

MEMORANDUM OF UNDERSTANDING

on cooperation for identifying and supporting projects in sectors
of common interest

between the

United States International Development Finance Corporation

and the

European Investment Bank

Washington, DC

___ April 2023

This is a non-binding memorandum of understanding (the "**MoU**") between:

the **United States International Development Finance Corporation**, having its headquarters at 1100 New York Avenue, NW, Washington, DC 20527, United States of America (the "**DFC**")

and

the **European Investment Bank**, having its seat in Luxembourg at 98-100, Boulevard Konrad Adenauer, L-2950 Luxembourg, Grand Duchy of Luxembourg (the "**EIB**")

together referred to as the "**Participants**", each of them as a "**Participant**".

INTRODUCTION AND BACKGROUND:

- (a) DFC is a wholly-owned corporation of the Government of the United States of America established to facilitate market-based private sector development and inclusive economic growth in less developed countries through the provision of credit, capital and other financial support.
- (b) The EIB is the financial investment arm of the European Union (the "**EU**") under the Treaty on the Functioning of the European Union. The role of the EIB is to support investments consistent with EU policy objectives. Further, pursuant to Article 18(7) of its Statute, as a complement to its lending activity, the EIB may provide technical assistance services in accordance with the terms and conditions set out by its Board of Governors.
- (c) The Participants share a commitment to democratic values.
- (d) The Participants affirm their intention to work together, on a non-exclusive basis, and explore the development of potential joint initiatives in areas of mutual interest related to financing and project investments in geographical areas where their respective development support interests overlap, such as but not limited to, Africa, the Indo-Pacific, Latin America and the Caribbean, the Middle-East and the Western Balkans.

1. PURPOSE AND SCOPE OF COOPERATION

Without prejudice to and within the limits of the respective tasks and responsibilities of the Participants, as reflected in the institutional and operational arrangements governing their action, the Participants intend, on a non-binding basis, to:

- (a) identify general principles of cooperation in connection with private sector projects in economic sectors of common interest, such as (but not limited to) the information and communication technology, life sciences and health, climate action and innovation, water, energy and climate infrastructure, and nature-based solutions.

The Participants intend to focus in particular on projects with the following characteristics:

- (i) projects in the **information and communication technology** ("**ICT**") sector which aim to advance secure and resilient connectivity and ICT supply chains by involving the use of trusted/non-high-risk suppliers;
- (ii) projects in the ICT sector which close digital divides by providing future-proof digital services to unserved or under-served communities in emerging and developing economies. Such projects would support investment in advanced, resilient and secure communications network infrastructures, built using trustworthy suppliers, which develop, commercialize, or scale new technologies, applications or business models that advance the digital ecosystem for unserved or underserved communities; and/or would enable, improve or support investments that foster the growth of the digital transformation around the world;
- (iii) projects in **health** services and infrastructure, health commodity manufacturing and supply chain, and health technology sector, fostering secure, resilient health systems that ensure

equitable access to, and affordability of, high quality healthcare. These projects may include economically and technically viable initiatives that enhance access to and availability of vaccines, diagnostics, therapeutics, medical devices and other critical health commodities. These projects may also include opportunities to collaborate with global and regional health institutions to achieve these goals;

- (iv) projects in the **water and wastewater sector** which provide or improve access to essential water and wastewater services, support greater water efficiency, and strengthen the adaptation and resilience of communities responding to the effects of climate change; and
 - (v) projects in the **energy** sector that increase renewables generation capacity, decarbonise the energy supply and develop enabling infrastructure, particularly in regions of energy transition, as well as in the context of Just Energy Transition Partnerships in associated countries.
- (b) within the scope of this MoU and subject to point 4 and to each Participant's applicable rules, regulations, policies and procedures on confidentiality, transparency and access to information and documents, and personal data protection, share information and materials, organise and promote joint events, knowledge sharing and awareness-raising activities, including training, and meetings with relevant industry stakeholders, to support the Participants to maximize their roles and contribution to bridging the investment gap for such projects.

While the Participants do not expect or intend to disclose to each other, in the implementation of this MoU, any confidential or commercially sensitive information, if necessary, the Participants undertake to consult each other in good faith and agree as to how any confidential or commercially sensitive information is to be disclosed to, and treated by, the recipient Participant.

- (c) identify suitable financial mechanisms and instruments and develop coordinated and/or joint financial and advisory offerings for such projects, provided that each individual project considered falls, at any given moment, within the respective mission and the investment strategy and policy of each Participant.

In this respect, the appraisal of projects to determine their eligibility for financing or advisory support by a Participant is subject to that Participant's policies, rules, conditions and procedures in force from time to time. Consequently, any granting of financing or provision of advisory support by a Participant is dependent on a positive outcome, as determined by that Participant at its discretion, of the appraisal of each individual project and its promoter, and to the specific approval by the management and governing bodies of that Participant of the financial and/or advisory support requested.

The provision of financial and/or advisory support by either Participant shall be subject to a separate agreement between the relevant parties as regards terms and conditions of the respective support.

- (d) identify ways to coordinate their respective monitoring activities for those projects in which both Participants are involved.
- (e) cooperate in carrying out research and analyses in areas of mutual interest, and publish the results.
- (f) organize periodic consultations to discuss and review progress, strategic plans, and achievements, as well as challenges, opportunities, and critical issues, in each case, in accordance with the principles set out in this MoU. The Participants expect to hold such consultations annually, or on an as needed basis.

2. NON-BINDING NATURE AND PRIVILEGES AND IMMUNITIES

Non-binding nature

- (a) This MoU reflects the Participants' intention to cooperate, expressed in good faith. This MoU is not intended to create rights or obligations under international or domestic law. This MoU is not a legally binding arrangement and does not represent nor does it intend to create any right or

binding legal obligation or relation between the Participants, or to restrict their cooperation with any other parties.

- (b) Without limitation, this MoU does not:
- (i) result in the establishment of any claims, financial implication, commitment, obligation or liability between the Participants;
 - (ii) represent any commitment or representation with regard to provision of financing or funding or any form of preferential treatment on the part of either Participant, in particular, but not limited to, with regard to the implementation of any projects or products or any funding or underwriting thereof on the part of either Participant;
 - (iii) affect any existing agreement or other arrangement between the Participants and does not prevent the signature of any future binding or non-binding arrangement between the Participants;
 - (iv) oblige the Participants to fulfil the purpose set out in point 1 herein, or to enter into any other type of contract or commitment;
 - (v) vest any rights upon the Participants or third parties;
 - (vi) constitute a Participant the agent of the other Participant for any purpose and does not create an agency or partnership relationship between the Participants; or
 - (vii) prevent either Participant from carrying out individually or in cooperation with a third party, the activities proposed in this MoU or activities in the same or similar fields covered by this MoU.
- (c) The cooperation between the Participants is subject to the policies and procedures of the Participants and to such further agreements and approvals as may be required for specific proposed activities.
- (d) Any arrangement between the Participants implementing this MoU or to which this MoU refers shall be subject to a prior approval by each Participant's decision-making bodies, to any applicable internal approvals that may be required pursuant to the respective internal policies, rules, conditions and procedures of each Participant and to the agreement on, and execution of, the relevant contractual documentation.

No waiver of immunities, privileges and exemptions

- (e) Nothing in this MoU shall constitute a waiver, or be construed as constituting a waiver of the immunities, privileges and exemptions enjoyed by the Participants or their respective employees, agents, alternates, directors, officers, members of the governing bodies and committees, and experts.
- (f) The Participants are entering into this MoU having full regard to their internal governing bodies' competence, constituent instruments, mandate and procedures as amended from time to time. No provision of this MoU may be construed as interference in any way with the independent decision-making autonomy of each Participant with regard to its respective activities and operations.
- (g) Nothing in this MoU shall be construed as allowing or compelling the Participants to exceed in any way the boundaries of their respective constituent instruments, mandates, procedures and policies, and resources.

3. RESTRICTIVE MEASURES (SANCTIONS)

- (a) DFC acknowledges that the EIB is required to comply with sanctions imposed by the United Nations and the European Union. Further, it is committed to comply, in certain circumstances, with sanctions imposed by sanctions authorities outside the European Union, including the United States of America and the United Kingdom.

- (b) The Participants intend to cooperate to allow the EIB to comply with relevant sanctions laws and regulations and, in particular, recognise that under EU law no EU funds or economic resources are to be made available, directly or indirectly, to, or for the benefit of, certain individuals, entities or groups of individuals.

4. DATA PROTECTION, DISCLOSURE RULES AND CONFIDENTIALITY

Disclosure Rules and Confidentiality

- (a) The Participants intend to put in place relevant tools and resources to support the cooperation established with this MoU, as well as to ensure transparency and adequate access to relevant information.
- (b) This MoU may be made publicly available by the Participants in accordance with their respective rules and procedures on data protection and disclosure¹ or mandatory provisions of law. By entering into this MoU, the Participants consent to such disclosure.
- (c) Unless required by law and subject to the Participants' respective rules and procedures on data protection and disclosure, the Participants agree that information and documents exchanged between the Parties pursuant to this MoU are confidential and should not be disclosed to third parties without consulting in writing with the concerned Participant.

Data Protection

- (d) The Participants acknowledge that, when processing personal data in connection with this MoU, each of them will act as independent controller and not as a processor on behalf of or joint controller with the other Participant. The Participants understand that personal data to be processed in the implementation of this MoU are limited sets of identification data of the data subjects involved with the follow up of this MoU. In case personal data transfers between the Participants exceed the above, the Participants undertake to consult each other in good faith and agree as to the terms and conditions that would apply to any such personal data transfer, in full respect of the legal framework applicable to each Participant.
- (e) Processing by the EIB: Any personal data included in or relating to the MoU, including its implementation, shall be processed by the EIB in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the MoU by EIB. Any natural person whose personal data is processed by the EIB as data controller in relation to this MoU has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to the processing. Should any natural person whose personal data is processed in relation to this MoU have any queries concerning the processing of its personal data, they shall address themselves to the data controller at the contact details included in point 11. They may also address themselves to the Data Protection Officer of the EIB. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

¹ In particular;

(A) for the EIB

- (i) Regulation 2018/1725 of the European Parliament and of the Council of 23 October 2018 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; and
- (ii) the EIB Group Transparency Policy (as published on the EIB website);

(B) for the DFC:

- (i) the Privacy Act (5 U.S.C. § 552a); and
- (ii) the Freedom of Information Act (5 U.S.C. § 552).

5. SETTLEMENT OF DISPUTES

Any dispute about the interpretation or application of this MoU will be settled amicably through consultations or by such similar means and, given the non-binding nature of this MoU, will not be referred to any national or international tribunal or third party for settlement.

6. STARTING DATE, DURATION AND TERMINATION OF THE COOPERATION

- (a) This MoU is to be operational for a period of 2 (two) calendar years from the date of its signature by both Participants, unless extended jointly and in writing by the Participants.
- (b) The collaboration under this MoU may be discontinued at any time by a Participant, by written notice to the other Participant at least 30 (thirty) calendar days in advance of the proposed date for discontinuation. In this case, the Participants may consider any necessary action to ensure that such discontinuation will not be prejudicial to any activity in progress pursuant to this MoU.

7. CHANGES TO THE TERMS OF THE COLLABORATION

The terms of the collaboration set out under this MoU may be changed upon written document signed by both Participant.

8. INTERPRETATION

Section, Article and Schedule headings in this MoU are for ease of reference only. The structure of this MoU in Sections, Articles and Schedules is not intended and shall not be construed to alter or limit in any way the non-binding nature of this MoU or to alter, limit or enlarge in any way the scope or meaning of this MoU.

9. PUBLICITY AND VISIBILITY

The Participants will coordinate in advance any publicity, press releases, promotional materials, announcements on social media platforms and websites, and any other communications under this MoU, including use of the name, trade name, brand, trademark, logo or other symbol or designation (or any abbreviation thereof) of the other Participant.

10. NOTICES AND COMMUNICATIONS

The Participants designate the following as their respective contacts for any communication to be made or document to be delivered under or in connection with this MoU:

For the DFC: Attention: Office of the Chief Development Officer
 United States International Development Finance Corporation
 1100 New York Avenue, NW
 Washington, DC 20527
 USA
 E-mail address: notices@dfc.gov
 Tel.: +1 202-336-8400

For the EIB: Attention: Institutional Representation Division, General Secretariat
European Investment Bank
98-100, boulevard Konrad Adenauer
L-2950 Luxembourg
Grand Duchy of Luxembourg
Tel.: +352 43 79 1

with a copy to:

Permanent Representation of the EIB Group to the United States of America
2175 K Street NW
Washington DC, 20037
United States of America
Tel. +1 202-729-6041
E-mail address: washington@eib.org

Each Participant shall promptly notify the other Participant in writing of any change in their respective communication details.

11. COSTS

Each Participant shall remain solely responsible for all costs and expenses it has incurred in connection with the preparation, negotiation, signing and implementation of this MoU in accordance with its terms.

Signed by the authorized representatives of each Participant, at Washington, DC, USA, on ____ April 2023, in two originals in the English language for the EIB, with no originals necessary for the DFC.

Signed for and on behalf of the
**UNITED STATES INTERNATIONAL
DEVELOPMENT FINANCE CORPORATION**

Signed for and on behalf of the
EUROPEAN INVESTMENT BANK

Scott Nathan
Chief Executive Officer

Dr Werner Hoyer
President