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SUBJECT Board of Audit in ESM-treaty

After consultation with our colleagues of the German Bundesrechnungshof, we are writing you to express our concern over the current state of affairs regarding the Board of Audit in the recently signed treaty for the European Stability Mechanism (ESM-treaty). In our opinion Article 30 (Board of Auditors) is flawed in a number of important respects. The shortcomings may still be (partially) repaired if we as SAIs make our concerns known to our ministers of Finance and our national parliaments before the by-laws of the ESM treaty are established.

SAI's action for external Audit in ESM-treaty in 2011

The European Council of 17 December 2010 reached an agreement to develop a new European financial stability fund, the ESM. A first version of the treaty was signed on 11 July 2011. In the opinion of many SAIs, the description of external audit was too limited.

In the margin of the Contact Committee meeting of 13 and 14 October 2011, the Eurozone SAIs and the European Court of Auditors discussed amongst themselves which elements of external audit we considered essential for the new ESM-treaty. Under the chairmanship of the Bundesrechnungshof a joint proposal for the external audit articles in the ESM-treaty was then developed in November 2011. The intention was that each SAI could use this proposal in discussions on the ESM with their minister of Finance and national parliament, in order to influence the ESM-negotiations between the ministers of Finance.

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Shortcomings with respect to external audit in definitive ESM-treaty

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The second – and final – version of the ESM-treaty was signed on 2 February 2012. After studying the ESM-treaty we have come to the conclusion that Article 30 (Board of Auditors) is still faced with a number of shortcomings, for example:

- There is no reference to the use of international audit standards in audits by the Board of Auditors;
- The different types of audit that should be possible for the Board Of Auditors – regularity, compliance, performance, risk management – are not explicitly mentioned;
- The possibilities for open dissemination of audit results by the Board of Auditors are limited. The Board of Auditors can establish one annual report, which the Board of Auditors cannot send itself to national parliaments and SAIs. This has to be done by the Board of Governors.

Partial repair possible in ESM by-laws

Although it is at this stage unclear exactly when the ESM by-laws will be developed, it *is* clear that the by-laws have to be adopted by the Board of Governors, i.e. the ministers of Finance of the ESM-countries. This gives SAIs the possibility to make their concerns about the current external audit articles in the ESM-treaty known to their ministers of Finance and to their national parliaments. Especially the latter may be of importance, as all the national parliaments of ESM-countries will have to ratify the ESM-treaty.

We fully support the initiative by the German Bundesrechnungshof to further discuss amongst SAIs the substantive content of the ESM by-laws. In our analysis, at least the following topics should be covered in the by-laws for Article 30 of the ESM-treaty:

- Membership of the Board of Auditors (including for example a 5-year term for all members), and the establishment of a small dedicated secretariat that will outsource audit assignments to public or private auditors;
- Audits by the Board of Auditors should adhere to all relevant international audit standards, and should be possible with respect to regularity, compliance, performance and risk management of the ESM;
- The information that the Board of Auditors must be able to access to carry out its audit task should include all documents and files of the final beneficiaries of ESM-funds pertaining to the financial assistance under the mechanism;

- The annual report of the Board of Auditors should include the conclusions and recommendations of the Board on all audits that have been carried out. When the Board of Governors sends the complete annual report of the Board of Auditors on to external parties, it should accompany the report by a public statement which indicates the actions it will undertake in order to repair any problems relating to the ESM discovered by the Board of Auditors.

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Transparency and accountability of the ESM are of concern to all SAIs. Even broader, they are tantamount to the legitimacy of the functioning of the ESM in the coming years, and how this will be perceived by the citizens of our countries. We therefore consider it important that the SAIs of the Eurozone and the European Court of Auditors coordinate their activities as much as possible in making their concerns regarding the current shortcomings in the ESM-treaty known to their minister of Finance and national parliament.

Yours sincerely,

Saskia J. Stuiveling,
President