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| **Call for Expression of Interest to select financial intermediaries under a Fund of Funds established in co-operation between the Romanian Government represented by the Ministry of Investment and European Projects and the European Investment Bank to implement a financial instrument under the Recovery and Resilience Plan for Romania: Capped Guarantee Instrument**  **Ref.: CFT-1685** |

1. **Introduction**

Romania is one of the largest beneficiaries of the Recovery and Resilience Facility (“**RRF**”) established under the Regulation (EU) 2021/241 (“**RRF Regulation**”) in terms of allocated RRF resources as national GDP share, with an estimated total allocation from the EU amounting to approx. EUR 30bn. The Recovery and Resilience Plan for Romania (“**RRP**”), which was endorsed by the Commission on 27September 2021 and subsequently approved by the European Council on 28October of 2021, is structured around six pillars: green transition, digital transformation, smart growth, social and territorial cohesion, health and resilience, and policies for the next generation, with the aim to achieve the recovery of the Romanian economy from the Covid-19 pandemic, to foster its resilience and to ensure enduring growth. A strong priority is given to green transition and digital transformation as at least 41% of the RRF resources shall target climate action mainstreaming and at least 21% investments in digitalisation.

As part of the RRP, the Romanian Government represented by the Ministry of Investment and European Projects (“**MIEP**”) has decided to dedicate RRF resources to the implementation of a fund of funds (“**FoF**”) managed by the European Investment Bank (“**EIB**”), in accordance with the provisions of   
a funding agreement signed between the Romanian Government and the EIB on 31 March 2022 (the “**Funding Agreement**”).

Relevant rules for implementing the Financial Instruments in the context of RRF are primarily stipulated in the RRF Regulation and other applicable EU regulation, as well as applicable national law and regulations.

The objective of this Call for Expression of Interest (“**CEoI**” or “**Call**”) is to select eligible financial institutions, whether public or private, to become Financial Intermediaries under the FoF.

This Call is addressed to those eligible financial institutions which are interested in receiving loss protection from the FoF in the form of an unfunded, capped guarantee for the implementation of the Financial Instrument (hereinafter **“FI”**) in Romania. Such activities shall be carried out in accordance with guarantee agreement(s) (“**Operational Agreements**”) to be entered into by the EIB as **Guarantor** and the selected Applicant(s).

1. **Definitions and Interpretation**

In this Call for Expression of Interest, capitalised terms and expressions shall have the meaning attributed to them below, unless otherwise defined above or the context requires otherwise:

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| Administrative Criteria | means the administrative criteria listed in Section 10; |
| Applicable Laws | means RRF Regulation, EU State Aid Rules and all other applicable Commission rules and guidelines, and national law, regulations and guidelines; |
| Applicant | means an applicant under this Call for Expression of Interest which must be a public or private credit or financial institution duly authorised by the competent authority and entitled under laws of an EU member state to originate and manage loans in Romania; |
| Assessment Criteria | means the assessment criteria listed in Section 11; |
| Business Plan | means the business plan of the Financial Intermediary which must be contained in its Expression of Interest, and which should address the matters set out in Section 7; |
| Commission | means the European Commission; |
| Eligibility Criteria | means the eligibility criteria set out in Annex 2 of this Call for Expression of Interest; |
| Eligibility Period | means the period ending on 30 June 2026; |
| EU | means the European Union; |
| Exclusion Criteria | means the exclusion criteria with which the Expressions of Interest and the Applicant must comply, and which are listed in Section 9; |
| Expression of Interest or EoI | means a proposal sent by an Applicant in response to this Call for Expression of Interest which shall be prefixed by a table in the form contained in Appendix 1 as well as include the documents mentioned therein, and includes the declarations contained in Appendices 2, 3 and 4; |
| Final Recipient | means an eligible legal person receiving financial support under  a Financial Instrument, as defined in the Eligibility Criteria; |
| Financial Instruments | means, within the meaning of the Omnibus Regulation, a measure of financial support provided to address one or more specific policy objectives of the Union which may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments; |
| Financial Intermediary | means an entity selected in accordance with the terms of this Call for Expression of Interest, and with whom an Operational Agreement has been signed; |
| Fund of Funds or FoF | means a fund-of-funds set up through the Funding Agreement signed between the Romanian Government represented by the MIEP and the EIB, with the objective of contributing support from the RRF to Financial Instruments, as detailed in the RRP for Romania; |
| FoF Manager | means the EIB as a manager of the RRF Fund of Funds in Romania; |
| Guarantee | means a first loss (capped) financial guarantee providing credit risk coverage on a Loan-by-Loan basis for the creation of a portfolio of eligible Loans; |
| Guaranteed Portfolio | means a portfolio of eligible Loans in respect of which the Guarantees are provided |
| Inclusion Period | means the period from the signature of the Operational Agreement until 30 June 2026; |
| Investment Strategy with Business Plan | means the *Investment strategy and Business Plan* attached to the Funding Agreement as Appendix A; |
| Investment Board | means a management board of the FoF established on the basis of the Funding Agreement; |
| Irregularity | means any breach of Union law or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of ESIF which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union; |
| Loans | means loans entered into with Final Recipients which comply with the applicable Eligibility Criteria; |
| MIEP | means the Ministry of Investment and European Projects of Romania; |
| Non-Compliant Jurisdiction or NCJ | means any jurisdiction which does not co-operate with the EU in relation to the application of internationally agreed tax standards; |
| Offer | means the Business Plan and the other documentation as required hereunder, to be submitted by the Applicants of this Call of Expression of Interest in the form of an offer to become a Financial Intermediary; |
| OLAF | means the European Anti-Fraud Office; |
| Omnibus Regulation | means Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012; |
| Operational Agreement | means a guarantee agreement entered into between a Financial Intermediary and the EIB acting on behalf of the FoF on the basis of this Call for Expression of Interest and the selection process; |
| RRF | means the Recovery and Resilience Facility under the RRF Regulation; |
| RRF Regulation | means the Regulation 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility; |
| RRP | means the Romanian recovery and resilience plan for the purpose of the RRF Regulation; |
| Selected Applicant(s) | means Applicant(s) selected as a result of this Call for Expression of Interest; |
| Target Area | means Romania; |
| Term Sheet | means the document titled “Recovery and Resilience Facility of Romania: Capped Portfolio Guarantee – Term Sheet with Key Terms and Conditions” presented in Annex 2 to this Call. |

In this Call for Expression of Interest, words denoting:

(i) the singular number only shall include the plural number also and vice versa;

(ii) one gender only shall include the other gender; and

(iii) persons only shall include firms and corporations and vice versa.

**DISCLAIMER**

The EIB (including any employees, officers, advisers and/or contractors of the EIB who contributed to the preparation of this document) make no representation, warranty or undertaking of any kind in relation to the accuracy or completeness of any information provided in, or in connection with, this Call for Expression of Interest (for the purposes of this section the “**Information**”).

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Only the express terms of any written contract (as and when it is executed) shall have any contractual effect.

All Applicants are solely responsible for their costs and expenses incurred in connection with the Financial Intermediary selection process including the preparation and submission of applications and participation in all future stages of this process. Under no circumstances will the EIB be liable for any costs or expenses borne by the Applicants or any of their supply chain, partners or advisors in this process.

For the purposes of the selection process, all advisors of the EIB are acting exclusively as the advisors to the EIB and will not be responsible or owe any duty of care to anyone other than the EIB in respect of the selection process.

This Call for Expression of Interest does not represent a public procurement procedure in the sense of Directives 2004/18/EC or 2014/24/EU.

**CONFLICTS**

The EIB requires all actual or potential conflicts of interest to be resolved to the EIB’s satisfaction prior to the delivery of an Applicant's submission. Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of the EIB could result in an Applicant being disqualified at the sole discretion of the EIB.

**CANVASSING AND NON-COLLUSION**

The EIB reserves the right to disqualify (without prejudice to any other civil remedies available to the EIB and without prejudice to any criminal liability which such conduct by an Applicant or consortium member (as the case may be) may attract) any Applicant or consortium member who, in connection with this document:

(i) offers any inducement, fee or reward to any Investment Board member, employee or officer of the EIB;

(ii) contacts any Investment Board member, employee or officer of the EIB about any aspect of this document in a manner not permitted by this document;

(iii) fixes or adjusts the amount of his EoI by or in accordance with any agreement or arrangement with any other Applicant or consortium member or supply chain member of any other Applicant (other than its own consortium members or supply chain);

(iv) enters into any agreement or arrangement with any other Applicant or potential applicant or consortium member of any other Applicant or potential applicant to the effect that it shall refrain from making a submission or as to the amount of any submission;

(v) causes or induces any person to enter such agreement as is mentioned above or to inform the Applicant or a consortium member of the Applicant of the amount or approximate amount of any rival submission;

(vi) canvasses any person in connection with this document who is not one of its own consortium members or one of its own team;

(vii) offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other submission or proposed submission; or

(viii) communicates to any person other than the EIB the amount or approximate amount of his proposed submission (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of a submission).

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**PUBLICITY**

Applicants shall not undertake (or permit to be undertaken) at any time, any publicity activity with any section of the media in relation to the Financial Intermediary selection process other than with the prior written agreement of the EIB. Such agreement shall extend to the content of any publicity. In this paragraph the word "media" includes (but without limitation) radio, television, newspapers, trade and specialist press, the internet, email and any printer materials accessible by the public at large and the representatives of such media.

1. **The FoF Investment Strategy and role of the Financial Intermediaries**
   1. **Context**

The RRF is the key instrument at the heart of the NextGenerationEU – an unprecedented coordinated EU response to the Covid-19 crisis aimed to address common European challenges by embracing the green and digital transitions, to strengthen economic and social resilience and the cohesion of the Single Market. The Romanian RRP forms part of this initiative by defining reforms and investments to be supported with RRF resources. A strong priority under the RRP is given to green transition and digital transformation where at least 41% and 21%, respectively, of RRF resources shall target investments for climate action and digitalisation. In addition, the RRF should support activities that fully respect the EU climate and environmental standards and priorities, including the principle of “do no significant harm”.[[1]](#footnote-1)

The MIEP has engaged with the EIB in the evaluation of the most effective options for the implementation of the RRF in Romania, including, *inter alia*, evaluating the set-up of dedicated Financial Instruments. Therefore, the EIB support has been envisaged to be provided by way of establishment of a dedicated bilateral mandate to manage part of the RRF funds allocated to Romania, in the form of   
a fund of funds managed by the EIB.

The overall objectives of the FoF are as follows:

* to improve access to finance for the target recipients, in order to support, unlock and accelerate new investment activities, which in turn help to support the wider economic recovery and support the implementation of the RRP;
* to promote and increase investment in climate action and digitalisation projects, supporting the wider green and digital transition of Romania;
* to improve the capacity of Financial intermediaries to support investment in these sectors and support the development of a wider financial intermediary market;
* to create a revolving and evergreen source of finance for Romania, able to support future rounds of reinvestment in similar activities, thereby helping to increase the financial sustainability of the RRF resources available;
* to mobilise private sector investment in the target investment areas at Financial Intermediary and project level and increase the impact of the RRF resources available.
  1. **Selection, legal form and responsibilities of Financial Intermediaries**

The Financial Intermediaries will be selected according to the criteria set out in this Call. The Financial Intermediaries will sign Operational Agreements with the EIB, on which grounds they will receive loss protection from the FoF in the form of an unfunded, capped guarantee for the implementation of the Financial Instrument. In order to carry out their mandate, the Financial Intermediaries shall establish separate blocks of finance within the same financial institutions, or independent legal entities, in accordance with national and EU rules.

The selected Financial Intermediaries will act in accordance with all Applicable Laws and with degree of professional care, efficiency, transparency and diligence expected from a professional body experienced in implementing financial instruments. To this end, the Financial Intermediaries will be asked to identify and provide Loans for the implementation of new projects with the view to achieving the required indicators within the established deadlines and manage the created portfolio in compliance with the objectives of this Call.

For these main purposes, the key tasks envisaged for the Financial Intermediary will broadly be, but not limited, to:

* originate, appraise, disburse, underwrite, service, monitor and control a portfolio of new Loans to Final Recipients (including the recovery of defaulted Loans) which fit within the FoF Investment Strategy with Business Plan and the agreed Business Plan of the Financial Intermediary;
* provide the necessary information to the FoF, the MIEP, the Investment Board and authorised entities in order to comply with the reporting obligations towards the Commission in accordance with Applicable Laws;
* undertake information and publicity measures on the involvement of the Financial Intermediaries in the deployment of Financial Instruments under the FoF;
* recommend and manage appropriate exit strategies from the Loans as applicable.

The Financial Intermediaries will have to undertake full management and responsibility in respect of the Loans. In addition to ensuring that the investments are viable from an economic and financial point of view, the Financial Intermediaries must ensure that the eligibility criteria established by the RRP, all applicable national, EU rules and guidelines provided in this Call are met.

It is intended that an advisory support package will be developed by the EIB in close cooperation with the MIEP. Support under this package will be made available to those Financial Intermediaries that opt to use it. It is intended that it will comprise the following areas of support:

• coaching and training support in relation to green taxonomy and eligibility verifications;

• access to local consultants to provide input in relation to the technical assessments of projects where required.

This assistance is intended to provide capacity building support to the Financial Intermediaries to support the implementation of the Financial Instrument. As stated above, the Financial Intermediaries will remain responsible for all related investment and eligibility decisions.

* 1. **Capped Guarantee Instrument**

The FoF will be implemented through an unfunded capped guarantee product to provide risk coverage on a Loan-by-Loan basis to facilitate the origination of a portfolio of newly originated, eligible Loans. Loans will be included in the Guaranteed Portfolio during the Inclusion Period. Loans originated by the Financial Intermediaries 6 months prior to the signature of the Operational Agreement with the EIB shall be also eligible for the Guarantee.

Risk coverage will cover defaulted amounts[[2]](#footnote-2) in line with the guarantee rate of 80% (“**Guarantee Rate**”) and up to the maximum risk coverage. The Financial Intermediary granting the Loan will be required to retain the remaining 20% of the risk.

The Cap Rate will be proposed by each Applicant as part of its application, in line with the historical performance of similar loans originated by the Applicant and can be maximum 20% (“**Cap Rate**”).

Accordingly, the maximum risk coverage by the EIB (“**Guarantee Amount**”[[3]](#footnote-3)) will be 16% of the size of Guaranteed Portfolio, assuming a maximum Cap Rate of 20%. The Guarantee Amount and Guaranteed Portfolio’s size will be specified in the Operational Agreements and will be denominated in Euro. Should the RRF funds disbursed to the EIB be eroded due to negative interest rates, the EIB’s liability regarding the Guarantee Amount will be limited to the funds available to it.

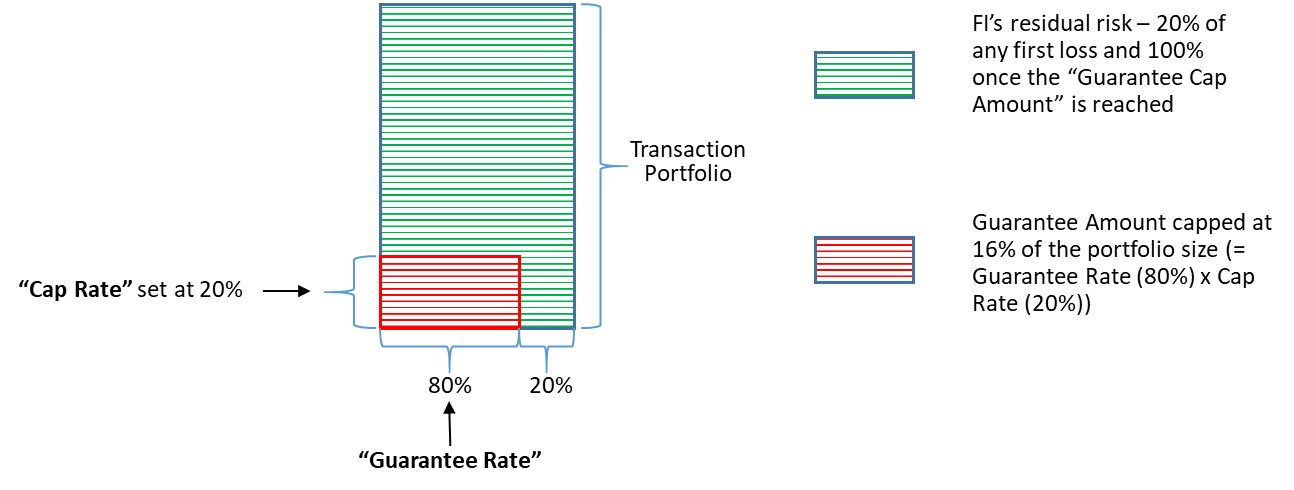
The tenor of the guarantee (i.e. final maturity) will be 15 years (or 25 years for projects implemented by small municipalities). Loans to Final Recipients with a maturity of more than the tenor of the guarantee can also be included, provided that the guarantee coverage is limited to the tenor of the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

Financial Intermediaries will be required to Transfer the Financial Advantage (“**ToFA**”) created by the Guarantee to the Final Recipients by making reductions in the interest rates of the Loans. The interest rate reduction will be a function of the reduction in the standard Risk Cost and Equity Cost of a Loan (i.e. the Financial Advantage) thanks to the protection provided by the Guarantee. In its application each Applicant shall specify the average level of interest rate reduction (to be expressed as a percentage of the Risk Cost and Equity Cost) it intends to make, as further detailed in Section 7.2.4. To ensure the transfer of the Financial Advantage fully to the Final Recipients, and considering that the Guarantee Fee will be zero, such level cannot be lower than 80%. Such level of interest rate reduction shall be applied equally to all Loans originated by the Applicant independent of characteristics such as maturity and risk rating. The levels indicated by the Applicants will used as one of the Assessment Criteria as explained in Section 11 below and will be transposed into a contractual obligation for the selected Financial Intermediaries. Failure to apply the proposed level of interest reduction will result in an exclusion of a given Loan(s) from the guaranteed portfolio.

The Financial Intermediaries will not be entitled to charge to the Final Recipients any costs or fees for reason of implementation of the Financial Instrument. The level of costs and fees charged to Final Recipients are not to be higher than those that would have been applied for the same loans without the financial advantage of the Guarantee.

The Financial Intermediaries shall be required to (i) maintain records evidencing the financial advantage compared to standard Risk and Equity Costs if the same loans weren’t benefiting from the Guarantee, and (ii) inform Final Recipients on the transfer of the financial advantage together with the general support received from the FoF.

A schematic representation of the Guarantee is depicted below:



The key terms and conditions of the Guarantee are provided in the Term Sheet constituing Annex 2 to this Call.

* 1. **Eligible Final Recipients and Investments**

The FoF supports eligible investments undertaken by Final Recipients being primarily Large Mid-Cap and Large Corporates. Large Mid-Caps are defined as enterprises that have between 500-2999 (full-time equivalent) employees, whereas Large Corporates are defined as enterprises with 3000 or more employees (full-time equivalent). The FoF may also support small municipalities with less than 100,000 inhabitants.

Regulated enterprises operating in the energy sector are not eligible as Final Recipients. Moreover, the Final Recipients engaged in any of the excluded activities listed in Annex 3 to this Call are ineligible for financing.

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

* compliance with all applicable laws and regulations, including the RRF Regulation and State Aid rules,
* compliance with eligibility criteria to be stated in the Operational Agreements to be signed with selected Financial Intermediaries and the policy and procedures thereof;
* reliability of the business model, cash flows, partners, etc.; and
* repayment capacity.

In line with the priorities of the RRP, the FoF aims to address access to finance needs of eligible Final Recipients whose investments relate primarily to climate and digitalisation activities. At least 41% of the resources allocated to the FoF should be invested in climate related investment activity and 21% to digitalisation related investments. The eligible investments will need to be in line with the types of intervention included in Annexes VI and VII of the RRF Regulation, respectively. The remaining balance of 38% of the resources will be available to be invested in broader investment activity of Final Recipients that encourages their growth and expansion, in turn supporting the wider economic recovery and creating new employment opportunities.

Whenever feasible, it is recommended that the priority in financing is given to the following sectors of economy where access to finance is in particular limited for enterprises:

* + agriculture,
  + food industry,
  + processing industry,
  + auto industry,
  + constructions (excluding real estate),
  + transport and distribution,
  + services for the population,
  + tourism,

provided that the eligibility criteria as defined below, including the DNSH principle, are complied with and such business activity is not on the list of the Excluded Activities attached hereto as Annex 3.

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

1. All eligible projects will need to comply with the ‘Do no significant harm” (DNSH) principle[[4]](#footnote-4) through the following measures:
2. use of sustainability proofing by applying the Commission’s technical guidance on sustainability proofing for the InvestEU Fund[[5]](#footnote-5);
3. exclusion of certain list of activities and assets from eligibility (see Annex 3 to this Call); and
4. ensuring compliance with the relevant EU and national environmental legislation.
5. Excluded activities – a list of excluded activities is included in Annex 3 to this Call. In particular, in accordance with DNSH requirements, the following activities will not be supported by the instrument:
   1. for climate change mitigation: (i) activities related to fossil fuels, including downstream use; (ii) activities under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks; (iii) indirect ETS costs compensation;
   2. for circular economy: (iv) activities related to waste landfills, incinerators and mechanical biological treatment plants; (v) activities where the long-term disposal of waste may cause harm to the environment (e.g. nuclear waste);
6. The selection criteria for projects will ensure that only activities that comply with relevant EU and national environmental legislation can be selected.

The maximum project size for all types of eligible Final Recipients and investments is up to EUR 25 million, although it is expected that much smaller projects will make the bulk of the portfolio.

Only the projects implemented and investments made in Romania are eligible.

* 1. **Financial products to be offered by Financial Intermediaries**

The financial products that can be offered by the Financial Intermediaries may be in the form of loans (revolving facilities, amortising/term loans including with bullet or balloon repayment profiles).

In the case of term loans, underlying exposures shall be newly originated (not earlier than the date of the signature of the Funding Agreement, i.e. 31 March 2022) and shall not consist of the refinancing of an existing loan (e.g. in the form of a new loan taken to repay an existing loan held with the Financial Intermediary or with other entities, or in order to introduce new terms to an existing loan).

In the case of revolving (i.e. working capital) facilities, the renewal of an existing facility is also eligible in case the existing facility has reached either (i) its legal maturity, or (ii) a date when the Financial Intermediary retains contractually the right to renew or cancel the revolving facility. Such exposures, similar to all other exposures, will need at inclusion to comply with all eligibility and other contractual requirements of the Operational Agreement.

The transaction should be performing as of the date reported to the EIB for inclusion in the Guaranteed Portfolio to be considered eligible.

Transactions to be included under the Operational Agreement need to be signed no later than by 30 June 2026.

* 1. **Investment milestones**

In line with the European Council implementing decision on the approval of the assessment of the recovery and resilience plan for Romania of 28 October 2021, at least 30% of the Guaranteed Portfolio should be built up by 31 December 2024 (“**Intermediate Objective**”) and 100% of the Guaranteed Portfolio should be built up by 30 June 2026 (“**Final Objective**”).

In addition, starting from 31 December 2023, the EIB will verify on a semi-annual basis that at a minimum 62% of the Guaranteed Portfolio is composed of Loans eligible for the Climate and Digitalisation Objective (“**C&D Objective**”). In case of failure to meet this requirement, the Financial Intermediaries will have a grace period of 6 months to remedy.

Failure to achieve the Intermediate, Final and/or C&D Objectives shall lead to an early termination of the Inclusion Period.

* 1. **Risk guidelines**

The risk profile and creditworthiness of the Final Recipients will be assessed autonomously and independently by the Financial Intermediaries.

In carrying out its responsibilities, the Financial Intermediaries shall act as diligent business entities applying at least the standard of professional care that can be expected from an EU-regulated financial institution, their own internal procedures and policies, as well as best practices of the financial sector and applicable for similar instruments. In particular, the Financial Intermediaries shall use all reasonable efforts to assess the creditworthiness of the Final Recipients in line with their internal procedures and/or market practice, also on the basis of the specific categories of promoters, type of project and financial product to be financed and used from time to time. The Financial Intermediary shall implement all necessary procedures related to the recovery of resources in line with their internal standards and policies and write off the amounts due only if the collection of such amounts can no longer be reasonably expected according to standard market practice or in the specific cases outlined in the business plan and in accordance with applicable rules and procedures.

The Financial Intermediaries will be responsible for the origination, underwriting, servicing, monitoring and controlling of Loans to Final Recipients, including the recovery of defaulted Loans in accordance with the Operational Agreement to be signed with the EIB.

1. **Operational Provisions**
   1. **Amounts allocated for the Call of Expression of Interests**

It is planned to allocate an amount of up to EUR 300 million[[6]](#footnote-6) in the form of the Guarantee.

Allocations of the Guarantee to the Financial Intermediaries will be done considering the Maximum Portfolio Volume presented by the Applicants in the proposed Business Plan and agreed in the Operational Agreement, among other factors.

The EIB may decide at its discretion to increase or decrease its commitment to the Financial Intermediaries, including based on its performance, at any point in time, subject to the prior approval of the Investment Board and the corresponding update of the Investment Strategies with Business Plan and/or the Funding Agreement, as appropriate.

If the Financial Intermediary lags significantly behind the build-up of Guaranteed Portfolio, the EIB at its sole discretion, and subject to the decision of the Investment Board, may decide to de-commit in part or full the amount of resources awarded to the Financial Intermediaries and to re-allocate such funds to another Applicant ranking first (and so on) in the reserve list (if any) if not rejected following the compliance due diligence performed by the EIB and subject to reaching an agreement on the terms of the Operational Agreement, or to launch a new Call for Expression of Interest, or to return the funds to the MIEP.

With a view to maximising the efficient use of the resources of the FoF, the EIB shall have sole discretion, and subject to the endorsement of the Investment Board, to allocate any additional amounts, if available from time to time, to Financial Intermediaries that out-perform initial expectations on the performance and build-up of the relevant Guaranteed Portfolio.

Allocations to the Financial Intermediaries are subject to the availability of funds received by the EIB from the MIEP, and to the satisfaction to the condition precedents which will be provided in the Operational Agreements, as customary. The EIB shall bear no responsibilities should the expected resources not have been paid into the FoF. The Guarantee Amount could potentially be affected by the impact of negative interest rates.

* 1. **Indicative Summary Terms of the Operational Agreement**

The Applicant(s), with which Operational Agreement(s) will be eventually signed, shall be required to comply with obligations including, but not limited to, the following:

* the requirement to comply with Applicable Laws;
* the requirement to pursue the objectives set out in the Operational Agreement, which shall include an obligation to act in accordance with the Investment Strategy and Business Plan, in particular the obligation to make investments in projects according to the agreed business plan of the Financial Intermediary.
* the requirement to indemnify the FoF or the MIEP for any loss caused by failure to comply with the Applicable Laws or with the terms of the Operational Agreement;
* the requirement to indemnify the FoF or the MIEP for any Irregularity occurring at the level of the Final Recipients unless the Financial Intermediary can prove that it has exercised due diligence in selecting and pursuing, at its own expense, appropriate contractual and legal measures against the Final Recipients to recover the amounts affected by the Irregularity;
* the requirement to act with a degree of professional care, efficiency, transparency and diligence expected from a professional body experienced in implementing Financial Instrument; In particular, the Financial Intermediary will, among others, use all required efforts to assess the creditworthiness of the Final Recipients in line with the standard practice, to collect amounts due and to write off the amounts due only if the collection of the amounts due can no longer be reasonably expected;
* the requirement to select the Final Recipients benefiting from the support of the Financial Instrument with due account of the nature of the Financial Instrument and a specific methodology – in particular, but without limitation, 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;
* the requirement that the selection of the Final Recipients is transparent and can be justified by the Financial Intermediaries on objective grounds and that such selection does not give rise to any conflict of interest;
* the requirement to provide support to the Final Recipients in a proportionate manner, which has the least distortive effect on competition;
* save where otherwise agreed, the requirement to select the Final Recipients benefiting from the support in line with the Applicant’s credit risk policy guidelines applicable to comparable Loan products funded through the Applicant’s own resources and in compliance with the terms of the Operational Agreement;
* the requirement to provide support to the Final Recipients in a way that ensures that the financial advantage derived from the Guarantee is fully passed on to the Final Recipients;
* the requirement to inform the Final Recipients of the financial advantage received;
* the requirement to monitor the implementation of the initiative, including regular reporting to the FoF;
* the requirement to comply with applicable publicity requirements under EU or national law, national regulations and the Operational Agreement – in particular, but without limitation, the Financial Intermediaries inform the Final Recipients, in accordance with the RRF Regulation, as well as relevant laws and regulations, that the funding is provided under the RRF Regulation, co-financed under EU funds pertaining to the RRP;
* the requirement to agree that the Financial Instrument may be audited (including on the spot verifications) by or on behalf of the MIEP, the audit authority, the Commission and the European Court of Auditors or other properly appointed body;
* the requirement to agree not to make a claim for any amount beyond the amount committed to them;
* the requirement that direct payments made to the Final Recipients must be made in a bank account with a credit institution situated within the territory of a Member State of the EU;
* the requirement to require the Final Recipients to hold and maintain, amounts received in a bank account with a credit institution situated within the territory of a Member State of the EU;
* the requirement to set up and maintain a separate accounting system or use a separate accounting code for disbursements to Final Recipients and to maintain an audit trail regarding the FoF (including identification of amounts disbursed and other requirements as they are provided under the RRP, the RRF Regulation and other Applicable Law);
* the requirement to ensure that the Final Recipients undertake to comply with applicable State Aid rules and the Financial Intermediaries shall repay any support received through the FoF which constitutes unlawful State Aid;
* the requirement to comply with the provision and standards, as implemented in the governing national law, set out in Directive 2015/849 on the prevention of the use of the financial system for the purposes of Money Laundering or Terrorist Financing; the Financial Intermediary should meet the standards described in the “Anti-Money Laundering Questionnaire” issued by the Wolfsberg Group;
* the requirement to apply (i) European restrictive measures issued pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, (ii) United Nations sanctions decided by the UN Security Council pursuant to Article 41 of the UN Charter and (iii) to the extent applicable sanctions imposed by the competent US sanctions authorities (such as the Office of Foreign Asset Control);
* the requirement to agree that the Financial Intermediary for the purpose of the relevant Financial Instrument, shall not enter into business relations with any entities incorporated in a Non-Compliant Jurisdiction (NCJ);
* the requirement to comply with the applicable legislation and market standards, concerning, *inter alia*, tax fraud, tax evasion, tax avoidance, aggressive tax planning and harmful tax practices.

Without prejudice for the above, the Operational Agreements shall also include, *inter alia*:

* requirements on the eligibility of the Final Recipients to be financed (which reflect the terms agreed between the EIB and the Investment Board, the Call for EoI, RRF Regulation and the RRP as approved by the European Council);
* requirements on the compliance of the Final Recipients to be financed and the relevant investments and/or projects with the Do No Significant Harm principle, within the meaning of art. 17 of Regulation (EU) No 2020/852, amending Regulation (EU) 2019/2088 and as set out in the Commission’s Do No Significant Harm Technical Guidance (2021/C58/01);
* requirements on data protection and document retention by the Financial Intermediaries and/ or the Final Recipients; and
* requirements as to the visibility of the involvement of the Financial Instrument and the applicability of the RRF Regulation.

Financial Intermediaries shall not (i) be established and shall not maintain business relations with entities incorporated in territories whose jurisdictions do not cooperate with the European Union in relation to the application of the internationally agreed standards with respect to money laundering, financing of terrorism, tax fraud, tax evasion, tax avoidance, aggressive tax planning or harmful tax practices, or (ii) engage or promote the engagement in any jurisdiction in activities, arrangements or series of arrangements which, having regard to all relevant facts and circumstances, could reasonably be considered as having been implemented for the purposes of any of the aforementioned. The Financial Intermediaries will be required to pass on certain of these obligations (including but not limited to obligations regarding sanctions compliance, and Anti-Fraud and Anti-Money Laundering (AML)/Combating Financing of Terrorism (CFT) provisions to the extent applicable) to Final Recipients and ensure that certain rights and obligations are included in their agreements with Final Recipients (including the right to recover from the Final Recipients any amount that forms an Irregularity).

Financial Intermediaries shall acknowledge the EIB Anti-Fraud Policy[[7]](#footnote-7) which sets out the policy of the EIB for preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing and shall take appropriate measures (as may be further specified in the Operational Agreements) to facilitate implementation of such policy.

The template of the Operational Agreement may be consulted upon request.

Operational Agreements signed with the Financial Intermediaries, including main terms and conditions, may be subject to modifications, to be agreed between parties, in case of changes of prevailing circumstances and may be assigned by the EIB to third parties, following also the agreement of the Investment Board, as the case may be.

* 1. **Duration of the Operational Agreements**

Operational Agreements will be indicatively in force from the date of signing the contracts to the winding up of the Financial Instrument.

1. **Instructions for Submission of Expression of Interest and Important Notices**

The selection of the Financial Intermediary(-ies) will proceed as described below.

The submission of the applications will be done through the platform “SmartShare” in two steps.

**STEP 1 - Access request to SmartShare**

Applicants must express their interest by e-mail to the following address: [GCS-procurement@eib.org](mailto:GCS-procurement@eib.org) until **21/03/2023 at 23:59 CET** at the latest to receive the link to access to the EIB’s secured SmartShare platform.

Applicants will be notified when the account is created to set up a password and upload their applications.

**STEP 2 - Submission of applications**

Applications must be submitted electronically through the SmartShare platform of EIB in the format of a single zipped file of 4 folders containing PDF format documents and structured as follows:

* Administrative Documents
* Balance sheets
* Business Plan
* Other annexes

The single zipped file shall be password protected and shall not exceed **2 GB** in size.

The single password for the zipped file shall be communicated to the Bank only after the deadline for submission of offers has passed.

The name of the zipped file must be precisely worded as follows:

INSERT reference of the call — APPLICATION — < NAME OF CANDIDATE >

All pdf files must be clearly named.

The deadline for receipt of applications is **24/03/2023 at 23:59 CET**.

After the deadline for receipt of applications, Applicants must communicate by e-mail to: [GCS-procurement@eib.org](mailto:GCS-procurement@eib.org) the password for the zipped file / application submitted via the SmartShare platform. The communication must be no later than **27/3/2022 at 10:00 CET** (date for the tendering opening).

**“Receipt”** shall mean in the case of use of the SmartShare platform, that the Applicant is required to complete the upload of its application before the deadline stated in **section 5** of the Terms of Reference. The time stamp generated by the SmartShare platform will decide whether the submission was on time or late.

Applications submitted by any other means (e.g. by e-mail or fax) or received later than the deadline indicated in **section 5** in the Terms of Reference will be rejected.

Any infringement of these rules (e.g. unprotected files/different formats/or missing references) constitutes an irregularity which will lead to rejection of the application.

**Amending or withdrawing tenders**

Applicants may amend or withdraw their applications by written notification at the e-mail address: [GCS-procurement@eib.org](mailto:GCS-procurement@eib.org) prior to the deadline for submitting applications. Applications cannot be amended after the submission deadline.

**No later than 13/02/2023**, Applicants may request clarifications regarding this Call for Expression of Interest or the nature of the Financial Instrument. Such requests must indicate the Call for Expression of Interest reference number and the name of the Applicant and shall be submitted in English via e-mail to G[CS-procurement@eib.org](mailto:CS-procurement@eib.org).

Written requests for clarifications from Applicants shall not receive individual replies. Instead, answers to relevant requests for clarifications received within the relevant deadline will be distributed together in a clarification note to be emailed to all the Applicants. The indicative timetable for this Call for Expression of Interest, which may be subject to change, is:

|  |  |
| --- | --- |
| **Activity** | **Timing** |

|  |  |
| --- | --- |
| Issue of Call for Expression of Interest | 23/01/2023 |
| Deadline for requests for additional information | 13/02/2023 |
| Deadline for submission of the EoI | 24/03/2023 |
| Notification to Applicants of the outcome of the selection process | 2nd quarter 2023 |
| Anticipated conclusion of Operational Agreement with the Selected Applicant following the IB’s approval. | 3rd quarter 2023 |

Applicants are directed to the important notices below. Unless expressly stated otherwise the terms and expressions used in this document shall have the meanings set out in Section 2 above.

1. All monetary amounts contained in EoIs must be firm and non-revisable, quoted in Euro and free of taxes and duties, the EIB being exempt there from those charges under the Protocol on the Privileges and Immunities of the European Communities.
2. The Applicant must declare that it has taken note of the conditions of the Call for Expression of Interest and has had the opportunity to gauge the scope and quality of the services required, as well as the possible risks and difficulties in the implementation.
3. The Applicant cannot invoke any error, inaccuracy or omission in its EoI to call any Operational Agreement into question or to attempt to have any contract amended.
4. The EIB reserves the right to reject any application that fails to comply with the specifications of this Call for Expression of Interest.
5. The EIB reserves the right to reject any Applicant:

(i) guilty of material misrepresentation;

(ii) who contravenes any of the terms of this document;

(iii) undergoing a change in identity, control, financial standing or other factor impacting on the selection and/or the evaluation process affecting the applicant; and/or,

(iv) who failed to pass the compliance due diligence assessment, including KYC, as specified in Section 12.

1. EoIs must be drawn up in writing in English (applications in other languages will not be accepted). Any official documents in a language other than English must be accompanied by a certified translation.
2. Applicants must respond to the requirements set out in this Call for Expression of Interest item by item.
3. The EIB may cancel this Call for Expression of Interest without notice at any time. The EIB reserves the right not to sign an Operational Agreement with any Applicant. Applicants shall respond to this Call for Expression of Interest on the understanding that they would not be entitled to any form of compensation, should the EIB decide to interrupt or cancel the Call for Expression of Interest before the Operational Agreement is signed.
4. The EIB has no obligation to enter into an Operational Agreement with the selected Applicant. Following the selection of an Applicant the EIB may enter into an Operational Agreement subject to (i) successful commercial and legal negotiations, (ii) the relevant EIB internal approvals under EIB own rules and procedures and (iii) the approval of the Investment Board.
5. Participation in this Call for Expression of Interest shall be taken as acceptance of all the terms and conditions mentioned in this Call for Expression of Interest and the conditions of the specifications.
6. The EIB reserves the right to seek additional detail from an Applicant to clarify any part of the Applicant’s EoI.
7. EoIs must be structured and submitted as indicating above in **section 5 -** **Instructions for Submission of Expression of Interest and Important Notices,** following Step 1 & Step 2.
8. All Applicants will be informed in writing of the outcome of their applications.
9. Applicants may be invited to a presentation, if the EIB so decides. Applicants will not be permitted to modify the terms and conditions of their EoI during their presentation or at any other time after the application has been submitted to the EIB. The presentation provided by Applicants may have impact on the scoring allocated to given Applicants under the Assessment Criteria.
10. The EIB Complaints Mechanism Policy shall apply. In addition, any legal dispute arising out of or related to this procedure shall be resolved by the European Court of Justice.
11. The following documents shall form an integral part of this Call for Expression of Interest:

* Cover Letter (Annex 1);
* Expression of Interest (Appendix 1 to Annex 1);
* Deed of Undertaking (Appendix 2 to Annex 1);
* Declaration to be made by the Applicant (Appendix 3 to Annex 1);
* Declaration of Honour on Exclusion Criteria and Selection Criteria and on the absence of Conflict of Interest (Appendix 4 to Annex 1);
* Applicant’s Business Plan (Appendix 5 to Annex 1, including the minimum content as per Section 7 below);
* Key Terms and Conditions of the Capped Guarantee Instrument (Annex 2);
* List of Excluded Activities (Annex 3).

1. **Selection process**

Financial Intermediaries shall be selected on the basis of an open, transparent, proportionate, non-discriminatory and objective selection procedure avoiding conflicts of interest, in line with EIB’s policies, rules, procedures and statutes.

Stages of the Selection process:

1. The EIB will reject the EoIs from Applicants which do not comply with the Exclusion Criteria set out under Section 9 below.
2. Those Applicants whose EoI is not rejected according to the Exclusion Criteria will go through the EIB evaluation process based on the Administrative Criteria set out under Section 10 below.
3. Those Applicants whose EoI passes the Administrative Criteria will thereafter be assessed on the basis of the Assessment Criteria set out under Section 11 below.
4. The selection shall be done by establishing a ranking amongst the EoI on the basis of the Assessment Criteria. The EoIs shall be ranked in order of preference with the preferred one ranking first (the Applicant of such application being referred to as “Selected Applicant”).
5. The Selected Applicants and their EoI will be subjected to a compliance due diligence by the EIB as specified in section 12.
6. Thereafter the EoI of the Selected Applicant, who have not been otherwise rejected following the compliance due diligence performed by the EIB, shall be submitted to the Investment Board. Following the approval of the Investment Board the EIB shall commence negotiations with the Selected Applicant with a view to concluding an Operational Agreement.
7. The remaining EoI(s), if any, that have not been excluded on the basis of the Exclusion Criteria and have passed the Administrative criteria, may, at the discretion of the EIB, be included in   
   a reserve list for a renewable period of 12 months from the date of submissions of the EoIs which may be renewed for further periods of 12 months at the discretion of the EIB.
8. All Applicants who have submitted EoIs will be informed in writing of the outcome of the evaluation.
9. If the EIB and the Selected Applicant fail to reach agreement on the terms of an Operational Agreement or if the Operational Agreement with the Selected Applicant is fully or partially terminated irrespective of the cause, the EIB may enter into negotiations with a view to concluding an Operational Agreement with the Applicant ranked first on the reserve list and so on.
10. The EIB may provide a loan through its own resources to a Financial Intermediary, according to its own rules and procedures. For the avoidance of doubt, the CEoI and Selection process do not apply to such transaction.
11. **Minimum Content of the Business Plan**

Applicants are expected to submit in their EoI one Business Plan that includes all the applicable elements and specific information required in order to comply with the requirements of this Call. The Business Plan to be included in the EoI must provide at a minimum the information described below regarding:

1. Information about Applicant;
2. Investment Strategy;
3. Operational Principles.

The Applicant may indicate any other elements relevant for the evaluation of the Business Plan in accordance with the Assessment Criteria.

Certain aspects of the Business Plan (which shall not include the Transfer of Financial Advantage and the Cap Rate) may be developed by mutual consent during the negotiation period for the Operational Agreement.

**7.1 Information about Applicant**

**7.1.1 Legal, ownership, management and governance structure**

The Applicant should provide a general description including:

1. Capital, ownership and organisational structure.
2. Legal and regulatory status, and applicable regulations.
3. Responsibilities of the management (and if applicable advisory) bodies, together with their composition and method of appointment, and decision procedures such as the organization of meetings, voting procedure, acceptance threshold and veto rights.
4. Corporate Governance including adherence to regulatory requirements and best banking practices.
   * 1. **Internal controls, monitoring and reporting procedures**

The Applicant should provide the confirmation that their:

1. internal control system is in conformity with international standards.
2. accounting system provides accurate, complete and reliable information in a timely manner in the context of the implementation of the Financial Instrument.
3. risk management framework is in place including, but not limited to, risk assessment, internal risk models, internal credit risk guidelines and policies, other internal risk guidelines, loan approval procedures, collateral requirements, early warning systems, limits framework, credit risk monitoring practices and procedures, management of arrears and non-performing loans (incl. recovery track record and capabilities).
4. monitoring and reporting procedures and indicators concerning historical data of the Loans will enable to provide evidence of the results of the Financial Instrument and to evaluate its effectiveness. It is to be noted that the selected Financial Intermediaries will have to comply with the monitoring and reporting requirements stemming from the Applicable Laws, and defined in the Operational Agreement, including agreement to be audited by the Member State audit bodies, the European Commission and the European Court of Auditors.

In addition, the Applicant shall demonstrate how it intends to manage the risk of Irregularities when implementing the Financial Instrument, including the risk of double funding from the RRF and other Union programmes.

The proposals with respect to risk management should generally be based on the experience of the Applicant with similar instruments. This section should address typical risks and how to address these, recovery procedures (including in respect of amounts affected by Irregularities), typical default rates and forecasts of losses, risk mitigation measures diversification measures and monitoring procedures

* + 1. **Economic and financial capacity**

The Applicant shall provide evidence to the satisfaction of the EIB evidencing its economic and financial viability and its entitlement to carry out the tasks foreseen herein and in its Business Plan under EU and national law. Among key evidence that can be submitted are,

(a) banking licence;

(b) financial statements for the past 3 years (demonstrating sound financial management to the satisfaction of the EIB);

(d) external credit rating, if available.

Applicants whose credit rating is lower than BB- as assigned by Standard and Poor’s Rating Group or Fitch Ratings Limited or Ba3 as assigned by Moody’s Investors Service (or equivalent credit rating category by another EU registered credit rating agency), or are not externally rated, should describe potential measures to mitigate the risk related to the probability of default, and thus failure to fulfil the contractual obligations.

* + 1. **Experience**

The Applicant shall demonstrate its institutional experience with the deployment of (i) public guarantee schemes in the form of financial instruments, or (ii) EU/EIB/EIF products including risk sharing, loans or funded/unfunded guarantees.

The Applicant shall also provide information on its competitive position, market share, historical lending volumes in the last three years to eligible Final Recipients for eligible investments in Romania with respect to lending to types of Final Recipients and investments eligible under the FoF.

* 1. **Investment Strategy**

The Applicant should put forward its investment policy and explain how this can reach the RRP objectives before the end of the Eligibility Period. In particular, the investment strategy should address the following:

**7.2.1 Consistency with RRP objectives**

The Applicant should outline the objectives of the Applicant’s investment strategy and link these to the RRP objectives and the FoF Investment Strategy and Business Plan (as highlighted in section 3 of this Call).

* + 1. **Compliance with eligibility conditions**

In this section the Applicant should evidence how it meets the conditions to implement a Financial Instrument:

i. entitlement to carry out the implementation tasks under EU and national law;

ii. adequate economic and financial viability;

iii. adequate capacity to implement the Financial Instrument, including organizational structure and governance framework providing the necessary assurance to the MIEP;

iv. existence of an effective and efficient internal control system;

v. use of accounting systems providing accurate, complete and reliable information in a timely manner;

vi. agreement to be audited by Member State audit bodies, the Commission and the European Court of Auditors.

Furthermore, the Applicant should confirm that it does and will comply with the requirements set out in to Articles 33(1) and 209 (2) of the Omnibus Regulation.

* + 1. **Guaranteed Portfolio**

The portfolio proposed herein by the Applicant must consider exclusively eligible Loans. Accordingly, the points in this subsection must be addressed exclusively in connection with such portfolio.

1. Proposed Maximum Portfolio Volume to be originated during the Inclusion Period;
2. Expected timing of launch of the product in the market following the signature of the Operational Agreement (expressed as number of months);
3. Expected timing to build-up the proposed Guaranteed Portfolio taking into account any necessary pre-implementation actions (e.g. adaptation of systems and of underlying contracts with Final Recipients), the Eligibility Criteria as well as the Investment Milestones defined in Section 3.6.
4. Expected characteristics of the Guaranteed Portfolio taking into account the characteristics of the eligible Loans, such as:
5. Size: expected breakdown by size (with maximum project cost of up to EUR 25 million);
6. Maturity: expected breakdown by final maturity and expected weighted average life (“WAL”) of the portfolio;
7. Amortisation: expected breakdown of the amortisation type (e.g. linear, bullet, balloon, other);
8. Interest rate structure: expected breakdown (fixed, floating);
9. Currency: expected breakdown by currency
10. Credit Rating: expected credit rating breakdown at origination of the Loans, taking into account that the Financial Intermediary may choose to include higher risk transactions in the Guaranteed Portfolio compared to its typical originated portfolio.
    * 1. **Description of the products**

**Transfer of the Financial Advantage (ToFA)**

In its application, each Applicant shall specify the average level of interest rate reduction (to be expressed as a percentage of the Risk Cost and Equity Cost) it intends to make. To ensure the transfer of the Financial Advantage fully to the Final Recipients, and considering that the Guarantee Fee will be zero, such level cannot be lower than 80%.

**Cap Rate**

The Applicant shall provide a proposal for the level of Cap Rate required for the Maximum Portfolio Volume it identified, based on the historical performance of similar loans originated by it, which cannot exceed the maximum allowed Cap Rate set at 20%.

* + 1. **Marketing Strategy**

The Applicant should outline its strategy to reach Final Recipients and inform them on the availability and conditions of the financing. In particular, the marketing strategy should include the following:

**Communication and promotion**

This section should describe how the Applicant plans to communicate and promote the Financial Instruments. Potential Final Recipients should be made aware that financial assistance is available to them and then be informed that the assistance they receive is secured with RRF. The marketing strategy proposed by the Applicant should specify at least the channels and instruments used to promote the Financial Instrument (i.e. types of on-site events, advertising on relevant websites, including a dedicated section on the Financial Intermediary’s website, other promotional events/actions, etc.). The proposed communication plan will be assessed considering, *inter alia*, its coverage, effort and resources deployed.

If the Romanian authorities make additional efforts to inform the general public about the RRP, these should be described in this section together with potential synergies between the proposed marketing strategy and other information efforts.

**Management of the relations with Final Recipients**

In this section, the Applicant should describe how the relations with the Final Recipients are managed in the following phases of access to the Financial Instrument:

1. Application submission: the Applicant should specify the channels made available to the Final Recipient to submit the request for Loans, *inter alia*:
   * 1. the number and location of agencies in the Target Area;
     2. any supporting instruments made available to the Final Recipients for the submission of the request (i.e. call centres, chat bot on the website, application guidelines, etc.).
2. Application assessment: the Applicant should outline how the Final Recipients are informed on the progress and the results of the assessment and the expected timings for completing the assessment process.

**7.2.6 Selection methodology for Final Recipients**

The Applicant should describe a robust and credible methodology for checking and controlling the Eligibility Criteria when identifying and appraising Final Recipients and ensuring that the selection is in line with the requirements of the Applicable Laws and those of this Call and the ensuing Operational Agreement, as well as State aid rules where relevant. Without prejudice for any other terms, conditions and requirements under this Call, it is understood that the Final Recipients to be financed and the relevant investments and/or projects have to comply with the Do No Significant Harm principle, within the meaning of article 17 of Regulation (EU) No 2020/852, amending Regulation (EU) 2019/2088 and as set out in the Commission’s Do No Significant Harm Technical Guidance (2021/C58/01).

The Applicant should also provide a description of the approval procedures for Loans to Final Recipients (process, delegation of approval powers, limits, etc.).

* 1. **Operating Principles**

**7.3.1 Management Team**

The Applicant should outline the roles and responsibilities of the management team, its experience in the implementation of financial instruments and/or loans and detail how specific departments or individuals fit their proposed roles.

It should describe how the management team fits into the broader organisation of the Financial Intermediary and indicate the experts and departments that would contribute to both the Financial Instrument and other activities of the Financial Intermediary such as the risk management or legal departments. Where relevant, it should also show how conflicts of interest are avoided.

This section can also detail any capacity building activities for existing staff or delegation of knowledge-intensive tasks to sub-contractors. It should further outline the roles and responsibilities of internal teams such as team involved in the evaluation of the applications, risk management team or any other internal control body.

Short CVs for key persons involved in the management of the Financial Instrument should be provided, with indication of years of experience in the relevant, previous experience in dealing with financial instruments, project experience, relevant track record with description of industry/type of investment/role of the person in the transaction and returns, etc.

**7.3.2 Conflict of Interest**

The Applicant should describe how it will ensure the impartiality of the selection process for Final Recipients. It should identify any existing conflicts of interest and describe conflict of interest procedures. The Applicant shall also indicate the proposed measures to align interests and to mitigate possible conflicts of interest

**7.3.3 Exit Policy**

The Applicant should describe its normal exit strategy and, where necessary, early withdrawal procedures from the Loans, along with their trigger conditions.

**7.3.4 Winding-up provisions**

The Applicant should briefly describe the winding up procedures for the Financial Instrument, including conditions for returning any resources attributable to the FoF. This would include receipts from recoveries. Winding-up may take place before or after the end of the Eligibility Period.

Winding up procedures relate typically to repayment or termination by the Financial Intermediary of the Loans in a portfolio, and the consequences of a termination. The Applicants are requested to describe how their proposed winding-up provisions will be consistent with the proposed exit strategy, i.e. how they will ensure that all Loans in the portfolio will be repaid or otherwise enforced, so that there is no outstanding claim by the timelines described in the Operational Agreement.

1. **Conditions regarding joint offers and subcontracting**
   * 1. Joint offers in general.

Groups of economic operators, including consortia and temporary associations (the “Groups”) are authorised to submit EoIs (“Joint Offers”). In this case, each member of the Group shall fulfil the requirements and accept the terms and conditions set out in this Call for Expression of Interest. The members of the Group shall designate one member as Group Leader with full authority to bind the Group and each of its members. The Group Leader shall act as a single point of contact with the EIB in connection with the present procurement procedure. While Groups are not required to have a specific legal form in order to submit an EoI, the Group selected may be required to adopt a given legal form after it has been selected and before an Operational Agreement is signed.

* + 1. Documentation and information to be provided.

In the section of the EoI related to the exclusion and administrative criteria situation, the Group shall clearly specify the role and tasks of each member of the Group (see Annex 3). In addition, each member of the Group must provide the following:

a. documentation related to its exclusion situation;

b. documentation related to the administrative criteria;

c. a letter of intent, designating the Group Leader and ensuring the proper execution of the respective share of tasks if the Group is awarded the contract by using the declaration contained in Appendix 2 of Annex 3.

* + 1. Joint Offers submitted by Groups will be assessed as follows:

a. the exclusion criteria and the administrative criteria will be assessed in relation to each member of the Group individually;

b. the assessment criteria will be assessed in relation to the Offer/EoI.

c. the compliance due diligence assessment in accordance with section 12.

Since all members of the Group will be jointly and severally liable towards the EIB for the performance of the Agreement, statements included in the joint offer saying, for instance:

• that each member of the Group will be responsible only for a specific part of the Operational Agreement, or

• that a separate Operational Agreement should be signed with each member of the Group if the joint offer is successful,

are incompatible with the principle of joint and several liability. The EIB will disregard any such statement contained in a Joint Offer/EoI, and it reserves the right to reject such Offers without further evaluation, on the grounds that they do not comply with these requirements.

If any member of the joint offer fails either the exclusion or administrative criteria, the Applicant will be excluded from further evaluation in the competition.

* + 1. Joint offer during the contract implementation.

All members of the Group shall be jointly and severally liable towards the EIB for the performance of the Agreement and they shall comply with the terms and conditions of the Operational Agreement and ensure the proper execution of their respective share of the services.

The Group Leader – duly authorised by the other members of the Group – shall act as a single point of contact with the EIB in connection with the services to be provided under the Operational Agreement; it shall co-ordinate the provision of the services by the Group members to the EIB; it shall guarantee a proper administration of the contract.

The composition of the Group and the allocation of tasks among the members of the Group shall not be altered without prior written information to the EIB.

* + 1. Subcontracting in general.

The Applicants may subcontract part of the tasks specified in this Call for Expression of Interest to other economic operators, as long as the services are provided in accordance with this document but with the exception of the following critical tasks, which cannot be subcontracted as these are fundamentally linked with the management of the mandator’s funds and are closely linked with the quality of the Applicant both in terms of its capacity to underwrite/service the loans and its capacity to apply adequate risk management practices (the “Core Activities”):

- activities relating to lending (indicatively selection, appraisal, financing / underwriting and servicing of loans);

- activities relating to risk management framework (including but not limited to risk assessment, internal risk models, internal credit risk guidelines and policies, other internal risk guidelines, loan approval procedures, collateral requirements, early warning systems, limits framework, credit risk monitoring practices and procedures).

By way of exception, the Applicants may subcontract tasks related to the recovery process, (despite the fact that they would otherwise be considered as Core Activities). Without prejudice to the other provisions of the EoI relating to subcontractors, in the case of subcontracting of activities relating to the recovery process, the Applicant should provide:

- a description of how this process will be managed; and

- all relevant information requested in the EoI with respect to the Applicant as part of the Business Plan also for the relevant subcontractor (including recovery track record and capabilities).

In case of subcontracting the Applicants shall clearly state in the section of the EoI related to the Applicant’s exclusion situation and capacity as per Annex 1 and its Appendices:

a. which tasks it intends to subcontract and clearly indicate the roles, activities and responsibilities of the subcontractor(s);

b. specify the volume or proportion of the activities likely to be subcontracted.

6) Assessment of subcontractors.

In case of subcontracting, the EoI will be assessed as follows:

a. the exclusion criteria and the administrative criteria will be assessed in relation to each proposed subcontractor individually;

b. the assessment criteria will be considered on a consolidated basis – Applicant plus subcontractor(s) – and will be evaluated in relation to the Offer/EoI;

c. the compliance due diligence assessment in accordance with section 12.

Where an Applicant is relying on the capacity of subcontractor(s), such entities must (i) be proposed to perform those services for which these capacities are required and (ii) submit a letter of undertaking in the EoI to that effect.

N.B. If a subcontractor does not fulfil one of the exclusion or administrative criteria, the Bank will require that the Applicant replaces that subcontractor. Failure to provide such replacement to the full satisfaction of the Bank within a deadline specified by the Bank shall result in the elimination of the Applicant.

7) Subcontracting during the contract implementation.

Once the Operational Agreement has entered into force, the successful Applicant shall retain full liability towards the EIB for the performance of the Operational Agreement as a whole. The EIB will not have any direct legal commitment with the subcontractor(s). During the execution of the Operational Agreement, the Selected Applicant will need EIB’s express authorisation to replace a subcontractor with another subcontractor and/or to subcontract tasks for which subcontracting was not envisaged in the original EoI.

**9. Exclusion Criteria**

All Applicants shall provide the declaration in Appendix 4 (“Declaration of Honour on Exclusion Criteria and Conflict of Interest”) regarding the Exclusion Criteria and the absence of conflict of interest, duly signed and dated by an authorised representative, stating that they are not in one of the situations listed in Appendix 4.

The selected Financial Intermediary shall provide the documents mentioned as supporting evidence in Appendix 3 before signature of the Operational Agreement and within the deadline specified by the EIB.

**10. Administrative Criteria**

Applications not excluded in accordance with the Exclusion Criteria, will be assessed on the basis of the following Administrative Criteria:

* The EoI includes a completed table in the form attached as Appendix 1 and all supporting documents are provided;
* Declarations indicated in Appendices 2 and 3 are completed, supported by the necessary documentary evidence, and is acceptable to the EIB.

**11. Assessment Criteria**

EoIs which have not been excluded on the basis of the Exclusion Criteria and which meet the Administrative Criteria will be evaluated on the basis of the Assessment Criteria, as described in the table below.

In case the score received in any of the below Assessment Criteria is equal to zero (0), such EoI will be excluded.

|  |  |  |
| --- | --- | --- |
| **Criterion** | **Assessment rules** | **Scoring** |
| **Qualitative Assessment Criteria (1 – 4)** | | **0-50** |
| 1. Quality of legal, ownership, management and governance structure, internal controls, and risk management | The Applicant shall demonstrate adequate organisational capacity to implement the FI, including:   * organisational structure and governance framework, * risk management, including conflict of interest management and conflict of interest preventive management measures, * organisational and administrative capacities, * monitoring and reporting procedures put in place, * efficient and effective internal control and accounting systems and procedures, and * consistency of winding up provisions with the exit strategy,   in order to meet objectives as presented in the Business Plan.  For further information, please see sections: 7.1.1, 7.1.2, 7.3.2, 7.3.3 and 7.3.4. | 0-5 |
| 1. Economic and financial capacity | The Applicant shall provide evidence to the satisfaction of the EIB of its economic and financial viability and its entitlement to carry out the tasks foreseen herein and in its Business Plan under EU and national law.  For further information, please see section 7.1.3. | 0-5 |
| 1. Adequate capacity to implement the Financial instrument | The Applicant shall demonstrate adequate capacity to implement the FI by reference*, inter alia*, to:   * experience with the deployment of (i) public guarantee schemes in the form of financial instruments, or (ii) EU/EIB/EIF products including risk sharing, loans or funded/unfunded guarantees; * its competitive position and market share in Romania in lending to eligible Final Recipients for eligible investments; * its historical lending volumes in the last three years to eligible Final Recipients for eligible investments; * its team of experts with expertise and experience in relevant fields.   The information provided in this section will be used among others to assess the reliability and credibility of the proposed Maximum Portfolio Volume.  For further information, please see sections 7.1.4 and 7.3.1. | 0-25 |
| 1. Quality of the investment strategy | The quality of the Applicant’s proposed investment strategy will be assessed through:   * level of understanding and compliance with RRP objectives and the FoF’s Investment Strategy as set out in Section 3 of this Call; * ability to launch the product and to build-up the Guaranteed Portfolio without unnecessary delay; * adequacy of expected characteristics of the Guaranteed Portfolio; * reliability and credibility of the proposed the marketing strategy for the FI; and * robustness of the methodology of selection proposed for Final Recipients, including mechanisms to avoid conflict of interests.   For further information, please see sections 7.2.1, 7.2.2, 7.2.4 and 7.2.5. | 0-15 |
| **Quantitative Assessment Criteria (5 – 6)** | | **0-50** |
| 1. Improvement of access to finance to Final Recipients - Transfer of Financial Advantage | The Applicant shall provide a proposal regarding the level of reduction in the Risk Costs and Equity Costs of the Loans, which will be transferred to the Final Recipients by making reductions in the interest rates of the Loans. | 0-25 |
| 1. Cap Rate | The Applicant shall provide a proposal for the level of Cap Rate required for the Maximum Portfolio Volume it identified, based on the historical performance of similar loans originated by it. | 0-25 |

**Note 1 – Scoring of items 1-4**

Scoring of items from 1 to 4 will be given on the basis of a qualitative analysis.

**Note 2 – Scoring of item 5**

Proposals under item 5 will be assessed based on the level of Interest Rate Reduction indicated by the Applicants in Section 7.2.4. The Applicant(s) indicating the highest level of Interest Rate Reduction will receive 25 points. The levels indicated by other Applicants will be compared to the highest level and will be awarded proportionally using the formula below:

Score for Applicant X = Proposal of Applicant X × 25

Highest Proposal

**Note 3 – Scoring of item 6**

Proposals under item 6 will be assessed based on the level of Cap Rate indicated by the Applicants in Section 7.2.4. The Applicant(s) indicating the lowest level of Interest Rate Reduction will receive 25 points. The levels indicated by other Applicants will be compared to the highest level and will be awarded proportionally using the formula below:

Score for Applicant X = Lowest Proposal × 25

Proposal of Applicant X

1. **Compliance due diligence assessment**

All Applicants shall provide at the moment of submitting their offers a completed Wolfsberg Questionnaire, duly signed and dated by an authorised representative; also, if requested by EIB, copies of internal policies and procedures regarding AML-CFT, sanctions compliance and Anti-Fraud/Corruption; and any other further information that may be requested by the EIB.

Additionally, the EIB will carry out a compliance due diligence assessment of the Selected Applicants’ financial standing, governance and origination capacity and their suitability to manage the Financial Instrument in terms of their risk management framework, systems, policies and procedures described in the EoI in order to ensure their reliability and credibility taking into account the specific market. In case of a joint offer, the above compliance due diligence assessment will be conducted in relation to each member of the Group individually.

The assessment will be conducted on a pass/fail basis. If a negative assessment results in respect of the Selected Applicant (whether sole or joint offer), the Selected Applicant will no longer be included in the EIB recommendation to the Investment Board. In the case of a subcontractor, the EIB may require that the Selected Applicant replaces that subcontractor with another having equal or greater quality –- failure to provide such replacement to the full satisfaction of the EIB shall result in the elimination of the Selected Applicant.

1. **Privacy statement**

During a call for expression of interest the EIB may get access to certain personal data (information related to an identified or identifiable natural person). The purpose of this Privacy statement is to provide information about the collection and use of personal data at the EIB. By applying to this call for expression of interest, the Applicant hereby provides consent to have the personal data processed in accordance with this Section.

**What is the purpose of the collection of personal data?**

Upon reception of your EoI, your personal data is collected and further processed for the purpose of a call procedure (e.g. the selection of experts and financial intermediaries, verifying the representation right, contact details etc., and the evaluation) and the management of the resulting contracts. Personal data collected and further processed concerns the staff employed by the Applicant, including consortium partners and subcontractors participating in call procedures and entering into a contractual relation with the EIB.

**What is the legal basis for processing personal data?**

Personal data are processed by the EIB in accordance with Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC. The legal basis for processing of personal data in the course of the implementation of financial instruments, is Article 38 (4)(b)(i) of the CPR of Commission Regulation 1303/2013.

Personal data are *inter alia*

* Personal details (e.g. name, address, ID number, passport number, e-mail address, phone/fax numbers, date of birth);
* Professional details (e.g. function, company department, e-mail address, phone/fax numbers);
* Education and training details (CV’s or short descriptions (pen portraits) of team members);
* Information required in relation to the evaluation of the exclusion criteria such as certificates for social security contributions and taxes paid, extracts from judicial records, etc.
* VAT registration number;
* Bank details.

**Who has access to your personal data and to whom is it disclosed?**

* EIB’s Staff of the Procurement and Purchasing Division;
* EIB’s Staff of the Operations Directorate;
* EIB’s Staff of the Legal Directorate;
* Relevant senior management of the requesting EIB Department and contract managers;
* External legal advisers;
* Investment Board;
* Only in special situations to:
  + EIB’s Office of the Chief Compliance Officer;
  + EIB Internal Audit;
  + EIB legal services;
  + EIB’s Inspectorate General;
  + European Court of Auditors;
  + European Data Protection Supervisor.
  + Or other authorities EIB is obliged to provide such personal data under applicable legal frameworks.

**Actors in the data collection**

* Controller: EIB Corporate Services Directorate
* Processor: EIB Procurement and Purchasing Division

**How does the EIB process personal data?**

The data collected is processed either manually or electronically.

* Manual processing: hard copies of the submitted offers (which may contain personal data, as specified above) are stored unopened until the opening session. Then, they are made available to the duly appointed members of the opening committee. Upon termination of the evaluation process, the “hard” originals of the tenders together with electronic copies in the form of CDs/USB sticks are stored in EIB Central Archives.
* Electronic processing: the Investment Board always receives electronic versions of the expressions of interest through a dedicated, restricted area in EIB’s electronic document management system (Livelink) where they are also stored after the assessment process.

**How do we protect and safeguard your information?**

Data are stored

* Electronically in specific areas of EIB electronic document management system (Livelink) with restricted access rights;
* Paper files are stored in archives, locked and only accessible to EIB’s Central Archiving team.

In both cases, access and control rights to the files are limited and granted only on a need-to-know basis.

**How long is your personal data kept?**

The data of the Selected Applicant shall be retained for the duration of the Guarantee Agreement between the EIB and the Selected Applicant, plus two years in the central archives, unless these are needed in the context of litigation or claims extending beyond this duration. The data of unsuccessful Applicants shall be retained for four years, unless these are needed in the context of litigation or claims extending beyond this duration. After the periods mentioned above have elapsed, the files are destroyed.

**What are your rights and how can you exercise them?**

You as a Data Subject shall have the right of access to your personal data and the right to request to rectify or to erase any such data that is inaccurate or incomplete. You also have the right to object to processing and the right to request a restriction of the processing. You can exercise these rights by contacting the processor (acting on behalf of the controller) CS/IMP/PROCUR division (CS-procurement@eib.org) or EIB’s Data Protection Officer ([p.donos@eib.org](mailto:p.donos@eib.org) or dataprotectionofficer@eib.org). In addition, you also have the right to have recourse at any time to the European Data Protection Supervisor [edps@edps.europa.eu](mailto:edps@edps.europa.eu).

**Annex 1**

**To: European Investment Bank**

Attention:

|  |  |
| --- | --- |
| **Call for Expression of Interest No.:** |  |
| **Deadline for the submission of the Expression of Interest :** |  |
| **Expression of Interest for Financial Instrument:** |  |
| **Applicant submitting the Expression of Interest:** | **\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_**  **(company name, registration number / standard identification code, if applicable)** |

Sir/madam,

Herewith we are submitting our Expression of Interest on behalf of [name of Applicant] in response to the Call for Expression of Interest No. [ ] in the framework of the FoF implemented through the EIB acting as agent of the Ministry of Investment and European Projects of Romania in the context of the Recovery and Resilience Plan for Romania**.** Capitalised expressions utilised herein shall have the meaning attributed to them in the above-mentioned Call for Expression of Interest.

The undersigned, duly authorised to represent the [name of Applicant], by signing this form certifies/certify and declare(s) that the information contained in this Expression of Interest and its Appendices is complete and correct in all its elements, and that the applicant has examined and accepts without reserve or restriction the entire contents of the Call for Expression of Interest.

The undersigned duly authorised to represent the [name of Applicant], by signing this form certifies and declares to have read the EIB Anti-Fraud Policy and declares not to have made nor to make any offer of any type whatsoever from which an advantage can be derived under the Operational Agreement and not to have granted nor to grant, not to have sought nor to seek, not to have attempted nor to attempt to obtain, and not to have accepted nor to accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to signing of the Operational Agreement. The Applicant acknowledges and agrees that, if selected, it shall accept the obligations listed in the Call for Expression of Interest.

The undersigned duly authorised to represent the [name of Applicant], by signing this form certifies and declares that the Applicant shall comply with relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud and that is not established and shall not maintain business relations with entities incorporated in territories whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standard.

The undersigned, duly authorized to represent the [name of Applicant], by signing this form certifies and declares that the [name of Applicant] does not perform illegal activities according to the applicable legislation in the country of establishment.

Yours sincerely,

Signature(s): Stamp of the Applicant (if applicable):

Name and position in capitals:

Applicant’s name:

Place: Date (day/month/year):

**ENCLOSED:**

1. Expression of Interest in the form set out in Appendix 1

2. Declarations to be made by the Applicant in the forms set out in Appendices 2-4

3. Business Plan attached as Appendix 5 (in line with the provisions set out in section 8)

# **Appendix 1 – Expression of Interest**

EXPRESSION OF INTEREST

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(name of Applicant)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(place of signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(date)

**1.** **Information about the Applicant**

**1.1. General information about the Applicant**

Expressions of Interest may be submitted by a consortium that, if awarded the contract, may assume a legal form by incorporation, partnership or otherwise which would enable the members of the consortium to contract as a single entity. Where such a consortium exists the Applicant shall be responsible towards the EIB and shall act as the interface between the EIB and the members of the consortium.

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Company Name**\* (Full legal name) | |  | | | | | | | |
| Address\* | |  | | | | | | | |
| Postal code & City\* | |  | | | | | | | |
| Country \* | |  | | | | | | | |
| Legal form of the Applicant\* | |  | | | | | | | |
| Date of registration (entry into the trade register)\* | |  | | | | | | | |
| Country of registration\* | |  | | | | | | | |
| Registration number \* (copy of registration certificate to be attached) | |  | | | | | | | |
| VAT registration number\* | |  | | | | | | | |
| SME | |  | yes | |  | no | | *Please tick the box as applicable* | |
| *SMEs are defined in Commission Recommendation 2003/361/EC as companies with fewer than 250 staff and a turnover not exceeding 50 million euros* | | | | | | | | | |
|  | | | | | | | | | |
| **Contact Person 1**\* |  | | | **Contact Person 2**\* | | | | |  |
| Work Title\* |  | | | Work Title\* | | | | |  |
|  | | | | | | | | | |
| E-mail address 1\* |  | | | E-mail address 1\* | | | | |  |
| E-mail address 2 |  | | | E-mail address 2 | | | | |  |
|  | | | | | | | | | |
| Telephone number 1\* |  | | | Telephone number 1\* | | | | |  |
| Telephone number 2 |  | | | Telephone number 2 | | | | |  |
|  | | | | | | | | | |
| I hereby certify the above information to be true. | | | NAME | | | |  | | |
|  | | | TITLE | | | |  | | |
|  | | | DATE | | | |  | | |
| Signature\* | | | | | | | | | |
| *NB: All mandatory fields (marked by an asterisk\*) must be filled in.*  *Legal Disclaimer: the Applicant is responsible for the above information. The EIB does not accept any responsibility or liability for the accuracy, content, completeness, legality, or reliability of the information received via this form* | | | | | | | | | |

**Appendix 2 - Deed of Undertaking**

**1. Organisation of the Applicant**

1.1 Please tick the box below, as applicable:

|  |  |  |  |
| --- | --- | --- | --- |
| 🞏 | 🞏 | 🞏 | 🞏 |
| Sole Applicant  with no declared subcontractor | Sole Applicant  with declared subcontractor(s) | Consortium  (joint offer by a group of economic operators)  with no declared subcontractor | Consortium  (joint offer by a group of economic operators)  with declared subcontractor(s) |

1.2 In case of a sole Applicant, please provide the information in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| Name of the Applicant | Legal form | Address in full | Name of the authorised representative |
|  |  |  |  |

1.3 In case of consortium, please provide the information in the tables below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Information on the leader of the consortium[[8]](#footnote-8)** | | | | |
| Name of the consortium leader | Legal form | Address in full | Name of the authorised representative | Roles, activities and responsibilities within the consortium[[9]](#footnote-9) |
|  |  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Information on the members of the consortium** | | | | |
| Name of the consortium member | Legal form | Address in full | Name of the authorised representative | Roles, activities and responsibilities within the consortium[[10]](#footnote-10) |
|  |  |  |  |  |
| *(please add as many lines to the table as necessary)* |  |  |  |  |

1.4 In case of subcontracting, please provide the information in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| Name of the subcontractors | Address in full | Reason for subcontracting and scope of subcontracting[[11]](#footnote-11) | Value of the subcontracted part of contract (in EUR **and** as a percentage of estimated total amount of contract) |
|  |  |  |  |
| *(please add as many lines to the table as necessary)* |  |  |  |

**Appendix 1 - Consortium member declaration**

To be completed and signed by **each** member of the consortium in the case that a consortium submits an offer/EoI.

I the undersigned, as an authorized representative of:

|  |  |
| --- | --- |
| Applicant Name |  |
| Address |  |

**hereby declare**

* the intention to collaborate with *[name of the consortium leader]* in the execution of the tasks related to the Call for Expression of Interest referenced below;
* that I have appointed *[name of the consortium leader]* as the leader of the consortium which (i) will represent the consortium and act as the single contact point for communication and (ii) shall also have full authority to legally bind the consortium and each of its members (including the entity represented by me), and (iii) shall be responsible for the administrative management of the Operational Agreement on behalf of all other consortium members (including the entity represented by me).
* that, if successful in the award of the tender referenced below, I undertake to provide *[name of the consortium leader]* with the necessary resources to perform the services which *[name of the consortium leader]* intends to entrust to us under that contract;
* to have examined and accepted in full the content of the “Call for expression of Interest” and all their annexes:

|  |  |
| --- | --- |
| Call for Expression of Interest Number |  |
| Title |  |

**I also hereby acknowledge to have taken special note of and subsequently declare**

* that I, or the entity I represent, are not in any of the situations concerning exclusion and conflict of interest;
* that I have provided a duly signed Declaration on honour on exclusion criteria and selection criteria and on absence of conflict of interest (Annex 5);
* to have examined and accepted the provisions set in the Call for Expression of Interest in their entirety without reservation or restriction.

|  |  |
| --- | --- |
| Name: |  |
| Signature: |  |
| Position: |  |
| Date: |  |

**Appendix 2: Subcontractor declaration**

To be completed and signed by **each** respective subcontractor in the case that tasks will be subcontracted.

I, the undersigned, as an authorized representative of:

|  |  |
| --- | --- |
| Subcontractor’s Name |  |
| Address |  |

**hereby declare**

* the intention to collaborate with *[name of the Applicant]* in the execution of the tasks related to the Call for Expression of Interest referenced below;
* hereby declareto have examined and accepted in full the Call for Expression of Interest referenced below:

|  |  |
| --- | --- |
| Call for Expression of Interest |  |
| Title |  |

**I also hereby acknowledge to have taken special note of and subsequently declare**

* that I, or the entity I represent, are not in any of the situations concerning exclusion and conflict of interest;
* that, I have provided a duly signed Declaration on honour on exclusion criteria and selection criteria and on absence of conflict of interest (**Annex 5**).
* to have examined and accepted the provisions set in the Call for Expression of Interest without reservation or restriction;

|  |  |
| --- | --- |
| Name: |  |
| Signature: |  |
| Position: |  |
| Date: |  |

**Appendix 3 – Declaration to be made by the Applicant**

|  |  |  |
| --- | --- | --- |
| 1. | Name of the Applicant |  |
| 2. | Type of business |  |
| 3. | Represented by (name and position)  In case of the EoI being submitted by a consortium, a power of attorney or a cooperation agreement authorising the attorney to submit the EoI and the Business Plan and to represent the consortium at all stages of the selection procedure on behalf of the partners jointly applying for the contract should be submitted |  |
| 4. | ESMA Authorisation/ Custodian Bank etc. where applicable. |  |
| Questions 5 to 11 should be answered on behalf of the Applicantand any proposed subcontractors / consortium members. These questions will be assessed on a pass/fail basis. Responses should be stated in the form of “Yes”/“No” or “Certified” with accompanying detail provided where requested, either in the space provided or on separate sheets which should be referenced by the applicant. | | |
| 5. | Are there any liens or charges outstanding against the organisation at a commercial court (or any other relevant authority)? |  |
| 6. | Is the Applicant in receivership (or the subject of equivalent proceedings)?  If so:  (a) date of the receivership order:  (b) on what terms is the applicant authorised to carry on its activity? Specify in particular:   * the name and address of the receiver(s):. * the date and period of validity of the authorisation given by the official receiver or the court to continue the business or activity: |  |
| 7. | The Applicant certifies that neither the organisation nor any of the persons authorised to act on its behalf are in liquidation |  |
| 8. | Has the Applicant been the subject of any sentence, disqualification or penalty regarding the proper pursuit of commercial or industrial occupations, or under the rules on prices and competition? |  |
| 9. | Has the Applicant or any of the persons authorised to act on its behalf a conflict of interest that may affect the performance of the tasks referred to in this Call for Expression of Interest? |  |
| 10. | The Applicant certifies that it has complied with its tax and social obligations in accordance with the legal provisions of the country in which it is established |  |
| 11. | The Applicant certifies that it is entitled to carry out the tasks of implementation of FI under EU and Romanian law |  |
| 12. | The Applicant certifies that the information given above is correct |  |

Done at ................................................. (date) .................................................

STAMP NAME(S) SIGNATURE(S)

# 

**Appendix 4 – Declaration of Honour on Exclusion Criteria and Selection Criteria and on the absence of Conflict of Interest**

The undersigned …………………………………, representing:

|  |  |
| --- | --- |
| (*only for natural persons*) himself or herself | (*only for legal persons*) the following legal person: |
| ID or passport number:  (‘the economic operator’) | Full official name:  Official legal form:  Statutory registration number**:**  Full official address:  VAT registration number:  (‘the economic operator’’) |

**I – Situations of exclusion**

|  |  |  |
| --- | --- | --- |
| declares that: | YES | NO |
| 1. **Grounds relating to criminal convictions (Art. 57(1) of Directive 2014/24/EU)** | | |
| 1. **Participation in a criminal organisation**   Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment for participation in a criminal organisation? As defined in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42). |  |  |
| 1. **Corruption**   Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment for corruption? As defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997, p. 1, and in Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54). This exclusion ground also includes corruption as defined in the national law of the contracting authority (contracting entity) or the economic operator. |  |  |
| 1. **Fraud**   Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment for fraud? Within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48). |  |  |
| 1. **Terrorist offences or offences linked to terrorist activities**   Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment for terrorist offences or offences linked to terrorist activities? As defined in Articles 1 and 3 of Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3). This exclusion ground also includes inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision. |  |  |
| 1. **Money laundering or terrorist financing**   Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment for money laundering or terrorist financing? As defined in Article 1 (3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) |  |  |
| 1. **Child labour and other forms of trafficking in human beings**   Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment for child labour and other forms of trafficking in human beings? As defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1). |  |  |
| 1. **Grounds relating to the payment of taxes or social security contributions (Art. 57(2) of Directive 2014/24/EU)** | | |
| 1. **Payment of taxes**   Has the economic operator breached its obligations relating to the payment of taxes and has this breach been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority? |  |  |
| **(b) Payment of social security**  Has the economic operator breached its obligations relating to the payment social security contributions and has this breach been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority? |  |  |
| 1. **Grounds relating to insolvency, conflicts of interests or professional misconduct (Art. 57(4) of Directive 2014/24/EU)** | | |
| 1. **Breaching of obligations in the fields of environmental, social and labour law**   Has the economic operator breached its obligations in the fields of environmental, social or labour law? As referred to for the purposes of this procurement in the relevant notice or the procurement documents or in Article 18(2) of Directive 2014/24/EU. |  |  |
| 1. **Bankruptcy**   Is the economic operator bankrupt? |  |  |
| 1. **Insolvency**   Is the economic operator the subject of insolvency or winding-up proceedings? |  |  |
| 1. **Arrangement with creditors**   Is the economic operator in an arrangement with creditors? |  |  |
| 1. **Analogous situation to bankruptcy under national law**   Is the economic operator in any analogous situation to bankruptcy arising from a similar procedure under national laws and regulations? |  |  |
| 1. **Assets being administered by liquidator**   Are the assets of the economic operator being administered by a liquidator or by the court? |  |  |
| 1. **Business activities are suspended**   Are the business activities of the economic operator suspended? |  |  |
| 1. **Agreements with other economic operators aimed at distorting competition** Has the economic operator entered into agreements with other economic operators aimed at distorting competition? |  |  |
| 1. **Guilty of grave professional misconduct**   Is the economic operator guilty of grave professional misconduct which renders its integrity questionable? Where applicable, see definitions in national law, the relevant notice or the procurement documents. |  |  |
| 1. **Early termination, damages or other comparable sanctions**   Has the economic operator shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions? |  |  |
| 1. **Serious misinterpretation**   Has the economic operator:   1. been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, 2. withheld such information, or 3. is not able to submit the supporting documents required pursuant to section IV of this declaration? |  |  |
| 1. **Undue Influence**   Has the economic operator undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award? |  |  |
| 1. **Other Grounds** | | |
| 1. **EIB Exclusion Policy**   Is the economic operator the subject of a current Exclusion Decision issued by the EIB which makes them ineligible for the award of contracts by the EIB?  If so, please provide brief description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
| 1. **Sanctions**   Is the economic operator itself, or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein, the target of a sanction or restrictive measure[[12]](#footnote-12) imposed or administered by: |  |  |
| 1. the European Union[[13]](#footnote-13); or |  |  |
| 1. the United States of America? |  |  |

**II – Conflict of Interest**

|  |  |  |
| --- | --- | --- |
|  | YES | NO |
| Is the economic operator aware of any **conflict of interest**\*, as indicated in national law, the relevant notice or the procurement documents due to its participation in the procurement procedure?  **If yes**, please provide details: |  |  |
| Has the economic operator or an undertaking related to it **advised** the contracting authority or contracting entity or otherwise been **involved in the preparation** of the procurement procedure?  **If yes**, please provide details: |  |  |

\**A conflict of interest could arise in particular as a result of direct or indirect economic, financial, political or national affinity, family, emotional life or any other shared interest.*

**III – Remedial measures**

If the economic operator declares one of the situations of exclusion listed in sections I or II above, it can provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. Such measures, which will be reviewed by the contracting authority in light of Article 57 of Directive 2014/24/EU, may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines. The relevant documentary evidence which illustrates the remedial measures taken must be provided in an annex to this declaration.

The provision of remedial measures does not apply to:

* point I.D (Other Grounds), except where a natural person who is a member of the economic operator’s administrative, management or supervisory body or has powers of representation, decision or control therein is the target of a sanction or restrictive measure, in which the case the economic operator may propose as a remedial measure that the natural person(s) concerned shall not be involved in the proposed contract, or
* during a period of exclusion from participation in procurement or concession award procedures imposed by a final judgment in the Member States where the judgment is effective.

**IV – Evidence upon request**

Upon request and within the time limit set therein, the contracting authority will require the economic operator to submit the following means of proof as evidence for the absence of grounds for exclusion declared in sections I and II of this declaration:

1. as regards point I.A (grounds relating to criminal convictions), the production of an extract from the relevant register, such as judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the Member State or country of origin or the country where the economic operator is established showing that those requirements have been met; and
2. as regards point I.B (payment of taxes or social security contributions) and paragraphs (b) – (g) of point I.C (insolvency, conflicts of interests or professional misconduct), a certificate issued by the competent authority in the Member State or country concerned.

Where the Member State or country in question does not issue such documents or certificates, or where these do not cover all the cases specified in points I.A, I.B or in paragraphs (b) – (g) of point I.C, they may be replaced by a declaration on oath or, in Member States or countries where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the Member State or country of origin or in the Member State or country where the economic operator is established.

The economic operator is not required to submit the evidence if it has already been submitted for another procurement procedure with the same contracting authority. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date. The signatory declares that the economic operator has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

|  |  |
| --- | --- |
| **Document** | **Full reference to previous procedure** |
| *Insert as many lines as necessary.* |  |

**V – Exclusion Effect**

The contracting authority shall exclude the economic operator from participation in a procurement procedure if:

* the contracting authority has established by verification, or is otherwise aware, that the economic operator is in one of the situations listed in **sections I to II of this Declaration**, and
* in the case of sub-section ii of point I.D(b) (US Sanctions), (1) the proposed contract for which the economic operator is applying has a US Nexus,[[14]](#footnote-14) or (2) the sanction or restrictive measure in question is not in conflict with [EU Regulation (EC) 2271/96](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996R2271) (“Blocking Regulation”) as amended from time to time, and
* if any remedial measures are proposed in accordance with section III of this Declaration, such measures are not, to the satisfaction of the contracting authority, sufficient to demonstrate the economic operator’s reliability.

**VI – Evidence for selection**

The signatory declares that the economic operator is able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.

The economic operator is not required to submit the evidence if it has already been submitted for another procurement procedure. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the economic operator has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

|  |  |
| --- | --- |
| **Document** | **Full reference to previous procedure** |
| *Insert as many lines as necessary.* |  |

***The economic operator may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.***

Full name Date Signature

**Annex 2**

**Recovery and Resilience Facility of Romania: Capped Portfolio Guarantee – Term Sheet with Key Terms and Conditions**

|  |  |
| --- | --- |
| **Product type** | Unfunded, capped guarantee provided on new eligible[[15]](#footnote-15) exposures.  The EIB and the Ministry Investment and European Funds of Romania (“MIEP”) entered into a Funding Agreement to set-up a Fund of Funds (“FoF’’) structure in the context of deploying the Recovery and Resilience Facility of Romania (“RRF”).  The guarantee (“Guarantee”) will be provided by the EIB through the FoF for the benefit of a Financial Intermediary (“FI”). |
| **The structure of the Guarantee, Guarantee Rate, Cap Rate and Guarantee Amount** | Credit risk coverage will be provided on a transaction-by-transaction basis, covering defaulted amounts[[16]](#footnote-16) in line with the Guarantee Rate and up to the maximum risk coverage.  The Guarantee Rate will be 80%. The Financial Intermediary that grants the underlying guaranteed exposure needs to ultimately retain the remaining 20% of risk.  The Cap Rate shall be proposed by the Applicant as part of its application to CEoI, considering the Maximum Portfolio Volume it identified and based on the historical performance of similar loans it originated. The Cap Rate can be maximum 20%. Accordingly, the Guarantee Amount[[17]](#footnote-17) (i.e. the maximum liability for the EIB) will be capped at a maximum 16% of the size of Guaranteed Portfolio, assuming a maximum Cap Rate of 20%. The Guarantee Amount and Guaranteed Portfolio’s size will be specified in the guarantee agreement (“Operational Agreement”) to be signed with the Financial Intermediary and denominated in Euro. Should the RRF funds disbursed to the EIB be eroded due to negative interest rates, the EIB’s liability regarding the Guarantee Amount will be limited to the funds available to it.  The tenor of the guarantee (i.e. final maturity) will be 15 years (or 25 years for projects implemented by small municipalities). Transactions to Final Recipients with a maturity of more than the tenor of the guarantee can also be included, provided that the guarantee coverage is limited to the tenor of the guarantee. |
| **Benefits of the product** | Financial Intermediaries:   * Provides significant risk protection; * Might potentially provide capital relief[[18]](#footnote-18)2; * Alleviates internal concentrations and limit restrictions on individual obligors and/or sectors; * Implemented under a full delegation approach;   thus facilitating new lending, also potentially by including high risk projects which might not have been financed without the guarantee.  Final Recipients:   * Increases accessibility of finance for high risk projects, which might not have been financed without the guarantee; * Facilitates access to finance at beneficial terms in the form of reduced interest rates, and potentially also by lowering the collateral requirements. |
| **Geographic eligibility of Financial Intermediaries** | (i) FIs incorporated in Romania;  (ii) FIs incorporated in other EU Member States, but operating through branches in Romania. |
| **Full delegation** | Upon selection and signing of the Operational Agreement, the Financial Intermediary will benefit from a full delegation of the origination, granting, monitoring, restructuring and recovery functions in line with the eligibility rules, the terms and conditions of the Guarantee Agreement, applicable laws and regulations (including the State Aid rules, which are further detailed below).  The Financial Intermediary shall perform the servicing of the portfolio, including monitoring and recovery actions. EIB’s prior consent or approval shall not be required for any amendments and waivers or any recovery action with regard to the covered transactions, provided that these are carried out for the purposes of improving the collectability of any claim under the covered transactions and in accordance with the Financial Intermediary’s credit policies, unless otherwise agreed in the Operational Agreement or in accordance with the Funding Agreement.  The Financial Intermediary shall comply at all times with its own credit risk policies and guidelines and shall inter alia (i) originate and monitor any transaction and (ii) consent to amendments and waivers, in each case in accordance with such policies.  The Financial Intermediary shall not make any amendments to its credit risk policies and guidelines that may have a material adverse effect on the ability of the Financial Intermediary to perform, operate, monitor and/or service the portfolio or materially adversely affect the operation, performance, monitoring or workout of the transactions, without the prior written consent of the EIB.  Further to the transaction granting and monitoring, Financial Intermediaries will also be responsible for ensuring that the Final Recipients and guaranteed exposures comply with all eligibility rules, the RRF regulation[[19]](#footnote-19) and other applicable laws and regulations (such as state aid, environmental, procurement and competition among others). Financial Intermediaries will also need to undertake “Know Your Customer” or similar identification procedures for each underlying transaction to final recipients (whether those procedures are applied voluntarily by the Financial Intermediary or pursuant to any applicable law or regulation).  Financial Intermediaries will also need to provide, in a timely manner, the necessary information to the FoF and Romanian authorities, in order for MA to comply with the reporting obligations towards the Commission in accordance with Applicable Laws and undertake marketing and publicity measures on the involvement of the RRF support. Financial Intermediaries will need to act in accordance with all Applicable Laws and with a degree of professional care, efficiency, transparency and diligence expected from a financial institution. |
| **EIB selection process and criteria** | In accordance with its procurement guidelines, the EIB has launched a Call for Expression of Interest (“CEoI”) for the selection of the Financial Intermediaries.  To be selected, FIs will need to successfully undergo a Due Diligence (“DD”) process conducted by the EIB. The DD process will focus, inter alia, on the Financial Intermediary’s implementation proposal and origination capacity, financial standing, risk management framework, ownership structure and governance, and administrative capacity.  Successful Financial Intermediaries need to demonstrate strong capacity in (i) originating an eligible portfolio and (ii) identifying and managing credit risks appropriately and ensuring that the portfolio to be guaranteed adheres with certain quality standards as agreed with the EIB *ex ante* and (iii) improvement in the access to finance of final recipients as detailed in the section on *Transfer of the Financial Advantage to the Final Recipients*  The Financial Intermediaries will be selected according to the criteria that will be set out in the CEoI. The Financial Intermediaries will enter into Operational Agreements with the EIB on the basis of which they will receive risk protection from the FoF in the form of capped guarantees for the portfolio volumes agreed in the Operational Agreements. |
| **Eligible Final Recipients** | Eligible Final Recipients include:   * Large Mid-Caps; * Large Corporates; * Small Municipalities.   Large Mid-Caps are defined as enterprises that have between 500-2999 (full-time equivalent) employees.  Large Corporates are defined as enterprises with 3000 or more employees (full-time equivalent).  An enterprise is any entity engaged in an economic activity, irrespective of its legal form, thus encompassing also family firms, partnerships, liberal professionals and associations regularly engaged in an economic activity.  Small Municipalities are defined as municipalities with less than 100,000 inhabitants.  Regulated enterprises operating in the energy sector are not eligible as Final Recipients under this instrument.  Excluded activities (applies to all type of final recipients)  Final Recipients engaged in any of the excluded activities listed in Annex 3 to the CEoI are ineligible. |
| **Eligible Transactions** | Underlying exposures shall be non-subordinated and may be in the form of loans (revolving facilities, amortising/term loans including with bullet or balloon repayment profiles).  The guarantee may cover only new transactions that have been signed by the Financial Intermediaries during the Inclusion Period. Loans originated by the Financial Intermediaries 6 months prior to the signature of the Operational Agreement with the EIB shall be also eligible for the Guarantee.  In the case of term loans, underlying exposures shall be newly originated and shall not consist of the refinancing of an existing loan (e.g. in the form of a new loan taken to repay an existing loan held with the Financial Intermediary or with other entities, or in order to introduce new terms to an existing loan).  In the case of revolving (i.e. working capital) facilities, the renewal of an existing facility is also eligible in case the existing facility has reached either (i) its legal maturity, or (ii) a date when the Financial Intermediary retains contractually the right to renew or cancel the revolving facility. Such exposures, similar to all other exposures, will need at inclusion to comply with all eligibility and other contractual requirements of the Operational Agreement.  To be eligible the transaction should be performing as of the date reported to the EIB for inclusion in the portfolio and must have been performing for the entire period from contracting date to the date reported to the EIB for inclusion in the portfolio.  Transactions to be included under the Operational Agreement need to be signed no later than 30.06.2026.  **Transaction size**  Minimum: No minimum amount defined.  Maximum: Maximum amount in line with the section on Portfolio risk mitigants below. |
| **Eligible Projects** | A minimum of 41% and 21% of the Guaranteed Portfolio must to be dedicated to Climate and Digitalisation objectives respectively, based on the methodologies set out for climate and digital tracking as stated in Annexes VI and VII of the RRF Regulation. The remaining 38% can be dedicated to enterprises for general corporate financing purposes, including productive investments, thus contributing to national economic recovery.  The Eligible Projects need to comply with the ‘Do no significant harm” principle[[20]](#footnote-20) through the following measures:   1. use of sustainability proofing by applying the Commission’s technical guidance on sustainability proofing for the InvestEU Fund[[21]](#footnote-21); 2. exclusion of certain list of activities and assets from eligibility (see Annex 3 to the CEoI); and 3. ensuring compliance with the relevant EU and national environmental legislation.   Maximum Project Size: For all type of Final Recipients, projects with a cost of up to EUR 25 million are eligible.  Project Location: Only the projects implemented in Romania are eligible. |
| **State aid rules:** | The Financial Intermediaries will be required to ensure compliance with applicable State aid rules.  It is expected that Financial Intermediaries will be required to calculate the gross grant equivalent of the State aid benefit of the guarantee provided and utilise the relevant provisions of the General Block Exemption Regulation[[22]](#footnote-22) or the *de minimis* as required. |
| **Defaulted amount** | Defaulted amount means:   * + 1. any principal and/or interest amount (excluding late payment and default interest, capitalised interest, fees and any other costs and expenses) due, payable and outstanding at such time following the occurrence of either:  1. a Transaction Default; or 2. a Transaction Acceleration, or    * 1. any reduction in principal and/or interest (excluding late payment and default interest, capitalised interest, fees and any other costs and expenses and excluding amounts of principal in excess of the amounts paid by the Financial Intermediary to the Final Recipient) occurring as a result of a Transaction Restructuring,   and excluding in each case any interest amounts occurring after 90 (ninety) days following the date on which that transaction became a non-performing transaction. |
| **Transaction Default, Transaction Restructuring and Transaction Acceleration** | Transaction Default means, in respect of an included exposure and unless otherwise specified in the specific terms of the Operational Agreement that a Final Recipient has failed to meet any payment obligation under the relevant Transaction and that such payment default has continued for at least 90 consecutive calendar days.  Transaction Restructuring means, in respect of an included exposure, that the Financial Intermediary, acting in a commercially reasonable manner to improve the collectability or recovery of the claims arising from the relevant exposure and in accordance with its standard internal procedures and Credit Policies seeking maximum recoveries, agrees in writing to the restructuring of such exposure such that the amount of principal scheduled to be paid, and/or any interest amount due, by the relevant Final Recipient is reduced (and not merely deferred).  Transaction Acceleration means in respect of an included exposure and unless otherwise specified in the specific terms of the Operational Agreement, the occurrence of an event of default (howsoever defined) under the relevant Transaction which has entitled the Financial Intermediary to accelerate payment of any amounts owed to it and the Financial Intermediary has exercised such right of acceleration (or is prevented from exercising such rights of acceleration solely by application of mandatory laws and regulations preventing or staying the exercise of such right). |
| **Inclusion Period** | The Inclusion Period starts at the signature of the Operational Agreement with the Financial Intermediary and lasts until 30.06.2026. During the Inclusion Period, the Financial Intermediaries will be allowed to build a portfolio (“Guaranteed Portfolio”) by including eligible transactions under the Guarantee.  The Inclusion Period will terminate early in case certain credit-related and other material events occur, such as:   1. events or circumstances which would be an Event of Default if it were in the direct control of the Financial Intermediary (see below); 2. change of law, NCJ events, change of control, loss of rating event (or alternatively loss of rating clause based on the sovereign rating and financial covenants if no external rating is available to be agreed with the FI), underperformance of the Guaranteed Portfolio (i.e. defaulted amount above a pre-defined threshold) and material adverse change; 3. failure to meet the Intermediate Objective; 4. failure to meet the C&D Objective at the end of a grace period of 6 months. |
| **Milestones** | The Financial Intermediaries would be required to build:   * 30% of the Guaranteed Portfolio by 31.12.2024 (“Intermediate Objective”). The failure to do so would trigger the termination of the Inclusion Period; and * 100% of the Guaranteed Portfolio by 31.06.2026 (“Final Objective”). In case of failure, the Financial Intermediary would be required to return the portion of the Guarantee Amount corresponding to the unbuilt portion of the Guaranteed Portfolio to the EIB. * In addition, starting from 31 December 2023, the EIB will verify on a semi-annual basis that at a minimum 62% of the Guaranteed Portfolio is composed of Loans eligible for the Climate and Digitalisation Objective (“C&D Objective”). In case of failure to meet this requirement, the Financial Intermediaries will have a grace period of 6 months to remedy. |
| **Events of Default**  **&**  **Early termination of the Operational Agreement** | Standard events of default applicable to the Financial Intermediary (typically: failure to pay the due recoveries, breach of agreement, repudiation, illegality and certain insolvency events).  The occurrence of an Event of Default, if it has not been remedied within the relevant grace period (if any), may result in the termination of the Operational Agreement (such event, an “Early Termination”). Upon Early Termination, the risk coverage will be cancelled and all amounts due by the Guarantor and/or Financial Intermediary would be calculated in accordance with the terms of the Operational Agreement. |
| **Reporting, inclusion and payment demands** | All these functions are executed on a quarterly basis, and via pre-agreed standardised templates.  The EIB will validate the inclusion of underlying exposures under the Operational Agreement following eligibility and other contractual checks based on the information provided by the Financial Intermediaries through the quarterly report. For the avoidance of any doubt and unless a non-eligibility has been identified, the guarantee coverage is effective upon signature of the underlying exposure. |
| **Payment under the guarantee** | Within 60 days upon receiving a payment demand. |
| **Recoveries** | All recoveries shall be collected by the Financial Intermediary in line with its recovery policies and procedures.  The Guarantor will be entitled to receive a percentage of the recoveries (net of external recovery and foreclosure costs) equal to the Guarantee Rate.  Upon payment under the Guarantee, the Guarantor will be entitled to receive proportionately all rights related to the recoveries collected from the Final Recipient from that moment onwards, including proportionately any Creditor rights to which the Financial Intermediary is entitled with respect to Final Recipient undergoing dissolution, bankruptcy or any similar processes. |
| **Replenishment feature** | Financial Intermediaries may replenish the Guaranteed Portfolio with new eligible transactions to Final Recipients, provided that these transactions meet the eligibility criteria. Replenishment is possible until the end of the Inclusion Period.  During the Inclusion Period, Financial Intermediaries are invited to replenish the portfolio as many times as possible to maximise the impact of the Operational Agreement to the economy. |
| **Guarantee fee** | The Guarantee fee is intended to be set at zero, subject to the confirmation of the MIEP on the compliance of the zero fee with the State Aid regulations. |
| **Performing transaction** | A performing transaction is a transaction with respect to which no Defaulted amount has been incurred. |
| **Portfolio currency** | EUR and RON.  Only the transactions denominated in the Portfolio currencies can be included in the Guaranteed Portfolio. |
| **Base currency** | EUR  All payments between the Guarantor and the Financial Intermediary shall be made in the Base currency. In the case of payments relating to a transaction denominated in a Portfolio currency other than the Base currency, it shall be calculated using the relevant FX rates to be defined in the Operational Agreement[[23]](#footnote-23). The Guarantor shall not incur any financial liability as a result of Foreign Exchange fluctuations between Euros and the Romanian Leu.  *Notwithstanding any other provision of this Agreement, the liability of the Guarantor to pay the Guarantee Amounts under this Agreement* ***shall not exceed at any time in aggregate the Guarantee Amount****.* |
| **Guarantee termination date** | The Guarantee shall terminate on the earlier of:   1. a contractually stipulated date that will take into account the exposure with the longest possible guaranteed date; 2. the date on which an early termination event has occurred, 3. the date (if any) on which the Guarantor is no longer liable to effect further payments to the Financial Intermediary and has no further claims under the Guarantee. |
| **Governing law and language** | The terms of the Operational Agreement shall be in the English language and the Operational Agreement shall be governed by the laws of Luxembourg. |
| **Transfer of the Financial Advantage (“ToFA”) to the Final Recipients** | Financial Intermediaries will be required to Transfer the Financial Advantage created by the Guarantee to the Final Recipients by making reductions in the interest rates of the Loans. The interest rate reduction will be a function of the reduction in the standard Risk Cost and Equity Cost of a Loan (i.e. the Financial Advantage) thanks to the protection provided by the Guarantee. In its application, each Applicant shall specify the average level of interest rate reduction (to be expressed as a percentage of the Risk Cost and Equity Cost) it intends to make. To ensure the transfer of the Financial Advantage fully to the Final Recipients, and considering that the Guarantee Fee will be zero, such level cannot be lower than 80%. Such level of interest rate reduction shall be applied equally to all Loans originated by the Applicant independent of characteristics such as maturity and risk rating. The levels indicated by the Applicants will used as one of the Assessment Criteria as explained in Section 11 of CEoI and will be transposed into a contractual obligation for the selected Financial Intermediaries. Failure to apply the proposed level of interest reduction will result in an exclusion of a given Loan(s) from the guaranteed portfolio.  The Financial Intermediaries will not be entitled to charge to the Final Recipients any costs or fees for reason of implementation of the Financial Instrument. The level of costs and fees charged to Final Recipients are not to be higher than those that would have been applied for the same loans without the financial advantage of the Guarantee.  The Financial Intermediaries shall (i) maintain records evidencing the transfer of the Financial Advantage to Final Recipients, and (ii) inform Final Recipients on the ToFA together with the general support received from the RRF. |
| **Risk mitigants** | Early termination of the Inclusion Period triggered by the credit-related and other material events mentioned above.  Portfolio risk mitigants:   * Maximum transactions amount in accordance with the size of each Operational Agreement to ensure a certain level of granularity; * Define eligible performing rating classes (across the various rating scales that will participate in the origination of the Guaranteed Portfolio); * Maximum acceptable concentration percentage for the worst eligible rating classes; * Maximum acceptable concentration percentages by sector and obligor. |

**Annex 3**

**List of Excluded Activities**

* + 1. Activities and assets related to fossil fuels, including downstream use[[24]](#footnote-24).
    2. Activities and assets under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks[[25]](#footnote-25).
    3. Activities and assets related to waste landfills, incinerators[[26]](#footnote-26) and mechanical biological treatment plants[[27]](#footnote-27).
    4. Activities and assets where the long-term disposal of waste may cause harm to the environment.
    5. Production or activities involving harmful or exploitative forms of forced labour[[28]](#footnote-28)/harmful child labour[[29]](#footnote-29).
    6. Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements.
    7. Any business relating to pornography or prostitution.
    8. Production or trade in wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species or Wild Fauna and Flora (CITES).
    9. Production or use of or trade in hazardous materials such as radioactive materials, unbounded asbestos fibres and products containing PCBs.
    10. Cross-border trade in waste and waste products unless compliant with the Basel Convention and the underlying national and EU regulations but for the avoidance of doubt, use of waste as a fuel in district heating is not excluded.
    11. Unsustainable fishing methods (i.e. drift net fishing in the marine environment using nets in excess of 2.5 km in length and blast fishing).
    12. Production or trade in pharmaceuticals, pesticides/herbicides, chemicals, ozone depleting substances[[30]](#footnote-30) and other hazardous substances subject to international phase-outs or bans.
    13. Destruction of Critical Habitats[[31]](#footnote-31).
    14. Production and distribution of racist, anti-democratic and/or neo-Nazi media.
    15. Tobacco, if it forms a substantial part of a Project's primary financed business activities[[32]](#footnote-32).
    16. Live animals for scientific and experimental purposes, including the breeding of these animals.
    17. Ammunition and weapons, military/police equipment, infrastructure or correctional facilities, prisons.[[33]](#footnote-33)
    18. Gambling, casinos and equivalent enterprises or hotels hosting such facilities.
    19. Commercial concessions over, and logging on, tropical natural forest; conversion of natural forest into a plantation.
    20. Purchase of logging equipment for use in tropical natural forests or high nature value forest in all regions; and activities that lead to clear cutting and/or degradation of tropical natural forests or high nature value forest.
    21. New palm oil plantations.
    22. Any business with a political or religious content.

1. More information about the Romanian RRP can be found on the EC website: <https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility/recovery-and-resilience-plan-romania_en>. [↑](#footnote-ref-1)
2. See definition on “Defaulted amount” section in the Term Sheet. [↑](#footnote-ref-2)
3. Guarantee Amount = Guarantee Rate x Cap Rate x the size of Guaranteed Portfolio. [↑](#footnote-ref-3)
4. As defined in Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and further detailed in the Commission’s Technical guidance on the application of ‘do no significant harm’ under the Recovery and Resilience Facility Regulation 2021/C 58/01. [↑](#footnote-ref-4)
5. Available on: <https://europa.eu/investeu/investeu-fund/about-investeu-fund_en>. [↑](#footnote-ref-5)
6. Please note that the presented amount may be decreased by, including but not limited to, the amount of the management fees paid to the EIB as the FoF manager. [↑](#footnote-ref-6)
7. Available at: <http://www.eib.org/attachments/strategies/anti_fraud_policy_20130917_en.pdf>. [↑](#footnote-ref-7)
8. Please include the declaration contained in Appendix 1 (Consortium member declaration) signed by each consortium member appointing the legal entity indicated above as the leader of the consortium which will represent the consortium and act as the single contact point for communication. This entity shall also have full authority to bind the consortium and each of its members for the purposes of the Operational Agreement. [↑](#footnote-ref-8)
9. If necessary, please include reference to other documents which form part of your offer and which describe the roles, activities and responsibilities of the consortium members more in detail. [↑](#footnote-ref-9)
10. If necessary, please include reference to other documents which form part of your offer and which describe the roles, activities and responsibilities of the consortium members [↑](#footnote-ref-10)
11. Please include the declaration contained in Appendix 2 (Subcontractor Declaration) from each subcontractor, stating their intention to collaborate with the Applicant, if the Applicant is awarded an Agreement. [↑](#footnote-ref-11)
12. Being “**the target of a sanction or restrictive measure**” means the economic operator (i) being listed on a sanctions list, or (ii) being (directly or indirectly) 50% or more (individually or on aggregate basis) owned or controlled by, or acting on behalf of or at the direction of, a person or entity listed on, any sanctions lists, or (iii) being located or resident in, or organised or incorporated under the laws of a Sanctioned Country, or owned or controlled by, or acting on behalf or at the direction of such a person or entity. A “**Sanctioned Country**” shall mean a country or territory that is, or whose government is, at any time, the target of comprehensive country or territory-wide sanction or restrictive measure imposed or administered by the competent authorities described in this sub-section (b). [↑](#footnote-ref-12)
13. Pursuant to Chapter 2 of Title V of the Treaty on European Union or Article 215 of the Treaty on the Functioning of the European Union, either autonomously or pursuant to the sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter. [↑](#footnote-ref-13)
14. “**US Nexus**” means where there is any US involvement or connection, including (without limitation): (i) any US dollar denominated transaction; (ii) any payment in any currency that is cleared through the US financial system, including foreign branches of US banks, and US branches, agency or representative offices or US accounts of non-US financial institutions; and (iii) any US Person, including US financial institutions, foreign branches of US banks, and US branches, agency or representative offices or US accounts of non-US financial institutions.

    “**US Person**” means: (i) any US citizen, US permanent resident alien or green card holder, wherever they are located or employed; (ii) any entity organised under the laws of the US or any jurisdiction within the US, including foreign branches of such an entity; and (iii) any individual or entity located in the US. [↑](#footnote-ref-14)
15. See definition on “Eligibility” section. [↑](#footnote-ref-15)
16. See definition on “Defaulted amount” section. [↑](#footnote-ref-16)
17. Guarantee Amount = Guarantee Rate x Cap Rate x the size of Guaranteed Portfolio. [↑](#footnote-ref-17)
18. 2 The analysis of the treatment of the Guarantee in respect of regulatory capital relief is to be carried out by the Financial Intermediary together with its regulator. The fulfilment of the regulatory requirements that enable the Financial Intermediary to use the Guarantee as a credit risk mitigation tool remains ultimately subject to the scrutiny and interpretation of the Financial Intermediary’s regulator. [↑](#footnote-ref-18)
19. REGULATION (EU) 2021/241 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 February 2021 establishing the Recovery and Resilience Facility [EUR-Lex - 32021R0241 - EN - EUR-Lex (europa.eu)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0241). [↑](#footnote-ref-19)
20. As defined in Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and further detailed in the Commission’s Technical guidance on the application of ‘do no significant harm’ under the Recovery and Resilience Facility Regulation 2021/C 58/01. [↑](#footnote-ref-20)
21. Available on: <https://europa.eu/investeu/investeu-fund/about-investeu-fund_en>. [↑](#footnote-ref-21)
22. 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, or a relevant regulation substituting it. [↑](#footnote-ref-22)
23. FX Rate applicable on the date of signature of the relevant Transaction between the Financial Intermediary and the Final Recipient. [↑](#footnote-ref-23)
24. Except projects under this measure in power and/or heat generation, as well as related transmission and distribution infrastructure, using natural gas, that are compliant with the conditions set out in Annex III of the ‘Do no significant harm’ Technical Guidance (2021/C58/01). [↑](#footnote-ref-24)
25. Where the activity supported achieves projected greenhouse gas emissions that are not significantly lower than the relevant benchmarks an explanation of the reasons why this is not possible should be provided. Benchmarks established for free allocation for activities falling within the scope of the Emissions Trading System, as set out in the Commission Implementing Regulation (EU) 2021/447. [↑](#footnote-ref-25)
26. This exclusion does not apply to actions under this measure in plants exclusively dedicated to treating non-recyclable hazardous waste, and to existing plants, where the actions under this measure are for the purpose of increasing energy efficiency, capturing exhaust gases for storage or use or recovering materials from incineration ashes, provided such actions under this measure do not result in an increase of the plants’ waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level. [↑](#footnote-ref-26)
27. This exclusion does not apply to actions under this measure in existing mechanical biological treatment plants, where the actions under this measure are for the purpose of increasing energy efficiency or retrofitting to recycling operations of separated waste to compost bio-waste and anaerobic digestion of bio-waste, provided such actions under this measure do not result in an increase of the plants’ waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level. [↑](#footnote-ref-27)
28. Forced labour means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty [↑](#footnote-ref-28)
29. Harmful child labour means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, moral or social development. In addition any labour that is performed by a person which has not yet reached the age of 15 is considered to be harmful, unless the local legislation specifies compulsory school attendance or the minimum age for working to be higher; in such cases, the higher age will be applied for defining harmful child labour. [↑](#footnote-ref-29)
30. Ozone Depleting Substances: Chemical compounds, which react with and delete stratospheric ozone, resulting in "holes in the ozone layer". The Montreal Protocol lists ODs and their target reduction and phase-out dates. [↑](#footnote-ref-30)
31. Critical habitat is a subset of both natural and modified habitat that deserves particular attention.  Critical habitat includes areas with high biodiversity value that meet the criteria of the World Conservation Union ("IUCN") classification, including habitat required for the survival of critically endangered or endangered species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Primary Forest or forests of High Conservation Value shall be considered Critical Habitats.  For the purpose of this Agreement, the environment and social requirements attached hereto are understood and agreed to provide reasonable and satisfactory assurance of the avoidance of destruction of critical habitat. [↑](#footnote-ref-31)
32. A benchmark for substantial is 5-10% of the balance sheet or the financed volume or sales revenues of the final recipient. [↑](#footnote-ref-32)
33. Such activities are fully excluded from EIB financing in all countries other than EU member states. In the EU, excluded activities relating to defence, public order and safety are limited to production (or construction) of, distribution (or processing) of, and trade in weapons, ammunition, explosives, equipment or infrastructures specifically designed for military use, and equipment or infrastructure which result in limiting people’s individual rights and freedom (i.e. prisons, detention centres of any form) or in violation of human rights. [↑](#footnote-ref-33)