

InvestEU

Climate & Infrastructure

Annex III

TERMS OF CONFIDENTIALITY

In the context of the InvestEU Climate & Infrastructure, the Applicant and the EIF will make available certain information of a non-public, confidential and proprietary nature to one another. This document (the “Terms of Confidentiality”) sets out how Confidential Information provided in this context will be dealt with by each of the EIF and the Applicant participating in the CEoI.

1. Confidentiality undertaking – each of the Applicant and the EIF will:

- a) keep the Confidential Information confidential and not disclose it to anyone except as provided for by paragraph 2 below and ensure that such Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information;
- b) use the Confidential Information only for the Permitted Purpose; and
- c) use all reasonable endeavours to ensure that any person to whom they pass any Confidential Information (unless disclosed under paragraph 2(b), (c), (d) or (f) below) acknowledges and complies with the provisions of these Terms of Confidentiality as if that person was subject to these Terms of Confidentiality.

2. Permitted disclosure – each party may, however, disclose Confidential Information:

- a) to its managing bodies, affiliates, officers, directors, employees, representatives, professional advisers, and (with respect to disclosure by the EIF) service providers and the Investment Committee of the InvestEU Fund, to the extent necessary for, or in connection with, the Permitted Purpose and to its auditors;
- b) with respect to disclosure by the EIF, to the European Commission, the European Investment Bank, the European Court of Auditors, the EPPO and/or the European Anti-Fraud Office (OLAF) and to their respective affiliates, officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to their respective auditors;
- c) with respect to disclosure by the EIF, to the European Investment Bank and to its respective affiliates, officers, directors, employees and professional advisers, to the extent that any such Confidential Information is relevant in the context of any current or future know-your-customer controls, verifications or activities under the EIB Group Anti-Money Laundering and Combatting the Financing of Terrorism Policy (the “EIB Group AML-CFT Policy”)¹, whether or not related to the Proposed Transaction;
- d) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body or administrative order, (ii) where required by its statutory documents, internal policies and procedures or in accordance with the relevant treaties or (iii) where required by the laws or regulations of any country with jurisdiction over its affairs; (iv) where required in connection with and for the purposes of any litigation, arbitration, administrative or other investigations, proceedings or disputes or in order to protect its interests in the course of any legal or arbitration proceedings;
- e) with the other party’s prior written consent, not to be unreasonably withheld;

¹ “EIB Group AML-CFT Policy” means the European Investment Bank group’s anti-money laundering and combating financing of terrorism policy, as published on the following website and as may be amended or superseded from time to time: <https://www.eib.org/en/publications/eib-group-anti-money-laundering-and-combatting-the-financing-of-terrorism-policy>.

or

- f) with respect to disclosure by the EIF, within the framework of the EIF's Transparency Policy² pursuant to which EIF may publish on its website the minutes of its Board of Directors (including a summary indicating the project name, the nature of the operation, the geographical focus, unless the Applicant has specifically objected to such disclosure as set out in the CoEI.

The party disclosing any information shall have the onus to prove that the disclosure of such information is permitted under this Terms of Confidentiality.

3. Notification of Required or Unauthorised Disclosure – the disclosing party will (to the extent permitted by law and by its statutory documents) inform the other party of the full circumstances of any disclosure under paragraph 2(d) or upon becoming aware that Confidential Information has been disclosed in breach of the Terms of Confidentiality.

4. Termination – The Terms of Confidentiality will cease to apply to Confidential Information on the earlier of (a) the date of the signature of the Proposed Transaction containing a confidentiality undertaking in the same or similar terms as the Terms of Confidentiality, and (b) two years following the date on which such Confidential Information was provided.

5. Definitions – In these Terms of Confidentiality:

“Confidential Information” means any information marked as confidential relating to the EIF, the Applicant and the Proposed Transaction, provided to a party by the other party or any of its affiliates or advisers, in whatever form, and includes any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

(a) is or becomes public knowledge (other than as a result of any breach by a party of the Terms of Confidentiality), or

(b) in relation to information regarding the Applicant only, is not marked as confidential by such Applicant at the time of delivery, or

(c) in relation to information regarding the Applicant only, is known by the EIF before the date the information is disclosed to EIF by such Applicant or any of its affiliates or advisers, or

(d) in relation to information regarding the Applicant only, is lawfully obtained by EIF, other than from a source which is connected with such Applicant and which, in either case, as far as EIF is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality;

“Permitted Purpose” means (a) (with respect to disclosure by the EIF) considering and assessing whether or not to enter into the Proposed Transaction or another transaction with the same Applicant, (b) any related legal or regulatory or (with respect to disclosure by the EIF) rating review and/or related reporting obligations, and/or (c) (with respect to disclosure by the EIF) any internal procedure of EIF or the European Investment Bank, including but not limited to, any current or future know-your-customer controls, verifications or activities under the EIB Group AML-CFT Framework (regardless of whether or not such procedures are related to the Proposed Transaction); and

“Proposed Transaction” means a guarantee or counter-guarantee agreement between the EIF and the Applicant.

6. Governing law and jurisdiction- The Terms of Confidentiality, and any non-contractual obligations arising

² https://www.eif.org/news_centre/publications/EIF_Transparency_policy

out of or in connection with them, shall be governed by, and construed in accordance with, Luxembourg law. Any disputes arising out of or in connection with the Terms of Confidentiality will be subject to the jurisdiction of the courts of Luxembourg-City.