

German deliberations on the ESM



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On July 10, the German Constitutional Court holds the first hearing regarding appeals against the ESM, the fiscal compact and an amendment to Article 136 TFEU, which legally anchors a stability mechanism in the Treaty. Without German ratification, the ESM cannot be launched.

The EU Summit held on June 28 and 29 has ignited a new wave of discussion regarding the European Stability Mechanism (ESM), the permanent eurozone bailout fund. Decisions as to how the ESM might be used in the future caused confusion amongst market participants. In the Treaty, the ESM exhibits a total subscribed capital amounting to EUR 700bn of which EUR 80bn is being paid-in capital. The initial maximum lending capacity will be EUR 500bn. The EFSF will eventually merge into the ESM. Originally, the ESM was to be launched in January 2013, which was then pulled forward to July 2012. However, given the incomplete ratification process at this stage, its launch has been postponed.

Table 1: ESM state of ratification

Member State	ESM capital share (%)	ESM capital share (in EUR, x1000)	Ratified (yes/no)
DE	27.15	190 024 800	No
FR	20.39	142 701 300	Yes
IT	17.91	125 395 900	No
ES	11.90	83 325 900	Yes
NL	5.71	40 019 000	Yes
BE	3.48	24 339 700	Yes
GR	2.82	19 716 900	Yes
AT	2.78	19 483 800	Yes
PT	2.51	17 564 400	Yes
FI	1.80	12 581 800	Yes
IE	1.59	11 145 400	No
SK	0.82	5 768 000	Yes
SI	0.43	2 993 200	Yes
LU	0.25	1 752 800	Yes
CY	0.20	1 373 400	Yes
EE	0.19	1 302 000	No
MT	0.07	511 700	No
Total	100	700 000 000	

Source: ESM Treaty and EU documents

Current state of ratification

In order to be enacted, a number of countries representing at least 90% of ESM capital subscriptions must ratify the ESM Treaty. At the time of writing, only 12 out of 17 countries have done so, representing an insufficient share (53.1%). Table 1 provides an overview. Given their contributions of over 10% each, both Germany and Italy need to ratify the ESM for it to become active. The other three remaining

countries are irrelevant in that respect, as they cannot block the entry into force. Procedurally, without ratification, a country would not become an ESM Member State; the ESM's capital stock would be reduced and the contribution share recalculated accordingly.

Ratification in Italy is widely being taken for granted, but no date has been agreed so far. The situation in Germany is more uncertain; while the Parliament ratified the Treaty on 29 June, a law only enters into force once the German President signs it. Given that several appeals against the fiscal compact and ESM law have been submitted to the Federal Constitutional Court, the Court asked Joachim Gauck, Germany's President, to postpone his decision until a final judgment has been made. The 10th of July has been set as the date for the first hearing. Hence, ratification will be delayed and a final decision is likely to take several months.

Our expectations

The general opinion in Germany is that the Court will not completely block the ESM; instead it is expected that the Court will communicate that the outer boundaries of interpretative room of the

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constitution have been reached, meaning that further EU integration would require an amended constitution. It does not, therefore, come as a surprise that German finance minister Wolfgang Schäuble has recently advanced the view that Germans soon will have to vote in a referendum on a new constitution as a result of further EU integration. Whether or not a referendum would be necessary by law is highly debated, as the German constitution generally does not arrange for referenda, except in the case that the Federal structure of the country is to be changed¹. But there is growing support for a referendum based on Article 146, which states that German Basic Law “[...] shall cease to apply on the day on which a constitution freely adopted by the German people takes effect.” The message to the Court seems clear: approve the ESM now, and we promise to make sure that a referendum will follow, thereby ensuring democratic legitimacy. As for the time horizon, Schäuble implicitly indicated that it can take place in “*less than five years*”.

Looking further ahead

The Constitutional Court has so far been viewed as an independent institution safeguarding democratic participation rights. Increasingly, however, this independence is being questioned. The Court’s upcoming ruling, therefore, will not only decide over the ESM’s future, but it will also determine the Court’s perceived role as an independent actor in both German and European politics. This, in turn is an important element of the German citizens’ trust in their democratic system.

Taken together, it seems that a threshold in EU integration has been reached which calls for a turning point away from closed-door politics towards more democratically legitimate procedures. Against this backdrop, further developments hinge on whether or not politicians will understand that citizens want to be informed; this would take much of the risk away from a referendum.

This is particularly relevant now given the risk that the referendum would not be approved by the German people. Not least due to often one-sided media reporting and insufficient communication by the government itself, Germans increasingly worry about losing their democratic participation rights. A recent poll² among 1000 German citizens showed that only 44% regarded the euro as advantageous, while 50% regarded it as disadvantageous and 85% agreed that the worst part of the crisis is still to come. Asked about their opinion regarding eurobonds, 10% think this step is necessary for a currency union. Slightly more than half (55%) would accept shared liability if sufficient control mechanisms were in place while 45% are strictly against eurobonds. If citizens were to vote in a referendum, only 39% would support shifting more power to a European budget authority, whereas 55% believe that budget autonomy and supervision should remain at the national level. All in all, the poll suggests that Germans would support further EU integration but they require democratic participation rights and trustworthy supervisory institutions as prerequisites. It is important that German politicians take this into account in the future.

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¹ German Basic Law, Article 29 (2)

² ARD-DeutschlandTREND, July 2012
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