



Number 20 of 2012

EUROPEAN STABILITY MECHANISM ACT 2012

REVISED

Updated to 9 December 2021

This Revised Act is an administrative consolidation of the *European Stability Mechanism Act 2012*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021* (38/2021), enacted 9 December 2021, and all statutory instruments up to and including the *Gaeltacht Act 2012 (Designation of Gaeltacht Language Planning Areas) (No. 4) Order 2021* (S.I. No. 710 of 2021), made 8 December 2021, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



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PART 1

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TEXT OF TREATY IN THE ENGLISH LANGUAGE



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AN ACT TO FURTHER FACILITATE, IN THE PUBLIC INTEREST, THE FINANCIAL STABILITY OF THE EUROPEAN UNION BY ESTABLISHING A PERMANENT STABILITY MECHANISM TO ASSUME THE TASKS OF THE EUROPEAN FINANCIAL STABILITY FACILITY AND THE EUROPEAN FINANCIAL STABILISATION MECHANISM IN PROVIDING, WHERE NEEDED, FINANCIAL ASSISTANCE TO EURO AREA MEMBER STATES AND FOR THAT PURPOSE—

(A) TO MAKE PERMANENT PROVISION TO PROVIDE FOR MATTERS RELATING TO THE PARTICIPATION BY THE STATE IN THE EUROPEAN STABILITY MECHANISM PURSUANT TO THE TREATY ESTABLISHING THE EUROPEAN STABILITY MECHANISM DONE AT BRUSSELS ON 2 FEBRUARY 2012 BETWEEN THE EURO AREA MEMBER STATES,

(B) TO PROVIDE FOR MATTERS RELATING TO THE STATE'S SUBSCRIPTION TO THE AUTHORISED CAPITAL STOCK OF THE EUROPEAN STABILITY MECHANISM IN ACCORDANCE WITH THAT TREATY,

(C) TO PROVIDE FOR PAYMENTS TO BE MADE OUT OF THE CENTRAL FUND OR THE GROWING PRODUCE OF THAT FUND SO AS TO ENABLE THE STATE TO GIVE EFFECT TO THAT TREATY,

(D) TO PROVIDE FOR ALL DIVIDENDS OR OTHER MONEYS RECEIVED BY THE STATE UNDER THAT TREATY TO BE PAID INTO THE EXCHEQUER, AND

(E) TO PROVIDE FOR RELATED MATTERS.

[3rd July 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Application of Act extended (30.10.2014) by *European Stability Mechanism (Amendment) Act 2014* (32/2014), ss. 3, 4, commenced on enactment.

Provision with respect to particular type of instrument and particular entities

3. The legal incidents and effects that the provisions of the Treaty and the Principal Act comprise shall include the legal incidents and effects arising by virtue or in consequence of—

- (a) the granting of an instrument of the class specified in section 4 , and (b) the establishment of subsidiary bodies or sub-entities by the ESM the purpose of which is to finance or implement, or to have vested in them ownership of, the capital instruments related to the recapitalisation referred to in section 4, and
- (b) the establishment of subsidiary bodies or sub-entities by the ESM the purpose of which is to finance or implement, or to have vested in them ownership of, the capital instruments related to the recapitalisation referred to in section 4 .

Class of instrument to which section 3 relates

4. The class of instrument referred to in section 3 is an instrument that effects the direct recapitalisation of a financial institution of an ESM member, being an instrument added to the list of financial instruments provided for in Articles 14 to 18 by a decision made by the Board of Governors under Article 19.

Definitions.

1.— In this Act—

“ESM” means the international financial institution established as the European Stability Mechanism by Article 1 of the Treaty;

“Minister” means Minister for Finance;

F1[“Treaty” means the Treaty establishing the European Stability Mechanism done at Brussels on 2 February 2012 between the Euro Area Member States of the European Union as adapted in consequence of the accession of the Republic of Latvia to it on 13 March 2014 and as further adapted in consequence of the accession of the Republic of Lithuania to it on 3 February 2015, as amended by the Agreement amending the Treaty establishing the European Stability Mechanism done at Brussels on 27 January 2021 and on 8 February 2021 between the Euro Area Member States of the European Union.]

Annotations

Amendments:

F1 Substituted (9.12.2021) by *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021* (38/2021), s. 3(a), commenced on enactment.

Editorial Notes:

E1 Previous affecting provision: definition of “Treaty” substituted (30.10.2014) by *European Stability Mechanism (Amendment) Act 2014* (32/2014), s. 2(1), commenced on enactment; substituted as per F-note above.

Payments by Minister in respect of authorised capital stock of ESM.

2.— The Minister may on behalf of the State, from time to time, make payments in respect of the contribution of the State to the authorised capital stock of the ESM in accordance with the Treaty.

Payments out of Central Fund.

3.— There may be paid out of the Central Fund or the growing produce of that Fund sums, aggregating to a sum not exceeding F2[€11,119,500,000] to enable the State to make payments in respect of its contribution to the authorised capital stock of the ESM in accordance with the Treaty.

Annotations

Amendments:

F2 Substituted (9.12.2021) by *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021* (38/2021), s. 3(b), commenced on enactment.

Payments into Exchequer.

4.— Any moneys received by or on behalf of the State by way of dividend from the ESM under Article 23 of the Treaty or otherwise received under the Treaty shall be

placed to the credit of the account of the Exchequer and shall form part of the Central Fund and be available in any manner in which that Fund is available.

Privileges and immunities.

5.— (1) The ESM shall have within the State the legal status, privileges and immunities referred to in Article 32 of the Treaty and, in respect of persons to whom paragraph 1 of Article 35 of that Treaty relates, such persons shall, subject to any waiver of immunity under paragraph 2 or 3 of that Article—

(a) be immune from legal proceedings with respect to acts performed by them in their official capacity, and

(b) enjoy inviolability in respect of their official papers and documents.

(2) In proceedings in any court, a certificate purporting to be under the seal of the Minister for Foreign Affairs and Trade and stating any fact relevant to determine whether the ESM, or any person to whom paragraph 1 of Article 35 of the Treaty relates, is entitled to inviolability or to a privilege or immunity under *subsection (1)* shall be *prima facie* evidence of that fact.

Annotations

Modifications (not altering text):

C2 Application of section extended (30.10.2014) by *European Stability Mechanism (Amendment) Act 2014 (32/2014)*, s. 5, commenced on enactment.

Application of sections 5, 6 and 7 of Principal Act

5. Sections 5, 6 and 7 of the Principal Act shall apply to the ESM acting through a subsidiary body or sub-entity referred to in section 3(b) as they apply to the ESM otherwise.

ESM exempt from requirement to be authorised or regulated.

6.— The ESM shall not be taken to be providing a service or carrying on an activity which would require it to be authorised or regulated by the Central Bank of Ireland.

Annotations

Modifications (not altering text):

C3 Application of section extended (30.10.2014) by *European Stability Mechanism (Amendment) Act 2014 (32/2014)*, s. 5, commenced on enactment.

Application of sections 5, 6 and 7 of Principal Act

5. Sections 5, 6 and 7 of the Principal Act shall apply to the ESM acting through a subsidiary body or sub-entity referred to in section 3(b) as they apply to the ESM otherwise.

ESM exempt from taxation.

7.— ESM, its assets, gains, income, property, staff and its operations and transactions authorised by the Treaty shall be exempt from taxation to the extent and in the manner provided for by Article 36 of the Treaty.

Annotations

Modifications (not altering text):

C4 Application of section extended (30.10.2014) by *European Stability Mechanism (Amendment) Act 2014 (32/2014)*, s. 5, commenced on enactment.

Application of sections 5, 6 and 7 of Principal Act

5. Sections 5, 6 and 7 of the Principal Act shall apply to the ESM acting through a subsidiary body or sub-entity referred to in section 3(b) as they apply to the ESM otherwise.

Reports by
Minister to Dáil
Éireann.

8.— (1) In respect of each reporting period the Minister shall, as soon as practicable after the end of the period, cause a report to be laid before Dáil Éireann that includes the following information:

- (a) the aggregate value of contributions made by the State to the authorised capital stock of the ESM under *section 2* during the reporting period,
- (b) the aggregate amount of moneys (including dividends) received by the State, to which *section 4* relates, during the reporting period,
- (c) the aggregate value of contributions made by the State to the authorised capital stock of the ESM under *section 2* up to the end of the reporting period, and
- (d) the aggregate amount of all moneys (including dividends) received by the State, to which *section 4* relates, up to the end of the reporting period.

(2) In *subsection (1)* “reporting period” means—

- (a) each of the following periods—
 - (i) the period from the passing of this Act to 31 December 2012,
 - (ii) the period in any year after 2012 from 1 January to 30 June,
 - (iii) the period in any year after 2012 from 1 July to 31 December,
- or
- (b) within each period to which *paragraph (a)* relates, such shorter periods as the Minister may from time to time consider appropriate in the circumstances.

Expenses.

9.— The expenses incurred by the Minister in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

Short title.

10.— This Act may be cited as the European Stability Mechanism Act 2012.

Section 1.

SCHEDULE

PART 1

TEXT OF TREATY IN THE IRISH LANGUAGE

F3[...]

Annotations**Amendments:**

- F3** Repealed (30.10.2014) by *European Stability Mechanism (Amendment) Act 2014 (32/2014)*, s. 2(3), commenced on enactment.

PART 2

TEXT OF TREATY IN THE ENGLISH LANGUAGE

F4[...]

Annotations**Amendments:**

- F4** Repealed (30.10.2014) by *European Stability Mechanism (Amendment) Act 2014 (32/2014)*, s. 2(3), commenced on enactment.



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About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

European Stability Mechanism Acts 2012 to 2021 : this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Finance (European Stability Mechanism and Single Resolution Fund) Act 2021 (38/2021)*, s. 8(3). The Acts in this group are:

- *European Stability Mechanism Act 2012 (20/2012)*
- *European Stability Mechanism (Amendment) Act 2014 (32/2014)*
- *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021 (38/2021)*, ss. 2-4

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021 (38/2021)*
- *European Stability Mechanism (Amendment) Act 2014 (32/2014)*

All Acts up to and including *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021 (38/2021)*, enacted 9 December 2021, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

None.

All statutory instruments up to and including *Gaeltacht Act 2012 (Designation of Gaeltacht Language Planning Areas) (No. 4) Order 2021 (S.I. No. 710 of 2021)*, made 8 December 2021, were considered in the preparation of this revision.