

Euro Bailout Fight Goes to The Constitutional Courts

by Rainer Apel

Wiesbaden, July 7—Following approval of the European Stability Mechanism (ESM) at the end of June by both chambers of the German parliament, the Constitutional Court in Karlsruhe has become the main battleground for opponents of this permanent European bailout fund. Immediately after the vote on the EU Fiscal Pact and the ESM, the Left Party and parliamentarians Peter Danckert (Social Democratic Party) and Peter Gauweiler (Christian Social Union) submitted their respective complaints to the court. There are other complaints from the cross-party alliance of Mehr Demokratie (More Democracy) and Freie Wähler (Free Voters), in league with the famous “four anti-euro professors,” Wilhelm Hankel, Wilhelm Nölling, Karl Albrecht Schachtschneider, and Joachim Starbatty.

Since several of these complaints involve petitions for an injunction against any government payment into the ESM for the time being, the court has urged President Joachim Gauck not to sign the law until the court has ruled on the injunctions. That could take several weeks. And without Germany’s 27% share of the funds in the ESM, the bailout fund cannot take effect; presumably, the ruling could come down at the end of July, at the earliest, since the original deadline of July 1 was missed. For the German federal government alone, this is a serious setback. The court scheduled a public hearing in Karlsruhe on July 10, which will serve as the basis for its decision for or against the emergency appeal.

‘A Bureaucratic Dictatorship’

The Free Voters and the “anti-euro professors” held a press conference in Berlin on July 2, at which professors Hankel and Schachtschneider had sharply critical words for the ESM.

“The ESM and the Fiscal Pact are a massive violation of the Constitution, because sovereign rights are

given up, and a European federal state would be established that is not democratically legitimized,” said Schachtschneider, recalling that he and the other three professors had warned, in their first constitutional challenge back in 1992, against precisely such an eventuality. The court must now finally draw a clear line, and Schachtschneider believes that this time there will be a positive response to the complaint. “And if not, then it should be established for the historical record that there was resistance. We are acting on behalf of all Germany’s citizens. It is an act of resistance.”

“The constitutional order is undermined by the policy,” Schachtschneider continued. “We no longer live in a democratic and social state, the Federal Republic of Germany, but for a long time now, we have been in another type of state, and the court must really take notice of that. The whole thing is a coup, a protracted coup d’état that started earlier, especially with the policy of Monetary Union. There is a great danger that we will end up with a bureaucratic dictatorship in Europe; the first steps have already been taken.”

Professor Hankel warned against “ruining all of Europe, if the pooling of the debt wrecks monetary stability and the solvency of the more stable countries is undermined.” The ESM, according to Hankel, is “utterly faulty in its design, as is the euro. It cannot even work technically. After the socialization of the currencies, now even the capital market is being socialized. This brings us to an ‘EU’ which is actually a caricature of what the founding fathers once imagined. The EU was once supposed to be the antithesis of the Soviet Union, but now it is becoming its clone. Our market economy is completely ruined.”

The ESM, he said later, in reply to a question from BüSo TV correspondent Stefan Tolksdorf, is unique in the world as a money monster: 140 times as large as the capital in the ECB; 80 times as large as that of the

Dr. Wilhelm Hankel and Social Democratic parliamentary Dagmar Metzger at a press conference in Berlin on July 2, discussing the complaint filed at the German Constitutional Court by Hankel and the three other “anti-euro professors” against the EU’s permanent bank-bailout mechanism, the ESM.



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Bundesbank; and more than 50 times as large as that of the largest European private bank, Deutsche Bank. The ESM will soak up all the money it can find on the capital markets and use it for bailouts, leaving nothing to lend to companies, or for youth jobs or education, Hankel warned.

As for the aforementioned founding fathers, Stephen Werhahn, a grandson of Konrad Adenauer (Germany’s first postwar chancellor), who is active in the Free Voters party, declared: “This threatens the heritage of Europe, as an unstable debtors union sows envy and discord among nations. Exactly 50 years ago, Konrad Adenauer and Charles de Gaulle sealed an agreement on German-French friendship in the Cathedral of Reims. The current policy is squandering this heritage.”

Impact in Ireland, Italy

There will also be lawsuits in Ireland and Austria; the latter’s National Council ratified the ESM on July 5. Independent Irish parliamentarian Thomas Pringle on June 26 informed the Irish High Court that he will be



Donegal Dollop

Irish parliamentarian Thomas Pringle will be filing a petition against the ESM at the Irish High Court.

filing a petition for suspension of ratification of the ESM, because it is contrary to EU law and EU treaties, and against the Irish Constitution.

Pringle argued that ratification was not “necessary” as a result of Ireland’s membership in the EU, as the government claims, because both the ESM and the Fiscal Pact are international legal treaties, not EU treaties. Pringle submitted, along with his petition to the High Court, an English translation of the German court ruling of June

19, as an important document with respect to how the government should respect the rights of parliament, in Germany and Ireland alike. The Karlsruhe judges had found that the federal government had given parliamentarians inadequate information about the planned changes in the European treaties, which is impermissible, and should not be allowed to happen again.

Pringle’s initiative shows clearly how closely Germany’s fight against the ESM is being followed abroad. This keen

interest is also evident in a statement by the prominent Italian anti-ESM activist Lidia Undiemi, who welcomed the German constitutional challenges as important for Italy, where so far no complaint has been filed before the Supreme Court.

Austria: Go for Glass-Steagall!

In Austria, the protests reached a high point in the days immediately before the debate in the National Council, when the two conservative opposition parties, the Austrian Freedom Party (FPÖ) and the Alliance for Austria’s Future (BZÖ), announced that they are not



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A rally against the ESM in Vienna on June 27, organized by the FPÖ and BZÖ parties. The banner at the podium (not shown) reads “Referendum Against ESM Insanity!” The FPÖ is calling for a Glass-Steagall-style banking reorganization.

only voting against the ESM in parliament, but will appeal to the Constitutional Court, and want to mobilize the people for a referendum. At a protest rally in Vienna on June 27, under the slogan “Referendum Against ESM Insanity,” FPÖ leader Hans Christian Strache said: “The European Stability Mechanism is just a headline, which has nothing to do with stability.” It has more to do with wiping out Austrian democracy and the Constitution, so there must be a referendum on it, he said.

In the parliamentary debate itself, Strache called the ESM “the road to financial dictatorship,” “a sado-masochistic contract,” which forces Austrians to pay, without allowing them to protest. With the ESM, Europe is marching into an unprecedented economic and political disaster, a “Euroshima,” he said.

An essential part of the FPÖ’s mobilization is the demand for a law on bank restructuring, instead of bailouts, so that the failing banks can be declared insolvent. Strache also called for this at the Vienna rally, and the financial expert of the FPÖ, Ewald Podgorschek, said on the eve of the rally: “We are calling for a strict separation of commercial and investment banks. Had such a regulation been in effect already, we would have been spared of a lot of things. The Glass-Steagall Act, which was introduced in the USA in response to the banking crisis in 1933 and was in effect until 1999, contributed to the stability of the U.S. financial system for decades. The separation of com-

mercial and investment banks would protect savings deposits and secure refinancing for the real economy, and the state, as guarantor of the savings, would no longer have to step in to compensate for losses caused by high-risk investment deals.

“In all bank bailouts so far,” he said, “the systemic character of big banks was cited as the most important argument for their rescue [‘too big to fail’]. What is really necessary for the economy, however, is classic banking based on savings and loans. This sector should not be jeopardized by risky, casino-like investment deals.”

The FPÖ’s call for action along the lines of Glass-Steagall is all the more noteworthy, because in Germany, except for the BüSo, the groups opposing the ESM are so far searching in vain for a real alternative to the current bailout system.

It is also worthy of note that the FPÖ, in its campaign statements, has used the BüSo’s anti-ESM [video](#) [in German] and the BüSo’s background information on the ESM and especially the recent EU summit, for example at Strache’s Vienna press conference after the National Council on July 5.

On the other hand, what the vast majority of groups opposing the ESM opposition in Germany are putting forward as a supposed “alternative” is mostly a mish-mash, maintaining the illusion that we need only return to the strict rules of the Maastricht system and everything in Europe would be fine again. That, unfortunately, ignores the systemic character of the financial and banking crisis, of which the euro crisis is only one aspect, albeit an important one. A return to the Maastricht rules would make the situation even worse, because it would stifle the real economy even more.

If the system is not completely replaced by new system oriented toward the real economy (Glass-Steagall, a National Banking system and productive credit, a New Bretton Woods, and the return of Europeans to their national currencies), as the BüSo has demanded, then Europe will inevitably stumble into the next major crisis. Changing the system is not a matter for future generations to deal with; it must happen now, before the system breaks apart and brings down all of Europe with it, in chaos and hyperinflation.

This article was translated from German.