

## Annex IV to the Open Call for Expression of Interest to select Financial Institutions under the ESIF EAFRD Portugal FoF



### Terms of confidentiality

In the context of the Facility, certain financial institutions (“Financial Institutions”) responding to the Call for Expression of Interest (the “Call”) will make available to the European Investment Fund (“EIF”) certain information of a non-public, confidential and proprietary nature. This document (the “Terms of Confidentiality”) sets out how Confidential Information provided by, or on behalf of, Financial Intermediaries in connection with the Call will be dealt with by EIF.

#### 1. Confidentiality undertaking – EIF will:

- a) take reasonable steps to 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 or in connection with the Permitted Purpose; and
- c) use all reasonable endeavours to ensure that any person to whom EIF passes any Confidential Information (unless disclosed under paragraph 2(b) or (c) below) complies with the provisions of these Terms of Confidentiality as if that person were subject to these Terms of Confidentiality.

#### 2. Permitted disclosure – EIF may, however, disclose Confidential Information:

- a) to its managing bodies, affiliates, officers, directors, employees, representatives, professional advisers, and service providers and the Investment Board (if applicable), to the extent necessary for, or in connection with, the Permitted Purpose and/or to its auditors;
- b) to the European Commission, the European Court of Auditors, the European Anti-Fraud Office (OLAF), the European Investment Bank, and/or to any other authority to whom disclosure is required under any applicable laws or regulations 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) 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;
- d) with the Financial Institutions prior written consent, not to be unreasonably withheld;

- e) within the framework of the EIF's Transparency Policy<sup>1</sup> 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 and the relevant EIF-managed resources of the Proposed Transaction), unless the Financial Institution has specifically objected to such disclosure as set out in the Call.
3. Notification of Required Disclosure – EIF will (to the extent permitted by law and by its statutory documents) inform the Financial Institutions of the full circumstances of any disclosure under paragraph 2(c).
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 to EIF.
5. Definitions – In these Terms of Confidentiality:
- “Confidential Information”** means any information in written or other permanent form marked by the Financial Institution (in good faith) as confidential relating to the Financial Institution and the Proposed Transaction, provided to EIF by a Financial Institution or any of its affiliates or advisers, 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 of the Terms of Confidentiality) or (b) is not marked as confidential by such Financial Institution or (c) is known by EIF before the date the information is disclosed to EIF by such Financial Institution or any of its affiliates or advisers or (d) is lawfully obtained by EIF, other than from a source which is connected with such Financial Institution 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; and
- “Permitted Purpose”** means (a) considering and assessing whether or not to enter into the Proposed Transaction or another transaction with the same Financial Institution, (b) any related legal or regulatory or rating review and/or related reporting obligations, and/or (c) any internal procedure of EIF or the European Investment Bank.
- “Proposed Transaction”** means a Guarantee Agreement between the EIF and the Financial Institution.
6. Governing law and jurisdiction – The Terms of Confidentiality, and any non-contractual obligations arising out of or in connection with them, shall be governed by, and construed in accordance with, the laws of Luxembourg. Any disputes arising out of or in connection with the Terms of Confidentiality will be subject to the jurisdiction of the courts of Luxembourg.

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<sup>1</sup> [http://www.eif.org/news\\_centre/publications/EIF\\_Transparency\\_policy.htm?lang=-en](http://www.eif.org/news_centre/publications/EIF_Transparency_policy.htm?lang=-en)