

RELEVANT REQUESTS FOR CLARIFICATIONS EIB (JR – 1457)

1. Is EIB considering structuring IAP with a pre-defined asset for the first series (“seed asset”) or is IAP structure meant to be a flexible structure that could accommodate various loan in various jurisdictions. If the former, can you give us more details on the seed asset? If later, can you elaborate how broad the scope of initial structuring should be taking into account the many legal jurisdictions in the EU?

EIB will not include seed assets in the IAP. The platform will be composed of new projects (greenfield ones). In terms of jurisdictions, EIB is targeting the EU Member States, so the platform should be able to issue notes in any of them. In any case, the main idea is to standardize issuance documentation and jurisdiction as much as possible to have a cost effective structure.

2. Does EIB have an expectation of the governing law of the loans (Luxembourg law, other?)
Loans applicable law will depend on the country where the different projects might be located, as depending on different legal frameworks on the projects to be financed the local laws might require the loans to be issued according to local regulation.

3. Is the underwriter allowed to share information on the target asset to potential IAP note investors before finalising its commitment? We expect this to be done under a NDA signed with the potential investor(s).

Yes. The underwriter will need to sign a mirror NDA with both EIB and investors that will mirror the one that EIB has with the project promoters, so that the AM has access to the information and can assess the different projects presented.

4. The loan underwriter will normally go on risk at the time they sign the loan agreement (financial close). Do you anticipate an earlier date when the underwriter provides their committed underwriting (or indicative underwriting)?

We are anticipating the have a period of at least one month prior to signing where the AM should be providing its commitment on each specific project.

5. Do you expect any underwriting fees or flex to be paid by the borrower of the loan (in addition to their usual loan costs), or would such costs be borne by the IAP?

The platform is expected to be self-financed, i.e. that the delta between the loan pricing and the final bond pricing should be enough as to pay all costs to be borne by the IAP itself (i.e. administrative costs, rating, credit enhancement and - subject to sufficient pricing - repayment of EIB pre-paid structuring costs)

6. Who is meant to take the risk on future draw down after the loan is sold to IAP and during the commitment period? E.g. if the IAP note is sold to an investor who later does not fund a drawing request then the IAP would be required to fund but will not have the capital to do so.

The AM would not be required to fund if the notes have already been transferred. The buyers of the notes would be the final debt owners and thus the ones making the loan advances, if one of them defaults, there would be a funding shortfall.

7. Do you expect IAP to be the lender of record of the loan or the underwriter remains the lender of record and sub-participates to the IAP.

To be validated and confirmed depending on different legal possibilities in each of the member States.

8. Does EIB anticipate that borrowers will be prepared to accept IAP /securitization-driven amendments to the loans (for example limited recourse/non-petition language)?
Borrowers to implement IAP would need to accept bond-like wording as the financing is implemented, should this be needed for investors to participate.
9. Is EIB holding the pen on the legal drafting of the IAP and candidate helping to review and construct the structure with your counsel?
The awarded AM along with EIB and the legal counsel will work closely together for the implementation of the IAP documentation once this is put in place.
10. If we underwrite the loan and – for some reason – cannot sell the IAP note, do we need to issue the notes (and own them ourselves) or can we keep the loan unchanged?
In case the AM underwrites a loan and it cannot later be sold down to targeted investors, the AM can keep the loan on its books. It is important to note that should this happen, the credit enhancement will not be available for the AM, as it will only kick in and be valid once the notes are issued in the market.
11. It is likely that some information on the loan will be disclosed to noteholders or in a prospectus at the exchange when listed. Some cooperation from the borrower will likely be required to facilitate this disclosure. Is this acceptable to EIB and the borrower?
Yes, all project promoters will need to agree to the NDA to share project information with selected AM and additionally to the distribution of the project prospectus should this be needed. To be defined in terms of timing for the projects where a competitive dialogue is taking place as to when the prospectus will be issued and information made public.
12. We understand that the “candidates” can be a consortium. There are tasks in the list that the candidate cannot provide even through sub-contractors (e.g. due to regulatory limitations). We expect to bring a consortium that can handle the full process but IAP may need to contract different tasks with different consortium member. Is this acceptable?
Yes it is acceptable.
13. End investors may often require a rating to optimise terms (e.g. pricing). Will the Borrower be ok with this and assist with the provision of a rating (e.g. answering Q&A). Given timing it may be necessary to approach rating agencies prior to an underwriting being confirmed – will this be ok?
Yes it will need to be agreed with project promoters and rating agencies will need to be involved in the process as they will need to have the information needed as to assess the potential rating of the project.
14. The candidate expects to team up with an AM to cover some of the tasks that the candidate is not regulated to do. The candidate and the AM expect to respond to the RFP as a consortium where each party commits for their part to EIB. We will also suggest providers for smaller tasks like agent bank, security trustee and paying agent. The candidate would suggest entities to undertake these tasks but these entities could be amended at a later stage. Please let us know if this approach is acceptable.
This approach is acceptable to EIB as long as all subcontractors are known to EIB and are experienced parties with sufficient track record to implement the roles they are expected to. Additionally, it will be important to note that in case some of the third parties on the consortium is changed during the life of the AM contract, EIB will need to be informed of the new parties entering into the consortium and approve their involvement (consent not to be unduly withheld).

15. Does EIB contemplate an English law security trustee arrangement with a Luxembourg law programme/offering docs? It is usual for Luxembourg securitisation vehicles to use an English law trust arrangement (even with Luxembourg law offering docs) but the RFP only mentions Luxembourg law.

To be discussed once the AM is awarded. It is not excluded at this time but EIB and the selected AM will need to take a view as to the best structure possible along with the external legal advisor hired for the implementation of the IAP.

16. Does EIB see the need for the platform to allow for cross-currency / interest rate swaps (e.g. to swap a fixed rate loan into a floating rate note)? If so, would EIB want multiple dealers to be able to do swaps with the SPV?

Yes, it will be desirable that the IAP can do swap contracts.

17. Would the IAP have the right to substitute the Asset Manager (or any member of the AM consortium) at any point in time? Current construct seems to imply that the Asset Manager that gets mandated will, in addition to setting up the IAP, act in all other capacities including underwriting, placement and monitoring and management of the loan (including swap execution where it applies) in every issuance by the IAP. Is this understanding correct? If not, can you please detail any envisaged timeline and procedures for substitution and/ or for adding other AMs to perform some of the tasks, in particular underwriting and placement of the notes ?

The understanding expressed above is correct. The AM mandated will be the one in charge of the underwriting, placement and monitoring. The intention is not to add any additional AM to the initially mandated one, but of course that could be the case if for whatever reason either the AM or IAP want to terminate the AM contract (due to the contract expiration or to termination by one of the parties to it – this will be regulated in the AM contract).

18. Since the proposed enhancement is different to the usual PBCE where the whole project is enhanced through introducing extra liquidity and thus rating implications may be different, have you already had constructive discussions with rating agencies on how the proposed credit enhancement for IAP individual tranches would impact the underlying rating?

Yes, we have discussed with rating agencies on that matter and the main approach on rating agencies is that they would rate the specific tranche, which benefits from the enhancement, and thus would have a higher rating than the project itself. In any case, this matter will be highly dependent on final projects to be included in the platform and their respective underlying risk.

19. Would EIB consider an acceptable proposal to link the IAP to an existing platform?

That would be something we could envisage subject to review of the existing platform's legal framework, mechanics and structure.

20. We are generally concerned about the potential conflicts of interest arising between an appointed Asset Manager on behalf of the IAP, and the same entity (or related one) approaching projects from an arranger prospective. In other words, we are concerned about potential arbitrage in terms of underwriting by Banks or Institutional investors with distribution capacity for each project, and the placing of debt between investors in either senior or IAP debt. As said, we think this is a general issue. Can we kindly request EIB to share their thoughts about potential conflicts arising on such projects where IAP might be considered?

The IAP debt is directed to a different class of investors than those targeted on a standard senior loan/note on a project basis. The IAP targets investors who usually do not invest in infrastructure on a normal basis and who would thus need a rating on the invested tranche to present to their investment committees (as opposed to more sophisticated infrastructure investors who have their own in house teams and do not need a rating for their funds to be placed in projects).

21. In relation with the question above, and as a potential mitigant, is the EIB is going to invest into the same projects where IPA will be activated?

The EIB will invest in all projects where an IAP tranche is envisaged. The bank would invest in two different ways, as a senior lender with an EIB senior debt tranche and also as a credit enhancement provider for the IAP tranche to achieve the investment grade rating.

22. Would the EIB consider a replacement of the underwriting function with a Placement Agent role?

We think given a failure to underwrite by the AM could be backstopped by the EIB, in the end it means EIB de facto is bridging the placement of the Notes out of their own investment; a positive collateral effect is the conflict with the private sector demand on same projects will be avoided. EIB's underwriting is a backstop in exceptional circumstance when the AM does not finally enter into the financing, as the total financing amount needs to be secured for the project sponsors. The option of implementing a placement agency role instead of taking the credit risk of the project is not envisaged at this stage.

23. In relation with the questions above, and given the material work to be undertaken by the AM, it is relevant to assess estimated IAP volumes. In other words, beyond eligibility criteria, it would be helpful if you could elaborate further on conditions upon which IAP will be used - given EIB will be used as main project sourcing entity. i.e. will IAP be used on every deal where EIB is involved? Or just on those one where analysis could demonstrate a shortage in lender's liquidity?

The IAP is intended to be one more of the financing options to be proposed to project promoters. Alongside EIB senior debt and commercial bank's debt, the IAP tranche would be developed as a capital markets solution to find additional liquidity if needed. The IAP will be implemented in those scenarios where the project needs to have additional liquidity and also where the underlying credit will be sufficient as to imply that the proposed credit enhancement would be enough as to achieve an investment grade rating for the IAP tranche.

24. Would EIB be ready to consider the potential warehouse of a portfolio of IAP loans instead of an individual sale of an IAP loan as an acceptable approach to investors? Fundraising efforts and approach to investors could benefit from synergies

Currently that is not the envisaged route, but if the AM would present this option and bear the risk during that time, we would be fine with that.

25. We are concerned about the potential disadvantages for non-Asset Managers arising in the CEoI, given the strong requirement to be experienced in relation to managing infrastructure assets. Can you please share your views?

The current CEoI is suited for banks, asset managers and even insurance companies that have experience in managing infrastructure assets in their balance sheet. The experience asked for related to infrastructure assets is the main point of interest, whether it will be a bank or an asset manager or other is not a qualifying aspect on the tender.

26. In terms of process, when can we expect AM to approach investors for the Notes? We are particularly concerned about potential adverse changes in the Market affecting the relative value of the supersenior Notes.

The AM will be able to approach investors as soon as the project promoters are fine with that and it has signed the corresponding NDA on the project it is working on. The notes to be issued will not be super senior to the other debt tranches, but will rank at the same seniority level as the rest of the senior debt. Recovery rates will be higher for the IAP tranche, but in terms of security on a project basis, the IAP note holders will be at the same level as the rest of the senior lenders.

27. In connection with the previous question, and in order to avoid adverse selection risk, what pricing negotiation scheme between PBCE and IAP should be considered for the IAP super senior tranche? Pricing on the credit enhancement will follow EIB pricing mechanism and consequently it would be priced the same way as any credit enhancement would be, depending on the project characteristics, risks assumed, etc.
28. Can we have clarification on the scope of investors to be targeted? Is the geographic scope limited to Europe?
The investments are limited to the EU member states, but the investors' geographical base is not limited.
29. In order to achieve desired objectives, and based on our experience with small and mid-sized investors, other structure features may need to be incorporated to a bond with an IG rating granted by EIB PBCE; we would like to ask whether other typical requirements requested for this asset class, such as make whole clauses and fix rate, will be incorporated to the IAP loan agreements?
As part of the work of the selected asset manager, the external legal counsel, EIB and the selected asset manager will draft a template finance contract, which will include the clauses, and provisions expected by those parties as needed. The actual clauses to be included will be assessed on a case-by-case basis.
30. What is the envisaged duration of the IAP Programme and AM services agreement?
The duration of the IAP Programme will depend on market appetite, at this stage there is no envisaged duration on the programme. The initial AM contract will last for 2 years with potential extension to be discussed.
31. The candidate is regulated as a financial institution (not as an Asset Manager). The EoI specifies that it wishes to receive offers from institutions to undertake the role of an Asset Manager. Does the request for an Asset Manager implies that the applicant needs to fulfil certain regulatory requirements ? Would the same apply to other Consortium members ?
The EoI refers to the term "asset manager" with no implication regarding the legal stand on the bidding party. As already stated above, bidders could be investment banks, insurance companies, asset managers, or any other party that can perform the services described and complies with requirements included in the EoI.