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STEERING BOARD

Geographical eligibility of cross-border operations
involving non-EU entities under EFSI

proposal by EIB

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Geographical eligibility of cross-border operations involving non-EU entities under EFSI

As stipulated in the EFSI Investment Guidelines in Annex II of the EFSI Regulation¹, “*The EFSI is demand driven but aims to support eligible projects across the Union **as well as cross-border projects**, covered by Article 8 of this Regulation*”.

Cross-border projects, in the meaning of Article 8 of the EFSI Regulation, refer to operations involving entities located in the EU and extending **outside the EU**, in a defined list of third countries or territories. Projects which are carried out within the Union and which involve several Member States across the EU internal borders are geographically fully eligible under EFSI and are not the subject of this paper.

The aim of this note is to clarify how the EFSI Regulation, and in particular Article 8 thereof, is to be understood in the context of investments in cross-border projects with non-EU components. This paper focuses on geographical eligibility only; other standard sectorial and economic eligibility criteria apply as always.

Eligibility of cross-border projects under EFSI

On the basis of Article 8 of the EFSI Regulation, the EFSI Agreement defines "**Cross-border Project**" as meaning “*any EFSI Guaranteed Operation which: (i) involves entities located or established in one or more Member State(s); and (ii) is located in one or more Member State(s) and extends to one or more third countries falling within the scope of the European Neighbourhood Policy, including the Strategic Partnership, the Enlargement Policy, the European Economic Area or the European Free Trade Association or extends to one or more Overseas Country or Territory as set out in Annex II to the Treaty, whether or not there is a partner in those third countries or Overseas Countries or Territories*” (hereafter “eligible third country or territory”).

On the basis of this definition, a non-exhaustive typology of different cross-border projects eligible under the EFSI Infrastructure and Innovation Window can be drawn on the basis of points a) to e) below.

a) Operations involving a physical interconnection between at least an EU Member State and an eligible third country or territory as per Article 8(b) of the EFSI Regulation.

Such projects could take the form inter alia of transport tunnels or bridges as well as energy (e.g. electricity cables, gas pipeline) or telecommunications interconnectors (e.g. broadband connectors). These eligible physical interconnections shall not include parts of a wider cross-border project when the part to be financed does not physically cross the border between EU Member State and an eligible third country or territory. For instance, a motorway connecting EU Member States to a third country but for which the project asking for the EIB financing

¹ Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 – the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1)

through EFSI only includes works in that third country would therefore not be an EFSI cross border operation.

To be eligible, at least 50% of the eligible project investment costs in such projects should be accounted for in the EU.

b) Operations involving a non-physical interconnection between at least an EU Member State and an eligible third country or territory as per Article 8(b) of the EFSI Regulation.

Such projects could take the form inter alia of telecommunication (including through satellites) systems with relay masts or similar equipment in eligible third countries or territories, when the telecommunication system is developed by entities located or established in one or more Member States and deployed in these Member States, and when this system is extended in an eligible third country or territory. It could also include for instance projects deploying European transport traffic management systems in EU Member States and in neighbouring countries.

To be eligible, at least 50% of the eligible project investment costs in such projects should be accounted for in the EU.

c) Operations involving a product or service developed in a EU Member State but whose deployment involves costs in an eligible third country or territory as per Article 8(b) of the EFSI Regulation

Such projects could take the form of RDI projects with a unique objective, involving eligible costs in eligible third countries or territories, for instance in the case of a vaccine targeting a specific illness for which tests have to be carried out in eligible third countries or territories. It could also take the form of an investment in new production capacities for new cleaner engines by an EU manufacturing company in the EU involving investment in new production capacities in an eligible third country or territory for part of the components or materials necessary for these engines to be manufactured in the EU with a direct and demonstrable link that the investment in the EU is subject to the investment in the eligible third country or territory. To be eligible, at least 80% of the eligible project investment costs in such projects should be accounted for in the EU, and the remaining components should be accounted for in the eligible third countries or territories as per Article 8(b).

These eligible operations shall involve entities located or established in the EU and not include projects for which the borrower is an entity located in a third country and extending to EU Member States.

d) Operations involving a framework cooperation in order to finance a portfolio of projects with a thematic focus, involving projects in at least an EU Member State and an eligible third country or territory as per Article 8(b) of the EFSI Regulation.

Such operations could take the form of framework programmes or loans, EFSI Investment Platforms (see also point g), established or managed by an entity established/incorporated in an EU Member State, supporting the deployment of energy efficient buildings in an EU Member State and in an eligible third country or territory.

To be eligible, such operations should demonstrate that the projects supported in the eligible third country or territory have direct and demonstrable benefits for the [investment in the] EU, supporting the general objectives of EFSI, and that at least 80% of the eligible project

investment costs in such projects should be accounted for in the EU, and the remaining components should be accounted for in the eligible countries or territories as per Article 8(b).

e) Operations involving operations with EU financial intermediaries with the aim of supporting final beneficiaries, in particular small and medium-sized enterprises, located in at least an EU Member State and an eligible third country or territory as per Article 8(b) of the EFSI Regulation

Such operations could take the form of multi-beneficiary intermediated loans or risk-sharing operations, for instance with National Promotional Banks, involving final beneficiaries in the EU and in an eligible third country or territory. Such an operation could be for instance set up with a development assistance agency to support SMEs [and Midcaps] in certain regions of an EU Member State and overseas territories eligible under Article 8(b) of the EFSI Regulation linked to that Member State but not part of the EU. To be eligible, the financial intermediary shall commit contractually that at least 80% of the portfolio of final beneficiaries should be located in the EU, and the rest of the portfolio of final beneficiaries should be located in the eligible third countries or territories as per Article 8(b).

For the sake of clarity, these eligible operations shall only include operations involving financial intermediaries located or established in the EU.

f) Operations involving EIB's equity participation in Funds

The eligibility of such operations has been clarified by the EFSI Steering Board in the document "Investments in funds in line with EFSI Regulation- Geographical Scope"².

g) Operations involving EFSI Investment Platforms

According to the EFSI Regulation, an Investment Platform means "*special purpose vehicles, managed accounts, contract-based co-financing or risk-sharing arrangements or arrangements established by any other means by which entities channel a financial contribution in order to finance a number of investment projects, and which may include:*

(a) National or sub-national Platforms that group together several investment projects on the territory of a given Member State;

(b) Multi-country or regional Platforms that group together partners from several Member States or third countries interested in projects in a given geographic area; and

*(c) Thematic Platforms that group together investment projects in a given sector."*³

EFSI Investment Platforms complying with paragraph (b) or (c) above may potentially involve operations or projects in eligible third countries or territories. As described in the EFSI Steering Board paper on "Rules applicable to operations with Investment Platforms and National Promotional Banks or Institutions"⁴, Platforms could be set up under different legal forms.

In case those platforms are structured as funds, special purpose vehicles (SPV) or similar structures, the provisions under the EFSI Steering Board document "Investments in funds in line with EFSI Regulation - Geographical Scope" shall apply. In case those platforms are not structured as funds, SPVs or similar structures, the principles outlined above in paragraph d)

²

http://www.eib.org/attachments/strategies/efsi_steering_board_investments_in_funds_in_line_with_efsi_regulation_en.pdf

³ Regulation (EU) 2015/1017 Art. 2(4)

⁴ <http://www.eib.org/infocentre/publications/all/efsi-rules-applicable-to-operations.htm>

for operations involving a framework cooperation in order to finance a portfolio of projects with a thematic focus, involving projects in at least an EU Member State and an eligible third country or territory as per Article 8(b) of the EFSI Regulation shall apply.

EFSI Operating policies and procedures for cross-border projects

Cross-border projects are subject to more complex operating policies and procedures in the EIB and in the Commission because of their double nature. The Bank's normal operating policies and procedures, including the EIB policy towards weakly regulated, non-transparent and uncooperative jurisdictions⁵, will continue to apply for Cross-border Projects.

Calculation of EFSI investment mobilised

The purpose of the EFSI Regulation is to support, in the Union, investments and increased access to financing for entities having up to 3 000 employees, with a particular focus on SMEs and small mid-cap companies. Therefore, the EIB group financing supported by the EFSI is expected to further generate a total of EUR 315 000 000 000 in investment in the Union.

The EFSI Steering Board document on Key Performance Indicators – Key Monitoring Indicators (KPI-KMI) Methodology⁶ addresses the concept of the calculation of the EFSI investment mobilised in cross-border operations between the EU and eligible third countries or territories as per Article 8(b) of the EFSI Regulation. The indicator on the EFSI eligible investment mobilised counting towards the EUR 315bn target, KPI 3, measures the total investment mobilised within EU only (the amounts falling in non-EU countries will thus be excluded from the calculation). A separate info item on the non-EU amount of investment mobilised will be foreseen in the revised KPI-KMI Methodology⁷. From the perspective of measuring geographic concentration limits, as requested by the Investment Guidelines and defined in the Strategic Orientation for EFSI, in the calculation of the share of investment in any three Member States together (measured by signed loan/investment amounts), the amount of investment mobilised outside the EU will not be considered.

⁵ EIB Policy towards weakly regulated, non-transparent and uncooperative jurisdictions, Anti-Fraud Policy, Whistleblowing Policy and the Framework for Anti-Money Laundering and Combating Financing of Terrorism).

⁶ http://www.eib.org/attachments/strategies/efsi_steering_board_kpi_kmi_methodology_en.pdf

⁷ It is recalled that the KPI-KMI methodology also defines how the KMI 1 on geographical concentration - which aims at measuring the volume of operations (EFSI financing) supported by the EU Guarantee – is calculated.