

ESM Market presence/Phasing out EFSF - ESM Treaty changes

Option 1 would require ESM Treaty change to create or allow for the creation of the new callable non-voting equity tranche, as well as new wording on decision making and governance. Therefore, the current revision of the ESM Treaty provides an opportunity to implement these changes without an additional ratification process. The current Article 40 of the ESM Treaty (Transfer of EFSF supports) paragraph 2 and 3 provides for the acquisition of EFSF rights and obligations.

We would add the following paragraph as **Article 40(4)**:

“Without prejudice to Articles 8 to 11, the Board of Governors may create an additional tranche of authorised capital in a maximum amount [of EUR [•] million] [or] [corresponding to the aggregate principal amount outstanding of the EFSF loan facilities transferred multiplied by a percentage not higher than 165%], to be subscribed by some or all EFSF shareholders in proportion to the contribution key set out in Annex 2 to the EFSF Framework Agreement. The new shares issued under this capital tranche shall have no voting rights. The Board of Governors shall determine the manner and circumstances of capital calls and payments under said tranche. [The decision by the Board of Governors under this paragraph shall enter into force after ESM Members have notified the Depositary of the completion of their applicable national procedures.]”

Additionally, **Article 5(6) (j)** would be amended as follows:

The Board of Governors shall take the following decisions by mutual agreement: [...]

(j) *“to establish the modalities of the transfer of EFSF support to the ESM and to create an additional tranche of capital, in accordance with Article 40; ”*

Option 2 would not require ESM Treaty change as a BoG decision (pursuant to Article 10 ESM Treaty) would be sufficient to achieve the desired effect.