

# ESM

## Legal and Economic Analysis Summary and Critical Appraisal 16 February 2012

1. The government leaders of the Euro-zone countries are founding the first European supranational **ESM (Mega) Bank**. This bank is *exempted from taking out a banking license* (Art. 1, Art. 32, para. 9).
2. The ESM Bank is granted a *carte blanche* so as to be able to unconditionally enter into any type of transactions with anybody (art. 3).
3. In order to make this “ESM Bank“ project possible, the weaker Euro-zone countries are granted *advantageous voting rights* (Art. 4) since they outweigh the others in numbers in the Euro-system.
4. The 17 Finance Ministers participating in the ESM establishment are constituting the legally untouchable Board of Governors of the ESM Bank (for Germany: Dr. W. Schäuble). This Board has the *total control* and ultimate decision-making power in all financial, material and – above all – personal affairs related to the ESM Bank. Each Governor has an alternate Governor as his representative (Art. 5).
5. The Governors are determining *secretly* both their salaries and the salaries of their Directors - which are running into *unknown amounts of millions of Euros* (Art. 5 para. 7 (n), Art. 34).
6. The ESM Bank’s “share *liability* capital“ amounts to (*initially*) EUR 700 000 million, divided into **(a)** EUR 80 000 million *shares to be paid-in* and **(b)** EUR 620 000 million *callable* shares. (art. 8 para. 1). The Governors are entitled to increase this *liability capital* by issuing new shares in the amount of thousands of millions **(c)** *at their own discretion* (Art. 8 para. 2, Art. 10 para. 1).
7. In the case of losses or due to any other reasons, unpaid ESM liability capital must be paid-in within 7 days. If a member is unable to pay, the unpaid amount will be *allocated* to the other shareholders (Art. 9, Art. 10, Art. 25 para. 1 c, 2).
8. If the capital stock is not increased (Ziff. 6), Countries will be liable - depending on how many ESM shareholders are unable to pay<sup>1</sup>- for (*minimum*) 27 % - 100 % (*maximum*) of EUR 700 000 million. If this “share liability capital“ is *increased* due to the Governors’ audacity or – maybe - stupidity (Art. 8, Art 10), an *increased* liability, i.e. in addition to the EUR 700 000 million, may be the result (Art. 9, Art. 10, Art. 25 para. 1 c, 2).
9. The ESM Bank shall be entitled to: **(A)** grant overdraft facilities to Euro-zone countries, Art 14, **(B)** finance banks, Art. 15; **(C)** grant loans to Euro-zone countries, Art. 16; **(D)** directly acquire government bonds from Euro-zone countries, Art. 17; **(E)** indirectly acquire government bonds from Euro-zone countries, Art. 18; **(F)**

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<sup>1</sup> Cascade effect: first-come, first-serve.

amend this list, i.e. extend it, Art. 19; **(G)** pursue a policy on interest rates <sup>2</sup>, Art. 20; **(H)** issue Eurobonds, Art. 21. – altogether, the ESM Bank can pursue financial transactions of any kind and at any desired amount. (art. 14 – 21).

10. With these financial transactions (A), (C), (D), (E), the ESM Bank is refinancing the Public Finances of weak Euro-zone countries *at the expense of the citizens* of strong Euro-zone countries, particularly Germany. The financial assistance to banks (B) is for the *creditors* of defaulting banks. This funding always includes new and long-standing debts (at least since 1999).
11. Art. 21: The ESM Bank can borrow loans/moneys (for refinancing purposes) *without any limit* in order to finance the debts of weak Euro-zone countries/banks. These new ESM debts are covered by the ESM Bank's capital stock (at least EUR 700 000 million). For the payment of this capital stock the countries/citizens are liable. Due to the cascade effect, in case of an emergency the European citizens and taxpayers are liable for the full amount of these EUR 700 000 million (and, as the case may be, increased according to Art.10!) , i.e. or all moneys/loans borrowed by the ESM and distributed within Europe.<sup>3</sup> Art. 21 is thus introducing **Eurobonds** without openly saying so. At the same time, a *snow-ball system* is created so that the risk of financing these loans is only borne by the citizens.
12. In the case of bankruptcy of a Euro country (e.g. Greece), ESM loans (Art. 14, 15, 16) are subordinated with respect to IWF loans. All this results in – as every subordinated creditor knows – a massively *increased risk* in terms of losses/liability (Preamble, para. 13 and para. 14).
13. The ESM Bank's indirect shareholders, i.e. the paying and liable citizens (particularly the German citizens) of the Euro-zone countries,<sup>4</sup> have no chance to examine transactions of the ESM Bank by appointing an independent external auditor in order to determine if such transactions are proper, factual and mathematically correct. *Such examinations are excluded* (Art. 26 – 30).
14. The ESM Bank, its assets, etc., etc., enjoy absolute *immunity*, i.e. they can never and nowhere be sued. In future, the bank can no longer be subject to any judicial or legal measures.<sup>5</sup> On the other hand, the ESM Bank has the right to sue anybody.<sup>6</sup> (Art. 32)
15. The ESM Bank is *exempt* from controls and licenses (Art. 32 para. 9).
16. The Governors (incl. Dr. Schäuble) and all the other staff of the ESM Bank have – from now on and in future – the *right to silence* and the obligation to secrecy and thus safeguard the secrecy **(a)** of the ESM Bank's transactions, if necessary, **(b)** of their own activities within the ESM Bank and particularly **(c)** the provisions of Art. 32, 34 - 36 ab.

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<sup>2</sup> Formerly (ESM version of 23 January 2012) called “Interest fixing policy“ - concealment!

<sup>3</sup> As „Jointly and severally liable debtor at the final instance“

<sup>4</sup> Indirectly, because the German citizens **(a)** become shareholders of the ESM Bank by providing the funds to the German State and **(b)** are liable for the ESM Bank losses in accordance with the treaty.

<sup>5</sup> Following the ratification (etc.) in Germany by the German Federal Parliament (Bundestag), this is valid from now on and “forever”.

<sup>6</sup> See also: [www.freiewelt.net/.../stoppt-eu-schuldenunion-\(esm-vertrag\)!-at- ...](http://www.freiewelt.net/.../stoppt-eu-schuldenunion-(esm-vertrag)!-at-...)

17. As part of *their vested interest*, all ESM Bank Governors (incl. Dr. Schäuble), Directors etc., etc., including all documents, enjoy *immunity* with respect to any jurisdiction regarding their operational (not official!)<sup>7</sup> activities for the ESM Bank, irrespective whether they squander, blast or embezzle hundreds of millions of Euros (Art. 35).
18. The salaries of Governors (see No. 5 above), Directors and other ESM Bank staff are fully *exempt* from all (including indirect) taxes and charges. All salaries below the position of a Governor are subject to an *internal tax* which is determined by the Board of Governors and payable to the ESM Bank, Art. 36 para. 5.<sup>8</sup>
19. The volume of a (consolidated) granting of loans by ESM and EFSF is **unlimited**, i.e. it is restricted to EUR 500 000 million (Art. 39, Art. 10) *only during a transitional phase*.<sup>9</sup>
20. Due to the fact that the respective Chancellor is the one who appoints the Finance Minister for an indefinite period of time and this Finance Minister is occupying the position of a Governor (revocable at any time), this will lead to extreme power struggles as far as the position of the Finance Minister is concerned and chaotic situations inside the ESM Bank every time the Finance Minister and the governments are changing.<sup>10</sup>
21. With the ratification of the ESM Treaty, the members of the national Parliaments seal the end of their own democratic national rights. (Art. 47 para. 1).

### **Conclusions:**

Since 1999, the governments of the Euro-zone countries have been damaging the Euro-zone up to breaking point through their unprofessional, reckless and partially silly financial policy but also through their continuous breaches of the Maastricht Treaty and the Stability Pact all of which led to credit orgies in the amount of thousands of millions. *As a result*, from 2007 onwards a world-wide speculation against the Euro started. As counteraction, again from 2007 onwards, the causal agents of this crisis have introduced footless and useless “bailouts“ in order to reduce the chaos. Now, the ultimate bailout shall be brought by the fiscal pact and the striking capacity of a ESM mega bank. The intention behind is to socialize the debts accrued by the weak Euro-zone countries during the last 13 years (as a result of a disastrous Euro finance policy) by means of the ESM Bank and (*inter alia*) re-distribute these debts to the taxpayers respect the citizens. It is planned that the loans required in this context are reinsured and warranted by the private assets of all European citizens. Actually, this means that the existing debts of the these countries are released in thousands of millions and substituted by new ESM Bank loans. For these loans, (above all) the citizens and taxpayers will have unlimited liability in the future. Behind this superbly orchestrated chaos of actions, manipulations, summits, laws, statements etc. the massive financial problems of national and international banks are discharged and placed onto the citizens’ shoulders via ESM<sup>11</sup> on the quiet. Key players: the Governors! And – apropos of nothing – this ingenious plan also has the intention to put an end to the world-wide speculations against the Euro.

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<sup>7</sup> The operation of a bank is not an *official* operation, as a consequence, no *official* activity exists.

<sup>8</sup> A completely futile money transaction shamming real taxation (*by a bank!*)

<sup>9</sup> In combination with the increased liability capital (see No.7) a deadly risk for citizens.

<sup>10</sup> Salaries in the amount of millions have to be expected for the Governors.

<sup>11</sup> Article 32 para. 1: The ESM Bank demands a transcendental legal status, far beyond that of a normal citizen.

There are many reasons why the ESM plan is totally naive and expected to lead the Euro-zone into a financial chaos the consequences of which the citizens will suffer bitterly.<sup>12</sup>

- (a) Speculation is not the cause of the European financial crisis.
- (b) On the contrary, the cause lies in the openly visible inability of the Euro Finance Ministers (*inter alia*) to control, to economize properly and sparingly and to obey the rules.
- (c) Any improvement regarding this behaviour and weaknesses cannot be expected.
- (d) The Finance Ministers designated as ESM Bank Governors are generally not qualified for bank industry business. As a consequence, they are not apt to lead a European mega bank.<sup>13</sup>
- (e) In general, the Fiscal Pact attached to the ESM Treaty shows the same deficiencies and uncertainties able to destroy the Maastricht Treaty and the Stability Pact. A placebo effect will not occur.<sup>14</sup>
- (f) The ESM Bank will additionally plunge into ruin the paying Euro-zone countries (A/D/Fi/NL).

With this ESM Treaty, uncontrollable political and financial power is transferred to a small group of people (the Euro Finance Ministers and their environs). As causal agents of this crisis they should be excluded from solving it per se. Their activities with the ESM would lead to further massive financial risks and damages to all European citizens and cover up erroneous behaviour and decisions of the past.

Moreover, very trivial reasons could be behind this ESM project:<sup>15</sup> the hair-raising privileges and the expected quantum leap as to the income of the ESM Bank Governors/Directors is possibly the reason for the insatiable desire of these ministers to get one of these ESM positions.

Nevertheless, things are clearly visible for everybody. The ESM privileges (beyond any kind of legitimacy) are the lure which (initially) got the Finance Ministers and their entourage into the ESM trap. After many fragile arguments and apocalyptic threats, now the countries' members of parliament and, as a consequence, the countries and their citizens will follow-up. The trap is closing after the ratification of the treaty<sup>16</sup>. After that, Eurobonds will be bought by gamblers and in only a very short time it will be the ESM Bank's creditors that are in charge in Europe. Europe's citizens will then be entitled to pay ad infinitum but they will continue to have no rights especially because these rights have been anyway excluded according to the Treaty.

The ESM Treaty is a mockery and derision as far as sanity and reason but also as far as the European juridical tradition are concerned. From a political point of view, the

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<sup>12</sup> „Dauerhafter Rettungsschirm ESM – dauerhafte Geldveruntreuung (Permanent ESM rescue package - permanent money embezzlement)“, *www.Richard Sulik.blog 13 December 2011*

<sup>13</sup> Governor Dr. Schäuble, for example, would have never the chance to receive a license for a regular CEO position in a bank by the German Financial Supervisory Authority (BaFin) pursuant to Banking Act (KWG), Article 33 para. 2. Therefore, in this case Article 32 para. 9 of the ESM Treaty applies (also with respect to other Governors).

<sup>14</sup> At most, the fiscal pact will trigger adverse Nocebo Effects

<sup>15</sup> Which has experienced the active cooperation of these ministers of finance!

<sup>16</sup> A beautiful synonym for this process.

government 's request to have the ESM Treaty approved national Parliaments <sup>17</sup> represents the most serious attempt against the democracy. With this ESM Treaty, a small group of governments revolt against their own people.

Any collapse of the Euro-system will appear to be a ridiculous minor matter if compared to the damages to be expected in connection with the implementation of the ESM Bank under the management of the already known Governors. After all: Europe existed before the Euro and will not fall with it – but continues to exist peacefully. The currently prevailing circumstances, however, bring dispute into the European house – dispute with political origin!

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<sup>17</sup> Up to now, this cannot be considered an orderly parliamentary procedure.