"), represented for the purpose of the present Agreement by its Vice-President, Ms Kristalina Georgieva,

and

the European Schools, represented by the Board of Governors, itself represented by the Secretary-General of the European Schools, Mr. Kari Kivinen,

Hereinafter collectively referred to as "the Parties",

Whereas pursuant to the Convention defining the Statute of the European Schools of 21 June 1994[[1]](#footnote-1)1 (hereinafter "the Convention"), and in particular its article 25 thereof, the European Commission pays, in the name of the European Union, a complementary contribution to the European Schools of Luxembourg I and Luxembourg II,

Whereas the European Schools of Luxembourg I and Luxembourg II are attended by children of staff of the ESM as pupils of category I,

Whereas the Commission, in order to reduce the complementary contribution of the EU budget has requested the ESM to contribute to the financing of the European Schools of Luxembourg I and Luxembourg II,

Whereas, pursuant to the Joint Declaration signed on 26 October 2015 with the Commission ( hereinafter "the Joint Declaration", in annex), the ESM committed to pay a financial contribution to the concerned schools during a temporary period and to assess regularly the situation in order to establish possible new arrangements for the future financing of the Schools,

Whereas, pursuant to the Joint Declaration, the modalities and the method of calculation of the said contribution by the ESM need to be defined in a temporary agreement with the Commission and the European Schools (hereinafter "the Contribution Agreement"),

Whereas, pursuant to the Joint Declaration, after signing the Contribution Agreement, the ESM and the Secretary-General of the European Schools, representing the European Schools on behalf of the Board of Governors, will sign a separate temporary agreement regarding the modalities of representation of the ESM in the decision-making bodies of the European Schools, in the form of a Participation Agreement under article 28 of the Convention.

The Parties have agreed as follows:

**Article 1 – Scope**

The present Agreement concerns the calculation of the contribution by the ESM to the European Schools of Luxembourg I and Luxembourg II, during the duration of the agreement.

**Article 2 – Designation of a central contact person**

By exchange of notes between the Parties, each of them shall designate a central contact person for all questions related to the present Agreement. The designation shall be made by reference to the function occupied by the person concerned. Each of the Parties may amend its designation at any time at its sole discretion and shall immediately inform the other Parties.

**Article 3 – Establishment of the amount to be paid**

The basis for the calculation of the contribution by the ESM to the Schools of Luxembourg I and Luxembourg II in the year N is the complementary contribution (hereinafter, "the complementary contribution") to those Schools provided for in the final budget[[2]](#footnote-2) for year N as adopted by the Budgetary Authority of the Union at the end of the year N-1.

The contribution by the ESM to the Schools shall correspond to 50% of the following calculation:

**Article 4 – Service provision, cooperation and communication**

The Parties agree to inform one another at the earliest possible moment of any matters which could affect the proper implementation of this agreement.

By the end of the year N-1, the Commission shall communicate to the ESM and the concerned European Schools the amount of the contribution by the ESM, as calculated according to the method laid down in article 3.

If the complementary contribution of the Commission to the concerned European Schools changes during the year of reference following the adoption of amending budgets by the Board of Governors, the contribution of the ESM will be accordingly adapted.

A**rticle 5 – Direct payment to the Schools**

The contribution to be paid by the ESM to the European Schools of Luxembourg I and Luxembourg II, as calculated according to the method laid down in article 3, will be transferred to the following bank accounts, designated by each School:

For the European School of Luxembourg I: …. (Bank account to be added)

For the European School of Luxembourg II: …. (Bank account to be added)

The payments for each School will be made in three instalments:

- by 15 January of the budgetary year N, the first instalment corresponding to 40 % of the total amount,

-by 15 July of the budgetary year N, the second instalment corresponding to 40% of the total amount,

- by 15 November of the budgetary year N, the remaining amount as adapted, if necessary, following the adoption of amending budgets affecting the European Schools in Luxembourg.

**Article 6 – Communication of errors and anomalies**

The Parties shall promptly notify any errors and/or anomalies concerning the data necessary for the implementation of the present Agreement through their respective contact persons. In reply to this notification the central contact person concerned shall indicate the reason for the error or anomaly as well as the proposed solution by the party he or she represents and the date by which this solution will be implemented.

If this information cannot be provided promptly, the complaining party will be kept informed about the timetable for the measures to be taken.

**Article 7 - Dispute settlement**

In the event of a dispute between the Parties to the present Agreement regarding its interpretation or implementation, the following applies:

a)            The Parties shall first attempt to reach an amicable agreement in good faith, first on the level of the services, and then, if that is not possible, on the level of the Managing Director of the ESM and the Director-General of DG HR of the Commission and the Secretary-General of the European Schools. 45 calendar days shall be allowed for each stage of this procedure, from the date when one party notifies the other of its request for the opening of this procedure.

b)            In case of disagreement, the President of the Court of Justice of the European Union shall appoint the arbitrator. The seat of the arbitration shall be Brussels. The arbitration shall be conducted in the English language, unless otherwise agreed by the Parties. The decision of the arbitrator on the dispute shall be based on the terms and conditions of the present Agreement in light of the principle of equity. This decision shall be taken within 60 calendar days. The Parties expressly exclude any application for setting aside the arbitral award. The award shall be final, binding and enforceable and excludes any appeal.

**Article 8 – Data protection**

The Parties to the present Agreement ensure that data protection rules pursuant to the Regulation (EC) No 45/2001 of the European Parliament and of the Council or the applicable national law implementing Directive 95/46/EC of the European Parliament and of the Council are strictly observed when handling the data received from the European Schools of Luxembourg I and Luxembourg II.

**Article 9 – Entry into force and duration**

The present Agreement shall enter into force on 1st January 2016.

The present Agreement shall terminate by the end of the School year 2019/2020.

**Article 10 – Regular consultations**

The Parties shall have regular contacts, at least once a year, in order to discuss the implementation of the present Agreement and the possible future arrangements. Without prejudice to the expiry of the present agreement, the possible future arrangements to be applicable after the end of School year 2019/2020, will be decided at latest in 2018.

Mr Klaus Regling, Managing Director of the ESM.

[Signature]

Done at …………………………

Date :…………………………….

Mr Kari Kivinen, Secretary-General of the European Schools

[Signature]

Done at …………………………

Date:……………………………

Ms Kristalina Georgieva, Vice-President of the Commission

[Signature]

Done at …………………………

Date:……………………………

Annex : Joint Declaration of the European Commission and the ESM

**ANNEX III**

**Participation Agreement**

**based on Article 28 of the Convention defining the Statute of the European Schools of 21 June 1994 (hereinafter "the Convention")**

**BETWEEN THE UNDERSIGNED:**

The European Schools, whose seat is located at Rue Joseph II, 30, B-1049 Brussels, represented by the Board of Governors, itself represented, with a view to the signing of this participation agreement, by Mr Kari KIVINEN, Secretary-General;

hereinafter referred to as ‘the European Schools’,

on the one hand,

**AND**

The European Stability Mechanism (hereinafter the "ESM"), represented by its Managing Director, Mr Klaus Regling,

on the other,

**PREAMBLE**

Whereas there are in Luxembourg two European Schools: the European School of Luxembourg I and the European School of Luxembourg II, located respectively Boulevard Konrad Adenauer, 23 in L-1115 Luxembourg and Rue Gaston Thorn, 6 in L-8268 Bertrange;

Whereas the ESM has an interest in the operation of the European Schools of Luxembourg I and II , which provide schooling to the children of their staff as pupils of category I;

Whereas, pursuant to the Joint Declaration signed on 26 October 2015 with the European Commission ( hereinafter "the Joint declaration", annex 1) the ESM committed to contribute directly to the financing of the European Schools of Luxembourg I and Luxembourg II and signed, with the European Commission and the European Schools, represented by the Secretary-General, on behalf of the Board of Governors, a Contribution Agreement concerning the financing of these Schools (hereinafter "the Contribution Agreement", annex 2), defining the conditions and the method of calculation of the amount of the ESM contribution to the budget of the said Schools;

Whereas, pursuant to the Joint Declaration and the signature of the Contribution Agreement, the ESM requested to benefit from the rights granted to organisations referred to in Article 28 of the Convention, having signed a Participation Agreement with the European Schools, proportional to their respective contribution to the budget of the concerned Schools;

**ACCORDINGLY, HAVING REGARD TO**

The Convention defining the Statute of the European Schools, signed at Luxembourg on 21 June1994, and in particular Article 28 thereof;

The decision of the Board of Governors of 1, 2 and 3 December 2015, adopted unanimously by its members, giving a mandate to the Secretary-General for conclusion of the aforementioned Contribution Agreement and of this Participation Agreement;

**THE FOLLOWING HAS BEEN AGREED:**

***Article 1***

Throughout the period of execution of the Contribution Agreement referred to in the preamble, the ESM shall have a seat as Observer on the Administrative Board of the European Schools of Luxembourg I and Luxembourg II.

***Article 2***

In the event of disagreement between the parties to this agreement as to its interpretation or implementation, the following shall apply:

a) The parties will first endeavour to reach in good faith an amicable settlement, initially at the level of the departments and subsequently, should that not prove possible, at the level of the Managing Director of the ESM and of the Secretary-General of the European Schools. Each phase of this procedure shall not exceed 45 days, starting from the date on which one party notifies the other of its request to initiate the procedure.

b) In the event of disagreement, the President of the Court of Justice of the European Union will designate the arbitrator.

The arbitrator will sit in Brussels. The arbitration will be conducted in English, unless the parties agree on the use of another language. The arbitral award with respect to the dispute must be based on the terms and conditions referred to in this agreement, in the light of the principle of fairness. That decision must be adopted within 60 calendar days. The parties shall expressly exclude any action for annulment of the arbitral award. The arbitral award shall be final, binding and enforceable by operation of law.

***Article 3***

This agreement shall enter into force on 1st January 2016.

This agreement will end on the same day as the tripartite agreement referred to in the preamble.

This agreement will be suspended in the event of non-execution of the Contribution Agreement.

*Done at Brussels, on………………………*

*in as many original copies as there are parties, each acknowledging that it has obtained its copy*

On behalf of the European Schools, On behalf of the ESM,

Their Secretary-General Its Managing Director

Kari KIVINEN Klaus REGLING

Annex 1: Joint Declaration of the European Commission and the ESM

Annex 2: Contribution Agreement of the European Commission, the ESM and the European Schools

1. 1 *Official Journal L 212 , 17/08/1994 P. 0003 - 0014* [↑](#footnote-ref-1)
2. In particular, see budgetary line 26.017011-C1-HR \_\_\_\_\_\_\_\_\_\_\_ for Luxembourg I and budgetary line 26.017012-C1-HR \_\_\_\_\_\_\_\_\_\_\_\_\_\_ for Luxembourg II. [↑](#footnote-ref-2)