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Bill Digest

Finance (European Stability Mechanism and Single Resolution Fund) Bill 2021

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Abstract

The Finance (European Stability Mechanism and Single Resolution Fund) Bill (the Bill) is a short technical Bill. The primary purpose of this legislation is to seek the approval of the Oireachtas to ratify amending agreements to both the European Stability Mechanism (ESM) Treaty and the Single Resolution Fund (SRF) Intergovernmental Agreement (IGA).

Tithe an Oireachtais
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Contents

This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2021, *L&RS Bill Digest: Finance (European Stability Mechanism and Single Resolution Fund) Bill 2021.*

Legal Disclaimer

Abbreviations

Abbreviations in Bill Digest	
DRI	Direct Recapitalisation Instrument
ECB	European Central Bank
ECCL	Enhanced Conditions Credit Line
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EMU	Economic and Monetary Union
ESM	European Stability Mechanism
IGA	Intergovernmental Agreement
IMF	International Monetary Fund
LoI	Letter of Intent
MoU	Memorandum of Understanding
PCCL	Precautionary Conditioned Credit Line
SRF	Single Resolution Fund

Introduction

The Finance (European Stability Mechanism and Single Resolution Fund) Bill 2021 (the Bill) was published on the Oireachtas website on Tuesday, 31 August 2021.[1] In a press release accompanying publication of the Bill, the Minister for Finance, Paschal Donohoe TD stated:

> "I welcome the publication of this Bill and look forward to engaging in our national ratification procedure in the Oireachtas. The reform of the ESM Treaty, signed in January, is a crucial stepping-stone on our path to strengthen the Economic Monetary Union and an important complement to our efforts in supporting economic recovery. It will boost confidence in the Euro Area's ability to quell crises before they escalate".[2]

The European Stability Mechanism (ESM) is the permanent crisis management mechanism for the euro area of 19 EU Member States set up in 2012 to provide loans to financially distressed euro area countries. The ESM issues debt instruments (i.e. bonds) to finance loans and other forms of financial assistance to euro area countries.

The Bill's primary purpose is to ratify amending agreements to both the European Stability Mechanism (ESM) Treaty and Single Resolution Fund (SRF) Intergovernmental Agreement (IGA) as noted in the accompanying Explanatory and Financial Memorandum. This ratification is required in order to implement the Eurogroup agreement of 30 November 2020 on ESM Treaty reform and to advance the entry into force of the Common Backstop to the Single Resolution Fund by the beginning of 2022 (two years ahead of schedule).

In addition, the Bill provides for technical amendments to existing legislation. These will update relevant definitions to extend the scope of existing national measures to amending agreements.[3]

The Explanatory and Financial Memorandum notes that the provisions of the Bill are not expected to give rise to any significant additional expenditure for the Exchequer.

The Bill has not been subject to the pre-legislative scrutiny (PLS) process[4] and no General Scheme was published to outline the heads of the Bill.

This Digest provides background, policy context and a summary of the provisions of the Bill. A Bill Briefing page is available here [internal access only].

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[1] This Bill appears on the summer 2021 Legislative Programme as the *European Stability Mechanism (Amendment) Bill* but was later retitled the *Finance (European Stability Mechanism and Single Resolution Fund) Bill 2021*.

[2] Department of Finance press release, *Minister Donohoe publishes the Finance (European Stability Mechanism and Single Resolution Fund) Bill*. 1 September 2021. Available at https://www.gov.ie/en/press-release/750ae-minister-donohoe-publishes-the-finance-european-stability-mechanism-and-single-resolution-fund-bill/

[3] As explained in the Explanatory and Financial Memorandum to the Bill.

[4] See Library & Research Service (2017) *The legislative review loop of Government legislation [infographic]* for more information on the legislative process – available at https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2017/2017-04-10_the-legislative-review-loop-of-government-legislation_en.pdf

Table of provisions

The Bill contains eight sections, as summarised below in table 1.

Table 1: Table of provisions

Section	Title	Effect
1.	Definitions	Provides for the defining of: • the *European Stability Mechanism Act 2012* as the "Act of 2012". • the *European Stability Mechanism (Amendment) Act 2014* as the "Act of 2014". • the *Finance (Miscellaneous Provisions) Act 2015* as the "Act of 2015". • the Agreement amending the Treaty establishing the European Stability Mechanism as the "Amending Agreement". • the Treaty establishing the European Stability Mechanism as the "ESM Treaty". • the Agreement amending the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund as the "Intergovernmental Agreement". • the Minister for Finance as the "Minister".
2.	Approval of terms of Amending Agreement	The Bill, if enacted, provides in this section for the approval of the ratification of the Agreement amending the Treaty establishing the European Stability Mechanism by the Oireachtas.
3.	Amendment of the *European Stability Mechanism Act 2012*	Amends section 1 of the 2012 Act by substituting its definition of "Treaty" with one which defines "Treaty" as being the "ESM Treaty" as amended by the "Amending Agreement" (see Section 1 – Definitions above). This section also amends section 3 of the 2012 Act to provide for changes to Ireland's contributions to the authorised capital stock of the ESM, following the end of the temporary correction period for Slovakia (on 1 January 2021).
4.	Amendment of the *European Stability Mechanism (Amendment) Act 2014*	Section 4 substitutes the definition of "Treaty" in the 2014 Act with " 'Treaty' has the meaning given to it by section 1 (amended by section 3(a) of the *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021*) of the Principal Act.".

Section	Title	Effect
5.	Approval of terms of Intergovernmental Agreement	This section provides for the approval of ratification of the "Intergovernmental Agreement" (the Agreement amending the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund) by the Oireachtas. It also provides for publication of notice of the coming into operation of the IGA by the Minister for Finance.
6.	Amendment of the *Finance (Miscellaneous Provisions) Act 2015*	Amends section 3(1) of the 2015 Act by substituting its definition of "Agreement" with one which defines "Agreement" as being "the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund done at Brussels on 21 May 2014" as amended by the "Intergovernmental Agreement" (see Section 1 – Definitions).
7.	Expenses	This section provides that any expenses incurred by the Minister in the administration of this Act be paid out of moneys provided by the Oireachtas.
8.	Short title, commencement, collective citation and construction	Provides for the short title which may be cited as the *Finance (European Stability Mechanism and Single Resolution Fund) Act 2021*. It also provides that Section 6 shall come into operation on the date from which the Intergovernmental Agreement applies in accordance with Article 5(2) of that Agreement. In addition, it provides for collective citation of the European Stability Mechanism Acts 2012 and 2014 and sections 2, 3 and 4 of this Bill (when enacted) as the European Stability Mechanism Acts 2012 to 2021.

Source: L&RS analysis of the Bill

Policy and legislative context

Introduction to the ESM

The European Stability Mechanism is an intergovernmental organisation for crisis management for its Members – the 19 Member States of the euro area. The purpose of the ESM is to prevent instability in the euro area by providing support through a series of instruments to its Members experiencing (or expecting) financing problems (see figure 1 on page 9).

This permanent rescue fund was set up in 2012 to provide loans to financially distressed euro area countries. The assistance is granted where it is needed to safeguard the financial stability of the entire euro area and of each euro area country.[5] ESM lending is subject to strict conditionality.[6] [7]

Headquartered in Luxembourg, the ESM was established on the basis of the Treaty establishing the European Stability Mechanism[8] and entered into force on 8 October 2012. The ESM is the permanent replacement to the temporary intergovernmental European Financial Stability Facility (EFSF) and the European Commission-administered European Financial Stabilisation Mechanism (EFSM). Whilst euro area countries in need of financial assistance are now expected to turn to the ESM, the EFSM remains in place and can be used if the need arises.[9]

ESM capital and funding

The purpose of the ESM is to provide loans to the 19 euro area Member States facing financial difficulties. This is done conditionally on the implementation of policy measures. In order to provide such assistance, the ESM borrows money on financial markets, and the borrowed money is guaranteed by its capital, as authorised by the Members.[10]

The ESM has a subscribed authorised capital of nearly €705 billion (see table 2 overleaf). This consists of over €80 billion in paid-in capital provided by ESM Members and approximately €624 billion in committed callable capital. Paid-in capital is the portion of the ESM's total capital paid in

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[5] See ESM webpage, *What is the ESM?* available at https://www.esm.europa.eu/content/what-esm

[6] European Central Bank glossary ("European Stability Mechanism (ESM)") available at https://www.ecb.europa.eu/services/glossary/html/glosse.en.html#722

[7] See the ESM website for more information on conditionality:
https://www.esm.europa.eu/assistance/programme-database/conditionality

[8] ESM Treaty - consolidated version is available at https://www.esm.europa.eu/sites/default/files/20150203_-_esm_treaty_-_en.pdf

[9] European Commission webpage, *European Financial Stabilisation Mechanism (EFSM)* available at https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/financial-assistance-eu/funding-mechanisms-and-facilities/european-financial-stabilisation-mechanism-efsm_en#legal-basis

[10] European Parliament Economic Governance Support Unit (EGOV) (2019) *The European Stability Mechanism: Main Features, Instruments and Accountability*. Available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2014/497755/IPOL-ECON_NT(2014)497755_EN.pdf

by ESM Members.[11] The other portion of ESM's capital is committed but will only be called if needed – this capital is 'callable' at any time, in case of need (i.e. the ESM Members commit to provide the corresponding funding at short notice).[12] The ESM lending capacity is capped at €500 billion.

Table 2: ESM capital and lending capacity

Capital	€ bn
Subscribed capital	704.8
Paid -in capital	80.5
Committed callable capital	624 approximately
Breakdown of ESM's lending capacity	
Maximum lending capacity	500
Less loan commitments	89.9
Current lending capacity: 82%	410.1

Source: Figures extracted from ESM webpage, *Explainers* available at https://www.esm.europa.eu/explainers

Ireland has paid-in contributions totalling €1.27 billion transferred in five equal tranches of €254m between July 2012 and the first half of 2014.[13] Paid-in capital refers to the final amount once all of the five instalments have been paid.[14]

Table 3 overleaf provides more information on the paid-in capital contributions of ESM members, detailing the contribution keys, corresponding capital subscription, and amount of paid-in capital. The ESM website[15] explains that the financial contribution of each member to the ESM capital is based on the capital key of the European Central Bank (ECB), which reflects the respective country's share in the total population and gross domestic product (GDP) of the euro area.[16]

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[11] See ESM webpage, *Explainers* available at https://www.esm.europa.eu/explainers

[12] European Parliament Economic Governance Support Unit (EGOV) (2019) *The European Stability Mechanism: Main Features, Instruments and Accountability*.

[13] "*Written answers - European Stability Mechanism*". Minister for Finance. 8 May 2012. Available at https://data.oireachtas.ie/ie/oireachtas/debateRecord/dail/2012-05-08/debate/mul@/main.pdf

[14] European Parliament Economic Governance Support Unit (EGOV) (2019) *The European Stability Mechanism: Main Features, Instruments and Accountability*.

[15] ESM webpage, *Explainers* available at https://www.esm.europa.eu/explainers

[16] The ESM defines "Capital contribution key (ESM)" as "a key specifying the percentage of total capital subscription and of total paid-in capital attributed to each ESM Member".

Table 3: Financial contributions of ESM Members

ESM Member	Contribution key %	Capital subscription (€ bn)	Paid-in capital (€ bn)
Belgium	3.4454	24.28	2.77
Germany	26.8992	189.58	21.66
Estonia	0.1847	1.30	0.14
Ireland	**1.5777**	**11.11**	**1.27**
Greece	2.7910	19.67	2.24
Spain	11.7953	83.13	9.50
France	20.2003	142.37	16.27
Italy	17.7506	125.10	14.29
Cyprus	0.1945	1.37	0.15
Latvia	0.2746	1.93	0.22
Lithuania	0.4063	2.86	0.32
Luxembourg	0.2482	1.74	0.19
Malta	0.0898	0.63	0.07
Netherlands	5.6650	39.92	4.56
Austria	2.7581	19.43	2.22
Portugal	2.4863	17.52	2.00
Slovakia	0.9849	6.94	0.79
Slovenia	0.4670	3.29	0.37
Finland	1.7811	12.55	1.43
Total	**100**	**704.79**	**80.54**

Source: ESM webpage, Explainers available at https://www.esm.europa.eu/explainers (see *Capital Structure/How much paid-in capital have ESM Members contributed?*)

Notes: The ESM website explains that the 17 founding Members of the ESM completed their payment of paid-in capital in April 2014, and new joiners Latvia and Lithuania began their payments in 2014 and 2015, respectively.

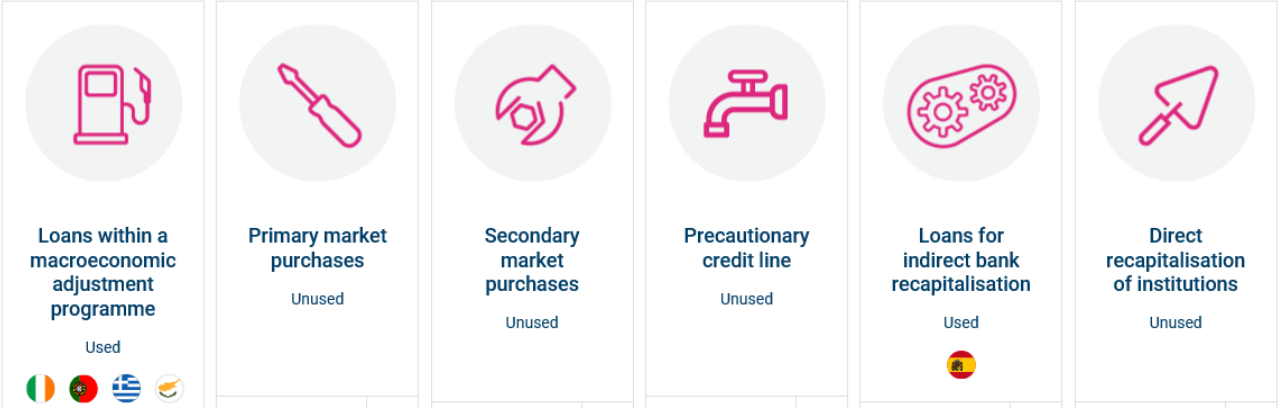
ESM financial assistance

The ESM can provide its Members with the following types of financial assistance:

- Loans to cover their financing needs;
- Loans and direct equity injections to recapitalise financial institutions;
- Primary and secondary debt market purchases of Members' national bonds; and
- Credit lines to be used as precautionary financial assistance.[17]

These are illustrated in Figure 1 below, which also shows the extent to which the different forms of financial assistance has been used to date or not.

Figure 1: ESM lending toolkit



Source: European Stability Mechanism webpage, *Lending toolkit*. Available at https://www.esm.europa.eu/assistance/lending-toolkit

In addition, the ESM Board of Governors approved the Pandemic Crisis Support credit line on 15 May 2020 to address financial implications of the Covid-19 crisis. This is available for ESM Members' direct and indirect health care, cure, and prevention-related costs.[18]

EFSF and ESM programmes

The ESM raises funds by issuing debt instruments, which are purchased by institutional investors. The ESM uses money borrowed from financial markets to finance its loans.

To date, Ireland, Portugal, Greece, Spain and Cyprus have received loans under EFSF and ESM programmes. The details of these programmes are set out in table 4 overleaf. It shows that Ireland exited the EFSF financial assistance programme on 8 December 2013. More information is also available at the programme database of the ESM, which is a repository of data related to the six financial assistance programmes that the EFSF and ESM carried out between 2011 and 2018. Specific information on Ireland's programme can also be found here.

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[17] European Stability Mechanism (2021), *ESM Annual Report 2020*. Available at https://www.esm.europa.eu/sites/default/files/document/esm-annual-report-2020.pdf

[18] European Stability Mechanism (2021), *ESM Annual Report 2020*. Available at https://www.esm.europa.eu/sites/default/files/document/esm-annual-report-2020.pdf

Table 4: EFSF and ESM programme overview

Institution	Country	Date agreed	Date concluded	Amount disbursed	Weighted average maturity	Final maturity
EFSF	Ireland	December 2010	Dec 2013	€17.7bn	20.8 years	2042
EFSF	Portugal	May 2011	May 2014	€26.0bn (€2bn repaid)	20.8 years	2040
EFSF	Greece	March 2012	June 2015	€141.8bn (€10.9 bn EFSF bonds were redelivered)	42.45years	2070
ESM	Spain	July 2012	December 2013	€41.3bn (€17.6bn repaid)	12.5 years	2027
ESM	Cyprus	March 2013	March 2016	€6.3bn	14.9 years	2031
ESM	Greece	August 2015	August 2018	€61.9bn (€2bn repaid)	32.35 years	2060

Source: European Stability Mechanism presentation, January 2021 (p. 56). Available at https://www.esm.europa.eu/sites/default/files/20210111efsfesminvestorpresentation.pdf

History and reform of the ESM

The ESM is currently being reformed to provide a legal basis for the assignment of new tasks to it. This reform of the ESM is part of the wider agenda to deepen Economic and Monetary Union (EMU)[19], including work on completing banking union, which itself is a key component of the EU's EMU.[20] The current reforms are discussed in more detail overleaf.

There have been several other significant developments in relation to ESM reform since its inauguration in October 2012. Key aspects of these are captured in table 5 overleaf. As shown, for example, debate around possible enhancement of the ESM took place in October 2017, when the Eurgroup discussed the possible future roles and tasks of the ESM in the context of the ongoing broader debate on the future of the Economic and Monetary Union. The Heads of State or Government of euro area countries initially endorsed ESM reform, as part of a package of measures to strengthen EMU and to broaden the mandate of the ESM, at the Euro Summit on 14 December 2018.[21] The Eurogroup agreement, on 30 November 2020, to proceed with ESM Reform is discussed in more detail below, given its centrality to this Bill.

[19] In this context, the European Commission presented a package of initiatives on 6 December 2017, intended to increase the unity, efficiency and democratic accountability of the EMU. For more information see European Commission, Questions & Answers: Commission sets out Roadmap for deepening Europe's Economic and Monetary Union (6 December 2017).

[20] This speech by Luis de Guindos, Vice-President of the ECB (in March 2021), for example notes that setting up the banking union was a crucial step in ensuring the stability of the euro area financial system and strengthening EMU.

[21] ESM webpage, *ESM Reform* available at https://www.esm.europa.eu/about-esm/esm-reform

Table 5: Timeline of ESM reform

Date	Event
9 Oct 2017	Eurogroup discusses possible enhancement of ESM
15 Dec 2017	Euro Summit discusses future of EMU and completing banking union
25 June 2018	Centeno's letter highlighting work done in Eurogroup on completing the Banking Union and further developing the ESM
3 Dec 2018	Eurogroup agrees on a comprehensive package for EMU deepening
14 Dec 2018	Euro Summit endorses all elements on the Eurogroup report
13 June 2019	Eurogroup agrees on revised ESM treaty and term sheet on euro-area budgetary instrument
21 June 2019	Euro Summit welcomes progress on deepening EMU
4 Dec 2019	Eurogroup Dec. 4 agreed, in principle, on all elements related to the ESM Reform
30 Nov 2020	The Eurogroup agrees to proceed with ESM Reform
27 Jan 2021	ESM Members sign revised Treaty, entrusting the institution with new tasks

Source: ESM webpage, *ESM Reform* available at https://www.esm.europa.eu/about-esm/esm-reform

The ESM has also been the subject of EU and national court cases during its history to date. Table 6 below provides a summary of relevant EU and national case law for the purposes of providing further information on this aspect of the ESM's history.

Table 6: Relevant EU and national case law

Date	Event
Pringle case, ECJ, 27/11/2012	The European Court of Justice (ECJ) ruled that the ESM is compatible with the Treaty on the Functioning of the EU (TFEU), including the 'no bail out' clause of Article 125: "(...) Article 125 TFEU does not prohibit the granting of financial assistance by one or more Member States to a Member State which remains responsible for its commitments to its creditors, provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy"
German constitutional court ruling on 18/03/2014	The German Federal Constitutional Court ruled, "Despite the liabilities assumed, the budgetary autonomy of the German Bundestag is sufficiently safeguarded. However, arrangements under budgetary law must be made to ensure that possible capital calls pursuant to the ESM Treaty can be met fully and in time within the agreed-upon upper limits".

Source: European Parliament Economic Governance Support Unit (EGOV) (2019) *The European Stability Mechanism: Main Features, Instruments and Accountability*.

Single Resolution Fund

There are two pillars of banking union - a Single Supervisory Mechanism (SSM) and a Single Resolution Mechanism (SRM). The Single Resolution Mechanism is governed by two texts: a Single Resolution Mechanism regulation covering the main aspects of the mechanism and the Intergovernmental Agreement (IGA) related to some specific aspects of the SRF – the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund.

In Ireland, the *Finance (Miscellaneous Provisions) Act 2015* is the legislation which implemented the original IGA on the SRF. Part 2 of the *2015 Act* provides for ratification of the "Intergovernmental Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund done at Brussels on 21 May 2014". Some background to the original IGA is provided below for context:

> "The main purpose of the IGA is to allow the progressive mutualisation /pooling of the SRF over the 8 year period from 2016 – 2024. During the transitional period, there will be national compartments which will be progressively merged. This structure enables the progressive mutualisation of the fund by requiring that in the event of a call upon the SRF, the national compartment of the affected Member State pays first, before, if necessary the other compartments make a contribution. As the transition proceeds, a smaller percentage is taken from the affected national compartment and a greater percentage is taken from other compartments, until after 8 years full mutualisation occurs. From 2024 on, any funds required for the resolution of a bank or banks will come from the SRF as a whole".[22]

Key reforms to the ESM and SRF (agreed in 2020)

This section looks at the current key reforms to the ESM and SRF in more detail. It also provides an overview of the ratification process for the two amending agreements to both the ESM Treaty and the SRF Intergovernmental Agreement (IGA), which are directly related to this Bill.

Eurogroup agreement on reform (November 2020)

The decision of the Eurogroup, on 30 November 2020, to proceed with the reform of the ESM is considered by some to have marked an important step towards completing the banking union[23]. Euro area finance ministers reached political agreement on completing the Treaty reform process at that 2020 Eurogroup meeting.[24] The Heads of State or Government then endorsed this decision at the 11 December 2020 Euro Summit, with the ESM Treaty (the constitutional document that describes the ESM's mandate) to be amended to add new tasks.[25]

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[22] Oireachtas Library & Research Service, 2015, *L&RS Bill Digest: Finance (Miscellaneous Provisions) Bill 2015*. Available at https://ptfs-oireachtas.s3.amazonaws.com/DriveH/AWData/Library2/BillFinance141015_160226.pdf

[23] See for example, European Stability Mechanism presentation, January 2021. Available at https://www.esm.europa.eu/sites/default/files/20210111efsfesminvestorpresentation.pdf

[24] ESM webpage, *ESM Reform* available at https://www.esm.europa.eu/about-esm/esm-reform

[25] ESM (2020) *Quarter 4 2020, Investor Newsletter N° 38 / 16 December 2020*. Available at https://www.esm.europa.eu/investors/esm/investor-newsletter-no.-38

The reform proposals, arising from the Eurogroup agreement (in November 2020), form an important part of the backdrop to this Bill. These can be summarised as follows and are discussed in more detail in the next section of this Bill Digest:

1. Addresses a gap in the Banking Union by empowering the ESM to act as the Common Backstop to the Single Resolution Fund (from January 2022[26]).
2. Further develops the ESM's precautionary financial assistance instruments.
3. Measures aimed at improving the operational effectiveness of the institution.

Key elements of the reform (and the impact of Covid-19)

In the ESM's 2020 Annual Report, Klaus Regling (Managing Director of the ESM) notes, in the context of the Covid-19 crisis that "Europe agreed to reform the ESM, further deepening Economic and Monetary Union" in order to "fortify the euro area against future shocks". The agreement signed by euro area Member States on reforming the ESM Treaty in early 2021 "broadens the ESM mandate to safeguard the common currency, kickstarting the ratification of the reformed ESM Treaty by national parliaments".[27] The reform comprises three key elements, which have been described as follows (emphasis added by author):

- The ESM will serve as the **Common Backstop to the Single Resolution Fund**, the EU agency that resolves failing banks, should the Single Resolution Fund not have sufficient funds. Governments will not need to rescue large banks at the expense of taxpayers, as any money lent by the ESM will be repaid by the banking sector itself.
- The ESM will strengthen the **preventive and precautionary features of its toolkit** to enable rapid implementation of financial facilities in instances of extreme and sudden external shocks. Once implemented, it will be easier for countries to access these **credit lines** without extensive negotiations about policy conditionality when certain requirements are met.
- The ESM will **strengthen its cooperation with the European Commission** and will have **an enhanced role in designing, negotiating, and monitoring future euro area stability programmes**. The European Commission, in charge of policy coordination, will guarantee that EU provisions are always respected and the ESM will ensure that public resources are used effectively and that a borrowing country is able to repay the loans.[28]

Support programmes in the last financial crisis were administered by the 'troika' of the European Commission, the ECB, and the International Monetary Fund (IMF). The third reform above involves an enhanced role for the ESM in the design, negotiation and monitoring of future euro area support programmes in cooperation with the European Commission. The ESM will focus on

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[26] The Eurogroup agreed in 2020 to bring forward implementation of the backstop from 2024 to 2022 given the achievement of sufficient risk reduction in the banking sector.

[27] European Stability Mechanism (2021), *ESM Annual Report 2020*. Available at https://www.esm.europa.eu/sites/default/files/document/esm-annual-report-2020.pdf

[28] European Stability Mechanism (2021), *ESM Annual Report 2020*. Available at https://www.esm.europa.eu/sites/default/files/document/esm-annual-report-2020.pdf

ensuring the efficient allocation of resources and the ability of the recipient Member State to repay the loans, with the Commission ensuring that the policy priorities of the EU are respected.[29]

Ratification process for amending agreements

Following agreement of the Eurogroup on 30 November 2020 to proceed with ESM reform, ESM Members signed the agreement amending the ESM Treaty on 27 January and 8 February 2021, which provides a legal basis for a set of new tasks assigned to the ESM[30]. By doing so, ESM Members launched the ratification process by their parliaments. The extended mandate for the ESM will come into force when all 19 ESM Members ratify the revised ESM Treaty.[31] At the same time, ESM Members also signed the amending agreement for the Single Resolution Fund IGA (establishing the ESM as a backstop to the SRF).

The Eurogroup meeting of 30 November 2020 notes that a process of parallel ratification of the two amending agreements would be pursued where possible, with ratification in any case to allow for the introduction of the Common Backstop at the start of 2022:

> "Member States will strive to complete the process of ratification of the Agreement amending the IGA at the same time as the agreement amending the ESM Treaty, where possible and taking into account their national requirements, and, in any event, as soon as necessary for the early introduction of the Common Backstop by the beginning of 2022".[32]

The Eurogroup has committed to the entry into force of both amending agreements from 1 January 2022. An Irish Government press release to accompany publication of this Bill also notes the commitment of Member States in the euro area to facilitate entry into force of both amending agreements in early 2022:

> "Euro Area Member States have committed to completing their respective national ratification procedures by the end of 2021 to enable the amending agreements to the ESM Treaty and the SRF IGA to enter into force at the beginning of next year".[33]

This Bill, if enacted, will provide the approval of the Oireachtas to ratify amending agreements to both the European Stability Mechanism (ESM) Treaty and the Single Resolution Fund (SRF) Intergovernmental Agreement (IGA).

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[29] Lawler, D. (2021) *Reforming the European Stability Mechanism (ESM): Implications for Financial Stability and Resilience*. Available at https://www.iiea.com/blog/reforming-the-european-stability-mechanism-esm-implications-for-financial-stability-and-resilience

[30] ESM webpage, *ESM Reform* available at https://www.esm.europa.eu/about-esm/esm-reform

[31] European Stability Mechanism (2021), *ESM Annual Report 2020*.

[32] Eurogroup press release, *Statement of the Eurogroup in inclusive format on the ESM reform and the early introduction of the backstop to the Single Resolution Fund*. 30 November 2021. Available at https://www.consilium.europa.eu/en/press/press-releases/2020/11/30/statement-of-the-eurogroup-in-inclusive-format-on-the-esm-reform-and-the-early-introduction-of-the-backstop-to-the-single-resolution-fund/

[33] Department of Finance press release, *Minister Donohoe publishes the Finance (European Stability Mechanism and Single Resolution Fund) Bill*. 1 September 2021. Available at https://www.gov.ie/en/press-release/750ae-minister-donohoe-publishes-the-finance-european-stability-mechanism-and-single-resolution-fund-bill/

A parliamentary question (in December 2020) asked about an examination carried out on the need for a referendum if the proposed changes to the European Stability Mechanism are agreed. In response, the Minister for Finance stated:

> "The Department [of Finance] is satisfied that the State can enter into the treaty to amend the ESM Treaty without submitting it to a referendum. The legal advice received by the Department in relation to this, and all other matters, is privileged".[34]

A table tracking progress on ratification of the "Agreement amending the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund" is available on the Council's website here.

[34] *"Written answers - European Stability Mechanism"*. Minister for Finance. Thursday, 10 December 2020. Available at https://www.oireachtas.ie/en/debates/question/2020-12-10/240/?highlight%5B0%5D=esm

Principal provisions of the Bill

This section of the Digest examines the main provisions of the Bill, which comprises eight sections. A short synopsis of each provision is given in the Table of Provisions (on pages 4-5 of the Digest).

Single Resolution Fund (SRF) IGA Amending Agreement

This section discusses both policy background to the SRF and related provisions of the Bill.

Policy background to the Common Backstop for the SRF

The first of three major reform listed previously (on page 13 of this Digest) will allow the ESM to act as a Common Backstop[35] to the Single Resolution Fund (SRF) and establish a credit line between the ESM and the SRF.[36]

The Single Resolution Fund was established on 1 January 2016 as an EU emergency fund for resolving failing banks in the context of the banking union. The SRF can be used "to ensure the efficient application of resolution tools" for resolving failing banks, after "other options (such as the bail-in tool) have been exhausted".[37]

The SRF is financed by commercial banks. All banks in Member State participating in the banking union[38] must pay a fee annually by law to the SRF (contributions). The SRF offers protection to taxpayers in that "the fund means that taxpayers are not first in line to pump money into a bank, should extra funding be required, since EU law requires all banks to pay into the fund annually".[39] It has been also noted that the "SRF ensures that the financial industry as a whole ensures the stabilisation of the financial system".[40]

It was originally intended that the Common Backstop would be introduced by 1 January 2024. The Eurogroup meeting of 30 November 2020, however, decided to introduce the backstop at the beginning of 2022 following an assessment that sufficient progress had been made in reducing risks in the banking sector (see Monitoring Report on Risk Reduction Indicators, November 2020).

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[35] The terms of reference of the Common Backstop to the Single Resolution Fund (4 December 2018) are available at https://www.consilium.europa.eu/media/37268/tor-backstop_041218_final_clean.pdf and the Term sheet on the European Stability Mechanism reform (4 December 2018) is available at https://www.consilium.europa.eu/media/37267/esm-term-sheet-041218_final_clean.pdf

[36] Lawler, D. (2021) *Reforming the European Stability Mechanism (ESM): Implications for Financial Stability and Resilience*. Available at https://www.iiea.com/blog/reforming-the-european-stability-mechanism-esm-implications-for-financial-stability-and-resilience

[37] Single Resolution Board (SRB) webpage, *The Single Resolution Fund*. Available at https://www.srb.europa.eu/en/content/single-resolution-fund

[38] All euro area Member States are part of the banking union but non-euro area EU Member States can also join the banking union by entering into close cooperation with the ECB – see Banking Union webpage at https://www.consilium.europa.eu/en/policies/banking-union/

[39] Single Resolution Board (SRB) webpage, *The Single Resolution Fund*. Available at https://www.srb.europa.eu/en/content/single-resolution-fund

[40] Single Resolution Board (SRB) webpage, *The Single Resolution Fund*. Available at https://www.srb.europa.eu/en/content/single-resolution-fund

The Common Backstop will replace the existing ESM tool for dealing with bank failures – the Direct Recapitalisation Instrument[41] which was devised during the euro area crisis when banking union was still in its infancy and bank resolution bodies were not yet in place.[42] The DRI for banks will be removed from the ESM's toolkit of financial assistance instruments following establishment of the ESM Common Backstop. [43]

The nominal cap for ESM loans to the SRF is set at €68 billion.[44] The backstop will be a last resort instrument in that the ESM can act as a backstop and lend the necessary funds to the SRF to finance a resolution in cases where the SRF is depleted. Resources for bank resolutions will be significantly increased by introduction of the ESM backstop:

> "The ESM backstop will double the resources available for bank resolutions in the banking union, which are set at 1% of covered deposits of all institutions authorised in the banking union. The backstop facility will work as a revolving credit line".[45]

Loans from the backstop to the SRF will be repaid via contributions from the banking sector over a period of up to five years:

> "If the credit line is used, the SRF will pay back the ESM loan with money from bank contributions within three years, although this period can be extended so that the total maturity is up to five years. As a result, it will be fiscally neutral over the medium term".[46]

Stakeholders and commentators have identified several benefits arising from the introduction of the Common Backstop in the current reforms. For example, the ESM's own website points to the significant increase in the size of the SRF in addition to the position of taxpayers in backstop arrangements:

> "From 2022 onwards the backstop to the SRF will be introduced. This is an additional emergency fund that can be called upon and doubles the size of the SRF. In the first instance, the backstop is provided through public money to provide immediate support and confidence to the market. However, this publicly funded backstop then has to be paid back in the years after its use by all of the banks in the Banking Union, meaning the taxpayer is fully reimbursed".[47]

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[41] More information on the Direct Recapitalisation Instrument is available on the ESM website at https://www.esm.europa.eu/assistance/lending-toolkit and https://www.esm.europa.eu/glossary/D

[42] Mascher, N *et al* (2020) *A backstop to the Single Resolution Fund now!* Available at https://www.esm.europa.eu/blog/backstop-single-resolution-fund-now

[43] ESM webpage, *ESM Treaty Reform – Explainer*. Available at https://www.esm.europa.eu/about-esm/esm-treaty-reform-explainer#ui-id-21

[44] ESM webpage, *ESM Treaty Reform – Explainer*. Available at https://www.esm.europa.eu/about-esm/esm-treaty-reform-explainer#ui-id-21

[45] Nicoletta Mascher, ESM Head of Financial Sector and Market Analysis, Initial remarks for panel discussion "The ESM backstop in practice" European Banking Institute (EBI) webinar Online, 24 February 2021. Available at https://www.esm.europa.eu/speeches-and-presentations/esm-backstop-practice-speech-nicoletta-mascher

[46] ESM webpage, *ESM Treaty Reform – Explainer*. Available at https://www.esm.europa.eu/about-esm/esm-treaty-reform-explainer#ui-id-21

[47] Single Resolution Board (SRB) webpage, *Single Resolution Fund, What is the Single Resolution Fund?* Available at https://www.srb.europa.eu/en/single-resolution-fund

Another ESM source suggests the following benefits as arising from a swift implementation of the backstop at this time, including from the perspective of participating Member States:

> "The backstop is operationally simpler than the bridge financing from domestic sources it replaces, which is prone to amplifying national divergences. It also has the benefit of being fiscally neutral to all member states and its taxpayers since funds will be fully recouped from the banking sector itself.
>
> The new tool better suits current regulation and the overall banking union architecture, while also avoiding the use of taxpayers' money and more efficiently decoupling the damaging sovereign-bank link".[48]

Parallels have been drawn between the Federal Deposit Insurance Corporation (FDIC) in the USA and the SRF, with the suggestion made that the ESM is well placed to fulfil a similar type of role to that played by the US Treasury in the relationship between the FDIC and the Treasury:

> "The first major reform to the ESM Treaty will allow the ESM to act as a **Common Backstop to the Single Resolution Fund (SRF)** and establish a credit line between the ESM and the SRF. This is comparable to the United States where there is a similar instrument to the SRF known as the Federal Deposit Insurance Corporation (FDIC) which has a credit line with the Treasury. Since the euro area does not have a Treasury, it is prudent to ask the ESM to fulfil this role. The SRF is financed by the banking sector but in the event that it becomes depleted, the ESM will now be in a position to lend to it with contributions repaid by the banking sector over three to five years."[49]

Relevant provisions in the Bill

One of the key objectives of this Bill is to seek Oireachtas approval to ratify an amending agreement to the Single Resolution Fund (SRF) Intergovernmental Agreement (IGA) in Ireland.[50] Ratification is required to implement particular aspects of the Eurogroup agreement of November 2020 on ESM Treaty reform and the early introduction of the Common Backstop to the SRF.[51]

Briefing material provided to the L&RS on the Bill explains the purpose of the amending agreement to the SRF is to accelerate access to Common Backstop during the transitional period:

> "As the ESM is being empowered to provide the Common Backstop through the amendments to the ESM Treaty ahead of the end of the 8 year transitional period, the signatories to the SRF Agreement wish to simultaneously lower the thresholds which apply to the Single Resolution Board having recourse to the Common Backstop for additional funding during the transitional period.

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[48] Mascher, N *et al* (2020) *A backstop to the Single Resolution Fund now!* Available at https://www.esm.europa.eu/blog/backstop-single-resolution-fund-now

[49] Lawler, D. (2021) *Reforming the European Stability Mechanism (ESM): Implications for Financial Stability and Resilience*. Available at https://www.iiea.com/blog/reforming-the-european-stability-mechanism-esm-implications-for-financial-stability-and-resilience

[50] The SRF IGA refers to the 2014 Agreement on the transfer and mutualisation of contributions to the Single Resolution fund.

[51] The Statement of the Eurogroup (30 November 2020) notes that "in 2018, we committed to introduce the Common Backstop before the end of 2023 provided that risks in the banking sector have been sufficiently reduced".

> The sole purpose of the SRF Amendment Agreement is to accelerate access to Common Backstop during the transitional period. Accordingly, the only substantive amendment to be made to the SRF Agreement by the Amendment Agreement is to alter the provisions of Article 5, which provides for the functioning of national compartments".[52]

Section 1 of the Bill provides for a number of definitions, including defining the Agreement amending the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund done at Brussels on 27 January 2021 and on 8 February 2021 as the "Intergovernmental Agreement".

Section 5 of the Bill provides for the approval of ratification of the Intergovernmental Agreement (the Agreement amending the Agreement on the Transfer and Mutualisation of Contributions to the SRF) by the Oireachtas. It also provides for publication of notice of the coming into effect of the IGA by the Minister for Finance, in accordance with Article 5(2) of that Agreement, in Iris Oifigiúil and on a website maintained by or on behalf of the Minister or the Government. The Explanatory and Financial Memorandum to the Bill explains that "the purpose of the notice is to signal to banks but also to other Signatories of the Intergovernmental Agreement that the Amendment of the Act of 2015 has come into effect".

Section 6 of the Bill amends the *Finance (Miscellaneous Provisions) Act 2015*, which implemented the original IGA, to give the necessary effect to the SRF amending agreement. Specifically, the reference to "Agreement" in the 2015 Act would be amended to include references to the amending agreement for the SRF (done at Brussels on 27 January 2021 and on 8 February 2021).

The Explanatory and Financial Memorandum to the Bill explains that "some technical amendments to existing legislation will update relevant definitions in order to extend the scope of existing national measures to Amending Agreements".

Section 7 of the Bill provides that any expenses incurred by the Minister for Finance in the administration of this Bill, if enacted, be paid out of moneys provided by the Oireachtas. This includes, as noted by the Explanatory and Financial Memorandum, any expenses related to the publication of notices referred to in section 5 (see above).

However, the Explanatory and Financial Memorandum also notes that the provisions of the Bill are not expected to give rise to "any significant additional expenditure" for the Exchequer.

As previously explained, financial contributions to the ESM are based on the ECB capital key, which reflects each country's share in the total population and GDP of the euro area. The amended Treaty does not envisage any change to this contribution key.[53] Ireland's callable and paid-in capital are detailed in table 3 (on page 8 of this Digest).

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[52] Department of Finance (2021) Finance (European Stability Mechanism and Single Resolution Fund) Bill 2021. Personal correspondence.

[53] Department of Finance (2021) Finance (European Stability Mechanism and Single Resolution Fund) Bill 2021. Personal correspondence.

European Stability Mechanism (ESM) Treaty Amending Agreement

This section discusses both policy background to the other aspects of ESM Treaty reform (other than the introduction of the Common Backstop which is discussed on pages 16-19) and related key provisions in the Bill.

Policy background to the ESM reform

This section looks at the following aspects of ESM reform:

- Reform of the Precautionary Conditioned Credit Line aimed at making it more effective and accessible.
- Greater cooperation between the ESM and the European Commission in future financial assistance programmes.
- Enhancing the ESM debt sustainability framework.

It also provides information on the adjustment of ESM capital contribution keys due to the end of the temporary correction period for Slovakia (on 1 January 2021).

Reform of Precautionary Conditioned Credit Line (PCCL)

There are currently two types of available credit lines in the ESM lending toolkit: a Precautionary Conditioned Credit Line (PCCL) and an Enhanced Conditions Credit Line (ECCL). The PCCL is defined as being available to a Member State whose economic and financial situation is fundamentally sound, as determined by respecting six eligibility criteria such as public debt, external position or market access on reasonable terms.[54] The ECCL is open to euro area Member States whose economic and financial situation remains sound but that do not comply with the eligibility criteria for PCCL.

A Memorandum of Understanding (MoU) is concluded with the programme country in cases where precautionary financial assistance (as described above) is granted. This details the policy conditions to be implemented in exchange for financial assistance.

The second component of ESM reform broadly identified earlier in this Digest deals with the ESM's precautionary credit lines and rules around accessing such financial assistance. Essentially, the PCCL is being reformed with the intention of making it more effective and accessible. Members seeking precautionary financial assistance from the ESM will now a sign a Letter of Intent (LoI) rather than a Memorandum of Understanding. The former states that they will comply with the ESM's eligibility criteria for accessing precautionary credit lines.[55]

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[54] The ESM website further explains that a Precautionary Financial Assistance is a credit line granted to a country whose general economic and financial situation remains sound, with the aim of preventing crisis situations by allowing such a country to access ESM assistance before it experiences difficulties raising funds in capital markets.

[55] Lawler, D. (2021) *Reforming the European Stability Mechanism (ESM): Implications for Financial Stability and Resilience*. Available at https://www.iiea.com/blog/reforming-the-european-stability-mechanism-esm-implications-for-financial-stability-and-resilience

The eligibility criteria[56] include a track record of two years preceding the request for a PCCL with a general government deficit not exceeding 3% of GDP, a general government structural budget balance at or above the country specific minimum benchmark, a debt/GDP ratio below 60% or a reduction in the differential with respect to 60% over the previous two years at an average rate of 1/20 per year.[57]

The rationale for this reform has been outlined in a previous section of this Bill Digest ("Key elements of the reform (and the impact of Covid-19)"), and includes:

- Strengthening the preventive and precautionary features of the ESM toolkit to enable rapid implementation of financial facilities in instances of extreme and sudden external shocks.
- Making it easier, once implemented, for countries to access these credit lines without extensive negotiations about policy conditionality when certain requirements are met.

Role of the ESM in future financial assistance programmes

The amended ESM Treaty provides for greater cooperation between the ESM and the European Commission in future assistance programmes, with the ESM to have an enhanced role in designing, negotiating, and monitoring of conditionality in future euro area stability programmes.

At present, requests for support from one of the ESM's facilities are channelled to the European Commission, which then takes the lead on most operational fronts. The ESM has described its new tasks in future financial assistance programmes:

> "When an ESM Member requests support, the Commission in liaison with the ECB, and the ESM will work closely together to prepare the assessments supporting the decision to grant a loan. These include the assessment of a Member's debt sustainability and repayment capacity, the assessment of financial stability risks, and the financing needs of the Member requesting support. The ESM will perform its analysis and assessment from the perspective of a lender.
>
> The ESM will be involved in the design of policy conditionality and any future Memorandum of Understanding (MoU) detailing the conditionality attached to the financial assistance facility will be signed by both the Commission and the ESM Managing Director.
>
> The ESM will also monitor compliance with the conditionality attached to the financial assistance facility together with the Commission in liaison with the ECB".[58]

Enhancing the ESM debt sustainability framework

The amended ESM Treaty also provides for some changes in relation to its debt sustainability framework. Provision of support only to countries whose debt is considered substantiable will remain a central feature and key operating principle of the ESM following the implementation of these reforms:

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[56] ANNEX III of the revised ESM Treaty deals with Eligibility criteria for ESM precautionary financial assistance.

[57] ESM webpage, *ESM Treaty Reform – Explainer*. Available at https://www.esm.europa.eu/about-esm/esm-treaty-reform-explainer#ui-id-21

[58] ESM webpage, *ESM Treaty Reform – Explainer*. Available at https://www.esm.europa.eu/about-esm/esm-treaty-reform-explainer#ui-id-21

> "The ESM Treaty has since the ESM's inception in 2012 included the requirement that the ESM should only provide stability support to countries whose debt is considered sustainable. The revised ESM Treaty will also require the confirmation of a country's repayment capacity. The assessments on debt sustainability and repayment capacity will be conducted by the European Commission, in liaison with the ECB, and the ESM, on a transparent and predictable basis, while allowing at the same time a sufficient margin of judgement.
>
> No changes are made regarding private sector involvement. The current ESM Treaty already addresses the point of an adequate and proportionate private sector involvement in accordance with long established IMF practice only in exceptional cases. Neither the current ESM Treaty, nor the revised Treaty make debt restructuring automatic".[59]

There are three main elements to enhancing the debt sustainability framework:

1. Introduction of **single-limb Collective Action Clauses (CACs)** for all euro area bond issuances by January 2022 for the purposes of making debt restructuring more orderly and predictable.[60]
2. A **new common methodology for conducting debt sustainability analysis** jointly developed by the European Commission and the ESM.
3. A **potential facilitator role for the ESM** (if so requested by the relevant ESM Member) to facilitate the dialogue between an ESM Member and its private investors on a voluntary, informal, non-binding, temporary, and confidential basis.

Adjustment of ESM capital contribution keys due to the end of the temporary correction period for Slovakia

The ESM website explains that in line with Article 42 of the ESM Treaty, ESM Members "whose GDP per capita is less than 75% of the EU average in the year before their accession to the ESM, benefit from a temporary correction of the capital contribution key for a period of 12 years". Such members benefit from temporarily lower paid-in capital contributions during the correction period while other ESM Members experience temporarily higher paid-in capital contributions as a result:

> "During the correction period, the capital subscription of the ESM Member benefiting from the correction is lower, thus leading to a temporarily lower paid-in capital contribution. Accordingly, during the correction period, the capital subscription of all ESM Members not benefitting from a correction is higher, thus leading to temporarily higher paid-in capital contributions.
>
> As set out in the ESM Treaty, the contribution key for the subscription of ESM authorised capital stock is adjusted when an ESM Member's correction period ends. Authorised capital

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[59] ESM webpage, *ESM Treaty Reform – Explainer*. Available at https://www.esm.europa.eu/about-esm/esm-treaty-reform-explainer#ui-id-21

[60] The ESM website explains that "Collective action clauses are clauses in the documentation of a bond that allow changes to the terms of bonds that are subject to a vote by their holders. If a qualified majority approves the change, it becomes effective for all those bonds. Unlike for companies, there is no bankruptcy or restructuring procedure for sovereign issuers. Therefore, collective action clauses in sovereign bonds help make sovereign debt restructuring more orderly and predictable".

stock and paid-in capital is transferred among ESM Members to reflect the adjusted ESM capital contribution key."[61]

Slovakia is one of a number of the countries to benefit from a temporary correction period.[62] The temporary correction period for Slovakia ended on 1 January 2021. Slovakia's capital contribution key increased from 0.8184% to 0.9849% following the end of its temporary correction period. This entailed a payment of €134,150,000 (€134.15m) by Slovakia which was redistributed to other ESM Members not benefitting from the correction.[63]

The table below shows Ireland's capital contribution keys prior to the end of Slovakia's temporary correction, and the adjusted values, effective from 1 January 2021. It also shows changes in authorised and paid-in capital for Ireland, in addition to the number of shares held by Ireland. Members receive ESM shares corresponding to their subscribed capital.[64]

Table 7: Capital contribution keys of Ireland prior to the end of Slovakia's temporary correction, and the adjusted values, effective from 1 January 2021

Previous ESM Contribution Key (%)	Adjusted ESM Contribution Key (%)	Number of Shares	Capital Subscription - Authorised Capital (€)	Capital Subscription - Paid-In Capital (€)	Reallocations - Authorised Capital (€)	Reallocations - Paid-In Capital (€)
1.5804	1.5777	111,195	11,119,500,000	1,270,800,000	-18,800,000	-2,160,000

Source: ESM webpage, *Adjustment of ESM capital contribution keys due to the end of the temporary correction period for Slovakia*

Relevant provisions in the Bill

The purpose of the Bill is to ratify the amending agreements to the ESM Treaty, along with the amending agreement to the SRF. Relevant provisions in the Bill relating to the amendment of the ESM Treaty are outlined below.

Section 1 of the Bill provides for a number of definitions, including defining:

- The "Amending Agreement" as meaning 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; and
- The "ESM 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

[61] ESM webpage, *Adjustment of ESM capital contribution keys due to the end of the temporary correction period for Slovakia*. Available at https://www.esm.europa.eu/content/adjustment-esm-capital-contribution-keys-due-end-temporary-correction-period-slovakia

[62] In addition to Slovakia, this correction was applied for Malta, Slovenia, Estonia, Latvia and Lithuania.

[63] ESM webpage, *Adjustment of ESM capital contribution keys due to the end of the temporary correction period for Slovakia*.

[64] European Parliament Economic Governance Support Unit (EGOV) (2019) *The European Stability Mechanism: Main Features, Instruments and Accountability*

March 2014 and as further adapted in consequence of the accession of the Republic of Lithuania to it on 3 February 2015.

Section 2 of the Bill provides for the approval of ratification of the Amending Agreement (the Agreement amending the Treaty establishing the European Stability Mechanism) by the Oireachtas.

Section 3 of the Bill provides for the substitution of the definition of "Treaty" in the *European Stability Mechanism Act 2012* with the following:

> " '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.",

This section also amends section 3 of the 2012 Act to provide for changes to Ireland's contributions to the authorised capital stock of the ESM. The Explanatory and Financial Memorandum to the Bill explains that this follows the end of the temporary correction period for Slovakia on 1 January 2021.

Specifically, the Bill amends the *European Stability Mechanism Act 2012*, in section 3 of that Act which provides for payments to the ESM in respect of Ireland's contribution to the ESM's authorised capital stock[65], by providing for the substitution of "€11,119,500,000" for "€11,145,400,000". The former corresponds to the amount of "Capital Subscription - Authorised Capital" for Ireland in table 7 (on page 23 of this Digest), following the end of the temporary correction period for Slovakia (on 1 January 2021).

Section 4 of the Bill provides for an amendment of the *European Stability Mechanism (Amendment) Act 2014* – replacing the definition of "Treaty" in 2014 Act with the following:

> " 'Treaty' has the meaning given to it by section 1 (amended by section 3(a) of the Finance (European Stability Mechanism and Single Resolution Fund) Act 2021) of the Principal Act.".

[65] This provision in the *2012 Act* caps Ireland's share of the authorised capital stock at €11,145,400,000 as set out in Annex II of the ESM Treaty.

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