



Deutscher Bundestag

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## **Compilation of legislation**

Legal framework for the Federal Government's forwarding and notification obligations in relation to the Bundestag in EU matters

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The documents contained in this compilation are unofficial translations; their completeness and accuracy is not guaranteed. In case of doubt, please consult the original texts published in the Federal Law Gazette.

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# Basic Law for the Federal Republic of Germany

## Article 23

### [European Union – Protection of basic rights – Principle of subsidiarity]

(1) With a view to establishing a united Europe, the Federal Republic of Germany shall participate in the development of the European Union that is committed to democratic, social and federal principles, to the rule of law, and to the principle of subsidiarity, and that guarantees a level of protection of basic rights essentially comparable to that afforded by this Basic Law. To this end the Federation may transfer sovereign powers by a law with the consent of the Bundesrat. The establishment of the European Union, as well as changes in its treaty foundations and comparable regulations that amend or supplement this Basic Law, or make such amendments or supplements possible, shall be subject to paragraphs (2) and (3) of Article 79.

(1a) The Bundestag and the Bundesrat shall have the right to bring an action before the Court of Justice of the European Union to challenge a legislative act of the European Union for infringing the principle of subsidiarity. The Bundestag is obliged to initiate such an action at the request of one fourth of its Members. By a statute requiring the consent of the Bundesrat, exceptions from the first sentence of paragraph (2) of Article 42, and the first sentence of paragraph (2) of Article 52, may be authorised for the exercise of the rights granted to the Bundestag and the Bundesrat under the contractual foundations of the European Union.

(2) The Bundestag and, through the Bundesrat, the *Länder* shall participate in matters concerning the European Union. The Federal Government shall keep the Bundestag and the Bundesrat informed, comprehensively and at the earliest possible time.

(3) Before participating in legislative acts of the European Union, the Federal Government shall provide the Bundestag with an opportunity to state its position. The Federal Government shall take the position of the Bundestag into account during the negotiations. Details shall be regulated by a law.

(4) The Bundesrat shall participate in the decision-making process of the Federation insofar as it would have been competent to do so in a comparable domestic matter, or insofar as the subject falls within the domestic competence of the *Länder*.

(5) Insofar as, in an area within the exclusive competence of the Federation, interests of the *Länder* are affected, and in other matters, insofar as the Federation has legislative power, the Federal Government shall take the position of the Bundesrat into account. To the extent that the legislative powers of the *Länder*,

the structure of *Land* authorities, or *Land* administrative procedures are primarily affected, the position of the Bundesrat shall be given the greatest possible respect in determining the Federation's position consistent with the responsibility of the Federation for the nation as a whole. In matters that may result in increased expenditures or reduced revenues for the Federation, the consent of the Federal Government shall be required.

(6) When legislative powers exclusive to the *Länder* concerning matters of school education, culture or broadcasting are primarily affected, the exercise of the rights belonging to the Federal Republic of Germany as a member state of the European Union shall be delegated by the Federation to a representative of the *Länder* designated by the Bundesrat. These rights shall be exercised with the participation of, and in coordination with, the Federal Government; their exercise shall be consistent with the responsibility of the Federation for the nation as a whole.

(7) Details regarding paragraphs (4) to (6) of this Article shall be regulated by a law requiring the consent of the Bundesrat.

## **Article 45**

### **[Committee on the European Union]**

The Bundestag shall appoint a Committee on the Affairs of the European Union. It may authorise the committee to exercise the rights of the Bundestag under Article 23 vis-à-vis the Federal Government. It may also empower it to exercise the rights granted to the Bundestag under the contractual foundations of the European Union.

# **Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (Cooperation Act)**

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

## **Section 1**

### **Participation of the Bundestag**

(1) In matters concerning the European Union, the Bundestag shall participate in the decision-making processes of the Federation and shall have the right to state its position. The Federal Government shall notify the Bundestag of such matters comprehensively and as early as possible.

(2) Matters concerning the European Union within the meaning of Article 23 of the Basic Law are, in particular, amendments to the Treaties and corresponding amendments at the level of primary law as well as legislative acts of the European Union. International agreements and intergovernmental arrangements are also matters concerning the European Union if they supplement, or are otherwise closely related to, the law of the European Union.

## **Section 2**

### **Committee on the Affairs of the European Union**

The Bundestag shall appoint a Committee on the Affairs of the European Union. The Bundestag may authorise the Committee to deliver opinions on its behalf. It may authorise the Committee to exercise the rights granted to the Bundestag by Article 23 of the Basic Law in relation to the Federal Government. It may also authorise it to exercise the rights granted to the Bundestag by the contractual foundations of the European Union.

## **Section 3**

### **Notification principles**

(1) The Federal Government shall notify the Bundestag comprehensively, as early as possible and continuously of matters concerning the European Union. This notification shall, in principle, be made in writing through the forwarding of documents or the presentation of the Federal Government's own reports and, in addition, orally. The oral notification shall perform a merely supplementary and explanatory function. The Federal Government shall ensure that this notification serves to enable the Bundestag to deliberate on its content.

(2) The notification shall cover, in particular, the Federal Government's decision-making process, the preparation and course of discussions within the institutions

of the European Union and the opinions of the European Parliament, of the European Commission and of the other Member States of the European Union as well as the decisions that have been taken. The same shall also apply to all preparatory bodies and working groups.

(3) The duty of notification shall also encompass the preparation and course of discussions at informal ministerial meetings, at euro summits and at meetings of the Eurogroup and of comparable institutions that are held on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union. The same shall also apply to all preparatory bodies and working groups.

(4) The core area of the Federal Government's own executive responsibility shall not be affected by the duty of notification.

(5) The Bundestag may waive its right to receive notification in specific cases, unless a parliamentary group or five per cent of the Members of the Bundestag lodge an objection.

#### **Section 4**

##### **Transmission of documents and reporting obligations**

(1) The notification of the Bundestag under section 3 of this Act shall be effected in particular through the transmission of all of the following items received by the Federal Government

1. documents
  - a. of the institutions of the European Union, the informal ministerial meetings, the Committee of Permanent Representatives and other Council committees and working groups,
  - b. of the euro summits, the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union,
  - c. of all bodies and working groups performing preparatory tasks for the institutions referred to in items a and b above,
2. reports from the Permanent Representation of the Federal Republic of Germany to the European Union or from the Federal Government concerning:
  - a. meetings of the institutions referred to in subparagraph 1 above,
  - b. sittings of the European Parliament and meetings of its committees,
  - c. the convening of trialogues and their proceedings and outcome, and
  - d. decisions of the European Commission.

The Bundestag must be informed in advance and in sufficiently good time to form an opinion on the subject of the meetings and on the position of the Federal Government and to be able to influence the negotiating line and voting decisions of the Federal Government. Reports of meetings must present at least the positions adopted by the Federal Government and other states, the course of



negotiations, intermediate findings and final outcomes as well as any decisions for which parliamentary approval is required.

(2) In addition, the Federal Government shall transmit to the Bundestag:

1. documents and information on the Federal Government's initiatives, opinions, contributions to consultations, draft programmes and explanations for institutions of the European Union, for informal ministerial meetings, for euro summits and for the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union,
2. relevant initiatives, opinions, contributions to consultations and explanations from governments of Member States of the European Union,
3. relevant initiatives, opinions, contributions to consultations and explanations from the Bundesrat and the *Länder*, and
4. coordinated instructions for the German representative on the Committee of Permanent Representatives.

The same shall also apply to all preparatory bodies and working groups.

(3) The Federal Government shall communicate information about unofficial documents it has received on matters concerning the European Union and shall make these available on request as early as possible.

(4) Before meetings of the European Council and of the Council, informal ministerial meetings, euro summits and meetings of the Eurogroup and comparable institutions that meet on the basis of international agreements and other arrangements which complement or are otherwise particularly closely related to the law of the European Union, the Federal Government shall notify the Bundestag of each subject of discussion in writing and orally. This notification shall encompass the main features of the subject matter and of the state of negotiations as well as the negotiating line of the Federal Government and its initiatives. After these meetings, the Federal Government shall provide written and oral information on their outcome.

(5) The Federal Government shall regularly transmit to the Bundestag, on at least a quarter-yearly basis, early-warning reports on current political developments in matters concerning the European Union.

(6) The Federal Government shall also notify the Bundestag:

1. of the institution of infringement proceedings under Articles 258 and 260 of the Treaty on the Functioning of the European Union by transmitting letters of formal notice and reasoned opinions as well as explanatory information and documents, particularly the response of the Federal Government, in so far as the proceedings concern the failure of the Federation to transpose directives or its incomplete or incorrect transposition of directives,

2. of proceedings before the Court of Justice of the European Union to which the Federal Republic of Germany is a party and shall transmit the pertinent documents relating to such proceedings, and
3. of other proceedings before the Court of Justice of the European Union and shall transmit the pertinent documents in so far as it has received them.

## **Section 5**

### **Projects of the European Union**

(1) Projects of the European Union ('projects') within the meaning of this Act are, in particular:

1. proposals and initiatives for decisions to open negotiations on amendments to the contractual foundations of the European Union,
2. proposals and initiatives for decisions to open negotiations with a view to preparing accessions to the European Union,
3. proposals and initiatives for decisions within the meaning of Article 140(2) of the Treaty on the Functioning of the European Union on the introduction of the euro. proposals for legislative acts of the European Union,
4. proposals for legislative acts of the European Union,
5. negotiating mandates for the European Commission to engage in negotiations on international agreements of the European Union,
6. items for discussion, initiatives, negotiating mandates and negotiation guidelines for the European Commission in the framework of the common commercial policy and the world trade rounds,
7. communications, opinions, green and white papers and recommendations from the European Commission,
8. reports, action plans and policy programmes of the institutions of the European Union,
9. interinstitutional arrangements concluded by the institutions of the European Union,
10. budgetary and financial plans of the European Union,
11. draft international agreements and other arrangements if they supplement, or are otherwise closely related to, the law of the European Union,
12. items for discussion, proposals and initiatives being addressed in the framework of international agreements and arrangements within the meaning of subparagraph 11 above.

(2) Proposals and initiatives of the European Union for which the participation of the Bundestag is required under the Responsibility for Integration Act (*Integrationsverantwortungsgesetz*) of 22 September 2009 (Federal Law Gazette I, p. 3022), as amended, are also projects within the meaning of the present Act.

(3) The following provisions shall apply to the matters specified below:

1. notwithstanding the provisions of sections 1 to 4 of the present Act, the provisions of the ESM Financing Act (*ESM-Finanzierungsgesetz*) of 13 September 2012 (Federal Law Gazette I, p. 1918), as amended, shall apply to the European Stability Mechanism;

2. notwithstanding the provisions of sections 1 to 4 of the present Act, the provisions of the Stabilisation Mechanism Act (*Stabilisierungsmechanismusgesetz*) of 22 May 2010 (Federal Law Gazette I, p. 627), as amended, shall apply to the European Financial Stability Facility;
3. section 7 of the present Act shall apply to the Common Foreign and Security Policy and the Common Security and Defence Policy.

## **Section 6**

### **Formal forwarding, report form and comprehensive appraisal, conclusion of EU legislative procedures**

(1) The Federal Government shall transmit all projects to the Bundestag with a forwarding letter (formal forwarding). The forwarding letter shall be based on the document to be forwarded and contain the following information:

1. the main substance and aim of the project,
2. the date on which the German-language version of the relevant document appeared,
3. the legal basis,
4. the applicable procedure, and
5. the designation of the lead federal ministry.

(2) Within two weeks following the formal forwarding of a project, the Federal Government shall transmit a report in accordance with the annex to this Act (report form). In particular, this form shall contain an appraisal of the project in terms of its compatibility with the principles of subsidiarity and proportionality.

(3) In addition, the Federal Government shall transmit a comprehensive appraisal of proposals for legislative acts of the European Union within two weeks following their referral to the Bundestag committees but no later than the start of their discussion by the Council bodies. Besides indications regarding the competence of the European Union to adopt the proposed legislative act and its compatibility with the principles of subsidiarity and proportionality, this appraisal shall, in the framework of a comprehensive assessment of the impact on the Federal Republic of Germany, contain statements, particularly in the light of legal, economic, financial, social and environmental considerations, on the substance of the regulatory provisions, alternatives, costs, administrative implications and the need for transposition. In the case of other projects within the meaning of section 5(1) of this Act, a comprehensive appraisal of the project shall be made solely on request.

(4) In the case of urgent proposals, the time limits defined in paragraphs 2 and 3 above shall be shortened so as to ensure timely notification of the Bundestag and the opportunity for the latter to deliver an opinion in accordance with the first sentence of section 8(1) of this Act. If a particularly extensive appraisal is required, the time limit may be lengthened.

(5) In addition, the Federal Government shall draw up detailed reports on request on particularly complex or significant projects.

(6) The Federal Government shall notify the Bundestag of the conclusion of a legislative procedure of the European Union; this notification shall also contain an appraisal as to whether the Federal Government considers the legislative act to be consistent with the principles of subsidiarity and proportionality; in the case of directives, the Federal Government shall inform the Bundestag of time limits to be observed for transposition into national law and of the transposition requirement.

## **Section 7**

### **Common Foreign and Security Policy and Common Security and Defence Policy**

(1) In the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy, the Federal Government shall provide comprehensive, continuous notification as early as possible. The notification shall, as a rule, be made in writing. It shall comprise the forwarding of a summary of the legislative acts that are due to be the subject of discussion, an appraisal of them and a prognosis of the future course of discussions. Section 4(4) shall apply, *mutatis mutandis*, to meetings of the European Council and the Council featuring decisions and conclusions in the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy.

(2) In addition, the Federal Government shall forward to the Bundestag, on request, documents of fundamental importance in accordance with the provisions of section 6(1) of this Act. Section 6(2) of this Act shall apply, *mutatis mutandis*.

(3) The Federal Government shall also provide continuous and early oral notification of all relevant developments in the realm of the Common Foreign and Security Policy and the Common Security and Defence Policy.

(4) The Federal Government shall notify the competent committees of the Bundestag orally about the meetings of the Political and Security Committee.

## **Section 8**

### **Opinions of the Bundestag**

(1) Before participating in projects, the Federal Government shall give the Bundestag the opportunity to deliver an opinion. To this end, the Federal Government shall continuously transmit to the Bundestag updated information on the course of discussions which will enable the Bundestag to determine, on the basis of the course of the discussions, the time by which it seems appropriate to deliver an opinion.

(2) If the Bundestag delivers an opinion, the Federal Government shall use it as a basis for its negotiation. The Federal Government shall notify the Bundestag continuously about the consideration given to its opinion in negotiations.

(3) The Bundestag may adapt and supplement its opinion while a project is being discussed. The first sentence of paragraph 2 above shall apply, *mutatis mutandis*.

(4) If the Bundestag avails itself of the opportunity to deliver an opinion under the first sentence of Article 23(3) of the Basic Law (Grundgesetz), the Federal Government shall invoke the requirement of prior parliamentary approval in the negotiations if the main interests expressed in the decision of the Bundestag cannot be asserted. The Federal Government shall notify the Bundestag thereof without delay in a special report. In its form and content, this report must lend itself to discussion by the bodies of the Bundestag. Before the final decision, the Federal Government shall endeavour to reach agreement with the Bundestag. This shall also apply if the Bundestag delivers an opinion on matters concerning municipal services of public interest in connection with projects of the European Union. The foregoing provisions shall not prejudice the right of the Federal Government, in awareness of the Bundestag's opinion, to take divergent decisions for good reasons of foreign or integration policy.

(5) After the final decision, the Federal Government shall notify the Bundestag in writing without delay, particularly as regards the adoption of the parliamentary opinion. If not all of the interests expressed in the opinion have been taken into account, the Federal Government shall also state the reasons for this. At the request of one quarter of the Members of the Bundestag, the Federal Government shall also explain these reasons in the framework of a plenary debate.

## **Section 9**

### **Opening of negotiations on accessions and treaty amendments**

(1) When notifying the Bundestag of proposals and initiatives for decisions on the opening of negotiations

1. to prepare an accession to the European Union, or
2. to make amendments to the contractual foundations of the European Union, the Federal Government shall refer to the Bundestag's right to deliver an opinion under section 8 of this Act.

(2) Before the final decision in the Council or in the European Council, the Federal Government is to reach agreement with the Bundestag. This shall not prejudice the right of the Federal Government, in awareness of the Bundestag's opinion, to take divergent decisions for good reasons of foreign or integration policy.

## **Section 9a**

### **Introduction of the euro in a Member State**

(1) When notifying the Bundestag of proposals and initiatives for Council decisions under Article 140(2) of the Treaty on the Functioning of the European Union on the introduction of the euro in an additional Member State, the Federal Government shall refer to the Bundestag's right to deliver an opinion under section 8 of this Act.

(2) Before the final decision in the Council, the Federal Government is to reach agreement with the Bundestag. This shall not prejudice the right of the Federal

Government, in awareness of the Bundestag's opinion, to take divergent decisions for good reasons of foreign or integration policy.

## **Section 10**

### **Access to databases, confidential treatment of documents**

(1) Within the scope of the provisions on data protection, the Federal Government shall grant the Bundestag access to the documentary databases of the European Union that are accessible to the Federal Government.

(2) The documents of the European Union shall, in principle, be transmitted openly. Security classifications applied by the institutions of the European Union to ensure special confidentiality shall be respected by the Bundestag. Any national classification as confidential which may be necessary for these documents or for other information, reports and communications to be transmitted to the Bundestag within the scope of this Act shall be applied prior to dispatch by the Federal Government and shall be respected by the Bundestag. The reasons for the classification shall be explained on request.

(3) The Bundestag shall take account of the particular need to protect current confidential negotiations by according them confidential treatment.

## **Section 11**

### **Bundestag Liaison Office**

(1) The Bundestag may maintain direct contacts with bodies of the European Union through a liaison office in so far as this enables it to exercise its participatory rights in matters concerning the European Union. The parliamentary groups in the Bundestag shall second representatives to the liaison office.

(2) The Federal Government shall assist the Bundestag Liaison Office in its professional tasks through the Permanent Representation of the Federal Republic of Germany to the European Union and the Embassy of the Federal Republic of Germany to the Kingdom of Belgium.

## **Section 12**

### **Entry into force, termination**

This Act shall enter into force on the day following the date of promulgation. At the same time, the Act of 12 March 1993 on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (Federal Law Gazette I, p. 311), as amended by Article 2 of the Act of 13 September 2012 (Federal Law Gazette 2012 II, p. 1006), shall terminate.

# **Act on the Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union (Responsibility for Integration Act)**

**(Gesetz über die Wahrnehmung der Integrationsverantwortung des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union; Integrationsverantwortungsgesetz - IntVG)**

## **Section 1 Responsibility for integration**

(1) In matters concerning the European Union, the Bundestag and the Bundesrat shall exercise their responsibility for integration primarily on the basis of the following provisions.

(2) The Bundestag and the Bundesrat shall deliberate and take decisions in good time on the proposals referred to in this Act and, in so doing, shall take account of the relevant time limits for the adoption of decisions by the European Union.

## **Section 2 Simplified revision procedure for the Treaties**

Approval by the Federal Republic of Germany of a decision of the European Union within the meaning of Article 48(6), second and third subparagraphs, of the Treaty on European Union shall take the form of a law as defined in Article 23(1) of the Basic Law (Grundgesetz).

## **Section 3 Special revision procedure for the Treaties**

(1) Approval by the Federal Republic of Germany of a decision of the Council within the meaning of the second sentence of Article 218(8), second subparagraph, or within the meaning of Article 311, third paragraph, of the Treaty on the Functioning of the European Union shall take the form of a law as defined in Article 23(1) of the Basic Law.

(2) Paragraph 1 above shall also apply to provisions enacted by the Council under Article 25, second paragraph, Article 223(1), second subparagraph, or Article 262 of the Treaty on the Functioning of the European Union.

(3) The German representative in the European Council may approve a proposal for a decision within the meaning of the second sentence of Article 42(2), first subparagraph, of the Treaty on European Union or abstain from voting on such a

proposal only after the Bundestag has taken a decision to that effect. The Federal Government may also table a motion in the Bundestag to that end. In the absence of such a decision by the Bundestag, the German representative in the European Council must reject the proposal for a decision. Once a decision of the European Council within the meaning of the second sentence of Article 42(2), first subparagraph, of the Treaty on European Union has been taken, approval by the Federal Republic of Germany shall take the form of a law as defined in Article 23(1) of the Basic Law.

#### **Section 4**

##### **Bridging clauses**

(1) The German representative in the European Council may approve a proposal for a decision within the meaning of Article 48(7), first subparagraph, first sentence, or second subparagraph, of the Treaty on European Union or abstain from voting on such a proposal only after a law to that effect as defined in Article 23(1) of the Basic Law has entered into force. In the absence of such a law, the German representative in the European Council must reject the proposal for a decision.

(2) The German representative in the Council may approve a proposal for a decision within the meaning of Article 81(3), second subparagraph, of the Treaty on the Functioning of the European Union or abstain from voting on such a proposal only after a law to that effect as defined in Article 23(1) of the Basic Law has entered into force. In the absence of such a law, the German representative in the European Council must reject the proposal for a decision.

#### **Section 5**

##### **Approval in the European Council in the case of special bridging clauses**

(1) The German representative in the European Council may approve a proposal for a decision within the meaning of Article 31(3) of the Treaty on European Union or Article 312(2), second subparagraph, of the Treaty on the Functioning of the European Union or abstain from voting on such a proposal only after the Bundestag has taken a decision to that effect. The Federal Government may also table a motion in the Bundestag to that end. In the absence of such a decision by the Bundestag, the German representative in the European Council must reject the proposal for a decision.

(2) In addition to the decision of the Bundestag, the Bundesrat must also have taken a corresponding decision if areas of activity are affected

1. for which no federal legislative competence exists,
2. in which the Länder are empowered to legislate by virtue of Article 72(2) of the Basic Law,
3. in which the Länder may adopt divergent provisions under Article 72(3) or Article 84(1) of the Basic Law, or
4. the regulation of which by means of a federal law requires the consent of the Bundesrat.



## **Section 6**

### **Approval in the Council in the case of special bridging clauses**

(1) The German representative in the Council may approve a proposal for a decision within the meaning of Article 153(2), fourth subparagraph, Article 192(2), second subparagraph, or Article 331(1) or (2) of the Treaty on the Functioning of the European Union or abstain from voting on such a proposal only after the Bundestag has taken a decision to that effect. The second and third sentences of section 5(1) of this Act shall apply, *mutatis mutandis*.

(2) Section 5(2) of this Act shall apply, *mutatis mutandis*.

## **Section 7**

### **Competence clause**

(1) The German representative in the Council may approve a proposal within the meaning of Article 83(1), third subparagraph, or Article 86(4) of the Treaty on the Functioning of the European Union or abstain from voting on such a proposal only after a law to that effect as defined in Article 23(1) of the Basic Law has entered into force. In the absence of such a law, the German representative in the Council must reject the proposal for a decision.

(2) Paragraph 1 above shall apply, *mutatis mutandis*, to amendments to the Statute referred to in Article 308, third paragraph, of the Treaty on the Functioning of the European Union.

## **Section 8**

### **Flexibility clause**

The German representative in the Council may approve a decision on the adoption of measures within the meaning of Article 352 of the Treaty on the Functioning of the European Union or abstain from voting on such a decision only after a law to that effect as defined in Article 23(1) of the Basic Law has entered into force. In the absence of such a law, the German representative in the Council must reject the proposal for a decision.

## **Section 9**

### **Emergency brake mechanism**

(1) In the cases referred to in the first sentence of Article 48, second paragraph, in the first sentence of Article 82(3), first subparagraph, and in the first sentence of Article 83(3), first subparagraph, of the Treaty on the Functioning of the European Union, the German representative in the Council must table a motion that the matter be referred to the European Council if the Bundestag has adopted a decision instructing him or her to do so.

(2) If areas of activity within the meaning of section 5(2) of this Act are primarily affected, the German representative in the Council must table a motion in

accordance with paragraph 1 above, even if a decision to that effect has already been taken by the Bundesrat.

## **Section 10**

### **Right of rejection in the case of bridging clauses**

(1) The following provisions shall apply to the rejection of a European Council initiative within the meaning of Article 48(7), third subparagraph, of the Treaty on European Union:

1. If an initiative relates primarily to an area in which exclusive legislative competence lies with the Federation, the Bundestag may decide that the initiative is to be rejected.
2. In all other cases, the Bundestag or the Bundesrat may decide that the initiative is to be rejected.

(2) The President of the Bundestag or the President of the Bundesrat shall notify the Presidents of the competent institutions of the European Union of the rejection of the initiative and shall inform the Federal Government accordingly.

(3) Paragraphs 1 and 2 above shall apply, *mutatis mutandis*, to proposals from the European Commission for a decision of the Council within the meaning of Article 81(3), third subparagraph, of the Treaty on the Functioning of the European Union.

## **Section 11**

### **Subsidiarity objection**

(1) In their Rules of Procedure, the Bundestag and the Bundesrat may stipulate how a decision on the delivery of a reasoned opinion in accordance with Article 6 of the Protocol on the application of the principles of subsidiarity and proportionality is to be obtained.

(2) The President of the Bundestag or the President of the Bundesrat shall transmit the reasoned opinion to the Presidents of the competent institutions of the European Union and shall inform the Federal Government accordingly.

## **Section 12**

### **Subsidiarity action**

(1) At the request of one quarter of its Members, the Bundestag is required to bring an action under Article 8 of the Protocol on the application of the principles of subsidiarity and proportionality. At the request of one quarter of the Members of the Bundestag who do not support the bringing of the action, their view shall be made clear in the application.

(2) In its Rules of Procedure, the Bundesrat may stipulate how a decision on the bringing of an action within the meaning of paragraph 1 above is to be obtained.

(3) The Federal Government shall make the application without delay to the Court of Justice of the European Union on behalf of the institution that has taken the decision to bring an action under paragraph 1 or paragraph 2 above.

(4) The institution that has decided to bring the action under paragraph 1 or paragraph 2 above shall assume responsibility for conducting the proceedings before the Court of Justice of the European Union.

(5) If a motion is tabled in the Bundestag or the Bundesrat for the bringing of an action under paragraph 1 or paragraph 2 above, the other institution may deliver an opinion.

### **Section 13**

#### **Notification**

(1) The Federal Government shall notify the Bundestag and the Bundesrat comprehensively, as early as possible, continuously and, as a rule, in writing of matters pertaining to this Act. The foregoing provision is without prejudice to details of the notification obligations arising from the Act of 12 March 1993 on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (Federal Law Gazette I, p. 311), as amended by Article 2(1) of the Act of 17 November 2005 (Federal Law Gazette I p. 3178), from the Act of 12 March 1993 on cooperation between the Federation and the Länder in Matters concerning the European Union (Federal Law Gazette I, p. 313), as amended by Article 2 of the Act of 5 September 2006 (Federal Law Gazette. I p. 2098), and from other provisions.

(2) The Federal Government shall notify the Bundestag and the Bundesrat if a matter is referred to the Council in preparation for an initiative of the European Council under Article 48(7) of the Treaty on European Union. The same shall apply if the European Council has taken such an initiative. The Federal Government shall notify the Bundestag and the Bundesrat of proposals made by the European Commission under Article 81(3), second subparagraph, of the Treaty on the Functioning of the European Union.

(3) Within two weeks of forwarding initiatives, proposals or decisions relating to the foregoing provisions, the Federal Government shall transmit to the Bundestag and the Bundesrat a comprehensive explanation of their implications for the contractual foundations of the European Union and an assessment of their necessity in terms of integration policy and their impact on such policy. The Federal Government shall also explain:

1. whether a law as defined in the first or second sentence of Article 23(1) of the Basic Law is required for the participation of the Bundestag and the Bundesrat;
2. whether, in the event of the procedure under section 9 of the present Act being an option:
  - a. draft legislative acts within the meaning of Article 48, first paragraph, of the Treaty on the Functioning of the European Union would affect important aspects of the German social-security system, including its

scope, cost or financial structure, or would affect the financial balance of that system,

b. draft legislative acts under Article 82(2) or Article 83(1) or (2) of the Treaty on the Functioning of the European Union would affect fundamental aspects of the German criminal-justice system.

(4) In the case of urgent proposals, the time limit defined in paragraph 3 above shall be shortened so as to ensure that the Bundestag and the Bundesrat can deal with them in a manner commensurate with their responsibility for integration. If a particularly extensive appraisal is required, the time limit may be lengthened.

(5) The Federal Government shall notify the Bundestag and the Bundesrat in writing without delay of any request made by another Member State in the Council under the first sentence of Article 48, second paragraph, the first sentence of Article 82(3), first subparagraph, or the first sentence of Article 83(3), first subparagraph, of the Treaty on the Functioning of the European Union. This notification shall include the Member State's reasons for its request.

(6) The Federal Government shall transmit a comprehensive appraisal of proposals for legislative acts of the European Union within two weeks following their referral to the Bundestag committees but no later than the start of their discussion by the Council bodies. This appraisal shall contain indications regarding the competence of the European Union to adopt the proposed legislative act and its compatibility with the principles of subsidiarity and proportionality.

(7) The Federal Government shall notify the Bundestag and the Bundesrat as early as possible of the conclusion of legislative procedures of the European Union; this notification shall also contain an assessment as to whether the Federal Government considers the legislative act to be compatible with the principles of subsidiarity and proportionality.

# **Act on Financial Participation in the European Stability Mechanism (ESM Financing Act)**

**(Gesetz zur finanziellen Beteiligung am Europäischen Stabilitätsmechanismus – ESMFinG)**

## **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;
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 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 of a Contracting Party includes financial assistance to an institution aiming at stabilising the financial sector when sector-specific conditionality is guaranteed, no direct bank risks are assumed and repayment is secured through a guarantee by 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 and the approval of a corresponding

Memorandum of Understanding pursuant to Article 13 paragraph 4 of the Treaty Establishing the European Stability Mechanism,

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 Mechanism shall remain unaffected.

(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 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(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 is 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 amendment of guidelines on the modalities for implementing individual financial assistance facilities pursuant to Articles 14 to 18 of the Treaty Establishing the European Stability Mechanism, the pricing guidelines pursuant to Article 20 paragraph 2 of the Treaty Establishing the European Stability Mechanism, the guidelines for borrowing operations pursuant to Article 21 paragraph 2 of the Treaty Establishing the European Stability Mechanism, the investment policy guidelines pursuant to Article 22 paragraph 1 of the Treaty Establishing the European Stability Mechanism, the 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 also may 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 the 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 the 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 nominate 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 Act 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 the 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.

(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 under 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 ESM representatives nominated 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 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 Union and the rights of the Bundesrat arising from the Act on Cooperation between the Federation and the *Länder* in Matters Concerning the European Union remain unaffected.

## **Section 8**

### **Entry into force**

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