

# Tripartite Agreement between the European Commission, the European Court of Auditors and the European Investment Bank



European  
Investment  
Bank

*The EU bank* 





## **Tripartite Agreement between the European Commission, the European Court of Auditors and the European Investment Bank**

### **Preamble**

- (1) The purpose of this Tripartite Agreement (the "Agreement") is to renew the agreement concluded on 26 September 2016 on cooperation between the European Commission ("the Commission"), the European Court of Auditors ("the Court") and the European Investment Bank ("the Bank" or the "EIB"), altogether, the "Parties", in line with Article 287(3) third subparagraph of the Treaty on the Functioning of the European Union (TFEU).
- (2) This Agreement does not modify or supersede any Union law, in particular the provisions of Articles 285 and 287 TFEU, which confer to the Court the mandate to audit the Union expenditure and revenue managed by the Bank and a right of access, even in absence of an Agreement, to information necessary in order to perform audits of Union expenditure and revenue managed by the Bank.
- (3) In accordance with the third subparagraph of Article 287(3) TFEU, the Agreement covers both the financing operations under the mandates conferred by the European Union on the Bank and the operations managed by the Bank and guaranteed by the general budget of the European Union ("the operations covered by the Agreement"). These mandates and budgetary guarantees programs are the subject of specific agreements between the Commission, representing the European Union, and the Bank, in line with the Financial Regulation applicable to the general budget of the Union (the "Financial Regulation") and/or sectoral regulations, where relevant. The Bank performs its obligations by virtue of those agreements in relation to the European Union, represented by the Commission, as mandator or guarantor.
- (4) Without prejudice to the provisions of the third subparagraph of Article 287(3) TFEU, this Agreement is intended in particular to govern access by the Court to documents and information held by the Bank, in order to carry out the audit mandate conferred on it by the Financial Regulation and the sectoral regulations which prescribe an audit mandate to the Court as regards the European Fund for Strategic Investments (EFSI), the European Investment Advisory Hub, the European Development Funds, the European Fund for Sustainable Development (EFSD), the EFSD Guarantee, the EFSD Guarantee Fund, the InvestEU Programme and any future sectoral regulations which prescribe an audit mandate to the Court as regards operations funded or guaranteed by the EU budget and managed by the Bank.
- (5) The scope of this Agreement shall cover both completed and current operations. Where the Bank manages Union's revenue and expenditure, it shall keep records in line with the FAFA Agreement and future financial framework partnership agreements between the Bank and the Commission, reflecting Article 132 of the Financial Regulation.

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- (6) The Parties shall implement this Agreement in good faith, with due regard for each party's legitimate and practical concerns.
- (7) In line with the IFAC and INTOSAI International Auditing Standards, in so far as these are applicable in the European Union context, the Court seeks to maintain a constructive working relationship with the Bank and the Commission and inform them in a timely manner, in the course of each audit concerning them, about the audit objective(s), questions, criteria, methodology employed and findings.

## **I. The Court's right to access information and documents**

### Article 1

- 1.1 The Court can request access to any information and documents necessary to perform its task, within the scope of its mandate to audit the Bank's activity in managing Union's revenue and expenditure, in line with the principle of proportionality and as illustrated in Annex I to this Agreement.
- 1.2 Annex I contains an indicative list of the types of documents or information that the Court may request in accordance with this Agreement and Article 287(3) TFEU, reflecting the principles set out in Article 257 of the Financial Regulation.
- 1.3 In line with Article 129 of the Financial Regulation, the Bank shall fully cooperate in the protection of the financial interests of the Union and shall, as a condition for receiving the funds, grant the necessary rights and access required for the Court to comprehensively exert its competences.

### Article 2

- 2.1 As a general rule, such information and documents shall be transmitted by the Bank to the Court at its premises. Whenever technically possible, electronic access to information and documents necessary for the audit shall be given to the Court in its own premises and in compliance with relevant security rules.
- 2.2 The consultation by the audit teams of such information and documents in a controlled environment (e.g. data rooms) will be the exception to that rule.
- 2.3 The recourse to such arrangements should be duly justified by the Bank and can be accepted by the Court only in cases of highly sensitive information of commercial or judicial nature.
- 2.4 Nevertheless, in such cases, the auditors shall be allowed to access the data room during the whole duration of the audit until adoption of the report and to take written notes.

### Article 3

- 3.1 For initial requests concerning documents and information listed in Annex I, the Bank shall make them available to the Court within ten working days from the date of receiving the Court's request.
- 3.2 The Court may address follow-up requests for additional information. The Bank shall make available to the Court those documents and information within five working days from the date of receiving the Court's request.
- 3.3 For initial and/or follow-up requests concerning documents and information not included in

Annex I, or for documents which are listed in Annex I but do not yet exist, either because they need to be generated on the basis of data stored in databases or because they need to be redacted, the Bank shall provide them, as a rule, within fifteen working days from the date of receiving the Court's request.

- 3.4 In the exceptional event of using data rooms, the Bank shall give access in those data rooms to all the documents and information requested by the Court within ten working days from the date of receipt by the Bank of the Court's request.
- 3.5 The format of the documents should enable audit activities. Where justified, because not related to management of EU funds, the Bank should indicate which parts of the document are redacted.
- 3.6 The Court shall address its requests for documents and information to the relevant department of the Bank, as indicated by the Bank.
- 3.7 In the event of exceptional and duly substantiated urgency due to an imminent audit visit requiring documents to be made available without delay, the deadline for making them available shall be agreed by the Bank with the Court. In such case, the Court shall inform the Commission thereof.

## **II. Confidentiality, data protection and use of information**

### Article 4

- 4.1 The Court is fully committed to ensuring the protection of confidential documents: its staff are subject to the confidentiality provisions of Article 339 TFEU, Article 17 of the Staff Regulations and the ECA's internal policies, namely, the ECA's Ethical Guidelines.
- 4.2 The Court will ensure a similar level of protection as that of the Bank as regards information and documents provided by the Bank, reflecting the Correlation table set out in Annex II. The information obtained during audits on operations covered by this Agreement shall be treated with the utmost discretion.
- 4.3 If the ECA receives an application for public access to documents received by the ECA during the audit, the ECA will, in accordance with Article 4.5 of Decision No 12/2005 of the Court of Auditors of 10 March 2005 regarding public access to Court documents (2009/C 67 /01), as amended in 2009, confirm receipt of the application and answer that the application should be addressed to the EIB. The same principle shall apply to disclosure to any other third parties, except for EPPO, OLAF, judicial and prosecution authorities.

### Article 5

The Court is bound to respect the data protection rules as laid down in the applicable Data Protection Regulation concerning Union institutions, bodies, offices and agencies.

### Article 6

Where projects are concerned that are partly financed or guaranteed from the budget of the Union and partly financed or guaranteed from the Bank's own resources or other resources managed by the Bank, the Court shall not make use of any information it may have acquired during its on-the-spot visits, regarding the part not financed or guaranteed by the budget of the Union.

### **III. Documentary reviews**

#### Article 7

The Bank takes note that, in line with the Financial Regulation, the Court has also the right to address evidence collection methods (e.g. interviews, surveys) directly to third parties, such as intermediary financial institutions and beneficiaries. The Bank shall be informed about any such evidence collection.

#### Article 8

- 8.1 The Bank shall do everything in its power to allow the Court to perform effective documentary reviews of the operations covered by the Agreement, in line with the approach and audit methodology of the Court.
- 8.2 To this end, the Parties agree to allow the flow of information between the Bank, the Commission and the Court on the operations covered by the Agreement to proceed on the scale required for the performance of as complete a documentary review as possible.
- 8.3 The operations which such auditing will cover shall be selected by the Court according to its own criteria and audit methodology.
- 8.4 The Court shall send the main questions relating to documentary reviews in writing and in good time to the relevant department indicated by the Bank and, at the same time, to the Commission, for information.

### **IV. On-the-spot visits**

#### Article 9

- 9.1 The Court shall inform the Commission and the Bank, on the basis of its annual work programme, of the operations covered by this Agreement for which it considers that an on-the-spot visit is necessary, and of the proposed timetable for carrying this out.
- 9.2 These operations shall be selected by the Court according to its own criteria and audit methodology.

#### Article 10

- 10.1 Within five working days from the date of receiving the information about the Court's intention to carry out an on-the-spot visit, the Bank's Audit Committee shall inform the Court whether it will conduct its visit at the same time. In such case, those visits may be scheduled and prepared by the Bank's Audit Committee and the Court in coordination.
- 10.2 In any event, the organization of on-the-spot visits by the Court and Bank's Audit Committee at the same time shall not delay the Court in performing its audit function in full independence.

#### Article 11

- 11.1 For the purpose of facilitating the Court's on-the-spot visits, the Bank shall establish the necessary contact with intermediary financial institutions and final beneficiaries.
- 11.2 The logistical organization of audits, as far as arrangements for on-the-spot visits are concerned (dates, itinerary, timetable, transport, accommodation), shall be the responsibility of the Court, in

consultation with the Bank.

11.3 The Court shall inform the Commission about the arrangements for the on-the-spot visits.

#### Article 12

During audit visits, the representatives of the Court and the Bank's Audit Committee shall examine all the necessary documents and raise any questions as they consider useful for their respective audits.

#### Article 13

13.1 The agents of the Bank and of the Commission may accompany the representatives of the Court in on-the-spot visits. The purpose of their participation is to facilitate the conduct of the audit by the Court.

13.2 In order to allow the Court to conduct its audit in full independence, the Court may (also) hold interviews with beneficiaries or other parties without the presence of the EIB's observers.

13.3 Each Party to the visit will bear its own costs.

13.4 All the members of the audit visits and the participants from the Bank and the Commission shall be bound to respect professional secrecy as laid down in Article 339 TFEU and banking secrecy, as applicable.

#### Article 14

14.1 The conclusions of the Court's audit may be communicated to the Bank's clients only by the Bank or by the Commission.

14.2 The Commission shall decide how it is to be represented at the information meetings, in preparatory discussions, and on-the-spot visits.

#### Article 15

The Bank's Audit Committee may draw up a mission report and the Court's delegation shall draw up a fact-clearing document, which they shall then provide to each other and the Commission.

### **V. Transmission of the Court's preliminary observations**

#### Article 16

16.1 The Court shall transmit to the Commission and to the Bank any observations which are, in its opinion, such that they should appear in its annual report and/or a special report.

16.2 The Bank takes note that the timeline set out in the Financial Regulation, within which the Commission and the Bank, through the Commission, may respond to those observations, shall respectively apply.

### **VI. Conciliation procedure, assessment, amendments and duration**

#### Article 17

A tripartite conciliation procedure shall be established between the Parties.

The Parties' representatives shall be:

- for the Court, the Member designated by the Court;
- for the Commission, the responsible Member of the Commission;
- for the Bank, the nominee designated by the Bank.

#### Article 18

18.1 The Parties shall assess the implementation of this Agreement and shall seek to resolve any difficulties arising from its interpretation and application in a cooperative spirit through oral and/or written exchanges.

18.2 The Parties shall also assess the consequences on the Agreement of relevant changes in Union Law concerning the Court's remit over the Bank.

18.3 If the Parties disagree on the above-mentioned assessments or on the way to solve difficulties, the conciliation procedure can be activated according to Article 19.

#### Article 19

19.1 The conciliation procedure shall commence at the request of one of the Parties, under the chair of the Commission. It shall be used:

- to launch any renegotiation of this Agreement;
- in the event the conciliation procedure is activated under Article 18.3; and
- in the event either Party wants to terminate the Agreement.

19.2 Recourse to termination is considered as a last resort solution.

#### Article 20

20.1 Subject to the conciliation procedure set out in Article 19.1, any amendment to this Agreement requires the unanimous consent of the Parties in writing.

20.2 By way of exception, the Parties may, outside the conciliation procedure, be authorized to:

- amend the different headings set out in Annex I to this Agreement;
- draw up a list of documents on operational needs and amend it in response to new circumstances which may require it to be updated, acting by written procedure or otherwise.

#### Article 21

21.1 This Agreement is concluded for a period of five years.

21.2 It shall be renewed by tacit agreement for further five-year periods.

#### Article 22

The expiry or termination of this Agreement does not affect obligations concerning ongoing and follow-up audit activities of the Court under this Agreement, relating to confidentiality of information, cooperation and exchange of information between the Parties, which will continue to have effect.

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## VII. Publication and effect of the Agreement

### Article 23

23.1 This Agreement will be published on the websites of the Court, the Commission, and the Bank.

23.2 It will come into effect on the date it has been signed by the last Party.

Signed in three original copies each in the English language.

For the EUROPEAN COMMISSION

Mr Johannes HAHN

Commissioner for Budget and Administration



For the EUROPEAN COURT OF AUDITORS

Mr Mihails KOZLOVS

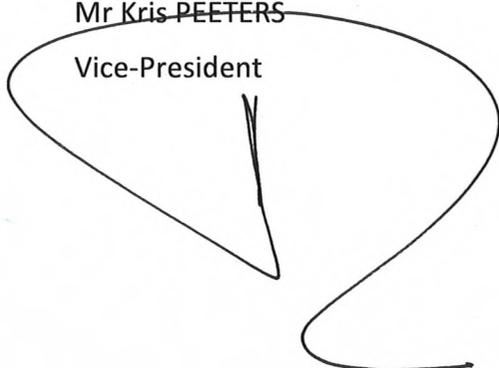
Member



For the EUROPEAN INVESTMENT BANK

Mr Kris PEETERS

Vice-President



## **ANNEX I REFERRED TO IN ARTICLE 1.1 AND 1.2 OF THE AGREEMENT**

### **Categories of documents or information**

#### **I. EU GENERAL BUDGET and EUROPEAN DEVELOPMENT FUNDS (including the Investment Facility under the Cotonou Agreement as amended and supplemented)**

##### **1. Request, such as:**

- calls for expression of interest to select financial intermediaries, promoters, beneficiaries;
- presentational flyers (marketing), Q&A for relevant financial instruments;
- relevant intermediary/beneficiary's expression of interest and presentation.

##### **2. Eligibility, such as:**

- EIB due diligence reports, checklists (e.g. drawdown investment compliance checklists), appraisal authorisations, risk management independent opinions, pre-signing note, IRC note reviews.

##### **3. Approval, such as:**

- EIB requests for approval, decisions of the steering boards/boards of directors;
- Agreements between EIB and financial intermediaries/beneficiaries, between intermediary and final beneficiary.

##### **4. Financial control, such as:**

- Beneficiaries' drawdown/distribution notices, side letters;
- EIB payment authorisations, checklists, bank statements, confirmation, cash movements monitoring files.

##### **5. Administration, reporting, monitoring and evaluation, such as:**

- regular (e.g. quarterly, semi-annual, annual) reports of financial intermediaries to EIB;
- data reports (e.g. lists of transactions with final beneficiaries, incl. respective amounts, loss rates, financial intermediaries, status, purpose, dates, data on advisory support etc.) exported from EIB databases based on Court's criteria and EU budget related management reporting;
- access to relevant data in IT databases (used for implementing EU budget). Such access will be granted, in a controlled environment at the Bank's premises on a read-only basis, enabling the Court to request data on the use of EU funds in a report or in a segregated database in mutually agreed dimensions, which could then be queried by the Court. In cases where databases or systems are exclusively related to the management of EU funds, the relevant data will be provided integrally.
- EIB regular (e.g. quarterly, semi-annual, annual) and final reports (incl. semi-annual, annual operational reports) to the Commission, EIB manuals for compiling the reports;
- EIB reports of on-site monitoring visits, including summaries sent to the Commission;
- EU budget related EIB internal audit and external auditors' reports shall be provided by the Bank, once the Court provided an explanation about its/their necessity. Those documents may

be provided, if necessary, in a controlled environment. Where justified, as they cover both findings pertaining to EU mandates and management of EIB own funds, the EIB may provide internal audit reports in redacted form;

- financial reporting packages to the Commission, audit report and audited financial statements and annexes for the financial instruments (managed by the EIB on behalf of the Commission), unaudited semi-annual financial statements;
- EIB management declaration of assurance to the Commission;
- EIB internal use dashboards and monitoring files, performance indicators and monitoring methodologies;
- Interim, ex post evaluations of financial instruments managed by the EIB.

**6. General information, such as:**

- EU budget related governance arrangements (for example, rules of procedure for Steering board, minutes of the meetings), where applicable under the mandates;
- Framework agreements between the Commission and the EIB (for example Relevant Service level agreement, financial and administrative framework agreement (FAFA) between the Commission and the EIB, relevant reports of factual findings on the implementation of FAFA Partnership agreements;
- relevant fiduciary and management agreement;
- for the respective financial instrument: delegation agreement and annexes, protocols between the Commission and the EIB, relevant EIB internal procedures, relevant investment policy/guidelines;
- EIB codes of conduct;
- EIB internal control frameworks shall be provided by the Bank, once the Court provided an explanation about its/their necessity. Those documents may be provided, if necessary, in redacted form regarding information not related to the management of EU funds.
- EIB organisation charts;
- pillar assessment reports on effective application of EIB standards, rules, procedures and policies to EU revenue and expenditure, prepared in accordance with the Commission Decision of 17<sup>th</sup> April 2019 implementing the Financial Regulation, as amended and supplemented. Where necessary for the purpose of an audit, the Bank shall transmit, on the Court's request also certain underlying documentation of the pillar assessment report, in accordance with the terms established in Annex I.

## **ANNEX II**

### **Correlation Table**

Paragraph 13 of the Court's Information Classification Policy<sup>1</sup> provides: "[i]nformation received from other EU Institutions or third parties must retain the level of confidentiality assigned by the originating party, and be allocated an ECA confidentiality level at least as high".

Paragraph 15 of the same Information Classification Policy provides: "if a Memorandum of Understanding (MoU) referring to data exchange is signed with other official bodies, it must contain a correlation table between their classification levels and ECA classification levels.

In accordance with the above-mentioned paragraphs, the Bank and the Court agreed to the following correlation table:

<b>The Bank</b>	<b>The Court</b>
Public	Public
Corporate use	ECA-use
Confidential	Sensitive
Strictly confidential	Sensitive

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<sup>1</sup> SG2120924EN03-20PP-CA030-20FIN-ECA\_Classification\_Policy-OR.docx.



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