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WRITTEN OBSERVATIONS OF THE KINGDOM OF SPAIN

Case C-370/12 \*

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**OBSERVATIONS OF THE KINGDOM OF SPAIN**

**IN CASE C-370/12**

**PRINGLE**

**ADDRESSED TO THE COURT OF JUSTICE**

**THE KINGDOM OF SPAIN,**

represented by Nuria Díaz Abad, Abogado del Estado, head of the legal service of the Spanish State for matters before the Court of Justice of the European Union, acting as Agent and having accepted that documents may be served on her using e-Curia, hereby submits the following observations pursuant to Article 23 of the Protocol on the Statute of the Court of Justice of the European Union and within the time-limits established therein:

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\* Language of the case: English.

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## **I – THE LEGAL FRAMEWORK OF THE EUROPEAN UNION**

### *A – Competences under Title VIII TFEU*

- 1 In order to answer the questions submitted by the referring court for a preliminary ruling, it is necessary first of all to undertake a general analysis of their context and, in particular, of the competences conferred on the European Union in the area of economic and monetary policy, and to consider whether such competences are exclusive in nature.

## 1. Economic policy and monetary policy

- 2 Article 3(4) TEU provides that: *‘The Union shall establish an economic and monetary union whose currency is the euro’*, while pursuant to Article 3(6) TEU: *‘The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.’* Article 4(3) states that: *‘... The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.’*
- 3 In this context, Article 3(c) TFEU provides that *‘monetary policy for the Member States whose currency is the euro’* is one of the exclusive competences of the Union, and Article 5(1) provides that: *‘The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies. Specific provisions shall apply to those Member States whose currency is the euro.’* The competences in each of these areas are developed in Title VIII TFEU.
- 4 Thus, Article 119(1) TFEU provides that: *‘For the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States’ economic policies ....’* Article 119(2), on the other hand, refers to *‘the definition and conduct of a single monetary policy and exchange-rate policy’* (emphasis added).
- 5 Chapter 1, relating to *‘economic policy’*, opens with Article 121. Article 121(1) establishes that economic policies are *‘a matter of common concern’* to be *‘coordinate[d] ... within the Council’*. Under Article 121(2) the Council is given the task of formulating, on a recommendation of the Commission, a *‘draft for the broad guidelines’* to be submitted to the European Council and, under Article 121(3), it is given that of monitoring, on the basis of reports from the Commission, economic developments in each of the Member States and in the Union. For these purposes, the Commission and the Council itself are both given a range of functions, from issuing warnings and recommendations to adopting the measures referred to in Article 126 in cases of excessive deficit, including imposing penalties.
- 6 By contrast with Chapter 1, Chapter 2, which deals with monetary policy, contains rules reflecting the fact that, as mentioned above, this competence is exclusive in nature by virtue of Article 3(c), and assigns to the European System of Central Banks (ESCB) the tasks listed in Article 127(2), namely:
  - *‘to define and implement the monetary policy of the Union,*
  - *to conduct foreign-exchange operations ...,*
  - *to hold and manage the official foreign reserves of the Member States,*

– *to promote the smooth operation of payment systems*’.

- 7 These tasks all serve the objectives set out in Article 127(1), which include supporting the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 TEU.
- 8 It is clear, then, that only **monetary policy constitutes an exclusive competence of the Union**, defined and administered by its own institutional system and a series of specific tasks which are elaborated in Chapter 2 of Title VIII, whilst **economic policies, including budgetary policies, fall within the competence of the Member States**, who are required by the TFEU to coordinate them, under the Council’s supervision, with specific provisions applying to members of the euro area.

## **2. Financial assistance measures and their limits: Articles 122, 123 and 125 TFEU**

- 9 Within the chapter on economic policy, the provisions relating to financial assistance to Member States, and particularly Articles 122, 123 and 125 TFEU, are worthy of attention in the context of the questions referred for a preliminary ruling.
- 10 Article 122 TFEU authorises the Council, on a proposal from the Commission and under certain conditions, to grant Union financial assistance to a Member State which is in severe difficulties or is seriously threatened with such difficulties caused by natural disasters or exceptional occurrences beyond its control.
- 11 This assistance is provided by the Union as such and is limited to the situations specifically referred to in this provision: natural disasters or exceptional occurrences beyond the control of the recipient Member State.
- 12 A second situation of financial assistance is that referred to in Article 143, assistance in cases of balance of payments disequilibrium for Member States with derogation under Article 139, in other words those that are not part of the euro area.
- 13 Apart from these, there are no other situations in which competence is conferred on the Union to grant financial assistance to a Member State. The Kingdom of Spain therefore takes the view that Article 122 TFEU does not exclude the possibility of Member States agreeing other mechanisms for providing financial assistance.
- 14 Articles 123 to 125 TFEU enshrine a series of prohibitions, of which that set out in Article 125, known as the ‘*no bail-out clause*’, is relevant for the present purposes, providing that neither the Union or the Member States shall ‘*be liable for or assume the commitments of central governments, regional, local or other*

*public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project’.*

- 15 Any possibility of either the Union or the Member States taking over by subrogation the indebtedness of any body of a Member State is therefore prohibited, and this is a limitation which will be relevant when we go on to consider the questions referred by the national court.

### **3. Article 136 TFEU**

- 16 The last remaining point to be addressed in this preliminary analysis is Chapter 4 of Title VIII, which contains provisions specific to Member States whose currency is the euro and whose aim is to strengthen the coordination of the economic policies of the members of the euro area, in the light of the effect that these have on the proper functioning of the monetary union.
- 17 In this regard, Article 136 enables the Council to adopt, in accordance with the procedures in Articles 121 and 126, measures ‘*a) to strengthen the coordination and surveillance of their budgetary discipline*’ and ‘*b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance*’.
- 18 In other words, it follows from the wording of this provision prior to the amendment which is the subject-matter of the question referred to the Court of Justice, that the Council has the competence to adopt specific measures in relation to the members of the euro area, but only in the two situations referred to in the provision: either the strengthening of coordination and budgetary surveillance or the setting of specific economic policy guidelines, provided that they are compatible with those adopted for the whole of the Union.
- 19 Any measure involving economic conditionality must be limited to these situations if it is to fall within the competence of the Union. The Union has no competence to impose measures involving economic conditionality outside of these situations.
- 20 European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro <sup>1</sup> (‘Decision 2011/199’) introduced the following new paragraph 3 into Article 136 TFEU:

*‘The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro*

<sup>1</sup> – OJ 2011 L 91, p. 1.

*area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality’.*

*B – The conclusion by Member States of international agreements in matters of Union competence*

- 21 Article 3(2) TFEU provides that, in matters of exclusive Union competence: ‘*The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.*’ It follows from this that, even in the realm of exclusive competence, the Member States are still able to conclude international agreements on these matters, provided that common rules are not affected or their scope altered.
- 22 Outside of these areas, competence to conclude international agreements between the Member States or with third parties has been confirmed by the Court of Justice, which has indicated that where ‘*the Community does not have exclusive competence ... the Member States are not precluded from exercising their competence in that regard collectively in the Council or outside it*’. <sup>2</sup>
- 23 Moreover, as far as the competence conferred on Union institutions in the context of international agreements is concerned, the Court of Justice held in the same judgment that the Treaty ‘*does not prevent the Member States from entrusting the Commission with the task of coordinating a collective action undertaken by them on the basis of an act of their representatives meeting in the Council*’. <sup>3</sup>
- 24 The Court had already established this approach in relation to the Community judicial system itself in Opinion 1/92 of 10 April 1992, <sup>4</sup> when it indicated that: ‘*The powers conferred on the Court by the Treaty may be modified pursuant only to the procedure provided for in Article 236 of the Treaty. However, an international agreement concluded by the Community may confer new powers on the Court, provided that in so doing it does not change the nature of the function of the Court as conceived in the EEC Treaty*’, <sup>5</sup> and, in particular, the binding effect of its decisions.

<sup>2</sup> – Joined Cases C-181/91 and C-248/91 *Parliament v Council and Commission* (Bangladesh) [1993] ECR I-3713, paragraph 16.

<sup>3</sup> – *Ibid.*, paragraph 20.

<sup>4</sup> – Opinion on the draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area ([1992] ECR I-2821).

<sup>5</sup> – *Ibid.*, paragraph 32.

## II – OBSERVATIONS

### A – Observations on the first question referred for a preliminary ruling

- 25 The first question submitted for a preliminary ruling by the referring court asks whether Decision 2011/199 is valid, having regard to the use of the simplified revision procedure under Article 48(6) TEU and, having regard to the content of the proposed amendment, in particular, whether the amendment involves any violation of the Treaties or the general principles of law of the Union. Each of these aspects will be considered separately.
  - i) The simplified procedure for amendment of the Treaties
- 26 Article 48(6) TEU sets out a simplified procedure for amending the Treaties which is applicable in cases involving amendments affecting all or part of the provisions of Part Three TFEU, of which Article 136 forms part, with the proviso that amendments adopted in this way ‘*shall not increase the competences conferred on the Union in the Treaties*’. There is no question but that this should be interpreted as meaning that the Article 48(6) procedure is not appropriate for amendments involving a reduction in the competences conferred on the Union either, given that the ordinary procedure set out in the preceding paragraphs is expressed to be the correct one for amendments which, inter alia, serve ‘*either to increase or to reduce the competences conferred on the Union in the Treaties*’.
- 27 Neither an increase nor a reduction results from the provision newly incorporated into the Treaty by Decision 2011/199, which does not give rise to any change in the competences of the Union, whether interpreted from a literal and schematic point of view or from that of its underlying intention. It should be recalled that the new Article 136(3) merely introduces the potential for the Member States whose currency is the euro to set up a stability mechanism, about which all we are told is that it will be activated if indispensable to safeguard the stability of the euro area as a whole and that the granting of any required financial assistance under the mechanism will be made subject to strict conditionality. So, the decision at issue does not increase the competences conferred on the Union in the Treaties, but relates to a mechanism to be set up by the Member States.
- 28 The Kingdom of Spain therefore takes the view that **Decision 2011/199 does not result in an increase in any of the competences conferred on the Union in the Treaty.**
- 29 According to its wording, the new paragraph authorises the activation of a mechanism for safeguarding the stability of the euro area as a whole, but it does not create it automatically and does not confer on the Union the competence to do so. In substance, therefore, it does not give rise to any competence at all, whether immediate or otherwise, direct or indirect, either for the Union or for the Member States themselves, who ‘*may activate it*’ but are not necessarily obliged to do so.



- 30 According to Recital 4 in the preamble to the decision in question, the mechanism will provide *‘the ... tool for dealing with such cases of risk to the ... stability of the euro area as a whole ... and ... help preserve the economic and financial stability of the Union itself [without affecting the competences which it has enjoyed to date]’*.
- 31 Even if the view were taken that the new Article 136(3) TFEU gave rise to a specific competence, that competence would be that of the Member States rather than that of the Union.
- 32 Consequently, no increase in the competences of the Union exists nor can exist.
- 33 Thus, in its opinion, delivered on 15 February 2011,<sup>6</sup> the European Commission indicated that the amendment *‘does not affect the competences conferred on the Union and its institutions in the Treaties. It does not involve creating a new legal base which would allow the Union to take action that was not possible before this Treaty amendment. Under the draft decision, the permanent stability mechanism will be established directly by Member States whose currency is the euro’* (paragraphs 11 and 12).
- 34 The European Central Bank also concluded in its opinion<sup>7</sup> that *‘the new Article 136(3) TFEU does not increase the competences of the Union’*.
- 35 **Neither is there an encroachment on or a reduction of the competences of the Union**, which has none, except in the circumstances referred to in Article 122 TFEU and in Article 143 TFEU, pursuant to which the Union is authorised to give balance of payment support to countries which are not members of the euro area (specifically, to those with derogations under Article 139 TFEU).
- 36 As explained above, in the area of economic policy the Union has no exclusive competences, as these belong to the Member States, who, in contrast to the case of monetary policy, are specifically required to coordinate and to comply with the broad guidelines adopted by the Council and those set out in the TFEU relating to the avoidance of excessive deficits.
- 37 As we have seen, the activation of financial backing is referred to only in Article 122 TFEU for the specific circumstances mentioned therein, which are not affected by the amendment.
- 38 Once again, the opinions delivered during the decision-making process are of particular relevance here.
- 39 In this regard, the European Commission states in its opinion: *‘Nor does the draft decision reduce the competences conferred on the Union. In particular, it does not*

<sup>6</sup> – COM (2011) 70 final

<sup>7</sup> – OJ 2011 C 140, p. 8.

*affect either the specific solidarity mechanisms provided for in Articles 122 and 143 of the TFEU in the event that a Member State is in difficulties or is seriously threatened with difficulties or the Union's competences in terms of coordination and surveillance of the economic and financial policies of the Member States in general and of Member States whose currency is the euro in particular*' (paragraph 12).

- 40 The European Parliament<sup>8</sup> pointed out in its opinion of 23 March 2011 that the draft decision '*cannot reduce the competences of the Union institutions in the fields of economic and monetary policy*' and that, as a result, the simplified revision procedure was appropriate (paragraph 19).
- 41 It should be noted that the new paragraph does not either confer or remove competence in the field of monetary policy either. So, from a schematic point of view, the new paragraph supplements Article 136(1) TFEU. Article 136 makes it possible to extend the procedures referred to in Articles 121 and 126, relating to economic policy (other than that set out in Article 126(14), which is not relevant for the present purposes), to the adoption of measures specific to those Member States whose currency is the euro in order to strengthen the coordination and surveillance of their budgetary discipline and to set out economic policy guidelines relating to those Member States, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.
- 42 The introduction of the new paragraph means that the funding mechanism that may be activated becomes part of the TFEU itself, thereby ensuring, on the one hand, that any conditions which that activation entails for any particular Member State flow directly from the Treaty and, on the other, that the mechanism will be applied in a way which is entirely consistent with the other provisions of that Treaty.
- 43 Finally, as we shall see in the following analysis, the Treaty establishing the European Stability Mechanism ('the ESM') does not affect the competences of the Union either, since it is an intergovernmental agreement, and thus the specific form taken by the stability mechanism has not resulted in any alteration to those competences.
- 44 Accordingly, it must be concluded that **the simplified procedure was appropriate for the adoption of Decision 2011/199** in that it does not affect Union competences either directly or indirectly.

<sup>8</sup> – OJ 2012 C 247E, p. 22.

ii) Compatibility of the proposed amendment with the Treaties and with the general principles of EU law

- 45 In view of the fact that the amendment introduced by Decision 2011/199 relates to a provision of EU law which has the status of primary law, the Kingdom of Spain takes the view that the Court of Justice does not have jurisdiction to consider the compatibility of the substance of a rule of primary law with the Treaties and with the general principles of EU law.

*B – Observations on the second question referred for a preliminary ruling*

- 46 The second question submitted for a preliminary ruling by the referring court asks, in essence, whether a Member State of the European Union whose currency is the euro is entitled to enter into and ratify an international agreement such as the ESM Treaty, having regard to: Articles 2 and 3 TEU and the provisions of Part Three, Title VIII TFEU; the exclusive competence of the Union in the field of monetary policy; the competence of the Union in coordinating economic policy; the powers and functions of Union institutions, the principle of sincere cooperation, and the general principles of EU law, including the right to effective judicial protection and the right to an effective remedy pursuant to Article 47 of the Charter of Fundamental Rights of the European Union and the general principle of legal certainty.

**1. The jurisdiction of the Court of Justice to consider the question**

- 47 A preliminary issue that should be considered is the jurisdiction of the Court of Justice to answer the question referred for a preliminary ruling. In doing so it is necessary to have regard to the fact that the ESM Treaty is a treaty concluded between the Member States whose currency is the euro which is subject to public international law. The Court of Justice has held that: *‘In relation to international conventions in general, it should be noted that, according to the case-law of the Court, if the Community is not a Contracting Party to a convention, in principle the Court is not competent to interpret the provisions of that convention in the context of preliminary proceedings’* (Case 130/73 *Vandeweghe and Others* [1973] ECR 1329, paragraph 2; Order in Case C-162/98 *Hartmann* [1998] ECR I-7083, paragraph 9; Case C-301/08 *Bogiatzi* [2009] ECR I-10185, paragraph 24; Case C-533/08 *TNT Express Nederland* [2010] ECR I-4107, paragraph 61; and Case C-132/09 *Commission v Belgium* [2010] ECR I-8695, paragraph 43). The Kingdom of Spain therefore takes the view that the Court of Justice does not have jurisdiction to consider the provisions of the ESM Treaty, but only to consider rules of EU law. It is from this perspective that the Kingdom of Spain would wish to approach the second question referred for a preliminary ruling.

## 2. The competence of Member States whose currency is the euro to enter into and ratify the ESM Treaty

i) Provisions of the TEU and the TFEU on economic and monetary policy

- 48 The Kingdom of Spain takes the view that the signatory States to the ESM Treaty have complied with their obligations under the Treaty and under secondary legislation, although this conclusion is not based on the amendment to Article 136 TFEU.
- 49 First, **the ESM is not inconsistent with Article 121 TFEU**, as Article 13(3) of the ESM states that: *‘The MoU [(memorandum of understanding)] shall be fully consistent with the measures of economic policy coordination provided for in the TFEU, in particular with any act of European Union law, including any opinion, warning, recommendation or decision addressed to the ESM Member concerned.’*
- 50 Secondly, **neither does it infringe the prohibition set out in [Article] 125 TFEU**. Article 125 TFEU prohibits the Union or the Member States from being liable for or assuming the commitments of central, regional or local governments or other public bodies of any Member State.
- 51 The ESM creates an international financial institution whose function is to grant financial assistance. Thus, from a subjective point of view, neither the Union nor the Member States assume or are liable in any way under the agreement for the obligations of any other Member State or States, and the same is true for the ESM itself, which merely takes responsibility for making the agreed loans but will in no circumstances assume the liabilities of the recipient Member State.
- 52 Moreover, from an objective point of view, in other words from the standpoint of the transactions to be carried out by the financial institution, it is not possible to point to any breach of Article 125 either, since none of the types of financial assistance contemplated in the Treaty amount in any way to assuming financial commitments in the place of recipient Member States.
- 53 The aims and characteristics of the instruments that can be used by the financial institution created for the granting of assistance are set out in the preamble to the ESM Treaty, where Recital 15 states that *‘ESM lending conditions for Member States subject to a macroeconomic adjustment programme, including those referred to in Article 40 of this Treaty, shall cover the financing and operating costs of the ESM...’*.
- 54 Accordingly, the main body of the ESM Treaty contains the provisions set out below:
- The purpose of the ESM shall be *‘to mobilise funding and provide stability support’* and: *‘For this purpose, the ESM shall be entitled to raise funds by issuing financial instruments or by entering into financial or other*

*agreements or arrangements with ESM Members, financial institutions or other third parties’ (Article 3).*

- Loans are the financial instruments used for the assistance. To that end, the ESM is empowered to borrow on the capital markets (Article 21).
- There is no subsidy element to the funding that may be provided, since: *‘When granting stability support, the ESM shall aim to fully cover its financing and operating costs and shall include an appropriate margin’* (Article 20(1)).
- Furthermore, ESM members receiving financial support are not exempt from meeting their financial obligations (to pay for the portion of capital stock for which they subscribe and to meet any capital calls) (Article 8).
- Article 8(5) also specifies that: *‘The liability of each ESM Member shall be limited, in all circumstances, to its portion of the authorised capital stock at its issue price. No ESM Member shall be liable, by reason of its membership, for obligations of the ESM. ...’* In other words, neither the Union nor any Member State whose currency is the euro assumes, even indirectly, the financial obligations of another Member State.
- Lastly, the appellant in the national proceedings submits that the stability mechanism *‘would make contracting Member States liable to put up funds precisely to enable recipient Member States to meet their obligations’*. In this regard it should be pointed out that the funds committed by the ESM members are for subscriptions to their portion of the capital stock and for meeting any capital calls made by the financial institution created.

55 Consequently, the ESM Treaty complies fully with the provisions of Article 125 TFEU.

56 Thus, the complete compatibility of the provisions of the ESM Treaty with the Member States’ obligations under the TFEU, whether as participants in the ESM or as recipients of any loan that the latter may grant, is ensured.

ii) The powers and functions of the Union

57 It is now necessary to analyse how competences are allocated to the Community institutions in the application of the provisions of the ESM.

58 The Court of Justice has ruled on this subject in Opinion 1/91<sup>9</sup> and Opinion 1/92<sup>10</sup> as well as in the *Bangladesh* case.<sup>11</sup> In the light of the case-law, it can only

<sup>9</sup> – Opinion of the Court of Justice of 14 December 1991 on the draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area ([1991] ECR I-6079)

<sup>10</sup> – See footnote [4].

be concluded that the manner in which competences are conferred on the European Commission, the European Central Bank and the Court of Justice of the European Union fully satisfies the criteria set out therein.

- 59 Furthermore, the European Parliament recalls, in its opinion of 23 March 2011 on the draft decision amending Article 136 of the TFEU, that ‘*the future permanent stability mechanism should make use of the Union institutions, since this would avoid the setting-up of double structures which would prove detrimental to European integration*’ (paragraph 15).
- 60 In relation to the Court of Justice specifically, Recital 16 in the preamble establishes that Article 273 TFEU constitutes the legal basis for jurisdiction and Article 37 of the ESM Treaty creates that jurisdiction incorporating the characteristics referred to in the above-mentioned opinions: the judgment shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgment within a period to be decided by said Court.

iii) The principle of sincere cooperation

- 61 In connection with an alleged infringement of the principle of sincere cooperation, it should be borne in mind that the ESM Treaty, as mentioned above, does not infringe EU law, and that, furthermore, it provides for links with Union institutions, thereby fostering the process of European integration.<sup>12</sup> The principle of sincere cooperation must therefore be deemed to be satisfied.

iv) EU general principles: effective judicial protection and legal certainty

- 62 The right to effective judicial protection is enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. It appears from the order for reference that the appellant in the main proceedings is of the opinion that the ESM Treaty would be incompatible with this principle and with the general principle of legal certainty, against which the Irish Government argues that it is difficult to envisage circumstances in which a stability mechanism would violate human rights.
- 63 The Kingdom of Spain takes the view that the Court should not attempt to evaluate this alleged breach, as the referring court has expressed it in a vague and imprecise manner, which makes it impossible for other interested parties submitting observations to analyse it.

*C – Observations on the third question referred for a preliminary ruling*

- 64 In the light of the replies suggested by the Kingdom of Spain to the first and second questions, the Member States should be regarded as being entitled to enter

<sup>11</sup> – See footnote 2.

<sup>12</sup> – See paragraph 15 of the opinion of the European Parliament of 23 March 2011.

into and ratify an international agreement such as the ESM Treaty without waiting for Decision 2011/199 to come into force, in that, as that decision is valid and the international agreement in question is consistent with EU law, entering into the agreement and ratifying it form part of the treaty-making power of the Member States.

### III – CONCLUSION

In the light of the arguments set out above, the Kingdom of Spain proposes that the Court of Justice should:

- reply to the first question to the effect that the simplified procedure for revision of the Treaties set out in Article 48(6) TEU was appropriate for the adoption by the European Council of Decision 2011/199 and rule that it lacks jurisdiction to consider the substance of the amendment to the TFEU due to its nature as a rule of primary EU law;
- reply to the second question to the effect that a Member State whose currency is the euro is entitled to enter into and ratify an international agreement such as the ESM Treaty;
- reply to the third question to the effect that the entitlement of a Member State to enter into and ratify an international agreement such as the ESM Treaty is not subject to the entry into force of Decision 2011/199.

Madrid, 14 September 2012

AGENT FOR THE KINGDOM OF SPAIN

[signature]

Nuria Díaz Abad