

**THE PORTUGUESE REPUBLIC**

**AND**

**EUROPEAN INVESTMENT FUND**

**FUNDING AGREEMENT**

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This Agreement is entered into by and among:

- (1) **The Member State** (the "**MS**"), duly represented by the Managing Authority of the Rural Development Programme ("**RDP**" or "*Programa de Desenvolvimento Rural (2014-2020)*") (the "**Managing Authority**"), as appointed by Resolution of the Council of Ministers of the Member State (*Resolução do Conselho de Ministros*) no. 59/2014; and
- (2) **The European Investment Fund**, 37 B, avenue J.F. Kennedy, L-2968 Luxembourg, Luxembourg (the "**EIF**"),

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

**WHEREAS:**

- (A) According to the conclusions of the ex-ante assessment entitled Ex ante Evaluation of the Financial Instruments of Portugal 2020 Programs - Lot 1 - Financial instruments of Direct support to companies carried out by the MS and finalised on April 2015, (the "**Ex-ante Assessment**"), the MS confirms that there exists a market failure in the provision of finance to farmers and agribusinesses in Portugal which results in a gap between the supply and demand for loans to agriculture and non-agricultural activities in Portugal for an amount estimated to be between EUR 3,000M and EUR 5,500M.
- (B) As an instrument to address the market failure evidenced in the Ex-ante Assessment, the MS entrusts the EIF under this Agreement with the creation of a fund-of-funds (the "**FoF**") within the meaning of Article 2 (27) of the CPR (as defined below) with the object of addressing the above market failure by facilitating access to finance to Final Recipients in cooperation with selected Financial Institutions active in the MS market and improving funding conditions for farmers and agribusinesses active in the MS market through the implementation of one or more Financial Instruments (each term as defined below). The FoF is financed by the Rural Development Programme ("**RDP**" or "*Programa de Desenvolvimento Rural 2014-2020*") in an amount of EUR 20,066,861 with resources from European Agricultural Fund for Rural Development ("**EAFRD**") and from the MS out of its national budget.
- (C) Under this Agreement, the MS appoints the EIF as its agent to manage the amounts made available under this Agreement in the form of the FoF pursuant to Article 38(4)(b)(i) of the CPR. The EIF will select Financial Institutions for the purpose of the FoF and enter into Operational Agreements with each selected Financial Institution during the Commitment Period.

Should, as further specified in this Agreement, additional resources from European Fund for Strategic Investments ("**EFSI**") be contributed to the financial instruments which are funded by the ESIF contribution of the MS, the legal basis for this EFSI-ESIF combination shall be considered instead to be article 38(1)(c) of the CPR (as amended by Regulation 2018/1046). For the purposes of the EFSI-ESIF combination, EIF would be entrusted with the implementation tasks pursuant to Article 39a(5)(b) of the CPR.

- (D) The Parties are entering into this Agreement for the purpose of:

- (a) mandating the EIF with the operation and the management of the amounts made available to the EIF under this Agreement in the form of a FoF in its own name, but for and on behalf of, and at the risk of, the MS;
  - (b) defining and implementing the Investment Strategy and Business Plan for the FoF;
  - (c) defining the rules governing the operation of the FoF, the functions and the duties of the Parties with respect to the FoF Activities;
  - (d) defining the role of the Investment Board;
  - (e) defining the rules in relation to the monitoring, evaluation and auditing of the FoF;
  - (f) defining the exit strategy; and
  - (g) determining the amount and the terms of payment of the Management Fees and Unforeseen Additional Expenses by the MS to the EIF.
- (E) The EIF may contribute, as mezzanine risk taker, additional funds from the EFSI to the implementation of the aforementioned financial instrument. The EIF may, at its fullest discretion, decide if and when to contribute such additional funds from EFSI, having regard, *inter alia*, to the market demand expressed under the Financial Instruments and the volumes of finance to Final Recipients expected to be generated thereunder.
- In this context, the Board of Directors of the EIF has approved on 12 November 2018 the deployment of up to EUR 15,000,000 of EFSI funds as a mezzanine (i.e., second loss piece) investment under this instrument.
- If the EIF decides to contribute funds from EFSI as mezzanine contribution, it shall inform the MS thereof and the Intercreditor Arrangements shall apply.
- (F) The EIF shall develop an appropriate call for expressions of interest (“**CEOI**” as defined below) in accordance with its internal policies and procedures, taking into account the market needs of the MS. The EIF shall use the CEOI to identify, evaluate and select suitable Financial Institutions to implement the Financial Instruments of the FoF. The CEOI will be submitted for approval to the Investment Board in accordance with the terms of this Agreement.
- (G) The entry into this Agreement by the MS and the performance of any obligations thereunder by the MS has been validly authorised by Common Ministerial Order from the Ministries of Finance and Agriculture (*Portaria Conjunta*), n. .../2019, of ....
- (H) Except for the undertakings provided in Clause 3.2, the effectiveness of this Agreement is subject to the communication in writing of the Prior Approval from the Portuguese Court of Auditors by the MS to the EIF.

**NOW THEREFORE** it is agreed as follows:

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 Any terms and expressions used in this Agreement shall bear the following meaning, unless the context requires otherwise:

**"Additional Expenses Request"** means a request in writing for payment of Unforeseen Additional Expenses, the form of which is substantially as set out in Appendix H (*Form of Additional Expenses Request*).

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

**"Agricultural Product"** means the agricultural products as referred to in Annex I of the EU Treaty (except fisheries);

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

**"Audit Firm"** means an independent external audit company selected by the EIF in its discretion for the purpose of the annual audited financial statements as per Clause 15.2(ii);

**"Audit Report"** means the annual audit report to be prepared by EIF in accordance with Clause 15.2(ii), to be submitted to the Investment Board by 31 December following the end of the reference accounting year;

**"Business Day"** means a day, other than a Saturday or Sunday, during which the EIF Luxembourg office is open, and credit institutions are open for general business in Luxembourg and the Republic of Portugal;

**"Cap"** has the meaning given to it in Clause 8.3;

**"CEOI"** means a call for expressions of interest which complies in all material respects with the requirements set out in Clause 2.4 of this Agreement;

**"Clause"** means a clause of this Agreement;

**"Commission"** means the European Commission;

**"Commitment Period"** means the period during which the EIF may enter into new Operational Agreements, which shall start on the Effective Date and end on 31 December 2023;

**"Condition Precedent"** has the meaning given to it in Clause 3.1;

**"Control Report"** has the meaning given to it in Clause 15.2(iii);

**"CPR"** means the Common Provisions Regulation (EU) No 1303/2013 of 17 December 2013 of the European Parliament and of the Council;

**"CRR"** means EU Regulation No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;

**"Delegated Act"** means the Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing the CPR;

**"EAFRD"** means the European Agricultural Fund for Rural Development;

**"EAFRD Regulation"** means Regulation 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development, as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017;

**"Effective Date"** means the date on which the MS informs the EIF in writing of the Prior Approval from the Portuguese Court of Auditors in accordance with limb (ii) of Clause 3.2;

**"Eligibility Period"** means, save as otherwise expressly provided, the period from the Effective Date until (and including) 31 December 2023;

**"ESIF"** means European Structural and Investment Funds;

**"EU"** means the European Union;

**"EURIBOR"** means, in relation to an unpaid or overdue amount, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the EIF may specify another page or service displaying the relevant rate after consultation with the Investment Board. If such rate is less than zero, EURIBOR shall be deemed to be zero. The relevant period shall be the period selected by the EIF in good faith which reflects the manner in which the EIF finances the unpaid or overdue amount;

**"Ex-ante Assessment"** has the meaning given to such term in Recital (A) of this Agreement;

**"Final Recipient"** means a legal or natural person receiving financial support from a Financial Instrument;

**"Financial Instrument"** means, in accordance with Article 38 of the CPR, any financial instrument, including, without limitation, loans, leases, guarantees and counter-guarantees for the benefit of the Final Recipients;

**"Financial Institution"** means a credit institution, financial institution, investment fund (including special purpose entities) or other financial intermediary, whether public

or private, selected by the EIF in accordance with this Agreement for the implementation of a Financial Instrument;

**“Final Recipient Transaction”** means a Financial Instrument entered into between a Financial Institution and a Final Recipient.

**"First Tranche"** means an amount of EUR 5,016,715.25 which shall be an amount equal to twenty-five per cent (25%) of the MS Contribution Committed;

**"FoF"** has the meaning given to such term in Recital (B);

**"FoF Account"** means the fiduciary account (or group of fiduciary accounts referred to collectively) to be opened and managed by the EIF on behalf of the MS, in accordance with Clause 6.2;

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

**"FoF Treasury Bank"** means one or more credit institutions (including the European Investment Bank) selected by the EIF for the placement of Treasury Funds in accordance with the Treasury Guidelines or, absent any indication therein, the EIF's internal rules and procedures and which satisfy the Treasury Required Rating;

**"Force Majeure Event"** has the meaning given to such term in Clause 20.10 of this Agreement;

**"Force Majeure Notice"** has the meaning given to such term in Clause 20.10 of this Agreement;

**"Fourth Tranche"** means an amount of EUR 5,016,715.25 which shall be an amount equal to twenty-five per cent (25%) of the MS Contribution Committed;

**"Implementing Act"** means the Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 supplementing the CPR;

**"Indemnified Amounts"** has the meaning given to such term in Clause 12.6 of this Agreement;

**"Intercreditor Arrangements"** means the set of provisions relating to the relationship between the EIF and the MS, in their respective roles as risk takers contributing resources to the Financial Instrument, as approved by the Investment Board, upon EIF's proposal;

**"Interest Generated"** has the meaning given to such term in Clause 5.3 of this Agreement;



**"Investment Board"** means a management board of the FoF consisting of 3 (three) members, duly appointed and empowered by the MS which shall operate in accordance with the terms set out in Clause 7 (*The Investment Board*);

**"Investment Board Rules of Procedure"** means the internal rules of procedure adopted by the Investment Board in accordance with Clause 7.5, the terms of which are set out in Appendix G (*Investment Board Rules of Procedure*);

**"Investment Strategy and Business Plan"** means the investment strategy and business plan for the activities in the context of the FoF in relation to the FoF Activity, attached to this Agreement as Appendix A (*Investment Strategy and Business Plan*), which shall include a separate section on the exit strategy;

**"Irregularity"** means any breach of EU law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the European Structural and Investment Funds, which has, or is likely to have, the effect of prejudicing the budget of the EU by charging an unjustified item of expenditure to the budget of the EU;

**"Legacy Funds"** means the aggregate of any funds continued to be managed by the EIF 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) MS Contributions Paid, interest or revenue received together with the Proceeds of Operations (following application of Clause 5.2 of this Agreement) less any amount repaid to the MS pursuant to Clauses 6 and 4.7 of this Agreement;

**"Legacy Period"** means the period of eight (8) years commencing on 1 January 2024 and ending on 31 December 2031 at the latest;

**"Management Fees"** means the amounts payable to the EIF for the services provided under this Agreement in accordance with Clause 8 (*Management Fees*);

**"Member State"** or **"MS"** means the Republic of Portugal.

**"MS Contributions Committed"** means EUR 20,066,861, being the funds committed to be invested in the FoF by the MS under Clause 4 (*Funding of the FoF*) or to be paid as Management Fees to EIF under this Agreement, 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;

**"MS Contributions Paid"** means the aggregate amount of the MS Contributions Committed which the MS 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-Cooperative Jurisdiction"** means (i) any jurisdiction that has been placed on the EU list of non-cooperative tax jurisdictions for tax purposes adopted on 5 December 2017 by the Council of the European Union (ECOFIN Council conclusions), as

subsequently amended and (ii) any jurisdictions considered as non-cooperative in accordance with the relevant EIB Group policies, as applicable from time to time;

**"Operational Agreement"** means an agreement (or set of agreements) entered into between the EIF and a Financial Institution for the purpose of entry into, subscription or provision of one or more Financial Instruments as part of the FoF Activity;

**"Paying Agency"** means the entity which is the accredited paying agency within the meaning of article 7 of Regulation (EU) 1306/2013;

**"Prior Approval from the Portuguese Court of Auditors"** means the approval by the Portuguese Court of Auditors (Tribunal de Contas) pursuant to Articles 44, 45 and 46 of Law 98/97, of 26 August 1997, amended by Laws 87-B/98, of 31 December 1998, 1/2001, of 4 January 2001, 55-B/2004, of 30 December 2004, 48/2006, of 29 August 2006, 35/2007, of 13 August 2007, 3-B/2010, of 28 April 2010, 61/2011, of 7 December 2011, 2/2012, of 6 January 2012, 20/2015, of 9 March 2015, and 42/2016, of 28 December 2016, of the entry into and performance under this Agreement by the MS;

**"Progress Report"** means, as relevant, the annual progress report to be prepared by the EIF in accordance with Clause 15.2(i), covering the period 1 January – 31 December of the previous year, and to be sent to the MS. The period can be amended with a decision of the Investment Board, however always in line with the applicable regulations;

**"Proceeds of Operations"** means, in relation to a Financial Instrument, the aggregate of all the returns, after allocation to the junior risk taker in accordance with the provisions of the Intercreditor Arrangements, if applicable, (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, dividends and other distributions without limitation) which are paid to the FoF Account by the EIF in accordance with this Agreement 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 created in the sense of Article 42 CPR 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;

**"Regulation (EU) 1306/2013"** means Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008;

**“Relevant Authorities”** means, collectively, the audit authority of the MS, the Commission and the European Court of Auditors;

**“Reminder Notice”** means a notice from the EIF addressed to the Paying Agency and simultaneously with a copy to the MS, for the purposes of Clauses 4.3 and 19.3;

**"Reporting Period"** means, in relation to the first reporting period, the period commencing on the Effective Date and ending on 31<sup>st</sup> December 2019, and thereafter, each period commencing on 1st of January of a calendar year and ending on 31<sup>st</sup> December of that year;

**"Return Request"** has the meaning given to such term in Clause 4.7;

**"Risk Policy"** means the risk framework and policy to be applied by the EIF when implementing Financial Instruments and entering into Operational Agreements as set out in Appendix B (*FoF Risk Policy*);

**"Rural Development Programme" (RDP)** means the rural development programme of the MS;

**“Rural Development Information System” (RDIS)** means the online IT system as defined in Article 69.1(a) of EAFRD Regulation;

**"Scheduled Termination Date"** means 31 December 2036;

**"Second Tranche"** means an amount of EUR 5,016,715.25 which shall be an amount equal to fifty per cent (25%) of the MS Contribution Committed;

**"Secretariat"** has the meaning given to it in Clause 7.8;

**"Signing Date"** means the date on which the last of the Parties signs this Agreement;

**"Small and medium-sized enterprise" or "SME"** means a micro (including individual entrepreneurs and self-employed persons), small or medium-sized enterprise as defined in the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, or as may be subsequently amended or substituted;

**"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 Republic of Portugal;

**“Termination for Cause”** has the meaning given to such term in Clause 20.3;

**“Termination Without Cause”** has the meaning given to such term in Clause 20.4;

**"Third Tranche"** means an amount of EUR 5,016,715.25 which shall be an amount equal to twenty five per cent (25%) of the MS Contribution Committed;

**"Tranches"** means, collectively, the First Tranche, the Second Tranche, the Third Tranche and the Fourth Tranche.

**"Treasury Funds"** has the meaning given to such term in Appendix C (*Treasury Guidelines*);

**"Treasury Guidelines"** means the set of guidelines which govern the management of the Treasury Funds and which are set out in Appendix C (*Treasury Guidelines*);

**"Treasury Required Rating"** has the meaning given to such term in Appendix C (*Treasury Guidelines*);

**"Unforeseen Additional Expenses"** has the meaning given to such term in Clause 9.1;

**"Unforeseen Additional Expenses Cap"** means an amount equal to 1% of the MS Contribution Committed as of the Effective Date; and

**"Written Request"** means a request in writing for payment of any of the Tranches of the MS Contribution Committed substantially in the form of Appendix F (*Form of Written Request*).

## 1.2 Interpretation:

Save where the context otherwise requires:

- (i) any reference to legislation, a statute or statutory provision shall include:
  - a) such legislation, statute or provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
  - b) any subordinate legislation made from time to time under that statute or provision;
- (ii) capitalised terms and expressions defined in the Preamble and the Recitals have the same meaning throughout this Agreement unless herein otherwise defined;
- (iii) words denoting:
  - a) the singular number only shall include the plural number also and vice versa;
  - b) one gender only shall include the other gender;
  - c) persons only shall include firms and corporations and vice versa;
- (iv) 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;

- (v) the Appendices form an integral part of this Agreement and shall have effect accordingly.

## **2. MANDATE AND FUNCTIONS OF THE EIF**

- 2.1 The MS hereby appoints the EIF as its agent, to act in its own name, but for and on behalf of and at the risk of, the MS 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. Should the contribution to the financial instrument be formed only by the MS Contribution Committed, the MS shall appoint EIF pursuant to Article 38(4)(b)(i) of the CPR. In case of a combination of EFSI-ESIF resources contributed to the same financial instruments, the legal basis shall be considered instead to be Article 39a(5)(b) of the CPR, as amended, modified or supplemented from time to time, and, as further set out in Recital (E), the provisions set out in the Intercreditor Arrangements shall be applicable.
- 2.2 The MS authorises the EIF, as its agent in connection with the management and operation of the FoF:
  - (i) To open and maintain the FoF Account, in the name of the EIF but for the account and at the risk of the MS, including any other fiduciary accounts necessary for the implementation of the FoF Activity, including for the purposes of Article 42 of the CPR;
  - (ii) to execute banking and financial transactions relating to the operation of the FoF in compliance with the terms of this Agreement;
  - (iii) to pursue the strategy set out in the Investment Strategy and Business Plan and apply the MS Contribution Committed to cover the risk of the portfolio of new eligible debt finance to be disbursed to eligible Final Recipients in the territory of the Portugal Mainland RDP (as further set out in the Intercreditor Arrangements, if applicable, and in accordance with the terms of this Agreement);
  - (iv) to identify, evaluate and select one or more appropriate Financial Institutions (by issuing and publishing CEOIs and other relevant criteria including in accordance with the criteria laid down by Articles 209(1), (2) and 155(3) of Regulation 2018/1046 and taking account of market needs), which shall enter into Operational Agreements for Financial Instruments for the purpose of the FoF, provided that:
    - a) The Investment Board approves the terms of the CEOI upon formal proposal by the EIF in accordance with Clause 7.9(v);
    - b) The CEOI complies with the requirements set out in Clause 2.4;

- c) The EIF informs the Investment Board of the selection of the relevant Financial Institutions and the terms and conditions to be applied by such Financial Institutions in relation to the support to be provided to Final Recipients (i.e., with respect to the implementation of the **transfer of benefit** principles to be specified in the CEOI) within 15 Business Days from the day when the selection is made;
  - d) the Risk Policy as set out in Appendix B (*FoF Risk Policy*) of this Agreement is taken into account; and
  - e) the EIF assesses each of the elements referred to in Article 7 of the Delegated Act when selecting the Financial Institutions;
- (v) to perform due diligence on the Financial Institutions, in accordance with the EIF's standard procedures;
- (vi) to negotiate, enter into (during the Commitment Period), execute, implement and, if needed, amend Operational Agreements (provided, for the avoidance of doubt, that such amendments are in line with the terms and conditions of this Funding Agreement and the CEOI) in the name of the EIF acting in its capacity as agent for and on behalf of the MS and for the ultimate benefit and risk of the MS in accordance with the CPR and the Delegated Act, taking into account the Risk Policy, including with the assistance or advice of external legal advisers retained by the EIF in its discretion.
- (vii) The EIF shall not have any obligation to enter into an Operational Agreement unless and until each or, as the case may be, the relevant tranche of the funds necessary for such Operational Agreement has been credited by the MS in cleared funds to the FoF Account in accordance with Clause 4. For the avoidance of doubt, following the end of the Commitment Period, the EIF may amend any Operational Agreement;
- (viii) 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 Institution or limited to the rights vis-à-vis the Financial Institution;
- (ix) to monitor the implementation of the Operational Agreements in accordance with Clause 15 (*Monitoring and Reporting*) and Appendix D (*Monitoring/Control of Financial Institutions*);
- (x) to manage the funds credited to the FoF Account, including, if relevant, through outsourcing and/or subcontracting all or part of the relevant activities to third parties, in accordance with the Treasury Guidelines. When opening and managing the FoF Account in line with the Treasury Guidelines, the EIF will endeavour, to the extent possible and acting in accordance with the Treasury Guidelines, to avoid negative interest rates and asset management losses. The MS acknowledges that the treasury assets will be held and invested at its risk (including with respect to negative interest and asset management losses);

- (xi) to undertake information, marketing and publicity measures of the FoF, pursuant to plan(s) proposed by the EIF and to be approved by the Investment Board from time to time in accordance with the terms of Clause 7;
- (xii) to the extent strictly necessary for the implementation of the FoF Activity under applicable law, organise the external translation into Portuguese language of any documents as the EIF from time to time deems necessary; and
- (xiii) to take any other action and to enter into any deeds or other documents that the EIF considers to be necessary or desirable for the proper implementation of the FoF.

2.3 In case of the contribution by EIF of funds from EFSI to the Financial Instrument, the Parties acknowledge and agree that:

- (i) the EFSI contribution will be unilaterally and discretionally decided by the EIF based on its own assessment of the market demand and conditions according to the EU Regulation and to the contractual arrangements between the EIF, the EIB, and the European Commission on the use of EFSI;
- (ii) the decision by the EIF to contribute EFSI to the Financial Instrument will be subject to the approval of the Intercreditor Arrangements following the procedure established in Clause 19.3;
- (iii) the EIF will allow for at least 1 (one) month for the Investment Board to review the Intercreditor Arrangements before taking a final decision on their implementation and will provide technical support to illustrate their operational implications;
- (iv) the MS will act as the junior risk taker in accordance with the provisions set out in the Intercreditor Arrangements and with the risk policy set out in Appendix B (*FoF Risk Policy*);
- (v) the EIF will act as mezzanine risk taker using EFSI in accordance with the provisions set out in the Intercreditor Arrangements;
- (vi) the cap rate for the portfolio guarantee to be set in the Operational Agreements to be signed by the EIF with the selected Financial Institutions will not change as a result of the EFSI contribution; as a result, the MS Contribution will cover the first losses of the portfolio below the cap rate and up to a detachment point that would be closer to the expected loss, with the consequence of more risk taken by the MS Contribution (and a reduction in the expectations for reflows);
- (vii) the Intercreditor Arrangements to be proposed by the EIF will provide definitions and operational indication on the relationship between the junior and the mezzanine risk taker, based on the following general allocation principles: (i) the junior risk taker will cover any default until the full MS contribution is used up before any loss can be incurred by the mezzanine risk taker; (ii) any Proceed of Operation will be used first to restore any loss incurred by the mezzanine risk taker before any Proceed of Operation could be allocated to the

junior risk taker; (iii) the repayments of the loans included in the portfolio will write down first the mezzanine and then the junior risk cover; and (iii) the EIF would be responsible to manage the cash-flows from and to the Fund of Funds according to these allocation principles and to calculate the actual junior and mezzanine risk-cover;

2.4 The CEOIs which the EIF shall develop and issue in connection with the FoF shall comply with the following requirements in all material respects:

- (i) the CEOIs shall allow the EIF to evaluate the Financial Institutions with respect to the criteria applicable to Financial Institutions referred to in Article 7 of the Delegated Act;
- (ii) the CEOIs shall be transparent, allow for justified decision-making on objective grounds and shall not give rise to a conflict of interest as regards the Financial Institutions to be selected;
- (iii) the CEOIs shall use the criteria for the selection of Financial Institutions from time to time set out in the CPR, the Delegated Act, this Agreement and, if applicable, any relevant regulation applicable to the EFSI mezzanine contribution. As at the time hereof the applicable criteria to be used during the selection of Financial Institutions shall include, without limitation, the following:
  - a) a robust and credible methodology for identifying and appraising Final Recipients;
  - b) the level of costs and fees for the implementation of the Financial Instrument and the methodology proposed for the calculation of such costs and fees;
  - c) the terms and conditions applied in relation to support to be provided to Final Recipients (i.e., the implementation of the **transfer of benefit** principles to be specified in the CEOI, including the provision of maturities for Final Recipient Transactions longer than would otherwise be offered by the Financial Institutions in the absence of the Financial Instrument); with specific reference to loan maturities, the selection criteria under the CEOI will provide for incentives to the Financial Institutions to express interest in supporting portfolios partially or entirely composed of debt financing with maturities longer than 12 years. Upon assessment of EIF and selection of the relevant Financial Institution such interest would be underpinned by portfolio eligibility criteria or other relevant portfolio management measures aimed at supporting the achievement of this policy objective.”;
  - d) the ability to raise resources for investments in Final Recipients additional to contributions from the FoF;



- e) where a particular Financial Institution already manages a similar financial instrument, the ability to demonstrate additional activity in comparison to present activity; and
- f) in cases of risk sharing, the proposed measures to align interests and mitigate potential conflicts of interest.

2.5 In performing the FoF Activity, the EIF 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 EIF, require such expert or professional advice. When retaining such services, the EIF 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 the EIF's internal procedure, and (iii) the services rendered by the external consultants are reasonably evidenced and duly documented. For the avoidance of doubt, any costs arising from the services retained by the EIF described in this Clause 2.5 are covered by the respective Management Fees, except if they constitute Unforeseen Additional Expenses or other expenses and charges set out in Clause 9 in which case they shall be covered in accordance with the provisions of Clause 9.

### 3. **CONDITION PRECEDENT**

3.1 Subject to Clause 3.3 and except for the undertakings provided in Clause 3.2, which shall produce effects from the Signing Date, this Agreement shall only produce effects on the date on which the Prior Approval from the Portuguese Court of Auditors is communicated in writing by the MS to the EIF in accordance with limb (ii) of Clause 3.2 (the “**Condition Precedent**”).

3.2 The MS undertakes to (i) take the necessary steps to request the Prior Approval from the Portuguese Court of Auditors within 5 (five) Business Days from the Signing Date, and (ii) inform the EIF in writing within 3 (three) Business Days of having obtained the Prior Approval from the Portuguese Court of Auditors.

3.3 This Agreement shall automatically terminate if the Condition Precedent is not verified within 3 (three) months from the Signing Date.

### 4. **FUNDING OF THE FOF**

4.1 The MS hereby undertakes to make available to the FoF an aggregate amount equal to the MS Contribution Committed, net of any charges or fees (including any bank transfer charges), which shall be paid by the MS.

4.2 The MS shall pay the MS Contribution Committed into the FoF Account as follows:

- (i) the First Tranche of the MS Contribution Committed (corresponding to EUR 5,016,715.25, equivalent to twenty five per cent (25%) of the MS Contribution Committed) by no later than the last Business Day of the month following the month when the EIF delivers a Written Request in accordance with this Clause

4.2, upon being informed by the MS in accordance with limb (ii) of Clause 3.2 that the Prior Approval from the Portuguese Court of Auditors was obtained;

- (ii) the Second Tranche of the MS Contribution Committed (corresponding to EUR 5,016,715.25, equivalent to twenty five per cent (25%) of the MS Contribution Committed) by no later than the last Business Day of the month following the month when the EIF delivers a Written Request in accordance with this Clause 4.2, upon approval by its relevant governing bodies of the first Operational Agreement;
- (iii) the Third Tranche of the MS Contribution Committed (corresponding to EUR 5,016,715.25, equivalent to twenty five per cent (25%) of the MS Contribution Committed) by no later than the last Business Day of the month following the month when the EIF delivers a Written Request in accordance with this Clause 4.2, informing that an amount corresponding to at least 60% (sixty percent) of the First Tranche has been allocated to cover possible losses of Financial Institutions corresponding to amounts disbursed to Final Recipients or has been used to pay Management Fees in accordance with Clause 8 (*Management Fees*);
- (iv) the Fourth Tranche of the MS Contribution Committed (corresponding to EUR 5,016,715.25, equivalent to twenty five per cent (25%) of the MS Contribution Committed) by no later than the last Business Day of the month following the month when the EIF delivers a Written Request in accordance with this Clause 4.2, informing that an amount corresponding to at least 85% (eighty five percent) of the first two Tranches has been allocated to cover possible losses of Financial Institutions corresponding to amounts disbursed to Final Recipients or has been used to pay Management Fees in accordance with Clause 8 (*Management Fees*).

Each Written Request shall be addressed to the Paying Agency in accordance with the procedure set out in Appendix I (*Payment Procedures*), with copy to the MS and shall confirm the amount required to be paid in the FoF Account by the MS and include the information set out in Appendix F (*Form of Written Request*).

- 4.3 If the MS, acting through the Paying Agency, does not pay any of the Tranches into the FoF Account within the timings referred to in Clause 4.2,
- (i) the EIF shall send a Reminder Notice to the MS; and
  - (ii) The unpaid amount shall bear interest from the date falling twelve (12) Business Days after the Reminder Notice until the date of payment at a rate equal to EURIBOR plus two (2) per cent per annum.
- 4.4 Any amount payable pursuant to Clause 4.2 shall accrue to and be retained by the EIF.
- 4.5 MS shall not withdraw or cancel any portion of the MS 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.

4.6 The MS Contribution Committed shall be used by the EIF 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.

4.7 Not earlier than three (3) months and no later than six (6) months following the delivery of the Audit Report concerning the last reference accounting year of the Eligibility Period and subject to the provisions set out in the Intercreditor Arrangements, if applicable, the MS shall be entitled to request in writing ("**Return Request**") to the EIF that an amount equal to the difference between:

- (i) the MS Contribution Paid; and
- (ii) the aggregate amount equal to the MS Contributions Paid which has been applied or remains committed to be applied for the purpose of (a) the financing of Final Recipients by Financial Institutions through Financial Instruments, (b) the payment of fees owed to the EIF, and/or (c) any other amount owed by the MS to the EIF under this Agreement;

shall be returned to the MS as set out in this Agreement.

4.8 The amount requested under Clause 4.7 shall be paid, subject (if and to the extent applicable) to the provisions set out in the Intercreditor Arrangements, from the funds available in the FoF Account to the MS, no later than 30 Business Days after the Return Request was delivered.

## 5. **USE OF PROCEEDS OF OPERATIONS**

5.1 The Parties agree as follows:

- (i) Under the terms of Operational Agreements EIF may expressly permit Financial Institutions to re-use and re-invest in Financial Instruments during the Eligibility Period the returns generated by existing Financial Instruments, which returns would otherwise constitute Proceeds of Operations.
- (ii) In the case of guarantees committed under Financial Instruments 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 in accordance with the principles set out below) promptly following the date on which the relevant Financial Instrument expires and/or no further liability may be incurred under such Financial Instrument.
- (iii) Subject to Clause 4.2 of this Agreement, after the end of the Eligibility Period, the MS may request the annual repayment of Proceeds of Operations which are generated by the Financial Instruments and which are allocated to the FoF in accordance with the provisions of this Agreement.

- 5.2 The Proceeds of Operation generated in the course of a financial year shall be used:
- 5.2.1 during the Eligibility Period, in the following order of priority, (i) for the payment and/or reimbursement of the respective Management Fees that remain unpaid, (ii) for the payment of shortfalls, if any, due to negative interest in accordance with Clause 9.3 and (iii) to cover commitments or exposures in relation to existing Financial Instruments, if relevant, in each case to the extent they are not used for the purpose of Clause 5.1(i);
  - 5.2.2 following the expiry of the Eligibility Period, in the following order of priority, (i) for the payment and/or reimbursement of the respective Management Fees that remain unpaid, (ii) for the payment of shortfalls, if any, due to negative interest in accordance with Clause 9.3, and (iii) if relevant, to cover commitments or exposures in relation to existing Financial Instruments.
- 5.3 MS and the EIF also agree that any interest or other gains earned by the FoF, including in respect of the Contribution Paid, the treasury activities and other gains generated from the FoF Account (“**Interest Generated**”), shall be used:
- 5.3.1 firstly, to set-off in accordance with Clause 5.6 any amounts owed to the EIF by the MS pursuant to Clause 9.3 below; and
  - 5.3.2 thereafter, subject to prior approval by the Investment Board, for the same purposes as the MS Contribution Committed, including, if needed and to the extent applicable, allocated in full or in part for the purposes set out in Clause 5.2 above.
- 5.4 Subject to clause 5.5, the EIF may enter into further Operational Agreements and incur expenditure (including Management Fees and management fees and costs payable to Financial Institutions under the relevant Operational Agreements, if any) during the Legacy Period, in accordance with Article 45 of the CPR and subject to Clause 5.5 below.
- 5.5 Any use of Legacy Funds for Financial Instruments to be implemented in the Legacy Period is subject to (i) the prior approval of the Investment Board upon formal proposal by the EIF in accordance with Clause 7.9(xii), (ii) an assessment of the market conditions demonstrating a continuing need for such investments and (iii) the Parties successfully renegotiating fees and other elements as required. Should the Investment Board, upon proposal by the EIF, decide to implement new Financial Instruments during the Legacy Period, no later than six (6) months prior to the end of the Eligibility Period, the EIF and the MS shall conduct such an assessment and the Investment Board, upon proposal by the EIF, shall, if appropriate, agree a revised Investment Strategy and Business Plan based on such assessment relating to the investment of Legacy Funds during the Legacy Period.
- 5.6 The EIF shall be entitled to set-off any amount owed to the EIF pursuant to Clause 9.3 of this Agreement against the Interest Generated, save that such set-off shall be without prejudice to the obligations of the MS under Article 43 of the CPR with respect to the entire amount of Interest Generated.

## 6. THE FOF AND THE FOF ACCOUNT

- 6.1 The Parties agree that the FoF shall be established as a "separate block of finance" within the EIF, as permitted under Article 38(6) of the CPR and the EIF shall implement appropriate solutions (including an accounting distinction) separating such resources from other resources managed by it.
- 6.2 The FoF Account shall be opened by the EIF in its own name, acting as agent for and on behalf of, and at the risk of, the MS, with a financial institution selected by the EIF in accordance with its internal rules and procedures and shall be communicated for information to the MS and maintained by the EIF in compliance with applicable law and the EIF's internal rules and procedures.
- 6.3 The FoF Account shall be denominated in Euros.
- 6.4 The FoF Account, which shall be utilised for the payments to and by the FoF in accordance with Clause 4 (*Funding of the FoF*), shall be the account communicated by the EIF to the MS in writing not later than ten (10) Business Days after the Effective Date or such other account, the details of which are communicated by the EIF to the MS in writing with ten (10) Business Days' prior notice, provided that the communication of an account by the EIF to the MS for the purpose of replacing an existing account shall not apply to payment requests submitted by the MS before the date when such communication became effective in accordance with Clause 25.2, even if the relevant payment is only made after that date.
- 6.5 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 EIF resources (including, for the avoidance of doubt, other funds or accounts belonging to the EIF), and shall be used exclusively for the performance of the FoF Activity in accordance with this Agreement.
- 6.6 The MS shall not create or permit to subsist any security, lien or other charge or encumbrance over the FoF Account, the MS Contributions Paid or any other funds managed by the EIF in connection with the FoF whether in favour of the MS or any third party creditor of the MS and whether under any financial assistance agreement entered into by the MS or otherwise, save as for such liens arising over the FoF Account to the respective custodian bank under law or general terms and conditions of the FoF Account. The MS 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).
- 6.7 Upon occurrence of any of the following events:
- (i) the MS breaches any of its material obligation under this Agreement;
  - (ii) the EIF's rights to manage the FoF Account are revoked, cancelled or otherwise adversely affected; or
  - (iii) the MS or any third party takes any legal action or proceeding or any other procedure or step aiming at (or having the effect of) (i) gaining access to, or control over, or seizing or attaching the FoF Account or any

funds deposited on such account or (ii) limiting EIF control over or rights to the FoF Account, provided that this shall not apply to any such legal action or proceeding or any other procedure or step undertaken which, in the opinion of the EIF, appears prima facie to be frivolous or vexatious;

the EIF shall be authorised to transfer the amounts in the FoF Account to any bank of its choice and open a bank account in its own name and belonging to the EIF to serve the same purposes as the FoF Account.

- 6.8 Subject to the Intercreditor Arrangements if and to the extent applicable, the MS acknowledges and agrees that the FoF Account shall be operated as follows:

The FoF Account shall be:

- (i) credited with, *inter alia*, the following items:
  - a) the MS Contributions Paid;
  - b) revenue generated from the investment of Treasury Funds in accordance with the Treasury Guidelines;
  - c) Interest Generated;
  - d) Proceeds of Operations. For the avoidance of doubt, any Proceeds of Operations that are in the form of releases of amounts committed under a Financial Instrument (in the form of a guarantee instrument) will remain credited in the FoF Account;
  - e) to the extent applicable, any other amounts allocated to the junior risk cover in accordance with the provisions of the Intercreditor Arrangements;
  - f) amounts for the payment of Management Fees; and
  - g) amounts for the payments of the respective Unforeseen Additional Expenses.
- (ii) debited by the EIF, with, *inter alia*, the following items:
  - a) amounts to be paid directly or indirectly to Financial Institutions under Operational Agreements, including guarantee payments, if applicable, in accordance with the provisions of the Intercreditor Arrangements;
  - b) Management Fees as provided under Clause 8 (*Management Fees*) and Unforeseen Additional Expenses and other amounts due to the EIF under Clause 9 (*Unforeseen Additional Expenses, Negative Interest and Treasury Losses*) and any other amounts due to the EIF under this Agreement;

- c) the amount of Treasury Funds to be withdrawn to make investments in accordance with the Treasury Guidelines;
- d) amounts transferred to the MS under this Agreement, including, without limitation, amounts to be transferred to the MS from time to time after the expiration or termination of this Agreement; and
- e) any other amount expressly authorised in writing by the MS and the EIF jointly.

The EIF shall continue to be entitled to debit these sums to the FoF Account after a termination of this Agreement for Termination for Cause or a Termination without Cause, in order to satisfy its rights and obligations under this Agreement.

- 6.9 The costs incurred as regards any negative interest or other charges assimilated to negative interest shall be covered in accordance with Clauses 9.3 and 9.4 of this Agreement.
- 6.10 The 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 bank charges, shall be borne by the EIF as a part of the Management Fee.
- 6.11 It is acknowledged and agreed by the Parties that any funds managed by the EIF for the FoF in accordance with this Agreement are the exclusive property of the MS whether or not such funds were financed in whole or in part by a loan or other financing made available to the MS by the European Investment Bank.

## **7. THE INVESTMENT BOARD**

- 7.1 The MS 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 MS specifically agrees that, for all matters relating to the implementation of the FoF and falling into the scope of this Agreement, the MS shall express its positions through the Investment Board.
- 7.2 The Investment Board shall consist of 3 (three) members appointed by the MS after consultation with the EIF.
- 7.3 Members of the Investment Board 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.
- 7.4 The EIF shall be entitled to designate up to two (2) of its officials to participate in meetings of the Investment Board as observers. For the avoidance of doubt, such observers shall not have any voting rights at meetings of the Investment Board.
- 7.5 The Investment Board shall be governed by the rules of attached in Appendix G (the *Investment Board Rules of Procedure*).

- 7.6 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 MS, and that the EIF 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 MS.
- 7.7 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 MS and that members of the Investment Board shall not be entitled to receive any fees, costs or expenses from the FoF or the EIF. The MS will operate the Investment Board and its internal organisation under its exclusive responsibility and at its own cost. The costs related to the participation in the meetings of the Investment Board of any observers designated by the EIF shall be borne by the EIF.
- 7.8 All costs incurred by the EIF in relation to its participation in the Investment Board shall be borne by the EIF as a part of the Management Fee, including the EIF's costs for providing the Secretariat of the Investment Board (the "**Secretariat**").
- 7.9 The Investment Board shall liaise internally with competent ministries and other authorities, as it deems appropriate, to perform its tasks in relation to the implementation of the FoF and shall be responsible for the following matters:
- (i) acting as the coordination and communication point between the EIF and the MS on all matters relating to the FoF in accordance with this Agreement;
  - (ii) communicating national rules and requirements relating to the FoF Activity, in consultation with the EIF;
  - (iii) providing interpretations on which the EIF can rely for the purpose of the implementation of this Agreement on matters relating to applicable national laws and regulations of the MS, including the RDPs and on compliance with State Aid rules, in connection with the eligibility of financing to Final Recipients under the Operational Agreements, the operation of the FoF, Financial Instruments and the Operational Agreements;
  - (iv) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), approving any amendments to this Agreement (including its Appendices);
  - (v) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), approving the terms of the CEOIs submitted to the Investment Board by the EIF for its approval (approval entailing verification that the CEOI satisfies the requirements of Articles 7(1) and 7(2) of the Delegated Act and any applicable EU, national and regional eligibility requirements, as well as the eligibility requirements of the RDPs);



- (vi) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), approving the Intercreditor Arrangements subject to the procedure set out in Clause 19.3 ;
  - (vii) receiving the annual Progress Report and presentation of its contents by EIF;
  - (viii) upon proposal by the EIF, granting or refusing within ten (10) Business Days of receipt of a proposal by the EIF the right to deviate from the Risk Policy and related risk parameters identified in this Agreement in connection with higher risks implied by such deviations (ineligibility risk, counterparty risks, etc.), in respect of both entering into Operational Agreements and in the course of implementing the Operational Agreements;
  - (ix) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), approving any information, marketing and publicity initiative for the FoF.
  - (x) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), approving the use of Interest Generated as set out in Clause 5.3.2;
  - (xi) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), approving Unforeseen Additional Expenditure according to Clause 9;
  - (xii) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), approving the entry into further Operational Agreements and the incurrence of expenditure during the Legacy Period, as set out in Clause 5.4; and
  - (xiii) upon formal proposal by the EIF (it being understood that the EIF will consult the Investment Board in good faith regarding content and scope of such proposal prior to submission of the formal proposal), carry out any other tasks under or in connection with this Agreement, without prejudice or limitation to the EIF's rights under this Agreement and notably as contemplated under Clause 7.13.
- 7.10 The quorum necessary in order to have a validly constituted Investment Board meeting is of at least a majority of the members with voting rights and one observer appointed by the EIF. Once a quorum is achieved, decisions of the Investment Board shall be taken by a majority of votes of the members with voting rights of the Investment Board that are present. In case of a tie of votes, the proposal in question shall be deemed to have been rejected.
- 7.11 Where the Investment Board has decision-making powers upon formal proposal of the EIF, 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 EIF has consented to any such amendment in writing. The Investment Board can take decisions either at the Investment Board meetings that are convened in accordance with the provisions of this Agreement or via written procedure as further set out in Appendix G (*Investment Board Rules of Procedure*), it being agreed, however, that if a decision with respect to a duly submitted formal proposal by the EIF is not taken at the Investment Board meeting immediately following the due submission of a formal proposal or via written procedure due to interruption/termination of such written procedure, such decision shall be taken by written procedure instituted shortly thereafter in which case the termination/interruption mechanism set out in paragraph 13 of Appendix G (*Investment Board Rules of Procedure*) shall not apply.

- 7.12 For the avoidance of doubt, the Parties acknowledge and agree that the EIF shall without prejudice to any decisions which require the approval of the Investment Board pursuant to the terms of this Agreement, have the exclusive right to take any decisions necessary in order to perform the FoF Activity in the context of this Agreement and to make proposals to the Investment Board on the matters set out in this Agreement.
- 7.13 The EIF shall provide the Secretariat of the Investment Board in accordance with this Agreement. The tasks and functions of the Secretariat shall include the following:
- (i) organisation of Investment Board meetings, including drawing up and distribution of Investment Board documents, agenda and minutes;
  - (ii) any other tasks as defined in this Agreement or by the Investment Board; and
  - (iii) communications related to the activities of the Investment Board shall be channelled through the Secretariat.
- 7.14 Any communications to and from the Investment Board shall be validly effected if addressed in writing in accordance with Clause 25 (*Notices*).

## **8. MANAGEMENT FEES**

- 8.1 The MS acknowledges that, in consideration for the operation of the FoF, the management of the FoF, the MS Contributions Committed and any other resources of the FoF (which for the avoidance of doubt excludes any EFSI funds allocated to this instrument) and the performance of the FoF Activity by the EIF, 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 EIF shall be entitled to the Management Fees, which the MS hereby agrees to assume and pay to the EIF. The EIF shall be entitled to withdraw the Management Fees from the FoF Account on a semi-annual basis in arrears. 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 EIF towards one or more Financial Instrument(s)), such excess amount shall, at the election of the EIF, either be

carried over for payment together with the amounts referred to in the next Written Request or shall be invoiced by the EIF to the MS, in form of a separate written request, and shall be payable until the last Business Day of the month following the month when said request became effective in accordance with Clause 25.2 into the FoF Account. Any such payment received by the EIF during the Eligibility Period shall be deemed to be part of the MS Contributions Paid.

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

- (i) during the Eligibility Period, the sum of:
  - a) in respect of the first twelve month period from the Effective Date, three per cent (3%) of the portion of the MS Contributions Paid (after deducting from the MS Contributions Paid any portion thereof which is committed to Financial Institutions by the EIF, acting on a prudent basis, to create financial provisions/reserves against exposures to contingent liabilities under Financial Instruments, in the form of guarantee agreements entered into by the EIF), which has not been returned to the MS in accordance with this Agreement (a deducted amount on which a Management Fee will be payable in accordance with Clause 8.2), which, for the purposes of this definition, shall be calculated *pro rata temporis* based on the number of calendar days during such period; and
  - b) in respect of the next twelve month period following the period set out in paragraph a) above, one per cent (1%) of the portion of MS Contributions Paid (after deducting from the MS Contributions Paid any portion thereof which is committed to Financial Institutions by the EIF, acting on a prudent basis, to create financial provisions/reserves against exposures to contingent liabilities under Financial Instruments in the form of guarantee agreements entered into by the EIF) which has not been returned to the MS, a deducted amount on which a Management Fee will be payable in accordance with Clause 8.2), which, for the purposes of this definition, shall be calculated *pro rata temporis* based on the number of calendar days during such period; and
  - c) thereafter and until the earliest of (i) the end of the Eligibility Period or (ii) the Termination Date, half a per cent (0.5%) *per annum* of the portion of the MS Contributions Paid (after deducting from the MS Contributions Paid any portion thereof which is effectively allocated by the EIF, acting on a prudent basis, to create financial provisions/reserves against exposures to contingent liabilities under Financial Instruments in the form of guarantee agreements entered into by the EIF) which has not been returned to the MS in accordance with this Agreement (which, for the purposes of this definition, shall be calculated *pro rata temporis* based on the number of calendar days during such period); and

- d) half a per cent (0.5%) *per annum* of the portion of the MS Contributions Paid which at any time is effectively allocated by the EIF, acting on a prudent basis, to create financial provisions/reserves against exposures to contingent liabilities under Financial Instruments in the form of guarantee agreements entered into by the EIF (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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a performance element equal to:

- e) one and a half per cent (1.5%) *per annum* of the portion of the MS Contribution Committed effectively allocated by the EIF (i.e. corresponding to amounts disbursed to Final Recipients by Financial Institutions), acting on a prudent basis, to create financial provisions/reserves against exposures to contingent liabilities under Financial Instruments (by reference to the disbursed amount to Final Recipients by Financial Institutions) in the form of guarantee agreements entered into by the EIF.
- (ii) **after the Eligibility Period**, an amount equal to (i) EUR 120,000 per annum plus (ii) EUR 40,000 per annum per Financial Institution selected to participate in this instrument pursuant to the publication of the CEOI, provided that this fee shall not be due with respect to the first Financial Institution so selected. The parties agree that, in case active management of the Legacy Funds is agreed according to Clause 5.5, the fees above will not be cumulated with the fees agreed for the active management of the Legacy Funds. For the avoidance of doubt, Clause 20.8 will apply to this Clause 8.2(ii).

8.3 Notwithstanding the other terms of this Clause 8 (*Management Fees*), the total amount of the Management Fees shall be subject to a cap during the Eligibility Period equal, at the end of the Eligibility Period, to the then applicable aggregate of:

- (i) seven per cent (7%) of the difference between (i) the MS Contributions Paid and (ii) the portion of the MS Contributions Paid which has been allocated to create financial provisions against exposures to contingent liabilities under Financial Instruments in the form of guarantee agreements entered into by the EIF, if any;

AND

- (ii) ten per cent (10%) of the portion of the MS Contributions Paid which has been allocated to create financial provisions against exposures to contingent liabilities under Financial Instruments in the form of guarantee agreements entered into by the EIF, if any,

(the "**Cap**").

8.4 The Parties agree that the Cap does not apply to Management Fees incurred after the Eligibility Period.

9. **UNFORESEEN ADDITIONAL EXPENSES, NEGATIVE INTEREST AND TREASURY LOSSES**

9.1 *Unforeseen Additional Expenses*

The MS acknowledges and agrees that the EIF may have to incur or suffer unforeseen additional costs, expenses and liabilities in connection with the implementation and management of the FoF (such as, without limitation, costs related to the translation of documents into Portuguese language as required by applicable law, regulation or by decision or resolution of any public authority established in the MS, and with the exception of the translations referred to in Clause 2.2(xii), as well as recovery actions or litigation arising in relation to Financial Instruments and/or Operational Agreements), including in particular those expenses which according to the applicable law, are not eligible expenditure for the purpose of Article 42 of the CPR and any related rules of ESIF Funds ("**Unforeseen Additional Expenses**"). EIF will inform the Investment Board of any Unforeseen Additional Expenses incurred. The MS agrees that any Unforeseen Additional Expenses shall be payable in accordance with Clause 9.2

9.2 The Parties agree that any Unforeseen Additional Expenses incurred in accordance with Clause 9.1 above, shall be paid first by the MS as a separate payment to the EIF, into the FoF Account, within one hundred twenty (120) Business Days from the EIF's Additional Expenses Request, failing which, following the Eligibility Period, the EIF shall be entitled to apply the Proceeds of Operation available in the FoF Account (excluding amounts already committed by the EIF towards one or more Financial Instrument(s)) in payment thereof and shall be entitled to withdraw the relevant amounts from the FoF Account.

The Parties agree that any Unforeseen Additional Expenses exceeding an amount equal to 1% of the MS Contribution Committed, shall require the prior written approval by the Investment Board. In the event that the Investment Board does not approve such Unforeseen Additional Expenses, EIF shall be fully released from any obligation it may have to pursue further actions which may lead to Unforeseen Additional Expenses and shall incur no liability for doing so.

9.3 *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 Treasury Funds, as well as any treasury losses will be covered:

9.3.1 during the Eligibility Period by the Proceeds of Operations or the Interest Generated in accordance with Clauses 5.3 and 5.6 above and, if such amounts are insufficient at a certain time as determined by the EIF, by the MS as a separate payment to the EIF sixty (60) Business Days from the EIF's written request; and

9.3.2 following the Eligibility Period, first by the Interest Generated, then by the Proceeds of Operations available in the FoF Account in accordance with Clause 5.2.2 and in the event these amounts are insufficient, by the MS as a separate payment to the EIF within sixty (60) Business Days from the EIF's written request.

9.4 If the MS does not pay any amounts set out in this Clause 9 within the applicable period of time, such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus two (2) per cent.

## 10. MATERIAL INTERESTS AND DISCLOSURES

The MS acknowledges and agrees that:

- (i) the EIF operates, or may operate, a number of mandates agreed, or to be agreed, between the EIF 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 the MS;
- (ii) the EIF 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 the MS;
- (iii) the EIF may (i) interact in other capacities (including as a lender, guarantor or investor) with the Financial Institutions as well as (ii) provide financing (including in the form of guarantees or equity) to the same final recipients/investments as the Financial Instruments contemplated herein, including in a manner where the Financial Instruments contemplated herein are subordinated to, or serve as a credit enhancement for, such EIF support; and
- (iv) EIF may be acting as mezzanine risk taker in accordance with the provisions of the Intercreditor Arrangements in case of a contribution of funds from EFSI.

Accordingly, the EIF may without prior reference to the Investment Board or to the MS, effect transactions in which the EIF 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 EIF's duty to the MS and the FoF.

In particular, and concerning potential conflicts of interests related to the implementation of the EFSI contribution, the EIF shall inform the Investment Board as soon as it becomes aware of the existence of a potential situation of conflict of interests and shall manage and where possible, address any such potential conflicts of interest, in accordance with the provisions set out in the Intercreditor Arrangements (if and to the extent applicable, meaning that if there is a conflict of interests between the junior and the mezzanine risk takers under the provisions of the Intercreditor Arrangements, the EIF will give priority to the interests of the latter, unless this agreement expressly provides otherwise), its internal rules and procedures, in good faith, taking into consideration the Investment Strategy and Business Plan.

## 11. OPERATIONAL AGREEMENTS

11.1 In accordance with Articles 6 and 7 of the Delegated Act, the EIF shall ensure that the Operational Agreements include undertakings or representations from the Financial Institutions that:

- (i) with respect to the relevant Financial Instrument, 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;
- (ii) the Final Recipients benefiting from the support of the Financial Instruments 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;
- (iii) the selection of the Final Recipients is transparent and can be justified by the Financial Institutions on objective grounds and that such selection does not give rise to any conflict of interest;
- (iv) the Financial Institutions inform the Final Recipients, in accordance with Article 13 (“Information and publicity”) and Annex III of Commission Implementing Regulation 808/2014 of 17 July 2014, that the funding is provided under co-financed programmes from EAFRD resources;
- (v) the Financial Institutions undertake to provide support to the Final Recipients in a manner which is proportionate and least distortive to competition;
- (vi) the Operational Agreements reflect the provisions set out in Annex IV of the CPR;
- (vii) the Financial Institutions agree that the Financial Instruments may be audited by or on behalf of the Relevant Authorities;
- (viii) the Financial Institutions will cooperate, and will contractually require that Final Recipients cooperate, in order to provide the information necessary to permit the evaluation of the RDP;
- (ix) the Financial Institutions agree that they cannot make a claim for any amount beyond the amount committed to them under the Operational Agreement; and
- (x) the Financial Institutions 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.

11.2 The EIF shall ensure that the Operational Agreements reflect certain additional requirements, including *inter alia*:

- (i) requirements on the eligibility of the enterprises or activities to be financed (which reflect the relevant RDPs, as specified in this Agreement, and terms agreed between the EIF and the Investment Board in the CEOIs);
- (ii) requirements on data protection and document retention by the EIF, the Financial Institutions and/or the Final Recipients; and
- (iii) requirements as to the visibility of the involvement of the Financial Instrument.

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

## **12. RESPONSIBILITIES OF THE PARTIES AND LIABILITY**

- 12.1 The EIF agrees, without prejudice to Clause 12.3 below, to act with the diligence of a professional manager and in good faith in implementing this Agreement.
- 12.2 Subject to Clause 12.3 below, the EIF shall under no circumstances be held responsible or liable to the MS or any other person in connection with the financial performance of the FoF, the financial results of any of the Operational Agreements or Financial Instruments, the investment of Treasury Funds (including as a result of negative interest/charges and/or the insolvency of the Treasury Bank), the failure by the MS, any Financial Institution or any Final Recipient benefitting from FoF financing to comply with any applicable laws or regulations.
- 12.3 The EIF shall not be liable to the MS, 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 MS which directly result from fraud, wilful misconduct or gross negligence of the EIF in the performance of this Agreement. For the avoidance of doubt, the EIF shall under no circumstances whatsoever be liable to the MS for non-consequential damages, loss of profit or exemplary or punitive damages.
- 12.4 Subject to Clause 12.3 above, any liability of the EIF in connection with this Agreement shall be excluded to the extent any action by the EIF is based on information obtained from the MS or a decision or approval from the Investment Board. The EIF assumes no obligation to independently verify the accuracy, relevance or completeness of any such information received from the MS or to examine or challenge any decision or approval by the Investment Board.
- 12.5 Specifically as regards the treatment of Irregularities that have led to a financial correction being imposed:
  - 12.5.1 The EIF shall be liable in respect of Irregularities occurring at the level of FoF in accordance with this Agreement;
  - 12.5.2 The EIF shall not be liable in respect of Irregularities occurring at the level of Financial Institution (i) where it has included the requirements of Article 6(1) Delegated Act in the relevant Operational Agreement and (ii) where it has exercised due diligence in selecting the Financial Institution and in selecting



and pursuing appropriate contractual and legal measures against the Financial Institution to recover the amounts affected by the Irregularity, it being understood that the decisions in relation to these contractual and legal measures are exercised at the sole discretion of the EIF acting with due diligence. For the avoidance of doubt, no liability shall apply to the EIF where these conditions are met; and

12.5.3 The EIF shall not be liable in respect of Irregularities occurring at the level of Final Recipients where it has (i) included an obligation in the Operational Agreement on the Financial Institution to exercise due diligence in selecting and pursuing appropriate contractual and legal measures against the Final Recipients to recover the amounts affected by the Irregularity and, (ii) where the Financial Institution is in breach of the obligation described in Clause 12.5.3(i), the EIF has itself exercised due diligence in selecting and pursuing appropriate contractual and legal measures against the Financial Institution within the framework of the Operational Agreement for the recovery of the affected amounts by the Irregularity, it being understood that the decisions in relation to these contractual and legal measures are exercised at the sole discretion of the EIF, acting with due diligence. For the avoidance of doubt no liability shall apply to the EIF where the Financial Institution has exercised due diligence in selecting and pursuing appropriate contractual and legal measures against the Final Recipient to recover the amounts affected by the Irregularity.

No liability in respect of the circumstances described in Clauses 12.5.2 and 12.5.3 shall apply to the EIF, where the MS fails to pay the EIF for litigation costs incurred or to be incurred in accordance with Clause 9.2.

12.5.4 The EIF shall not be liable in respect of Irregularities occurring at the level of the Financial Institutions and/or the Final Recipients, in cases where amounts affected by the Irregularity cannot be recovered from a Financial Institution due to mechanisms included in the relevant Operational Agreement which aim at making the guarantee provided thereunder compliant with the regulatory capital relief requirements under CRR.

12.6 The MS hereby agrees to indemnify and hold harmless the EIF 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 EIF (the "**Indemnified Amounts**") in connection with:

- (i) the appointment of the EIF under this Agreement or in connection with the FoF Activity with its role as a manager of the Financial Instrument;
- (ii) any information supplied by the MS or the Investment Board to the EIF in relation to this Agreement being false, misleading or incomplete;
- (iii) any instruction made by or on behalf of the MS to the EIF in relation to this Agreement or the FoF Activity;

(iv) any breach (including failure to pay) or misrepresentation, whether arising directly or indirectly, by the MS or the Investment Board under this Agreement; and/or

(v) 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 EIF in the performance of this Agreement.

For the avoidance of doubt, the obligation of the MS under this Clause 12.6 extends also to the obligation to hold the EIF harmless for any payments that the EIF would have been obliged to make to Financial Institutions (including any penalties) under Operational Agreements, including where the EIF has made such payment on the basis of resources other than FoF resources.

12.7 The MS hereby agrees that:

(i) Any Indemnified Amount (together with any interest accrued thereon for late payment under Clause 12.7(ii) due to the EIF shall be paid by the MS to the EIF by no later than the last Business Day of the month following the month when the EIF's written request became effective in accordance with Clause 25.2, as an additional amount payable by the MS in excess of the MS Contributions Committed and shall be paid from MS resources which are not subject to EU rules on ESIF funds.

(ii) If the MS does not pay any Indemnified Amount within the delay set out in Clause 12.7(i), such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus two (2) per cent.

12.8 The obligations of the MS to indemnify the EIF 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.

12.9 To the extent that the amounts available in a FoF are insufficient (including, but not limited to, cases where such shortfall is due to treasury losses or unavailability of funds deposited with the FoF Treasury Bank) to pay the respective Managements Fees due in accordance with this Funding Agreement, any other amounts due under this Agreement as well as amounts necessary to cover commitments under Operational Agreements in a manner consistent with the coverage of the relevant tranche by the MS Contribution, as further specified under the Intercreditor Arrangements (if and to the extent applicable), the MS shall be liable to pay such amounts to the EIF. If the MS fails to pay the requested amount on the due date, interest shall accrue on the unpaid or overdue amount from the due date up to the date of actual payment at a rate equal to EURIBOR plus one (1) per cent. The obligations of the MS to pay the amounts specified in this Clause 12.9 of this Agreement to the EIF 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.

12.10 The Parties acknowledge and agree that where the EIF enters into guarantees with Financial Institutions, whilst the objective is that such guarantees qualify as eligible

unfunded credit protection for the purposes of Articles 201, 203 and 213 *et seq.* of the CRR (as amended or replaced from time to time), the EIF shall take no responsibility for and shall not engage any liability to the MS or to any Financial Institution for the satisfaction of these requirements and the Financial Institutions shall have sole responsibility regarding the prudential and accounting treatment of such guarantees and shall conduct their own independent due diligence and obtain relevant legal, accounting, regulatory and financial advice from appropriate professional advisers approved by the MS for this purpose.

**13. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY THE MS**

13.1 The MS hereby represents and warrants and in respect of the matters in Clause 13.1(v), (vi), (vii) and (j) (below), represents and warrants at all material times until the termination of this Agreement that:

- (i) it has full power and capacity (including with respect to its domestic laws and constitutional requirements) to appoint the EIF 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 EIF to do so on its behalf;
- (ii) the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- (iii) neither its entry into or performance of this Agreement nor into any such transaction will breach any law, rule or regulation applicable to it or any material contract to which it is a party;
- (iv) the potential combination of the MS Contribution Committed with EFSI resources is allowed for the purpose of this Agreement and is subject to article 38(1)(c) of the CPR;
- (v) the FoF is free from all liens, charges and encumbrances and the MS undertakes that no liens, charges or encumbrances over the FoF will arise from the acts or omissions of the MS;
- (vi) any information or documentation provided by the MS to the EIF (including any information as to the financial position of the MS or the FoF) is true, complete, accurate and not misleading in any material respect;
- (vii) it will provide any further information properly required by the EIF or any competent authority;
- (viii) it understands and acknowledges the risks entailed in the Financial Instruments in particular as set out in Appendix B (*FoF Risk Policy*);
- (ix) it shall provide, upon the EIF's request, any further information or documents to the EIF that may be required to allow the EIF or Financial Institutions to fulfil their respective obligations under applicable tax laws;

- (x) this Agreement is a private and commercial contract and will not be subject administrative law rules, other than those regarding the capacity and authority to enter into this Agreement.
- 13.2 The MS will notify the EIF 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 EIF may from time to time reasonably require. The MS acknowledges that a failure to provide such information may adversely affect the ability of the EIF to provide services under the Agreement and the quality of the services that the EIF may provide.
- 13.3 The MS undertakes not to deal, or dispose of any of the assets of the FoF nor to authorise any person other than the EIF to deal or dispose of any of them.
- 13.4 MS undertakes not to seek any changes to its respective RDP that might affect the Financial Instrument to be implemented in the context of the FoF, without seeking the prior approval of the EIF.
- 13.5 MS undertakes to take all necessary actions to engage its Paying Agency and to ensure that the Paying Agency will perform all required payments in accordance with the terms of this Agreement. The Parties agree that the EIF will not commit under Operational Agreements any part of the MS Contribution Committed prior to receiving a written notice from the MS that the Paying Agency has accepted in writing to comply with the payment deadlines agreed under this Agreement.
- 13.6 The MS represents and warrants that the Investment Strategy and Business Plan (i) fully and accurately incorporates all the conditions and requirements (including eligibility criteria) of the RDP that are applicable to the Financial Instrument implemented and (ii) complies with the policy objectives of its respective RDP.
- 13.7 The MS further represents and warrants that there are no additional national or regional requirements that would apply to the Financial Instrument implemented in the context of the FoF. The Parties agree that if any such requirements come into force following the Effective Date, the MS shall notify the EIF as soon as possible and following such notification, the EIF shall have the right, in its absolute discretion, either to apply such requirements to Operational Agreements to be subsequently entered into or to stop entering into new Operational Agreements.
14. **STATE AID**
- 14.1 The MS shall be responsible for ensuring compliance with all applicable State Aid rules. The MS further confirms that the section entitled “State Aid implications” in Appendix A (*Investment Strategy and Business Plan*) complies with all applicable State Aid rules.
- 14.2 The MS shall provide to the EIF all information necessary to enable FoF, each Financial Instrument and each Operational Agreement to be compliant with rules on State Aid. The EIF's responsibility with respect to State Aid shall be limited to requiring each Financial Institution to ensure compliance with State Aid requirements according to the provisions set out in this Agreement (including its Appendices) and insert the relevant clauses in each respective Operational Agreement.

14.3 Information referred to in Clause 14.2 above shall be communicated by the EIF to the Financial Institutions which shall be contractually responsible for satisfying the applicable State Aid rules.

14.4 Each Operational Agreement shall include an undertaking by the Financial Institution to comply with the State Aid rules in accordance with Clause 14.3, including an obligation for the Financial Institutions to obtain an undertaking from the Final Recipients, to repay any support received which constitutes unlawful state aid.

## 15. MONITORING AND REPORTING

15.1 The EIF shall monitor the implementation of the Financial Instruments and Operational Agreements in accordance with the criteria set out in Appendix D (*Monitoring/Control of Financial Institutions*).

15.2 On the basis of data provided by the Financial Institutions, the EIF shall prepare in English the following reports and statements:

- (i) an annual progress report (the "**Progress Report**"), submitted by the EIF to the Investment Board not later than 15 May of the year following the Reporting Period, which shall include a summary of the monitoring activities carried out, as set out in Appendix E (*Progress Report*) of this Agreement; and
- (ii) an annual audit report (the "**Audit Report**") which shall be prepared in accordance with EU generally accepted accounting principles, and drawn up by an Audit Firm appointed by EIF, substantially in the form that the implementing act referred to in article 40(1) of the CPR may determine;
- (iii) a control report (the "**Control Report**"), if required by the implementing act referred to in article 40(1) of the CPR. Until implementing act referred to in article 40(1) of the CPR has not entered into force, a report in relation to article 41 CPR as set out in Appendix K (*Report in relation to Article 41 of CPR*) of this Agreement would be provided instead.;
- (iv) after the payment of the Fourth Tranche and in no case after the end of the Eligibility Period, a quarterly report as defined under Appendix J (*Quarterly Report*) dispatched to the MS four (4) months after the end of the relevant quarter until 85% (eighty five percent) of the first three Tranches has been allocated to cover possible losses of Financial Institutions corresponding to amounts disbursed to Final Recipients or has been used to pay Management Fees in accordance with Clause 8 (*Management Fees*);
- (vi) a report in relation to article 41 CPR covering the financial year using the last available data, submitted not later than 15 January each year during the Eligibility Period, as set out in Appendix K (*Report in relation to article 41 CPR*) of this Agreement
- (vii) a one-off letter highlighting the amounts disbursed by operation and territory to be provided at the earliest of (i) the dispatch of the first progress report after the

end of the inclusion period (as referred to in Part II of Appendix B), (ii) when all funds are disbursed, or (iii) 30 September 2023.

15.3 The EIF agrees that any monitoring it conducts with respect to the Financial Instruments (including, where relevant, on a sample basis) will cover the following issues:

- (i) whether Financial Institutions operate procedures with the aim of complying with EU laws and rules and procedures and the Operational Agreement (the checks to be performed by the EIF will be those set out in the EIF's internal monitoring rules and procedures);
- (ii) whether the agreements by which financing is made available to Final Recipients contain provisions relating to audit requirements and audit trails in accordance with paragraph 1(e) of Annex IV to the CPR and include any agreed visibility requirements;
- (iii) whether an adequate audit trail is established for reporting and auditing purposes, in accordance with the relevant provisions of the CPR and applicable Delegated and Implementing Acts;
- (iv) whether the Financial Institutions retained the supporting documents which relate to the financing made available to Final Recipients until the later of (i) three (3) years from the date of expiry of the Operational Agreement; or (ii) 10 years after the effective date of the transaction between the Financial Institution and the Final Beneficiary; and
- (v) whether the Financial Institutions 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 Institutions and (ii) ensuring that the Financial Institutions can produce evidence that the funds have been used for the intended purposes, that the Financial Institutions are complying with the applicable EU and national laws and are complying with the criteria and conditionality attached to the funding they receive.

## 16. **AUDITING**

16.1 The EIF agrees to maintain an adequate audit trail in relation to the FoF for reporting and auditing purposes (including to provide to the MS an annual Audit Report drawn up by its external auditors), in accordance with the relevant provisions of the CPR and applicable Delegated and Implementing Acts, taking into account any amendment, extension, re-enactment or replacing legislation. The MS shall not carry out any on-the-spot verifications at the level of the EIF.

16.2 In accordance with Article 40(3) of the CPR, the MS shall ensure that no audits are conducted at the level of the Final Recipients, unless:

- (a) there are no supporting documents available at the level of the MS, EIF or at the level of the Financial Institutions which provide evidence of the support from the Financial Instruments to the Final Recipients; or

- (b) there is evidence that the documents available at the level of the MS, EIF or the Financial Institutions do not represent a true and accurate record of the support provided,

in which case, the audit authority of the MS is permitted to audit or appoint persons to audit the Final Recipients.

- 16.3 The Operational Agreements shall provide that the Financial Institutions consent (a) to be audited by or on behalf of the Relevant Authorities and (b) to provide all information necessary for the MS, the EIF, 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. .
- 16.4 The MS 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 ESIF resources, as updated from time to time and taking into account any amendment, extension, re-enactment or replacing legislation.
- 16.5 The Parties agree that the audits as per Clause 16.4 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. In case of verifications or audits as per Clauses 16.2 and 16.4, the MS shall inform the EIF of such audit with at least six (6) weeks prior written notice and provide the EIF with the scope of such audit.

## **17. DOCUMENT RETENTION**

- 17.1 The EIF (i) shall retain all supporting documents for its actions pursuant to this Agreement for a three (3) year period from 31 December following the submission of the accounts by the MS to the Commission; and (ii) will insert appropriate clauses in the Operational Agreements in order for the Financial Institutions to retain the supporting documents relating to the financing made available by them to Final Beneficiaries, according to Article 15.3(iv) of this Agreement.
- 17.2 The EIF agrees to make all supporting documents available as evidence in order to allow for its expenditure to be audited.
- 17.3 The EIF shall ensure that the Operational Agreements contain undertakings similar to Clauses 17.1 and 17.2 above in order that the Financial Institutions comply with the requirements set out in Article 9.1(e) of the Delegated Act.

## **18. OFFSHORE POLICY**

- 18.1 Pursuant to Article 38(4) of the CPR, or in case of an EFSI contribution to the Financial Instrument, pursuant to Article 39a(6):
  - (i) The EIF agrees to not enter into Operational Agreements with Financial Institutions incorporated in a jurisdiction which, at the time of envisaged

signature of the Operational Agreement, would be a Non-Cooperative Jurisdiction; and

- (ii) The EIF shall ensure that the Operational Agreements contain an undertaking similar to that contained in Clause 18.1(i) above, whereby the Financial Institutions agree for the purpose of the relevant Financial Instrument, not to enter into business relations with any entities incorporated in a Non-Cooperative Jurisdiction.

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

## 19. **AMENDMENTS**

- 19.1 Amendments to this Agreement shall be agreed between the Parties in writing, 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.
- 19.2 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 MS or the EU (including, where relevant, any compensation or adjustment to the remuneration of the EIF as a result of any such amendments).
- 19.3 As per Clause 7.9(vi), any potential Intercreditor Arrangements in the implementation of an EFSI contribution shall be approved by the Investment Board, before undertaking an amendment procedure as set out in Clause 19.1, or concluding a separate signature, as commonly decided by the Parties.

## 20. **EFFECTIVE DATE, TERMINATION AND FORCE MAJEURE**

- 20.1 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 MS under Clause 12 shall continue in full force and effect notwithstanding any termination of this Agreement).
- 20.2 No later than six (6) months prior to the Scheduled Termination Date of this Agreement, the EIF shall return the balance of the FoF Account outstanding at that time (after deducting any Management Fees and Additional Expenses payable to the EIF until the Scheduled Termination Date) by crediting the relevant amount to such bank account as the MS communicates to the EIF. Any residual liabilities under the Operational Agreements shall be transferred to and assumed by the MS or to an entity expressly appointed by the MS for this purpose.



20.3 The following events will permit a termination for cause (a "**Termination for Cause**"):

- (i) either Party commits a material breach of its obligations under this Agreement, and such breach, 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;
- (ii) the MS fails to make payment of the First Tranche within twelve (12) Business Days of a Reminder Notice being sent by the EIF;
- (iii) the MS fails to make payment in respect of the Second Tranche, the Third Tranche or the Fourth Tranche within twelve (12) Business Days of a Reminder Notice being sent by the EIF, and such failure to pay is not remedied within twelve (12) Business Days of the EIF giving the MS notice thereof;
- (iv) there is any failure to pay by the MS of any other amount due and payable under this Agreement, and such failure to pay is not remedied within twelve (12) Business Days of the EIF giving the MS notice thereof;
- (v) the MS fails to comply with its obligations under Clause 16.4;

Subject to 20.5 below, 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 20.3(i) occurs.

Subject to 20.5 below, the EIF may by written notice to the MS terminate this Agreement if an event in any of Clauses 20.3(ii) to (v) occurs.

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

20.5 The Parties agree that upon occurrence of a Termination Without Cause under Clause 20.4 or Termination for Cause under Clause 20.3, the EIF may, but shall not be obliged to, give a written notice to the MS pursuant to which 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 EIF 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 MS (the "**Transfer Period**").

In particular, in such case,

- (i) the MS shall accept and assume all rights, obligations and liabilities arising out of Operational Agreements and agrees to enter into any transfer agreement or equivalent documentation necessary for the formalisation of the transfer thereof to the MS; and

- (ii) notwithstanding Clause 26.3, 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 MS and, as relevant, shall be credited with such bank account as the MS shall communicate to EIF and the FoF Account shall be closed,

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

20.6 The Parties agree that upon occurrence of a Termination Without Cause under Clause 20.4 or Termination for Cause under Clause 20.3, until such time that the EIF has given written notice to the MS in accordance with the provisions of Clause 20.5 and the Transfer Period has lapsed, the EIF shall continue to manage the FoF Account and the then existing Operational Agreements on the terms of this Agreement, including the right to be paid Management Fees and Unforeseen 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 enter any new Operational Agreements; and
- (ii) it shall not re-invest or re-use Proceeds of Operations in new Financial Operations save for such re-investment or re-use which is made by the relevant Financial Institution 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 such Operational Agreements that were in effect on the date on which this Agreement would otherwise have ended by reason of the termination.

20.7 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 EIF shall be released from any obligation to perform the FoF Activity, as of the effective date of such termination.

20.8 Termination or expiration of this Agreement shall not affect EIF's and the MS' rights and obligations accrued or existing at the date of such termination or expiration, including, without limitation, EIF's and the MS' accrued rights and obligations related to payment obligations. Upon termination or expiration of this Agreement, this Agreement shall remain in force in respect of any actual or contingent liability (including, without limitation, any Unforeseen Additional Expenses) or exposure under any Operational Agreement, until any such liability or exposure has been written off or determined to be unrecoverable and any applicable statute of limitation has expired and in particular, EIF shall be entitled to retain such amounts as may be required under this Agreement or any Operational Agreement for the payment of any amount owed thereto or the satisfaction of any accrued or contingent obligations under or in connection with outstanding Final Recipient Transactions.

- 20.9 Upon the occurrence of a Termination for Cause of this Agreement, all expenses incurred by the EIF 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 EIF until termination) and any residual liabilities under the Operational Agreements to the MS or to an entity expressly appointed by the MS for this purpose (all these external expenses collectively referred to “Transfer Expenses”), must be borne by the Party to which the cause for termination is to be attributed. In case of an occurrence of a Termination without Cause of this Agreement, the MS shall bear the Transfer Expenses.
- 20.10 Notwithstanding any other provision of this Clause 20, 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 like), including (without limitation) the cancellation or suspension of the FoF pursuant to an act of the European Union or of the MS 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 20.

## 21. **CONFIDENTIALITY AND DISCLOSURE**

- 21.1 The EIF is not obliged to disclose to the Investment Board or to take into consideration information:
- (i) 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
  - (ii) which comes to the notice of an employee, officer or agent of the EIF but does not come to the actual notice of an the EIF individual managing the FoF or any Operational Agreements.
- 21.2 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:
- (i) where the disclosure is made by the EIF to the European Investment Bank;
  - (ii) 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;

- (iii) to their professional advisers where reasonably necessary for the performance of their professional services;
- (iv) (in the case of the EIF when disclosing information relating to the MS 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
- (v) 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.

21.3 The MS authorises the EIF to supply to the FoF and the EIF's auditors any information about the FoF funds requested by them.

## 22. **ASSIGNMENT**

22.1 This Agreement is personal to the MS and may not be assigned by the MS or transferred by it (whether by assignment, novation or otherwise).

22.2 Without prejudice to Clause 2.5, the EIF 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 (i) the European Investment Bank, or (ii) an entity which it reasonably considers can properly perform those functions, subject in this case to obtaining the prior written consent of the Investment Board, which consent shall not be unreasonably withheld provided the EIF is able to demonstrate the ability of the potential transferee to perform the functions at hand.

## 23. **GOVERNING LAW AND DISPUTE RESOLUTION**

23.1 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of Luxembourg.

23.2 The Parties shall use their best endeavours to settle any dispute, claim or difference arising in connection with this Agreement in an amicable manner, by entering into negotiations. Such negotiations shall not exceed a period of two (2) months after the receipt by one Party of a notice from the other Party of the existence of such claim, dispute or difference.

If the claim, dispute or difference is not resolved through amicable settlement within the period set out above, such claim, dispute or difference arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination or the consequences of its nullity, and any non-contractual obligations arising out of or in connection with this Agreement, shall be finally and irrevocably settled by arbitration in accordance with the Rules of Arbitration of the International

Chambers of Commerce ("**ICC Rules**") by three (3) arbitrators, one to be appointed by the MS, one by EIF and the third in accordance with the ICC Rules. The language of the arbitration proceedings shall be English and the seat and place of arbitration shall be in Luxembourg.

## **24. WAIVER OF IMMUNITY**

24.1 For the purposes of this Agreement, the MS waives for the benefit of the EIF, all immunity, whether from suit, against execution of any judgment or otherwise, that it or its property may have in any jurisdiction. In particular, but without limitation:

- (i) submits to arbitration in accordance with Clause 23.2 above and to the supervisory jurisdiction of the Luxembourg court in respect of that arbitration; and
- (ii) consents to the giving of any relief by way of injunction or order for specific performance or for the recovery of land or other property.

24.2 These waivers extend to all the property of the MS allocated to or comprising the FoF, which the MS accepts and agrees, constitutes property.

## **25. NOTICES**

25.1 Communications in writing and Addresses

Unless otherwise provided for in this Agreement, any notice or communication by one Party to any other Parties shall be made in writing and shall be delivered by registered mail or email, with transmission confirmation clearly stating in the subject "*[Insert subject title]*", to the following addresses:

### **If to the MS**

Autoridade de Gestão do PDR 2020

Address: Rua de São Julião, nº. 63, 1149-030 Lisboa, Portugal

Attention: Gestora do PDR2020 - Eng.<sup>a</sup> Gabriela Freitas

Email: st.pdr2020@pdr-2020.pt

### **If to the Investment Board Secretariat :**

Secretariat

European Investment Fund

Address: 37b, av. J. F. Kennedy, L-2968 Luxembourg

Attention: Regional Business Development

Email: MASSIMI@eif.org

**If to the Paying Agency (for Written Requests):**

IFAP - Instituto de Financiamento da Agricultura e Pescas, I.P.

Address: Rua Castilho, n.º 45-51, 1269-164 Lisboa, Portugal

Attention: Presidente do Conselho Diretivo - Eng.º Pedro Ribeiro

Email: ifap.cd@ifap.pt

**If to the EIF:**

Regional Business Development

European Investment Fund

Address: 37b, av. J. F. Kennedy, L-2968 Luxembourg

Email: MASSIMI@eif.org

Either Party shall inform the respective other Parties 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.

**25.2 Delivery**

25.2.1 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (i) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post in a prepaid envelope addressed to it at that address; or
- (ii) 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 25.1 (*Communications in writing and Addresses*) above, if addressed to that department or officer.

25.2.2 Any communication or document which becomes effective, in accordance with paragraphs (i) and (ii) in Clause 25.2.1 above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**26. MISCELLANEOUS**

26.1 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.

- 26.2 The EIF's authority under this Agreement is given by the MS on behalf of its successors in title as well as of itself.
- 26.3 The EIF may, but shall not be obliged to set-off any amount owed to it against any amount payable by the EIF to the MS under this Agreement.
- 26.4 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.
- 26.5 This Agreement has been executed in two (2) counterparts in the English language, each of which represents an authentic original.
- 26.6 If the Intercreditor Arrangements are applicable, in case of discrepancies between the provisions of such Intercreditor Arrangements and the other provisions of this Agreement, the Intercreditor Arrangements shall prevail.

[●] 2019

#### **THE MEMBER STATE**

.....

By:

Title:

.....

By:

Title:

#### **EUROPEAN INVESTMENT FUND**

.....

By:

Title:





## **APPENDIX A**

### **INVESTMENT STRATEGY AND BUSINESS PLAN**

Unless otherwise defined herein, words and expressions defined in the Funding Agreement shall have the same meaning when used herein.

#### **A. INVESTMENT STRATEGY**

##### **1. Introduction**

The Member State participating in the deployment of the Financial Instrument intends to make a contribution from the Portugal Mainland Rural Development Programme (RDP) to tackle part of the market gap identified in the Ex-ante Assessment.

In order to address the above market failure evidenced by the Ex-ante Assessment, the Member State entrusts EIF under this Agreement with the creation and management of a FoF for the purpose of implementing the present investment strategy as amended from time to time by the Parties based on the inputs provided by the Investors Board according to the Agreement and in particular for the purpose of selecting Financial Institutions to implement the financial instrument(s) offered by the EIF.

More specifically, EIF will provide to selected Financial Institutions a capped guarantee for portfolios of newly originated loans or other risk-bearing instruments if specifically provided for in the RDP and as specified in the CEOI to eligible Final Recipients in the eligible agricultural and agro-industrial sectors.

This "Investment Strategy and Business Plan" has been established in the context of the implementation by the EIF of the Fund of Funds on Mainland Portugal, and aims to determine the principles of a coordinated and concerted approach between the various associated parties for the preparation, programming and implementation of the Fund of Funds.

As stipulated by paragraph 1 of Annex IV to the CPR, the FoF Activity shall be governed by this Investment Strategy and Business Plan, which may be revised in accordance with the terms of this Agreement and in accordance with the orientations taken, if necessary, by the Investment Board.

##### **2. Ex-ante assessment**

The Member State has performed an Ex-ante Assessment, within the meaning of Article 37.2 of the CPR. The results of the analysis highlight that the following, that has been taken into consideration – to the extent relevant – for the definition of this Investment Strategy:

- For all sectors in general, there is an insufficient volume of credit provided to satisfy the investment needs.
- The successive insufficient levels of economic and financial results of the companies, associated with the high leverage that characterizes the Portuguese business sector, worsened significantly the indicators of reduced access to finance in Portugal, especially for smaller companies. This situation will have consequences for the granting

of credit in the near future. In fact, about 30% of micro-enterprises, 25% in SMEs and 20% larger companies have overdue loans.

- In the case of companies in the primary sector, the financial gap was found to be more significant than for the average in the economy. Consequently, the availability of guarantee mechanisms and subsidies to financing costs is of particular relevance in this sector.
- The investment strategy of the ex-ante assessment for financial instruments oriented to the companies establishes three main areas of intervention with a specific strategy in the framework of the Rural Development Programme. The areas suggested by the ex-ante assessment and mostly constituting the basis for the envisaged Investment Strategy are the following:
  - 1) Promotion of entrepreneurship: to adopt financial instruments specifically aimed at promoting entrepreneurship, which will allow the development of pilot experiences in this field, especially by young entrepreneurs.
  - 2) Promotion of the development and implementation of new business models for internationalization: to increase agricultural added value through renewal and improvement of farms in the scope of Measure 4, through typologies 05: Guarantees or equivalents and 06: Subsidies for interest, Guarantee premiums, Technical support or equivalent.
  - 3) Creation and expansion of capacities for product development and advanced services: to renew and improve the management of farm structures, to reinforce the positions of companies in their value chains, to combat aging and low qualifications of the agricultural population and improvement of capacity of forest based SMEs and improvement of capacity of forest-based SMEs.

### **3. The Implementation Arrangements**

In order to overcome the failures and respond to some of the recommendations highlighted by the Ex-Ante Evaluation, the Member State entrusts the EIF with the creation of the Fund of Funds within the meaning of Article 2 (27) of the CPR to facilitate the access to financing and improve the financing conditions of the Final Recipients in cooperation with duly selected Financial Institutions. This will be achieved through the implementation of one or more Financial Instruments in the form of capped portfolio guarantees (see section 4 below). Under this Agreement, the Member State shall designate the EIF as its agent to manage the amounts made available hereunder in the form of a Fund of Funds under Article 38 (4) (b) (i) of the CPR.

The EIF will select Financial Institutions for the purposes of the Fund of Funds and enter into Operational Agreements with each of them. The Member State acknowledges and accepts that the selected Financial Institutions will become the competent entity for the award of loans to the Final Recipients. The evaluation and selection of the Financial Institutions will be carried out by the EIF as part of its Call for Expression of Interest ("CEOI") process as set out in this Agreement. The Member State shall establish or appoint the Investment Board to oversee and monitor the implementation of the Investment Strategy and Business Plan in accordance with the provisions of this Agreement.

The Fund of Funds will receive a contribution from the RDP of Mainland Portugal of EUR 20,066,861 and – according to Clause 2.1 in the Funding Agreement and the Intercreditor Arrangements – will possibly receive a contribution by the EIF, senior to the contribution of the RDP as specified in the Intercreditor Arrangements and guaranteed by EFSI of up to EUR 15,000,000. For the avoidance of doubt, this Investment Strategy will apply to all the contributions mentioned above, subject to the Intercreditor Arrangements and to the general principle that the RDP contribution will be junior to the EIF EFSI contribution.

The Member State confirms that the Investment Strategy and Business Plan herein, including, without limitation, the Eligibility and State Aid implications below, complies with the objectives of its RDP and that it is fully compliant with all the conditions and requirements of its RDP applicable to the Financial Instrument.

The Member State acknowledges and agrees that the allocation committed to the sub-measures and operations set out in the RDP is merely of an indicative nature and that EIF, in order to ensure flexibility of the Financial Instrument in light of market demand, shall be entitled to pool together and commit such resources to Financial Institutions that can use such resources for support to any sub-measure and operation in line with actual market demand. The Managing Authority of the Rural Development Programme will transmit information to the selected Financial Institutions on the investment applications submitted and assessed, but not approved due to lack of resources, assuring safeguarding on the protection of personal data in terms of the Regulation 2016/679 of 27 April 2016 (General Data Protection Regulation), being understood that the eventual funding of such investments is a decision of the Financial Institutions.

### **Financial Products/Instruments to be Offered**

The Fund of Funds will contribute to the establishment of one or more capped portfolio guarantee Financial Instrument. These instruments will be implemented by the EIF through one or more selected Financial Institutions. The evaluation and selection of the latter will be carried out by the EIF according to its CEOI process. Depending on the outcome and the quality of the CEOI responses received by the EIF, one or more Financial Institutions will be selected. Contributions from the Fund of Funds will be allocated to the following instrument:

A Financial Guarantee Instrument called "First Loss Portfolio Guarantee" ("FLPG") per each selected Financial Institutions. This instrument would cover part of the first losses (within a limit predefined by the EIF) of a new portfolio of loans granted by Financial Institutions to the benefit of the Final Recipients being legally present and carrying out economic activities in mainland Portugal and respecting the eligibility criteria. In return for this guarantee, the Financial Institutions will undertake to improve the conditions of access to the bank credit of the Final Recipients.

The maximum liability of the Fund of Funds for losses, (the “**Cap Amount**”), shall be limited to a percentage of the loan portfolio volume, determined by the EIF (the “**Cap Rate**”). The maximum cap amount is therefore proportional to the maximum volume of the guaranteed portfolio. At any time, the cap amount allocated to each guarantee transaction is proportional to the actual volume of loans granted by the Financial Institution. The cap amount is to be considered as eligible expenditure under the EU rules on ESIF Funds.

Subject to the provisions set out in the Intercreditor Arrangements, in case market conditions would allow for the contribution by the EIF of an EFSI mezzanine tranche, the cap amount for the maximum liability of the Fund of Funds (Cap Amount) would be limited to a percentage of the loan portfolio volume lower than the percentage covered by the EIF of the loan portfolio volume of some or all the Financial Institutions selected (Cap Rate). Therefore in such a case, the Cap Amount would cover part of the Cap Rate, with the difference being covered – as a second loss piece – by the EFSI.

The sub-measures supported by the financial instrument will be:

- 4.1. "Support for investment in agricultural holdings" and
- 4.2 "Support for investment in processing / marketing and/or development of agricultural products"

Support under these two sub-measures will be provided through three Operations defined in the RDP, to be implemented through a financial instrument:

Operation 3.1.3 - Investment of Young Farmers in agricultural holdings supported by a financial instrument included in the sub-measure 4.1

Operation 3.2.3 - Investment in agricultural business supported by a financial instrument included in the sub-measure 4.1

Operation 3.3.3 - Investment in transformation and marketing of agriculture products supported by a financial instrument included in sub-measure 4.2

#### **4. Aid Intensity**

The selected Financial Institutions will have to ensure that the financing operations to the Final Recipients respect the maximum aid intensity set in the RDP. The selected Financial Institutions will be responsible in particular for the conduct of the appropriate control procedures.

The Aid component of the Final Recipient Transaction will be calculated by the selected Financial Institutions in the form of a gross grant equivalent (GGE) with a methodology to be further detailed and approved by the Investors Board for the Financial Institution to implement. The GGE of each loan cannot exceed 35% of the total eligible cost of the investment project (including, for the avoidance of doubt, any eligible expenditure, including working capital).

All the principles listed above will be implemented in the Operational Agreements as indicated in the section "Aid Intensity" in section D. (Main Indicative Features of the Financial Instrument).

#### **5. Combination with grant support**

With the objective of maximizing the experimental nature of support through a financial instrument, the combination of the guarantee with other forms of support under Rural Development Programme will not be allowed during the first phase of implementation of the instrument. It will be the responsibility of the Financial Institutions to verify, based on a

declaration by the Managing Authority of the Rural Development Program, that no other form of support is received by the Final Recipient for the same investment supported by the Financial Instrument.

If during the Eligibility Period combination with grants should be allowed for, the present Investment Strategy will have to be amended accordingly. Any possible combinations of support will be - where appropriate - regulated, in respect of the period of application and scope, by this Funding Agreement.

For the avoidance of doubt, the debt financing granted in the context of the financial instruments shall not be used to pre-finance grants and for this purpose the Financial Institution will rely on a representation provided by the Final Recipient in the underlying transaction documentation.

## **B. EXIT STRATEGY**

### **1. General**

The guiding principles of the exit policy can be described as follows:

The contributions of the Fund of Funds allocated to the different portfolio guarantees provided by the EIF to the selected Financial Institutions constitute the cap amount that the EIF can use to cover for guarantee payments called by the Financial Institutions for loans on which a default has occurred. The cap amount is allocated proportionally to the construction of the loan portfolio for the Final Recipients and constitutes eligible expenditure.

Such allocation – when not used to cover for loan defaults – will be kept as long as and to the extent that a guarantee payment can be called according to the guarantee and cap rate set in the Operational Agreements on outstanding loans. Therefore, such an instrument is necessarily accompanied by a specific expiry date which will be specified in the corresponding Operational Agreement. After this date, and after the application of the different mechanisms to debit and credit the Fund of Funds according to this agreement, the part of the resources which is not intended to honor the possible guarantee calls will be made available to the different risk takers according to the Intercreditor Arrangements, if any. It is agreed and understood that the amount and performance of returns will depend on the characteristics (in particular: amount, duration and risk profile) of the operations financed. In any case, the amounts released may only be paid to the relevant Risk Taker when the total amount of outstanding exposure is less than the cap amount defined in the Operational Agreement. In case of an EFSI contribution by the EIF, the rights of each risk taker in respect of such released amounts are set out in the Intercreditor Arrangements

It is the responsibility of the EIF to ensure that the Operational Agreement provides clear procedures and practices that enable the Fund of Funds to "exit" the Financial Institution Transaction by including default event clauses that would allow the EIF to terminate the Operational Agreement in the event of default (eg non-payment, misrepresentation, bankruptcy, illegality), to the extent that such clauses are consistent with a favorable regulatory capital treatment of the Financial Instrument. In addition, although the financial products for the benefit of the Final Recipients are of a lasting nature, the Parties recognize that it is not certain that in this case, the resources allocated to the Fund of Funds and invested for the implementation of the Financial Instrument are returned to the Fund of Funds. In other words,

the Financial Instrument may not be sustainable. In the worst case, particularly due to adverse economic conditions affecting the performance of the loan portfolio, poor performance of the Financial Institutions or failures of the latter, the return of amounts invested in the form of Financial Instruments could even be zero.

It is agreed and understood that the EIF, based on the market conditions, may contribute EFSI resources to the Financial Instrument with the specific purpose of maximizing the additionality of the financial instrument and in order to increase the volumes of the new debt finance to be supported. Based on this policy goal, of increasing the volumes with an EFSI contribution while maintaining the MS Contribution Committed, the MS acknowledges that in case of an EFSI contribution the risk taken by the Fund of Funds will be higher as the cap amount contributed by the MS will cover the first losses of the loan portfolio, in an amount commensurate with the expected losses, as further detailed in the Intercreditor Arrangements and the probability of reflows will be lower.

## **2. Use of returned funds before and after the end of the eligibility period**

The Funding Agreement provides for: (i) during the eligibility period, the reinvestment in the Financial Instrument of any amount becoming available for the MS according to Clause 5.2 and subject to the Intercreditor Arrangements, in compliance with art. 44 of CPR; (ii) after the end of the eligibility period, the repayment to the MS of any amount becoming available for the MS according to Clause 5.2 and subject to the Intercreditor Arrangements, or – alternatively – the possibility to reinvest it in the same or in a different financial instrument, in compliance with art. 45 of CPR.

## **C. BUSINESS PLAN FOR THE FINANCIAL INSTRUMENTS TO BE IMPLEMENTED**

### **1. General**

The Investment Strategy described above will be implemented with the support of the EIF. The EIF shall manage and operate the Fund of Funds, including the funds and resources of the Fund of Funds and the Account of the Fund of Funds and perform the other functions and responsibilities relating to the Fund of Funds stipulated in this Agreement.

As stipulated in this Agreement, the EIF shall identify, evaluate and select appropriate Financial Institution(s) through the issuance and publication of the CEOI. This CEOI will specify criteria relevant to the selection of Financial Institutions under this Agreement and in accordance with the provisions of the CPR and the Delegated Act. Each Expression of Interest (EI) submitted by a bidder will include a business plan or equivalent documents in accordance with the requirements of the CPR. This business plan will be complemented by the results of the CEOI process.

### **2. Expected leverage effect**

As described in the table below, it is envisaged that private endowments (of the Financial Institution and / or the Final Recipient) will create a leverage effect on the EAFRD allocations, the MS' own resources and the EFSI contributions, if utilised.

The utilisation of EFSI resources would happen based on market conditions and only in case it could allow for the required additionality in terms of higher portfolio volumes. As a consequence, the financial instrument will envisage mechanisms whereby the portfolio volumes available to Financial Institution(s) will be based on the RDP contribution, and could be increased to a higher portfolio volume to be targeted depending on the actual market conditions and achieved thanks to the EFSI contribution.

The leverage figure on the following table is indicative and will be a function of the maximum cap rate and the split between the RDP contribution and EFSI

	<b>Guarantee instrument</b> (Portfolio guarantee)
Contribution from the RDP of Mainland Portugal	<b>EUR 20.07m</b>
Amount of the contribution from the RDP (net of possible management fees payable according to Clause 8) available for the Capped Portfolio Guarantees	<b>EUR 18.06m</b>
Guarantee Rate	<b>70%</b>
Cap rate (up to)	<b>25%</b>
Amount of new finance (approx.)	<b>EUR 103.2m</b>
Leverage Effect :	<b>5.7x</b>
Possible deployment of EFSI as Second Loss Piece (up to)	<b>EUR 15m</b>
Additional amount of new finance with EFSI (approx.) (up to)	<b>EUR 85.7m</b>

## **D. MAIN INDICATIVE CHARACTERISTICS OF THE FINANCIAL INSTRUMENT**

### **1. General characteristics of the Guarantee and structure**

- **Objective:** to improve the access of the Final Recipients to bank financing;
- **Structure:** guarantee of the first losses on a Portfolio of new financing to the Final Recipients, each financing being covered up to a guaranteed Guarantee Rate of 70% on a loan-by-loan basis up to a Guarantee Cap rate up to 25% covering expected and a portion of the unexpected loss;

- **Guarantor:** the EIF acting on behalf of the MS and – possibly – as mezzanine risk taker with EFSI resources according to the Intercreditor Arrangements;

- **Benefits for the Financial Institutions:** free credit risk coverage;

- **Transfer of benefit:** The total benefit to be transferred to Final Recipients shall be based on the benefit provided to the Financial Institution in respect of each Operational Agreement. The Financial Institutions will be required to transfer the benefit of the guarantee to the Final Recipients in the form of increased duration of debt financing, reduced interest rates, reduced guarantees, reduced own funds contributions, longer maturities, or other forms of improved access to finance for the Final Recipients resulting from increased risk taking by the Financial Institution. The transfer of benefit may also include a combination of the above elements.

The specific transfer of benefit requirements shall be tailored to each Financial Institution by the EIF under its professional judgment, and using a predefined quantitative approach, considering the following:

- specific objectives of the Financial Instrument,
- associated ex ante/market analysis,
- existing credit policies of the Financial Institution in respect of the targeted Final Recipients,
- capital provisioning requirements of the Financial Institution
- an acceptable level of operating costs including, but not limited to, the additional costs and risks of the Financial Institution (compared to its standard business) associated with the verification of eligibility conditions, applying aid intensity rules, reporting of the portfolio, etc.).

These Transfer of Benefit requirements shall be submitted to the Investment Board for information before the signature of the Operational Agreements.

If the Transfer of Benefit occurs via a reduction in the credit risk margin compared to that in the Financial Institution's standard pricing applicable to the Final Recipient (as the Financial Institution receives no remuneration/funding from the EIF), the assessment of the Transfer of Benefit could focus only on the credit risk premium.

In such case, the reduced credit risk premium to be applied by the Financial Institution could be established as follows:

$(100\% - \text{Guarantee Rate}) * \text{Credit risk premium normally charged by the Financial Institution without a guarantee} + (\text{Guarantee Rate} \times (\text{Guarantee Fee} + \text{acceptable additional costs margin}))$

In cases where the Financial Institution does not obtain full capital relief of the guaranteed portion of the portfolio, the additional costs margin shall include a premium to compensate the Financial Institution's capital charge on the guaranteed portion of the loan, based on EIF's professional judgement.

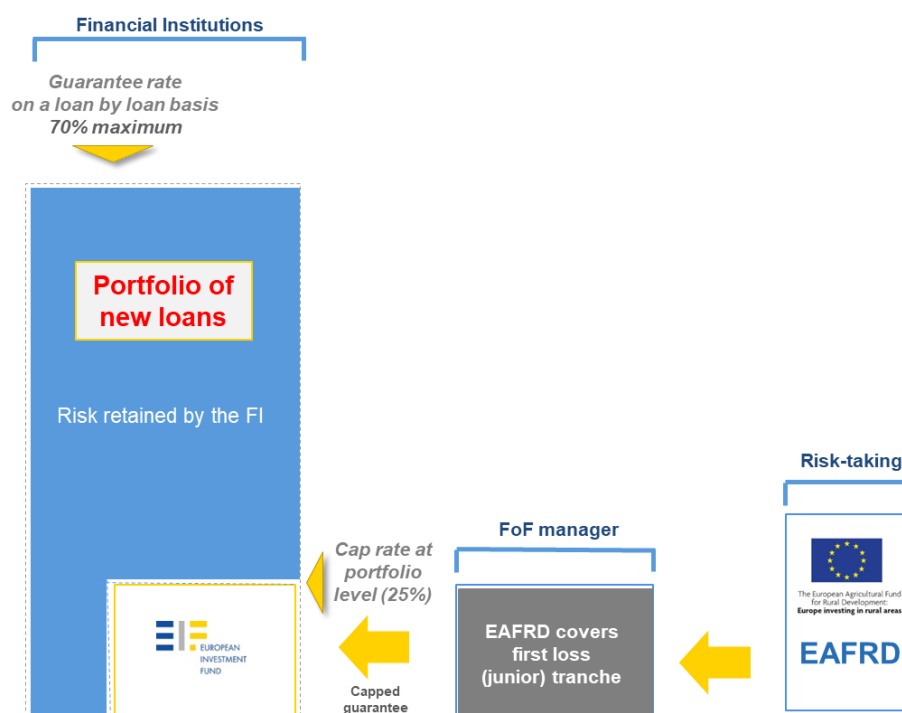


With specific reference to loan maturities, the selection criteria under the CEOI will provide for incentives to the Financial Institutions to express interest in supporting portfolios partially or entirely composed of debt financing with maturities longer than 12 years. Upon assessment of EIF and selection of the relevant Financial Institution such interest would be underpinned by portfolio eligibility criteria or other relevant portfolio management measures aimed at supporting the achievement of the policy objective.

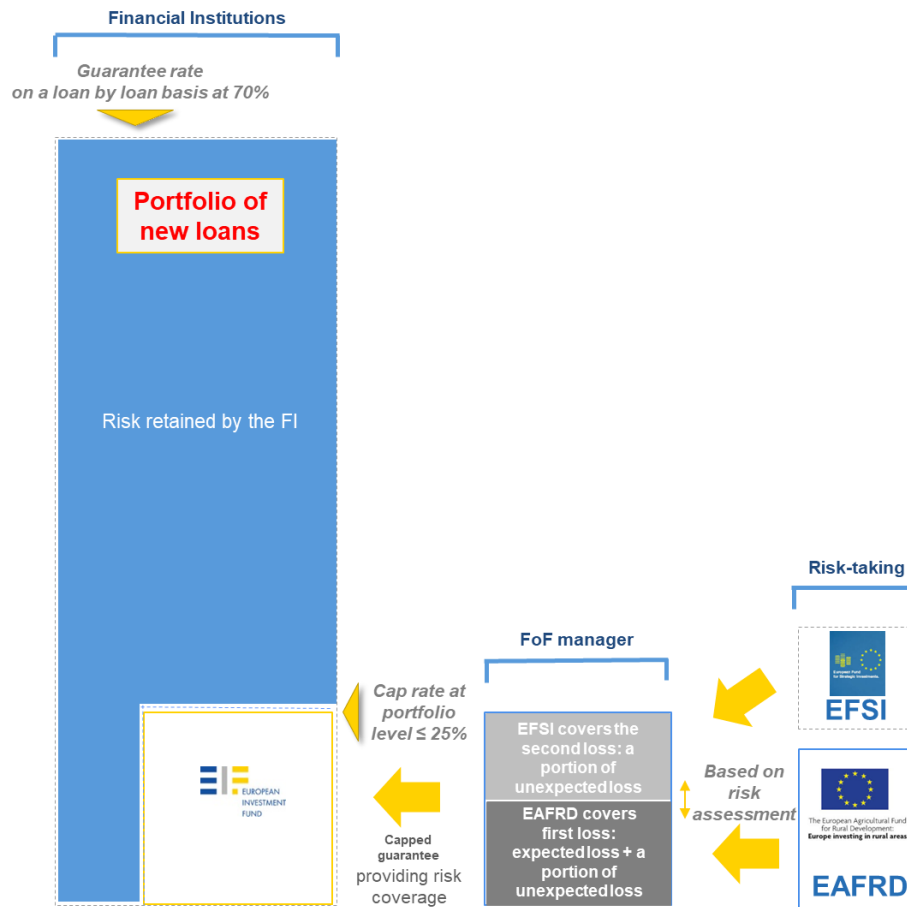
- **Credit decisions** delegated to the Financial Institution according to its risk policies, and according to the Eligibility Criteria applicable to the Financing to the Final Recipients included in the Portfolio;
- **Automatic Coverage:** Final Recipient Transactions that meet the Guarantee criteria are automatically covered based on a report to be sent quarterly to the EIF;
- **Financial guarantee on first demand:** in the event of default, the Financial Institution will be paid on the first request within 60 days of the quarterly report on the loss;
- **Losses covered by the Guarantee:** the Defaulted amounts according to the definition set out in the indicative term sheet below;
- The **Guarantee Cap Amount** increases in proportion to the construction of the Portfolio (see diagram below).

• **Indicative Schematic representation of the Instrument:**

**Before EFSI contribution**



## After EFSI Contribution



• **Eligibility criteria:** Under this Financial Instrument, the portfolio of new loans to be originated / constructed by the selected Financial Institutions must only be composed of Financing to the Final Recipients that meet all the following eligibility criteria: :

- A. Eligibility Criteria for Final Recipients,
- B. Eligibility Criteria for Final Recipient Transactions,
- C. Eligibility Criteria for the Portfolio, and
- D. Operation specific Eligibility Criteria.

as indicated in Annex A1 below

• **State aid:** the amount allocated to the Final Recipients in the context of a Final Recipients Financing must comply with the following rules:

The calculation of the Gross Grant Equivalent (GGE) will be the responsibility of the Financial Institution and not of the EIF and obtained according to the calculations methodology that will be approved by the Investors Board. The GGE of each loan included in the portfolio should not be higher than 35% of the total eligible costs of the investment supported.

The Member State recognizes that in case of Final Recipients falling under the category of an SME the methodology for the calculation of the GGE will be based on the safe harbour defined by the European Commission in its Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, and its corrigenda. For Final Recipients falling outside of the category of an SME (i.e. large companies) a simplified formula will be used based on the provisions of Art. 4.6(b) of Regulation 1407/2013. With the latter simplified methodology, Final Recipient Transactions may not have an initial maturity of more than 120 months and the GGE results from the following calculation:  $GGE = \text{Loan principal amount} \times \text{Guarantee Rate} \times \text{Min}(\text{Loan duration in years}; 10) \times 200/1500/5$

## **E. CONFIRMATION BY THE MEMBER STATE**

Under this Financial Instrument, the Member State expressly acknowledges and confirms that the investment strategy and policy as set out in this Appendix A:

- reflects all the provisions required by the Rural Development Program (for each type of operation concerned) or the European / national legislation or regulation applicable to the Financial Instrument;
- complies with the provisions of the Rural Development Program and the national legislation or regulations applicable to the Financial Instrument (including state aid rules); and
- reflects the provisions laid down in EAFRD Regulation.

As such, the Member State recognizes and confirms that the EIF's responsibility for (i) the conformity of the provisions of the Operational Agreements with the Rural Development Program or any other European / national legislation or regulation applicable to the Financial Instrument and (ii) the eligibility of guaranteed financing under these rules is limited to the requirement to include the eligibility criteria and other requirements set out in this investment strategy and policy (as supplemented and / or amended by decision of the Investment Board, if any) in the Operational Agreements.

The Member State also acknowledges and confirms that no restrictions on the "implementation risk" and "mitigation" measures listed in the RDP are the responsibility of either the EIF or the Financial Institutions.

## **ANNEX A1 - Eligibility Criteria**

Under this FoF, the portfolio of new debt finance to be originated by the selected Financial Institution(s) must only be composed of financing to the Final Recipients that meet all the following eligibility criteria. The EIF may apply additional eligibility criteria pursuant to its relevant internal policies and procedures (e.g. anti-fraud policy, non-cooperative jurisdiction policy, etc.), as applicable from time to time.

### **A. Eligibility Criteria for Final Recipients**

	<b>Eligibility Criteria for Final Recipients</b>	<b>Application</b>
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1	<p>The Final Recipient shall be potentially economically viable (as assessed by the Financial Institution in accordance with its internal procedures) and is not in "in difficulty" (within the meaning of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty).</p> <p>It is assumed that given the risk-sharing under the guarantee between the EIF and the Financial Institutions (70%/30%), the Financial Institutions, applying their ordinary business practices, will provide loans only to Final Recipients that have the necessary technical, financial and human resources for carrying out the supported investment. The decision by the Financial Institutions on each loan, taken in accordance with their internal financial and technical evaluation procedures, is considered the proof of such assessment.</p>	Signing date
2	<p>The Final Recipient is not subject to collective insolvency proceedings (or any equivalent concept) nor fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors. In case the Final Recipient is a legal person but not a SME as defined in Commission Recommendation (EU) 2003/361/EC, the Final Recipient shall be in a situation comparable to a credit rating of at least B-.</p>	Signing date
3	<p>The Final Recipient means a natural or legal person, including micro, small or medium sized enterprises (SMEs) as defined in Commission Recommendation (EU) 2003/361/EC.</p>	Signing date
4	<p>The Final Recipient shall be legally present and carrying out economic activities in Portugal. In case of legal persons, compliance with such condition is evidenced by the presentation by the Final Recipient to the Financial Institution of one of the following: its excerpt from the Portuguese Commercial Registry Office ("<i>Certidão Permanente</i>") or the access code to its excerpt from the Portuguese Commercial Registry Office ("<i>Certidão Permanente</i>"). In case of natural persons, compliance with such condition is evidenced by the presentation by the Final Recipient to the Financial Institution of the following: Declaration of Activity issued by the Portuguese Tax Authority ("<i>Declaração de Início de Atividade</i>").</p> <p>The Final Recipient shall be registered with the Portuguese Tax Authority and therefore in compliance with the applicable accounting regulation. Such condition is evidenced by the presentation by the Final Recipient of the latest due tax statements in accordance with the applicable laws and regulations (for legal</p>	Signing date

	persons, “IRC Declaration” and, for natural persons, “IRS Declaration”).	
5	The Final Recipient shall not have a substantial focus on one or more restricted sectors as set out in the relevant EIF’s policy on restricted sectors <sup>1</sup> (as applicable from time to time) (which determination shall be made by the Financial Institution in its discretion based, without limitation, on the proportionate importance of such sector on revenues, turnover or client base of the relevant Final Recipient).	Signing date
6	The Final Recipient shall provide to the Financial Institution a certificate confirming a regularized situation of the Final Recipient before the Portuguese Tax Authority and the Portuguese Social Security Authority.	Signing date
7	The Final Recipient shall provide to the Financial Institution a Declaration by the AGPDR 2020 confirming that it has not benefited from PDR2020 support for the same operation / measure.	Signing date
8	The Final Recipient shall not be in an exclusion situation, as will be further specified in the CEOI.	Signing date

Compliance with Final Recipient Criteria shall be addressed by the Financial Institutions on the basis of representations given by the Final Recipients in the legal documentation concerning the relevant Final Recipient Transactions.

#### **B. Eligibility Criteria for Final Recipient Transactions**

	<b>Eligibility Criteria for Final Recipient Transactions</b>	<b>Application</b>
1	<p>Eligible Final Recipient Financial Transactions shall be either:</p> <ul style="list-style-type: none"> <li>a) Amortising loans (including bullet/balloon loans) with a minimum maturity of 3 years and a maximum maturity of 15 (fifteen) years, provided that the maximum maturity shall in no case extend beyond 31 December 2035; or</li> <li>b) Financial leases according to art. 13 of Reg (EC) 807/2014 with a minimum maturity of 3 (three) years and a maximum maturity of up to 15 (fifteen) years, provided that the maximum maturity shall in no case extend beyond 31 December 2035.</li> </ul>	Continuing
2	Final Recipient Transactions must finance expenditures made by the Final Recipients that occurred after the date of submission of the	Signing date

<sup>1</sup> Available of the EIF website: [http://www.eif.org/news\\_centre/publications/2010\\_Guidelines\\_for\\_Restricted\\_Sectors.htm](http://www.eif.org/news_centre/publications/2010_Guidelines_for_Restricted_Sectors.htm).

	application for financing to the Financial Institution, provided that, by way of exception, for Final Recipient Transactions financing general costs as defined in article 45.2.c of the EAFRD Regulation , such expenditure shall be eligible even if incurred before the date of submission of the application.	
3	The investments to be supported by the Final Recipient Transaction shall not be physically completed or fully implemented at the date of approval by the Final Recipient of the Final Recipient Transaction.	Signing date
4	<p>Final Recipient Transactions shall support investments localized in mainland Portugal and specifically:</p> <ul style="list-style-type: none"> <li>a) In case of Final Recipient Transactions financing an investment whose location can be determined without ambiguity: the place of investment must be in mainland Portugal; or</li> <li>b) In case of Final Recipient Transactions financing an investment whose location cannot be determined without ambiguity, or any other type of financing: the Final Recipient shall have an active establishment in mainland Portugal, as evidenced by the respective excerpt from the Portuguese Commercial Registry Office (“<i>Certidão Permanente</i>”) in the case of legal persons or the Declaration of Activity issued by the Portuguese Tax Authority (“<i>Declaração de Início de Atividade</i>”) in the case of natural persons;</li> </ul>	Continuing
5	<p>Final Recipient Transactions shall finance investments/costs eligible in accordance the EAFRD Regulation and its implementing acts (in each case as amended, restated and/or replaced from time to time) and in particular:</p> <ul style="list-style-type: none"> <li>a) Costs for the purchase or lease of tangible and intangible assets;</li> <li>b) Working capital being part of the business plan of the investment project, for an amount not exceeding EUR 200,000 (two hundred thousand euros) or 30% of the total amount of the eligible costs for the investment, whichever is the higher;</li> <li>c) General costs linked to the eligible investment such as architect, engineer and consultation fees, fees relating to advice on environmental and economic sustainability, including feasibility studies, according to art. 45.2(c) of the EAFRD Regulation.</li> </ul>	Continuing

	<p>Eligible costs include, but are not limited to:</p> <ul style="list-style-type: none"> <li>a) Acquisition of second-hand equipment and replacement equipment;</li> <li>b) VAT paid by the Final Recipient on eligible costs; and</li> <li>c) Multi-annual plants and their planting.</li> </ul>	
6	<p>Final Recipients Transactions shall <u>not</u> finance the following ineligible expenses:</p> <ul style="list-style-type: none"> <li>a) Investments whose main purpose is the production of energy;</li> <li>b) Fines, financial penalties, legal and litigation costs, exemptions from charges;</li> <li>c) Charges, premiums and other financial charges;</li> <li>d) Projects carried out by aquaculturists or fishermen as well as projects concerning fishery or aquaculture products covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products;</li> <li>e) Costs related to a leasing contract, such as the lessor's margin, interest refinancing costs, overhead costs, insurance costs, self-construction,(for the avoidance of doubt the ordinary interests due on the principal is eligible);</li> <li>f) Activities constituting pure financial transactions;</li> <li>g) Real estate development activities when undertaken as a financial investment activity;</li> <li>h) The provision of consumer credit;</li> <li>i) Transfer of property rights related to businesses/operations, provided that such transfer takes place between independent investors;</li> <li>j) Investments on annual plants;</li> <li>k) Investments on live animals with the exception of autochthonous breeds in the context of Operations 3.1.3; and</li> <li>l) Other excluded activities based on applicable legislation/regulation as further specified in the CEOI</li> </ul>	

7	Currency of Final Recipient Transactions: EUR.	Continuing
8	Final Recipient Transactions must finance a project, which is considered financially viable (as assessed by the Financial Institution in accordance with its credit policy)	Signing Date
9	Final Recipient Transaction shall not restructure or refinance existing debts.	Continuing
10	Final Recipient Transactions must not pre-finance a grant.	Continuing
11	Final Recipient Financial Transactions Amounts:  a) Minimum EUR 25.000,00 (twenty five thousand);  b) Maximum EUR 5.000.000,00 (five million) for Final Recipient Transactions under Operations 3.1.3 and 3.2.3;  c) Maximum EUR 10.000.000,00 (ten million) for Final Recipient Transactions under Operation 3.3.3.	Signing date
12	In case of investments for activities that require specific authorization (i.e. investments in irrigation and investments for economic activities involving animals) the Final Recipients should present to the Financial Institution any document required by the national regulation in order to confirm possession of such authorization.	Signing Date
13	Final Recipients Financing must not be affected by Irregularity or fraud.	Continuing
14	Final Recipient Transactions must comply with the terms of the Operational Agreement relating to the transfer of benefit as determined by EIF.	Continuing
15	Final Recipient Financing shall not take the form of subordinated loan, mezzanine loan, quasi-equity loan or convertible loan.	Continuing

### C. Eligibility Criteria for the Portfolio

1	The total amount of Final Recipient Transactions exceeding the higher of EUR 2,500,000 or 1% of the Portfolio shall not represent more than 25% of the expected amount of the Portfolio.	At the end of the period during which Financial Institutions can include Final Recipient
2	The aggregate principal amount of all Final Recipient Transactions entered into with SMEs shall represent at least 75% of each Portfolio.	



		Transactions in their Portfolio
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#### D. Eligibility Criteria specific for operations

	Operations 3.1.3	Operations 3.2.3	Operations 3.3.3	Application
<b>Final Recipients</b>	<p>Shall meet one of the following criteria:</p> <p>a) To be natural persons of age between 18 and 40 registered as farmers, as evidenced by their NACE code (“CAE”), and formally assume ownership and direct management of the farm;</p> <p>b) To be legal persons registered as farming businesses, as evidenced by their NACE code (“CAE”), in which one natural person of age between 18 and 40 is a managing partner and holds more than 50% of the business; or</p> <p>c) To be legal persons registered as</p>	<p>Shall meet one of the following criteria:</p> <p>a) To be natural persons registered as farmers, as evidenced by their NACE code (“CAE”);</p> <p>b) To be legal persons registered as farming businesses, as evidenced by their NACE code (“CAE”)</p> <p>In both cases a) and b) above, the Final Recipient shall:</p> <p>(i) Be registered in the Parcel Identification System; and</p> <p>(ii) Present to the Financial Institution an IFAP I.P. Declaration.</p>	<p>Shall meet the following criteria:</p> <p>a) To be active in investments for the transformation and marketing of agricultural products covered by the Annex I to the Treaty for the Functioning of the European Union (with the requirement that in case of transformation both the input and the output of the process shall be covered by such Annex I), as evidenced by the presentation to the Financial Institution of an IFAP I.P. Declaration.</p>	Signing Date

	<p>farming businesses, as evidenced by their NACE code (“CAE”), in which more than one natural person aged between 18 and 40 are managing partners and hold individually at least 25% and collectively at least 50% of the business;</p> <p>In all cases a), b) and c) above, the Final Recipient shall present to the Financial Institution an IFAP I.P. Declaration.</p>			
<b>Final Recipient Transactions (Investments)</b>	<p>Shall finance one of the following investment activities (by reference to the relevant Operation as referred to in the RDP):</p> <p>a) Investments that improve the overall performance and sustainability of agricultural exploration (as assessed by the Financial Institution in accordance with its credit policy);</p> <p>b) Investments aimed at complying with any EU Regulations requirements applicable to agricultural production, including safety at work, within 12 months since the introduction of the relevant EU Regulation;</p> <p>c) Investments in irrigation, subject to compliance with art. 46 of Regulation (EU) 1305/2014.</p>	<p>Shall finance the following investment activity (by reference to the relevant Operation as referred to in the RDP):</p> <p>a) Investments for the transformation and marketing of agricultural products covered by the Annex I to the Treaty for the Functioning of the European Union (with the requirement that in case of transformation both the input and the output of the process shall be covered by such</p>	Continuing	

		Annex I), as evidenced by the presentation to the Financial Institution of an IFAP I.P. Declaration.	
<b>Other Eligible Costs (in addition to the ones referred to in section 5 of B. above (Eligibility Criteria for Final Recipient Transactions))</b>	Costs specifically linked to irrigation projects, subject to compliance with art. 46 of EAFRD Regulation.		Continuing
	Costs linked to: a) Purchase of land up to 10% of the total eligible costs of the investment; b) Live animals of autochthonous breed.	Costs linked to purchase of land up to 10% of the total eligible costs of the investment, but only with respect to parcels being rearranged ( <i>“operação de emparcelamento”</i> ), evidenced by the relevant parcelling notice ( <i>“auto de emparcelamento”</i> ).	Continuing

## **APPENDIX B<sup>2</sup>**

### **FOF RISK POLICY**

#### **Risk Factors and Framework for Debt Instruments**

##### **Part I**

##### **Introduction and Risk Factors**

Appendix B is an outline of the principal risk factors and risk control mechanisms for debt transactions with Financial Institutions under the mandate under this Agreement (the “**Mandate**”). It is intended to provide the framework for managing the Mandate from a risk perspective, in light of the Mandate’s objectives and the investment strategy set out in Appendix A (*Investment Strategy and Business Plan*).

Before deciding to enter into this Funding Agreement, the MS should carefully consider all of the information available to them, including, but not limited to, the information set out in this Appendix. The risk factors set out herein are not exhaustive. There may be other risks that each Minister should consider that are relevant to its own particular circumstances or generally.

In line with its objective of addressing market gaps where commercial operators alone do not fully meet the needs of Final Recipients, it is expected that the Mandate will be taking a significant level of risk. The financial instruments may support additional risk taking by commercial operators or include a subsidy element (i.e. a reduced or no interest rate and/or reduced collateral requirements). As a consequence, the Mandate will incur a certain level of losses and hence not achieve full financial sustainability.

The actual losses incurred by the Mandate transactions will depend on many variables, including (but not limited to) the Mandate’s objectives, the macroeconomic environment, the product parameters and the Financial Institutions selected for the implementation.

The tailoring of the transactions’ characteristics and the focus of the EIF in the context of the selection and due diligence process will be driven primarily by:

- 1) objectives of the Mandate and of EFSI – if applicable – as set out in the Investment Strategy and Business Plan and in line with the requirements and policy objectives set out in the RDP and for the EFSI contribution, if any;
- 2) proposed funding conditions for the Final Recipients and the Mandate’s financial return and timing of reflows from transactions; and
- 3) ability to disburse the funds in a timely fashion by the selected financial institution(s).

Notwithstanding the above, the risk of transactions can be controlled to some extent both at financial institution and portfolio level by setting minimum criteria for an acceptable counterparty, as well as criteria limiting the riskiness of the underlying portfolio of final recipients.

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<sup>2</sup> Subject to further review in accordance with Risk comments

In this respect, the implementation of risk mitigating mechanisms introduces an implicit trade-off between the ability to disburse the funds to Final Recipients in a rapid manner and the level of counterparty and portfolio risk taken by the Mandate. Moreover, there is an implicit trade-off between the criteria limiting the riskiness of the underlying portfolio of debt financing and the overall Mandate objective of incentivising commercial operators to go beyond their current risk appetite.

EIF will publish calls for expression of interest, approved by the Investment Board, for the evaluation and selection of suitable Financial Institutions (counterparties) according to its internal rules and procedures and within the risk framework of the Mandate, as stated in Part II of this Appendix B.

The underlying transactions will be implemented by EIF applying its own professional judgement and due care. The implementation of transactions will take into consideration a number of relevant factors, including inter alia, the overall economic and market conditions and any specific focus that certain transactions may have.

The MS acknowledges and agrees with the product descriptions presented in Appendix A (*Investment Strategy and Business Plan*), their terms and the risks associated with them for the FoF. The MS agrees that the FoF amounts disbursed by the Financial Institution to the Final Recipients, and the management fees paid to the Financial Institutions, if any, shall be considered as eligible expenditure.

In particular, the MS acknowledges the risk factors set out below and agrees that any such risks shall be entirely borne by the FoF and that EIF shall not be liable for any expense considered ineligible (under applicable EAFRD rules) including in such circumstances:

1. Final Recipients portfolio risk

It is expected that the FoF will be taking a significant level of risk, commensurate with its role to address perceived market gaps where commercial operators alone do not fully cover the needs of the targeted Final Recipients. The instrument carries the potential for significant losses to be incurred. The MS acknowledges that due to the considerations above the FoF will be exposed to quasi-certainty of loss of the allocated budget due to the high expected losses that may be associated with the underlying portfolio(s).

The actual losses and their volatility incurred by the underlying transactions will depend on many variables, including (but not limited to) the Mandate's objectives, the macroeconomic environment, the product parameters, portfolio diversification, and the financial sub-intermediaries selected for the implementation, particularly their risk appetite and data provision.

Given the requirement for the EFSI contribution to be justified by the market conditions and by the "additionality" to be achieved through increased portfolio volumes supported by the guarantee, the losses incurred by the FoF will possibly be higher in case of an EFSI contribution.

2. Eligibility risk and Irregularities

Final Recipient Transactions entered into by Financial Institutions with Final Recipients under the Financial Instrument shall meet a number of eligibility criteria in order to be included in the portfolio(s). 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 EAFRD and EFSI regulation. Non-compliance with such eligibility criteria has different consequences depending on circumstances.

Underlying Final Recipient Transactions which do not comply with the agreed eligibility criteria at the date of the inclusion in the portfolio(s) shall be excluded from the portfolio(s) as of the date of their inclusion. Equally, underlying transactions which become ineligible at a later stage shall be excluded from the portfolio(s) as of the date of their ineligibility.

However, underlying Final Recipient Transactions are not automatically excluded from the portfolio in case the breach of eligibility criteria is outside the control of the Financial Institution and losses suffered by the Financial Institutions in connection thereof shall, subject to certain conditions, remain covered by the Financial Instrument. This raises a risk of ineligibility of the relevant expenditure under the applicable EAFRD regulation. If losses covered under the Financial Instrument relate to underlying transactions which do not comply with relevant eligibility criteria (subject to the terms above), the relevant expenditure could be considered as non-eligible under applicable EAFRD rules.

Although EIF will ensure the monitoring of operations in accordance with Appendix D (*Monitoring/control of Financial Institutions*), the MS agrees that, in case the expenditure incurred will not be considered eligible, any such expenditure shall be borne entirely by the FoF, and EIF shall not be liable for any expense considered ineligible (under applicable EAFRD rules) in such circumstances, subject to the treatment of Irregularities under Clause 12.5.

The same principles stated above apply to Irregularities, and accordingly the risk related to such irregularities shall be borne entirely by the FoF, and EIF shall not be liable for any losses suffered by the FoF or the MS as a result thereof.

As further set out in this Agreement, the EIF has the possibility to add additional EFSI funds to the Financial Instrument as second loss piece in order to allow for the coverage of higher volumes of Final Recipient Transactions. Pursuant to the conditions applicable to the utilization of such EFSI funds, the amount of EFSI used shall always correspond to at least 20% of the amount of ESIF used as first loss piece. In certain circumstances, if the origination of the Portfolio of Final Recipient Transactions by the Financial Institutions is not continuing to increase (e.g. in case of adverse market conditions) after the moment when the EFSI funds are starting to being used, this could result in a lower amount of volumes being available to the MS to claim as ESIF eligible expenditure.

### 3. Counterparty risk

The FoF aims to support the development of Financial Instruments exposed to a risk-capital market and is subject to extensive regulatory requirements. This, inter alia,

means that the implementation of the FoF implies high risks with regards to its objective of ultimately financing Final Recipients under the Mandate.

In particular, such high risks may relate to counterparty risk of Financial Institutions via which Financial Instruments are implemented, i.e. the risk of a Financial Institution becoming insolvent, and not being therefore able to proceed with the investment in Final Recipients and/or repay to the FoF any amounts recovered from Final Recipients.

It is understood that the use of the Financial Instrument implies an acceptance of the counterparty risk inherent to the instrument as the FoF would be subject to the consequences of any default of a financial institution contracted under the instrument.

In accordance with professional due diligence, EIF will seek to assess counterparty risk, including through identification of suitable risk mitigation mechanisms in line with this Appendix B.

A default of a Financial Institution might have a negative impact on the servicing of the already established portfolio and monitoring of the already granted loans as well. In such cases, losses on the portfolio might be much higher than anticipated, due to e.g. higher defaults and realisation of lower recoveries as the monitoring, workout and recovery functions might not be efficient any more, and therefore may affect negatively the self-sustainability of the individual scheme.

Other risks stemming from a default of a Financial Institution include (without limitation):

- b) Under-utilisation of FoF resources (e.g. defaults happen before FoF funds reach Final Recipients);
- c) Irregularities and ineffective right of a claw-back by FoF leading to losses of FoF funds which would not be considered eligible under EAFRD rules.

In light of the above, the Parties agree that, notwithstanding the implementation of risk mitigation mechanisms, EIF may proceed with the Mandate implementation, in the interest of deploying the FoF resources, and shall not be deemed responsible for any losses should the risks highlighted above or any other risks associated with this type of instrument materialise.

#### 4. Non-absorption risk

The below risk factors are related to the risk that the underlying portfolio is not built-up (in full or in part).

Notwithstanding all reasonable efforts to promote the instrument, the Financial Institutions may not be able, due to market reasons and conditions (i.e. demonstrated substantial decrease of the requests for eligible loans and investments from Final Recipients), to complete the build-up of the portfolio of eligible loans and investments. This lack of absorption of EAFRD monies might raise a risk of ineligibility of the relevant expenditure under the applicable EAFRD rules.

A delay or failure in provision of successive tranches of financing by the MS, any loss (including negative interest) incurred by the MS arising from the default, insolvency or fraud of any agent, bank (including Financial Institutions, the Treasury Bank) or other third party can cause a knock-on effect in the signature or extension of agreements with Financial Institutions.

5. Loan tenor risk

Limitation of loan tenors typically aims to minimise the average time required for the portfolio to fully amortise - thereby minimising exposure to credit risk - and also to help accelerating the timing of proceeds to the FoF. EIF understands that the MS does not wish to limit the portfolio in this respect with the view of maximising the achieved benefit for the Final Recipients (i.e. increased loan maturities). The MS acknowledges that this lack of limitation periods for loans has an impact on the risk profile of the instrument.

6. Risk related to the FoF Account

The MS acknowledges and agrees that any loss incurred by the FoF arising from (1) the default, insolvency or fraud of any agent, bank (the FoF Treasury Bank) or other third party involved in the treasury management or (2) the application of negative interests on the FoF's assets, shall be borne entirely by the MS and that the EIF shall not be responsible in any way whatsoever for any consequence.

7. Conflict of interest

In case of a mezzanine contribution by EIF using funds from EFSI, the MS will be the junior risk taker with respect to losses arising from underlying debt financing ultimately covered by the guarantee instrument and EIF will be the mezzanine risk taker. In light of this, the implementation and management of the Financial Instrument may inherently give rise to conflicts between the positions of the risk takers which shall be mitigated, inter alia, by the terms of this Agreement and the Intercreditor Arrangements, by defining the roles, rights and level of seniority of the risk takers.

## Part II

### Portfolio and Counterparty Risk Frameworks for Debt Instruments

The MS hereby acknowledges and agrees that EIF may directly enter into and/or revise transactions with Financial Institutions under debt instruments to the extent that they fall within the portfolio and counterparty risk frameworks described below:

<b>Return Objective</b>	The Mandate's objective is to support Final Recipients established and operating in the relevant jurisdiction with no expectation of full financial sustainability.
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<b>Portfolio Risk Framework:</b>	<p>Measures will be implemented on a case-by-case basis following the relevant due diligence process and contractual negotiations with the Financial Institutions.</p> <p>For the avoidance of doubt, the list set out herein comprehends a vast number of measures which EIF may recur to; however, not all of them will necessarily be reflected in each transaction and the actual level of protection will be fixed, as appropriate, within the boundaries set out below.</p> <ol style="list-style-type: none"> <li>1) Acceptable rating classes of Final Recipients, and concentration: All rating classes qualifying for lending under a Financial Institution's credit and collection policy will be eligible. With the view of pursuing the Mandate objectives and, as relevant, favouring access to finance for riskier Final Recipients and, at the same time, incentivise lending to the same riskier Final Recipients, the EIF will only aim at limiting the riskiest eligible rating classes (determined according to the relevant Financial Institution's categorisation, e.g., the two riskiest classes plus potentially the unrated Final Recipients) to not more than 40% of the portfolio volume agreed between EIF and the Financial Institution (the <b>"Maximum Portfolio Volume"</b>);</li> </ol> <p>Large exposure concentrations: Large exposures (i.e. aggregate loan amount per Final Recipients) may be considered. The total amount of Final Recipient Transactions exceeding the higher of EUR 2,500,000 or 1 % of the Portfolio shall not represent more than 25% of the expected amount of the Maximum Portfolio Volume.</p> <ol style="list-style-type: none"> <li>2) Maximum loan amounts: A maximum loan amount will be set for each transaction (subject also to the applicable aid intensity rules) equal to: <ol style="list-style-type: none"> <li>(i) EUR 5,000,000 in the case of activities in primary production of agricultural products;</li> <li>(ii) EUR 10,000,000 in the case of processing and marketing of agricultural products (resulting in agricultural products).</li> </ol> </li> <li>3) Limits on bullet/balloon non-revolving repayment transactions <sup>3</sup>: Not more than 25% of the Maximum Portfolio Volume may be originated in the form of bullet/balloon non-revolving repayment transactions;</li> </ol>
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<sup>3</sup> Bullet loan refers to a repayment profile whereby the entire principal amount of the financing is to be repaid at maturity); balloon loan refers to a repayment profile whereby at least 30% of the principal amount of the financing is to be repaid at maturity.

	<p>4) Geographical limits: those defined in annex A1. Eligibility Criteria to the Appendix A (<i>Investment Strategy and Business Plan</i>).</p> <p>5) Tenor limitations for underlying transactions: No particular limitations will be set (except for maximum and minimum maturity for each underlying transaction regarding Final Recipients).</p>
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In the case where:

- A. a transaction includes terms falling outside the abovementioned counterparty and risk frameworks, or
- B. a transaction is considered, by EIF in accordance to its own professional judgement and after taking into account, inter alia, the prevailing economic/market conditions and/or any particular mandate/product focus, that it cannot meet all the criteria referred to in the risk frameworks above leading to a materially higher risk to be taken by the FoF,

a prior approval from the Investment Board regarding the items of deviation or specific concern will be sought, in accordance with Clause 7.9(viii) of this Agreement, in order to either (i) enter into or amend an Operational Agreement not meeting one or more of the criteria mentioned in the above risk frameworks or to (ii) waive the application of one or more of the criteria mentioned in the above risk frameworks under an Operational Agreement.

## **APPENDIX C**

### **TREASURY GUIDELINES**

1. The MS and the EIF acknowledge that in performing the FoF Activity under the Funding Agreement, the EIF has the right to manage the funds paid from time to time into the FoF Account. The term "Treasury Funds" shall mean all the funds from time to time deposited into the FoF Account less (i) any amounts that have been disbursed for the purpose of any Financial Instrument or for any other purpose in accordance with this Agreement, and (ii) any amounts which should be maintained in the FoF Account for liquidity purposes, in each case as estimated by the EIF.
2. The EIF shall, as soon as reasonably feasible, take the necessary actions to enable the Treasury Funds to be managed through the FoF Treasury Bank.
3. For this purpose, and in accordance with its internal rules and procedures, the EIF will use one or multiple FoF Treasury Banks duly authorised to operate within the European Union, having at least the Treasury Required Rating.
4. For the avoidance of doubt, Treasury Funds may be only invested in term and call deposits in line with the EIF internal rules and procedures and sound financial management.
5. The FoF Treasury Bank must have one minimum required rating (the "Treasury Required Rating") for long term/short term rating of Baa2/P-2 by Moody's (or any equivalent rating released by Standard & Poor's and/or Fitch Ratings).

## **APPENDIX D**

### **MONITORING/ CONTROL OF FINANCIAL INSTITUTIONS**

#### **1. GENERAL**

- 1.1 Monitoring checks shall be performed in line with the EIF rules and procedures.
- 1.2 One monitoring visit or one desk review at the EIF's headquarter per Operational Agreement shall be undertaken throughout the term of each Operational Agreement.
- 1.3 In the context of the point 11 of the Progress Report (Appendix E (*Progress Report*)), the EIF 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.

The form of such information will be included in the Progress Report template (Appendix E (*Progress Report*)).

#### **2. MONITORING OF FINAL RECIPIENTS**

- 2.1 Financial Institutions may, in line with their internal rules and procedures and particularly in the cases where fraudulent behavior is suspected, be required to perform monitoring checks at the level of the Final Recipients.
- 2.2 Monitoring by the EIF of Financial Institutions shall address the following:
  - (a) both during the appraisal, selection and implementation of financial instrument, monitor compliance of Financial Institutions with relevant EU laws applicable to the use of structural funds, as further set out in this Agreement, and the relevant Operational Agreement;
  - (b) funding agreements contain provisions concerning audit requirements and audit trail in accordance with point 1(e) of Annex IV to the CPR;
  - (c) an adequate audit trail is established for reporting and audit purposes in accordance with the relevant provisions of the CPR and applicable Delegated and Implementing Acts;
  - (d) supporting documents:
    - (i) are retained by Financial Institutions 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 law;
    - (ii) are kept for the duration of three (3) years from 31 December following termination of the relevant Operational Agreement;

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

### **3. MANAGEMENT VERIFICATIONS AND ON-THE-SPOT CHECKS BY THE PAYING AGENCY**

The Paying Agency is responsible of the management verifications required by art. 9 of Reg EC 480/2014 and of the control system required by art. 58 and 59 of Regulation (EU) 1306/2013. In this capacity, the Paying Agency may carry out management verifications and on-the-spot checks on the Financial Instruments visiting the Financial Institutions.

Such management verifications and on-the-spot checks shall be carried out at the level of the Financial Institutions selected by the EIF, which grants the financing and shall consist of verifying compliance with the eligibility criteria and the approved operations. Thus, the Financial Institutions must have a properly organized file containing all the documents and evidence that support, based on the ordinary business procedures of the Financial Institutions and the provisions in the Operational Agreements signed by the EIF according to this Funding Agreement, the decisions taken allowing an adequate audit trail. The eligibility criteria to be monitored shall be those defined by the Management Authority and listed in Annex A1.

When carrying out on-the-spot checks, the Paying Agency may check the Financial Instruments at the level of the Final Recipients by verifying a sample of the Final Recipient Transactions based on the documents available at the Financial Institutions. No direct checks or verifications are envisaged at the level of the Final Recipients, except for the cases provided for in art. 40 of CPR.

## **APPENDIX E PROGRESS REPORT**

### **Annex 1: Progress Report**

This Annex covers the Progress Report obligations applicable to the EIF, including for data relating to Financial Institutions and to Final Recipients in relation to Progress Report mentioned in Appendix E (*Progress Report*) of this Agreement.

#### **1.1 Progress Report requirements for the FoF**

The EIF shall submit to the MS not later than 15 of May of the year following the reporting period comprehensive Progress Reports which shall, where applicable, include graphical representations to highlight the results achieved. Values reported will reflect the cumulative implementation since start. All information on volumes is to be reported in Euro, whereby the standard EIF conversion methodology will be applied for non-euro Operations/transactions.

The reports shall be based on data available from the internal control systems of the EIF and on reporting received from the Financial Institutions. All reports shall start with the following information fields:

- Name of the Financial Instrument
- Reporting date
- Reporting currency

#### **1.2 Summary Progress Report requirements for the FoF**

The annual Progress Report to be submitted shall contain detailed information for all Operational Agreement signed in accordance with the requirements described in sections 1.2.1 and 1.2.2 below.

In addition, to the information of 1.2.1 and 1.2.2, a narrative section will be prepared. The narrative information will include the following information

1. Progress on implementation
  - a. Other key information related to FoF, Investment Board and other meetings
  - b. Audits and irregularities
  - c. Publicity
  - d. Litigation
2. Financial Instruments
  - a. Recent Operational Agreements completed
  - b. Monitoring activities

c. Deal flow (pipeline) overview

**1.2.1 Summary section of the annual report**

The information will be provided on an accumulated basis so as to allow the MS to adequately respond to EC regulatory provisions on reporting.

<b>Reporting frequency</b>	<b>Numbering</b>	<b>Type of information to be reported</b>
A	1.	Name of the Fund-of-Funds
A	2.	Name of the Entrusted Entities
A	3.	Contribution
A	3.1	MS Contribution
A	3.1.1	Out of which, EAFRD
A	3.1.2	Out of which, national co-financing
A	3.2	EFSI Contribution
A	4.	Funding Agreement Signature Date
A	5.	Currency
A	6.	Commitment Period (if applicable)
A	7.	Termination Date
A	8.	Type of Financial Instrument
A	9.	Full Name of the Rural Development Programme (ID Number)
A	10	Priority (focus area)
A	11.	Operation supported by the Financial Instrument
A	12.	MS Contribution Committed
A	13.	MS Contribution Paid
A	14.	FoF Management Fees
A	14.1	Out of which, base remuneration

A	14.2	Out of which, performance remuneration
A	15.	EIF as Guarantee Manager Fees paid
A	15.1	Out of which, base remuneration
A	15.2	Out of which, performance remuneration
A	16	Number of Final Recipients
A	16.1	Out of which, individuals
A	16.2	Out of which, microenterprises
A	16.3	Out of which, SMEs
A	16.4	Out of which, large enterprises
A	17.	Proceeds of Operations
A	18.	Disbursements to Final Recipients
A	19.	Expected leverage of FoF
A	20.	Achieved leverage of FoF at year end <sup>4</sup>
A	21.	Total number of signed Operational Agreements
A	22.	Total number of Final Recipients having received financing during the whole programme period
A	23.	Total number of employees (at the first inclusion date)
A	24.	Total Amount Committed by FoF to Financial Institutions

### 1.2.2 Section covering individual Guarantee Operations in the Progress Report

The information required in this section shall be provided per individual Operational Agreement signed.

Reporting frequency	Numbering	Type of information to be reported
		<i>Information on Financial Institutions</i>

<sup>4</sup> The Achieved leverage of Operations signed is computed as follows: Maximum amount of financing available to Eligible Final Recipients /Total Amount Committed by FoF to Financial Institutions



A	1.	Portfolio name
A	2.	Signature Date
A	3.	Guarantee Rate
A	4.	Maximum Portfolio Volume
A	5.	Actual Portfolio Volume (Loan Amount Committed to FRs)
A	6.	Actual Outstanding Amount
A	7.	Utilisation of Maximum Portfolio Volume
A	8.	Disbursement to Final Recipient
A	9.	Disbursement ratio
A	10.	Signed Commitment
A	11.	FoF Drawn Amount
A	12.	FoF Undrawn amount
A	13.	Maximum Cap Amount
A	14.	Net Guarantee Calls paid
A	15.	Utilisation of signed commitment %
A	16.	Release of signed commitment
		<b><i>Guarantee Operations – Final Recipient portfolio analysis</i></b>
A	17.	Portfolio Name
A	18.	Number of Final Recipients
A	18.1	Out of which, individuals
A	18.2	Out of which, microenterprises
A	18.3	Out of which, SMEs
A	18.4	Out of which, large enterprises
A	19.	Number of Loans

A	20.	Number of employees as at time of inclusion
A	21.	Average Loan Maturity in months
A	22.	Actual Portfolio Volume (Loan Amount Committed to FRs)
A	23.	Investment Amount
A	24.	Amount Paid
A	25.	Amount recovered
A	26.	Net Amount Paid
A	27.	Number of Loans Defaulted
A	28.	Number of Final Recipient by size (in terms of transaction size)
A	29.	Number of Final Recipient by size (in terms of number of employees at first inclusion)
A	30.	Number of Final Recipient by sector (NACE level 4)
		<i>List of final recipients</i>
A	31.	Portfolio Name
A	32.	Final Recipient name
A	33.	Operation
A	34.	Fiscal Number
A	35.	Transaction ID
A	36.	Signature date
A	37.	Region
A	38.	Final Recipient Sector (NACE level 4)
A	39.	Sector of investment (NACE level 4)
A	40.	Agricultural Branch
A	41.	Contract currency

A	42.	Loan Amount Committed
A	43	Loan Amount Disbursed
A	44.	Maturity (months)
A	45.	GGE Amount
A	46.	Investment Amount
A	47.	Loan Purpose
A	48.	Farm size (if available from the FI)

**Annex 2: ESIF and national co-financing figures to be used for reporting by the EIF to the MA**

1- The ESIF subsidy rates per region to be used for the purpose of the Control Report and the Report in relation to article 41 CPR as defined under Clause 15 are those set in columns “of which EAFRD” and ”of which co-financing” of the table below :

Types of regions	ESIF EAFRD Portugal MA Contribution Committed	of which EAFRD	of which co-financing
Less developed regions	18,152,216.98	17,244,606.00	907,610.98
Transition regions (Algarve)	742,809.77	542,251.00	200,558.77
Other regions (Lisbon)	1,171,834.36	738,256.00	433,578.36
<b>TOTAL</b>	<b>20,066,861.11</b>	<b>18,525,113.00</b>	<b>1,541,748.11</b>

2- The split per types of region is to be implemented as follows:

2.1- In case no inclusion occurred, the split per types of regions applied for producing the Control Report and the Report in relation to article 41 CPR will be indicative and follow the below table:

Types of regions	Indicative ESIF EAFRD Portugal MA Contribution Committed
Less developed regions	18,152,216.98
Transition regions (Algarve)	742,809.77
Other regions (Lisbon)	1,171,834.36
<b>TOTAL</b>	<b>20,066,861.11</b>

This split per type of region will also be used for reporting on Management Fees.

2.2- After the first inclusion and until the end of the Eligibility Period, the actual split per type of regions - reflecting disbursed loans to final recipients - will be used for producing the Control Report and the Report in relation to article 41 CPR. This split per type of region will also be used for reporting on Management Fees.

**APPENDIX F**  
**FORM OF WRITTEN REQUEST**

TO [*The COMPETENT PAYING AGENCY*]  
- to the address set out in Clause (\*)  
(*Funding of the FoF*)

Copy to

Managing Authority of the RDP of [*MS/Region name*]

- to the address set out in Clause (\*)  
(*Funding of the FoF*)

Luxembourg, [*day/month/year*]

**RE: ESIF EAFRD FoF of [*MS/Region*] – Written Request for the [*First Tranche / Second/Third/Fourth Tranche*]**

The European Investment Fund (“**EIF**”), in accordance with Clause (\*) (*Funding of the [*MS/Region*] FoF*) of the funding agreement signed between EIF and [*MS/Region*] on [\*] (the “**Funding Agreement**”) request the payment of the [*First Tranche / Second/Third/Fourth Tranche*].

*Written Request for the payment of the First Tranche*

The total amount of the (First Tranche) is EUR [\*] (\*) [*numbers and letters*]. The indicative breakdown is as follows:

EUR [\*](\*)[*numbers and letters*] to cover commitments pursuant to operational agreements to be entered into by EIF with the financial institutions which will be selected in accordance with the Call for Expression of Interest to be published by EIF; and

EUR [\*](\*)[*numbers and letters*] to cover Management Fees in accordance with Clause 8.3.

Pursuant to the terms of Appendix (\*) (*Payment Procedure*) of the Funding Agreement, please find enclosed the following supporting information and documents.

*[documents/information listed in paragraph (\*) of Appendix (\*) (Payment Procedure) of the Funding Agreement]*

*Written request for the payment of the Second/Third/Fourth Tranches (as applicable)*

The total amount of the [Second/Third/Fourth] Tranche is EUR [\*] (\*) [*numbers and letters*]. The indicative breakdown is as follows:

EUR [\*](\*)[*numbers and letters*] to cover commitments pursuant to operational agreements entered into by EIF with the financial institutions listed below; and

EUR [\*](\*)[*numbers and letters*] to cover Management Fees in accordance with Clause 8.3.

Pursuant to the terms of Appendix (\*) (*Payment Procedure*) of the Funding Agreement, please find enclosed the following supporting information and documents.

*[documents/information listed in paragraph (\*) of Appendix (\*) (Payment Procedure) of the Funding Agreement]*

Please process the payment to the bank account n. [IBAN, BIC, Bank] within the deadlines set out in the Funding Agreement.

Best regards

European Investment Fund

## **APPENDIX G**

### **INVESTMENT BOARD RULES OF PROCEDURE**

1. This document sets out the Rules of Procedure approved by the Investment Board pursuant to Clause 7 of the funding agreement entered into by the MS and the European Investment Fund 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 MS. Such appointment shall be valid for a term of four years. Should the Chairperson not be able to attend a meeting, s/he shall indicate who, of the other members nominated by the MS (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 of six years, and re-appointment for additional terms shall be permitted.
4. The EIF shall be entitled to designate its officials or representatives to participate in the sessions of the Investment Board as observers. The secretariat functions would be carried out by these EIF representatives attending the Investment Board
5. The MS 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 EIF of the name(s) and contact details of the substituting member.
6. The EIF shall be able, but shall not be obliged to, nominate also an alternate in respect of each of the members or observers nominated by it.
7. The Investment Board is authorized to designate, punctually, other people as observers of the Investment Board if it considers that their participation is relevant taking into account the agenda of the Investment Board.
8. If the position of a member (whether voting and/or alternate) vacates for any reason whatsoever (e.g. resignation, removal, death, etc.), the MS 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 EIF. 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).
9. 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 MS, for the remainder of the term of office of the substituted Chairperson.
10. 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.

11. Within thirty (30) calendar days ahead of the expiry of a term of office, the MS shall communicate to the EIF the new appointed member (and his/her contact details) or the reappointment of the existing member for an additional term.
12. The quorum necessary in order to have a validly constituted Investment Board meeting is of at least two duly empowered voting members and one observer appointed by the EIF.
13. 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 EIF. Such notice of call, together with the relevant agenda, shall be sent at least ten (10) Business 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 five (5) Business Days ahead of the relevant meeting. However, if the meeting is held on a notice shorter than ten (10) Business 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 25 (*Notices*) of the Funding Agreement shall apply *mutatis mutandis* to the communication and delivery of written notices by the Secretariat.
14. Meetings shall be held in Lisbon or at such other city within the MS as agreed between the Chairperson and the EIF, at the address, date and time indicated from time to time by the MS. 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.
15. The Investment Board shall be entitled to take decisions by written procedure. The text of the relevant resolution shall be proposed by the voting member asking for the relevant written procedure decision, and agreed with the EIF and the Chairperson. 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 ten (10) Business Days as of the date of dispatch. A resolution shall be deemed as positively voted if, at the expiry of the above mentioned ten (10) Business 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 interrupted if so requested by any of the voting members or 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.
16. The Investment Board's discussions shall be kept confidential.



- 17.** 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 MS, as managing authority, under the relevant EU Regulations.
- 18.** All decisions and relevant discussions of the Investment Board shall be recorded in minutes, to be drafted by the Secretariat. The minutes shall be final upon their approval by way of signature of the Chairperson and EIF.
- 19.** 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.
- 20.** Representatives of the EIF other than the observers to the Investment Board, and of other parties (e.g. Financial Institutions) may be invited to meetings of the Investment Board, 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.
- 21.** The Secretariat of the Investment Board shall, as soon as reasonably possible, share with the members of the Investment Board any information received in the discharge of its duties under Clause 7.13(iii).

**APPENDIX H**  
**FORM OF ADDITIONAL EXPENSES REQUEST**

From: European Investment Fund

To: The Member State

Dated: [●]

Dear Sirs

**Funding Agreement between [Member State] and the European Investment Fund**  
**dated [●] (the "Agreement")**

1. We refer to Clause 9.[1/3] 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 one hundred and twenty (120) 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 20.3(iv) of the Agreement.

Yours faithfully

.....

authorised signatory for

The European Investment Fund

## **APPENDIX I PAYMENT PROCEDURES**

### **1. General terms**

The MS and EIF agree that the payment to EIF of each of the Tranches shall be made with the modalities, the procedures and the controls provided for in Clause 4 (*Funding of the FoF*) of the Funding Agreement and in this Appendix I.

The MS undertakes to notify the payment deadlines agreed under the Funding Agreement and the terms of this Appendix I to the competent Paying Agency, which – pursuant to the Funding Agreement – is authorised to pay the requested amounts to EIF in accordance with the terms of this Appendix I.

The Parties agree that the Operational Agreements will provide that the Financial Institutions will start originating the ‘loans’ in the MS subject to the prior written confirmation from the relevant MS of the acceptance by the competent Paying Agency of the payment deadlines agreed under the Funding Agreement and of the provisions of this Appendix I.

In accordance with the RDP of the MS and the Funding Agreement, the Parties acknowledge that the utilisation of the guarantee financial instrument (and the relevant payment of the MS Contribution Committed) deployed under the instrument is driven by the market demand, without any binding allocation to a specific sub-measure or focus area of the RDP. The Parties therefore agree that all the payment requests will be made according to the indicative allocation set forth in Appendix A (*Investment Strategy and Business Plan*).

For the avoidance of doubt the actual allocation to operations 3.1.3, 3.2.3, and 3.3.3 (and the corresponding focus areas) will be possible based on the actual disbursements to Final Recipients and will result in a letter (ref 14.2 (c)) aimed at adjusting the amounts claimed for each sub-measure / focus area.

### **2. Written Request for the First Tranche**

The payment of the First Tranche can be requested by EIF to the competent Paying Agency in line with article 4.2(i) through the submission of a Written Request for payment.

The supporting information and documents that EIF shall provide in order for the Paying Agency to process the payment demand of the First Tranche are:

- 1) A Written Request, using the format set out in Appendix F (*Form of Written Request*) of the Funding Agreement;
- 2) Copy of the Funding Agreement (including the relevant annexes) signed by the MS/ and EIF;
- 3) Bank account details (IBAN, BIC, Bank).

The administrative controls that the Paying Agency shall perform consist in the documentary check of whether the documents listed under 1) to 3) above have been provided and verifying the following:

- i) the required administrative process to be completed (i.e. signature of the Funding Agreement between the EIF and the MA);
- ii) the eligibility of the EIF as beneficiary (according to CPR);
- iii) the consistency of the contents of the Funding Agreement with the Regulation and in particular Annex IV of CPR;
- iv) the set-up of the FoF through the opening of the dedicated FoF Account by the EIF;
- v) the correspondence of the amount requested in the Written Request with the amount set out in Clause 4 (*Funding of the FoF*) of the Funding Agreement.
- vi) the notification by the MA to the EIF of the Prior Approval of the Portuguese Court of Auditors was obtained.

Such controls will be performed by the Paying Agency within 12 (twelve) Business Days from receipt of the Written Request. In case the supporting documents required according to the present procedure would be missing or would be incomplete, the Paying Agency shall swiftly inform the EIF and the terms for the payment set out in Clause 4 of the FA would start from the complete submission of the Written Request.

### **3. Written Request for the Second Tranche**

The payment of Second Tranche can be requested by EIF to the competent Paying Agency upon the satisfaction of the conditions set out in Clause 4.2(ii) (*Funding of the FoF*) of the Funding Agreement, and through the submission of a Written Request to be sent by EIF to the competent Paying Agency..

The supporting information and documents that EIF shall provide in order for the Paying Agency to process the payment demand of the Second Tranche are:

- 1) A payment request for the amount set out in Clause 4.2(ii) (*Funding of the FoF*) of the Funding Agreement, using the format set out in Appendix F (*Form of Written Request*) of the Funding Agreement;
- 2) Information on the Financial Institutions selected and the date of decision by the EIF on the selection and the foreseen signature of the Operational Agreement(s) covering;

The administrative controls that the Paying Agency shall perform consist in the documentary check of whether the documents listed under 1) to 2) above have been provided and verifying the following:

- i) the outcome of the selection process following the launch of the CEOI and the information on the commitments by the EIF to the relevant Financial Institutions; For this purpose the supporting information and documents that EIF shall provide are:
- ii) a copy of the Call of Expression of Interest and evidence of its publication;
- iii) copy of the minutes of the relevant governance body of the EIF or any equivalent document providing evidence of the decision on the selection;
- iv) the correspondence of the amount requested with the amount set out in Clause 4 (*Funding of the FoF*) of the Funding Agreement.

Such controls will be performed by the Paying Agency within 12 (twelve) Business Days from receipt of the Written Request. In case the supporting documents required according to the present procedure would be missing or would be incomplete, the Paying Agency shall swiftly inform the EIF and the terms for the payment set out in Clause 4 of the FA would referred to the complete submission of the Written Request.

#### **4. Written Request for the Third Tranche**

The payment of Third Tranche can be requested by EIF to the competent Paying Agency upon the satisfaction of the conditions set out in Clause 4.2(iii) (*Funding of the FoF*) of the Funding Agreement, and through the submission of a Written Request to be sent by EIF to the competent Paying Agency.

The supporting information and documents that EIF shall provide in order for the Paying Agency to process the payment demand of the Third Tranche is :

- 1) A Written Request for the amount set out in Clause 4.2(iii) (*Funding of the FoF*) of the Funding Agreement, using the format set out in Appendix F (*Form of Written Request*) of the Funding Agreement; including a declaration on the satisfaction of the conditions for the payment request in order to satisfy the thresholds set out in Clause 4 (*Funding of the FoF*) of the Funding Agreement, including an indication of the total amount disbursed to Final Recipient in the MS;
- 2) If applicable, the control report provided for in the implementing act referred to by art. 40(3) of CPR relative to the second interim payment to be claimed by the PA to the European Commission according to art. 41 of CPR. Until the implementing act referred to in article 40(1) of the CPR has not entered into force, a report in relation to article 41 CPR, as set out in Appendix K (*Report in relation to Article 41 of CPR*) of this Agreement, to support the payment demand of the Third Tranche.
- 3) Alternatively to the control report mentioned in point 2, if not applicable, a list of loans provided to the Final Recipients as reported by Financial Institutions featuring the fiscal numbers, transaction ID, disbursed amounts, guarantee amounts as well as indication of the NUTS 2.

The administrative controls that the Paying Agency shall perform consist in the documentary check of whether the documents listed under 1) to 3) above have been provided and verifying the compliance of the Control Report with the provisions of the implementing act referred to in art. 40(1) of CPR or, alternatively:

- i. the disbursements to final recipients included in the relevant payment request as indicated by the Financial Institutions;
- ii. a declaration of the required thresholds (if relevant and as defined in the Funding Agreement) of resources on loans actually disbursed and used for management fees (i.e. eligibility under art. 42 of CPR);
- iii. the correspondence of the amount requested with the amount set out in Clause 4 (*Funding of the FoF*) of the Funding Agreement.

Such controls will be performed by the Paying Agency within 12 (twelve) Business Days from receipt of the Written Request. In case the supporting documents required according to the present procedure would be missing or would be incomplete, the Paying Agency shall swiftly inform the EIF and the terms for the payment set out in Clause 4 of the FA would referred to the complete submission of the Written Request.

## **5. Written Request for the Fourth Tranche**

The payment of Fourth Tranche can be requested by EIF to the competent Paying Agency upon the satisfaction of the conditions set out in Clause 4.2(iv) (*Funding of the FoF*) of the Funding Agreement, and through the submission of a Written Request to be sent by EIF to the competent Paying Agency.

The supporting information and documents that EIF shall provide in order for the Paying Agency to process the payment demand of the Third Tranche is :

- 1) A Written Request for the amount set out in Clause 4.2(iv) (*Funding of the FoF*) of the Funding Agreement, using the format set out in Appendix F (*Form of Written Request*) of the Funding Agreement; including a declaration on the satisfaction of the conditions for the payment request in order to satisfy the thresholds set out in Clause 4 (*Funding of the FoF*) of the Funding Agreement, including an indication of the total amount disbursed to Final Recipient in the MS;
- 2) If applicable, the control report provided for in the implementing act referred to by art. 40(1) of CPR relative to the third interim payment to be claimed by the PA to the European Commission according to art. 41 of CPR. Until the implementing act referred to in article 40(1) of the CPR has not entered into force, a report in relation to article 41 CPR, as set out in Appendix K (*Report in relation to Article 41 of CPR*) of this Agreement, to support the payment demand of the Third Tranche.

- 3) Alternatively to the control report mentioned in point 2, if not applicable, a list of loans provided to the Final Recipients as reported by Financial Institutions featuring the fiscal numbers, transaction ID, disbursed amounts, guarantee amounts as well as indication of the NUTS 2 level.

The administrative controls that the Paying Agency shall perform consist in the documentary check of whether the documents listed under 1) to 3) above have been provided and verifying the compliance of the Control Report with the provisions of the implementing act referred to in art. 40(1) of CPR or, alternatively:

- i. the disbursements to final recipients included in the relevant payment request as indicated by the Financial Institutions;
- ii. a declaration of the required thresholds (if relevant and as defined in the Funding Agreement) of resources on loans actually disbursed and used for management fees (i.e. eligibility under art. 42 of CPR);
- iii. the correspondence of the amount requested with the amount set out in Clause 4 (*Funding of the FoF*) of the Funding Agreement.

Such controls will be performed by the Paying Agency within 12 (twelve) Business Days from receipt of the Written Request. In case the supporting documents required according to the present procedure would be missing or would be incomplete, the Paying Agency shall swiftly inform the EIF and the terms for the payment set out in Clause 4 of the FA would referred to the complete submission of the Written Request.

## **5. Provisions regarding controls**

- i) Administrative checks performed by the Paying Agency shall be accrued out as laid above from points 1 to 4 of Annex J. The payment of a tranche (contribution from the RDP to the FoF) shall be made after the successful completion of the administrative checks. For the avoidance of doubt, the payment is not conditional to the performance of the on-the-spot checks, which could take place after the payment (if the payment claim is sampled in the relevant year).
- ii) Given the nature of the Financial Instrument deployed thereunder, in line with article 40 (1) CPR, the Parties acknowledge that the Paying Agency will not perform on-the-spot checks at the level of the EIF.
- iii) Subject to item (ii) of this paragraph 4, the Paying Agency may perform on-the-spot checks at the level of the Financial Institutions selected by EIF if the operation is selected in accordance with article 50 of Reg. 809/2014 as amended and supplemented from time to time. In this case the MS (or the competent Paying Agency) shall promptly notify EIF before the date of the on-the-spot control.
- iv) In the circumstances described in item (iii) above, the on-the-spot checks will be performed at the premises of the Financial Institutions selected by EIF and will be carried out through the documentary verification of the documentation available at

the Financial Institutions, including the sample of contractual documentation related to the loans disbursed, based on the checklists and timetable approved by the Investment Board (upon formal proposal of the EIF).

- v) For the avoidance of doubt, the sampling methodology for the selection of Final Recipient Transactions checked via the on-the-spot checks carried out at the level of the Financial Institutions is independent from the sampling methodology applied for the selection of the payment claims (i.e. payment of the First/Subsequent Tranches). Together with the checklists and timetable, such sampling methodology is subject to approval by the Investment Board.
- vi) Subject to the above and in accordance to article 40(3) CPR, the Parties acknowledge that on the on-the-spot checks will be performed by the Paying Agency or any Delegated Bodies of the MS at the level of the final recipients only when, alternatively:
  - (a) supporting documents, providing evidence of the support from the financial instrument to final recipients and of its use for the intended purposes in line with applicable law, are not available at the level of Financial Institutions;
  - (b) there is evidence that the documents available at the level Financial Institutions do not represent a true and accurate record of the support provided.

## **6. Other provisions**

The Parties agree that if – upon (or after) the submission of the Written Requests for payment set out in the preceding paragraphs – the IT system used by the MS or Paying Agency (i.e., the Rural Development Information System) does not allow the correct filing of such applications or requests, the same applications or requests shall be processed through paper submission. The MS shall ensure that they will be handled by the Paying Agency in accordance with the terms of this Appendix I, in particular with particular reference to the controls and the relevant timing.



**APPENDIX J**  
**QUARTERLY REPORT**

		<i>Quarterly Report: list of fields</i>
A	1.	Portfolio Name
A	2.	Final Recipient name
A	3.	Operation
A	4.	Fiscal Number
A	5.	Loan Amount Committed
A	6.	Loan Amount Disbursed

# **APPENDIX K** **REPORT IN RELATION TO ARTICLE 41 CPR**

Annex 5

EAFRD contribution paid to financial instruments as referred to in Article 41 of Regulation (EU) No1303/2013 for programming period 2014-2020 - situation as of 30/09/xxxx

In EUROS		All types of financial instruments using EAFRD funds for 2014 – 2020 programmes											as of 30/09/xxxx
MA	Applicable measures	Total cumulated fund capital available (i.e. paid to the fund) <sup>(1)</sup>		Total of guarantees (support committed to final recipients or to the benefit of final recipients in guarantees)		Total cumulated of loans (support paid to final recipients or to the benefit of final recipients in loans)		Total amount of support paid to final recipients or to the benefit of final recipients in equity or quasi-equity investments		Total cumulated EAFRD eligible management costs and fees <sup>(2)</sup>	Total cumulated EAFRD other eligible amounts (if any) <sup>(1)</sup>	Total cumulated EAFRD contributions considered as eligible expenditure in the	Total EAFRD non used
		(Total Public including EAFRD and National)	(only EAFRD part) <sup>(2)</sup>	(Total Public including EAFRD and National)	(only EAFRD part) <sup>(2)</sup>	(Total Public including EAFRD and National)	(only EAFRD part)	(Total Public including EAFRD and National)	(only EAFRD part)	(only EAFRD part) <sup>(2)</sup>	(only EAFRD part) <sup>(2)</sup>	(only EAFRD part)	(only EAFRD part)
		a	b	c	d	e	f	g	h	i	j	k=d+f+h+i	l=b-k (if (0.000 or 0.000, then enter "used")
ESIF EAFRD Portugal													
ESIF EAFRD Portugal	4												

<sup>(1)</sup> The apportionment of the figures per measure is based on the indicative breakdown of the Contribution Committed as defined in the respective Funding Agreements.

<sup>(2)</sup> EAFRD part - calculated based on the Structural funds share as defined in the respective Funding Agreements.