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*Committee on Budgetary Control*

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## **WORKING DOCUMENT**

on the hearing of 24 April 2012 on the "Budgetary control of EFSF, EFSM and ESM"

Committee on Budgetary Control

Rapporteur: Iliana Ivanova

*This Working Document sets out the considerations of the Rapporteur in view of the hearing that will take place on 24 April 2012 on the "Budgetary control of EFSF, EFSM and ESM".*

## **Background**

In May 2010 the European Council decided to establish, based on Art. 122 of the TFEU, two temporary instruments for financial assistance to Member States experiencing financial difficulties - the European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF). These two temporary mechanisms will be replaced by a permanent mechanism (European Stability Mechanism (ESM)) which will become operational in July 2012.

## **Budgetary control - state of play**

- **EFSM & EFSF**

The EFSM was created by Council Regulation 407/2010 which grants the Commission the right to borrow up to a total of EUR 60 bn at the capital markets and to lend them to a Member State of the euro zone experiencing difficulties. As the loans under the EFSM are backed up by the EU budget, the European Parliament scrutinises the Commission's actions with regards to the EFSM. Furthermore, the European Parliament could exercise control over the Commission's operations in the context of the budget and the discharge procedures. However, the European Parliament is not accorded with any direct decision power for granting assistance under this mechanism. As far as the external audit is concerned the European Court of Auditors could perform financial and performance audits to all borrowing and lending activities of the Commission as regards the EFSM.

The EFSF was created as a Special Purpose Vehicle which is backed up by guarantee commitments from the euro zone Member States for a total of EUR 780 bn and has a lending capacity of EUR 440 bn. The democratic control of national governments' actions with regard to the EFSF is ensured by the National parliaments. Thus the European Parliament is not at all involved in this process. Furthermore the EFSF does not include any audit rights for the Supreme Audit Institutions (SAIs) at all and lacks of provisions on external public audit.

- **ESM**

The ESM will be an international financial institution established by European treaty<sup>1</sup>. It will be financed through paid-in capital of EUR 80 bn and callable capital of EUR 620 bn. There are on-going discussions about granting the ESM with a banking licence which would allow it to be funded by the European Central Bank but also to fall under the banking regulatory supervision.

The European Parliament pointed out in its resolution of 23 March 2011<sup>2</sup> that the establishment of the ESM outside the Union's institutional framework could create problems

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<sup>1</sup> See Treaty establishing the European Stability Mechanism

<http://www.europecouncil.europa.eu/media/582311/05-tesm2.en12.pdf>

<sup>2</sup> See European Parliament resolution of 23 March 2011 on the draft European Council decision amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (P7\_TA(2011)0103)

related to the control mechanism of the Union's institutions. Furthermore concerns were expressed by some of the SAIs that the Treaty lacks sufficient provisions for ensuring effective external audit.

According to the last version of the Treaty establishing the ESM, the external public audit of the mechanism will be carried out by a Board of Auditors<sup>1</sup>. The ECA will be a permanent Member of this board alongside with two other SAIs appointed on a rotational basis and two further Members without specifying their background<sup>2</sup>. But even if the ECA is involved on a permanent basis in the external auditing process, the annual audit report of the Board of Auditors will only be reported to the Board of Governors of the ESM. Moreover the Board of Governors will then send this report to National parliaments and the SAIs only<sup>3</sup>. Neither the European Parliament nor the general public are envisaged as addressees.

## Conclusions

The Declaration of the Rights of Man and of the Citizen of 1789 states in its Article 15 that "The society has the right to require of every public agent an account of his administration"<sup>4</sup>. Transposed into current times, this could be understood that all taxpayers' money should be subject to adequate public audit and adequate parliamentary scrutiny. Moreover, according to the Lima Declaration<sup>5</sup>, "All public financial operations, regardless of whether and how they are reflected in the national budget, shall be subject to audit by Supreme Audit Institutions. Excluding parts of financial management from the national budget shall not result in these parts being exempted from audit by the Supreme Audit Institution. "

For all three instruments there is currently a lack of sufficient coordination of responsibilities, both in terms of democratic scrutiny and also in terms of audit rights of Supreme Audit Institutions (SAIs).

## Points for further considerations

The Rapporteur would like to emphasise on the following questions:

1. The Rapporteur is of the opinion that Art. 30 of the ESM Treaty presents serious weaknesses related to the adequacy of the external audit which have been identified in the following documents:
  - Resolution of the Contact committee of the SAIs of the EU dated 14 October 2011 on the Statement of SAIs of the euro area on the external audit of the ESM<sup>6</sup>
  - Letter from the President of the Netherlands Court of Audit on issues to be addressed in the by-laws of the ESM with regard to Article 30 of the ESM Treaty<sup>1</sup>

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<sup>1</sup> See Art. 29 of the Revised ESM Treaty, 2 February 2012

<sup>2</sup> See Art.30 (1) of the Revised ESM Treaty, 2 February 2012

<sup>3</sup> See Art. 30 (5) of the Revised ESM Treaty, 2 February 2012

<sup>4</sup> See Art. 15 "La société a le droit de demander compte à tout agent public de son administration"

<sup>5</sup> See The Lima Declaration, [http://www.issai.org/media%28622,1033%29/ISSAI\\_1\\_E.pdf](http://www.issai.org/media%28622,1033%29/ISSAI_1_E.pdf)

<sup>6</sup> See <http://eca.europa.eu/portal/pls/portal/docs/1/9406723.PDF>

The by-laws of the ESM are still under negotiation and therefore the Member States and the Council should use them in order to fix these shortcomings and to elaborate appropriate arrangements for public external audit of legality, regularity as well as performance.

2. According to the last version of the ESM Treaty, signed on 2 February 2012, the Commission and the ECB will carry out important tasks such as "monitoring compliance with the conditionality attached to the financial assistance facility"<sup>2</sup>. These activities could be subject to an audit of the ECA in line with the ECA's audit rights as laid down in Articles 285-287 of the TFEU. This could create an opportunity to scrutinize this part of ESM-related work by the European Parliament.
3. The "Governance package" adopted in 2011 stipulates that in case of interests and fines collected from Member States whose currency is the euro they should be channelled through the EU budget to the ESM<sup>3</sup>. The transferred funds could also be subject to a possible audit of the ECA.
4. In case of granting a banking licence to the ESM, the ESM should become subject to banking regulatory supervision
5. In view of the political scrutiny that the European Parliament will exercise in the ESM it should be granted the same level of access to information as the National Parliaments.

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<sup>1</sup>[http://www.courtsofaudit.com/english/News/2012/02/Letter\\_of\\_president\\_Netherlands\\_Court\\_of\\_Audit\\_on\\_ESM\\_Board\\_of\\_Auditors](http://www.courtsofaudit.com/english/News/2012/02/Letter_of_president_Netherlands_Court_of_Audit_on_ESM_Board_of_Auditors)

<sup>2</sup> Art. 13 (7) of the Revised ESM Treaty, 02 February 2012

<sup>3</sup> See, for example, Art. 10 of Regulation No. 1173/2011 on the effective enforcement of budgetary surveillance in the euro area