

# **European Stability Mechanism**

## **Draft Guideline on Financial Assistance for the Direct Recapitalisation of Institutions**

### **Article 1**

#### ***Scope***

1. The Board of Governors of the ESM may decide to grant financial assistance to directly recapitalise institutions at the request of an ESM Member, in accordance with the decision xx of xx taken by the ESM Board of Governors under Article 19 of the ESM Treaty. For the purpose of this guideline, "institutions" refers to institutions as defined in Article 2(3)-(5) of Council Regulation 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions.
2. Such financial assistance shall be provided by the ESM for the specific purpose of direct recapitalisation of institutions established in an ESM Member.
3. The financial assistance shall be provided in accordance with this guideline as well as the State aid provisions under Article 107 and 108 of the Treaty on the Functioning of the European Union (TFEU).
4. The financial assistance to institutions may be requested by ESM Members within or outside the confines of a macroeconomic adjustment programme. The financial assistance shall be subject to specific conditionality relevant to this instrument; said conditionality shall be of an institution-specific, sector-specific and/or macro-economic nature.
5. If an ESM Member is already the beneficiary of financial assistance provided by the ESM and requires use of additional financial support instruments, the existing Memorandum of Understanding shall be revised to include conditionality needed for this instrument and to assess whether the conditionality already used is still appropriate or whether changes are required. The decision whether to provide direct bank recapitalisation as an additional financial support instrument shall be taken in accordance with the provisions and procedures of these guidelines.
6. This guideline is without prejudice to the possibility that a non-requesting ESM Member may provide national financial assistance to a subsidiary of an institution established in its territory even if ESM support is requested for the parent company. This assistance shall be provided in accordance with the State aid provisions under Article 107 and 108 of the TFEU.

### **Article 2**

#### ***Aim of the financial assistance***

1. The aim of the financial assistance to institutions is to preserve the financial stability of the euro area as a whole and of its Member States by catering for those specific cases in which an ESM Member experiences acute difficulties with its financial sector that cannot be remedied without significantly endangering its fiscal sustainability due to a severe risk of contagion from the financial sector to the sovereign. The use of this instrument could also be considered if other alternatives would have the effect of endangering the

continuous market access of an ESM Member. As far as the use of the instrument of an ESM loan for the recapitalisation of financial institutions is not possible, such financial assistance shall thus seek to help remove the risk of contagion from the financial sector to the sovereign by allowing the recapitalisation of institutions directly, thereby reducing the effect of a vicious circle between a fragile financial sector and a deteriorating creditworthiness of the sovereign.

2. The financial assistance granted to institutions under this form of stability support shall be restricted to the specific purpose of recapitalising institutions, while requiring fulfilment of appropriate conditionality, addressing both the sources of difficulties in the financial sector and, where appropriate, the general economic situation of the requesting ESM Member.
3. The instrument shall not be used for the winding-up of institutions.

### **Article 3** ***Eligibility criteria***

1. The following criteria related to the relevant institution(s) shall be met in order for a request for financial assistance for the purpose of directly recapitalising institutions to be considered eligible:
  - a. The institution(s) is, or is likely to be in the near future, in breach of the capital requirements established by the ECB in its capacity as supervisor<sup>1</sup>, is unable to attract sufficient capital from private sector sources to resolve its capital problems and the bail-in conducted in accordance with Article 8 of this Guideline is not expected to address fully the capital shortfall. Private sector sources shall include tapping new market investors or existing shareholders.
  - b. The institution(s) concerned should have a systemic relevance or pose a serious threat to the financial stability of the euro area as a whole or of the requesting ESM Member<sup>2</sup>. The systemic dimension of these institutions shall be assessed taking into account, primarily, their size, interconnectedness, complexity, and substitutability.
2. The following criteria related to the requesting ESM Member shall be met in order for a request for financial assistance for the purpose of directly recapitalising institutions to be considered eligible:
  - a. The requesting ESM Member is unable to provide financial assistance to the institutions in full without very adverse effects on its own fiscal sustainability, including via the instrument of an ESM loan for the recapitalisation of financial institutions. The use of the instrument can also be considered if it is established that other alternatives would have the effect of endangering the continuous market

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<sup>1</sup> If the ECB was not already the competent supervisor of the institution at the time of request, the new capital requirements set by the ECB after the transfer of supervision shall be the ones taken into account.

<sup>2</sup> For the purpose of this guideline, systemic relevance can refer to: (i) systemically important institutions that fall into the main criteria enclosed in this guideline; or (ii) other institutions, not necessarily cross-border, whose insolvency could have a significant negative impact on the financial system because of adverse market circumstances or financial stress.

access of the requesting ESM Member and consequently require the financing of its sovereign needs via the ESM.

- b. Providing financial assistance to the benefit of the requesting ESM Member is indispensable to safeguard the financial stability of the euro area as a whole or of its Member States.
3. Compliance with the criteria in paragraphs 1 and 2 shall be assessed in accordance with Article 4(2) prior to any decision, even in principle, to grant stability support via direct recapitalisation of institutions.

#### **Article 4**

##### ***Procedures for granting support***

1. An ESM Member shall address a request for financial assistance to the Chairperson of the ESM Board of Governors. Such a request shall provide: i) an indication of the institution(s) in distress for which financial assistance is being requested, ii) possible amount of capital needs, taking into account the bail-in that is to be conducted in accordance with Article 8 of this guideline, iii) an opinion from the competent supervisory authority on the financial situation of the institution(s) in distress, iv) the result of the most recent stress-test, conducted by the relevant supervisor of the institution(s) concerned, and v) if deemed necessary by the European Commission or the Managing Director, the result of the most recent stress-test of all other relevant institutions in the requesting ESM Member.
2. Upon receipt of such a request, as a precondition for direct recapitalisation, the ESM Board of Governors shall address without delay to the ECB the request foreseen in Article 33(3) of Council Regulation 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions, if the ECB was not already the supervisor of the institution concerned. This decision of the ESM Board of Governors requesting the ECB to assume supervision of the institution concerned shall have no bearing on any future decision as to the granting of assistance. In addition, the Chairperson of the Board of Governors shall entrust the European Commission – in liaison with the ECB and, wherever appropriate, the IMF – to conduct the assessments referred to in Article 13(1) of the ESM Treaty and to assess the respect of Article 3(2) of this guideline, and with the Managing Director, the competent resolution authority and the ECB in its capacity as supervisor, to assess the respect of the eligibility criteria established in Article 3(1).
3. Based on the assessments in paragraph 2, the ESM Board of Governors, acting on a proposal from the Managing Director, shall decide whether the eligibility criteria are met, and, if so, may decide to grant, in principle, financial assistance to the benefit of the ESM Member.
4. Following the decision pursuant to paragraph 3, the ESM Member concerned shall, for itself and on behalf of all ESM Members, notify, pursuant to Article 108(3) TFEU, the European Commission of the intention to grant State aid within the meaning of Article 107(1) TFEU. The ESM shall act as an agent for the ESM Member concerned throughout the procedure. The arrangements between the ESM and the ESM Member concerned shall contain provisions obliging the ESM Member concerned to effectively enforce any decision by the Commission under Article 107 and 108 TFEU.

5. The ESM shall draw up, jointly with the institution(s) and the ESM Member concerned, and in consultation with the ECB in its capacity as supervisor and the competent resolution authority, a restructuring plan that shall ensure the viability of the institution after recapitalisation and restructuring. The ESM Member concerned shall ensure timely delivery of any necessary information. The main elements of the draft restructuring plan shall be presented to the ESM Board of Directors for approval before submission to the Commission<sup>3</sup>.
6. In parallel, the Managing Director shall, in liaison with the European Commission and the ECB in its capacity as supervisor, conduct a due diligence exercise, as a rule with the assistance of independent experts aimed at primarily determining the institution(s)'s viability in line with Article 7 and its loss absorption potential.
7. In addition, the ESM Board of Governors shall, in accordance with Article 13(3) of the ESM Treaty, entrust:
  - a. The European Commission, in liaison with the ECB, the Managing Director and, wherever appropriate, the IMF, with the task of negotiating, with the ESM Member concerned, a Memorandum of Understanding (MoU) detailing the policy conditions related to the requesting ESM Member's financial sector and, where appropriate, its supervision, corporate governance of institutions, and relevant domestic legislation. Such conditions may include, where appropriate, requirements related to the general economic policy of the ESM Member concerned.<sup>4</sup>
  - b. The Managing Director, in liaison with the European Commission, the ECB in its capacity as supervisor and the requesting ESM Member, to establish institution-specific conditions not required under the framework of Article 107 and 108 TFEU; such conditions can include, but are not limited to, restrictions upon the remuneration of management and the dividend policy of the institution. Such conditions together with the financial instruments to be utilised for the recapitalisation, shall be described in a proposal, to be adopted by the Board of Governors, for an institution-specific agreement to be established between the ESM, requesting ESM Member and the institution(s) concerned.
  - c. The Managing Director with the task of preparing in parallel, in liaison with the European Commission, the ECB, and the requesting ESM Member a proposal, to be adopted by the ESM Board of Governors, for a financial assistance facility agreement (FFA) detailing the financial assistance, in particular the envisaged amounts to be provided to the institutions concerned, including the financial terms and conditions as well as the type of instruments and the obligations of the requesting ESM Member. The proposal for an FFA shall contain the overall maximum amount of the assistance for the benefit of the requesting ESM Member, taking into account the results of the due diligence exercise referred to in

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<sup>3</sup> These main elements shall include information relevant to the proposals referred to in Article 4(8). At the same time, the full draft restructuring plan will be made accessible to any member of the Board of Directors, upon demand, according to a dedicated security procedure, without prejudice to Article 17 of the ESM by-laws.

<sup>4</sup> Where direct recapitalisations are implemented as part of a macro-economic adjustment programme, the general economic policy conditions referred to in this paragraph are as a rule the ones set in the programme.

paragraph 6, as well as the necessary capital level determined by the ECB in its capacity as supervisor pursuant to Article 7(2).

8. The proposals for the institution-specific conditions and the FFA shall be submitted for approval to the ESM Board of Governors in parallel. In case financial assistance has been requested for several institutions and the finalisation of an institution-specific agreement is delayed, the related proposal will be submitted at a later stage in parallel with a proposal to amend the FFA, if required.
9. The European Commission shall sign the Memorandum of Understanding on behalf of the ESM, subject to prior compliance with the conditions set out in paragraph 7 and approval by the ESM Board of Governors.
10. Subsequent to the decision of the European Commission under Articles 107 and 108 TFEU setting out the State aid conditionality, the ESM Board of Directors shall approve the FFA and the respective institution specific agreement(s) to be signed by the Managing Director of the ESM. The ESM Board of Directors shall approve the disbursement of the first tranche; where applicable, such approval may be made subject to the condition that any prior actions stipulated within the institution-specific conditions of assistance set in the institution-specific agreement are fulfilled.
11. Any direct recapitalisation by the ESM will only be disbursed once the restructuring plan in paragraph 5 has been approved by the European Commission.
12. All processes shall be set up such as to ensure that the ESM Board of Governors and Board of Directors receive all information relevant to fulfil their tasks and obligations under this guideline and concerning the State aid procedure.

## **Article 5**

### ***Monitoring***

1. Monitoring of compliance with institution-specific conditions related to Article 107 and 108 TFEU shall be conducted by the European Commission. The European Commission may appoint a monitoring trustee to assist it in the monitoring who shall have the right to sit on all relevant committees of the institution and have access to all relevant information. The European Commission is expected to make available to the ESM Board of Directors and the ECB in its capacity as supervisor information relevant to the reporting on compliance.
2. Monitoring of compliance with other institution-specific conditions that are unrelated to Article 107 and 108 TFEU shall be conducted by the ESM in liaison with the European Commission and the ECB in its capacity as supervisor<sup>5</sup>. The ESM may appoint a monitoring trustee who shall have the right to sit on all relevant committees of the institution and have access to all relevant information. A monitoring trustee appointed according to this paragraph need not be different from a monitoring trustee appointed according to paragraph 1. The Managing Director shall provide details on the institution's compliance with the institution-specific conditions monitored by the ESM and its trustee,

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<sup>5</sup> If assistance is granted under Article 10(2)(c), monitoring of any bridge institution or asset management vehicle shall also be considered as institution-specific conditions.

if any, to the ESM Board of Directors to the extent possible on a quarterly basis and upon request by the ESM governing bodies.

3. Monitoring of all other policy conditions shall be conducted by the European Commission, in liaison with the ECB, the ESM and, wherever appropriate, the IMF. Where deemed necessary, the monitoring institutions shall also be authorised to involve other relevant experts, such as external auditors or monitoring trustees. The relevant institutions shall provide details on the conditions monitored to the ESM Board of Directors.
4. The ESM, European Commission and the ECB and any relevant experts and trustees authorised by them shall have the right to conduct on-site inspections in any beneficiary financial institution(s) in order to adequately monitor compliance with the conditions mentioned in paragraphs 1, 2 and 3 in line with their respective competences.
5. An additional assessment by the IMF of the implementation of international standards and supervisory practices may, where appropriate, be actively sought by the beneficiary ESM Member, during the period of implementation of the financial assistance.
6. The ESM shall establish an appropriate warning system, in accordance with Article 13(6) of the ESM Treaty, to ensure that it receives any repayments due by the ESM Member under Article 9(4).
7. When this instrument is implemented outside of the confines of a macroeconomic adjustment programme, the European Commission shall subject the ESM Member concerned to enhanced surveillance under Article 2(3) of Regulation 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, if it has not already done so.
8. The institution-specific agreement shall, wherever possible, contain appropriate contractual covenants related to non-compliance with the institution-specific conditions, including contractual financial sanctions. In case of non-compliance, the ESM Board of Directors may enforce such covenants upon a proposal from the Managing Director. If deemed necessary, the ESM may notify the ECB in its capacity as supervisor of any violation of these conditions.

## **Article 6**

### ***Implementation of the financial assistance***

1. The ESM shall provide the financial assistance as described in the financial assistance facility agreement and the institution-specific agreement. The ESM Member concerned shall adopt all agreed measures required for the implementation of the recapitalisation plan.
2. Financial assistance may be provided in several tranches, which may each consist of one or more disbursements.
3. Subsequent to the first tranche, disbursements of further tranches, if any are provided under the decisions taken in Article 4(10), shall be made upon a decision, by mutual agreement, of the ESM Board of Directors, following a proposal from the Managing

Director and after having received the report conducted by the European Commission, in liaison with the ECB and the ESM, in accordance with its monitoring procedure.

## **Article 7**

### ***Valuation of the institution***

1. Before providing financial assistance and in line with Article 4(6), the Managing Director of the ESM in liaison with the European Commission and the ECB in its capacity as supervisor, shall conduct, as a rule with the assistance of independent experts a thorough due diligence, stress test, and rigorous economic valuation of the institution's assets to determine the amount of incurred, expected and unexpected losses, as well as the institution's loss absorption capacity, taking into account the level of bail-in conducted in accordance with Article 8 of this Guideline, and its viability in addition to providing the basis for pricing the ESM injection. The ESM Board of Governors may decide as part of the decision under Article 13(2) of the ESM Treaty referred to under Article 4(3) of this guideline, upon a proposal of the Managing Director based on an analysis of all necessary information and after having consulted the European Commission and the ECB in its capacity as supervisor, to make use of the results of the stress test and/or rigorous economic valuation already conducted by the ECB in its capacity as supervisor, provided these were finalised within the three months prior to the request.
2. The capital injected by the ESM and, as a rule, the ESM Member shall be of the amount required to reach the necessary capital level as determined by the ECB in its capacity as supervisor, taking into account a possible participation from private investors.

## **Article 8**

### ***Application of bail-in***

1. The instrument cannot be used as a precautionary instrument as defined in Article 32(4)(d)(iii) of Directive 2014/XXX establishing a framework for the recovery and resolution of credit institutions and investment firms and Article 16(3)(d)(iii) of the Regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund.
2. The following waterfall shall apply as a precondition for the use of this instrument for a transitional period, until 31 December 2015:
  - i. a contribution to loss absorption and recapitalisation equal to an amount of 8% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action, has been made by shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise;
  - ii. thereafter, use of the national resolution fund (or national financing arrangement set up in accordance with Article 100(6) of Directive 2014/XXX establishing a framework for the recovery and resolution of credit institutions and investment firms) up to the 2015 target level.
3. From 1 January 2016 the full application of the waterfall as defined in the Regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund shall be a precondition for the use of this instrument. This implies



that the following preconditions for use of this instrument shall apply from 1 January 2016 onwards:

- i. a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action, has been made by shareholders, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise;
- ii. a contribution of the resolution financing arrangement of 5% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action, has been made;
- iii. all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

## **Article 9**

### ***Contribution of the ESM Member to the Recapitalisation Operation***

1. The ESM Member shall contribute a level of capital alongside the ESM.
  - a. If the institution has insufficient equity to reach the legal minimum Common Equity Tier 1 ratio of 4.5%<sup>6</sup> under a sufficiently prudent scenario under an individual stress test of the institution, the requesting ESM Member shall be required to implement a one-off capital injection to reach this capital ratio,<sup>7</sup> before the ESM enters into the capital of the institution; or
  - b. If the institution has sufficient equity to reach the legal minimum Common Equity Tier 1 ratio of 4.5% under the afore-mentioned evaluation in 1(a), the requesting ESM Member shall be required to make a capital contribution before the ESM enters into the capital of the institution. During the first two years following the entry into force of this instrument, said contribution of the ESM Member shall be the equivalent of 20% of the total amount of the public contribution to the recapitalisation operation and the equivalent of 10% thereafter.
2. If the contribution of the ESM Member under paragraph 1(a) is below the amount that would have been required under paragraph 1(b), the ESM Member shall inject an additional amount alongside the ESM to cover the difference.
3. If, due to its fiscal position and significant implications upon market access, the requesting ESM Member is unable to fully provide its contribution to the recapitalisation,

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<sup>6</sup> The ratio applicable to all institutions according to Regulation 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (CRR) and Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV), at full implementation post transition, excluding the capital conservation buffer and any other buffer(s) that may apply to the institution in question. Other elements (such as the definition of capital) will be applied in line with the timetable of implementation established under the CRR/CRD IV.

<sup>7</sup> Capital needs shall be determined under a sufficiently prudent scenario under an individual stress test of the institution, after exhausting all existing buffers, including tapping existing shareholders and the applicable level of write-down or conversion of liabilities.

the ESM Board of Governors may by mutual agreement decide to partially or fully suspend the contribution outlined in paragraph 1 on the condition that (i) the ESM Member agrees to indemnify the ESM for any loss incurred on the share of capital that was acquired by the ESM in lieu of the ESM Member and (ii) the MoU contains appropriate conditions of a macroeconomic nature. The details of such agreement shall be specified in the FFA.

4. Any loss incurred by the ESM in relation to the share of financial assistance provided in lieu of the ESM Member under paragraph 3 shall be treated as a long-term loan. The details of such agreement, including the maximum maturity of the loan, shall be specified in the FFA.

## **Article 10**

### ***Capital instruments***

1. As a general rule, recapitalisation by the ESM shall be conducted against the acquisition of common shares that satisfy the common equity tier 1 requirement of Regulation 575/2013 on prudential requirements for credit institutions and investment firms.
2. The ESM Board of Governors may decide, as part of the decision under Article 13(3) of the Treaty:
  - a. To depart from the rule mentioned in paragraph 1 and authorise the acquisition of other capital instruments that satisfy the regulatory capital requirements, such as special shares, hybrid capital or contingent capital in order to fulfil supervisory requirements including pillar 2. In all circumstances in which the ESM Board of Governors authorises the acquisition of other capital instruments, the ESM shall also hold an appropriate level of common shares.
  - b. To depart from the rule mentioned in paragraph 1 and authorise the issuance of guarantees<sup>8</sup> if strictly warranted for reducing the total cost of the recapitalisation. The use of guarantees shall not increase the probability of losses for the ESM as compared to the use of other capital instruments. In all circumstances in which the ESM Board of Governors authorises the issuance of guarantees, the ESM shall hold an appropriate level of common shares.
  - c. In exceptional circumstances, subject to European Commission approval on the basis of Article 107 and 108 TFEU and as part of the resolution process undertaken by the institution(s), to provide financial assistance, including via guarantees with full recourse to the requesting ESM Member, to any bridge institution or asset management vehicle resulting from the restructuring if warranted for reducing the total cost of the recapitalisation or if deemed crucial to the success of the recapitalisation operation by the ECB in its capacity as supervisor. Such assistance to asset management vehicles can only be provided in conjunction with assistance to the beneficiary institution that has transferred the assets and that has a viable business model. The application of Article 2(3) is without prejudice to what is established under this Article.

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<sup>8</sup> Issuing guarantees on funding instruments is excluded from the application of this paragraph.

## **Article 11**

### ***Governance***

1. The ESM shall be able to influence key aspects regarding the business model as well as the governance of the institution benefitting from direct recapitalisation, including the risk framework. Such provisions on governance may include, but are not limited to, the faculty of assuring a sufficient information flow, the appointment and dismissal of members of management and imposing remuneration schemes for management that exclude excessive pay or bonuses.
2. The ESM's influence shall be realised through its representation in the institution as a shareholder and through an institution-specific agreement between the ESM, the requesting ESM Member and the institution(s) concerned, as contemplated in Article 4(7)(b), detailing the appropriate institution-specific conditions and which needs to be signed before any financial assistance can be granted. In order to avoid any impediments arising from the application of national law, for the full exercise of the appropriate influence of ESM, if necessary, changes to the national legal framework of the ESM Member, including the introduction of a bank recovery and resolution framework, shall be imposed as part of the conditionality in the Memorandum of Understanding.

## **Article 12**

### ***Exit from the recapitalisation***

1. The ESM Board of Directors may decide upon a proposal from the Managing Director to sell the capital instruments acquired in full or in tranches. The ESM Member concerned shall be informed in advance on a confidential basis.
2. The ESM Member concerned shall not sell to a third party the capital instruments that it may have acquired, as long as the ESM still holds the capital instruments that it has acquired, without the authorisation of the ESM Board of Directors.
3. The recapitalisation operation may also be terminated by the redemption or the buy-back of the capital instruments by the recapitalised institution, subject to the agreement of the Board of Directors of the ESM.
4. Upon disposal or redemption of all capital instruments owned by the ESM, the financial assistance provided under this instrument shall be deemed terminated.
5. The above provisions are without prejudice to the application of the restructuring conditions set out in the decision of the European Commission referred to in Article 4(11). Any changes that the ESM or ESM Member envisages to make to the restructuring conditions should be first notified and approved by the European Commission.

## **Article 13**

### ***Role of the subsidiary body and participation of the private sector in the financial assistance***

The ESM subsidiary body established pursuant to the ESM Board of Governors Resolution XXX may be entrusted, subject to the approval of the ESM Board of Governors, with the implementation of the recapitalisation of institutions in accordance with the provisions of this guideline. The ESM shall strive to conduct the recapitalisation operation alongside external investors. The ESM may, upon approval by the ESM Board of Governors, establish, , sub-entities dedicated to the financing, implementation, and

ownership of the capital instruments related to the recapitalisation of institutions in accordance with the provisions of this guideline in order to facilitate the participation of the private sector, which to this effect may participate in the dedicated vehicles or funds.

#### **Article 14**

##### ***Retroactive application of direct recapitalisation***

1. This guideline is established without prejudice to existing ESM and EFSF programmes in which financial assistance has been provided to ESM Members who recapitalised their institutions, which could be replaced in part or in full with a retroactive application of direct recapitalisation following a decision by the ESM Board of Governors, on a case-by-case basis, by mutual agreement.
2. The detailed modalities for such replacement shall be established in the relevant ESM Board of Governors decision.

#### **Article 15**

##### ***Review***

1. The ESM Board of Directors shall review this guideline at least every 2 years after its entry into force to assess whether changes are required in light of developments related to the establishment of the Banking Union, including considering whether the rules related to the contribution of an ESM Member under Article 9(1) remain appropriate.
2. In addition, a more comprehensive review shall take place ten years after the entry into force of this guideline, at which point a decision shall be taken on the continuation of this instrument.

#### **Article 16**

##### ***Information***

1. The ESM shall provide comprehensive information to its governing bodies regarding recapitalisation operations, including the reports referred to in Article 5(2).