

Act on Financial Participation in the European Stability Mechanism

(ESM Financing Act)¹

Date of signature: 13 September 2012

Full citation:

“ESM Financing Act of 13 September 2012 (Federal Law Gazette I, p. 1918), amended by Article 1 of the Act of 29 November 2014 (Federal Law Gazette I, pp. 1821 and 2193)”

Section 1 Assumption of German share in the capital stock of the European Stability Mechanism; changes to consolidated lending volume of the European Stability Mechanism and the European Financial Stability Facility

(1) In order to meet its obligations from joining the European Stability Mechanism (ESM), the Federal Republic of Germany shall contribute 21.71712 billion euros to the total paid-in capital of the European Stability Mechanism amounting to 80 billion euros, and 168.30768 billion euros to the total callable capital of the European Stability Mechanism amounting to 620 billion euros.

(2) The Federal Ministry of Finance shall be authorised to assume guarantees for the callable capital totalling 168.30768 billion euros. Payments to callable capital shall be provided within the federal budget

1. pursuant to Article 9 paragraph 2 of the Treaty Establishing the European Stability Mechanism to restore the original level of paid-in capital if the offsetting of payment shortfalls causes the amount of paid-in capital to fall below the agreed sum of 80 billion euros;

2. pursuant to Article 9 paragraph 3 of the Treaty Establishing the European Stability Mechanism to avoid a default of the payment obligations of the European Stability Mechanism;

¹ This working translation of the *Gesetz zur finanziellen Beteiligung am Europäischen Stabilitätsmechanismus (ESM-Finanzierungsgesetz – ESMFinG)* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

3. pursuant to Article 25 paragraph 2 of the Treaty Establishing the European Stability Mechanism as part of a temporary revised increased capital call;
4. pursuant to Article 9 paragraph 1 of the Treaty Establishing the European Stability Mechanism on the basis of a unanimous decision of the Board of Governors of the European Stability Mechanism.

(3) The Federal Government shall be authorised, through its representative on the Board of Governors, to approve a decision pursuant to Article 10 paragraph 1 of the Treaty Establishing the European Stability Mechanism to change the consolidated lending volume of the European Stability Mechanism and the European Financial Stability Facility within the meaning of Article 39 of the Treaty Establishing the European Stability Mechanism to the extent that funds required for the implementation of emergency measures approved by the European Financial Stability Facility until 30 March 2012 will not be deducted, up to an amount of 200 billion euros, for the calculation of the consolidated lending volume within the meaning of Article 39 of the Treaty Establishing the European Stability Mechanism.

Section 2 Granting of stability support by the European Stability Mechanism

The European Stability Mechanism is authorised to grant stability support to a Contracting Party of the European Stability Mechanism under the conditions specified in the Treaty Establishing the European Stability Mechanism and in accordance with the procedures specified therein if this is indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. The stability support instruments available to the European Stability Mechanism are precautionary financial assistance, financial assistance for the re-capitalisation of financial institutions of a Contracting Party, loans, and the purchase of a Contracting Party's bonds on the primary or secondary market. Financial assistance for the re-capitalisation of financial institutions may be granted to a Contracting Party or, upon application by such Contracting Party, directly to financial institutions of the Contracting Party.

Section 3 Budgetary responsibility and responsibility for stability

(1) In matters concerning the European Stability Mechanism, the German Bundestag shall exercise its budgetary responsibility and its responsibility for the existence and continued development of the stability of the Economic and Monetary Union in particular with respect to the following provisions.

(2) The German Bundestag shall deliberate and vote on items of business under this Act within

a reasonable time frame. In so doing, it shall take account of the relevant time limits for decision-making at the level of the euro area.

Section 4 Parliament's right of prior approval for decisions in the European Stability Mechanism

(1) Matters concerning the European Stability Mechanism that impact on the overall budgetary responsibility of the German Bundestag shall be discussed in the plenary of the German Bundestag. The overall budgetary responsibility shall be deemed to be affected in particular

1. in the event of a decision pursuant to Article 13 paragraph 2 of the Treaty Establishing the European Stability Mechanism to grant a Contracting Party to the European Stability Mechanism, on the basis of a request by that Contracting Party, stability support in the form of a financial assistance facility specified in the Treaty Establishing the European Stability Mechanism,

2. in the event of the adoption of a financial assistance facility agreement pursuant to Article 13 paragraph 3, third sentence, of the Treaty Establishing the European Stability Mechanism, the approval of a corresponding Memorandum of Understanding pursuant to Article 13 paragraph 4 of the Treaty Establishing the European Stability Mechanism, or the granting of direct financial assistance to financial institutions upon adoption of an institution-specific agreement,

3. in the event of decisions made within the framework of the European Stability Mechanism to change the authorised capital stock or maximum lending volume pursuant to Article 10 paragraph 1 of the Treaty Establishing the European Stability Mechanism; Article 2 paragraph 1 of the Act on the Treaty of 2. February 2012 Establishing the European Stability Mechanism² shall remain unaffected,

4. in the event of decisions made within the framework of the European Stability Mechanism to determine or modify the upper limits of total funding available for a particular financial assistance instrument.

(2) In circumstances where the overall budgetary responsibility is affected, the Federal Government may, through its representative, approve a proposal for a decision in matters concerning the European Stability Mechanism or abstain from voting on such a proposal only

² Gesetz zu dem Vertrag vom 2. Februar 2012 zur Einrichtung des Europäischen Stabilitätsmechanismus.

after the plenary has taken an affirmative decision to that effect. In the absence of such a plenary decision, the German representative must reject the proposal for a decision. The representative of the Federal Government shall participate in the vote.

(3) If, pursuant to Article 5 paragraph 6 letter (m) of the Treaty Establishing the European Stability Mechanism, responsibilities of the Board of Governors are delegated to the Board of Directors, sections 3 to 6 shall apply accordingly.

Section 5 Participation of the Budget Committee of the German Bundestag

(1) In all other matters concerning the European Stability Mechanism affecting the budgetary responsibility of the German Bundestag where a decision by the plenary is not provided for pursuant to section 4, the Budget Committee of the German Bundestag shall be involved. The Budget Committee shall monitor the preparation and implementation of agreements on stability support.

(2) Advance approval of the Budget Committee shall be required for:

1. decisions regarding the provision of additional instruments without changing the total funding volume of an existing financial assistance facility or significant changes to the terms of a financial assistance facility,
2. decisions regarding capital calls pursuant to Article 9 paragraph 1 of the Treaty Establishing the European Stability Mechanism or the adoption or significant change of terms and conditions applicable to capital calls pursuant to Article 9 paragraph 4 of the Treaty Establishing the European Stability Mechanism,
3. the adoption or significant change of the following: guidelines on the modalities for implementing individual financial assistance instruments available to the European Stability Mechanism under Articles 14 to 18 of the Treaty Establishing the European Stability Mechanism and pursuant to decisions taken in accordance with Article 19 of the Treaty Establishing the European Stability Mechanism; pricing guidelines pursuant to Article 20 paragraph 2 of the Treaty Establishing the European Stability Mechanism; guidelines for borrowing operations pursuant to Article 21 paragraph 2 of the Treaty Establishing the European Stability Mechanism; investment policy guidelines pursuant to Article 22 paragraph 1 of the Treaty Establishing the European Stability Mechanism; dividend policy guidelines pursuant to Article 23 paragraph 3 of the Treaty Establishing the European Stability Mechanism; and the rules for the establishment, administration and use of other funds pursuant

to Article 24 paragraph 4 of the Treaty Establishing the European Stability Mechanism,

4. the detailed terms and conditions for capital changes pursuant to Article 10 paragraph 2 of the Treaty Establishing the European Stability Mechanism,

5. the adoption of rules or interpretations governing professional secrecy pursuant to Article 34 of the Treaty Establishing the European Stability Mechanism.

In these cases, the Federal Government may, through its representative, approve a proposal for a decision in matters concerning the European Stability Mechanism or abstain from voting on such a proposal only after the Budget Committee has taken an affirmative decision to that effect. The Federal Government may also submit a corresponding request to the Budget Committee. In the absence of such a decision by the Budget Committee, the German representative must reject the proposal for a decision. The representative of the Federal Government shall participate in the vote.

(3) In cases not covered by subsection (2) above that affect the budgetary responsibility of the German Bundestag, the Federal Government shall involve the Budget Committee and give consideration to its opinions. This applies in particular to decisions regarding the payment of individual tranches of agreed stability support.

(4) The Governor and alternate Governor appointed by Germany pursuant to Article 5 paragraph 1 of the Treaty Establishing the European Stability Mechanism are required to inform and provide information to the Budget Committee of the German Bundestag upon request by at least a quarter of its members, with the request being supported by at least two parliamentary groups on the Committee, unless circumstances under section 6 of this Act are affected.

(5) The plenary of the German Bundestag may take over the powers of the Budget Committee at any time by means of a decision taken by a simple majority and exercise such powers by simple decision.

(6) A motion or an item of business submitted by the Federal Government shall be deemed as referred to the Budget Committee within the meaning of the Rules of Procedure of the German Bundestag. Rule 70 of the Rules of Procedure shall apply accordingly, with the proviso that the request by a quarter of the members of the Budget Committee must be supported by at least two parliamentary groups on the Committee.

Section 6 Participation of Special Panel

(1) If a purchase of government bonds on the secondary market pursuant to Article 18 of the Treaty Establishing the European Stability Mechanism is planned, the Federal Government may invoke the particular confidentiality of the matter. Particular confidentiality is established if the deliberations or a decision-making process must be kept secret in order not to jeopardise the success of the measures. The assumption of particular confidentiality shall be substantiated by the Federal Government.

(2) In such circumstances, the participation rights specified in sections 4 and 5 may be exercised by members of the Budget Committee who are elected by the German Bundestag for one legislative term by secret vote and by a majority of its members (Special Panel). The number of members and an equal number of substitute members shall be the smallest possible that allows each parliamentary group to appoint at least one member, that respects majority ratios and that reflects the composition of the plenary. The Special Panel elected in accordance with section 3 subsection 3 of the Stabilisation Mechanism Act³ shall exercise the rights accorded in this Act. An election in accordance with the first and second sentences shall take place for the first time during the legislative period in which no panel can be elected pursuant to section 3 subsection 3 of the Stabilisation Mechanism Act after that Act expires.

(3) The Special Panel may immediately lodge an objection to the assumption of particular confidentiality. In the case of an objection, the plenary shall exercise the participation rights specified in section 4 and the Budget Committee shall exercise the participation rights specified in section 5.

(4) The Special Panel shall report to the German Bundestag about the content and outcome of its deliberations as soon as the reasons for particular confidentiality cease to apply.

Section 7 Provision of information by the Federal Government

(1) The Federal Government shall notify the German Bundestag and the Bundesrat comprehensively, as early as possible, continuously and, as a rule, in writing about matters pertaining to this Act. As regards matters that affect the competencies of the German Bundestag, the Federal Government shall give the German Bundestag the opportunity to deliver its opinion and shall take such opinions into consideration.

³ Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus (Stabilisierungsmechanismusgesetz - StabMechG)

- (2) The Federal Government shall provide to the German Bundestag all documents at its disposal to enable the German Bundestag to exercise its participation rights. The Federal Government shall also transmit these documents to the Bundesrat.
- (3) The German Bundestag and the Bundesrat shall take account of the particular need to protect current confidential negotiations by according them confidential treatment.
- (4) In the event of a request for stability support by a Contracting Party to the European Stability Mechanism pursuant to Article 13 paragraph 1 of the Treaty Establishing the European Stability Mechanism, the Federal Government shall, within seven days following submission of such request, transmit to the German Bundestag and the Bundesrat an initial appraisal of the content and scope of the requested support. If the Federal Government intends to approve the granting of stability support pursuant to Article 13 paragraph 2 of the Treaty Establishing the European Stability Mechanism, it shall in good time transmit a comprehensive appraisal of the content and scope of the support requested, an opinion on the European Commission's assessment pursuant to Article 13 paragraph 1 of the Treaty Establishing the European Stability Mechanism, and an estimate of the financial consequences.
- (5) The Budget Committee of the German Bundestag shall also receive regular written reports on the financial management of the European Stability Mechanism within the meaning of Chapter 5 of the Treaty Establishing the European Stability Mechanism. The Federal Government shall also transmit to the Budget Committee quarterly summary statements of the financial position of the European Stability Mechanism and a profit and loss statement showing the results of its operations pursuant to Article 27 paragraph 2 of the Treaty Establishing the European Stability Mechanism.
- (6) The continuous provision of information by the Federal Government shall also include details regarding the respective consideration given in negotiations to the opinions submitted by the German Bundestag and by the Budget Committee of the German Bundestag in accordance with this Act.
- (7) The information rights under subsections (1) to (6) may, in cases of particular confidentiality under section 6 subsection (1), be limited to the Members of the Special Panel, as long as the reasons for particular confidentiality persist. Once these reasons cease to apply, the Federal Government shall provide this information to the German Bundestag without delay.
- (8) The Federal Government shall also send to the Bundesrat the information provided in accordance with subsection (5). The continuous provision of information by the Federal

Government shall also include information as to how the Bundesrat's respective opinions in matters relating to this Act have been taken into consideration. If subsection (7) is applicable, the Bundesrat shall be informed when the reasons for particular confidentiality cease to apply.

(9) The European Stability Mechanism representatives appointed by Germany or the German Governor may not invoke the professional secrecy obligations under Article 34 of the Treaty Establishing the European Stability Mechanism in response to requests for information by the German Bundestag, its committees or its members.

(10) The rights of the German Bundestag arising from the Act on Cooperation between the Federal Government and the German Bundestag in Matters Concerning the European Union⁴ and the rights of the Bundesrat arising from the Act on Cooperation between the Federation and the *Länder* in Matters Concerning the European Union⁵ remain unaffected.

Section 8 Entry into force

This Act shall enter into force on the day after its promulgation.

⁴ *Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union* (EUZBBG)

⁵ *Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union* (EUZBLG)