Annex III: Counter-Guarantee Termsheet

1 | Overview

The portfolio Counter-Guarantee shall be issued by EIF as counter-guarantor, to offer risk protection to selected Financial Intermediaries offering Counter-Guarantees to Sub-Intermediaries that are originating Debt Financing, which comply with the criteria set out in this Call, including:

1. This document setting out the indicative terms of the Counter-Guarantee, and
2. Any additional criteria set out in the Counter-Guarantee Agreement (as described below).

The Counter-Guarantee shall partly cover the credit risk associated with the guarantees provided by the Financial Intermediary covering directly or indirectly new Debt Financing transactions granted by Financial Sub-Intermediaries which are included in the relevant Portfolio(s). The Counter-Guarantee is structured as a Capped Counter-Guarantee.

The Counter-Guarantee is a financial counter-guarantee and shall cover Defaulted Amounts, on a transaction by transaction basis, incurred by the Financial Intermediary in respect of each defaulted eligible Intermediary Transaction, up to the Cap Amount.

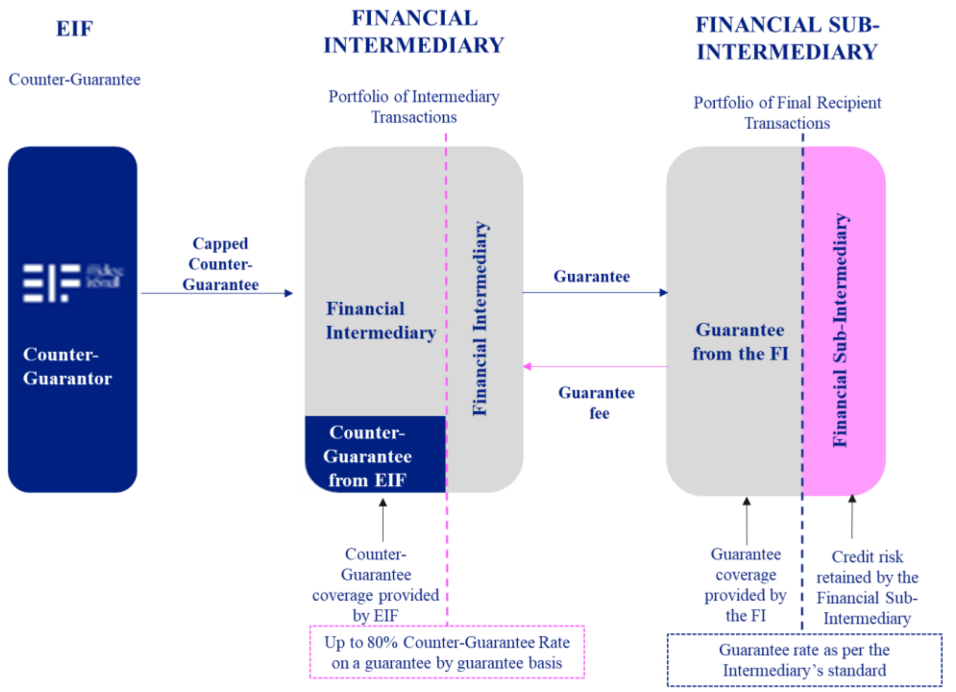
The origination, due diligence, documentation and servicing of the Intermediary Transactions shall be performed by the Financial Intermediary in accordance with its standard origination and servicing procedures. In this context, the Financial Sub-Intermediary(ies) will originate each Final Recipient Transaction (to be) covered by the Intermediary Transactions based on the pre-defined eligibility criteria listed below, and on those set out in the relevant Counter-Guarantee Agreement.

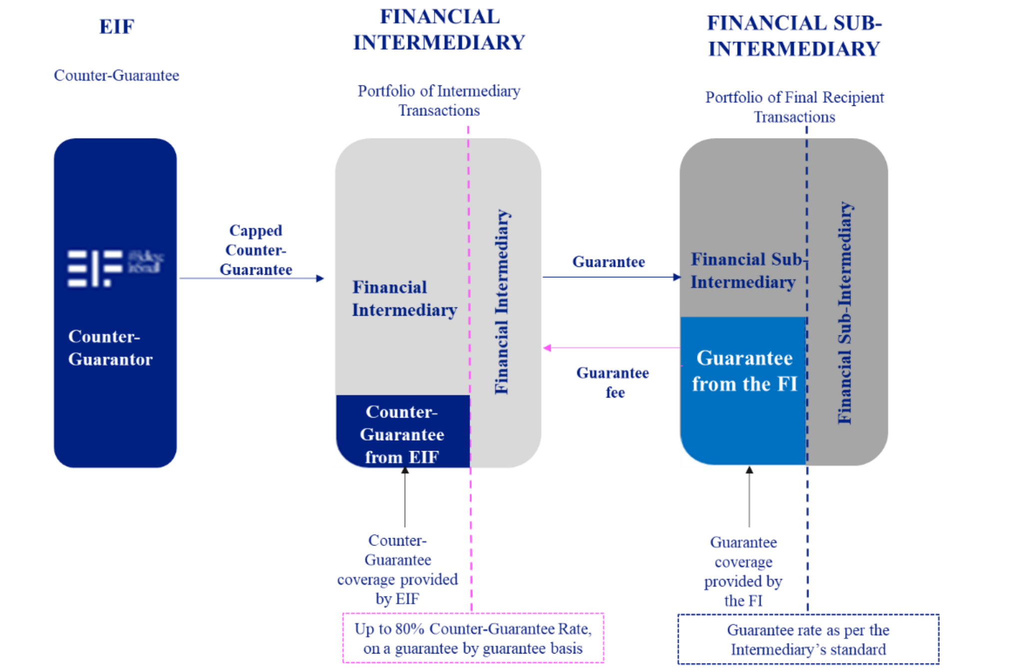
In order to include an Intermediary Transaction in a Portfolio (to be covered by the Counter-Guarantee) a Financial Intermediary must send an Inclusion Notice on a quarterly basis, in accordance with the terms of the Counter-Guarantee Agreement.

2 | Indicative terms of the Counter-Guarantee

The terms below apply to the portfolio counter-guarantee issued by EIF and to all Financial Sub-Intermediaries, Intermediary Transactions, Final Recipients and Final Recipient Transactions.

2.1 | General Provisions

Type of Counter-Guarantee	The Counter-Guarantee provided by EIF shall be a Capped Counter-Guarantee.
Language and Governing Law	The terms of the Counter-Guarantee Agreement shall be in the English language and shall be subjected to the laws of Luxembourg. The parties shall agree to expressly submit the Counter-Guarantee to the professional payment guarantee regime governed by the Luxembourg law of 10 July 2020 on professional payment guarantees.
Structure	The Counter-Guarantee shall cover Defaulted Amounts incurred by the Financial Intermediary at a Counter-Guarantee Rate subject to the Counter-Guarantee Cap Rate. The Defaulted Amounts, net of any Recoveries, covered by the Counter-Guarantee shall in aggregate not exceed the Cap Amount stipulated in the Counter-Guarantee Agreement between EIF and the relevant Financial Intermediary. Capped Counter-Guarantee with uncapped guarantee coverage for Financial Sub-Intermediaries:  Or, alternatively Capped Counter-Guarantee with capped guarantee coverage for Financial Sub-Intermediaries:

	
Applicability of the Base Currency	The Intermediary Transaction currency shall be in the relevant underlying Final Recipient Transaction currency. If the Portfolio consists of Intermediary Transactions denominated in EUR and another currency, the Base Currency shall be EUR. The Committed Counter-Guarantee Volume shall be expressed in the Base Currency. Payments made under Payment Demands and Recovery notices shall typically be made in the Base Currency, as further specified in the Counter-Guarantee Agreement.
Inclusion Process	In order for Intermediary Transactions to be covered by the Counter-Guarantee, they must be signed during the Inclusion Period (or as otherwise agreed in the Counter-Guarantee Agreement) and reported to EIF by way of inclusion notices sent by the Financial Intermediary on a quarterly basis. The Inclusion Period typically starts on the date of the signature of a Counter-Guarantee Agreement with a Financial Intermediary. The Inclusion Period will be set out in the Counter-Guarantee Agreement and will typically last 2 to 3 years (and may be extended from time to time).
Counter-Guarantee Termination Date	The Counter-Guarantee shall terminate on the earlier of the following dates: a) the date on which an Early Termination Event has occurred; b) the date (if any) on which EIF is no longer liable to effect further payments to the Financial Intermediary and the EIF has no further claims against the Financial Intermediary; c) the date constituting 9 months following the last scheduled maturity date of the Final Recipient Transaction; and d) 31 December 2035.
Trigger Event	EIF may include Trigger Events in the Counter-Guarantee Agreement, in order to manage Portfolio ramp-up and credit quality.

	The occurrence of a Trigger Event entitles but does not oblige EIF to end the Inclusion Period for the relevant Portfolio. Trigger Events may include, without limitation: a) A Cumulative Default Rate Trigger Event whereby a Trigger Event occurs on one or more specific date(s) as specified in the Counter-Guarantee Agreement if, the aggregate outstanding principal amount of defaulted Intermediary Transactions already included in the Portfolio exceeds a predetermined level. b) A Portfolio Trigger Event whereby a Trigger Event occurs if on a predefined date the ratio between (i) the Actual Counter-Guarantee Volume and (ii) the Committed Counter-Guarantee Volume is below a predetermined level as set out in the Counter-Guarantee Agreement.
Early Termination Event	The Counter-Guarantee Agreement contains certain events of default, including non-payment, breach of obligation, insolvency, unlawfulness, sanctions and misrepresentation. The occurrence of an event of default, if it has not been remedied within the relevant grace period (if any), may result in early termination of the Counter-Guarantee (before 31 December 2035).
Level of Counter-Guarantee Rate	The Counter-Guarantee Rate shall typically be set at 80%, which is the maximum. However, the EIF may, at its discretion, agree with the Financial Intermediary on the application of lower Counter-Guarantee Rate to the respective Intermediary Transactions included in the relevant Portfolio(s).
Determination of the Cap Amount	The Cap Amount corresponds to the level, at which the obligation of the EIF to pay under the Counter-Guarantee is capped, [1] which is EIF's maximum liability under the Counter-Guarantee and is calculated at Financial Intermediary level as the product of the: i) Actual Counter-Guarantee Volume, and ii) the Counter-Guarantee Cap Rate.
Defaulted Amounts	Means, any amounts due to be paid[2] by the Financial Intermediary to the Financial Sub-Intermediary under the terms of a covered Intermediary Transaction in respect of a Final Recipient Transaction covered by such Intermediary Transaction, as agreed between EIF and the Financial Intermediary and specified in the Individual Counter-Guarantee Agreement, following the occurrence of either a Final Recipient Transaction Default, Final Recipient Transaction Acceleration or Final Recipient Transaction Restructuring.
Enhanced Access to Finance Measures Implementation	The Counter-Guarantee agreement will contain specific obligations for the Financial Intermediary to ensure that the benefit of the Counter-Guarantee is passed on to the largest extent possible to the Final Recipients. Final Recipient Transaction, covered by the Intermediary Transaction, shall enhance access to or availability of finance by meeting at least one of the following conditions:

[1] *The Financial Intermediary shall take into account that it bears the currency risk when the Cap Amount is expressed in Euro and the Intermediary Transactions are issued in the currency of the relevant Western Balkan Beneficiary Economy.*
[2] *For transactions under the on-lending business model the notion of "paid" shall be the risk sharing portion under a Final Recipient Transaction covered by the Financial Intermediary.*

	a. The Final Recipient Transaction shall, for the purpose of reflecting the benefit of the Counter-Guarantee, have more favourable features for the Final Recipient than it would have without the Counter-Guarantee (for instance (X) increased maturity, (Y) reduction of the interest rate of the Final Recipient Transaction (the interest rate shall be justifiable with regard to underlying risks and the actual cost of funding related to a credit), or (Z) reduction of the collateral requirements applicable to the Final Recipient Transactions (the collateral requirements shall be justifiable with regard to underlying risks)); or b. The Final Recipient Transaction shall cover categories of Final Recipients which could not be served without the Counter-Guarantee (e.g. for risk considerations); or c. the Final Recipient Transaction shall be entered into with a Final Recipient that is established in a geographical area which have not been served previously by the Financial Intermediary; or d. the Final Recipient Transaction shall be part of the deployment of a specific new product. In addition, the Intermediary Transaction may enhance access to or availability of finance by reduced guarantee fee charged by the Financial Intermediary to Financial Sub-Intermediaries or Final Recipients. EIF shall analyse the transfer of benefit mechanism proposed by the Financial Intermediaries and may, where appropriate, adjust the transfer of benefit during the due diligence phase.
Right of clawback by the EIF	EIF will be entitled to be repaid by the Financial Intermediary certain amounts in specified circumstances, including any amounts paid under the Counter-Guarantee by EIF in excess of the Defaulted Amounts, in excess of the Cap Amount, and any excess amount paid by EIF as a result of an exclusion of a Final Recipient Transaction from the relevant Portfolio.
Replenishment	During the Inclusion Period and if so regulated in the Counter-Guarantee Agreement at the discretion of EIF, once the Committed Counter-Guarantee Volume is reached the Financial Intermediary may include further new transactions with Final Recipients in the Portfolio to replenish the amortised principal amount of Final Recipient Transactions. The terms and conditions of the Counter-Guarantee Agreement, including inter alia the definition of Committed Counter-Guarantee Volume, Actual Counter-Guarantee Volume and Counter-Guarantee Cap Amount, shall reflect provisions on Replenishment, if applicable.
Financial Sub-Intermediary, Intermediary Transaction, Final Recipient and Final Recipient Transaction Eligibility Criteria	Each Financial Sub-Intermediary, Intermediary Transaction, Final Recipient and Final Recipient Transaction shall comply with the eligibility criteria indicated in Section 2.4.

Process for Payment Demands	The Financial Intermediary may call on the Counter-Guarantee for incurred Defaulted Amounts by sending a Payment Demand to EIF via email**.** A Payment Demand shall only be valid if it relates to the Defaulted Amounts and reported to EIF no later than the third Report Date following the calendar quarter in which the relevant credit event occurred. Payment Demands shall only be valid if they are relating to Defaulted Amounts incurred by the Financial Intermediary in respect of Credit Events occurred no later than 31 December 2035, the date which may be extended by agreement between EIF and European Commission and such extension notified to the Financial Intermediaries. One Payment Demand may be sent by Financial Intermediaries for each calendar quarter, provided that it is sent no later than the Report Date following the end of such calendar quarter. If the Payment Demand id valid, the EIF shall pay any amounts claimed thereunder within 60 calendar days of receipt.
Process for Recoveries	Where the Financial Intermediary receives Recoveries, a Recovery notice document must be sent to EIF in order to notify Recoveries recovered or received by the Financial Intermediary in relation to the Intermediary Transactions covering Final Recipient Transaction included in the relevant Portfolio(s). The Financial Intermediary shall send to the EIF at any relevant time, but not later than 30 days after the end of each calendar quarter a Recovery notice with the accompanying Recoveries schedule and shall pay to the EIF any relevant amount, within three months of the end of each calendar quarter in which Recoveries are recovered or received by the Financial Intermediary. The Guarantee Agreement may provide for two options, that at or before the Guarantee Termination Date, EIF and the Financial Intermediary may agree either: (i) on an ex-ante recovery rate that shall apply to any Final Recipient Transactions still in the recovery process; or (ii) that the obligation for the Financial Intermediary to share Recoveries shall continue until such time as the Financial (Sub-) Intermediary, acting in good faith and in a commercially reasonable manner may determine at any time in accordance with its internal guidelines and recovery procedures that the recovery period for the relevant defaulted Final Recipient Transactions shall be terminated. The Financial Intermediary shall notify EIF once the recovery periods for all defaulted Final Recipient Transactions have been terminated.
Recoveries sharing	Recoveries shall be shared between the EIF and the Financial Intermediary in accordance with the Counter-Guarantee Rate (e.g. if the Guarantee Rate is 80%, the Intermediary keeps 20% of the Recoveries and shall pass on 80% of the Recoveries to EIF). However, if the amount of the losses exceeds the Counter-Guarantee Cap Amount, a corresponding amount of recoveries may first be allocated to the Financial Intermediary as further specified in the Counter-Guarantee Agreement.
Exclusion Process	At any time, the EIF may verify (and/or request information from the Financial Intermediary) in order to verify whether an Intermediary Transaction included in the relevant Portfolio is an eligible Intermediary Transaction and whether its inclusion in the relevant Portfolio is in compliance with the terms of the Counter-Guarantee

	Agreement. At any time, the EIF may notify the Financial Intermediary of a non-eligible Intermediary Transaction by sending an exclusion notice. If a Financial Intermediary becomes aware that an Intermediary Transaction is or becomes a non-eligible Intermediary Transaction or any other undertakings, requirements or requests of the Counter-Guarantee Agreement are not complied with or satisfied in connection with such Intermediary Transaction, the Financial Intermediary shall include such information in the immediately following Report delivered to the EIF and flag any such Intermediary Transaction as excluded. Intermediary Transactions that do not comply with the Intermediary Transaction Eligibility Criteria are deemed excluded from the relevant Portfolio (and shall not be covered by the Counter-Guarantee). However, if the Financial Intermediary becomes aware of an Intermediary Transaction, at any time after the date on which it was included in the Portfolio, is or becomes a non-eligible Intermediary Transaction as a result of any event or circumstance beyond the control of the Financial Intermediary after a Payment Demand relating to the Final Recipient Transaction covered by such Intermediary Transaction was sent by the Financial Sub-Intermediary to the Financial Intermediary and the Financial Intermediary could not, acting diligently, have become aware thereof prior to such date, that Intermediary Transaction shall nonetheless be covered by the Counter-Guarantee for the purpose of the Payment Demand relating to such Final Recipient Transaction (and, for the avoidance of doubt, clawback will not apply with respect to payments already made with respect to such Intermediary Transaction) for the period until the Financial Intermediary became aware and unless it is for any other reason excluded from the portfolio and ceases to be a covered Intermediary Transaction. Similarly, if an eligible Intermediary Transaction is or becomes a non-eligible Intermediary Transaction as a result of any event or circumstance beyond the control of the Financial Intermediary before a Payment Demand relating to the Final Recipient Transaction was sent by the Financial Sub-Intermediary to the Financial Intermediary or the Financial Intermediary could not, acting diligently, have become aware thereof prior to such date, then such Intermediary Transaction shall be covered by the Counter-Guarantee if the Financial Intermediary procures that all amounts owed to the Financial Sub-Intermediary by the relevant Final Recipient under such Final Recipient Transaction are accelerated or otherwise terminated no later than on the Report Date immediately following the date on which it became aware of the same or could, acting diligently, have become aware thereof. If a Subordinated Debt Transaction is or becomes a non-eligible Final Recipient Transaction as a result of any event or circumstance beyond the control of the Financial (Sub-) Intermediary and the Financial (Sub-) Intermediary was upon the occurrence of a default under such Subordinated Debt Transaction, prevented from accelerating any amounts owed to it under such Subordinated Debt Transaction (either by contract or by virtue of mandatory laws and regulations), such transaction shall be deemed to be covered by the Counter-Guarantee provided that the Financial (Sub-) Intermediary accelerates the Subordinated Debt Transaction as soon as the contractual terms or applicable laws and regulations allow for it. However if the Financial (Sub-) Intermediary is entitled to accelerate such Final Recipient Transaction but fails to do so within the timeframe specified above then the respective Intermediary Transaction covering such Final Recipient Transaction shall be excluded from the relevant Portfolio.

2.2 | Miscellaneous provisions

Fees	The Counter-Guarantee shall be free of charge, except for the Commitment Fee.
Servicing	The Financial Intermediary shall perform the servicing of the Portfolio(s), in accordance with its internal policies and procedures.
Reporting	Financial Intermediaries shall provide EIF with the information in respect of that calendar quarter in a Report on the Report Date. Other reporting may be required from the Financial Intermediary as specified in the Counter-Guarantee Agreement.
Monitoring and Auditing	Financial Intermediaries and Financial Sub-Intermediaries shall agree to allow and to provide access to documents and premises related to the relevant Counter-Guarantee for the representatives of the relevant national authorities, national court of auditors, the European Commission, the European Court of auditors, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO) the EIF, agents of the EIF, the EIB, and any EU or national institution or body which is entitled to verify the use of the Counter-Guarantee in the context of the WB EDIF Guarantee4 SME Resilience. To that effect, the Financial Intermediaries shall also include appropriate provisions in each agreement with the Financial Sub-Intermediaries or Final Recipients (as applicable) or ensure that each Financial Sub-Intermediary includes appropriate provisions in each agreement with the Final Recipients (as applicable).
Know your Customer	The Financial Intermediary shall, prior to the signature of the Counter-Guarantee Agreement, disclose to the EIF information on its beneficial owners and at any time thereafter, promptly inform the EIF of any change in its beneficial owners.
Record keeping	The Financial Intermediary shall maintain or be able to produce all the documentation related to the implementation of the Counter-Guarantee Agreement for a period of five (5) years following the Counter-Guarantee Termination Date. The Financial Intermediary shall require each Final Recipient and each Financial Sub-Intermediary to maintain and be able to produce all the documentation related to the implementation of the relevant Final Recipient Transaction or the relevant Intermediary Transaction for a period of five (5) years following the termination of the relevant Final Recipient Transaction or Intermediary Transaction.
State aid	Counter-Guarantee transactions complying with the conditions set out in this Annex III and the Counter-Guarantee Agreement are considered as consistent with State aid rules. For the avoidance of doubt, in case of Final Recipient Transaction or Intermediary Transaction with State bodies or vehicles using State resources, such as National Promotional Banks and Institutions, the Financial (Sub-) Intermediary's obligation to comply with State aid rules shall continue to apply notwithstanding the compliance of the Counter-Guarantee with State aid rules.
Visibility and promotion	The Financial Intermediaries shall carry out adequate information, marketing and publicity campaigns, including through their website or alternative ways of communication to achieve equivalent visibility. The Financial Intermediaries shall further ensure that the Financial Sub-Intermediary and Final Recipient Transaction agreements, relevant promotional material, press

	releases and relevant publications on their website (or alternative ways of communication to achieve equivalent visibility pertaining to the Guarantee Facility) contain a statement to the effect that the Intermediary Transactions and the Final Recipient Transactions benefit from support from the WB EDIF Guarantee4 SME Resilience (as further detailed in the Counter-Guarantee Agreement).
Risk Retention	The Financial Intermediary shall maintain at all times a relevant portion corresponding to an economic exposure of at least 20% of the outstanding amount of each Intermediary Transaction guaranteed by the Financial Intermediary and included in the Portfolio(s). For this 20% portion, the Financial Intermediary shall not enter into any credit support, guarantee or other transfer of risk arrangement, provided that any collateral, security or guarantee payable to the Financial Intermediary that qualify as "recoveries" under the relevant Guarantee Agreement shall not be taken into account for this purpose.
Transfer	The Financial Intermediary shall not be entitled to transfer any or all of its rights and obligations under the Counter-Guarantee without the prior written consent of the EIF.
Restrictive Measures Implementation	Contractual provisions shall be included in the Counter-Guarantee Agreement to ensure that no funds or economic resources are made available directly or indirectly to, or for the benefit of, persons or entities designated by Restrictive Measures.

2.3 | Eligibility Criteria

Financial Sub-Intermediary	Financial Sub-Intermediaries shall comply with each of the following eligibility criteria: a) It shall be established or operating in the Target Region; b) It is duly authorised, if applicable, to carry out Debt Financing activities or to issue guarantees according to the applicable legislation; c) It shall not be in an Exclusion Situation; d) Any additional Financial Sub-Intermediary eligibility criteria that may be specified in the relevant Counter-Guarantee Agreement.
Final Recipient Eligibility Criteria	The Financial Sub-Intermediary shall ensure that each Final Recipient shall comply with each of the following eligibility criteria: 1. It shall be an SME[3]; 2. It shall be established and operating in the Target Region; 3. It shall not be a Restricted Final Recipient; 4. It shall not be in an Exclusion Situation, except if it is a natural person; 5. It shall not be subject to collective insolvency proceedings nor fulfil the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors; 6. It shall not be active in the Excluded and Restricted Sectors and Activities; and 7. It shall comply with any additional Final Recipient eligibility criteria that may be specified in the relevant Counter-Guarantee Agreement.

[3] *Commission SME Recommendation as amended from time to time.*

Intermediary Transaction Eligibility Criteria	An Intermediary Transaction shall comply with each of the following eligibility criteria: 1. It must be signed by the end of the Inclusion Period; 2. It shall be denominated in the relevant underlying Final Recipient Transaction currency; 3. It shall cover, directly or indirectly, the principal amount of one or more underlying Final Recipient Transaction at the applicable Guarantee Rate[4]; 4. It shall cover (directly or indirectly) Final Recipients meeting the criteria specified above and Final Recipient Transactions Eligibility Criteria specified below; 5. It shall comply with the applicable provisions on Enhanced Access to Finance Measures Implementation; 6. It shall comply with any additional Intermediary Transaction eligibility criteria that may be specified in the relevant Counter-Guarantee Agreement for each Portfolio.
Final Recipient Transaction Eligibility Criteria	The Financial Sub-Intermediary shall ensure that each Final Recipient Transaction shall comply with each of the following eligibility criteria: 1. It shall be denominated in (i) EUR, (ii) another tradeable currency that is the legal tender of the Western Balkan Beneficiary Economy where the Final Recipient is established, or (iii) provided that there is a strong economic rationale for doing so currencies other than the legal tender of the Western Balkan Beneficiary Economies where the Final Recipient is established and other than EUR; 2. It shall be newly originated (signed during the Inclusion Period) (for the avoidance of doubt, refinancing of pre-existing obligations shall be allowed under specific conditions mentioned below); 3. It shall be in the form of a Debt Financing; 4. If it is a subordinated debt product, it shall be in the form of Subordinated Debt Transaction; 5. It shall comply with the provisions on Enhanced Access to Finance Measures; 6. Its purpose shall be: a) an investment in tangible or intangible assets, including leases; b) working capital; c) business transfers; d) documentary credit transactions (i.e. letters of credit and bank guarantees) and trade receivables transactions (i.e. factoring products); e) refinancing of pre-existing obligations; f) finance for any other purpose supporting the business of SMEs; 7. It shall comply with the maximum principal amount, which shall not exceed EUR 500,000 (or equivalent amount in local currency);

[4] *Or risk-sharing rate in case of the on-lending business model.*

	8. It shall have a fixed repayment schedule or be a Revolving Final Recipient Transaction; 9. It shall comply with the minimum maturity period, which shall be 12 months, except for documentary finance transactions and factoring transactions, that would have no minimum contractual maturity; 10. In cases the Final Recipient Transaction includes re-financing, it shall comply with the following provisions: i) Re-financing is not allowed for loans or other debt instruments which are (i) more than sixty days past due or (ii) in non-performing loan or default status within applicable national banking rules; and ii) Any loans or other debt instruments to be re-financed must be deemed viable and financially sustainable by the relevant financial intermediary; and iii) Final Recipient Transactions including re-financing must benefit from lower interest rates and/or reduced collateral requirements compared to the debt financing that is being re-financed; iv) Final Recipient Transactions including re-financing must benefit from a longer maturity period (compared to the remaining loan maturity of the existing debt finance that is being re-financed) and/or credit holidays and/or an increase of the amount of financing; and v) The aggregate of all Intermediary Transactions covering Final Recipient Transactions including re-financing does not exceed 20% of the Maximum Portfolio Volume; 11. It shall not support any of the Excluded and Restricted Sectors and Activities[5]; 12. It shall comply with any additional Final Recipient Transaction eligibility criteria that may be specified in the relevant Counter-Guarantee Agreement.
Portfolio Eligibility Criteria	EIF may set eligibility criteria for the Portfolio, including concentration limits for specific rating classes and Intermediary Transaction size limits. Breach of these criteria results in the exclusion from the Portfolio of those Intermediary Transactions causing the Portfolio to breach the concentration limit(s). Specifically, EIF may require that the Financial Sub-Intermediary ensures that the sum of initial principal amounts of Intermediary Transactions granted to SMEs qualifying as Microenterprises accounts for at least 20% of the sum of the initial principal amounts of all Intermediary Transactions in the Portfolio.

[5] *For the purpose of compliance with this eligibility criterion the Financial Intermediary may rely on representations or undertakings from the Final Recipient.*