

TREATY  
of the 17 Euro countries establishing the  
**EUROPEAN STABILITY MECHANISM**  
**ESM**  
**Economic and legal analysis**

**Why is this ESM Treaty needed altogether?**

In the **year 1999**, some countries joined forces to create the European Monetary Union (Euro Union).<sup>1</sup> The intention behind was to establish an economic counter-balance against the US and China with the individual Euro countries acting as subsidiaries of a parent corporation, the “**Euro Group**”. The **shareholders and creditors (financial backers) of this corporation** are the **European citizens**. It is on the basis of their work and capital this Euro-zone is actually working. The participating countries are managed by their heads of government and their Finance Ministers. At the same time, the aforementioned officials are – by order of their citizens – active in and responsible for the management of the Euro-zone.

For the success of this Euro company, the introduction and protection of the **€uro** as strong and sound common currency was of crucial importance. In order to ensure this, the following “rules of the game”<sup>2</sup> were anchored in a binding agreement: the **(1)** upper limits regarding fiscal deficit (3% maximum of GDP) and **(2)** indebtedness (60 % maximum of GDP) shall not be exceeded, **(3)** ban on low interest rate policies and **(4)** acquisition of government bonds of Member States by the ECB. In addition, it was agreed that **(5)** severe admission criteria shall be applicable, **(6)** regular examination as to points 1- 4 above shall take place and, in the case of any violation against points 1 – 5 above **(7)** severe sanctions shall be immediately imposed.

But already before the introduction of the Euro (1999/2002) **unequivocal warning signals** existed that in the case of violations against points 1 – 7 above the Euro, including the overall **Euro-zone**, could be the victim of a financial **break-down** and that the **TARGET-2** settlement system would be playing a decisive role in this context.<sup>3</sup>

Between 1999 and 2012 virtually all<sup>4</sup> the Euro-zone governments (i.e. the respective heads of government and their finance ministers) managed their countries by ignoring the „holy security mechanisms“ set forth under points 1 - 7 above in an unbelievably irresponsible manner.<sup>5</sup> Particularly the Euro-zone run into debts free from any kind of restraints<sup>6</sup> and pursued low interest rate policies. In the year 2007, however, “the party was over“ and the Euro governments had to face the consequences of **their** quixotic financial policies. Of course, they were shocked but they rejected any kind of own responsibility and started to blame others (adventurers, banks, alien powers, etc.).

From that point in time the governments started sending “bailout packages“, or, more precisely, tying up “money packages“ in monthly intervals and send them to where money is or was lacking. This money was directly taken from national budgets, fresh out of the money presses or borrowed on the money market. The intention of these bailout packages was to curb the damages these governments caused to the Euro-zone with their erroneous and lax financial policy since 1999.

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<sup>1</sup> With serious disadvantages as to the voting rights of Germany

<sup>2</sup> See Stability Pact and Maastricht Treaty

<sup>3</sup> Peter Garber (1998) „Notes on the role of Target in a Stage III crisis“, *NBER Working Paper 6619* (1998), [www.nber.org/papers/w6619](http://www.nber.org/papers/w6619); accordingly, TARGET shows very serious errors in its design, errors which have never been criticized by the German side and will now cost the German citizens thousands of millions of Euros.

<sup>4</sup> Except Finland!

<sup>5</sup> The Stability Pact and the Maastricht Treaty have been completely disregarded by the respective governments!

<sup>6</sup> The banks have given an edge to the situation by thoughtlessly granting loans to Euro countries in almost unlimited amounts - against (partially) substandard guarantees. Now, they want their money back; the countries don't have it and, as a consequence, for about 4 years now the European citizens are made to pay via convoluted, intricate approaches.

Eventually, it will be the citizens who will have to pay for the fact that various Euro governments managed their Euro business in a negligent and commercially inept manner during the past 13 years and that - as a result thereof - the Euro-zone is facing bankruptcy. But, it is generally known that disenchantment comes after deception and thus nobody is currently considering a change in the management. In the meanwhile, however, it has become more than obvious that all the bailout packages issued up to now were futile. Today, money is lacking more than ever.

Now, the closed fraction of European heads of government, including their finance ministers, i.e. the originators of this Euro crisis of all things, is expecting that the citizens of Euro-zone **trust them one more time**. But that is not the end of the story: the establishment of a **bank** in disguise *called* **ESM** - provided with capital and “firing power“ never heard of before <sup>7</sup> and under the management of **Governor Dr. Schäuble** <sup>8</sup> (p.p. Germany) – is planned for further “rescue purposes” in order to rescue the Euro (*at full risk and expense of the German citizens!*)

To reasonable people it will sound completely unreasonable and absurd that exactly the same people, i.e. the ones that have ruined the Euro Company by their inability and self-interest over the last decade, are now the ones engaged in “rescuing“ it. But partially confusing policies and misguided attention of the media <sup>9</sup> are changing the course things should take: their “taking the bull by the horns“ strategy covers many of the facts by a smoke screen and, as a consequence, this outrageously, not affordable and never repayable debt reorganisation is continuing at the citizens’ expense, whatever the cost and no matter if commercially reasonable or not.

The reader of these lines should not lose sight of the fact that: for each Euro the German government uses, spends or guarantees (wherever and however) in connection with rescue packages, laws, ESM Treaties etc. it will always be this very reader that will have to pay and/or be liable and nobody else! It will **always be his money** that is spent today and extracted from him (by means of interests and fees!) tomorrow. Any other way of looking at these facts is illusionary and wrong. The members of governments and/or managers of the “rescue companies” (e.g. ESM) will never assume any liability. It will be always the citizens’ wallet they are taking when it comes to paying government debts.

If things are handled at the German government’s will this **ESM Bank** will be equipped with a liability capital of EUR 700 000 million on the basis of the citizens’ assets, i.e.

(1) EUR 80 000 million <sup>10</sup> in form of *paid-in shares* (in 5 instalments),

(2) EUR 620 000 million in form of shares *callable* at any time, <sup>11</sup>

i.e. funds for which the German citizen will be **liable** as „*lender of last resort*“<sup>12</sup>. Governor Dr. Schäuble (in co-operation with others) will manage the ESM. <sup>13</sup> As a consequence, huge powers and financial means will be concentrated in his person: it is the intention that the Governors and/or the ESM are entrusted with huge sums of current and future fiscal revenues (as trustees, of course, since they are dealing with tax moneys!). As is usual in the banking business, of course each of these appointed Trustees (here: the Governors and the ESM) should be bound to financial reporting and liable in the case of misconduct.

Let us see what the ESM Treaty says in this context. It will show us what the future plans of our government, Chancellor Dr. Merkel and Finance Minister Dr. Schäuble are.

<sup>7</sup> Whatever this nonsense means.

<sup>8</sup> Article 5 para. 1 sentence 3. “The Governor shall be a member of the government who has responsibility for finance“. *Communication of the Federal Ministry of Finance from 3 February 2012 „Fragen und Antworten zum ESM- Questions and Answers regarding the ESM“* [http://www.bundesfinanzministerium.de/nr\\_54/DE/Wirtschaft\\_und\\_Verwaltung/Europa/Der\\_Euro/Stabilitaet/Stabilisierung-des-Euro/201202-ESM-FAQ.html](http://www.bundesfinanzministerium.de/nr_54/DE/Wirtschaft_und_Verwaltung/Europa/Der_Euro/Stabilitaet/Stabilisierung-des-Euro/201202-ESM-FAQ.html)

<sup>9</sup> Right-wing extremists, left-wing extremists, Wulff, Costa Concordia, cold spell in winter time, Stuttgart 21, etc.

<sup>10</sup> Germany’s share: at least 27 %. Recipient: ESM – without repayment obligation!

<sup>11</sup> Note: guarantees are - if compared to less risky bonds - **high-risk primary debts**

<sup>12</sup> Lender of the last resort.

<sup>13</sup> In a dual function as Finance Minister and Governor?

This introduction shall serve at the same time as a comment of the 6-pages Preliminary Remarks (here: Preamble) of the ESM Treaty, para. 1 – 17 (with one exception: see below.). In the following, we are going to single out only the most important of the dozens of appalling contractual mantraps and pitfalls set forth in the ESM. After all, it doesn't actually matter if a contract is null and void because of *one* crucial reason or because of *dozens* of them.

These comments are distinguished according the following modus operandi:

The headings of Chapters and Articles always remain the same. The passages we did not want to comment (here) were mainly deleted unless we wanted to leave the overall impression of corresponding arrangements. Particularly *interesting* wording is highlighted in **red**. Passages in **green** indicate unknown (future) arrangements, i.e. beyond any possible assessment. Notes are comments of the authors (*parenthesis, blue, italic, underlined*). Superfluous filler words, phrases, references etc. not required for the understanding of the text have been deleted as far as possible. Disorienting or unintelligible semantics, including unusual syntax, have been transformed into normal German language and occasionally dissected. We are of the opinion that a Treaty establishing a company for which the German People have to pay hundreds of thousands of millions, if applicable, should be worded in a manner that even "normal" people are able to understand (which is not the case as far as the original text is concerned!). For reasons of clarity and space saving, our comments are basically made in the footnotes, i.e. in direct contraposition to the text. We are aware of the fact that there are certain disadvantages due to a more difficult legibility (because of the smaller fonts) but have to accept it. Our comments are not only restricted to the legal point of view but comprise first and foremost economic considerations: this is our money we are dealing with, i.e. a good reason to primarily think and act in a commercially reasonable manner. After all, the Euro-zone was not established to exist for its own sake, it does not serve as playing field for starry-eyed idealists, political experiments or the personal progress of Eurocrats!

### Preamble

Art 125 of the EU Treaties (TFEU) sets forth: **No Euro-zone country shall be liable for the debts of another Euro-zone country** (so-called. „bail-out ban“)<sup>14</sup>. Until now this meant that Germany did not have to pay for the debts of Greece, Portugal, Spain, Ireland, Italy, etc. On 2 February 2012, however, the German ambassador to Brussels signed the ESM Treaty which will have to be *ratified* now. An *amendment*<sup>15</sup> to this Treaty is granting the ESM – notwithstanding the „bail out ban“ – the **permission to render financial assistance to all needy Euro countries**. Since Germany's share is 27.1464 % (EUR 190,024,800,000) in the ESM (current capital stock: EUR 700 000 million), the German citizens will have to pay and/or be liable for these EUR 190 000 million meaning that – as a result thereof and contrary to all the promises by the German Chancellor – the **German citizen will be liable for the debts of all the weak Euro-countries** and made to pay. With this, the German government has quit its financial protection of the normal German citizens' income and savings (including insurances and old-age provisions) and cleared them for looting.<sup>16</sup> As already correctly stated in para. (10) of the Preamble, the ESM can be considered to be a kind of „**Enabling Law**“.

<sup>14</sup> „Bail out ban“= no “rescue payments” to other countries! This prohibition was the most important condition for Germany's accession to the Euro-zone.

<sup>15</sup> **Ratification**: Approval of the Treaty by the Federal Government, the Federal Council, the Federal Parliament and signature of the Federal President. Following this, the ESM is expected to enter into force in July, i.e. as soon as at least 90 % of the ESM capital stock has been secured by ratifying this Treaty. The ESM Treaty expressly refers to an **amendment of 136 TFEU** by a third paragraph on 25 March 2011.

<sup>16</sup> See also (*inter alia*): Richard Sulik in RichardSulik.blog.de/2011/12/13dauerhafter-rettungsschirm-esm; Bryan Hayes in [www.Germany.net/content/der-esm](http://www.Germany.net/content/der-esm) ; [www.deutsche-mittelstands-nachrichten.de/2012/01/36926/](http://www.deutsche-mittelstands-nachrichten.de/2012/01/36926/)

**CHAPTER 1**  
**MEMBERSHIP AND PURPOSE**

**ARTICLE 1**

Establishment and members

1. By this Treaty, the Contracting Parties establish among themselves an **international financial institution**<sup>17</sup>, to be named the "European Stability Mechanism" ("ESM").
2. The Contracting Parties are ESM Members.

**ARTICLE 2**

New members

**ARTICLE 3**

Purpose

The purpose of the ESM shall be to mobilise funding and provide stability support ... to the benefit of ESM Members ...to safeguard the financial stability of the euro area ... For this purpose, the ESM shall be entitled to raise funds by issuing financial instruments (*promissory notes, ESM bonds, etc.*) or by entering into financial or **other agreements**<sup>18</sup> or arrangements (*e.g. loan agreements, guarantees, bails, etc.*) with ESM Members (Euro countries), financial institutions (= *banks, insurance companies etc.*) or **other third parties**.

**CHAPTER 2**

**GOVERNANCE**

**ARTICLE 4**

Structure and voting rules

1. The ESM shall have a **Board of Governors (BoG)**<sup>19</sup> and a Board of Directors, as well as a Managing Director and other dedicated staff as may be considered necessary.
2. The decisions of the Board of Governors (BoG) and the Board of Directors shall be taken<sup>20</sup>
  - as specified in this Treaty -
    - (1) by mutual agreement (*unanimously, 17 votes*)
    - (2) by qualified majority or
    - (3) by simple majority.
  - A **Quorum** (*all three variants*) is present if
    - 2/3 of the (1) **members with voting rights** (= 11.33 votes/heads)<sup>21</sup>
    - **and at least**
    - 2/3 of the (2) voting **rights** are present (*11 votes + 67 % [D 27.15 %]*)

<sup>17</sup> In other words: with this ESM Treaty an **International ESM BANK is established**. This bank will be a permanently established commercial enterprise with *nominal capital* and *shareholders*. Its purpose is the execution of *commercial activities* (money transactions of all kind with countries, institutions and private persons) with *the intention of making profit*, see Chapter 4 of the ESM Treaty. No banking licence shall be required and/or such licence shall be deemed to be granted. In the meantime, the real start of the banking business is prepared by the media in form of a mock fight, see for instance *Jean- Claude Juncker in finanzen.net, 8 December 2011*:“ GIPFEL: Eurogruppen-Chef Juncker fordert Banklizenz für ESM – SUMMIT: Euro-zone boss Juncker requests banking licence for ESM“

<sup>18</sup> Due to the fact that “other third parties“ and “other agreements“ are legal concepts at will, Article 3 has - according to its content - in reality the following meaning: „*The ESM Bank shall be entitled to do any kind of business with everybody, free from any restrictions.*“ Article 3 is an absolute **carte blanche** for the Governors permitting them to use the money of the European citizens as they please!

<sup>19</sup> Original English ESM text: “Board of Governors“, in the following: “BoG”

<sup>20</sup> As already in the Stability Pact and the Maastricht Treaty: Very serious disadvantages as to the voting rights of Germany.

<sup>21</sup> 11 or 12 heads – to be adjusted upward or downward? Completely unclear!

3. The adoption of a decision by <sup>22</sup> by (1) **mutual agreement** requires the **unanimity (100 %)** of all the members participating in the voting. Abstentions do not prevent the adoption of a decision by mutual agreement.
4. By way of derogation from para. 3, an (4) **emergency voting procedure** shall be used where the Commission and the ECB both conclude that ... this is in the interest of the Euro-zone. The adoption of a decision by mutual agreement by the Board of Governors referred to in points e and f of Article 5 para. 6 and the Board of Directors under that *emergency procedure* requires a qualified majority of **85 %** of the votes cast.  
Where the emergency procedure is used, a transfer from the reserve fund and/or the paid-in capital to an emergency reserve fund is made in order to constitute a dedicated buffer, to cover the risks arising from the financial support granted under that emergency procedure.
5. The adoption of a decision by (2) **qualified majority** (Article 4 para. 2, 2. old version) requires **80 %** of the votes cast.
6. Adoption of a decision by (3) **simple majority** requires a majority of the votes cast (**50 % +**).
7. The **voting rights** of each ESM Member, shall be equal to the number of shares allocated to it as set out in **Annex II** (capital stock of the ESM).
8. If any ESM Member fails to pay the amount due (Articles 8, 9, 10, 14, 15), such Member shall be unable for so long as such failure continues, to exercise any of its voting rights. The voting thresholds shall be recalculated accordingly.

## ARTICLE 5

### Board of Governors

#### **BoG**

1. Each ESM Member shall appoint<sup>23</sup> a member of the **BoG**<sup>24</sup> (Governor) and an alternate Governor of the **BoG**. Such appointments are revocable at any time. The **member of the BoG** shall be the **Finance Minister**<sup>25</sup> of the respective ESM Member, and, if this is not the case, his representative.
2. The BoG shall choose its Chairperson and the Chairperson's representative either from among its own members or transfer the chair to the **President of the Euro Group**.<sup>26</sup> The term of office shall be 2 years.
3. The Chairperson and the Vice-Chairperson may be re-elected.

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<sup>22</sup> 2/3 of the shares of the authorized capital stock pursuant to Annex II, see Article 4 para. 7. In other words: a **quorum** exists if 11 or 12 heads are present and they concentrate 66.667 % of the shares pursuant to Annex II. A difference has to be made between *quorum* and *voting mode*. Pursuant to Article 4 para. 7, the number of voting rights (if a quorum is present) is determined according to Annex II. This means: in case of decisions by *unanimity*, Cyprus or Estonia are able to prevent any of the decisions, for instance the dissolution of the ESM. In case of *decisions by qualified majority*, the German Governor Schäuble is theoretically able to prevent decisions. On the other hand, he can not impose any decision against a coalition of more than 15.1% (Article 4 para. 4) and/or 20.1 % (Article 4, para. 5). In case of decisions by *simple majority*, the German Governor can be outvoted without any major effort.

<sup>23</sup> Who appoints? The Federal President, the Chancellor, the Federal Parliament, a referendum, the print media?

<sup>24</sup> Engl. version: "Board of Governors". Warning: former English version is deviating from German text!

<sup>25</sup> The **Governor for Germany: Dr.Schäuble** (*see list of Governors in the Annex*); communication of the *Federal Ministry of Finance from 3 February 2012 Fragen und Antworten zum ESM*. [http://www.bundesFinanzministerium.de/nr\\_54/DE/Wirtschaft\\_und\\_Verwaltung/Europa/Der\\_Euro/Stabilitaet/Stabilisierung-des-Euro/201202-ESM-FAQ.html](http://www.bundesFinanzministerium.de/nr_54/DE/Wirtschaft_und_Verwaltung/Europa/Der_Euro/Stabilitaet/Stabilisierung-des-Euro/201202-ESM-FAQ.html)

<sup>26</sup> Mr. **Jean-Claude Juncker** made himself known by the statement: „We will take a decision, let it stay for a while and see what happens. If there is no big to-do about it and nobody raises hell – because most of them do not even understand what has been decided – then we continue – step by step, until the point of no return is reached.“

4. The Member **(1)** of the European Commission **(EC)** in charge of economic and monetary affairs and **(2)** the President of the ECB, as well as **(3)** the President of the Euro Group (if he or she is not the Chairperson or a Governor) *may participate* in the meetings of the BoG *as observers*.
5. ...
6. The **BoG** shall take the following **decisions** by **mutual agreement** (*with one accord*):
  - a) to cancel the emergency reserve fund and transfer its content back to the reserve fund
  - b) to issue new shares on terms other than at par, Article 8 para. 2;
  - c) to make the capital calls in accordance with Article 9 para. 1;
  - d) to change the authorised capital stock and adapt the maximum lending volume of the ESM, in accordance with Article Article 10 para. 1,
  - e) to take into account a possible update of the key for the subscription of the ECB capital, in accordance with Article 11 para. 3, and the changes to be made to Annex I in accordance with Article 11 para. 6;
  - f) to provide stability support by the ESM, including the support stated in the memorandum of understanding referred to in Articles 12 – 18
  - g) to give a mandate to the EC to negotiate, in liaison with the ECB, the economic policy conditionality, in accordance with Article 13 para. 3.
  - h) to change the **pricing guideline** for financial assistance, Article 20.
  - i) to change the list of financial assistance instruments, Article 19
  - j) to establish the **modalities** of the transfer of EFSF support to the ESM, Article 40;
  - k) ...
  - l) ...
  - m) to delegate to the Board of Directors the tasks listed in this Article.
7. **The BoG** shall take the following **decisions by qualified majority**:
  - b) to transfer the BoG Chair to the President of the Euro Group or to an ESM Member.
  - c) to set out by-laws of the ESM and the rules of procedure applicable to the BoG and Board of Directors (including the right to establish committees and subsidiary bodies), in accordance with para. 9;
  - d) on the list of incompatible activities for the members of the BoD (Article 6 para. 8);
  - e) to appoint and to end the term of office of the First Director, in accordance with Art.7;
  - f) to establish other funds, in accordance with Article 24;
  - g) on the actions to be taken for recovering a debt from ESM Member (Art.25 para. 2, 3);
  - h) to approve the annual accounts of the ESM, in accordance with Article 27 para. 1;
  - i) to appoint the members of the Board of Auditors, in accordance with Article 30 para. 1
  - j) to approve the external auditors, Article 29;
  - k) **to waive the immunity** of, *inter alia*, the Chairperson of the BoG/Members of the Board of Directors, Article 35
  - l) to determine the **taxation regime** applicable to the ESM staff (Article 36 para.5);
  - m) on a **dispute in accordance with Article 37 para. 2** and
  - n) **any other necessary decision not explicitly provided for** by this Treaty
9. The BoG shall adopt their **rules of procedure** and the **by-laws** of the ESM.

## ARTICLE 6

### Board of Directors

1. Each Member of the BoG shall appoint one Director and one alternate Director (s) from among the people of *high competence*<sup>27</sup> in economic and financial matters. Such appointments shall be revocable **at any time**.<sup>28</sup>
4. The **BoG**<sup>29</sup> shall be entitled to invite other persons to attend the meetings as observers on an *ad hoc basis*, including representatives of institutions or organisations.
5. The BoG shall take decisions by qualified majority, unless otherwise stated in this Treaty. Decisions to be taken on the basis of **powers delegated by the BoG**<sup>30</sup> shall be adopted in accordance with Article 5 para. 6 and 7.
6. The Board of Directors shall ensure that the ESM is run in accordance with this Treaty and the **by-laws** of the ESM adopted by the BoG. It shall take decisions as provided for in this Treaty or which are delegated to it by the BoG.
7. Any vacancy in the Board of Directors shall be immediately filled in accordance with para.1.
8. The **BoG shall lay down** what activities are incompatible with the duties of a Director or an alternate Director, the by-laws of the ESM and rules of procedure of the Board of Directors.

## ARTICLE 7

### Managing Director

(„Managing Director“ here referred to as ”First Director”)

1. In addition to the Directors, the First Director shall be appointed by the BoG in accordance with Article 6 para. 1.<sup>31</sup>
2. The First Director shall, however, cease to hold office when the BoG so decides.<sup>32</sup>
3. ...
4. The First Director shall be the chief of the staff of the ESM.<sup>33</sup> He shall be responsible for...appointing, dismissing and the **employment conditions**.
5. The First Director shall be the legal **representative of the ESM**<sup>34</sup> and shall conduct, under the direction of des Board of Directors<sup>35</sup> the current business of the ESM.

## CHAPTER 3

### CAPITAL

## ARTICLE 8

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<sup>27</sup> Excellent, i.e. not from among a group of fools!

<sup>28</sup> Ensuring thus that the **Board of Directors is completely depending on the BoG** and, as a consequence, that the **BoG is controlling the ESM-Bank at all levels, i.e. without any restrictions**.

<sup>29</sup> The BoG? We are dealing here with the Board of Directors! Meaning: If the BoG gives the Board of Directors a permission in this context, privileged third parties may participate in its meetings, and are thus being ”rewarded” by the BoG.

<sup>30</sup> The powers of the Board of Directors are delegated by the BoG. The Board of Directors is a subordinated agency.

<sup>31</sup> The BoG (not the Board of Directors itself) appoints the First Director. Again: The BoG’s system regarding power, dependency and rewards runs like a golden thread through the overall Treaty!

<sup>32</sup> Without notice! Once more: the First Director is only the tool of the BoG, see Article 5 para. 2

<sup>33</sup> How many staff members of the ESM-Bank (nominal capital EUR 700 000 million., business volume x thousands of millions (**Billionen**)) do the European citizens have to finance: 10,000, 100,000. 200,000? (see as a benchmark e.g.: Deutsche Bank, nominal capital EUR 2 000 million. Business volume EUR 3 000 million (**Billionen**), 102,000 employees).

<sup>34</sup> The First Director is a **non-liable** legal representative, Article 35, however, all responsibilities can be shifted to him.

<sup>35</sup> Rather according to BoG instructions!

## Authorised capital stock

1. The authorised **capital stock**<sup>36</sup> shall be **EUR 700 000 million**<sup>37 38</sup>. It shall be divided into seven million portions (*shares*) having a nominal value of EUR 100 000 each.
2. The capital stock shall be divided into (a) **paid-in shares** and (b) **callable shares**. The initial total aggregate nominal value of paid-in shares (=shares to be paid!) shall be **EUR 80 000 million**. Shares of the subscribed capital stock shall be issued at par. (c) **Other shares**<sup>39</sup> shall be issued at par, unless the BoG *decides to issue them* in special circumstances *on other terms*.
3. Shares of authorised capital stock shall not be encumbered or pledged and they shall not be *transferable*, with the exception of transfers for the purposes of implementing adjustments provided for in Article 11.<sup>40</sup>
4. ESM Members hereby irrevocably and unconditionally undertake to provide their contribution to the capital stock, in accordance with their contribution key in Annex I.
5. The liability of each ESM Member shall be limited, in all circumstances, to its portion of the authorised capital stock at its issue price.<sup>41</sup> No ESM Member shall be liable, by reason of its membership, for obligations of the ESM.<sup>42</sup>

## ARTICLE 9

### Capital calls

1. The BoG may call in **unpaid** capital at any time.
2. The Board of Directors may call in unpaid capital by **simple majority** decision to restore the level of paid-in capital if the amount of the latter is reduced by the absorption of **losses** below the level established in Article 8 para. 2, as may be amended by the BoG in accordance with Article 10.
3. The First Director shall call unpaid capital in a timely manner to avoid the ESM being in default. When a **potential shortfall** in ESM funds is detected, the First Director shall make such capital call(s) as soon as possible with a view to ensuring that the ESM shall have sufficient funds to meet payments due to creditors in full on their due date. ESM Members hereby **irrevocably and unconditionally**<sup>43</sup> undertake to pay on demand any capital call made on them by the Managing Director pursuant to this paragraph, such demand to be paid **within seven days** of receipt.<sup>44</sup>

<sup>36</sup> English text: *capital stock* und *shares*, i.e. **share capital** and **shares!** (the ESM is not an authority!).

<sup>37</sup> **Capital stock EUR 700 000 million**, initial lending volume – for the beginning – EUR 500 000 million (see Preamble para. 6)

<sup>38</sup> Contrary to the truth, both the Federal Government and the Federal Ministry of Finance inform (on 13 February 2012) that the capital stock is **only EUR 80 000 million**: [www.bundesFinance Ministerium.de](http://www.bundesFinance Ministerium.de) **Signature of the ESM Treaty**; [www.bundesregierung.de](http://www.bundesregierung.de). **Stabilization of the fiscal pact and the ESM**.

<sup>39</sup> The inoffensive wording of “Other shares“ entitles to **increases of capital stock in any quantity whatsoever**, Art 10. para. 1

<sup>40</sup> Pretentious nonsense! Once the capital stock is used, it is gone, no matter if pledged or not!

<sup>41</sup> **and is thus unlimited**, since – pursuant to Article 8. para. 2 and compared against Article 10 para. 1 - **the capital stock can also be increased in an unlimited manner**. Article 8 para. 5 is a clear-cut attempt of deception! Now, the parliamentarians asked to authorise this ESM Treaty can’t claim that they have not been informed and warned. They should always bear in mind that disenchantment comes after deception!

<sup>42</sup> However, the fact that any prosecutor outside the Eurozone **is able to lift the corporate veil** should **not** be excluded, of course! Liability can never be excluded if the ESM/an ESM Member causes damage to a non-European citizen/country (e.g. USA, China, Russia).

<sup>43</sup> English text: „unconditionally“ i.e. „unbedingt = imperatively“

<sup>44</sup> (1) Unpaid capital, (2) **losses** incurred as well as (3) (*discovered*) *potential* losses of the ESM are **to be** irrevocably and unconditionally (see *English version*) **refunded** to the ESM **in any quantity of thousands of millions**

## ARTICLE 10

### Changes in authorised capital stock

1. The **BoG** shall review *regularly and at least every five years* the maximum lending volume and the adequacy of the authorised capital stock of the ESM. It may decide to **change the capital stock** <sup>45</sup> and amend Article 8 and the list of capital stock (**Annex II**) accordingly. Such decision shall enter into force after the ESM Members have **notified** <sup>46</sup> the Depository *of the completion of their applicable national procedures*.
2. The Board of Directors shall adopt the terms and conditions which shall apply to capital changes.

## ARTICLE 11

### Contribution key

1. The contribution key for subscribing to ESM capital stock shall be based on the key for subscription of the ECB's capital and on the ESCB Statute.
2. The **contribution key** for the ESM capital stock is specified in (**Annex I**)
3. The ESM contribution key shall be adjusted when ...

## CHAPTER 4

### OPERATIONS

## ARTICLE 12

### Principles

1. ... to safeguard the financial stability, the ESM may provide stability support to a Member.
2. Without prejudice to Article 19, ESM stability support may be granted through the instruments provided for in Articles 14 to 18.
3. *Collective action clauses* <sup>47</sup> shall be included, as of 1 January **2013**, in all new euro area government securities (*government bonds*), with maturity above one year, in a way which ensures that their legal impact ...

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**whatsoever within 7 days.** If a country defaults (e.g. Greece), the others shall be liable by making correspondingly **increased payments** (especially Germany), Article 25 para. 2.

<sup>45</sup> This **capital stock may be increased** – at the *risk of the citizens* and taxpayers- **without any restrictions (!)**, even up to an amount of EUR 10 000 000 million, and all this can be decided by the BoG, i.e. inter alia by Dr. Schäuble, **without having to ask the parliament!**

<sup>46</sup> Warning! Trap! **Notifying is not the same as ratifying!** Notifying means “to inform” and not “to approve”. Contrary to Article 47 para. 1 where the overall effectiveness of the ESM Treaty expressly depends on its **ratification** (= approval, acceptance by the Federal Parliament, the Federal Council, the Federal President), the wording in Article 10 para. 1, third sentence is ambiguous and vague by setting forth that a BoG decision shall enter into force after the *„completion of the national procedures“* and having notified the Depository. The intention behind is - without any doubt – the application of a **simpler procedure as a ratification** for *increases of capital* thus making it possible that both the Federal Parliament and the Federal Council are bypassed. If this were not the intention, increases of capital had to be **subject to ratification**. As long as this is not entrenched in any law it must be assumed that the BoG/ESM has the intention and is able to **increase capital outside normal legal procedures**. This means, a simple announcement = notification of the depository in Luxembourg is required. Germany has never experienced a similarly deceitful and dangerous Treaty - this is why a straightforward **legal procedure is crucial** in this context.

<sup>47</sup> Content and scope of this regulation are not clearly understandable. Such regulation *in the ESM Treaty* seems inappropriate.

## ARTICLE 13

### Procedure for granting stability support

1. An ESM Member may address a request for stability support to the Chairperson of the BoG. On receipt of such a request, the Chairperson of the BoG shall entrust the **EC**, in liaison with the **ECB**, with the following **tasks**:<sup>48</sup>
  - (a) to **assess** the existence of a risk to the financial stability of the euro area, unless the **ECB** has already submitted an analysis under Article 18 para. 2;
  - (b) to **assess** whether public debt is sustainable;
  - (c) to **assess** the actual or potential financing needs of the ESM Member concerned.
2. On the basis of the request of the ESM Member and the assessment referred to in paragraph 1, the BoG may decide to **grant** stability support to the ESM Member in the form of a **financial assistance facility**.<sup>49</sup>
3. If a decision pursuant to paragraph 2 is adopted, the BoG shall entrust the **EC** – in liaison with the **ECB** - with the **task** of negotiating, with the ESM Member concerned, a memorandum of understanding (**MoU**).  
The MoU shall be fully consistent with the the .... opinions, warnings, recommendations, decisions etc. ...<sup>50</sup>
4. The **EC** shall **sign** the **MoU on behalf of the ESM**, subject to ....<sup>51</sup>
6. The ESM shall establish an appropriate **warning system**<sup>52</sup> to ensure that it receives any repayments due under the stability support in a timely manner.
7. The **EC** – in liaison with the ECB and, wherever possible, together with the IMF - shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.

## ARTICLE 14

### (A) ESM precautionary financial assistance

1. The BoG may decide to grant (*to an ESM Member*) **(1)** precautionary financial assistance in the form of a precautionary conditioned credit line or **(2)** in the form of an enhanced conditions credit line in accordance with Articles 12 para. 1 (**different guidelines**).

## ARTICLE 15

### (B) Financial assistance for the re-capitalisation of **financial institutions**<sup>53</sup> of an ESM Member

1. The BoG may decide to grant financial assistance through loans to an ESM Member for the specific purpose of **re-capitalising** its **financial institutions**, etc.
4. The BoG shall adopt **detailed guidelines** detailed guidelines on the modalities for implementing **financial assistance for financial institutions**.

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<sup>48</sup> With this, the responsibility for mistakes in the assessment is shifted to the EC and the ECB! The wording “the EC and the ECB have the following tasks ...” means, the ESM shall be placed **above** the EC and the ECB, and that it is the BoG’s intention to take the position *as the uppermost* “**Governors of Europe**“ (... he who has the gold makes the rules!).

<sup>49</sup> In plain English: to financially support the weak Euro countries ad infinitum.

<sup>50</sup> I.e. regulations that the Contracting Parties intentionally and continuously disregarded and undermined with respect to the Maastricht Treaty and the Stability Pact.

<sup>51</sup> Here again, **responsibilities are shifted to the EC, the assistance staff of the ESM!**

<sup>52</sup> “Warning system“: this ridiculous, actually implicitly required system intends to simulate security!

<sup>53</sup> “Financial institutions“ are **banks and credit institutions**. Financial institutions are dealing with money. They use their customers’ money and invest it in bonds or capital contributions; see also *finance.wiwi.tu-dres-den.de/Wiki-fi/index.php/Finanzinstitutionen*

**ARTICLE 16****(C) ESM loans**

1. The BoG may decide to grant financial assistance in the form of a **loan**<sup>54</sup> to an **ESM Member**, Article 12.
4. The Board of Directors shall adopt the **guidelines** on the modalities for implementing ESM loans

**ARTICLE 17**

**(D) Primary market support facility**<sup>55</sup>  
**(= direct acquisition of government bonds)**

1. The BoG may decide to arrange for the purchase of government bonds of an ESM Member **on the primary market**.<sup>56</sup>
2. The conditionality attached to the primary market support facility shall be detailed in the MoU, in accordance with Article 13 para. 3
3. The financial terms and conditions under which the bond purchase is conducted shall be specified in a **financial assistance facility agreement**.
4. The Board of Directors shall adopt **detailed guidelines**<sup>57</sup> in this respect.

**ARTICLE 18**

**(E) Secondary market support facility**<sup>58</sup>  
**(= indirect acquisition of government bonds)**

1. The BoG may decide to acquire **bonds of an ESM Member on the secondary market**, Article 12. para. 1
2. Decisions on the acquisition of government bonds to address contagion shall be taken on the basis of an *analysis of the ECB*<sup>59</sup> ...
3. The Board of Directors shall adopt **detailed guidelines** to implement the acquisition of government bonds.

**ARTICLE 19****(F) Review of the list of financial assistance instruments**

Der BoG may review the *list of financial assistance instruments* provided for in Articles 14 to 18 and **decide to make changes to it**.<sup>60</sup>

**ARTICLE 20**

**(G) Pricing policy**<sup>61</sup>  
**(Interest policy)**

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<sup>54</sup> Caution: Due to junior-ranking regulation - massive risk of payment shortfall: Preamble, para. 13, 14; see also: Hayes, opt.cit., p. 3

<sup>55</sup> Primary market: Direct purchase of **government bonds** (etc.) issued for the first time at par (issue market).

<sup>56</sup> This is **direct financing** of individual countries with the financial means and at the risk of all European citizens!

<sup>57</sup> Of course, the content of these **guidelines** is unknown, as is the case with all the other **additional regulations marked in green**. The fact that these guidelines shall be "detailed" (instead of brief, clear and public) is only showing once more the usual strategy to feign seriousness.

<sup>58</sup> Secondary market: Acquisition via stock market at *market prices* (larger trade volume) –*indirect* state financing

<sup>59</sup> In this case, the blame is shifted to the ECB!

<sup>60</sup> Meaning that **other** financial assistance instruments may be **introduced** without major problems!

<sup>61</sup> Concealing choice of words for "interest policy" (see ESM version from 23 January 2012).

1. When granting stability support, the ESM shall aim to fully cover its financing and operating costs and shall include an appropriate margin.<sup>62</sup>
2. For all financial assistance instruments, the interest policy shall be detailed in an interest policy guideline, which shall be adopted by the BoG.

## ARTICLE 21

(H) Borrowing operations

*(EURO BONDS of the ESM Bank)*

1. The ESM shall be empowered to borrow on the capital markets from (1) banks, (2) other financial institutions or (3) other persons or (4) institutions for the performance of its purpose.<sup>63</sup>
2. The modalities of the borrowing operations (= ESM-borrowings!) shall be determined by the First Director, in accordance with the guidelines to be adopted by the BoD.
3. The ESM shall use appropriate risk management tools,<sup>64</sup> which shall be reviewed regularly by the Board of Directors.<sup>65</sup>

## CHAPTER 5

### FINANCIAL MANAGEMENT

## ARTICLE 22

Investment policy

1. The First Director shall implement a prudent investment policy for the ESM, so as to ensure its highest creditworthiness. The ESM shall be entitled to use part of the return on its investment portfolio to cover its operating and administrative costs.
2. The operations of the ESM shall comply with the principles of sound financial and risk management.<sup>66</sup>

## ARTICLE 23

Dividend policy

1. The Board of Directors may decide, by simple majority, to distribute a dividend to the ESM Members where ... required ... not required ...
2. As long as the ESM has not provided financial assistance to one of its members, the proceeds shall be returned to the ESM Members.<sup>67</sup>
3. The First Director shall implement the dividend policy for the ESM in accordance guidelines to be adopted by the Board of Directors.

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<sup>62</sup> Typical banking operation!

<sup>63</sup> The lending operations are unlimited and primarily secured by the private German property, Article 25 para. 1 c), para. 2. Due to the fact that, as above mentioned, the ESM super-bank's current capital stock of EUR 700 000 million will probably be unlimited, this arrangement (= Eurobonds) implies unlimited liability (see footnotes 45 and 46 of Article 10) of the overall property of all German citizens as far as all the operations of the ESM/ESFS and the ESM's financial assistance are concerned; with respect to Euro bonds see also Bryan Hayes, opt. cit. and „Die Überschuldungskrise – Jetzt wird unser Geld verschleudert – Crisis of over-indebtedness – now our money is squandered“, p. 38.

<sup>64</sup> If these Euro bonds are credited against freshly printed US\$, very soon US-American adventurers will be the secret bosses of the ESM Bank and thus take over control in Europe (wonderful prospects!).

<sup>65</sup> What a relief, it's all good now!

<sup>66</sup> Correct and commendable arrangements! However, they should permit to be controlled by the creditors, the German taxpayers and citizens, at least, however, by the parliament and exactly this is not the case.

<sup>67</sup> Pretentious nonsense! It is more likely that 18 jets (Gulfstream) are bought for the 17 Governors and the First Director.

**ARTICLE 24**

## Reserve and other funds

1. The BoG shall establish a **reserve fund** and, where appropriate, other funds.
2. The **net income** from the ESM operations and the proceeds of the financial sanctions<sup>68</sup> received from the ESM Members shall be put aside in a reserve fund.
3. The resources of the reserve fund shall be invested.
4. The Board of Directors shall adopt such rules as may be required for **other funds**.<sup>69</sup>

**ARTICLE 25**

## Coverage of losses

1. **Losses** arising in the ESM operations shall be charged
  - (a) firstly, against the reserve fund
  - (b) secondly, against the **paid-in** capital; and
  - (c) lastly, against an amount of the **unpaid capital**, which shall be called in *(within 7 days)* in accordance with Article 9 para. 3 *(see Art. 5 para. 2 (old version) (b))*
2. If an ESM Member fails to meet the required payment a pro-rata payment **shall be required** by the other ESM Members.<sup>70</sup> *(Obligation to make additional capital contributions, lex specialis vs. Art 8 para. 5!)*

**ARTICLE 26**

## Budget

The Board of directors shall approve the ESM budget annually.

**ARTICLE 27**

## Annual accounts

The **Board of Governors** shall approve the **annual accounts of the ESM**.

**ARTICLE 28**

## Internal Audit

An internal audit function shall be established according to international standards.

**ARTICLE 29**

## External Audit

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<sup>68</sup> What kind of sanctions do there exist apart from “financial” ones?

<sup>69</sup> Profits? If at all, it will not go to the ones who provide and guarantee the money, i.e. the citizens, but, as we see it, it will end up in a number of funds all of which require the administration of somebody – a grateful task far beyond any control. The question arises – and not only in connection with this topic – what kind of stories the ladies and gentlemen that are representing us as Members of the German Parliament are going to tell their children and grandchildren in order to justify this treaty and its incalculable consequences in the near future. We actually wonder if – when it comes to that – arguments such as party discipline and securing one’s own position will be sufficient? We did not know all this! There was nothing we could do! (1933 – 1945!)

<sup>70</sup> **Obligation to make additional contributions!** A **very dangerous passage** – especially to Germany’s disadvantage – which will probably become reality in no time at all. In an extreme case it may occur that only Germany is financially sound and has to pay for everything – without any chance to reject such payment. It is more than sufficient, for example, if Greece or Portugal are unable to pay or unilaterally declare bankruptcy. Then the Euro chain will break and the day following this a bitter payday will dawn – but also the question as to who is to blame for all this will arise immediately! (see also Article 10, footnotes 45 and 46)

The accounts of the ESM shall be audited by independent external auditors *approved by the BoG* and responsible for certifying the annual financial statements. The external auditors shall have full power to examine all books and accounts of the ESM and obtain full information about its transactions.

### **ARTICLE 30** Board of Auditors

1. The Board of Auditors (BA) shall consist of five members appointed by the BoG and shall include two members from the supreme audit institutions of the ESM Members - with a rotation between the latter - and one from the European Court of Auditors.
2. The members of the BA shall examine the accounts, the profit and loss statement and the balance sheet of the ESM <sup>71</sup>
3. The BA shall draw up independent audits.
4. The BA may inform the Board of Directors at any time of its findings. It shall, on an annual basis, draw up a report to be submitted to the BoG.
5. The BoG shall make the annual report accessible to the national parliaments and supreme audit institutions of the ESM Members and to the European Court of Auditors.
6. Any matter relating to this Article shall be detailed in the **by-laws** of the ESM. <sup>72</sup>

### **CHAPTER 6** **GENERAL PROVISIONS**

#### **ARTICLE 31** Location

1. The ESM shall have its seat and principal office in Luxembourg. <sup>73</sup>
2. The ESM may establish a liaison office in Brussels.

#### **ARTICLE 32** Legal status, privileges and immunities <sup>74</sup>

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<sup>71</sup> This corresponds to a pure examination of accounting transactions und book entries. The decisions of the BoG/Directors/staff, however, are **not examined as to their factual correctness!**

<sup>72</sup> The internal and external **examinations pursuant to Articles 27, 28, 29 are a charade** due to the fact that the BoG and not the ones providing the ESM with money and guarantees, i.e. the European citizens or their parliamentary representatives, are the ones appointing such internal and external auditors. Even the BA does not guarantee real independent audit continuity, as, for example, the representatives of the German Court of Auditors are only entitled to two examinations over a period of 17 years. With this, the cooperation of three external auditors exists for mainly hygienic reasons, if at all.

<sup>73</sup> Where **Jean-Claude Juncker** comes from, in the tax haven of Luxembourg, with the consequence that **he will probably be the one chairing the BoG.**

<sup>74</sup> The establishment of the ESM and its Governors adds up to a deliberate overthrow **of the national states and an open coup d'état**: see, inter alia, *WeltOnline*: „Europa läuft Gefahr, die Demokratie zu verspielen – Europe is in danger to gamble away its democracy“ 30 January 2012“. It is the professed goal of the future European Governor, Dr. Schäuble, to eliminate the German national state: [www.youtube.com/watch?v=iKd4lpNR3os](http://www.youtube.com/watch?v=iKd4lpNR3os) ; [www.welt.de](http://www.welt.de) „Die-oeffentliche-und-die-verborgene-Seite-der-Krise (*The public and the hidden side of the crisis*)“ 8 December 2011; [www.Germany.net](http://www.Germany.net) „Schäuble: Germany is not a sovereign state“, 1 December 2011; Erich Weede in *FAZ*, 3 February 2012 „Ein Vereinigtes Europa der Narren – A United Europe of fools?“ These consequences have been passing through the minds of most of the mainstream journalists - without leaving any trace, however. While their own nations are confronted with crucial decisions in terms of politics and finances they are investigating some petty details of the Federal President's private and political life and beclouding (intentionally?) the civic spirit of the population with banalities.

1. To enable *the ESM*<sup>75</sup> to fulfil its purpose, the **legal status** and the following **privileges** and **immunities** shall be accorded to the ESM in the Euro-zone.
2. Der ESM shall have full legal personality; it shall have full legal capacity to:
  - (a) acquire and dispose of movable and immovable property,
  - (b) contract,
  - (c) be party to legal proceedings
  - (d) enter into a headquarter agreement and/or protocols as necessary for ensuring that its legal status and its privileges and immunities are recognised and enforced.
3. The **ESM Bank**, its property, funding and assets, wherever located and by whomsoever held, shall enjoy **immunity from every form of judicial process**.<sup>76</sup>  
The property, funding and assets of the **ESM Bank** shall, wherever located and by whomsoever held, be **immune from search, requisition**, confiscation, expropriation or any other form of seizure, taking or foreclosure by executive, judicial, administrative or legislative<sup>77</sup> action.
4. The **archives** of the **ESM Bank** and all documents belonging to the ESM Bank or held by it, shall be **inviolable**.
5. The premises of the **ESM Bank** shall be **inviolable**.
6. The official **communications** of the ESM Bank shall be accorded by each ESM Member which has recognised the privileges and immunities of the ESM Bank, the same treatment as it accords to the official communications of an ESM Member.
7. To the extent necessary to carry out the activities provided for in this Treaty, all property, funding and assets of the **ESM Bank** shall be **free** from restrictions, regulations, **controls** and moratoria of any nature.
8. The **ESM** shall be **exempted** from any requirement to be authorised or licensed as a credit institution, investment services provider or other regulated entity.<sup>78 79</sup>

### ARTICLE 33 Staff of the ESM

The Board of Directors shall lay down the **conditions of employment** of the First Director and other staff of the ESM

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<sup>75</sup> As a matter of course, the **ESM Bank does not need even one** of the **privileges granted** pursuant to Articles 32 – 38.

<sup>76</sup> All these hundreds of millions of Euros at the disposition of the ESM Bank and/or the BoG are belonging to the European taxpayers and/or are underwritten by them. Considering these circumstances, it is an incredible impertinence that they dare to present to the citizens of the Euro-zone a Treaty with such terms and conditions as set forth in Articles 32, 34, 35. We Germans went through the Third Reich and the Enabling Law of 1933 but we learnt our lessons from these experiences: **No global financial crisis requires** or justifies that we have to **dispense** the persons dealing with this crisis from **being controlled**, exempt them from their duty to give **information** or their **legal responsibility** in any way whatsoever. Even the Roman dictators and the German Emperors did not have or ask for such kind of rights. The intention behind the masterminds, authors and contractors of the ESM Bank Treaty is to put the actions of the Governors and their staff into a legal black hole. Full discretionary powers - immunised and not bound by any legal system are simply null and void. The formal elimination of any right to control and follow-up is actually provoking a highly dangerous situation since it opens all the doors to irresponsible handling of the administration of hundreds of millions and squandering or misappropriation of the moneys entrusted to such bank. The “crisis management“ of the acting responsible persons during the last 4 years speaks volumes: The **attempted coup** as to the establishment of an ESM Bank in a legal vacuum has the intention to eliminate the European nations!

<sup>77</sup> With this, the ESM BANK claims the highest supra-national legal position in the Euro-zone, higher than any position of the individual Euro-zone countries. As a consequence, **Germany's rights** will be regarded as being **inferior** to those of the **ESM-Bank's rights** in future!

<sup>78</sup> This makes it abundantly clear that the **ESM** is a **bank without the obligation to take out a banking licence** but entitled to grant such licence to itself at any time.

<sup>79</sup> It is completely irrelevant that the SPD (Social Democratic Party) requests such banking licence and the FDP (Liberal Democratic Party) rejects it: they are completely out-acted by now and simply don't know it yet.

**ARTICLE 34**  
Professional secrecy<sup>80</sup>

The Members or former Members of the BoG and of the Board of Directors and any other persons who work or have worked for or in connection with the ESM shall not disclose information that is subject to professional **secrecy**. They shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

**ARTICLE 35**  
Immunities of persons<sup>81</sup>

1. **In the interest of the ESM**, the Chairperson of the BoG, Governors, alternate Governors, Directors, alternate Directors, as well as the First Director and other staff members shall be immune from legal proceedings with respect to *acts performed by them in their official capacity*<sup>82</sup> and shall enjoy inviolability in respect of their official papers and documents. (see previous footnote)
4. Each ESM Member shall take the action necessary for giving effect to this Article in the terms of its own law.

**ARTICLE 36**  
Exemption from taxation<sup>83</sup>

Within the scope of its official activities, the ESM, its assets, income, property and its operations and transactions authorised by this Treaty shall be **exempt from all direct taxes**. The ESM Members shall, wherever possible, take the appropriate measures to **remit** or **refund** the amount of **indirect taxes** or sales taxes included in the price of movable or immovable property where the ESM makes, for its official use, substantial purchases<sup>84</sup>, the price of which includes taxes of this kind.

1. Goods imported by the ESM and necessary for the exercise of its official activities shall be **exempt from all import duties and taxes** and from all import prohibitions and restrictions.
2. Staff of the ESM shall be subject to an internal tax on **salaries** and emoluments paid by the ESM, subject to rules to be adopted by the Board of Governors for the benefit of the

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<sup>80</sup> It is out of question that to be as silent as a grave is the best thing to do for somebody who is allowed to do as he pleases (i.e. uncontrolled) with the money of other people. Nevertheless, this kind of arrangement is completely illegal when it comes to the administration of entrusted property.

<sup>81</sup> Immunity: The present concoction (which is no “Treaty“ in the legal sense!) is intended to put outrageous sums of money at the disposal of a clique of powerful politicians at uncontrollable conditions for the creditors. Never forget: An open door may tempt a saint! He who asks his own people and parliament to put up with such a “Treaty“ definitely knows why he asks for immunity! *Honni soit qui mal y pense!* A suggestion: This immunity should be expressly extended to family members, friends and acquaintances since ESM property (e.g. a jet) could also be in their possession, Article 32 para. 4. Of course, this **immunity is in the interest of the ESM**, how else would it be able to do business in a legal and undisturbed manner!

<sup>82</sup> The ESM is no official authority and can thus not act in any “official“ capacity.

<sup>83</sup> The ESM has **abolished** cumbersome **taxes** for itself and its staff! Well done! This **exemption of taxes for Governors and Directors** is based on Article 36. para. 5 or laid down in Article 5 para. 7. (n). If considering the volume of the ESM businesses, the **salaries of the Governors** and the First Director will be at **approx. one million** p.a., respectively, quasi an “upgrade“ of a Finance Minister’s salary at the expense of the taxpayers.

<sup>84</sup> E.g. airplanes, ships, cars, houses, tower buildings and weekend homes for conferences, including vineyards, etc. Considering the aircraft fleet needed (an own executive airline would make sense), these amounts will also sum up to millions per year (including a special VAT advantage of approximately 20 %) at the expense of the taxpayers and citizens.

- ESM.<sup>85</sup> From the date on which this tax is applied, such salaries and emoluments shall be **exempt from national income tax**.
3. **No taxation of any kind** shall be levied on any *obligation* or **security** issued by the ESM including any *interest* or *dividend* thereon by whomsoever held.

### ARTICLE 37

#### Interpretation and dispute settlement<sup>86</sup>

1. Any question of **interpretation** or application of the provisions of this ESM **Treaty**, etc. shall be submitted to the Board of Directors for its decision.
2. The BoG shall decide on any dispute arising between (1) an ESM Member and the ESM, or (2) between ESM Members, in connection with the interpretation and application of this Treaty. The votes of the member(s) concerned shall be suspended when the BoG votes on such decision and the voting threshold needed for the adoption of that decision shall be recalculated accordingly.
3. If an ESM Member contests the decision referred to in para. 2, the dispute shall be submitted to the ECJ.

### ARTICLE 38

#### International cooperation

The ESM shall be entitled to cooperate with.... xyz.<sup>87</sup>

### CHAPTER 7

#### TRANSITIONAL ARRANGEMENTS

### ARTICLE 39

#### Relation with EFSF lending

During the **transitional phase** spanning the period from the entry into force of this Treaty until the complete run-down of the EFSF, the consolidated **ESM** and **EFSF lending shall not exceed EUR 500 000 million**, without prejudice to the review of the adequacy of the maximum lending volume in accordance with Article 10. The Board of Directors shall adopt *detailed guidelines* on the calculation of the forward commitment capacity to ensure that the consolidated lending ceiling is not breached.<sup>88</sup>

### ARTICLE 40

#### Transfer of EFSF supports<sup>89</sup>

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<sup>85</sup> Firstly, the ESM pays salaries and, in a second step, these salaries are subject to deductions by the ESM! All smoke and mirrors for the public at large!

<sup>86</sup> Of course, the ESM settles its disputes in a legal vacuum. Submitting appeals to the ECJ – quite a good joke!

<sup>87</sup> and it can also decide to leave it! (futile and obfuscated filling passage!)

<sup>88</sup> This arrangement is a simple attempt of deception and tries to hoax the public into believing that the ESM's financial assistance volume – and thus the citizens' risk – is limited to EUR 500 000 million. This limit, if at all, is only valid for a limited TRANSITIONAL PHASE. This reservation alone, but also the reference to Article 10, completely undermines the EUR 500 000 million limit. The lending volume is **not restricted** to EUR 500 000 million!

<sup>89</sup> This is the consequence of the miserable failure of Dr. Schäuble's plan for a 4 – 5-fold EFSF leveraging. Now, the ongoing "rescue measures" will be **concentrated** in the **ESM**. This means that in future Europe will be governed by the Governors of a European **Mega ESM Bank** above and beyond any kind of law. The ESM Treaty provides more privileges to the Governors than any German Prince has ever been able to claim for himself; a former Prince in Germany was at least bound by the existing rule of law and not at all entitled to command - free from restrictions - the use of several years of income of this subjects by single acts.

1. **By way of derogation from Article 13**, the BoG may decide that the EFSF<sup>90</sup> commitments to provide financial assistance to an ESM Member under its agreement with that member shall be assumed by the ESM as far as such commitments relate to un-disbursed and un-funded parts of loan facilities.
2. The ESM may, if authorised by its BoG, acquire the rights and assume the obligations of the EFSF...

#### ARTICLE 41

##### Payment of the initial capital

1. Payment of *paid-in shares*<sup>91</sup> of the amount subscribed by each ESM Member shall be made in five annual instalments of 20 % each of the total amount; without prejudice to additional payments, Article 41 para. 2.
2. During the five-year period, a minimum ratio between *paid-in* capital and the *outstanding amount of ESM issuances* of 15 % must be maintained and guarantee a **minimum** combined *lending capacity* of the ESM and of the EFSF of **EUR 500 000 million**.

#### ARTICLE 42

##### Temporary correction of the contribution key

1. The ESM Members shall subscribe the authorised capital stock on the basis of the initial contribution key as specified in **Annex I**. The **temporary correction** included in this initial contribution key (*see para. 2*) shall apply for a period of twelve years after the date of the adoption of the euro by the ESM Member concerned.
2. If a new ESM Member's gross domestic product (GDP) in the year immediately preceding its accession to the ESM is less than 75 % of the average GDP per capita, then its contribution key (pursuant to Article 10) shall benefit from a **temporary correction**<sup>92</sup> and equal the sum of:
  - (a) 25 % of the percentage share in the ECB capital of the national central bank of that ESM Member (see Article 29 of the ESCB Statute); and
  - (b) 75 % of that ESM Member's percentage share in the gross national income (GNI) of the euro area in the year immediately preceding its accession to the ESM.
4. As a result of the temporary correction of the key the relevant proportion of shares shall be reallocated amongst the ESM Members (*at the expense of the strong Euro countries*).

#### ARTICLE 43

##### First appointments

1. Each ESM Member shall designate<sup>93</sup> its Governor and alternate Governor for the BoG within the two weeks of the entry into force of this Treaty.

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<sup>90</sup> A public limited company (Aktiengesellschaft) under the laws of Luxembourg which is entitled to borrowings up to EUR 440 000 million via interest-bearing promissory notes (=bonds) and grant them to weak Euro countries. Its shareholders: the Euro countries.

<sup>91</sup> Article 8 para. 2, (a): EUR 80 000 million – overall nominal capital EUR 700 000 million

<sup>92</sup> A rather dubious provision which is discriminating Germany in any case and favouring the weak Euro countries as the amount of this correction is temporarily allocated to the strong countries. Moreover: initially, all ESM Members are “new“ members. One might come to the conclusion that this benefit/ discrimination clause shall be immediately applicable (including for such initial Members)! All this is opposed by the wording “...adoption of the Euro.“

<sup>93</sup> Governor Dr. Schäuble is neither democratically elected nor appointed; his future position and enormous authority to exert power is directly based on Art 5 para. 1. After all, it is the respective Chancellor/head of the government that is appointing the Finance Minister - and consequently the Governor (Article 5 para. 1) - this will inevitably lead to future power struggles within some governments and, on the other hand, probably be the cause of chaotic situations for the ESM and its operations.

2. The BoG shall appoint the First Director and each Governor shall appoint a Director and an alternate Director within the two months of the entry into force of this Treaty.

**CHAPTER 8**  
**FINAL PROVISIONS**  
**ARTICLE 44**  
Accession

This Treaty shall be... open for accession by ... other Member States, **if the BoG approves such accession.**

**ARTICLE 45**  
Annexes

The following Annexes to this Treaty shall constitute an integral part thereof:

- 1) **Annex I: Contribution key of the ESM;**
- 2) **Annex II: Subscriptions to the authorised capital stock**

**ARTICLE 46**  
Deposit

This Treaty shall be deposited with the General Secretariat of the **Council of the European Union ("the Depositary").**

**ARTICLE 47**  
Ratification, approval and acceptance

1. This Treaty requires the **ratification, approval** or acceptance by the signatories.<sup>94</sup> Die The instruments of ratification, approval or acceptance are deposited.
2. The Depositary shall notify the other signatories of each **deposit** and **the date** thereof.

**ARTICLE 48**  
Entry into force

1. This **Treaty shall enter into force** on the date **(1)** when **instruments of ratification, approval or acceptance have been deposited** by signatories **(2)** whose **initial subscriptions represent no less than 90%** of the total subscriptions set forth in Annex II. Where appropriate, the list of ESM Members shall be adjusted. The key in Annex I shall then be recalculated and the total authorised capital stock in Article 8 para. 1 and Annex II and the initial total aggregated nominal value of paid-in shares in Article 8 para.2 shall be **reduced** accordingly.
2. **For each of the signatories** this treaty shall enter into force on the day following the deposit of the instrument of ratification, approval or acceptance.

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<sup>94</sup> The signatory countries of this ESM. **Ratification:** Article 59 of the German constitution: Ratification by the Federal Parliament and the Federal Council, signed by the Federal President (only 2 readings in the Federal Parliament; decision: acceptance and/or rejection by a majority). At the latest when the ratification procedure begins, we will have this beautifully decorated **Trojan ESM Horse** in front of the Reichstag building.

Done at Brussels on the second day of February in the year two thousand and twelve in a single original, whose Dutch, English, Estonian, Finnish, French, German, Greek, Irish, Italian, Maltese, Portuguese, Slovak, Slovenian, Spanish and Swedish texts are equally authentic, which shall be deposited in the archives of the Depositary which shall transmit a duly certified copy to each of the Contracting Parties.

For the Member States of the Euro area,

(Signatures) <sup>95</sup>

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<sup>95</sup> As for the closing of hospitals, the construction of tunnels or stations, the people nowadays wouldn't do without a national referendum and it is the right way to proceed even in cases where regional, and financially rather insignificant measures are concerned. In the year 2010, Germany's national revenue was EUR 226 000 million (press release German Ministry of Finance, 13 January 2011). The ESM Treaty, on the other hand, is able to imply a EUR 700 000 million liability for the German people and lead - with some delay - to sovereign default. But before this happens, large parts of the citizens' property will already be lost. The German voters did not award the Members of the German Parliament the mandate to ratify a contract with such payment obligations, guarantees and incalculable risks which, in addition to that, exempts the persons acting in this context from any kind of liability with respect to their doings. If looking at it in a commercial sense, this procedure has to be considered as virtually suicidal and - as far as the German citizens and the German people is concerned - irresponsible ad infinitum. Considering the facts at hand, a ratification of this ESM Treaty would be unconstitutional and void - irrespective of whether the German Constitution currently provides for it or not. The overall ESM Treaty implies that Germany (and also the other Euro countries) is quitting its financial sovereignty and handing it over to the ESM. It destroys the financial basis of the German national state and deprives the German citizens of their rights with respect to the utilization of their taxes and property. In keeping with this, the Members of the German Parliament should be reminded of the following sentence:

**„Parties should care for their country's people and not for themselves. “**

**Konrad Adenauer**

ANNEX I

**Contribution key of the ESM**

<b><u>ESM Members</u></b>	<b><u>ESM contribution key (%)</u></b>
The Kingdom of Belgium	3.4771
The Federal Republic of Germany	27.1464
The Republic of Estonia	0.1860
The Republic of Ireland	1.5922
The Hellenic Republic	2.8167
The Kingdom of Spain	11.9037
The French Republic	20.3859
The Italian Republic	17.9137
The Republic of Cyprus	0.1962
The Grand Duchy of Luxembourg	0.2504
The Republic of Malta	0.0731
The Kingdom of the Netherlands	5.7170
The Republic of Austria	2.7834
The Portuguese Republic	2.5092
The Slovak Republic	0.4276
The Slovak Republic	0.8240
The Republic of Finland	<u>1.7974</u>
Total	100.00 %

ANNEX II**Subscription of the authorised capital stock**

<b>ESM Members</b>	<b>Number of shares</b>	<b>subscribed Capital (EUR)</b>
The Federal Republic of Germany	1 900 248	190 024 800 000
The Republic of Estonia	13 020	1 302 000 000
The Republic of Ireland	111 454	11 145 400 000
The Hellenic Republic	197 169	19 716 900 000
The Kingdom of Spain	833 259	83 325 900 000
The French Republic,	1 427 013	142 701 300 000
The Italian Republic	1 253 959	125 395 900 000
The Republic of Cyprus	13 734	1 373 400 000
The Grand Duchy of Luxembourg	17 528	1 752 800 000
The Republic of Malta	5 117	511700 000
The Kingdom of the Netherlands	400 190	40 019 000 000
The Republic of Austria	194 838	19 483 800 000
The Portuguese Republic	175 644	17 564 400 000
The Republic of Slovenia	29 932	2 993 200 000
The Slovak Republic	57 680	5 768 000 000
The Republic of Finland	<u>125 818</u>	<u>12 581 800 000</u>
Total	7 000 000	700 000 000 000

**ESM****The Governors of Europe**

(as of February 2012)

1. Germany	Dr. Wolfgang Schäuble
2. Belgium	Steven Vanackere
3. Estonia	Jürgen Ligi
4. Ireland	Brian Lenihan
5. Greece	Evangelos Venizelos
6. Spain	Christobal Montoro
7. France	Francois Baroin
8. Italy	Mario Monti
9. Cyprus	Kikis Kazamias
10. Luxembourg	Luc Frieden
11. Malta	Tonio Fenech
12. The Netherlands	Jan Cornelis (Jan Kees) de Jager
13. Austria	Dr. Maria Fekter
14. Portugal	Vitor Gaspar
15. Slovenia	Franc Križanič
16. Slovak Republic	Ivan Miklos
17. Finland	Jutta Urpilainen