



Annex III - JEREMIE Romania Reflows Equity Instrument (“the Facility”) Investment Guidelines – Co-Investment Window

Important Disclaimer

This document is for information purposes only. This document is an outline of the principal operational guidelines for the product described herein, which are subject to change and non-exhaustive.

This document is intended to provide a basis for discussions and does not constitute a recommendation, a solicitation, an offer or a binding commitment – either implicit or explicit – on the part of the European Investment Fund (the “EIF”) and/or or any other person to enter into one or more transaction(s). Any finance commitment by the EIF can only be made, inter alia, after appropriate approval, conclusion of legal due diligence and finalisation of the required legal documentation. The EIF does not act as adviser to you or owe you any fiduciary duty. The EIF does not make any representations or warranties (whether explicitly or implicitly) with respect to the information contained in this document.

1. Definitions

Whenever used in these guidelines, the following terms shall have the meanings opposite them. Any capitalised items not defined in this Annex have the meaning given to them in the Open Call for expression of Interest or as the case may be Annex II thereto.

Financial Intermediary	<p>Means an entity undertaking risk capital investments which is eligible to receive funding under the Facility; and which shall include investment funds, venture capital or private equity funds and special purpose vehicles established or in formation, by providing equity but shall exclude entities (i) targeting buy out or replacement capital intended for asset stripping and (ii) operating lending activities requiring a banking licence.</p> <p>Investment could be made in equity funds with regional and pan-European focus, however with the requirement for such funds to invest in Eligible Final Recipients (see chapter 4 below).</p>
JEREMIE Reflows (“Facility”) investment	<p>Romania Equity Co-</p> <p>Means co-investment or any contractual arrangement entered into between the EIF and a Financial Intermediary pursuant to a Facility Agreement co-investment agreement.</p> <p>It shall be noted that for the purposes of these Investment Guidelines, the Facility Investment comprises solely of the resources made available through the Reflows from JEREMIE.</p> <p>JEREMIE reflows are no longer subject to EU Structural Funds requirements.</p>

Co-Investment Vehicle	<p>All co-investments undertaken under the Co-investment Window shall be made through a limited liability vehicle, the structure of which is to be proposed by the Financial Intermediary and agreed by the EIF. To the extent possible, such a structure shall replicate the existing legal structure of the fund(s).</p> <p>The Facility Co-Investment will be realised through the Co-Investment Vehicle, managed and controlled by the Financial Intermediary, and EIF will be the only investor in the Co-Investment Vehicle. EIF will not engage in making direct co-investments into Eligible Final Recipients.</p>
Non-Compliant Jurisdiction	<p>“Non-Compliant Jurisdiction” means a jurisdiction (i) listed in the Annex I of the European Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, adopted by the European Council at its meeting held on 12 March 2019, and/or (ii) listed in the Annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, and/or (iii) rated as “partially compliant”, “provisionally partially compliant” or “non-compliant” by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes and/or (iv) included in the Financial Action Task Force “Public Statement” (i.e. countries or jurisdictions with such serious strategic deficiencies that the Financial Action Task Force calls on its members and non-members to apply counter-measures or for which the Financial Action Task Force calls on its members to apply enhanced due diligence measures), and/or (v) included in the Financial Action Task Force statement “Improving Global AML/CFT Compliance: On-Going process”(i.e. countries or jurisdictions with strategic weaknesses in their AML/CFT measures but that have provided a high-level commitment to an action plan developed with the Financial Action Task Force), in each case as such statement, list, directive or annex may be amended and/or supplemented from time to time.</p>

2. The terms of a Facility Co-investment

Nature	Co-Investments alongside venture capital and private equity Financial Intermediaries.
Size of Facility Co-Investment	<ul style="list-style-type: none"> • At least 10% of total commitments by all co-investors in the respective financing round raised by the Eligible Final Recipient; • Not more than the higher of i) up to 50% of the total commitments by all co-investors in the respective financing round raised by the Eligible Final Recipient, or ii) EUR 15m.
Duration of Facility Investments	Facility Investments shall usually consist of positions in Financial Intermediaries for not more than 13 years since launching the call.

Private Co-Investors	<p>In order to catalyse private sector investments, at least 50% of the capital committed to any Facility co-investment shall be provided by investors that pass the market economy operator test¹.</p> <p>When calculating the portion of capital co-invested in any one Eligible Final Recipient by investors that pass the market economy operator test, no account shall be taken of the capital committed or proposed to be co-invested under the Facility, which is considered an investment by public investor.</p> <p>In assessing compliance with the above requirements as regards shareholding of a fund-of-funds, the EIF may require a declaration from the Financial Intermediary.</p>
Ranking of Investments	<p>Facility Investments shall rank at least pari-passu (i.e. Like Risk, like Reward) with investors investing in the same risk class. A transaction is presumed to be compliant with the above pari-passu principle requirement if investors in the same risk class make their investment under equivalent economic terms and conditions and hold the same level of subordination or seniority. The relevant constitutional documents of the Financial Intermediary (including, where relevant, any side letter entered into by the EIF) shall reflect such key requirement.</p>
Restricted Sectors	<p>The Financial Intermediary shall not include in their business activity – and thus provide financing to the Final Recipients – any activity which would make a Facility Investment not compatible with the Guidelines on the EIF Restricted Sectors, as amended from time to time (for further information, please visit the EIF website).</p> <p>http://www.eif.org/news_centre/publications/2010_Guidelines_for_Restricted_Sectors.htm</p>
Monitoring and audit	<p>The Financial Intermediaries must agree (and must agree to cause the Final Recipients to agree) to allow the Commission's agents, the Government of Romania, the EIF and the European Court of Auditors to have access to adequate information to enable them to discharge their duties with respect to monitoring, control and auditing of the correct use of the Investments, including the promotion, visibility and transparency requirements specified in this Annex in the "Miscellaneous" section. These controls may include on-the-spot controls of the Financial Intermediaries and the Final Recipients.</p>
State Aid	<p>State aid issues need to be assessed by the Government of Romania (MA), with the Government of Romania communicating to EIF the applicable rules. Compliance with the rules is foreseen either by issuance of a state aid/ de minimis aid scheme or MA's confirmation that the investments are in line with the Market Economy Operator Test and thus do not constitute State aid in line with the Guidelines on State Aid to promote risk finance investments 2014, as subsequently amended or replaced. More details on state aid requirements shall be set out in the Fund documentation.</p>

¹ Communication from the Commission: Guidelines on State Aid to promote risk finance investments of 15 January 2014 (http://ec.europa.eu/competition/state_aid/modernisation/risk_finance_guidelines_en.pdf)

3. The Financial Intermediaries

The Financial Intermediary needs to comply with the following general and specific requirements:

General Requirements	<p>The Financial Intermediary shall:</p> <ul style="list-style-type: none"> i. Provide the EIF with a representation as attached in Annex I; ii. Agree to publicize the support of the Government of Romania under the Facility as set out in the “Miscellaneous” section of this Annex; iii. Agree not to select Excluded Final Recipients.
Specific requirements	<p>The Financial Intermediary shall:</p> <ul style="list-style-type: none"> i. Meet the definition of the Financial Intermediary; ii. Provide equity (including, without limitation, equity, subordinated and participating loans and/or convertible bonds, mezzanine); iii. Not include in their business activity any of the activities referred to below: <ul style="list-style-type: none"> a. illegal activities according to applicable legislation; b. any other activity which would make such a Facility Investment not compatible with the Guidelines on the EIF Restricted Sectors² as amended from time to time; iv. Be established in a Country within the European Union; v. Not be established, at the date of the Fund Agreement, in a Non-Compliant Jurisdiction; vi. Be commercially-oriented managed by independent management teams³ combining the appropriate mix of skills and experience to demonstrate the necessary capability and credibility to manage a risk capital fund; vii. Agree to provide reporting in accordance with the applicable provisions of the Facility as further specified in the “Miscellaneous” section; viii. Be willing to provide the list of investors in compliance with the requirements set out in the “Investor base” section.

² http://www.eif.org/news_centre/publications/2010_Guidelines_for_Restricted_Sectors.htm

³ Independent management teams include teams operating within a corporate or university structure provided that the operation of the fund management business has a high degree of independence from the parent company/organisation

4. Final Recipients

Financial Intermediaries shall undertake to select Final Recipients according to their internal rules and procedures taking due account of the economic viability of projects of Final Recipients.

Eligible Recipients	Final	<p>1. With respect to location of the Eligible Final Recipient, it shall:</p> <p>(i) be established in Romania (as to be assessed based on the Certification of Registration with the Romanian Trade Registry); the Eligible Final Recipient may be a branch or subsidiary registered in Romania of a foreign company.</p> <p>2. With respect to the size, stage and economic sector of the Eligible Beneficiary, it shall:</p> <p>(iv) be an SME (Commission recommendation 2003/361/EC) or a Midcap (i.e. up to and including 2999 FTEs);</p> <p>(v) not be a company in difficulty, as defined by the Community guidelines on State aid for rescuing and restructuring firms in difficulty</p> <p>(vi) not operate in any of the economic sectors referred to as “EIF restricted sectors” in the Guidelines on EIF restricted sectors</p> <p>The Financial intermediaries shall undertake to include in their respective investment documentation an obligation to invest in Eligible Final Recipients at least the amount of the relevant Facility Investment drawn down for the purposes of investments.</p>
Purpose of financing of Eligible Recipients	Final	<p>The investment made in an Eligible Final Recipient is to be used primarily to finance, business development, business expansion or value creation (which may include, inter alia, restructuring, acquisition activities, activities for strengthening of export capabilities, etc). Partial buy-outs through the form replacement capital (roll-over from key management, including founders, shareholder reorganisation, (leveraged) buy-outs) are possible. For avoidance of doubt replacement capital intended for asset stripping is not allowed.</p>

5. Miscellaneous

Transfer	<p>Under the Funding Agreement, EIF may be substituted in its role as JEREMIE HF manager. In the event of such substitution, GoR, or the entity appointed by GoR as new JHF, will assume the full discretion and responsibility to perform the tasks of the JHF and to implement the JHF operations in Romania, and may take over the Financial Instrument(s). The Fund Agreements will provide for the possible substitution of EIF, in order to allow the transfer of the Fund Agreements to the successor entity.</p>
Reporting	<p>Financial Intermediaries shall provide the EIF with quarterly and annual reporting prepared in accordance with the reporting guidelines published or endorsed by the Invest Europe from time to time. Financial Intermediaries shall also provide annual audited financial statements in accordance with applicable laws. The valuation of risk capital investments in Eligible Final Recipients shall be made in accordance with the valuation principles published or endorsed by Invest Europe from time to time. More detailed reporting requirements shall be set out in the Fund documentation.</p>

Visibility	<p>Each Financial Intermediary shall:</p> <ul style="list-style-type: none"> i. explicitly inform Eligible Final Recipients that financing is made possible through the support of the Facility with the financial backing of the Government of Romania. Such information needs to be prominently included either in the contractual documentation and/or in an accompanying cover letter; ii. create a website or a dedicated section on its website or a clear link to this information, regarding the type of finance offered, name of the product supported through the Facility (if applicable), a description of the key eligibility criteria, the investment focus (if applicable); iii. include in any press release that the Financial Intermediary may choose to make with regard to the operation and on a dedicated information page of the type of finance offered referred to in (ii) above on its website a reference, in the relevant language, that the Financial Intermediary has benefited from the support of the Facility. <p>More detailed visibility requirements shall be set out in the Fund documentation.</p>
Publication	<p>The EIF shall publish on its website each year:</p> <ul style="list-style-type: none"> a) a list of Financial Intermediaries with whom the EIF concluded a Fund Agreement⁴, containing for each Financial Intermediary the name and address of the Financial Intermediary, as well as the amount invested by the EIF under the Fund Agreement into the Financial Intermediary, an indication of the nature of the Financial Intermediary's investments (indicating whether this Financial Intermediary is a sector specific entity by publishing the respective sector or by indicating that this Financial Intermediary has a generalist approach); b) a list of Eligible Final Recipients, containing for each Eligible Final Recipient the name and address and the type of finance received under the Facility. <p>Any Financial Intermediary, or Eligible Final Recipient may, prior to receiving financial support under the Facility, declare in writing (including by a representation in the relevant agreement) that the publication requirements set out above risks harming its commercial interests or risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union, on the basis of a written justification. The implementation details will be established by the EIF. In addition such publication shall not be required if: (i) it would be illegal under the applicable laws and regulations, or (ii) the eligible Eligible Final Recipient is a natural person.</p>
Record Keeping	<p>The Financial Intermediary shall maintain or be able to produce all the documentation related to the implementation of the Fund Agreement for a period to be specified in the Fund Agreement. The Financial Intermediary shall require each Final Recipient to maintain and be able to produce all documentation related to the investment for a corresponding period following the termination of the investment in such Eligible Final Recipient.</p>

⁴ This shall also include the name of the entity that applied for the funding.