

Investment Guidelines

for the EFSI Private Credit Tailored for SMEs Programme

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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.

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Annex II to the Open Call for Expression of Interest to select Financial Intermediaries under the EFSI Private Credit Tailored for SMEs Programme

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 I thereto.

EIF Investment	Means a commitment in any form entered into by EIF to invest in or alongside an EFSI Private Credit Financial Intermediary, excluding any co-investments from other resources managed or advised by EIF, if any.
EFSI Private Credit Financial Intermediaries	Means an investment fund, a (co-) investment scheme in any form (including managed accounts and other types of contractual arrangements), or a special purpose vehicle, in any form, established or to be established, which, applying a portfolio investment approach, invests, directly or indirectly, predominantly in the form of Senior Debt, while it may also invest, directly or indirectly, in non-distressed contractually subordinated debt or hybrid debt-equity instruments.
EFSI Regulation	Means regulation (EU) 2015/1017, as amended by Regulation (EU) 2017/2396 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub (OJ L 345, 27.12.2017, p. 34)
Excluded Final Recipient	Means an entity that cannot benefit directly or indirectly from financing supported by the EFSI Private Credit Programme as a result of the application of the Guidelines on the EIF Restricted Sectors ¹ as amended from time to time.
Final Recipient	Means an entity benefiting directly or indirectly (including inter alia through holding companies and, platforms and/or other funds) from financing provided by the EFSI Private Credit Financial Intermediary, which shall not be an Excluded Final Recipient.
Fund Agreement	Means, but is not limited to, the agreement whereby the EIF commits to invest in, or alongside, an EFSI Private Credit Financial Intermediary.
Minimum Allocation	<p>A EFSI Private Credit Financial Intermediary shall invest in Target Final Recipients an amount equal to at least the Minimum Allocation, defined as the lower of:</p> <ul style="list-style-type: none"> (i) Two times of the aggregate amounts drawn down under the Fund Agreement for the purpose of investment; and (ii) Two-thirds of the total amount drawn down by the EFSI Private Credit Financial Intermediary from its investors for the purpose of investments. <p>subject to the following floors:</p> <ul style="list-style-type: none"> (i) 50% of invested amounts allocated to Target Final Recipients where the EFSI Private Credit Financial Intermediary is established in the EU; or

¹ http://www.eif.org/news_centre/publications/2010_Guidelines_for_Restricted_Sectors.htm.

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	(ii) 75% of invested amounts allocated to Target Final Recipients where the EFSI Private Credit Financial Intermediary is established outside the EU.
NPB	Means a national promotional bank or a national promotional institution.
Non-Compliant Jurisdiction	Means a jurisdiction (i) listed in the Annex I of the Council of the European Union conclusions on the revised European Union list of non-cooperative jurisdictions for tax purposes, adopted by the Council of the European Union 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.
Primary Investment	Means a direct or indirect investment (including in the form of debt) in a Final Recipient resulting in financing flowing directly or indirectly into the final beneficiary. Any investment entailing a transfer of an existing financing from an existing lender to a EFSI Private Credit Financial Intermediary not resulting in financing flowing directly or indirectly into the Final Recipient shall not be considered as a Primary Investment unless such transfer to the EFSI Private Credit Financial Intermediary has occurred within 4 months from the date such financing has initially been funded by the existing lender provided that such financings comply with the requirements set out in these Guidelines.
Senior Debt	Means non-contractually subordinated, non-distressed, secured or unsecured, debt in any legal form.
Small Mid-Cap	Means an entity with fewer than 500 FTEs that is not an SME.
SME	Means a micro, small or medium-sized enterprise as defined in Commission Recommendation 2003/361/EC (OJ L 124, 20.5.2003, p. 36).
Target Final Recipient	A Final Recipient that is at the time of first financing by the EFSI Private Credit Financial Intermediary: (i) an SME or a Small Mid-cap, (ii) not an Excluded Final Recipient and (ii) is established or operating in the EU.

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2. The EFSI Private Credit Financial Intermediaries

General Requirements

The EFSI Private Credit Financial Intermediaries:

- i. Shall not include in their business activity any activity which would make an EIF Investment incompatible with the Guidelines on the EIF Restricted Sectors² as amended from time to time;

Specific requirements

- i. The Financial Intermediary shall meet the definition of an EFSI Private Credit Financial Intermediary;
- ii. The EFSI Private Credit Financial Intermediary is exclusively undertaking Primary Investments;
- iii. The EFSI Private Credit Financial Intermediary shall not be entitled to issue any drawdown notice to EIF relating to an investment in any Excluded Final Recipients;
- iv. The EFSI Private Credit Financial Intermediary shall be managed by an independent management team³ combining the appropriate mix of skills and experience to demonstrate the necessary capability and credibility to manage a risk capital fund⁴ and which, during the due diligence process, demonstrated to the EIF that they (i) have a clear strategy to make a sufficient number of investments into Target Final Recipients, create adequate deal flow and establish appropriate exit strategies and (ii) will apply good market practice in areas such as legal structure, investment principles, reporting and evaluation;
- v. The EFSI Private Credit Financial Intermediary shall be managed by entities which are controlled⁵ by individuals or privately held entities;
- vi. The EFSI Private Credit Financial Intermediary shall not be established in a Non-Compliant Jurisdiction unless the operation is physically implemented in the relevant Non-Compliant Jurisdiction and does not present any indication that it supports actions that contribute to targeted activities. The EIF will provide relevant arrangements in order for the Financial Intermediary to transpose this requirement at the level of the Final Recipients;
- vii. The EFSI Private Credit Financial Intermediary shall undertake to comply with applicable European Union law and agreed international and European Union standards and, therefore, not support actions that contribute to tax evasion or finance artificial arrangements aimed at tax avoidance. The EIF will provide relevant arrangements in order for the Financial Intermediaries to transpose this requirement at the level the Final Recipients;
- viii. The EFSI Private Credit Financial Intermediary shall accept that it may be subject to an extended due diligence inter alia in case it is incorporated in a jurisdiction listed in Annex II of the Council Conclusions as at the date of the application.

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

³ Independent fund managers include those operating with (or within) a crowdfunding platform or banking group provided that the fund manager makes the final investment decision independently.

⁴ The individual members of the management teams are not required to have prior direct experience of fund management provided that they can otherwise demonstrate appropriate capabilities within the team to manage the EFSI Private Credit Financial Intermediary, whereby the management team as a whole will be evaluated and this criteria does not have to be fulfilled by each individual member of the management team.

⁵ For the purpose of this requirement, control means the power to direct the management of the entity which is controlled whether through the ownership of voting capital, by contract or otherwise, or the ability to exercise (whether directly or indirectly) more than 50% of the voting capital or similar rights of ownership in respect of such controlled entity or the contractual right to appoint or remove the management of such entity or a majority of the members of such entity's executive bodies.

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- ix. The EFSI Private Credit Financial Intermediary shall acknowledge the EIF Anti-Fraud Policy which sets out the policy of EIF for preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing⁶ as amended from time to time, and shall take appropriate measures (as may be further specified in the relevant agreement) to (i) facilitate implementation of such policy as well as to (ii) undertake to support investigations performed by the EIF or the European Investment Bank, the EPPO, or the European Anti-Fraud (OLAF), or Court of Auditors (ECA) in connection with actual or suspected prohibited conduct.
- x. The EFSI Private Credit Financial Intermediary shall accept that the EIF may not be required to participate (subject to applicable law), fully or partially, in an investment in the Final Recipient, if that investment would result in an irremediable breach of the Minimum Allocation.

Governance of Intermediaries

The EIF may be represented on advisory boards or similar investor representation bodies.

- i. The legal documentation governing the rights and obligations of the investors and of the EFSI Private Credit Financial Intermediary shall include provisions relating, in particular, to the following principles:
 - changes to the fundamental nature of the EFSI Private Credit Financial Intermediary, including material changes to the investment strategy that have a material impact on the eligibility criteria and requirements of the EFSI Private Credit Programme, shall require prior consent from the EIF;
 - possibility for investors to remove the management team for cause and without cause.
- ii. The EIF will expect the EFSI Private Credit Financial Intermediary to put in place appropriate measures to avoid conflicts of interests and align the interests of the EFSI Private Credit Financial Intermediary, its managers and its investors. Such measures to be in line with market practices and shall be transparent to the EFSI Private Credit Financial Intermediary's investors.
- iii. The remuneration of the EFSI Private Credit Financial Intermediary's manager shall be transparent to the EFSI Private Credit Financial Intermediary's investors. Management fees shall be at a level that covers operational and management costs in a sustainable way without disturbing the alignment of interests aimed for. The level of management fees shall allow for the execution of the EFSI Private Credit Financial Intermediary's strategy.

3. The terms of an EIF Investment

Nature	Equity investments in, or alongside, EFSI Private Credit Financial Intermediaries.
Investor	The EIF in its own name with financing from the EFSI Private Credit Programme.
Size of EIF Investment	Each EIF Investment shall:

⁶ Please refer to http://www.eif.org/attachments/publications/about/Anti_Fraud_Policy.pdf

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- a) not exceed seventy five million euros (EUR 75,000,000)⁷ or the EUR equivalent in another eligible currency at time of commitment;
- b) not exceed 50% of the aggregate commitments made to the Financial Intermediary.

Duration of EIF Investment The lifetime of the EIF Investment shall not exceed 15 years, plus up to 3 years' extension.

Investor Base of a EFSI Private Credit Financial Intermediary At least 30% of total commitments to a EFSI Private Credit Financial Intermediary at the time of the closing of the relevant EIF Investment (including commitments made in earlier closings, if any) are made by independent private investment sources (as set forth below):

- EIF/EIB own resources, invested at own risk and excluding public parts of mandates
- Financial institutions (investing at own risk and from own resources)
- Private endowments & foundations
- family offices & Business Angels (including joint investment vehicles set-up by/with Business Angels)
- Corporate investors
- Insurance companies
- Pension funds
- Private individuals
- Academic institutions (including universities and public and private research institutions)
- NPBs investing own resources, for their own risk, and on commercial terms.

Other categories of investors may also be considered private investment sources (e.g. sovereign wealth funds or fund-of-funds). In the case of sovereign wealth funds, they shall be considered independent private investment sources if the money invested is generated by commercial activities and is invested on commercial terms.

Fund-of-funds shall be considered as independent private investment sources provided that they invest in a EFSI Private Credit Financial Intermediary exclusively on commercial terms and are managed or advised by a privately held asset manager. Any fund-of-funds fully funded by state budget resources shall not be considered an independent private investment source⁸.

For the purpose of the above provisions, state budget resources shall include European Structural and Investment Funds (for e.g. Jeremie initiative).

In assessing compliance with the above requirements, the EIF may rely on a declaration, representation or undertaking from the Financial Intermediary.

⁷ On an exceptional basis, EIF may consider making an investment of up to one hundred million euros (EUR 100,000,000). Where EIF also provides an investor with bilateral unfunded credit protection then the total amount of EIF Investment in the EFSI Private Credit Financial Intermediary, plus the unfunded credit protection in the same EFSI Private Credit Financial Intermediary, shall not exceed one hundred million euros (EUR 100,000,000).

⁸ Where a fund-of-funds is partially funded by state budget resources, the investment made by such a fund-of-funds into an EFSI Private Credit Financial Intermediary shall not be considered as an independent private investment source pro rata to the amounts invested by the fund-of-funds which are directly funded by state budget resources.

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Ranking of Investments The EIF Investment shall rank at least *pari passu* (i.e. like risk, like reward) with other investors (including NPBs).

The relevant constitutional documents of the EFSI Private Credit Financial Intermediary (including, where relevant, any side letter entered into by the EIF) shall reflect such requirement.

Signing period The EIF may enter into an EIF Investment until 31 December 2022, provided that the EIF Board of Directors has approved the EIF Investment on or before 31 December 2020.

4. Miscellaneous

Monitoring and audit

The EFSI Private Credit Financial Intermediaries must agree (and must agree to cause the Target Final Recipients to agree) to allow the EC's agents (including OLAF's), 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 EIF's investment, including the promotion, visibility and transparency requirements specified in this section of this Annex. These controls may include on-the-spot controls of the EFSI Private Credit Financial Intermediaries, and the Final Recipients.

Reporting

EFSI Private Credit Financial Intermediaries shall provide the EIF with quarterly and annual reporting prepared in accordance with the predefined parameters as set by EIF. EFSI Private Credit Financial Intermediaries shall also provide annual audited financial statements in accordance with applicable laws.

Other Information

EFSI Private Credit Financial Intermediaries may be requested to provide, from time to time, further information related to the Target Final Recipients covered by the EFSI Private Credit Programme in the context of instrument evaluations and employment and growth reports to be prepared by the EIF based on data available as of 31 December 2019. To this end, the EFSI Private Credit Financial Intermediaries shall require the Target Final Recipients to provide certain information on the basis of a template provided by the EIF. The provision of such information by Target Final Recipients shall (i) be subject to applicable laws, including without limitation in relation to data protection and banking secrecy, and (ii) not be mandatory requirement nor constitute a condition precedent to the relevant transaction or any eligibility criteria.

Visibility

EFSI Private Credit Financial Intermediaries shall explicitly inform Final Recipients that financing is made possible through the support of the EC through the EFSI.

Publication

The EIF may publish on its website a list of EFSI Private Credit Financial Intermediaries containing for each EFSI Private Credit Financial Intermediary the name and address of the EFSI Private Credit Financial Intermediary, as well as the amount of EIF's investment into the EFSI Private Credit Financial Intermediary, an indication of the EFSI Private Credit Financial Intermediary's investment focus.

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The EIF may also publish on its website a list of Target Final Recipients, containing the name, the address and the type of finance received under the EFSI Private Credit Programme.

Any EFSI Private Credit Financial Intermediary, or Target Final Recipient may, prior to receiving financial support under the EFSI Private Credit Programme, 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. In addition such publication shall not be required if: (i) it would be illegal under the applicable laws and regulations, or (ii) the Target Final Recipient is a natural person.

Record Keeping

The EFSI Private Credit Financial Intermediary shall maintain or be able to produce all the documentation related to the implementation of the Fund Agreement for a period of five (5) years following the termination of the Fund Agreement. The EFSI Private Credit Financial Intermediary shall require each Target Recipient to maintain and be able to produce all documentation related to the investment for a period of five (5) years following the termination of the investment in such Final Recipient.