



**THE GOVERNMENT OF ROMANIA REPRESENTED BY THE MINISTRY
OF INVESTMENT AND EUROPEAN PROJECTS**

AND

THE EUROPEAN INVESTMENT BANK

FUNDING AGREEMENT



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This Agreement is entered by and between:

- **THE GOVERNMENT OF ROMANIA**, duly represented by the Ministry of Investment and European Projects ("**MIEP**", as defined below) in accordance with GEO no. 124/2021; and
- The **EUROPEAN INVESTMENT BANK**, 100 boulevard, Konrad Adenauer, L-2950, Luxembourg, Grand-Duchy of Luxembourg ("**EIB**"),

collectively the "**Parties**" and individually, a "**Party**" as the context may require.

Having regard of the Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resiliency Facility ("**RRF**") (the "**RRF Regulation**") and of the Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis.

Having regard of the fact that pursuant to the RRF Regulation, no measure proposed by the MIEP, both investment and reform propositions, should lead to significant harm to environmental objectives notably within the meaning of article 17 of Regulation (EU) No 2020/852, amending Regulation (EU) 2019/2088 (the "**Do No Significant Harm principle**").

Having regard of the fact that the COVID-19 outbreak in early 2020 changed the economic, social and budgetary outlook in the Union and in the world, calling for an urgent and coordinated response both at Union and national level in order to cope with the enormous economic and social consequences as well as asymmetrical effects for Member States.

WHEREAS

1. The RRF consists of both repayable and non-repayable financial support that is available for allocation or that has been allocated to a Member State, pursuant to the terms and conditions set out under the RRF Regulation and, in particular, under the relevant National Recovery and Resilience Plan;
2. The submission of national Recovery and Resilience Plans featuring the details of the proposed reforms and investments to be undertaken by the Member States to the Commission (as defined below) is a *sine qua non* for the approval of the transfer of financial resources to the Member States. The Commission (as defined below) vets the national Recovery and Resilience Plans submitted by the Member States with a view to ascertain the coherence, the efficiency and the effectiveness thereof. The Commission, where it deems so appropriate, transmits a proposal to the Council for the final approval of the relevant plan. The engagement of the Member States to ensure a sound economic governance is a *sine qua non* for the award of financial resources to the relevant Member States;
3. Romania submitted its Recovery and Resilience Plan for the endorsement of the Commission (as defined below) and the approval of the European Council on 31st of May 2021, which was endorsed by the Commission on 27th of September of 2021 and approved by the European Council on the 28th of October of 2021 (the "**RRP**");



4. It is the intention of the MIEP to entrust the EIB with the management of the financial resources to the extent detailed herewith below;
5. The EIB is willing to enter into a contractual agreement with the MIEP to determine and define the conditions upon which it will conduct the mandate entrusted by the MIEP (the "**Agreement**");
6. Under this Agreement, the MIEP appoints the EIB as its agent to manage the amounts made available under this Agreement in the form of a Fund of Funds structure (the "**FoF**"). On this basis the EIB will deploy two financial instrument products (the "**Financial Instruments**"):
 - a. A "**Direct Lending Product**" (as defined below), using part of the funds made available under this Agreement (i) as credit enhancement for the EIB financing and/or (ii) in the form of on-lending to Final Recipients (as defined below).
 - b. An intermediated guarantee product (the "**Intermediated Product**"), by means of which part of the funds made available under this Agreement will be provided by the EIB in the form of a capped portfolio guarantee to selected Financial Intermediaries with whom the EIB will enter into Operational Agreements (as defined below).
7. The Parties are entering into this Agreement for the purpose of:
 - (a) mandating the EIB with the operation and the management of the amounts made available to the EIB under this Agreement in its own name, but for and on behalf of, and at the risk of, the MIEP;
 - (b) defining and implementing the Investment Strategy and Business Plan for both the Direct Lending Product and the Intermediated Product;
 - (c) defining the rules governing the operation of the FoF, the functions and the duties of the Parties with respect to the FoF Activity;
 - (d) defining the role of the Investment Board;
 - (e) defining the exit strategy;
 - (f) determining the amount and the terms of payment of the Management Fees and Additional Expenses by the MIEP to the EIB; and
 - (g) defining the rules in relation to the monitoring, evaluation and auditing of the FoF.
8. A set of common provisions shall apply to both of Financial Instruments. Those are established in the Clauses to this Agreement. Additionally, in order to cater for the specialties linked to each of both deploying modalities, specific rules will be established in separated Annexes as regards both Financial Instruments.
9. The funds made available under this Agreement to the FoF will be allocated to each Financial Instrument in a flexible manner and *as needed*, pursuant to periodical decisions



to be taken by an Investment Board duly appointed by the MIEP, acting upon proposals submitted by the EIB.

10. Any processing of personal data shall be carried out by the EIB in accordance with the applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data;
11. The entry into this Agreement by the MIEP and the performance of any obligations thereunder by the MIEP has been validly authorised in accordance with GEO no. 124/2021.

NOW THEREFORE it is agreed as follows:

COMMON PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following defined terms and expressions shall bear the following meaning, unless the context requires otherwise:

"Additional Expenses" means the costs, expenses and liabilities incurred or suffered by the EIB in connection with the FoF as further described in Clause 8 (*Additional Expenses, Negative Interest and Treasury Losses*);

"Additional Expenses Request" means a request in writing for payment of Additional Expenses substantially in the form of Appendix B (*Additional Expenses Request*);

"Agreement" means this agreement (and its Annexes and Appendices) as amended, supplemented or modified from time to time;

"Annex" means an annex to this Agreement which shall form an integral part of this Agreement;

"Appendix" means an appendix to this Agreement which shall form an integral part of this Agreement;

"Business Day" means a day, other than a Saturday or Sunday, during which EIB Luxembourg office is open, and credit institutions are open for general business in Luxembourg and Bucharest;

"Cap" has the meaning given to such term in Clause 7.4.(a);

"Clause" means a clause of this Agreement;

"Commission" means the European Commission;



"Direct Lending Product" means the Financial Instrument referred to in Recital 6.a above, whose specific terms are foreseen in Annex 1 (*Direct Lending Product Specific Terms*) of this Agreement;

"Do No Significant Harm principle" or **"DNSHP"** has the meaning given to it in the second paragraph of the preamble of this Agreement;

"EIB" means the European Investment Bank;

"Effective Date" means the date on which the last Party signs this Agreement;

"EIB Group" means the EIB, the European Investment Fund or any subsidiary of the EIB;

"Eligibility Period" means, save as otherwise expressly provided, the period by which all transactions with Final Recipients are signed from the Effective Date until (and including) end of June 2026;

"EU" means the European Union;

"EURIBOR" shall have the meaning set out in Appendix C (*Definition of Euribor*);

"Financial Intermediary" means a credit institution, financial institution, investment fund (including special purpose entities), fund managers or other financial intermediary, whether public or private, selected by the EIB in accordance with this Agreement for the implementation of the Intermediated Product;

"Final Recipient" means a legal person receiving support from Financial Instruments;

"Financial Instrument" means a form of support delivered via a structure through which financial products are provided to Final Recipients. Under the FoF the Financial Instrument shall take the form of guarantees, and loans (including risk-sharing loans as the case may be), and comprise both the Intermediated Product and the Direct Lending Product (as further defined under the Investment Strategy and Business Plan in Appendix A);

"Financial Regulation" means the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222).

"First Tranche" means an amount equal to EUR 90m (ninety million euros);

"FoF" has the meaning given to such term in Recital 6;

"FoF Account(s)" means the account opened by the EIB in its books for the purposes of collecting and administering the FoF on behalf of the MIEP in accordance with Clause 5 (*The FoF and the FoF Account(s)*);



"FoF Activity" means the activities of the FoF as described in this Agreement, including the functions and duties of the EIB in connection with the operation and management of the FoF in accordance with Clause 2 (*Mandate and Functions of the EIB*);

"Force Majeure Event" has the meaning given to such term in Clause 14.12;

"Force Majeure Notice" has the meaning given to such term in Clause 14.12;

"Indemnified Amounts" has the meaning given to such term in Clause 10.5;

"Interest Generated" has the meaning given to such term in Clause 4.3;

"Intermediated Product" means the Financial Instrument referred to in Recital 6.b above, whose specific terms are foreseen in Annex 2 (*Intermediated Product Specific Terms*) of this Agreement;

"Investment Board" means a management board of the FoF consisting of 5 members, duly appointed and empowered by the MIEP which shall operate in accordance with the terms set out in Clause 6 (*The Investment Board*) and in the Annex 1 (*Direct Lending Product Specific Terms*) and the Annex 2 (*Intermediated Product Specific Terms*);

"Investment Board Rules of Procedure" means the internal rules of procedure adopted by the Investment Board in accordance with Clause 6.5, the terms of which are set out in Appendix D (*Investment Board Rules of Procedure*);

"Investment Strategy and Business Plan" means the investment strategy and business plan for the activities of the FoF in relation to the FoF Activity, attached to this Agreement as Appendix A (*Investment Strategy and Business Plan*) comprising both the Direct Lending Product and the Intermediated Product;

"Legacy Cap" has the meaning given to such term in Clause 7.4.(b);

"Legacy Funds" means the aggregate of any funds continued to be managed by the EIB pursuant to this Agreement during the Legacy Period, whether in the form of commitments to Financial Instruments, amounts available in the FoF Account or otherwise and including (without double counting) MIEP Contributions Paid, interest or revenue received together with the Proceeds of Operations less any amount repaid to the MIEP pursuant to Clauses 3.7 and 3.8 of this Agreement;

"Legacy Period" means the period starting on 1 July 2026 and ending on 31 December 2030;

"Management Fees" means all the amounts payable to the EIB as management fees and costs for the services provided under this Agreement in accordance with Clause 7 (*Management Fees*);

"MIEP" means the Ministry of Investment and European Projects of Romania;

"MIEP Contributions Committed" means an aggregate amount of EUR 300m (three hundred million euros) sourced by the loan component of RRF for Romania, being the



funds committed to be invested in the FoF by the MIEP under Clause 3 (*Funding of the FoF and Allocation of Funds Between the Financial Instruments*) plus any amount by which the MIEP Contributions Committed is increased pursuant to Clause 3.9 of this Agreement;

"MIEP Contributions Paid" means the aggregate amount of the MIEP Contributions Committed which the MIEP has paid into the FoF Account and which, for the avoidance of doubt, excludes any interest accrued on the FoF Account, any Proceeds of Operations or any other gains or receipts generated for the FoF;

"Non-Compliant Jurisdiction" means a jurisdiction:

- (i) listed in the annex I of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, adopted by the European Council at its meeting held on 12 March 2019;
- (ii) listed in the annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies;
- (iii) rated as "partially compliant", "provisionally partially compliant" or "non-compliant" by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes against the international standard on exchange of information on request;
- (iv) included in the Financial Action Task Force "Public Statement" (i.e. countries or jurisdictions with such serious strategic deficiencies that the Financial Action Task Force calls on its members and non-members to apply counter-measures or for which the Financial Action Task Force calls on its members to apply enhanced due diligence measures); or
- (v) included in the Financial Action Task Force statement "Improving Global AML/CFT Compliance: On-Going process" (i.e. countries or jurisdictions with strategic weaknesses in their AML/CFT measures but that have provided a high-level commitment to an action plan developed with the Financial Action Task Force),

in each case as such statement, list, directive or annex may be amended and/or supplemented from time to time;

"Operational Agreement" means an agreement (or set of agreements) entered into between the EIB and a Financial Intermediary for the purpose of entry into, subscription or provision of the Intermediated Product as part of the FoF Activity;

"Proceeds of Operations" means in respect of a Financial Instrument, the aggregate of all the returns (whether repayment of principal, or release of any resources committed under a guarantee contract (or which relates to a provision against contingent liabilities under a guarantee contract), interest, recovered amounts, guarantee fees and other amounts without limitation) which are paid and available for use to the FoF Account or otherwise received in the FoF Account in respect of the relevant Financial Instrument, and which are attributable to support by the FoF to Final Recipients and in particular, with respect to Financial Instruments in the form of guarantees, any amount (i) committed



under such Financial Instrument, (ii) corresponding to eligible expenditure (as established pursuant to this Agreement) and (iii) which is released (including funds in the FoF Account which are released from a provision against contingent liabilities under a guarantee contract), provided that amounts recovered under guarantees shall constitute Proceeds of Operations only once they are no longer required as provision against contingent liabilities under the relevant guarantee contracts;

"Progress Report" means the annual progress report to be prepared by the EIB in accordance with Annex 1 (*Direct Lending Product Specific Terms*) and Annex 2 (*Intermediated Product Specific Terms*), covering the period from 1 January – 31 December of the previous year, and to be sent to the MIEP and the Investment Board;

"Reminder Notice" means a reminder notice for payment of a Subsequent Tranche issued by the EIB under Clause 3.9 of this Agreement;

"Return Request" has the meaning given to such term in Clause 3.7;

"RRF" means the Recovery and Resilience Facility as established under RRF Regulation;

"RRF Regulation" means the Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility;

"RRP" means the Recovery and Resilience Plan for Romania as endorsed by the Commission and approved by the European Council referred in Recital 3, and/or supplemented from time to time;

"Scheduled Termination Date" means 31 December 2030;

"State Aid" means state aid as described in Articles 107 and 108 of the Treaty on the Functioning of the European Union together with all other rules or regulations relating to the provision of state aid as adopted from time to time by the European Union or, as the case may be, the MIEP;

"Subsequent Tranche" means each tranche of the MIEP Contribution Committed requested up to a maximum of three, subsequent to the First Tranche, to be paid into the FoF Account pursuant to a Written Request, and in an amount not lower 20% of the MIEP Contributions Committed.

"Termination due to Regulatory Developments" has the meaning given to such term in Clause 14.6;

"Termination for Cause" has the meaning given to such term in Clause 14.4;

"Termination Without Cause" means a form of termination of this Agreement which is not a Termination for Cause nor a Termination due to Regulatory Developments, as described in Clause 14.5;

"Transfer Expenses" has the meaning given to such term in Clause 14.3;



"Transfer Period" has the meaning given to such term in Clause 14.7;

"Treasury Guidelines" means the set of guidelines agreed by the parties, which govern the management of the Treasury Funds and which are set out in Appendix E (*Treasury Guidelines*);

"Unitary Fund" has the meaning given in Appendix E (*Treasury Guidelines*); and

"Written Request" means a request in writing for payment of a First Tranche or any Subsequent Tranche of the MIEP Contribution Committed substantially in the form of Appendix F (*Form of Written Requests*).

1.2 Interpretation:

Save where the context otherwise requires:

- (a) any reference to legislation, a statute or statutory provision shall include:
 - (i) such legislation, statute or provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enaction or consolidation applies or is capable of applying to any transactions entered into hereunder;
 - (ii) any subordinate legislation made from time to time under that statute or provision;
- (b) capitalised terms and expressions defined in the Preamble have the same meaning throughout this Agreement unless herein otherwise defined;
- (c) words denoting:
 - (i) the singular number only shall include the plural number also and vice versa;
 - (ii) one gender only shall include the other gender;
 - (iii) persons only shall include firms and corporations and vice versa;
- (d) headings in this Agreement shall be used solely for reference;
- (e) unless otherwise specified, if the last day of any term or deadline falls on a day which is not a Business Day, the relevant term or deadline shall end on the immediately following Business Day; and
- (f) the Annexes and Appendices form an integral part of this Agreement and shall have effect accordingly.



2. MANDATE AND FUNCTIONS OF THE EIB

- 2.1 The MIEP hereby appoints the EIB as its agent to act in the name of the EIB, but for and on behalf of, and at the risk of, the MIEP as principal, to manage and operate the FoF, including the funds and resources of the FoF and the FoF Account and to carry out the other functions and duties in relation to the FoF set out in this Agreement.
- 2.2 The MIEP authorises the EIB, as its agent in connection with the management and operation of the FoF ("**FoF Activity**"):
- (a) to execute banking and financial transactions relating to the operation of the FoF in compliance with the terms of this Agreement;
 - (b) to open and maintain the FoF Account in the name of the EIB but for the account and at the risk of the MIEP;
 - (c) to pursue the strategy set out in the Investment Strategy and Business Plan (Appendix A);
 - (d) to manage the funds credited to the FoF Account, in accordance with the Treasury Guidelines including those required with respect to the Unitary Fund;
 - (e) As regards the Direct Lending Product and the Intermediated Product, to carry out the specific task foreseen, respectively in Annex 1 (*Direct Lending Product Specific Terms*) and Annex 2 (*Intermediated Product Specific Terms*).
 - (f) to monitor the implementation of the relevant investments and Operational Agreements pursuant to the terms and conditions hereunder and in accordance with the terms foreseen in the Annex 1 (*Direct Lending Product Specific Terms*) and the Annex 2 (*Intermediated Product Specific Terms*) and Appendix G (*Monitoring and Reporting*);
 - (g) to take any other action and to enter into any deeds or other documents that the EIB considers to be necessary or desirable for the proper implementation of the FoF.
- 2.3 In performing the FoF Activity, the EIB shall be entitled to retain the services of professional advisers and external consultants, such as tax and legal advisers, accountants, brokers and/or investment banks, translators for specific tasks in connection with the FoF Activity and the implementation of Financial Instruments which, in the reasonable opinion of the EIB, require such expert or professional advice. When retaining such services, the EIB shall ensure that (i) the scope of such services is connected to the scope of this Agreement or is agreed between the Parties, (ii) the fees payable for such services are established in accordance with EIB's internal procedure, and (iii) the services rendered by the external consultants are reasonably evidenced and duly documented.



3. FUNDING OF THE FOF AND ALLOCATION OF FUNDS BETWEEN THE FINANCIAL INSTRUMENTS

- 3.1 The MIEP hereby undertakes to make available to the FoF an aggregate amount equal to the MA Contribution Committed, net of any charges or fees (including but not limited to any bank transfer charges), which shall be paid by the MIEP.
- 3.2 The MIEP shall pay the First Tranche of the MIEP Contribution Committed into the FoF Account no later than thirty (30) calendar days from the date of the initial Written Request by the EIB.
- 3.3 The Parties agree that:
 - (a) each Subsequent Tranche of the MIEP Contribution Committed shall be paid in the FoF Account no later than thirty (30) calendar days from the date of the Written Request by the EIB;
 - (b) each Written Request shall be substantially in the form set out in Appendix F (*Form of Written Requests*) and shall confirm the amount required to be paid to the FoF Account as a Subsequent Tranche, as specified in such Written Request;
- 3.4 The MIEP shall not withdraw or cancel any portion of the MIEP Contribution Committed (whether or not such amount has been effectively paid to the FoF) unless the Parties agree to the withdrawal or cancellation in writing.
- 3.5 The MIEP Contribution Committed shall be used by the EIB for the purpose of the FoF Activity and in accordance with this Agreement, until the termination of this Agreement and the closing and liquidation of the FoF Account.

The Parties agree that the MIEP Contribution Paid shall be initially allocated to each Financial Instrument in equal parts, subject to eventual re-allocation and further allocations as needed and pursuant to the periodical decisions taken by the Investment Board acting upon proposals submitted by the EIB as foreseen in Clause 6.8(f).

- 3.6 The MIEP Contribution Committed shall be allocated, administered, and managed by the EIB in accordance with the EIB's rules, policies, and procedures and depending on the specificities of each Financial Instrument provided hereunder (save where adjustments to these rules, policies and procedures are applied in the context of the FoF and as further set out in the Appendix A (*Investment Strategy and Business Plan*)).
- 3.7 Not earlier than three (3) months and no later than six (6) months following the end of the Eligibility Period, the MIEP shall be entitled to request in writing ("**Return Request**") to the EIB that an amount equal to the difference between:
 - (a) the MIEP Contributions Paid potentially increased by the net interest and net gains generated (on the FoF Account) from the MIEP Contributions Paid accrued up until the date of return; and
 - (b) the aggregate amount equal to the MIEP Contributions Paid which has been applied or remains committed to be applied for the purpose of (a) the financing of Final



Recipients through Financial Instruments, (b) the payment of any fees owed to the EIB, (c) potential negative interest accrued of the FoF Account; and/or (d) any other amount owed by the MIEP to the EIB under this Agreement

shall be returned to the MIEP.

- 3.8 The amount requested under Clause 3.7 shall be paid from the funds available in the FoF Account to the MIEP no later than sixty (60) calendar days after the date of issuance of the Progress Report or other relevant document, as provided under the applicable legal framework from time to time, prepared in accordance with Annex 1 (*Direct Lending Product Specific Terms*) and the Annex 2 (*Intermediated Product Specific Terms*) to follow the Return Request.
- 3.9 If the MIEP does not pay the First Tranche or any Subsequent Tranche into the FoF Account within thirty (30) calendar days from a Written Request by the EIB, then:
- (a) the EIB shall send a reminder notice (a "**Reminder Notice**") to the MIEP; and
 - (b) the unpaid amount in respect of the First Tranche or the relevant Subsequent Tranche shall bear interest from the date falling ten (10) calendar days after the Reminder Notice until the date of payment at a rate equal to EURIBOR plus one (1) per cent.
- 3.10 Any amount payable pursuant to Clause 3.9(b) shall accrue to and be retained by the EIB. If the MIEP fails to pay an amount due in respect of the First Tranche or a Subsequent Tranche within ten (10) calendar days of the EIB sending a Reminder Notice to the MIEP then this shall permit the EIB to terminate this Agreement by reason of the occurrence of a Termination for Cause.

4. USE OF INTEREST GENERATED AND PROCEEDS OF OPERATIONS

4.1 The Parties agree as follows:

- (a) Under the terms of the Operational Agreements, the EIB may expressly permit Financial Intermediaries to re-use and re-invest in Financial Instruments returns in respect of existing Financial Instruments, which returns would otherwise constitute Proceeds of Operations. The terms and conditions of any such permission for Financial Intermediaries to re-use or re-invest Proceeds of Operations shall be submitted to the Investment Board pursuant to Clause 6.8;
- (b) Save as provided in Clause 4.1(a), all Proceeds of Operations shall be paid into the FoF Account without unreasonable delay or in the case of funds committed under Financial Instruments which are guarantees or retained in the FoF Account as provisions against liabilities under such guarantees, such amounts shall be released from the commitment or provision (and be available for the general purposes of the FoF) promptly following the date on which the relevant guarantee expires and/or no further liability may be incurred under such guarantee; and
- (c) During the period from the Effective Date until the Scheduled Termination Date, the Proceeds of Operations which are available in the FoF Account may be re-used



and re-invested under Financial Instruments (including to cover commitments under Financial Instruments which are guarantees, i.e. the Intermediated Product) or to create a provision/reserve (retained in the FoF Account) against contingent liabilities under such guarantees in accordance with this Agreement and the purposes and targets of the RRP on a case by case basis. The proposed terms and conditions, including the additional applicable management fees which, for the avoidance of doubt, are not subject to the Cap and the Legacy Cap foreseen in Clause 7 (*Management Fees*), of any such re-use or re-invest of Proceeds of Operations shall be submitted to the Investment Board pursuant to Clause 6.8.

- 4.2 The Proceeds of Operations generated in the course of a financial year shall be used in the following order of priority: (i) for the payment and/or reimbursement of the respective Management Fees relating to further investments; (ii) for the payment and/or reimbursement of any respective Additional Expenses that remain unpaid; (iii) for the payment of shortfalls, if any, due to negative interest in accordance with Clause 8.5; and (iv) to cover commitments or exposures in relation to existing Financial Instruments, including in circumstances in which a Written Request under Clause 3.2 is not honoured by the MIEP; provided that this does not discharge in whole or in part the MIEP from its obligation to make payment in respect of such Written Request under Clause 3.2, if relevant.
- 4.3 The Parties also agree that any net interest or other net gains earned by the FoF, including in respect of the MIEP Contributions Paid, the treasury management activities and other gains generated from the FoF Account ("**Interest Generated**"), shall be used for the purposes set out in Clause 4.2 above and in the same order of priority.
- 4.4 Subject to the agreement of the Parties, the EIB may enter into further Operational Agreements and investments under the Direct Lending Product and incur expenditure (including Management Fees and management fees and costs payable to Financial Intermediaries under the relevant Operational Agreements) during the Legacy Period and subject to Clause 4.4 below.
- 4.5 The use of Legacy Funds for Financial Instruments to be implemented in the Legacy Period is subject to subsequent agreement of the Parties, which shall be reached no later than six (6) months prior to the end of the Eligibility Period and, if appropriate, revised Investment Strategy and Business Plans.
- 4.6 The EIB shall be entitled to set-off any amount owed to the EIB pursuant to Clause 8 (*Additional Expenses, Negative Interest and Treasury Losses*) against the Interest Generated being returned, save that such set-off shall be without prejudice to the obligations of the MIEP under this Agreement with respect to the entire amount of Interest Generated.

5. THE FOF AND THE FOF ACCOUNT(S)

- 5.1 The Parties agree that the FoF shall be established as a "separate block of finance" within the EIB, and that amounts committed to the FoF and paid to the EIB shall be held as off-balance sheet items, and the EIB shall implement appropriate solutions separating such resources from other resources managed by it.



- 5.2 The FoF Account shall be opened by the EIB in its books for the purposes of administering the FoF funds on behalf of the MIEP.
- 5.3 Payments related to the FoF Account shall be settled through the following account, or any such other account communicated by the EIB to the MIEP from time to time:

Currency:	EUR
Beneficiary bank:	European Investment Bank
BIC CODE:	BEILLULLXXX
Beneficiary account:	Direct via TARGET2 (/RT)
IBAN:	LU92998000000000000001
Communication:	RRF Romania

Before each transfer of funds into the BoI FoF Account, the MIEP shall systematically inform the EIB at least five (5) Business Days prior to the payment date, by e-mail (to OPS-MM5-Treasury@eib.org, FI_PRO_BOT_LPC_CM@eib.org and FI-PRO/BOT/LPC/RECONCILIATION@eib.org or to such other mail address as may be indicated by the EIB from time to time). The MIEP shall ensure that the SWIFT message instructing such payment shall include, in field 70 (remittance information) and in another appropriate available field, a clear indication of the relevant operation name and the source and use of such funds in the following format: "RRF Romania".

- 5.4 The FoF Account shall be denominated in Euros.
- 5.5 The FoF Account and funds credited thereto shall at all times and in all respects be used, committed or otherwise disposed of or managed in accounting terms separately from other the EIB resources (including, for the avoidance of doubt, other funds or accounts belonging to the EIB), and shall be used exclusively for the performance of the FoF Activity in accordance with this Agreement.
- 5.6 The MIEP shall not create or permit to subsist any security, lien or other charge or encumbrance over the FoF Account, the MIEP Contributions Paid or any other funds managed by the EIB in connection with the FoF whether in favour of the MIEP or any third party creditor of the MIEP and whether under any financial assistance agreement entered into by the MIEP or otherwise. The MIEP shall not be entitled to operate, close or otherwise restrict the use of the FoF Account (including by withdrawing any funds deposited in the FoF Account).
- 5.7 The Parties acknowledge and agree that the EIB shall be entitled to operate the FoF Account as follows:

The FoF Account shall be:

- (a) credited with, *inter alia*, the following items:
- (i) the MIEP Contributions Paid;
 - (ii) revenue generated from the investment of FoF funds in accordance with the Treasury Guidelines, to the extend applicable;



- (iii) Interest Generated;
 - (iv) amounts clawed-back from the Final Recipients and Financial Intermediaries, as the case may be, or returned by Final Recipients and Financial Intermediaries, where such amounts do not correspond to any eligible expenditure;
 - (v) Proceeds of Operations;
 - (vi) amounts for the payment of Management Fees;
 - (vii) amounts for the payment of Additional Expenses (and any other amounts due to the EIB under this agreement); and
 - (viii) any funds not already provided for in this Clause.
- (b) debited by the EIB, with the following items:
- (i) amounts to be paid to Final Recipients or to the EIB, as the case may be, including financing for loan products (including risk-sharing loans), and guarantee payments;
 - (ii) amounts to be paid directly or indirectly to Financial Intermediaries under Operational Agreements, and guarantee payments;
 - (iii) Management Fees as provided under Clause 7 (*Management Fees*) and Additional Expenses under Clause 8 (*Additional Expenses, Negative Interest and Treasury Losses*), and any other amounts due to the EIB under this Agreement;
 - (iv) the amount of FoF funds invested in accordance with the Treasury Guidelines;
 - (v) any negative interest on the amounts standing on the credit of the FoF Account subject to investment by the EIB of the assets of the FoF Account, plus any fees, losses and costs arising from the management of the assets on the FoF Account in accordance with the Treasury Guidelines;
 - (vi) amounts transferred to the MIEP under this Agreement, including, without limitation, amounts to be transferred to the MIEP from time to time after the expiration or termination of this Agreement; and
 - (vii) any other amount expressly authorised in writing by the MIEP and the EIB jointly.

The EIB shall continue to be entitled to debit these sums to the FoF Account after a termination of this Agreement for a Termination due to Regulatory Developments, a Termination for Cause or a Termination Without Cause, in order to satisfy its rights and obligations under this Agreement until the end of the Transfer Period.



- 5.8 Any costs incurred for the maintenance and administration of the FoF Account or any other bank accounts necessary for the implementation of the FoF Activity including, but not limited to bank charges, shall be borne by the EIB as part of the Management Fees, other than as regards any negative interest or bank charges assimilated to negative interest which shall be covered in accordance with Clause 8 (*Additional Expenses, Negative interest and Treasury Losses*).
- 5.9 It is acknowledged and agreed by the Parties that any funds managed by the EIB for the FoF in accordance with this Agreement are the exclusive property of the MIEP whether or not such funds were financed in whole or in part by a loan or other financing made available to the MIEP by the EIB.

6. THE INVESTMENT BOARD

- 6.1 The MIEP shall establish or designate the Investment Board with a view to monitoring and supervising the implementation of the Investment Strategy and Business Plan in accordance with the provisions of this Agreement. In order to enhance the efficiency of the FoF, the MIEP specifically agrees that, for all matters relating to the implementation of the FoF and falling into the scope of this Agreement, the MIEP shall express its positions through the Investment Board.
- 6.2 The Investment Board shall consist of 5 members appointed by the MIEP after consultation with the EIB, who shall be representatives of the MIEP and the Ministry of Finance of Romania competent in the sectors of the FoF and having at least three (3) years of relevant experience.
- 6.3 The MIEP or the Members of the Investment Board, as appropriate, shall appoint the Chairperson of the Investment Board at the first meeting of the Investment Board. The members shall act solely in the interests of the FoF.
- 6.4 The EIB shall be entitled to designate up to three (3) of its officials to participate in meetings of the Investment Board, as observers.
- 6.5 The Investment Board shall, at its first meeting and subject to the EIB not objecting, adopt internal rules of procedure for its routine functioning and the management of the FoF in the form attached in Appendix D ("***Investment Board Rules of Procedure***").
- 6.6 The Parties acknowledge that any decisions taken or communicated by the Investment Board shall always be taken after appropriate assessment of the position of the MIEP as appropriate and solely in the interests of the FoF. The EIB observers on the Investment Board designated pursuant to Clause 6.4 shall not be entitled to vote in decisions made by the Investment Board. The EIB shall be entitled to rely, without further enquiry, on any decisions taken or communicated by the Investment Board and to assume that such decisions fully reflect the position of the MIEP.
- 6.7 For the avoidance of doubt, the Parties acknowledge that the above appointments shall have effect exclusively for the purposes of this Agreement and for the governance of the FoF and further acknowledge that all costs in relation to establishing and operating the Investment Board shall be borne by the MIEP and that members of the Investment Board



shall not be entitled to receive any fees, costs or expenses from the FoF or the EIB. The MIEP will operate the Investment Board and its internal organisation under its exclusive responsibility and cost.

6.8 The Investment Board shall liaise internally with competent ministries, counselling bodies and other authorities, as it deems appropriate, to perform its tasks in relation to the implementation of the FoF and the Investment Board shall be responsible, among others, for the following matters:

- (a) acting as the coordination and communication point between the EIB and the MIEP on all matters relating to the FoF in accordance with this Agreement;
- (b) communicating, setting and amending (or proposing to the competent authorities the amendment), if deemed necessary, national rules and requirements relating to the FoF Activity, in consultation with the EIB;
- (c) providing advice and conclusive rulings on matters relating to applicable national laws and regulations and on compliance with State Aid rules (including confirmation of gross grant equivalent), in connection with the eligibility of financing to Final Recipients (including under Operational Agreements), the operation of the FoF, the Financial Instruments and Operational Agreements;
- (d) upon proposal by the EIB, approving any amendments to the Investment Strategy and Business Plan (Appendix A) if any;
- (e) receiving the annual Progress Report;
- (f) upon proposal by the EIB, as foreseen in Clause 3.5 above, approving the allocation of the MIEP Contribution Committed to the Financial Instruments as needed be;
- (g) approving any proposal by the EIB for the re-use and re-invest in Financial Instruments returns or Proceeds of Operations as per Clause 4.1(a) and Clause 4.1(c); and
- (h) upon formal proposal by the EIB (following consultation with the Investment Board, if and when deemed necessary), carry out any other tasks under or in connection with this Agreement, without prejudice or limitation to the EIB's rights under this Agreement. Those including, for the avoidance of doubt, the specific decisions to be taken as regards each Financial Instrument, as foreseen in Annex 1 (*Direct Lending Product Specific Terms*) and Annex 2 (*Intermediated Product Specific Terms*).

6.9 Where the Investment Board has decision-making powers upon proposal of the EIB, the Investment Board shall have the power only to approve or reject proposals or recommendations in their entirety (and not in part) and shall not have the power to amend such proposals or recommendations, unless the EIB has consented to any such amendment.



- 6.10 For the avoidance of doubt, the Parties acknowledge and agree that the EIB shall have the exclusive right to take any decisions necessary in order to perform the FoF Activity and to make proposals to the Investment Board on the matters set out in this Agreement.
- 6.11 The MIEP shall provide the secretariat of the Investment Board in accordance with this Agreement (the "**Secretariat**"). The tasks and functions of the Secretariat shall include the following:
- (a) organisation of Investment Board meetings, including drawing up and distribution of Investment Board documents, agenda and minutes;
 - (b) any other tasks as defined in this Agreement or by the Investment Board; and
 - (c) communications related to the activities of the Investment Board shall be channelled through the Secretariat.
- 6.12 Any communications to and from the Investment Board shall be validly effected if addressed in writing in accordance with Clause 18 (*Notices*).

7. MANAGEMENT FEES

- 7.1 The MIEP acknowledges that, in consideration for the operation and management of the FoF, the MIEP Contributions Committed and any other funds of the FoF and the performance of the FoF Activity by the EIB, from the Effective Date (irrespective of whether the funds have actually already been disbursed on that date) until the earlier of (i) the termination of this Agreement, and (ii) the Scheduled Termination Date, the EIB shall be entitled to the Management Fees, which the MIEP hereby agrees to assume and pay to the EIB.

Upon receipt of the First Tranche and Subsequent Tranches, the EIB reserves the right to set aside and identify separately within the amount received the estimated necessary amount to cover its Management Fees due and those receivable for a period of 12 months or for the period up until the end of the Eligibility Period if such a period is shorter than 12 months. However if the period from receipt of the last Subsequent Tranche to the end of the Eligibility Period is longer than 12 months, then the EIB reserves the right to set aside the estimated amount for the period until the end of the Eligibility Period.

- 7.2 The EIB shall be entitled to withdraw the Management Fees from the FoF Account on a semi-annual basis. The Parties agree that if the Management Fees due exceed the available balance of the FoF Account (including for the purpose of such calculation, any Proceeds of Operation credited thereto but excluding, amounts already committed by the EIB towards one or more Financial Instrument(s)), such excess amount shall, at the election of the EIB, either be carried over for payment together with the amounts referred to in the next Written Request or shall be invoiced by the EIB to the MIEP, in the form of a separate written request, and shall be payable within ten (10) Business Days into the FoF Account. Any such payment received by the EIB during the Eligibility Period shall be deemed to be part of the MIEP Contributions Paid.



7.3 The Management Fees shall be payable (or debited from the FoF Account) semi-yearly in arrears and shall consist of:

(a) **during the Eligibility Period**, the sum of:

- (i) in respect of the first and the second year from the Effective Date, 1.5% per annum of the MIEP Contributions Paid (which, for the purposes of this definition, shall be calculated *pro rata temporis* based on the number of calendar days during such period);
- (ii) thereafter and until the earliest of (i) the end of the Eligibility Period or (ii) the Termination Date, 1.3% per annum of the MIEP Contributions Paid (which, for the purposes of this definition, shall be calculated *pro rata temporis* based on the number of calendar days during such period);

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an utilization element equal to:

- (iii) 0.5% per annum of the amount of the MIEP Contributions Paid and disbursed to Final Recipients (under the Direct Lending Product), or set aside by the EIB to create financial provisions against exposures to contingent liabilities for Operational Agreements entered into with Financial Intermediaries providing the underlying loans to Final Recipients (under the Intermediated Product), as the case may be (which, for the purposes of this definition, shall be calculated in aggregated amounts on 30th June and 31st December of each calendar year *pro rata temporis* based on the number of calendar days during such period);
- (b) **after the Eligibility Period**, 1% per annum of the MIEP Contributions Paid (which, for the purposes of this definition, shall be calculated *pro rata temporis* based on the number of calendar days during such period).

7.4 Notwithstanding the other terms of this Clause 7 (*Management Fees*), the total amount of the Management Fees shall be subject to a cap:

- (a) during the Eligibility Period equal at any relevant time to the then applicable aggregate of 6% of the MIEP Contributions Paid and disbursed to Final Recipients (under the Direct Lending Product), or set aside by the EIB to create financial provisions against exposures to contingent liabilities for Operational Agreements entered into with Financial Intermediaries providing the underlying loans to Final Recipients (under the Intermediated Product), as the case may be (the "**Cap**"); and
- (b) after the Eligibility Period equal at any relevant time to the then applicable aggregate of 5% of the MIEP Contributions Paid and disbursed to Final Recipients (under the Direct Lending Product), or set aside by the EIB to create financial provisions against exposures to contingent liabilities for Operational Agreements entered into with Financial Intermediaries providing the underlying loans to Final Recipients (under the Intermediated Product), as the case may be (the "**Legacy Cap**").



7.5 Subject to Clause 13 (*Amendments*) below, should the Parties agree to extend the duration of this Agreement beyond the Scheduled Termination Date, they will negotiate also the fees applicables during such extended period.

8. ADDITIONAL EXPENSES, NEGATIVE INTEREST AND TREASURY LOSSES

8.1 Additional Expenses

The Parties agree that any Additional Expenses incurred or to be incurred by the EIB in connection with the FoF and the FoF Activity (together with any interest accrued thereon for late payment under Clause 8.6), including in particular those expenses which are deemed not eligible expenditure and any related rules of the MIEP, shall be considered to be additional amounts payable by the MIEP in excess of the MIEP Contributions Committed and from MIEP resources which are not subject to EU rules on RRF as further set out below in this Clause.

8.2 The Additional Expenses shall include, *inter alia*:

- (a) costs arising in connection with the termination of this Agreement, and with the transfer of any FoF funds to the MIEP or any entity newly appointed by the MIEP for such purpose;
- (b) costs connected to the external audit of the FoF and other audit engagements;
- (c) costs connected to recovery actions or any litigation arising in relation with Financial Instruments;
- (d) costs incurred in connection with information, marketing and publicity measures of the FoF as approved by the Investment Board from time to time; and
- (e) other costs to be defined as Additional Expenses and mutually agreed by the EIB and the MA from time to time.

8.3 Any Additional Expenses incurred in accordance with Clause 8.1 above, shall be covered:

- (i) First by the Proceeds of Operations available in the FoF Account (excluding amounts already committed by the EIB towards one or more Financial Instrument(s) or applied to cover Management Fees due to the EIB, as the case may be). In this regard, the EIB shall be entitled to withdraw the relevant amounts from the FoF Account.
- (ii) Second, and to the extent not covered by the Proceeds of Operations, by the MIEP as a separate payment to the EIB, into the FoF Account, within ten (10) Business Days from the EIB's Additional Expenses Request.

8.4 The EIB will, to the extent possible and as soon as practicable, inform the MIEP in writing of the likelihood of incurring any Additional Expenses and where Additional



Expenses may be forecasted, the EIB will also provide a forecast to allow the MIEP to comply with its budgetary rules.

8.5 *Negative Interest and Treasury Losses*

The Parties agree that any costs linked to the application of negative interest rates to the FoF Account or any other bank accounts necessary for the implementation of the FoF Activity, including as regards the Unitary Fund, as well as any treasury losses will be covered:

- (i) by the Proceeds of Operations or the Interest Generated in accordance with Clauses 4.2 and 4.3 above; and
- (ii) if such amounts are insufficient at a certain time as determined by the EIB, by the MIEP as a separate payment to the EIB within ten (10) Business Days from the EIB's written request.

8.6 If the MIEP does not pay any amounts set out in this Clause 8 within the applicable term, such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus one (1) per cent.

8.7 Should the EIB succeed in recovering any costs connected to litigation referred to in Clause 8.2(c) above, which have been effectively paid by the MIEP, in respect of the same litigation process, to the EIB, it shall return to the MIEP such costs recovered, provided that the EIB shall first be entitled to set these amounts off against any other amounts due to it by the MIEP.

9. MATERIAL INTERESTS AND DISCLOSURES

The MIEP acknowledges and agrees that:

- (a) the EIB operates, or may operate, a number of mandates agreed, or to be agreed, between the EIB and third parties. The investment policies of such mandates may entail the offering of financial instruments of a similar nature to the Financial Instruments in a number of jurisdictions, including Romania; and
- (b) the EIB may on its own account or on behalf of third parties invest in financial instruments of a similar nature to the Financial Instruments in a number of jurisdictions, including Romania; and
- (c) the EIB shall provide financing to the same Final Recipients/investments as the Financial Instruments contemplated herein in accordance with the Investment Strategy and Business Plan.

Accordingly, the EIB may, without prior reference to the Investment Board or to the MIEP, effect transactions in which the EIB has, directly or indirectly, a material interest or a relationship of any description with another party, which involves or may involve a potential conflict with the EIB's duty to the MIEP and the FoF. The EIB shall manage and where possible, address any potential conflicts of interest, in accordance with its internal rules and procedures, which may include, where appropriate, the implementation



of confidentiality rules and organisational arrangements relating to the dissemination of confidential information within the EIB and taking into consideration the Investment Strategy and Business Plan for the FoF.

10. RESPONSIBILITIES OF THE PARTIES AND LIABILITY

- 10.1 The EIB agrees, without prejudice to Clause 10.2 below, to act with the diligence of a professional body and in good faith in implementing this Agreement.
- 10.2 Subject to Clause 10.3 below, the EIB shall under no circumstances be held responsible or liable to the MIEP or any other person in connection with the financial performance of the FoF, the financial results of Financial Instruments, the investment made in accordance with Treasury Guidelines (including as a result of negative interest/charges), the financial results of any of the Operational Agreements, the failure by the MIEP, and/or any Final Recipient benefitting from FoF financing to comply with any applicable laws or regulations. The EIB shall not incur any financial liability as a result of Foreign Exchange fluctuations between Euros and the Romanian Leu in relation to the fact that relevant amounts in the RRP and relevant Operational Agreements (under the Intermediated Product) and lending agreements as regards investments (under the Direct Lending Product) are expressed in Euros.
- 10.3 The EIB shall not be liable to the MIEP, or any other person, for any acts or omissions under or in connection with its appointment under this Agreement and its own performance of the FoF Activity except to the extent of such costs, claims, damages, losses, liabilities or expenses of the MIEP which directly result from fraud, wilful misconduct or gross negligence of the EIB in the performance of this Agreement. For the avoidance of doubt, the EIB shall under no circumstances whatsoever be liable to the MIEP for consequential damages, loss of profit or exemplary or punitive damages.
- 10.4 Subject to Clause 10.3 above, any liability of the EIB in connection with this Agreement shall be excluded to the extent any action by the EIB is based on information obtained from the MIEP or a decision or approval from the Investment Board. The EIB assumes no obligation to independently verify the accuracy, relevance or completeness of any such information received from the MIEP or to examine or challenge any decision or approval by the Investment Board.
- 10.5 The MIEP hereby agrees to indemnify and hold harmless the EIB and each of its officers, directors, employees, agents, delegates and sub-delegates upon first written demand in respect of any cost, claim, damage, loss, liability, judgments, settlements or expenses (including legal fees and other costs incurred in investigating or defending any claim) incurred or suffered by the EIB (the "**Indemnified Amounts**") in connection with:
- (a) the appointment of the EIB under this Agreement or in connection with the FoF Activity;
 - (b) any information supplied by the MIEP or the Investment Board to the EIB in relation to this Agreement being false, misleading, inaccurate or incomplete;



- (c) any instruction made by or on behalf of the MIEP to the EIB in relation to this Agreement or the FoF Activity;
- (d) any breach (including failure to pay) or misrepresentation, whether arising directly or indirectly, by the MIEP or the Investment Board under this Agreement; and/or
- (e) any claim by any person to be entitled to any assets which form part of the FoF,

except in so far as such Indemnified Amounts directly result from the fraud, wilful misconduct or gross negligence of the EIB in the performance of this Agreement.

For the avoidance of doubt, the obligation of the MIEP under this Clause 10.5 extends also to the obligation to hold the EIB harmless for any payments that the EIB would have been obliged to make to Final Recipients or to Financial Intermediaries (including any penalties) under Operational Agreements, as the case may be, including where the EIB has made such payment on the basis of resources other than FoF resources.

10.6 The MIEP hereby agrees that:

- (a) Any Indemnified Amount (together with any interest accrued thereon for late payment under Clause 10.6(b) due to the EIB shall be paid by the MIEP to the EIB within ten (10) Business Days of the EIB's written request, as an additional amount payable by the MIEP in excess of the MIEP Contributions Committed and shall be paid from MIEP resources which are not subject to EU rules on RRF.
- (b) If the MIEP does not pay any Indemnified Amount within the delay set out in Clause 10.6(a), such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus one (1) per cent.

10.7 The obligations of the MIEP to indemnify the EIB under this Agreement are continuing and shall remain in full force and effect notwithstanding the occurrence of the Scheduled Termination Date or any termination of the other terms of this Agreement.

11. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY THE MIEP

11.1 The MIEP hereby represents and warrants and in respect of the matters in Clause 11.1(c), (d), (g) and (f) (below), represents and warrants at all material times until the termination of this Agreement that:

- (a) it has full power and capacity (including with respect to its domestic laws and constitutional requirements) to appoint the EIB on the terms of this Agreement and to enter into transactions within the scope of this Agreement and has obtained all necessary authorisations and approvals to permit the EIB to do so on its behalf;
- (b) neither its entry into or performance of this Agreement nor into any such transaction will breach any law, rule or regulation applicable to it, namely the RRF Regulation and the RRP, as approved, or any material contract to which it is a party;



- (c) the FoF is free from all liens, charges and encumbrances and the MIEP undertakes that no liens, charges or encumbrances over the FoF will arise from the acts or omissions of the MIEP;
 - (d) any information or documentation provided by the MIEP to the EIB (including any information as to the financial position of the MIEP or the FoF) is true, complete, accurate and not misleading in any material respect.
 - (e) the Investment Board, as the case may be, shall provide any further information properly required by the EIB or any competent authority, including in relation to performing the EIB's obligations under this Agreement;
 - (f) it has understood and acknowledged the risks entailed in the Financial Instruments including as set out in Appendix A (*Investment Strategy and Business Plan*) and Appendix H (*FoF Risk Policy*). The MIEP acknowledges and accepts (i) the risk of full loss both at the Final Recipient's level and the Financial Intermediary's level and (ii) a lack of a risk-commensurate return;
 - (g) it acknowledges and agrees that the FoF shall operate, to the extent applicable:
 - (i) Regarding the Direct Lending Product, in accordance with the EIB's respective rules, policies, and procedures, save for the cases detailed in Section 1 (*Direct Lending Product Risk Policy*) of Appendix H (*FoF Risk Policy*); and
 - (ii) Regarding the Intermediated Product, the EIB will not apply the EIB's rules, policies and procedures applied to operations it carries out at its own risk, as further detailed in Section 2 (*Intermediated Product Risk Policy*) of Appendix H (*FoF Risk Policy*); and
 - (h) the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations and they comply with the representation indicated in indent (b) above.
- 11.2 The MIEP will notify the EIB promptly if there is any material change to any of the information provided by it for the purposes of this Agreement or to its circumstances generally, and will provide such other relevant information as the EIB may from time to time reasonably require. The MIEP acknowledges that a failure to provide such information may adversely affect the ability of the EIB to provide services under the Agreement and the quality of the services that the EIB may provide.
- 11.3 The MIEP undertakes not to deal, or dispose of any of the assets of the FoF nor to authorise any person other than the EIB to deal or dispose of any of them.
- 11.4 The MIEP represents and warrants that the Investment Strategy and Business Plan (Appendix A) (i) fully and accurately incorporates all the conditions and requirements (including eligibility criteria) of the RRP that are applicable to the Financial Instruments implemented and (ii) complies with the policy objectives of the RRP.



- 11.5 The MIEP further represents and warrants that there are no additional national or regional requirements that would apply to the Financial Instruments implemented in the context of the FoF.

12. DOCUMENT RETENTION

- 12.1 The EIB agrees to retain all supporting documents for its actions pursuant to this Agreement for a three (3) year period from the end of the Legacy Period; or for documents relevant to State Aid rules, for a ten (10) year period from the date on which the last aid was granted to Final Recipients.
- 12.2 The EIB agrees to make all supporting documents available as evidence in order to allow for its expenditure to be audited by the European Court of Auditors.

13. AMENDMENTS

- 13.1 Amendments to this Agreement shall be made in writing with the written consent of the Parties, with each Party representing that all prior authorisations and publications necessary for such amendments have been obtained or performed at the time of the written consent. Amendments shall become effective upon execution by both Parties hereto.
- 13.2 The Parties shall negotiate in good faith and execute any amendments to the terms of this Agreement, which may become necessary or desirable in case of an amendment to any laws, regulations or administrative acts of the MIEP or the EU (including, where relevant, any compensation or adjustment to the remuneration of the EIB as a result of any such amendments).
- 13.3 Notwithstanding Clause 13.1 above, any amendments, updates and/or additions to Appendix A (*Investment Strategy and Business Plan*), if any, may be made by the Parties following the procedure of approval by the Investment Board set out in Clause 6.8(d), properly documented in the relevant minutes and duly communicated to MIEP by the Investment Board, shall not require a formal amendment to this Agreement.

14. EFFECTIVE DATE, TERMINATION AND FORCE MAJEURE

- 14.1 This Agreement shall become effective as of the Effective Date and shall, unless terminated earlier in accordance with this Clause, remain in force until the Scheduled Termination Date (provided that the indemnification obligations of the MIEP under Clause 10 (*Responsibilities of the Parties and Liability*) shall continue in full force and effect notwithstanding any termination of this Agreement).
- 14.2 No later than six (6) months prior to the Scheduled Termination Date of this Agreement, the EIB shall return the balance of the FoF Account outstanding at that time (after deducting any Management Fees payable to the EIB until the Scheduled Termination Date) by crediting the relevant amount to such bank account as the MIEP communicates to the EIB. Any residual liabilities under the transactions entered into with Final Recipients shall be transferred to and assumed by the MIEP or to an entity expressly appointed by the MIEP for this purpose.



14.3 Upon termination of this Agreement earlier than the Scheduled Termination Date, all expenses incurred by the EIB in connection with such termination and transfer of the balance of the FoF Account outstanding at that time (after deducting any Management Fees and Additional Expenses payable to the EIB until termination) and any residual liabilities to the MIEP or to an entity expressly appointed by the MIEP for this purpose (all these external expenses collectively referred to “**Transfer Expenses**”), must be borne by the MIEP.

14.4 The occurrence of any of the following events will permit a termination for cause (a “**Termination for Cause**”):

- (a) either Party commits a material breach of its obligations under this Agreement, if capable of being remedied, has not been remedied by the defaulting Party within three (3) months from the other Party giving written notice of such breach to the defaulting Party;
- (b) the MIEP fails to make payment of the First Tranche within thirty (30) calendar days from the date of the initial Written Request by the EIB;
- (c) the MIEP fails to make payment in respect of a Subsequent Tranche within ten (10) calendar days of a Reminder Notice being sent by the EIB;
- (d) there is any failure to pay by the MIEP of any other amount due and payable under this Agreement and such failure to pay is not remedied or cured in full within ten (10) calendar days of the date upon which it is due;
- (e) the MIEP fails to comply with its obligations to satisfy the cost of the audits and/or verifications as contemplated in Annex 1 (*Direct Lending Product Specific Terms*) and Annex 2 (*Intermediated Product Specific Terms*); or
- (f) the Parties do not agree a revised Investment Strategy and Business Plan as described in Clause 4.5 prior to the commencement of the Legacy Period.

The Party which did not commit the relevant material breach of this Agreement may by written notice to the other Party terminate this Agreement if the event in Clause 14.4.(a) occurs.

The EIB may by written notice to the MIEP terminate this Agreement if an event in any of Clauses 14.4.(b) to (e) occurs.

Either Party may by written notice to the other Party terminate this Agreement if the event in Clause 14.4(f) occurs.

14.5 Provided that this Agreement has not been terminated for a Termination for Cause, this Agreement may be terminated without any cause on the last day of the Eligibility Period by either Party giving written notice to the other Party no later than six (6) months prior to the end of the Eligibility Period (the “**Termination Without Cause**”).

14.6 Without prejudice to a Termination for Cause, this Agreement may be terminated by the EIB, at any time in case the MIEP or any public authority duly empowered within the



MIEP amends or changes any laws, regulations or administrative acts, and such amendment, in the reasonable opinion of the EIB may have an adverse impact on the activities entrusted to the EIB under this Agreement, or on the performance, of the FoF, materially deviates from the Investment Strategy and Business Plan (Appendix A) or are not suitable for implementing it (the "**Termination due to Regulatory Developments**").

14.7 The Parties agree that:

- (a) if a material breach under Clause 14.4(a) is not capable of being remedied, or if a material breach under Clause 14.4(a) which is capable of being remedied has not been remedied within three (3) months of either Party giving written notice of the Termination for Cause;
- (b) a failure to pay under Clauses 14.4(b), (c) or (d) or a breach under Clause 14.4(e) is not remedied within ten (10) Business Days of the EIB giving the MIEP notice of the Termination for Cause;
- (c) either Party gives written notice of a Termination Without Cause or Termination With Cause under Clause 14.4(f); or
- (d) the EIB gives written notice of a Termination due to Regulatory Developments under Clause 14.6,

then, unless the EIB gives a written notice to the MIEP pursuant to Clause 14.8, a three (3) month period shall be immediately initiated during which the Parties agree that the FoF, all assets and liabilities relating to the FoF (including where held or incurred in the name of the EIB as part of the FoF Activity) and all Operational Agreements entered into, are transferred to (whether by assignment, novation or otherwise) or assumed by the MIEP (the "**Transfer Period**"). In particular, in such case,

- (i) the MIEP shall accept and assume all rights, obligations and liabilities relating to the FoF and Operational Agreements and agrees to enter into any transfer agreement or equivalent documentation necessary for the formalisation of the transfer thereof to the MIEP; and
- (ii) notwithstanding Clause 19.3, the balance of the funds paid in the FoF Account, as well as any assets resulting from the implementation of the Operational Agreements, shall be transferred to the MIEP and, as relevant, shall be credited with such bank account as the MIEP shall communicate to the EIB and the FoF Account shall be closed,

and at the end of the Transfer Period, the EIB shall be automatically released of any liability under this Agreement and the Operational Agreements and this Agreement shall terminate.

14.8 If any of the events in sub-paragraphs(a), (b), (c) or (d) of Clause 14.7 occur, the EIB may, at its discretion, give written notice to the MIEP within thirty (30) days of the existence of such circumstances, that:



- (a) the EIB shall not transfer the balance of the FoF Account (or any assets resulting from the investments carried out) to the MIEP; and
- (b) the EIB shall not assign, transfer or novate the then existing Operational Agreements and Financial Instruments and to the MIEP, but shall continue to manage the FoF Account, the Operation Agreements and the existing Financial Instruments on the terms of this Agreement, including the right to be paid Management Fees and Additional Expenses, to be reimbursed in respect of costs and expenses and to be indemnified under the terms of this Agreement provided that:
 - (i) it shall not propose any new project or investment to the Investment Board;
 - (ii) it shall not enter any new Operational Agreements; and
 - (iii) it shall not re-invest or re-use Proceeds of Operations save for such re-investment or re-use which is made by the relevant Financial Intermediary in accordance with the express terms of an existing Operational Agreement.

In such circumstances, this Agreement shall continue in full force effect until such time as the Scheduled Termination Date occurs in relation to the support of Financial Instruments as were in effect on the date on which this Agreement would otherwise have ended by reason of the Termination for Cause or a Termination Due to Regulatory Developments.

14.9 Without prejudice to any of the provisions of this Clause relating to the Parties' obligations on termination of this Agreement, in the event of termination of this Agreement, the EIB shall be released from any obligation to perform the FoF Activity, as of the effective date of such termination.

14.10 The EIB shall procure that, subject to applicable law, all agreements supported by the FoF including, for the avoidance of doubt, Operational Agreements, provide for assignment, novation, substitution and/or nomination rights of the MIEP in order to ensure the transfer of such agreements thereunder to the MIEP or to an entity newly appointed by the MIEP, as applicable, in case of termination of this Agreement. The undertaking set out in this Clause shall not apply in a situation where the relevant transfer rights would not permit a favourable regulatory capital treatment of the Financial Instruments under applicable law.

14.11 Termination of this Agreement shall be without prejudice to accrued rights and obligations under this Agreement.

14.12 Notwithstanding any other provision of this Clause 14, in the event that an unforeseeable exceptional situation or event beyond any of the Parties' control occurs (other than labour disputes, strikes or financial difficulties and the kind), including (without limitation) the cancellation or suspension of the FoF pursuant to an act of the European Union or of the MIEP or otherwise, which prevents either of them from fulfilling any of their obligations under this Agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence (each a "**Force Majeure Event**"), the Party



facing such Force Majeure Event shall inform the other Party without delay through a written notice ("**Force Majeure Notice**") stating the nature, probable duration and foreseeable effects. Upon receipt of a Force Majeure Notice, the Parties shall immediately enter into consultation and make every effort to minimise any damage due to the occurrence of the relevant Force Majeure Event, it being understood that neither Party shall be held in breach of its obligations under this Agreement if it is prevented from fulfilling them due to a Force Majeure Event. If the Parties, acting in good faith, ascertained that the continuation of the performance of the FoF Activity is impossible or extremely onerous as a result of the occurrence of a Force Majeure Event, this Agreement shall be terminated in accordance with this Clause 14.

15. CONFIDENTIALITY AND DISCLOSURE

15.1 The EIB is not obliged to disclose to the Investment Board or to take into consideration information:

- (a) the disclosure of which by it to the Investment Board would or might be a breach of duty or confidentiality to any other person; or
- (b) which comes to the notice of an employee, officer or agent of the EIB but does not come to the actual notice of an EIB individual managing the FoF.

15.2 The Parties will at all times keep confidential all information of a confidential nature acquired in consequence of their involvement in the implementation of this Agreement, except that they may disclose such information in any of the following circumstances:

- (a) where the disclosure is made within the EIB Group;
- (b) where they may be entitled or bound to disclose it by law or regulation or by their own policies on public access to information, or where requested by regulatory or fiscal authorities or any court of competent jurisdiction, including disclosing such information to the Commission, the European Anti-Fraud Office, and/ or the European Court of Auditors;
- (c) to their professional advisers where reasonably necessary for the performance of their professional services;
- (d) (in the case of the EIB when disclosing information relating to the MIEP and/or the FoF) to any of its delegates and other agents under this Agreement, to any market counterparty or any broker (in accordance with market practice) in relation to transactions undertaken for the FoF, in all cases only to assist or enable the proper performance of its services under this Agreement, or any Operational Agreements; or
- (e) to counterparties where disclosure is reasonable for the purpose of effecting transactions in connection with this Agreement or of establishing a dealing relationship with a view to such transactions.

15.3 The MIEP authorises the EIB to supply to the FoF and EIB's auditors any information about the FoF requested by them.



16. ASSIGNMENT

- 16.1 This Agreement may not be assigned by the MIEP or transferred by it (whether by assignment, novation or otherwise).
- 16.2 Without prejudice to Clause 2.3, the EIB may transfer or delegate all or any part of its functions, including all or any part of its rights and duties under this Agreement to an entity which it reasonably considers can properly perform those functions, subject to obtaining the prior written consent of the MIEP, which consent shall not be unreasonably withheld.

17. GOVERNING LAW AND DISPUTE RESOLUTION

- 17.1 The Parties hereby submit to the jurisdiction of the Court of Justice of the European Union.
- 17.2 This Agreement is subject to the general principles of law common to the Member States as interpreted or to be interpreted by the Court of Justice of the European Union.

18. NOTICES

18.1 Communications in writing and Addresses

Unless otherwise provided for in this Agreement, any notice or communication by one Party to the other Party shall be made in writing and shall be delivered either by registered mail, email or telefax, with transmission confirmation clearly stating in the subject "RRF Romania", to the following addresses:

If to the MIEP:

Address: Șos. București-Ploiesti, nr. 1 – 1B, Victoria Office Intrarea str. Menuetului, nr. 7, Sector 1, București.
Attention: Mr George Carpusor
Email: cabinet.ministru@mfe.gov.ro
george.carpusor@mfe.gov.ro

If to the Investment Board:

Address: Șos. București-Ploiesti, nr. 1 – 1B, Victoria Office Intrarea str. Menuetului, nr. 7, Sector 1, București
Attention: Mr George Carpusor
Email: cabinet.ministru@mfe.gov.ro
george.carpusor@mfe.gov.ro

**If to the EIB:**

Address: European Investment Bank
98-100 bld Konrad Adenauer
L-2950, Luxembourg
Attention: Head of Financial Instruments Unit
Baltic Sea and Northern Europe Department
Email: OPS-BSNE1-FININSTR@eib.org

Either Party shall inform the respective other Party in writing without undue delay of any change of the above address details. Until receipt of notification of such changes, each Party may validly serve notice to the last address duly notified to it.

18.2 Delivery

- (1) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (a) if by way of fax, when received in legible form;
 - (b) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post in a prepaid envelope addressed to it at that address; or
 - (c) if by way of email, when actually received (or made available) in readable form,and, if a particular department or officer is specified as part of a Party's address details provided under Clause 18.1 (*Communications in writing and Addresses*) above, if addressed to that department or officer.
- (2) Any communication or document, which becomes effective, in accordance with paragraphs (a) to (c) in Clause 18.1 (*Communications in writing and Addresses*) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

19. MISCELLANEOUS

- 19.1 This Agreement, including its Appendices (as amended from time to time) constitutes the entire agreement of the Parties with respect to the management of the FoF and supersedes and extinguishes all prior understandings, arrangements, agreements, representations, proposals or communications between the Parties, whether written or oral.
- 19.2 EIB's authority under this Agreement is given by the MIEP on behalf of its successors in title as well as of itself.
- 19.3 The EIB may, but shall not be obliged to set-off any amount owed to it against any amount payable by the EIB to the MIEP under this Agreement.



- 19.4 The specific provisions contemplated in Annex 1 (*Direct Lending Product Specific Terms*) and Annex 2 (*Intermediated Product Specific Terms*) shall complement the terms established herein. In case of conflict between those and Clauses 1 to 19 of this Agreement, the latter shall prevail.
- 19.5 The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of this Agreement nor the legality, validity or enforceability of any other provision.
- 19.6 This Agreement has been executed in three (3) originals in English language, or has been signed electronically each of which represents an authentic original of this document, unless it has been executed electronically.

THE GOVERNMENT OF ROMANIA
EUROPEAN INVESTMENT BANK

.....

By: Dan Vîlceanu

Title: Minister of Investment and
European Projects

.....

By: Sonja Ingrid Malkki

Title: Head of Division

.....

By: Goetz Von Thadden

Title: Head of Unit



ANNEX 1

DIRECT LENDING PRODUCT SPECIFIC TERMS

1. SPECIFIC DEFINITIONS

- 1.1 In this Annex 1 the following defined terms and expressions shall bear the following meaning, unless the context requires otherwise:

“Eligible Project” means a project which is eligible to receive investment in accordance with the terms and conditions of the FoF Investment Strategy and Business Plan (Appendix A), the eligibility criteria of the RRP and the EIB.

- 1.2 Unless explicitly stated otherwise in this Annex 1, capitalised terms shall have the meaning attributed to them in the Agreement.

2. SPECIFIC FUNCTIONS OF THE EIB REGARDING THE DIRECT LENDING PRODUCT

Further to Clause 2.2 of the Agreement, the MIEP authorises the EIB, as its agent in connection with FoF Activity:

- (a) to propose, negotiate and implement, as required and in accordance with the terms and conditions of this Agreement, investment into projects appraised and approved for the EIB own lending; and
- (b) to enforce, defend and if necessary adapt or waive any rights arising from the investments carried out in accordance with the Agreement, including, where it is commercially reasonable, by means of litigation, arbitration, mediation or other dispute resolution methods or procedures.

3. INVESTMENT BOARD SPECIFIC TASKS IN CONNECTION WITH THE DIRECT LENDING PRODUCT

- 3.1. Further to Clause 6.8 of the Agreement, regarding the Direct Lending Product, the Investment Board shall be also responsible for approving the relevant EIB's proposals for investment of the MIEP Contributions Committed, including the negotiation and conclusion of the relevant agreements and confirmation of the eligibility of the relevant investment as well as of the pricing to be applied. For the avoidance of doubt, the foregoing pricing approval shall not apply to RRF funds used by the EIB as a cash collateral.
- 3.2. For the avoidance of doubt, aspects of eligibility and pricing, if applicable as per Article 3.1 above, of any proposed investment (RRF component), shall be exclusively decided by the MIEP and/or the Investment Board and will be communicated to the EIB and included in the relevant EIB proposal.



4. STATE AID

- 4.1 The MIEP shall be responsible for ensuring compliance with all applicable State Aid rules.
- 4.2 The MIEP shall provide the EIB with all information necessary to enable the FoF and each investment to be compliant with rules on State Aid. The EIB's responsibility with respect to State Aid shall be limited to requiring each Final Recipient to (i) ensure compliance with State Aid requirements and (ii) repay any support received through the FoF, which constitutes unlawful State Aid.
- 4.3 Information referred to in Article 4.2 of this Annex above shall be communicated by the EIB to the Final Recipients, which shall be contractually responsible for satisfying the applicable State Aid rules.
- 4.4 Each investment agreement to be entered into with Final Recipients shall include an undertaking by the Final Recipient to comply with the State aid rules.

5. MONITORING AND REPORTING

- 5.1 The EIB shall monitor the implementation of the Direct Lending Product in accordance with the criteria set out in Appendix G (*Monitoring and Reporting*).
- 5.2 On the basis of data obtained from the Final Recipients,- the EIB shall prepare Progress Report in English, submitted by the EIB to the MIEP and the IB not later than three (3) months following the last day of the reporting period, which shall include a summary of the monitoring activities carried out, as set out in Appendix G (*Monitoring and Reporting*) of this Agreement.
- 5.3 The EIB agrees that any monitoring it conducts with respect to the Financial Instruments (including, where relevant, on a sample basis) will cover the following issues:
 - (a) whether the agreements by which financing is made available to Final Recipients contain provisions relating to audit requirements and audit trails in accordance with applicable regulation; and
 - (b) whether an adequate audit trail is established for reporting and auditing purposes.

6. AUDITING

- 6.1 The MIEP or any other national authorities shall not carry out any audits nor on-the-spot verifications at the level of the EIB.
- 6.2 The Final Recipients shall provide consent (a) to be audited by or on behalf of the MIEP, the Commission and the European Court of Auditors or any other EU body or institution which is entitled to verify the use of funds made available under the relevant Financial Instrument and (b) to provide all information necessary for the MIEP, the EIB, and the Commission to comply with any applicable information or audit requirements of the relevant national audit authorities and/or of the European Court of Auditors.



- 6.3 The MIEP shall satisfy, at its own cost, its obligations to conduct audits and/or verifications (including on-the-spot) in accordance with the EU guidelines, rules or regulations relating to Financial Instruments, as applicable for the RRF's resources, as updated from time to time and taking into account any amendment, extension, re-enactment or replacing legislation.
- 6.4 The Parties agree that the audits as per Article 6.3 above may take place during the entire duration of this Agreement and that such verifications and audits may consume considerable time and resources. The Parties shall ensure that such audits are carried out in the least intrusive manner and according to procedures, methodologies and checklists agreed between the Parties.

7. OFFSHORE POLICY

- 7.1 Pursuant to this Agreement, the EIB agrees to not enter into transactions with Final Recipients incorporated in a jurisdiction which, at the time of envisaged signature of the relevant transaction, would be a Non-Compliant Jurisdiction.
- 7.2 The Parties hereby agree that a change in the status of a jurisdiction to a Non-Compliant Jurisdiction shall have no effect on those Financial Instruments already implemented at the time of such change.



ANNEX 2 INTERMEDIATED PRODUCT SPECIFIC TERMS

1. SPECIFIC DEFINITIONS

- 1.1 In this Annex 2 the following defined terms and expressions shall bear the following meaning, unless the context requires otherwise:

"**CEOI**" means a call for expressions of interest which complies in all material respects with the requirements set out in Article 2.2 of this Annex 2.

- 1.2 Unless explicitly stated otherwise in this Annex 2, capitalised terms shall have the meaning attributed to them in the Agreement.

2. SPECIFIC FUNCTIONS OF THE EIB REGARDING THE INTERMEDIATED PRODUCT

- 2.1 Further to Clause 2.2 of the Agreement, the MIEP authorises the EIB, as its agent in connection with FoF Activity:
- (a) to identify, evaluate and select appropriate Financial Intermediaries (by issuing and publishing CEOI(s) and other relevant criteria including in accordance with the criteria laid down by Articles 33(1) and 209(2) of the Financial Regulation and taking account of market needs) which shall enter into Operational Agreements for the purpose of the FoF, provided that the EIB assesses, at least, each of the elements referred to in Appendix I (*Requirements for Financial Intermediaries*) when selecting the Financial Intermediaries;
 - (b) to perform due diligence on the Financial Intermediaries;
 - (c) to negotiate, enter into, execute, implement and, if needed, amend Operational Agreements in the name of the EIB acting in its capacity as agent for and on behalf of the MIEP and for the ultimate benefit and risk of the MIEP, taking into account the relevant FoF Risk Policy (Appendix H), including with the assistance or advice of external legal advisers retained by the EIB in its discretion. The EIB shall not have any obligation to enter into an Operational Agreement unless and until each of, as the case may be, the relevant tranche of the funds necessary for such Operational Agreement has been credited by the MIEP in cleared funds to the FoF Account in accordance with Clause 3 (*Funding of the FoF and Allocation of Funds between the Financial Instruments*); and
 - (d) to enforce, defend and if necessary adapt or waive any rights of the FoF under or in connection with Operational Agreements, including, where it is commercially reasonable, by means of litigation, arbitration, mediation or other dispute resolution methods or procedures, subject to the recovery processes of the Financial Intermediary or limited to the rights vis-à-vis the Financial Intermediary. Without prejudice to the foregoing, any waiver of key terms of Operational Agreements shall require the authorisation of the Investment Board.



2.2 The CEOIs which the EIB shall develop and issue for the purposes of selecting the Financial Intermediaries in connection with the FoF shall comply with the following requirements in all material respects:

- (a) the CEOIs shall allow the EIB to evaluate the Financial Intermediaries with respect to the methodology and criteria applicable to Financial Intermediaries referred to in Appendix H (*FoF Risk Policy*) and Appendix I (*Requirements for Financial Intermediaries*).
- (b) the CEOIs shall be transparent, allow for justified decision-making on objective grounds and shall not give rise to a conflict of interest.
- (c) the CEOIs shall use the criteria for the selection of Financial Intermediaries following EIB's internal procedures. As at the time hereof the applicable criteria to be used during the selection of Financial Intermediaries may include, without limitation, the following:
 - (i) a robust and credible methodology for identifying and appraising Final Recipients;
 - (ii) the level of costs and fees for the implementation of the Intermediated Product and the methodology proposed for the calculation of such costs and fees;
 - (iii) the terms and conditions applied in relation to support to be provided to Final Recipients, including, where relevant, pricing;
 - (iv) the ability to raise resources for investments in Final Recipients additional to contributions from the FoF, in line with the Investment Strategy and Business Plan;
 - (v) where a particular Financial Intermediary already manages a similar financial instrument, the ability to demonstrate additional activity in comparison to present activity; and
 - (vi) in cases of risk sharing, the proposed measures to align interests and mitigate potential conflicts of interest.

3. INVESTMENT BOARD SPECIFIC TASKS IN CONNECTION WITH THE INTERMEDIATED PRODUCT

Further to Clause 6.8 of the Agreement, regarding the Intermediated Product, the Investment Board shall be also responsible for the following matters:

- (a) approving the terms of the CEOIs submitted to the Investment Board by the EIB for its approval (approval entailing confirmation that the CEOI satisfies the requirements foreseen in this Agreement, as applicable);
- (b) approving the selection of Financial Intermediaries following a CEOI;



- (c) approving each proposed investment into a Financial Intermediary and be informed of the key terms and conditions of each proposed Operational Agreement; and
- (d) approving any waiver of the key terms of the Operational Agreements.

4. OPERATIONAL AGREEMENTS

4.1 The EIB shall ensure that the Operational Agreements include undertakings or representations from the Financial Intermediaries that:

- (a) with respect to the Intermediated Product, they will act in accordance with all applicable laws and with a degree of professional care, efficiency, transparency and diligence expected from a professional body experienced in implementing Financial Instruments;
- (b) the Final Recipients benefiting from the support of the Intermediated Product are selected with due account of the nature of the Financial Instrument and their potential economic viability, or as relevant, the potential economic viability of the investment projects of the Final Recipients which are to be financed;
- (c) the selection of the Final Recipients is transparent and can be justified by the Financial Intermediaries on objective grounds and that such selection does not give rise to any conflict of interest;
- (d) the Financial Intermediaries inform the Final Recipients, in accordance with the RRF Regulation, as well as relevant laws and regulations, that the funding is provided under the RRF Regulation, co-financed under EU funds pertaining to the RRP;
- (e) the Financial Intermediaries undertake to provide support to the Final Recipients in a manner which is proportionate and least distortive to competition;
- (f) the Operational Agreements reflect the provisions set out in this Agreement;
- (g) the contribution to be made to the FoF is set out and appropriate co-financing will be provided by the Financial Intermediaries in line with the CEoI;
- (h) the Financial Intermediaries agree that the Financial Instruments may be audited by or on behalf of Romanian audit authority, the Commission and the European Court of Auditors or other properly appointed body;
- (i) the Financial Intermediaries agree that they cannot make a claim for any amount beyond the amount committed to them under the relevant Operational Agreement;
- (j) the Financial Intermediaries and the Final Recipients must hold and maintain amounts received from the FoF in a bank account with a credit institution situated within the territory of a Member State of the EU;
- (k) direct payments made to the Final Recipients, must be made in a bank account with a credit institution situated within the territory of a Member State of the EU; and



- (l) the Financial Intermediaries shall ensure that the Final Recipients undertake to comply with applicable State Aid rules and the Financial Intermediaries shall repay any support received through the FoF which constitutes unlawful State Aid.
- 4.2 The EIB shall ensure that the Operational Agreements reflect certain additional requirements, including *inter alia*:
- (a) requirements on the eligibility of the Final Recipients to be financed (which reflect the terms agreed between the EIB and the Investment Board, the CEOI, the RRF Regulation and the RRP as approved by the European Council);
 - (b) that the Final Recipients to be financed and the relevant investments and/or projects comply with the Do No Significant Harm Principle, within the meaning of article 17 of Regulation (EU) No 2020/852, amending Regulation (EU) 2019/2088 and as set out in the Commission's Do No Significant Harm Technical Guidance (2021/C58/01);
 - (c) requirements on data protection and document retention by the EIB, the Financial Intermediaries and/ or the Final Recipients; and
 - (d) requirements as to the visibility of the involvement of the Financial Instrument and the applicability of the RRF Regulation.

Such requirements shall be agreed between the EIB and the Investment Board in respect of the CEOIs.

5. STATE AID

- 5.1 The MIEP shall be responsible for ensuring compliance with all applicable State Aid rules.
- 5.2 The MIEP shall provide to the EIB all information necessary to enable the FoF, each Financial Instrument and each Operational Agreement to be compliant with rules on State Aid. The EIB's responsibility with respect to State Aid shall be limited to requiring each Financial Intermediary to ensure compliance with State Aid requirements in the CEOI published in accordance with Article 2.2 and, subsequently, in each respective Operational Agreement.
- 5.3 Information referred to in Article 4.2 of this Annex 2 above shall be communicated by the EIB to the Financial Intermediaries which shall be contractually responsible for satisfying the applicable State Aid rules.
- 5.4 Each Operational Agreement shall include an undertaking by the Financial Intermediary to comply with the State Aid rules in accordance with Article 4.3 of this Annex 2, including an obligation for the Financial Intermediaries to obtain an undertaking from the Final Recipients in the name of the MIEP to repay any support received through the FoF which constitutes unlawful State Aid.



6. MONITORING AND REPORTING

- 6.1 The EIB shall monitor the implementation of the Financial Instruments and Operational Agreements in accordance with the criteria set out in Appendix G (*Monitoring and Reporting*).
- 6.2 On the basis of data provided by the Financial Intermediaries, the EIB shall prepare the Progress Report in English, submitted by the EIB to the MIEP not later than three (3) months following the last day of the reporting period, which shall include a summary of the monitoring activities carried out, as set out in Appendix G (*Monitoring and Reporting*) of this Agreement.
- 6.3 The EIB agrees that any monitoring it conducts with respect to the Financial Instruments (including, where relevant, on a sample basis) will cover the following issues:
 - (a) whether Financial Intermediaries operate procedures with the aim of complying with rules and procedures relating to the FoF and the Operational Agreement;
 - (b) whether the agreements by which financing is made available to Final Recipients contain provisions relating to audit requirements and audit trails in accordance with applicable regulation;
 - (c) whether an adequate audit trail is established for reporting and auditing purposes;
 - (d) whether the Financial Intermediaries retain any supporting documents which relate to the financing made available to Final Recipients until the latter of (i) five (5) years from the date of expiry of the Operational Agreement; or (ii) ten (10) years after the effective date of the transaction between the Financial Intermediary and the Final Recipients; and
 - (e) whether the Financial Intermediaries operate procedures with the aim of (i) keeping supporting documents available to allow the verification of the legality and regularity of expenditure by the Financial Intermediaries and (ii) ensuring that the Financial Intermediaries can produce evidence that the funds have been used for the intended purposes, that the Financial Intermediaries are complying with the applicable EU and national laws and are complying with the criteria and conditionality attached to the funding they receive.

7. AUDITING

- 7.1 The MIEP or any other national authorities shall not carry out audits nor any on-the-spot verifications at the level of the EIB.
- 7.2 The Operational Agreements shall provide that the Financial Intermediaries consent (a) to be audited by or on behalf of the MIEP, the Commission and the European Court of Auditors or any other EU body or institution which is entitled to verify the use of funds made available under the relevant Operational Agreement and (b) to provide all information necessary for the MIEP, the EIB, the FoF and the Commission to comply with any applicable information or audit requirements of the relevant national audit authorities and/or of the European Court of Auditors and/or any other EU body or



institution which is entitled to verify the use of funds made available under the relevant Operational Agreement.

- 7.3 The MIEP shall satisfy, at its own cost, its obligations to conduct audits and/or verifications (including on-the-spot) in accordance with the EU guidelines, rules or regulations relating to Financial Instruments, as applicable for RRF's resources, as updated from time to time and taking into account any amendment, extension, re-enactment or replacing legislation.
- 7.4 The Parties agree that the audits as per Article 7.3 of this Annex 2 above may take place during the entire duration of this Agreement and that such verifications and audits may consume considerable time and resources. The Parties shall ensure that such audits are carried out in the least intrusive manner and according to procedures, methodologies and checklists agreed between the Parties.

8. DOCUMENT RETENTION

The EIB shall ensure that the Operational Agreements contain undertakings similar to Clauses 12.1 and 12.2 of the Agreement in order that the Financial Intermediaries comply with the requirements set out therein.

9. OFFSHORE POLICY

9.1 Pursuant to this Agreement:

- (a) the EIB agrees to not enter into Operational Agreements with Financial Intermediaries incorporated in a jurisdiction which, at the time of envisaged signature of the Operational Agreement, would be a Non-Compliant Jurisdiction; and
- (b) the EIB shall ensure that the Operational Agreements contain an undertaking similar to that contained in Article 7.1 above, whereby the Financial Intermediaries agree for the purpose of the relevant Financial Instrument, not to enter into business relations with any entities incorporated in a Non-Compliant Jurisdiction.

9.2 The Parties hereby agree that a change in the status of a jurisdiction to a Non-Compliant Jurisdiction shall have no effect on Operational Agreements already entered into at the time of such change.



APPENDIX A INVESTMENT STRATEGY AND BUSINESS PLAN

1. Introduction

Access to finance is a key issue for large companies in Romania. The EIB's "*What holds Romanian firms back*" (2019) noted that before the pandemic, investment recovery was slow despite strong economic growth at the time and low interest rates, this has been exacerbated by the effects of the crisis. The same report noted that the use of bank loans has a strong impact on business investment. Access to funding from local banks is positively linked to investment and has the strongest impact on companies' decision and ability to invest. Therefore, increasing access to finance under favourable conditions is considered essential to support the recovery efforts of large companies.

The EIB's 2021 investment survey¹ also identified that around 12% of Romanian firms can be considered financially constrained. Collateral requirements are the biggest problem. To address these problems, the financial sector needs to be further developed to provide new financial products that can facilitate access to credit to support growing businesses and foster innovation, especially in key sectors such as climate action and digitalisation:

Climate action: Almost three quarters of Romanian firms (72%) say that climate change now has an impact on their business, well above the EU average (58%), while 57% of firms already report planning to invest in climate-related projects, ahead of the EU average (47%). However, only 25% of companies managed to invest in energy efficiency improvement measures, well below the EU average (37%).

Digitalisation: Overall a quarter of all Romanian firms (25%) have developed or introduced new products, processes or services as part of their investment activities, which includes only 6% of all companies claiming to have undertaken new innovations in the country or the world. More than half of businesses (53%) implemented at least one advanced digital technology, below the EU average of 61%.

A report by *fi-compass* has also highlighted that the level of financial intermediation in Romania (limited by legislative changes and weaknesses in the corporate sector) compared to the European level is very low (around three times below the EU average), meaning that there is significant growth potential². This is also reflected in the EC Country Report which states that "*banks play only a limited role in providing credit to businesses, which can hold back the economy*"³. Therefore, further efforts are needed to encourage the development of the financial intermediation market and this is seen as another important dual objective of the reform and investment proposal.

In the context of the COVID- 19 crisis, the European Commission (EC) stressed the necessity to strengthen the current framework and provide direct financial support to the Member States

¹ <https://www.eib.org/en/publications/econ-eibis-2021-eu> .

² *Gap analysis for SME financing. Country fiche – Romania* (not published).

³ https://ec.europa.eu/info/publications/2020-european-semester-country-reports_en.



through an innovative tool. To this effect, the Recovery and Resilience Facility (RRF) has been established to provide effective and significant financial support to step up the implementation of sustainable reforms and related public investments in the Member States to be implemented in line with the strategic pillars of the national Recovery and Resilience Plans (RRP). Through RRF, private investment is incentivised by public investment schemes, including financial instruments, subsidies and other instruments, provided State Aid rules are complied with.

The overall objective of the RRP for Romania is to support the Romanian socio-economic recovery and long-term development after the COVID-19 pandemic. It also aims to increase the growth potential while addressing long-standing challenges. The reforms and investments under the Romanian RRP are structured around six pillars: i) Green Transition, ii) Digital Transformation, iii) Smart, sustainable, and inclusive growth, iv) Social and territorial cohesion, v) Health and economic and social resilience, and vi) Next Generation.

The RRF Financial Instrument (RRF-FI) established for Romania comprises a joint effort of the Romanian Government and the European Investment Bank aiming to tackle the consequences of the COVID-19 pandemic by supporting sustainable investments in line with the strategic pillars of the RRP. The RRF-FI will be financed by the loan compartment of the RRP in the amount of EUR 300m that will be allocated to support investments contributing to climate and digital objectives by the target companies, and to encourage the growth and expansion of the companies, in turn creating new employment opportunities and supporting the wider economic recovery. Subject to the agreement of the Romanian Government and the EIB, this amount might be increased in the future, in response to further market analysis and/or increased market demand.

2. Implementation Arrangements

The RRF-FI will be implemented as a Fund of Funds (FoF) that will be managed by the EIB. The FoF will act as a financial instrument and will aim to maximise the impact of the RRF resources allocated through the utilisation of these resources by way of loans and guarantees. The amounts released from the investments supported can then be used to support new investment projects in similar target sectors, thereby aiming to create a revolving evergreen resource for Romania.

The FoF model will be built on similar structures already successfully used for financial instruments provided by the Shared Management Funds (previously known as the European Structural and Investment Funds) in other EU countries. The FoF will be created as a separate block of finance within the EIB and, for the avoidance of doubt, the EIB will act as the FoF manager.

The FoF is intended to include indicatively two Financial Instruments, one of which would be implemented through a number of underlying Financial Intermediaries who will be appointed following the completion of a selection process. The other Financial Instrument would aim to facilitate direct lending from the EIB.



The FoF will be managed by the EIB who will make recommendations on the matters specified in the Funding Agreement to an Investment Board whose responsibilities will be to monitor and supervise the implementation of this Investment Strategy and Business Plan.

3. Objectives of the FoF

The overall objectives of the FoF are as follows:

- to improve access to finance for the target recipients, in order to support, unlock and accelerate new investment activities, which in turn help to support the wider economic recovery and support the implementation of the RRP;
- to promote and increase investment in climate action and digitalisation projects, supporting the wider green and digital transition of Romania;
- to improve the capacity of Financial intermediaries to support investment in these sectors and support the development of a wider financial intermediary market;
- to create a revolving and evergreen source of finance for Romania, able to support future rounds of reinvestment in similar activities, thereby helping to increase the financial sustainability of the RRF resources available;
- to mobilise private sector investment, including the EIB, in the target investment areas at Financial Intermediary and project level and increase the impact of the RRF resources available, and
- to create a new and versatile financing vehicle for Romania, capable of supporting future investment in additional sectors for example urban development and capable of deploying additional RRF and potentially also Shared Management Funds (subject to relevant approvals).

In line with the priorities of the RRP, the FoF will aim to address access to finance needs of eligible Final Recipients primarily in the climate and digitalisation sectors. At least 33% of the resources allocated to the FoF should be invested in climate related investment activity and 16% to digitalisation related investment activity. The eligible investments will need to be in line with the types of intervention included in Annexes VI and VII of the Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (RRF Regulation), respectively.

The remaining balance of 51% of the resources will be available to be invested in broader investment activity that supports the recovery of the Romanian economy and specifically contributes to the social, economic and territorial cohesion and strengthens economic and social resilience of Romania.

In relation to the three areas of support (climate action, digitalisation and wider support), the following horizontal provisions will apply:



- 1) All eligible projects will need to comply with the ‘Do no significant harm’ (DNSH) principle⁴ through the following measures:
 - a) use of sustainability proofing by applying the Commission’s technical guidance on sustainability proofing for the InvestEU Fund⁵;
 - b) exclusion of certain list of activities and assets from eligibility (see Annex 1); and
 - c) ensuring compliance with the relevant EU and national environmental legislation
- 2) Excluded activities – a list of excluded activities is included in Annex 1. In particular, in accordance with DNSH requirements, the following activities will not be supported by the instrument:
 - a) for climate change mitigation: (i) activities related to fossil fuels, including downstream use; (ii) activities under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks; (iii) indirect ETS costs compensation;
 - b) for circular economy: (iv) activities related to waste landfills, incinerators and mechanical biological treatment plants; (v) activities where the long-term disposal of waste may cause harm to the environment (e.g. nuclear waste);
- 3) The selection criteria will also ensure that only activities that comply with relevant EU and national environmental legislation can be selected.

4. Financial allocations

The RRF resources will be contributed to the FoF in the amount of EUR 300 million to enable contributions to the two Financial Instruments, i.e. the Intermediated Product and the Direct Lending Product, as further described in Section 6 below. It will be possible to re-allocate resources between the two Financial Instruments based on analysis pertaining the actual performance and market needs, with the prior approval of the Investment Board. Subject to further agreements between the Romanian Government and the EIB, it will be possible to receive additional funding contributions, to reinforce current structures or potentially create further Financial Instruments in the future.

In order to support the breadth of potential eligible Final Recipients, the initial split of RRF allocations between the two Financial Instruments with the demarcation on the project size is expected to be as follows:

Financial Instrument	Initial Allocation	Project Size
Intermediated Product	EUR 150m	<EUR 25m
Direct Lending Product	EUR 150m	>EUR 25m

⁴ As defined in Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and further detailed in the Commission’s Technical guidance on the application of ‘do no significant harm’ under the Recovery and Resilience Facility Regulation 2021/C 58/01.

⁵ Available on: https://europa.eu/investeu/investeu-fund/about-investeu-fund_en.



In addition, it is envisaged that an allocation for advisory support will be required from the overall RRF contribution. This allocation will not exceed EUR 3m but its precise amount will be determined following further market testing and with the agreement of MIEP.

Independently from managing the FoF and its proposed financing role in relation the Direct Lending Product, the EIB may, at its sole discretion, and acting independently from its FoF managing role, provide financial support from its own resources to support the selected Financial Intermediaries. The form and amount is subject to the EIB's internal rules, policies and procedures. Such potential financial support may include financing extended to any other third party eligible to obtaining financing from the EIB with a view to co-financing the eligible investments. The EIB investment programme will comply with the EIB Group Climate Bank Roadmap 2021-2025 published in December 2020, including the EIB's approach to sustainable finance and the EU Taxonomy, the implementation of the Paris Alignment Framework and the Bank's Climate Action targets.

5. Financial Products

5.1. Intermediated Product

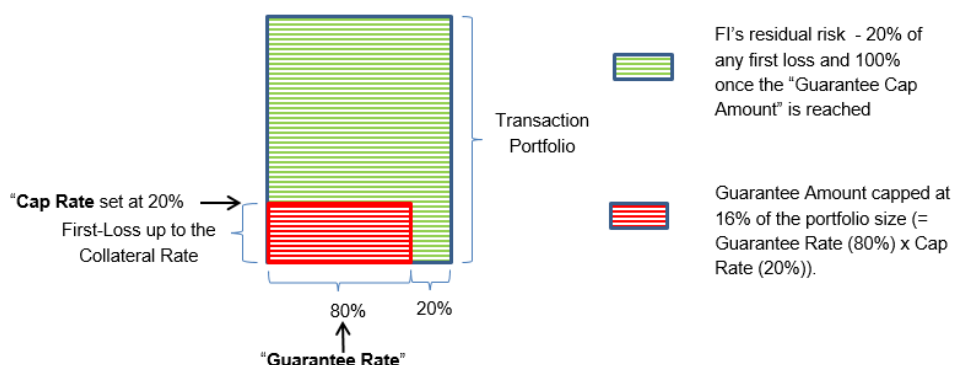
Under this Financial Instrument, the FoF will provide unfunded guarantees backed by RRF resources to selected Financial Intermediaries with the aim of providing better access to finance, improving conditions of financing, facilitating new lending by Financial Intermediaries to projects that may otherwise have been too high risky in the absence of the guarantee, and providing a high leverage on the use of RRF funds.

The selected Financial Intermediaries will be required to transfer the financial advantage created by the guarantee fully to the Final Recipients in the form of lower interest rates on the transactions to be included in the guaranteed portfolio. As part of the Financial Intermediaries selection process, the applicants shall propose concrete measures on how to quantify the financial advantage and how to transfer it by making an interest rate reduction, which will be further analysed by the EIB during the selection process. Exceptionally, if there are specific market failures which can be mitigated by methods other than interest rate reductions (such as longer loan maturities or lower collateralisation levels), the Financial Intermediaries can include alternative proposals in their applications on how to transfer the financial advantage in these cases. Such proposals should clearly identify the market failure and the method for the calculation of the financial advantage, which will be further analysed by the EIB during the selection process.

Under the guarantee, credit risk coverage will be provided on a transaction-by-transaction basis, covering defaulted amounts in line with the agreed guarantee rate and up to the maximum risk coverage. The Guarantee Rate will be set at 80%. The counterpart that grants the underlying guaranteed exposure will be required to retain the remaining 20% of risk.



It is intended that the guarantee is capped with the Cap Rate to be established following the due diligence process to be carried out during the selection of Financial Intermediaries, with the reservation that it cannot exceed 20%.



The tenor of the guarantee will be 15 years (or 25 years for projects implemented by small municipalities). Transactions to Final Recipients with a maturity of more than the tenor of the guarantee can also be included, provided that the guarantee coverage is limited to the tenor of the guarantee.

The transactions originated by the Financial Intermediaries up to 6 months prior to the signing of the Operational Agreement with the EIB will be eligible for the guarantee.

The guarantee is intended to be free of charge, subject to the compliance with applicable State Aid regulations for which due confirmation will be required from the Romanian Government.

5.2. Direct Lending Product

Under this Financial Instrument, EIB-financed loans will be backed by a partial RRF Cash Collateral that will be provided by the FoF through a dedicated cash deposit for the benefit of the EIB, in an account managed by the FoF as a separate block of finance.

This product has been designed in order to improve access to finance and support the EIB in offering better financing conditions to Final Recipients..

The RRF Cash Collateral rate for each EIB loan will be set during the Due Diligence process carried out by the EIB in line with its internal procedures with a maximum not exceeding 35% of the amount of EIB loan.

The tenor of EIB loans is expected to be up to 15 years for the energy sector and up to 12 years for all other sectors. The tenor of the RRF Cash Collateral will be up to the tenor of the underlying EIB Loan.

The RRF resources may be also used in the form of co-lending to Final Recipients alongside EIB financing. In this context, the Romanian Government acknowledges and accepts that the pricing applied to the part of the operations funded under the RRP may differ from the one



applied to EIB's own transactions. Should the RRF resources be on-lent at lower interest rates than the EIB tranche, in such cases the Romanian Government will verify and confirm the appropriate RRF pricing to ensure compliance with State aid rules.

As regards the EIB's own funds, the EIB will apply its standard lending procedures and internal risk guidelines in relation to individual project operations supported. The allocation of RRF resources will be subject of approval by the Investment Board following the EIB's recommendations.

5.3 Eligibility period

In order to align with the wider RRP milestones, all investments to be supported under the FoF will need to be signed by 30 June 2026.

6. Advisory Support

In order to support the deployment of the FoF and in view of the technical and innovative character of the climate change and digitalization investments primarily targeted by the RRP, the latter foresees the possibility to use RRF resources to provide advisory support at (i) Final Recipients' level to help investment projects to reach a mature stage and to be ready for financing, as well as, if deemed necessary, (ii) at the level of Financial Intermediaries providing loans and benefiting from RRF guarantees to develop the capacities required to address market gaps.

For the avoidance of doubt, any potential advisory support shall be agreed upon and regulated in a separate contractual agreement between the Parties.

7. Targeted Final Recipients

The Final Recipients will be primarily large Mid-Caps and large Corporates, including possibly small municipalities⁶. The Final Recipients engaged in any of the excluded activities listed in Annex 1 are ineligible for financing.

The Final Recipients can be located or operate in the whole territory of Romania.

All Final Recipients receiving support under the FoF should comply with the following general criteria:

- compliance with all applicable laws and regulations, including the RRF Regulation and State Aid rules,
- compliance with eligibility criteria to be stated in the Operational Agreements to be signed with selected Financial Intermediaries and the policy and procedures thereof (in relation to the Intermediated Product)

⁶ Large Mid-Caps are defined as enterprises that have between 500-2999 (full-time equivalent) employees. Large Corporates are defined as enterprises with 3000 or more employees (full-time equivalent). Small Municipalities are defined as municipalities with less than 100,000 inhabitants.



- compliance with the EIB rules, policy and procedures, including eligibility and other applicable criteria (in relation to the Direct Lending Product);
- reliability of the business model, cash flows, partners, etc.; and
- repayment capacity.

The targeted number of Final Recipients will be at least 25.

8. Expected leverage effect

Under the Direct Lending Product, the amount of investment mobilized is expected to range between EUR 0.77bn and 1.3bn depending on the share of the investments to be covered by the guaranteed EIB loans. The estimated leverage effect of RRF funds will therefore range between 5.1 and 9.

Under the Intermediated Product, the amount of investment mobilised is expected to be up to EUR 840m based on a multiplier of 6.25 times and assuming full utilisation.

9. Milestones and Indicative Investment Timetable

The FoF should be operational by the end of Q1 2022, based on the indicative milestones and targets below. In line with the RRP, 30% of all investments should be allocated to Final Recipients by the end of 2024 and 100% by the end of June 2026.

STEPS	Date
Signature of Funding Agreement	Q1 2022
First Investment Board and approval of Investment Strategy	Q2 2022
State aid clearance	Q2 2022
Publication of Call for Expression of Interest and procurement of Financial Intermediaries for Intermediated Product	Q2 2022
Start of investment activities in relation to Direct Lending Product	Q2 2022
Evaluation and selection of Financial Intermediaries	Q2 2022
Signatures of Operational Agreement with selected Financial Intermediaries	Q3 2022
Start of investment activities – Intermediated Product	Q3/Q4 2022
30% of all investment allocated to Final Recipients	Q4 2024



100% of all investment allocated to Final Recipients	Q2 2026
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The investment horizon may be further modified by the EIB, subject of the approval of the Investment Board, to reflect the actual implementation calendar of the FoF.

10. Exit strategy

The EIB in its capacity as the FoF Manager may re-use the amounts released from the support provided to the investments made by the Final Recipients to support further investments in target areas, and for the payment of the Management Fees, until 30 June 2026 or until another date to be agreed between the MIEP and the EIB in writing.

After that period, all reflows will be channelled to the MIEP in accordance with the terms and conditions of the Funding Agreement.

No later than six months before the end of 2030, the EIB and the MIEP will enter into consultations on the exit strategy under which two scenarios are currently foreseen:

- 1) The EIB will continue to manage the reflows and monitor the projects until the latest repayment is reimbursed to the EIB or Financial Intermediary, whichever is later; or
- 2) Repayment of the balance of the FoF Account (less the Management Fees payable to the EIB) will take place no later than six months after the date falling on 31 December 2030 through crediting a relevant amount to the bank account communicated by the Romanian Government to the EIB in writing. Any remaining commitments under loan agreements will be transferred to and taken over by the Romanian Government or any entity specifically designated for that purpose, including also in the form of an assignment of rights under loan agreements, with the exception of the EIB loans provided under the Direct Lending Product for which the corresponding RRF funds will be held in the FoF Account until the latest maturity date.

Irrespective of the aforementioned, the Romanian Government and the EIB recognise that, although one of the distinctive traits of the Financial Instruments is their revolving nature, this may be achieved only in the case the resources allocated to the FoF and invested for the implementation of Financial Instruments are released from investments to Final Recipients.

In the worst-case scenario, in particular due to adverse economic conditions, poor performance of Final Recipients or default of the same, no money invested in the form of Financial Instruments may be returned to the FoF.

ANNEX 1 – Excluded Activities



1. Activities and assets related to fossil fuels, including downstream use⁷.
2. Activities and assets under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks⁸.
3. Activities and assets related to waste landfills, incinerators⁹ and mechanical biological treatment plants¹⁰.
4. Activities and assets where the long-term disposal of waste may cause harm to the environment.
5. Production or activities involving harmful or exploitative forms of forced labour¹¹/harmful child labour¹².
6. Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements.
7. Any business relating to pornography or prostitution.
8. Production or trade in wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species or Wild Fauna and Flora (CITES).
9. Production or use of or trade in hazardous materials such as radioactive materials, unbounded asbestos fibres and products containing PCBs.
10. C
cross-border trade in waste and waste products unless compliant with the Basel Convention and the underlying national and EU regulations but for the avoidance of doubt, use of waste as a fuel in district heating is not excluded.
11. Unsustainable fishing methods (i.e. drift net fishing in the marine environment using nets in excess of 2.5 km in length and blast fishing).

⁷ Except projects under this measure in power and/or heat generation, as well as related transmission and distribution infrastructure, using natural gas, that are compliant with the conditions set out in Annex III of the 'Do no significant harm' Technical Guidance (2021/C58/01).

⁸ Where the activity supported achieves projected greenhouse gas emissions that are not significantly lower than the relevant benchmarks an explanation of the reasons why this is not possible should be provided. Benchmarks established for free allocation for activities falling within the scope of the Emissions Trading System, as set out in the Commission Implementing Regulation (EU) 2021/447.

⁹ This exclusion does not apply to actions under this measure in plants exclusively dedicated to treating non-recyclable hazardous waste, and to existing plants, where the actions under this measure are for the purpose of increasing energy efficiency, capturing exhaust gases for storage or use or recovering materials from incineration ashes, provided such actions under this measure do not result in an increase of the plants' waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level.

¹⁰ This exclusion does not apply to actions under this measure in existing mechanical biological treatment plants, where the actions under this measure are for the purpose of increasing energy efficiency or retrofitting to recycling operations of separated waste to compost bio-waste and anaerobic digestion of bio-waste, provided such actions under this measure do not result in an increase of the plants' waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level.

¹¹ Forced labour means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty

¹² Harmful child labour means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, moral or social development. In addition any labour that is performed by a person which has not yet reached the age of 15 is considered to be harmful, unless the local legislation specifies compulsory school attendance or the minimum age for working to be higher; in such cases, the higher age will be applied for defining harmful child labour.



12. Production or trade in pharmaceuticals, pesticides/herbicides, chemicals, ozone depleting substances¹³ and other hazardous substances subject to international phase-outs or bans.
13. Destruction of Critical Habitats¹⁴.
14. Production and distribution of racist, anti-democratic and/or neo-Nazi media.
15. Tobacco, if it forms a substantial part of a Project's primary financed business activities¹⁵.
16. Live animals for scientific and experimental purposes, including the breeding of these animals.
17. Ammunition and weapons, military/police equipment, infrastructure or correctional facilities, prisons.¹⁶
18. Gambling, casinos and equivalent enterprises or hotels hosting such facilities.
19. Commercial concessions over, and logging on, tropical natural forest; conversion of natural forest into a plantation.
20. Purchase of logging equipment for use in tropical natural forests or high nature value forest in all regions; and activities that lead to clear cutting and/or degradation of tropical natural forests or high nature value forest.
21. New palm oil plantations.
22. Any business with a political or religious content.

¹³ Ozone Depleting Substances: Chemical compounds, which react with and delete stratospheric ozone, resulting in "holes in the ozone layer". The Montreal Protocol lists ODs and their target reduction and phase-out dates.

¹⁴ Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value that meet the criteria of the World Conservation Union ("IUCN") classification, including habitat required for the survival of critically endangered or endangered species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Primary Forest or forests of High Conservation Value shall be considered Critical Habitats. For the purpose of this Agreement, the environment and social requirements attached hereto are understood and agreed to provide reasonable and satisfactory assurance of the avoidance of destruction of critical habitat.

¹⁵ A benchmark for substantial is 5-10% of the balance sheet or the financed volume or sales revenues of the final beneficiary.

¹⁶ Such activities are fully excluded from EIB financing in all countries other than EU member states. In the EU, excluded activities relating to defence, public order and safety are limited to production (or construction) of, distribution (or processing) of, and trade in weapons, ammunition, explosives, equipment or infrastructures specifically designed for military use, and equipment or infrastructure which result in limiting people's individual rights and freedom (i.e. prisons, detention centres of any form) or in violation of human rights.



APPENDIX B
ADDITIONAL EXPENSES REQUEST

From: European Investment Bank

To: MIEP

Dated: [●]

Dear Sirs,

Funding Agreement between the Government of Romania and the European Investment Bank

dated [●] (the "**Agreement**")

1. We refer to Clause 8.3 of the Agreement. This is the Additional Expenses Request. Terms defined in the Agreement shall have the same meaning in this Additional Expenses Request unless otherwise defined herein.
2. We hereby confirm that EUR [●] should be paid into the FoF Account within ten (10) Business Days of this Additional Expenses Request. The payment is necessary to cover the following Additional Expenses:

- [●]
3. We remind you that failure to comply with this Additional Request on a timely basis, permit the Agreement to be terminated for Termination for Cause under Clause 14.4(d) of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Bank



APPENDIX C DEFINITION OF “EURIBOR”

“EURIBOR” means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the **“Representative Period”**).

For the purposes of paragraphs (a) to (c) above:

- (i) **“available”** means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), or any successor to that function of EMMI, as determined by the EIB; and
- (ii) **“Screen Rate”** means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the EIB on the day (the **“Reset Date”**) which falls 2 (two) relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the EIB.

If such Screen Rate is not so published, the EIB shall request the principal offices of four major banks in the euro-zone, selected by the EIB, to quote the rate at which EUR deposits in a comparable amount are offered by each of them, as at approximately 11:00 a.m., Brussels time on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations. If no sufficient quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the EIB, at approximately 11:00 a.m., Brussels time, on the day which falls 2 (two) relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European banks for a period equal to the Representative Period. The EIB shall inform the Borrower without delay of the quotations received by the EIB.

All percentages resulting from any calculations referred to in this Appendix will be rounded, if necessary, to the nearest one thousandth of a percentage point, with halves being rounded up.

If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EMMI (or any successor to that function of EMMI as determined by the EIB) in respect of EURIBOR, the EIB may by notice to the Borrower amend the provision to bring it into line with such other provisions.



If the Screen Rate becomes permanently unavailable, the EURIBOR replacement rate will be the rate (inclusive of any spreads or adjustments) formally recommended by (i) the working group on euro risk-free rates established by the European Central Bank (ECB), the Financial Services and Markets Authority (FSMA), the European Securities and Markets Authority (ESMA) and the European Commission, or (ii) the European Money Market Institute, as the administrator of EURIBOR, or (iii) the competent authority responsible under Regulation (EU) 2016/1011 for supervising the European Money Market Institute, as the administrator of the EURIBOR, (iv) the national competent authorities designated under Regulation (EU) 2016/1011, or (v) the European Central Bank.

If no Screen Rate and/or the EURIBOR replacement rate is available as provided above, EURIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the EIB to be the all-inclusive cost to the EIB for the funding of the relevant Tranche based upon the then applicable internally generated EIB reference rate or an alternative rate determination method reasonably determined by the EIB.



APPENDIX D

INVESTMENT BOARD RULES OF PROCEDURE

1. This document sets out the Rules of Procedure pursuant to Clause 6 of the funding agreement entered into by the MIEP and the European Investment Bank on [date] ("**Funding Agreement**"). Any term used in capitalised letter herein shall have the same meaning attributed to it under the Funding Agreement.
2. The Investment Board, at its first meeting, shall appoint its Chairperson among the members nominated by the MIEP. Should the Chairperson not be able to attend a meeting, s/he shall indicate who, of the other members nominated by the MIEP (including the alternates), shall be the Chairperson in respect of such meeting (or the members attending shall designate an *ad hoc* Chairperson for such meeting).
3. The term of office of each duly empowered member of the Investment Board shall be until end of June 2026, and re-appointment for additional terms shall be permitted.
4. The EIB shall be entitled to designate its officials or representatives to participate in the sessions of the Investment Board as observers.
5. The MIEP shall be able, at any time, to remove the member(s) nominated by it, whether voting and/or alternates. Any such removal shall become effective only upon appointment of a replacement member and effective communication, in writing, to the EIB of the name(s) and contact details of the substituting member.
6. Each Party shall be able, but shall not be obliged to, nominate also an alternate in respect of each of the, respectively, members or observers nominated by it.
7. If the position of a member (whether voting and/or alternate) vacates for any reason whatsoever (e.g. resignation, removal, death, etc.), the Party which appointed such member shall (but shall not be obliged to in respect of alternates), without unreasonable delay, appoint a new member for the remainder of the term of office of the substituted member, by communicating the name(s) and contact details of the substituting member to the other Party. The Investment Board shall continue to function and be able to carry out its tasks even in the absence of such substitution (in which case, for the avoidance of doubt, the Investment Board may operate with a reduced number of members subject to paragraph 12 below).
8. In case the Chairperson position vacates, the Investment Board, at its immediately following meeting, shall appoint a new Chairperson among the members nominated by the MIEP, for the remainder of the term of office of the substituted Chairperson.
9. The observers will not have any voting rights. However, subject to the terms further set out in these Rules of Procedure, they shall receive the same written information on matters discussed and/or decided upon by the Investment Board, as well as minutes of each meeting, as the voting members and their alternates.



10. Within thirty (30) calendar days ahead of the expiry of a term of office, each Party shall communicate to the other Party the new appointed member (and his/her contact details) or the reappointment of the existing member for an additional term.
11. The quorum necessary in order to have a validly constituted Investment Board meeting is of at least three duly empowered voting members and one observer appointed by the EIB.
12. Upon the request of the Chairperson and/or EIB, the Secretariat shall convene each meeting by sending a written notice to all members (including the alternates) and observers by e-mail, at the address specified in the notice of appointment of each member, and by communicating to the EIB. Such notice of call, together with the relevant agenda, shall be sent at least five (5) calendar days before the scheduled date of the meeting. Meetings can be held on shorter notice if all members and observers so agree. Any relevant documentation shall be sent to the members (voting and alternates) and observers three (3) calendar days ahead of the relevant meeting. However, if the meeting is held on a notice shorter than five (5) calendar days, any documentation shall be sent/delivered, at the latest, at the beginning of the meeting. Agenda points can be added directly at the meeting if all voting members and observers so agree. The provisions of Clause 18 (*Notices*) of the Funding Agreement shall apply *mutatis mutandis* to the communication and delivery of written notices by the Secretariat.
13. Meetings shall be held in Bucharest or at such other city within Romania as agreed between the Chairperson and the EIB, at the address, date and time indicated from time to time by the MIEP. Members and observers shall be entitled to attend via conference or video call, and they shall be considered to be present as long as the Chairperson is satisfied with the identity of the relevant person.
14. The Investment Board shall be entitled to take decisions by written procedure. The text of the relevant resolution shall be proposed by the Chairperson and agreed with the EIB. The Chairperson will distribute the proposed resolution and any relevant materials to the members and observers of the Investment Board and the deadline for voting on any such proposed resolution shall be of five (5) calendar days as of the date of dispatch. A resolution shall be deemed as positively voted if, at the expiry of the above mentioned five (5) calendar days, all members have either voted in favour or not cast a vote (i.e. silence will be deemed as a positive vote). The Chairperson will then confirm, in writing, any relevant decision to all members and observers. A written procedure process can be terminated if so requested by any of the voting members observers, or if any voting member has provided comments such that the resolution would be substantially different or, in any case, at the discretion of the Secretariat. In such a case, the Chairperson may organise a physical Investment Board meeting, in which case the notice of call and the relevant documentation shall be sent within five (5) Business Days from the date of interruption of the written procedure.
15. The Investment Board's discussions as well as the documentation shared shall be kept confidential.



- 16.** It is acknowledged that the delegation given to the Investment Board under the Funding Agreement shall in no way limit the powers and responsibilities attributed to the MIEP, as managing authority, under the relevant EU Regulations.
- 17.** All decisions and relevant discussions of the Investment Board (including non-objection to proposals) shall be recorded in minutes. Minutes shall be short and concise and shall include the resolutions of the Investment Board while any part of the discussion shall be recorded upon the request of a voting member and/or EIB. The minutes shall be final upon their approval by way of signature of the Chairperson (priorly having being reviewed by and agreed with the EIB).
- 18.** Members of the Investment Board shall respect defined standards of integrity and shall abstain from action that could induce a conflict of interest in the discharge of their duties.
- 19.** Representatives of the EIB other than the observers to the Investment Board, and of other parties may be invited to meetings of the IB, if so deemed appropriate by the Chairperson. They shall not be entitled to any voting right, remuneration or reimbursement, nor to receive accompanying materials and minutes of the meeting.



APPENDIX E

TREASURY GUIDELINES

The FoF funds shall be invested by EIB, at the risk of the FoF and following execution of a subscription agreement in a form acceptable to EIB, in the pooled investment portfolio known as the “EIB Unitary Fund” (the “**Unitary Fund**”). The Unitary Fund is a fund which EIB manages on behalf of certain third parties, that may include the European Commission, member states of the Union and their regional and municipal authorities. The Unitary Fund shall be managed as a money market fund providing daily liquidity. An Information Memorandum providing up-to-date detailed description of the Unitary Fund will be provided upon request of the MIEP.



APPENDIX F
FORMS OF WRITTEN REQUEST

FORM OF INITIAL WRITTEN REQUEST

From: European Investment Bank

To: MIEP

Dated: [●]

Dear Sirs

Funding Agreement between the Government of Romania and the European Investment Bank dated [●] (the "Agreement")

1. We refer to Clause 3.2 of the Agreement. This is the Written Request. Terms defined in the Agreement shall have the same meaning in this Written Request unless otherwise defined herein.
2. We hereby request you to pay an amount of EUR [●] (the "**First Tranche**") into the FoF Account within thirty (30) calendar days from the date of this Written Request.
3. We remind you that failure to comply with this Written Request on a timely basis would permit the Agreement to be terminated for Termination for Cause under Clause 14.4 of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Bank



FORM OF WRITTEN REQUEST AFTER THE INITIAL WRITTEN REQUEST

From: European Investment Bank

To: MIEP

Dated: [●]

Dear Sirs

Funding Agreement between the Government of Romania and the European Investment Bank dated [●] (the "Agreement")

20. We refer to Clause 3.2 of the Agreement. This is the Written Request. Terms defined in the Agreement shall have the same meaning in this Written Request unless otherwise defined herein.
21. We hereby confirm that EUR [●] (a "**Subsequent Tranche**") should be paid into the Fund Account no later than thirty (30) calendar days from the date of this Written Request.
22. We remind you that failure to comply with this Written Request on a timely basis would permit the Agreement to be terminated for Termination for Cause under Clause 14.4 of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Bank



APPENDIX G MONITORING AND REPORTING

1. GENERAL

- 1.1 Monitoring checks shall be performed in line with the applicable EIB rules and procedures for financial instrument mandates.
- 1.2 One monitoring visit or one desk review at EIB's headquarters per Operational Agreement and investment agreement, depending if the Intermediated or Direct Lending Product respectively, shall be undertaken throughout the term of each Operational Agreement and investment agreement, depending if the Intermediated or Direct Lending Product respectively.
- 1.3 In the context of the Progress Report (which will be prepared for each calendar year by 31 March), the EIB will provide information on:
 - (a) the date of monitoring activities performed;
 - (b) the types of findings identified; and
 - (c) the status of the findings identified.
 - (d) the actions taken to correct findings, if any.

The form of such information will be included in the Progress Report template.

2. MONITORING OF FINANCIAL INTERMEDIARIES AND FINAL RECIPIENTS

- 2.1 Financial Intermediaries may, in line with their internal rules and procedures and particularly in the cases where fraudulent behaviour is suspected, be required to perform monitoring checks at the level of the final recipients.
- 2.2 Monitoring by the EIB of Financial Intermediaries and Final Recipients shall address the following:
 - (a) both during the appraisal, selection and implementation of financial instrument, monitor compliance of Financial Intermediaries and Final Recipients, depending if the Intermediated or Direct Lending Product respectively, with the relevant Operational Agreement and the EIB's rules and procedures;
 - (b) an adequate audit trail is established for reporting and audit purposes in accordance with the relevant provisions of the applicable EU (RRF) law;
 - (c) supporting documents:
 - (i) are retained by Financial Intermediaries and Final Recipients, depending if the Intermediated or Direct Lending Product respectively, with respect to financing made available to Final Recipients in order to provide evidence on the use of the funds for the purposes intended, including the eligibility of expenditure in accordance with applicable EU and national (RRF) law;
 - (ii) are kept for the duration of three (3) years from the end of the Legacy Period or, for documents relevant to State Aid rules, for a ten (10) years from the date on which the last support was granted to Final Recipients under investment agreements;



(iii) are available to allow verification of the legality and regularity of the expenditure.

3. PROGRESS REPORT

The Progress Report shall contain:

- 3.1 a description of Financial Instrument and an overview of the arrangements for implementing such Financial Instrument;
- 3.2 the identity of the Financial Intermediaries and Final Recipients depending if the Intermediated or Direct Lending Product respectively,;
- 3.3 for the Intermediated Product, the total amount paid to the FoF, the total amount set aside by the EIB to create financial provisions against exposures to contingent liabilities for Operational Agreements and the amounts transferred from the FoF to the Financial Intermediaries as guarantee payments (where applicable) and to the EIB;
- 3.4 for the Direct Lending Product, the total amount of support paid to the Final Recipients, paid for the benefit of the Final Recipients, in addition to the Management Fees incurred or Management Fees paid;
- 3.5 a summary of the performance of the Financial Instrument, including the progress of its set-up;
- 3.6 the total amount of interest and any other financial gains generated through the resources from the RRF to the FoF and details of the RRF resources paid back or released to the Financial Instruments from investments made;
- 3.7 a report on the progress of FoF in reaching the expected leverage effect of investments made by the Financial Instruments and the value of the investments and participations;
- 3.8 a report on the contribution of the Financial Instruments in achieving the indicators, as relevant;
- 3.9 a summary of the monitoring activities carried out and;
- 3.10 a treasury report in respect of the Treasury Funds.

It is acknowledged that the EIB may need to adjust and modify the above terms of monitoring and reporting to adapt to the subsequent guidance provided by the Commission, its applicable internal policies and procedures. Any adjustment and modification will be communicated to the Investment Board by the EIB at least thirty (30) calendar days in advance from implementation of change.



APPENDIX H

FOF RISK POLICY

(Risk, Pricing and valuation policy)

I. RISK POLICY FOR THE DIRECT LENDING PRODUCT

1. Specific risk factors

Considering the features of the financial product that will be offered under this Direct Lending Product, it is expected that the FoF will be taking a level of risk in accordance with EIB's rules, policies and procedures applied to operations it carries out at its own risk and commensurate with its role to address perceived market gaps caused by the unprecedented crisis, where commercial operators alone do not fully cover the needs of the underlying projects. However, the Financial Instrument may carry the potential for significant or even full loss to be incurred as well as lack of risk commensurate return, the risks of which are acknowledged and accepted by the MIEP. In this context though, it is worth mentioning the following parameters:

Firstly, the actual losses, if any, incurred by the Financial Instrument will depend on many variables, including (but not limited to) the Final Recipients' performance, the macroeconomic environment, the product parameters and embedded incentives for private investors, if any.

Secondly, the selection of an investment into Eligible Projects under this Direct Lending Product will be implemented by the EIB applying its own professional judgment and due care in accordance with the EIB's policies and procedures as applied to operations it carries out at its own risk, and will be approved by the Investment Board.

This Direct Lending Product shall operate, to the extent applicable, in accordance with the EIB's respective rules, policies, and procedures, save for the following cases:

Where the EIB requires for its own funds a State or European Commission guarantee, such form of security shall not be applicable for RRF contributions. To this effect, the MIEP acknowledges and accepts that for the above cases the EIB's rules, policies and procedures applied to operations it carries out at its own risk will not be applicable to the FoF and therefore RRF contributions could be on-lent unsecured.

The MIEP acknowledges and accepts that the EIB will not be responsible for ensuring compliance with State aid rules. Consistent with the mandate's objectives, the EIB will not set any pricing or return expectations for the FoF, and any financial advantage provided to Final Recipients through the FoF would be considered as a mere neutral pass-through mechanism. The appropriate pricing for the RRF contributions will be defined, verified by and communicated to the EIB by the MIEP, thus ensuring its compliance with State Aid rules. In this context, the MIEP acknowledges and accepts that will not apply the pricing methodology applicable to operations the EIB carries out at its own risk and therefore the pricing applied to (part of) the operations funded under the RRF may differ from the one applied to the EIB's own transactions.

The standard financial monitoring, restructuring and recovery management applicable to



operations the EIB carries out at its own risk will be applied for the direct lending. The MIEP acknowledges and accepts that, in the event an adjusted financial monitoring, restructuring and recovery management is to be applied for (part of) the operations funded under the RRF, such monitoring will be presented by the EIB and accepted by the MIEP in a form to be determined by the Parties. This includes monitoring whether any event of default or any other event leading to the termination of the relevant investment agreement is triggered, and acting as appropriate in case of such event.

The EIB shall not incur any financial liability as a result of Foreign Exchange fluctuations between Euros and the Romanian Leu in relation to the fact that relevant amounts in the RRP and lending agreements as regards investments are expressed in Euros.

Any other derogation from the EIB's rules, policies and procedures approved by the EIB management bodies for its own resources is expected to be applicable also for the RRF contributions used for direct lending.

2. Eligibility risk

Loan transactions entered with Final Recipients are expected to meet a number of eligibility criteria. Some of these eligibility criteria are determined on the basis of commercial considerations, whilst others are fixed on the basis of relevant requirements set out in the applicable EU regulations and applicable national rules. Non-compliance with such eligibility criteria has different consequences depending on circumstances.

The investment agreements will include certain provisions, the objectives of which will be to recover the amounts allocated: (i) for an underlying transaction which does not comply or no longer complies with the agreed eligibility criteria, or (ii) affected by an irregularity.

Nevertheless, the inherent characteristics of loan transactions means that the recovery for the benefit of the FoF of such allocated amounts is not guaranteed and remains subject notably to the application of clauses negotiated with the Final Recipient. Furthermore, the exercise by the EIB of its rights with regard to the Final Recipient is limited by the rights that any investor may exercise towards the Final Recipient under the law, notably company law.

The MIEP acknowledges and agrees that such risks shall be borne entirely by the FoF and that the EIB shall not be responsible in any way whatsoever for any consequence of any expense being considered ineligible (under applicable EU regulations) in such circumstances.

3. Non-absorption risk

Notwithstanding all reasonable efforts to promote the instrument, the EIB may not be able, due to market reasons and conditions (i.e. demonstrated substantial decrease of the requests for eligible investments from Final Recipients in Romania), to complete the build-up of the portfolio of eligible investments in the indicated investment timeline. It is therefore acknowledged by the MIEP that this lack of absorption of RRF monies might raise a risk of ineligibility of the relevant expenditure under the applicable EU rules.



4. General risk factors

General risk factors for Financial Instruments include foreign exchange rates, interest rates, credit risk, counterparty risk, market volatility and political risks. The list of risk factors set out below is not exhaustive. Other risks may arise on a case-by-case basis, such as:

- (a) Investment in a Financial Instrument requires a long-term commitment, with no certainty of return. Many of the investments made may prove to be highly illiquid, and there can be no assurance that the EIB will be able to recover the invested amounts in a timely manner in accordance with the foreseen repayment schedule.
- (b) Each investor, including the FoF, must be prepared to bear the economic risk of an investment for at least the duration of the life of a Financial Instrument.
- (c) The EIB will make investments based on estimates or revenue and cash flow projections, internal rates of return and current returns, which in turn will be based on, among other considerations, assumptions regarding the performance of each investment, the amount and terms of available financing, the securities/collaterals provided, the scheduled repayments, including possible asset recovery and remediation strategies, all of which are subject to significant uncertainty. In addition, events or conditions which have not been anticipated may occur and may have a significant effect on the actual rate of return received on the relevant investments. Investors have no assurance that any capital will be returned to them.
- (d) There can be no assurance that the investments selected by the EIB will be profitable, that the EIB will be able to avoid losses or that selected investments will generate sufficient liquidity to the Financial Instruments.
- (e) The success of a Final Recipient's activities may be affected by general economic and market conditions, such as interest rates, availability of equity and credit, inflation rates, economic uncertainty, changes in laws and national and international political circumstances. These factors may affect the performance of each investment and its capacity to repay the funds invested.
- (f) There is no assurance that the EIB will be able to fully invest the commitments made to it or that suitable investment opportunities will be identified that satisfy the Investment Strategy. If the EIB is unable to invest the FoF funds, the potential return could be significantly reduced.

Therefore, the MIEP's readiness to accept both the mandate specific, eligibility, non-absorption and general risks is a prerequisite for implementing Financial Instruments. The acceptance of the risks is effectively an acceptance of a potential trade-off between the returns and the policy impact, enabling the pursuit of the policy objectives as set out in the "*Investment Strategy, Risk Policy, Exit Strategy and Business Plan*".

The MIEP hereby acknowledges and confirms its understanding and acceptance that the Financial Instruments implemented under the FoF will entail a level of risk in accordance with the EIB's rules, policies and procedures applied to operations it carries out at its own risk subject to the cases described above and may incur a level of losses- or even full loss, as laid out above.



II. RISK POLICY FOR THE INTERMEDIATED PRODUCT

1. Acknowledgements

The MIEP acknowledges and accepts that the EIB's rules, policies and procedures applied to operations it carries out at its own risk will not be applicable to this Intermediated Product.

This includes, without limitation, that the EIB will not apply the provisions of the credit risk guidelines, the pricing and valuation methodology, as well as the ceilings for financing applicable to operations the EIB carries out at its own risk.

Considering the features of the financial product to be offered under this Product, it is expected that the FoF will be taking a considerable level of risk, commensurate with its role to address perceived market gaps where commercial operators alone do not fully cover the needs of the underlying final recipients. The Financial Instrument carries the potential for significant or even full loss to be incurred as well as a lack of risk commensurate return. The MIEP acknowledges and accepts (i) the risk of full loss both at the Final Recipient and at the Financial Intermediary's levels and (ii) a lack of a risk-commensurate return.

2. Risk Policies and procedures

The EIB will apply instead the provisions of the general mandate risk principles for impact finance mandates, included in the relevant section of the EIB Credit Risk Guidelines. In accordance with these provisions, the EIB will make a qualitative assessment of the suitability of a financial intermediary's risk management framework, systems, policies and procedures to implement the underlying Financial Instrument.

More specifically, the EIB will evaluate and select Financial Intermediaries in line with the provisions of the CEOIs, taking into account the agreed Investment Strategy and Business Plan. The selection of Financial Intermediaries will be finalised by the EIB applying its own professional judgment and applicable internal rules, policies and procedures, and will be subject to the decision of the Investment Board.

Under the guarantee, the EIB will determine the guarantee cap rate individually for each guarantee transaction following due diligence of the eligible financial intermediary. The guarantee rate will be set at 80%, while the guarantee cap rate will be set at a level corresponding to maximum of 20% of the targeted aggregate portfolio. The counterpart that grants the underlying guaranteed exposure will be required to retain the remaining 20% of risk.

3. Pricing and returns

The MIEP acknowledges and accepts that the EIB will not be responsible for ensuring consistency with State Aid rules. Consistent with the mandate's objectives, the EIB will not set any pricing or return expectations for the FoF, and it would be considered as a mere neutral pass through mechanism. In addition, the pricing or return of the Financial Instruments will be fully delegated to the Financial Intermediary to apply its rules, policies and procedures.



4. Financial monitoring and valuation

An adjusted financial monitoring, restructuring and recovery management from that applicable to operations the EIB carries out at its own risk will be applied in accordance with the rules for monitoring and reporting defined in the Funding Agreement. This includes monitoring whether any event of default or any other event leading to the termination of the Operational Agreement is triggered, and acting as appropriate in case of any such event.

Furthermore, the financial monitoring and restructuring and recovery management of the underlying loan portfolio will be fully delegated to the Financial Intermediary to apply its rules, policies and procedures.

No fair value assessment of the portfolio will be done by the EIB. The EIB will transmit, on an aggregate basis, information about the valuation from the Financial Intermediary in accordance with the latter's standard rules, policies and procedures. Such information about the Financial Intermediary's valuation shall not be part of audited report from the EIB.

5. Foreign Exchange risk

The EIB shall not incur any financial liability as a result of Foreign Exchange fluctuations between Euros and the Romanian Leu in relation to the fact that relevant amounts in the RRP and relevant Operational Agreements are expressed in Euros.



APPENDIX I REQUIREMENTS FOR FINANCIAL INTERMEDIARIES

ASSESSMENT OF FINANCIAL INTERMEDIARIES

In selecting Financial Intermediaries, the EIB shall perform its assessment by reference to the following criteria:

- (a) the legal capacity and authorisation of the Financial Intermediaries to carry out the relevant implementation tasks under EU and national law;
- (b) that the Financial Intermediaries are adequately economically and financially viable;
- (c) that the Financial Intermediaries have effective and efficient internal systems and controls;
- (d) that the Financial Intermediaries use an accounting system which provides accurate, complete and reliable information in a timely manner; and
- (e) the willingness of the Financial Intermediaries to be audited by the EIB, the audit bodies of Romania, the Commission and the European Court of Auditors.