

CORPORATE

EIB Group

**Policy towards weakly  
regulated, non-transparent  
and non-cooperative jurisdictions  
and tax good governance**



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weakly regulated, non-transparent and  
non-cooperative jurisdictions and  
tax good governance**



**EIB GROUP POLICY TOWARDS WEAKLY REGULATED, NON-TRANSPARENT AND NON-COOPERATIVE JURISDICTIONS AND TAX GOOD GOVERNANCE (“EIB GROUP NCJ POLICY” OR “POLICY”)**

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# I. Introduction

## I.1 Introductory remarks

The European Investment Bank Group (“EIB Group”), consisting of the European Investment Bank (“EIB” or “the Bank”) and the European Investment Fund (“EIF” or “the Fund”) supports and contributes to the implementation of relevant international and EU standards in the fields of anti-money laundering and countering the financing of terrorism (“**AML-CFT**”) and tax good governance. The EIB was among the first International Financial Institutions (“**IFIs**”) to adopt in 2005 a specific policy governing its activities linked to the so-called “Offshore Financial Centers”. Following adoption of the 2005 policy, and with a view to taking into account changes in international and EU regulatory developments, the original policy was revised in 2009 and 2010<sup>1</sup>, followed by the adoption of an addendum in 2014. With this, the EIB Group has demonstrated its ambition to maintain and expand its leading position amongst IFIs by continuously aligning to and driving best standards and practices which also support relevant international and European Union (“**EU**”) regulatory developments.

The EIB approved, at the beginning of 2017, an ‘Interim approach to the EIB’s NCJ Policy and tax sensitive jurisdictions’ (“**Interim Approach**”) applying additional tax good governance measures and an extended tax due diligence approach, in addition to the existing AML-CFT Framework and NCJ Policy elements, for operations giving rise to potential tax concerns.

The experience gathered in the Interim Approach has been reviewed by the EIB and discussed with key stakeholders such as the European Commission (“**EC**”), EIB’s shareholders and civil society organisations in preparation of a revised EIB Group approach.

In order to remain at the forefront in supporting implementation of international and EU standards in the field of AML-CFT and to promote tax good governance, the EIB and the EIF Boards of Directors have adopted this revised NCJ Policy (“**EIB Group NCJ Policy**” or “**the Policy**”). The Policy is in keeping with the EIB Group’s commitment to support the EU Policy and legislation adopted following the publication of the EC’s Anti Tax Avoidance Package and the regulatory developments of the Organisation for Economic Cooperation and Development (“**OECD**”) and the Global Forum on Transparency and Exchange of Information (“Global Forum”).

This Policy replaces in full the previous EIB Policy towards weakly regulated, non-transparent and uncooperative jurisdictions and the EIF Revised Policy on offshore financial centres and governance transparency and the related addenda.

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<sup>1</sup> The 2010 revision of the EIB OFC Policy resulted in the change of the Policy title to “Policy towards weakly regulated, non-transparent and uncooperative jurisdictions”.

## 1.2 Preamble

The mission of the EIB Group is to contribute, by financing sound investments, to the policy objectives of the EU as enshrined in the Treaty on the Functioning of the European Union (“**TFEU**”)<sup>2</sup>, the Statutes of the EIB<sup>3</sup> and the EIF<sup>4</sup>, and in decisions of the European Council and of the European Parliament. The EIB Group contributes to the integration, balanced development and economic and social cohesion of the EU Member States. EIB Group’s activities also encompass a series of mandates assigned by the EU in support of the EU’s policies.

The present Policy takes account of the AML-CFT standards as promoted by the EU and the Financial Action Task Force (“**FATF**”)<sup>5</sup> and the tax good governance principles promoted by the EU, the OECD, the Group of Twenty (“**G20**”) as well as the **Global Forum**. The EIB Group is committed to the highest standards of integrity in line with the principles and standards of applicable EU legislation, applicable best banking practices and market standards including, where relevant, other international financial institutions’ standards.<sup>6</sup> The EIB Group takes note of the “Communication from the Commission on new requirements against tax avoidance in EU Legislation governing in particular financing and investment operations” of 21 March 2018 (“**EC Communication**”) within the framework set by the EU Council conclusions on “The EU list of non-cooperative jurisdictions for tax purposes” adopted by the Council (ECOFIN) in its meeting of 5 December 2017 and amended thereafter (“**EU Council Conclusions**”).

Criminal activities such as money laundering, terrorist financing and tax crimes, as well as non-criminal activities such as tax avoidance undermine the efforts of governments to ensure sustainable development of their economies and the ability to collect adequate public revenues. Illegal and other abusive tax practices may be facilitated by, inter alia, multijurisdictional corporate structures and recourse to jurisdictions which are considered non-aligned with internationally and EU agreed standards.

The EIB Group supports standard setting organisations in their efforts to combat tax crimes and tax avoidance, with the aim of creating a fairer and more stable business environment and a level playing field. Contracting counterparties which receive financial support from EIB Group are expected to align themselves with the international and EU standards in the fields of AML-CFT as well as tax good governance, where applicable, taking into account business rationale and general business practices. Therefore, the EIB Group expects, as a rule, readiness of its contracting counterparties to disclose relevant tax good governance information.

Against this background and in order to mitigate the risk of misuse of EIB Group funds, and where relevant, funds from other sources, for the purpose of activities which are illegal or abusive in relation to applicable laws, the EIB Group continuously enhances the effectiveness of its compliance and control framework. The scope of the framework applicable to EIB Group

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<sup>2</sup> Article 309 of the TFEU: “The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union (...)”.

Article 209 paragraphs 1 and 3 of the TFEU: “1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy, which may relate to multi-annual cooperation programmes with developing countries or programmes with a thematic approach.(...) 3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1”.

<sup>3</sup> The EIB’s Statute is drawn up as a Protocol (no. 5) annexed to the TFEU. As provided for under Article 51 of the Treaty on European Union, the Statute forms an integral part of the Treaties and has the same legal value.

The EIB Statutes are available at: <https://www.eib.org/en/infocentre/publications/all/statute.htm>

<sup>4</sup> The EIF Statutes and their Annexes are available at: [https://www.eif.org/news\\_centre/publications/statutes.htm](https://www.eif.org/news_centre/publications/statutes.htm)

<sup>5</sup> These standards are embedded in the EIB Group AML-CFT Framework available at <https://www.eib.org/infocentre/publications/all/eib-group-anti-money-laundering-policy-and-combating-finance-of-terrorism-framework.htm>

<sup>6</sup> Article 12 of the EIB Statute: “A [Audit] Committee (...) shall verify that the activities of the Bank conform to best banking practice (...)”

Article 18 of the EIB Statute: “In its financing operations, the Bank (...) shall ensure that its funds are employed as rationally as possible in the interests of the Union. (...)”

Article 2 of the EIF Statute: “(...) The activities of the Fund shall be based on sound banking principles or other sound commercial principles and practices as applicable. (...)”

operations is set out, inter alia, in this Policy, the [EIB Group AML-CFT Framework](#) as well as the [EIB](#) and [EIF](#) Anti-Fraud Policies, all to be read in conjunction.

The implementation of the OECD's Base Erosion and Profit Shifting ("**BEPS**") package, together with the relevant EU Legal Framework, such as the Anti-Tax Avoidance Directive and the EU Council Conclusions, are designed to create a more consistent international tax good governance framework. Broadening and deepening tax cooperation around the world is key to increase the level of tax compliance globally. Tax good governance is also developing on the basis of case law of the Court of Justice of the EU.

The EIB Group supports regulatory efforts aimed at, amongst other, enhancing compliance of jurisdictions' regimes with international and EU tax good governance standards. While ensuring compliance of taxpayers with tax legislation is a responsibility of competent national authorities, the EIB Group will continue to play its role in supporting tax transparency, fair taxation and anti-BEPS standards. In this respect, the EIB Group will take account of jurisdictions' participation in the Inclusive Framework on BEPS, Global Forum, adherence to the Standard for Automatic Exchange of Financial Account Information, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, the Convention on Mutual Administrative Assistance in Tax Matters and other relevant standards, as well as the status of jurisdictions under the EU Council Conclusions.

The EIB Group strives to enter into business relationships with contracting counterparties that are compliant with applicable laws and best market standards. The EIB Group therefore requires its contracting counterparties to comply with all applicable laws, including in the area of AML-CFT and taxation.

The EIB is the Bank of the European Union and adheres to the EU legal and policy framework.

To that effect the EIB governing bodies have adopted the EIB Group NCJ Policy under which the EIB Group applies due diligence to its contracting counterparties, their beneficial owners and other parties integral to the project.

The presence of elements of tax avoidance concerns or of jurisdictions listed under the relevant EU policies for tax, money laundering or counterterrorism purposes are considered as higher risk indicators by the EIB Group and trigger enhanced due diligence. In accordance with the relevant policies the EIB Group will either not engage in such projects or seek to ensure that deficiencies identified by the EU policies as problematic are not exploited.

The EIB Group will require that when its funds are passed on to final beneficiaries via financial intermediaries, their allocation should be in line with the principles of this Policy.

This Policy applies to all new or renewed operations of EIB Group entities and is publicly available on EIB Group's website<sup>7</sup>.

### ***1.3 Main Definitions***

For the purposes of this Policy:

- "**AML-CFT**" means Anti-Money Laundering and Combatting the Financing of Terrorism;
- "**AML Directive**" means Directive (EU) 2015/849 of the European Parliament and of Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended and supplemented from time to time;
- "**Beneficial Owner**" shall have the same meaning as ascribed to the term under the AML Directive or, where applicable, relevant FATF Recommendations as well as Global Forum's standards;

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<sup>7</sup> <http://www.eib.org/infocentre/events/all/ncj-policy-and-procedures-workshop.htm>



- **“BEPS”** means base erosion and profit shifting;
- **“Contracting Counterparty(ies)”** means direct contractual counterparts of EIB or EIF that are either receiving or managing financial support under an EIB Group financing and investment operation;
- **“Cross-border Operations”** means operations where (i) the jurisdiction where the Contracting Counterparty is incorporated or established and (ii) the jurisdiction where the operation is physically implemented are different;
- **“EIB”** means European Investment Bank;
- **“EIB Group”** means the European Investment Bank and the European Investment Fund;
- **“EIB Group NCJ Policy”** or **“Policy”** means the EIB Group Policy Towards weakly regulated, non-transparent and non-Cooperative Jurisdictions and Tax Good Governance;
- **“EIF”** means European Investment Fund;
- **“EU”** means European Union;
- **“EU Legal Framework”** includes applicable principles and policies, as translated into laws, as well as rules and regulations adopted by the EU in connection with NCJs and Targeted Activities, such as the EU Anti-Tax Avoidance Directive, EU legislative mandates and EU Council decisions as well as relevant case law of the Court of Justice of the EU;
- **“FATF”** means Financial Action Task Force;
- **“GCCO”** means the Group Chief Compliance Officer of the European Investment Bank;
- **“Global Forum”** means the Global Forum on Transparency and Exchange of Information for Tax Purposes;
- **“IFIs”** means International Financial Institutions;
- **“Lead Organisations”** means organisations and standard setting bodies, including the EU, the United Nations, the International Monetary Fund, the Financial Stability Board, the FATF, the OECD, the Global Forum, the G20, the Inclusive Framework on BEPS and any successor organisation, as the case may be;
- **“NCJ”** means **“Non-Compliant Jurisdiction”**, i.e. a jurisdiction classified by one or more Lead Organisations for not having made sufficient progress towards satisfactory implementation of EU and/or internationally agreed standards in connection with AML-CFT<sup>8</sup> and/or tax transparency/tax good governance standards<sup>9</sup>, as applicable and includes the following:
  - **“Restricted Jurisdiction”** means a jurisdiction classified by one or more Lead Organisations as “non-compliant”, “partially compliant”, “non-cooperative” or having an equivalent poor rating in connection with the above mentioned international and/or EU standards;
  - **“Prohibited Jurisdiction”** means a jurisdiction:
    - classified by one or more Lead Organisations as presenting ongoing and substantial AML-CFT risks, having repeatedly failed to address and/or remedy (as the case may

<sup>8</sup> Such jurisdictions feature in Reference Lists published from time to time by Lead Organisations such as FATF (available here: <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-june-2018.html>) and EC under Art 9(2) of Directive (EU) 2015/849.

<sup>9</sup> Such jurisdictions feature in Reference Lists published from time to time by Lead Organisations such as the EU (available here: [https://ec.europa.eu/taxation\\_customs/tax-common-eu-list\\_en](https://ec.europa.eu/taxation_customs/tax-common-eu-list_en)) and the Global Forum (available here: <http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/#d.en.342263>).

- be) identified strategic deficiencies in its AML-CFT framework and for which call for action on members of the classifying Lead Organisation applies; or
  - which is a Restricted Jurisdiction for both AML-CFT and tax purposes;
- **“NCJ Link”** means any of the links below to an NCJ:
  - **Location Link**, where the Contracting Counterparty is established or incorporated in an NCJ;
  - **Ownership Link**, where the Contracting Counterparty is owned (as per the meaning of AML Directive) by a legal or natural person established or incorporated in an NCJ;
  - **Control Link**, where the Contracting Counterparty is controlled (as per the meaning of AML Directive by a legal or natural person established or incorporated in an NCJ;
- **“NCJ Operation”** means a lending (including equity investments), borrowing, treasury or guarantee operation with an NCJ Location Link;
- **“New or Renewed Operations”** means (i) any newly signed financing and investment operation or (ii) any signed financing and investment operation which is contractually amended in order to increase the financing amount or extend the scheduled tenor;
- **“OCCO”** means the Office of the Chief Compliance Officer;
- **“OECD”** means the Organisation for Economic Cooperation and Development;
- **“Prohibited Conduct”** shall have the meaning as ascribed to the term under the EIB Anti-Fraud Policy or EIF Anti-Fraud Policy, as applicable;
- **“Reference Lists”** means ratings and/or lists compiled by the Lead Organisations assessing the level of adherence and/or implementation of internationally and/or EU agreed standards in the field of AML-CFT and tax good governance, in particular in connection with Targeted Activities;
- **“Targeted Activities”** means (i) criminal activities such as money laundering, financing of terrorism, tax crimes (i.e. tax fraud and tax evasion) and (ii) tax avoidance practices;
- **“TFEU”** means the Treaty on the Functioning of the European Union.

## ***1.4 Core Principles***

The EIB Group is fully aware that NCJs can raise serious integrity concerns and are particularly exposed to the risk of facilitating Targeted Activities. With a view to mitigating the risk that the EIB Group's financing and investment operations could be misused for Targeted Activities, this Policy introduces an approach designed to (i) put in place appropriate mechanisms to protect EIB Group against the integrity and reputation risk related to such misuse, (ii) support efforts of the Lead Organisations in creating a level playing field among jurisdictions in the areas of AML-CFT and tax good governance and (iii) promote integrity in the financial markets.

All operations are assessed in line with the standards of the due diligence process promoted by the EIB Group AML-CFT Framework and this NCJ Policy. The EIB and the EIF carry out specific due diligence on operations as set out hereafter. Operations with NCJ Links shall be subject to enhanced monitoring.

Principles of efficient use of resources and proportionality require that this Policy, as well as any guidelines and measures foreseen hereunder (operational procedures), follow a risk-based approach in line with AML-CFT standards.

The core principles of the present Policy are the following:

1. Prohibition against entering into New or Renewed Operations with an NCJ Link to a Prohibited Jurisdiction or Location Link to a Restricted Jurisdiction in accordance with Section II.1);
2. Enhanced Vigilance in connection with all operations with NCJ Links in accordance with Section II.2); and
3. Reporting obligations to the Board of Directors in accordance with Section II.3).

## ***1.5 Reference Lists***

For the purposes of determining the risk related to the involvement of the EIB Group in an operation, the EIB Group:

1. expects, to the extent applicable, compliance of the operations with the EU Legal Framework and internationally agreed standards promoted by the Lead Organisations;
2. endeavours to consistently apply risk-based due diligence measures in consideration of the Reference Lists;
3. applies the principle that in the event of conflict between ratings/lists provided in different Reference Lists, any Reference List published by the EU shall prevail; and
4. in the absence of relevant Reference Lists or applicable EU Legal Framework, may decide to carry out an independent assessment and monitoring of the relevant jurisdiction, in accordance with the EU Legal Framework and/or internationally accepted standards and best practices.

In this respect, the GCCO will inform the operational services of the EIB Group entities of any material change in connection with:

- the EU Legal Framework;
- the Reference Lists; and
- any independent assessment carried out by OCCO pursuant to paragraph 1.5.4) above.

## ***1.6 Scope of the Policy***

This Policy applies to:

1. all operations, including EIB Group-financed structures implemented on behalf or for the account of other bodies within or outside the EU, where the EIB Group participates in the course of its financing and investment activities as detailed in operational procedures, and
2. all borrowing and treasury activities of the EIB Group with an NCJ Location Link, where the approach followed shall take into account the specificities of these activities.

## II. Policy Guidelines

The EIB Group will follow the guidelines below in all its operations.

### II. 1 Prohibition

The EIB Group will not enter into any New or Renewed Operation with any NCJ Link to Prohibited Jurisdictions or NCJ Location Link to Restricted Jurisdictions, subject to the below.

#### (i) *Prohibited Jurisdictions*

The EIB Group may enter into a New or Renewed Operation with an NCJ Link to Prohibited Jurisdictions only if the operation is physically implemented in the relevant Prohibited Jurisdiction and it does not present any indication that it is used for Targeted Activities.

In any event, the EIB Group will not make investments supporting the financial sector (e.g. participation in the recapitalisation of banks, insurance companies or other financial intermediaries) in a Prohibited Jurisdiction, except where the relevant entity serves as a financial intermediary for the EIB Group's investments in the relevant Prohibited Jurisdiction.

#### (ii) *Restricted Jurisdictions*

The EIB Group may enter into a New or Renewed Operation with a Location Link to a Restricted Jurisdiction only if the operation is physically implemented in the relevant Restricted Jurisdiction and it does not present any indication that it is used for Targeted Activities.

Physical implementation exceptions for both Prohibited and Restricted Jurisdictions are envisaged in order to avoid penalising the local population of countries where the EIB Group has received an EU mandate to provide finance and to support the EU objectives of development, cooperation and economic, social and territorial cohesion stipulated in Articles 209 and 309 of the TFEU and its Protocol No 28. In determining the applicability of such expectation the EIB Group shall assess in accordance with section II.2 below whether the risk (if any) that the operation could be misused for Targeted Activities can be mitigated. It should be noted that the physical implementation exception applies, unless specifically excluded in the applicable mandates.

### II. 2 Enhanced Vigilance

All operations with NCJ Links are subject to enhanced due diligence, which may consider, on a risk-sensitive basis, relevant elements of the Anti-Tax Avoidance Toolbox in Appendix 1 hereto. For all operations with NCJ Links the EIB Group shall perform checks to determine whether:

- the levels of transparency and integrity of the relevant operation are satisfactory to the EIB Group. In particular the Contracting Counterparty/ies and their Beneficial Owners must be clearly identified, in line with the AML Directive or the relevant FATF Recommendations, as applicable;
- the Contracting Counterparty/ies can provide plausible justifications for the NCJ Location Link<sup>10</sup> or

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<sup>10</sup> For illustration purposes, sound economic purposes for recourse to a relevant structure may include: limitation of risk (e.g. to provide investors with contractual protection against personal liability for claims against the fund or individual

- there is a risk that the operation is (or may be) misused for Targeted Activities.

On a risk-sensitive basis and in line with EIB Group policies, the EIB Group may decide to extend the above-mentioned checks to operations with Contracting Counterparties incorporated or established in jurisdictions which are generally cooperative but have not yet solved outstanding tax good governance deficiencies. In such cases, the checks shall focus on the identified deficiencies of the relevant jurisdictions.

## ***II. 3 Reporting obligations to the Board of Directors***

The Boards of Directors of EIB and EIF respectively shall be informed of the existence of any operation with an NCJ Link and identified risk indicators of Targeted Activities in connection to an operation. Furthermore, extended information regarding identified integrity concerns will be provided in accordance with Section III.2 of this Policy. Such information shall be included in the relevant Board report. In the event that an NCJ Link comes into existence only after the Board's approval and before signature, the information shall be given to the Board as soon as practicable after the services of the Bank have become aware of the existence of such a link.

For operations where approval is delegated by the EIB Board of Directors to the Management Committee or by the EIF Board of Directors to the EIF Chief Executive, the relevant Board of Directors shall be informed pursuant to the normal reporting procedures for delegated activities.

Where approval of operations is delegated by the EIB Board of Directors to the Management Committee or the EIF Board of Directors to the EIF Chief Executive, the relevant Board of Directors shall be informed accordingly of operations with an NCJ Link for which plausible tax disclosures have not been obtained.

## **III. Measures implemented by the EIB Group**

### ***III.1 Due diligence in relation to NCJ and Targeted Activities***

In implementing the Policy, the EIB Group carries out specific due diligence to satisfy itself that:

- the Contracting Counterparties are not incorporated or established in an NCJ (unless the physical implementation exception referred to below applies);
- operations do not constitute an investment supporting the financial sector of a Prohibited Jurisdiction, unless the relevant entity serves as a financial intermediary for the EIB Group's investments in the relevant Prohibited Jurisdiction;
- the Contracting Counterparty/ies and their Beneficial Owners are identified;

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assets); permitting effective co-investment by other parties into individual investments, thus further spreading risk and opening up investment opportunities; banking security, often requiring more than one level of holding company, to provide a pledge to be given over a single company's shares; favourable establishment and regulatory cost; administrative simplicity (e.g. a single legal shareholder owning investments, to provide a simpler acquisition and ongoing governance structure compared to multiple investors); facilitating regulatory compliance and investor reporting, allowing a single entity management board to provide oversight of the entire portfolio; stability and certainty in the political, regulatory, domestic tax and legal system as investments may be held for a number of years and the same framework may not be available in the country where the project will be located; clarity that the applicable corporate law permits timely and efficient cash extraction (e.g. in respect of a disposal of part of an investment); availability of suitable local premises, staff, administrative support and other professional advisors at a reasonable cost; lender and investor familiarity or access to qualified personnel.

- in case of operations with any NCJ Links the presence of NCJs is identified and information is collected in accordance with Section III.2.

EIB may engage in an NCJ Operation when:

- the Contracting Counterparty/ies' and the operation's physical implementation location are in the same jurisdiction and
- the risk (if any) of the operation being misused for Targeted Activities can be mitigated.

### **III.2 Tax Disclosures**

For NCJ Operations and operations with controlling shareholders of the Contracting Counterparties incorporated or established in an NCJ, the Contracting Counterparties will be requested to:

- disclose the economic rationale of the structure and the specific economic requirements that make recourse to the relevant structure necessary; and
- provide a description of the tax regime applicable to the proceeds of the operation.

For operations with any NCJ Links, EIB Group shall collect information about the level of commitment by the relevant NCJ to comply with tax good governance standards, such as:

- the reason for inclusion of the relevant jurisdiction on the list of non-cooperative jurisdictions for tax purposes under the EU Council Conclusions;
- commitment to implement the automatic exchange of information;
- membership of the Global Forum and satisfactory rating;
- being signatory and a party of the OECD Multilateral Convention on Mutual Administrative Assistance;
- existence of harmful preferential tax regimes, identified by certain Lead Organisations<sup>11</sup>;
- existence of tax regimes which facilitate offshore structures that attract profits without real economic activity;
- membership of the Inclusive Framework on BEPS or implementation of the BEPS minimum standards; and
- being a party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

EIB Group Contracting Counterparties should take account of tax good governance principles and closely cooperate with the EIB Group for this purpose considering the relevant elements of the Anti-Tax Avoidance Toolbox in Appendix 1 hereto.

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<sup>11</sup> Reference is made to the progress reports and overviews of preferential tax regimes published from time to time by relevant instruments or organisations such as the Code of Conduct Group on Business Taxation (available here: <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>) and OECD (available here: <http://www.oecd.org/tax/beps/update-harmful-tax-practices-2017-progress-report-on-preferential-regimes.pdf>).

### ***III.3 Relocation requirements***

In addition to the general prohibition against carrying out NCJ Operations as outlined in section II.1, the EIB Group adopts the relocation requirements for new Cross-border Operations with Contracting Counterparties incorporated or established in NCJs prior to signature of the contract.

On that basis, if the Contracting Counterparty's place of incorporation or establishment is or becomes classified as an NCJ by one or more Lead Organisations, the EIB Group will not enter into New or Renewed Operations with these entities unless they relocate outside an NCJ prior to signing of the contract. As stated above the relocation requirements only apply to Cross-border Operations: by analogy with the principles stated in Section II.1 no relocation requirements will be imposed if the Contracting Counterparty is established or incorporated in the same NCJ in which the operation is physically implemented and the operation does not present a risk (if any) of being misused for Targeted Activities that cannot be mitigated.

### ***III.4 Additional measures***

The EIB Group may adopt additional measures to address certain risk factors identified in the course of the due diligence performed on the NCJ Operation which may be perceived as being open to misuse by the Contracting Counterparty for Targeted Activities.

Possible measures to mitigate tax avoidance risk are provided in the Anti-Tax Avoidance Toolbox in Appendix 1 hereto.

On a risk-sensitive basis, the EIB Group may decide to extend the above-mentioned additional measures to other operations in line with EIB Group policies.

### ***III.5 Integrity clauses in the EIB Group's contracts; Contracting Counterparty's declarations and undertakings***

When concluding agreements with financial intermediaries, the EIB Group shall transpose certain principles referred to in this Policy into the relevant agreements and shall require the financial intermediaries to report on their observance. In particular in its financing agreements with financial intermediaries for debt operations the EIB Group will include appropriate mechanisms so that:

- Financial intermediaries are required to comply with applicable law, including tax law.
- Financial intermediaries require final beneficiaries receiving EIB Group funds to comply with applicable law, including tax law.
- EIB Group funds are not allocated by financial intermediaries to final beneficiaries incorporated or established in an NCJ except in the case of operations to be physically implemented in such NCJ.
- Financial intermediaries are subject to appropriate reporting requirements in the event of breach of such mechanisms.

In addition, in EIB Group's financing agreements outside the EU, the Contracting Counterparties are generally required to confirm, among other things, that:

- they have not engaged in or will not engage in any Prohibited Conduct in connection with the execution of the operation;

- when financial intermediaries are concerned, they apply the FATF Recommendations<sup>12</sup> or, where applicable, the AML Directive;
- all reasonable due diligence has been undertaken to satisfy them that no part of their share capital is of illicit origin; and
- they will inform the EIB Group of any alteration of their legal status and any transaction involving a material change in ownership, thus ensuring the transparency of the Contracting Counterparty/ies on a continuing basis.

Additional contractual provisions addressing specific transparency and integrity issues can be imposed by the EIB Group on a case-by-case basis for operations with an NCJ Link, following the publication of any assessment of the Lead Organisations which highlights weaknesses in their compliance with international and EU standards and/or specific recommendations by the OCCO.

For indirect equity operations, appropriate provisions can be included in the legal documentation of the fund in which the EIB Group participates to address compliance issues, including but not limited to those in respect of AML-CFT.

In the event of breach of the above clauses, the EIB Group may have recourse to appropriate measures under applicable laws, policies and rules, including cancellation or suspension of the financing. Entities found to have engaged in Prohibited Conduct may be excluded from future operations.<sup>13</sup>

## IV. Implementation and Review of Policy

The EIB Management Committee and EIF Executive Management (Chief Executive and Deputy Chief Executive) will adopt detailed operational procedures and due diligence measures for the implementation of this EIB Group Policy, tailored in consideration of each institution's specificities and requests from the decision-making bodies, which will be updated as appropriate from time to time in order to ensure its effective implementation in all EIB Group activities.

The GCCO is responsible for the administration of this Policy pursuant to the applicable internal procedures established in close cooperation with the relevant EIB Group services.

The EIB Group reconfirms its commitment to support implementation of international and EU standards in the field of AML-CFT and tax good governance, by keeping the Policy updated also taking into account relevant EU and international regulatory developments.

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<sup>12</sup> The FATF has issued 40 Recommendations to provide a complete set of counter-measures against money laundering and 9 Special Recommendations as a basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

<sup>13</sup> The Bank's Exclusion Policy sets forth the policy and procedures for the exclusion of entities and individuals found to have engaged in Prohibited Conduct, available here: <http://www.eib.org/en/infocentre/publications/all/exclusion-policy.htm>



## Appendix 1 Anti-Tax Avoidance Toolbox

While tax avoidance is not a criminal activity, it may under specific circumstances contribute to unfair tax practices, erode the tax base in jurisdictions where economic value is actually created and be contrary to/incompatible with the policy principles laid down in the EIB Group NCJ Policy which supports the EU's External Strategy for Effective Taxation and takes note of the EC Communication within the framework set by the EU Council conclusions and applicable EU law.

The EIB Group has developed a tax good governance framework as well as an internal toolkit to take account of the tax good governance of its Contracting Counterparties<sup>14</sup> and may apply, on a risk-sensitive basis and as applicable, the following tools and/or approaches when identifying the potential risk of tax avoidance in operations.<sup>15</sup>

The EIB Group cannot replace competent tax authorities in enforcement and/or supervision of compliance with applicable tax laws.

<b><u>I. Tax good governance expected from the Contracting Counterparties</u></b>	<b><u>II. Tax avoidance risk assessment tools and measures</u></b>	<b><u>III. Relationship with competent tax authorities</u></b>
<p>The EIB Group expects that Contracting Counterparties:</p> <ul style="list-style-type: none"> <li>❖ are compliant with the applicable national, European or international laws and to that extent refrain from artificial arrangements aimed at tax avoidance;</li> <li>❖ hold and provide adequate, accurate and current beneficial ownership information;</li> <li>❖ are aware of the EIB Group's tax good governance expectations highlighted in the publicly available EIB Group NCJ Policy;</li> </ul>	<p>The EIB Group may seek confirmation from Contracting Counterparties that they do not benefit from harmful preferential tax regimes identified by certain Lead Organisations.</p> <p>Contracting Counterparties are subject to the risk-based tax due diligence assessment and may be requested to provide when relevant inter alia:</p> <ul style="list-style-type: none"> <li>❖ ownership structure chart<sup>16</sup> indicating the relevant jurisdiction, economic rationale and tax regime applicable to major shareholders upstream the project ownership structure;</li> </ul>	<p>When necessary, EIB Group may encourage dialogue between the Contracting Counterparties with competent tax authorities, with a view to them being informed about certain tax aspects of the Contracting Counterparty's structure and/or arrangements, such as the multijurisdictional ownership structure and/or the classification of financial instruments/entities, and/or information on direct or indirect shareholders.</p>

<sup>14</sup> The EIB Group may apply a simplified approach a) where Contracting Counterparties are at least one of the following i) public companies listed on a stock exchange and subject to disclosure requirements, ii) public administration (sovereigns, sub-sovereigns), state owned enterprises or IFIs, iii) Contracting Counterparties which are subject to country-by-country reporting (Action 13 BEPS) or b) in the absence of cross-border elements.

<sup>15</sup> This may apply, on a risk-sensitive basis and when plausible, to other entities integral to the project.

<sup>16</sup> In line with AML/CFT standards.

<ul style="list-style-type: none"> <li>❖ refrain from cross-border ownership structures involving jurisdictions with identified tax good governance deficiencies by Lead Organisations which are primarily motivated by tax reasons and do not have economic substance;</li> <li>❖ proactively take account of their exposure to national, European and international tax risks arising from their ownership/control structure; and</li> <li>❖ endorse the arm's length principle for transactions with related parties.</li> </ul> <p>The EIB Group expects that Contracting Counterparties who are financial intermediaries apply, on a risk-sensitive basis, principles referred to in the EIB Group NCJ Policy when extending EIB Group funding to final beneficiaries in line with the mechanisms laid down in section III.5 of the Policy.</p>	<ul style="list-style-type: none"> <li>❖ information regarding the statutory and effective tax rates and explanation of differences (if any) between such two rates;</li> <li>❖ explanation on how adverse media reports regarding tax matters were or are currently being addressed;</li> <li>❖ explanation on disputed tax positions (if any);</li> <li>❖ description of the tax regime applied to the expected revenues/cash flows that will be generated from the supported project;</li> <li>❖ confirmation that their intra-group transactions (if any) are compliant with the arm's length principle and/or whether any transfer pricing documentation was prepared and provided to relevant tax authorities;</li> <li>❖ information on CRS and FATCA classification of the entities included in the ownership structure;</li> <li>❖ an independent tax opinion describing the applicable tax regime and confirming that the ownership structure does not present any indication of tax avoidance;</li> <li>❖ a document from competent tax authorities on 'tax good standing' (if available).</li> </ul> <p>When plausible, EIB Group may engage in dialogue with Contracting Counterparties to address identified tax good governance deficiencies.</p>	<h4 style="background-color: #003366; color: white; padding: 2px;">IV. Country-related tax risks</h4> <p>In the course of tax due diligence the EIB Group will take into account the tax integrity risks stemming from the presence of the Contracting Counterparties in certain jurisdictions. This assessment may consider inter alia:</p> <ul style="list-style-type: none"> <li>❖ jurisdiction's tax good governance deficiencies identified by Lead Organisations;</li> <li>❖ membership of a country / jurisdiction in the Global Forum;</li> <li>❖ membership of a country / jurisdiction in the Inclusive Framework on BEPS;</li> <li>❖ adherence to the Multilateral Convention on Administrative Assistance in Tax Matters and/or existence of bilateral exchange of information instruments and/or existence of EU legislation providing for exchange of information;</li> <li>❖ adherence to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS;</li> <li>❖ key indicators and outcomes of the OECD work on international tax matters regarding the relevant jurisdiction.</li> </ul>
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**CORPORATE**

EIB Group

**Policy towards weakly regulated,  
non-transparent and non-cooperative  
jurisdictions and tax good governance**



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