



Brussels, 19 February 2019
(OR. en)

6441/19

Interinstitutional File:
2018/0229(COD)

ECOFIN 166
CADREFIN 89
CODEC 419
COMPET 138
RECH 95
ENER 79
TRANS 111
ENV 148
EDUC 67
EF 68
TELECOM 66
IA 61
FSTR 25
CULT 28
AUDIO 27

NOTE

From: General Secretariat of the Council
To: Permanent Representative Committee 2

Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing the InvestEU Programme
- Partial mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 6 June 2018, the Commission presented a proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU programme.¹
2. The European Economic and Social Committee delivered its opinion on 17 October 2018.²
The Committee of the Regions delivered its opinion on 6 December 2018.³

¹ Doc. ST 9980/18 + ADD 1-6

² Doc. ST14015/18

³ Doc. ST15867/18

3. The proposal has been examined by the Working Party of Financial Counsellors in seventeen meetings during the Austrian and Romanian Presidencies, and several compromise proposals have been prepared with a view to reaching an agreement on the Council's negotiating mandate.
4. The European Parliament adopted its position on 16 January 2019.

II. STATE OF PLAY

5. Following deliberations in the Working Party of 14 February 2019, the Presidency has submitted the compromise text in annex to the Permanent Representatives Committee with a view to reaching an agreement on a partial mandate for negotiations with the European Parliament. This is without prejudice to decisions that will be taken at horizontal level in the framework of negotiations on the Multiannual Financial Framework 2021-2027.
6. The compromise solutions brought forward during negotiations have been further refined in the latest compromise. The Presidency is of the view that the revised compromise represents a balanced approach.
7. However, there is one issue on which an agreement has not been found in the Working Party of Financial Counsellors. **This concerns the location of the secretariat of the Investment Committee.** The Investment Committee, composed of independent experts, should conclude on the granting of the support from the EU guarantee to financing and investment operations fulfilling the eligibility criteria, including the additionality requirement. It will be assisted by a secretariat.
8. The delegations agree that the secretariat:
 - must be independent,
 - reports directly and exclusively to the Investment Committee,
 - respects strong confidentiality rules,
 - be entrusted tasks of a purely administrative nature,
 - should be staffed with Commission- as well as EIB-appointed members, to address concerns of independence, while also taking advantage of the experience of EFSI. A staffing formula of 2 members appointed by the Commission, 2 appointed by the EIB, with the head of the

secretariat from the Commission appeared as agreeable to the delegations at the technical level. The involvement of members appointed by other implementing partners than the EIB has not received broad support.

The fact that the Steering Board approves the rules of procedure for the secretariat is an important building block in delivering on the above-mentioned features. Both the EIB and the Commission have to agree for any decision to be made in this forum.

Based on the views expressed in the Working Party meeting of 14 February, the Presidency considers that this could be a viable way forward towards an overall compromise.

9. At the same, while some delegations prefer the secretariat to be administratively located in the Commission for reasons of its independence, other delegations are in favour of the EIB hosting the secretariat, building on the experience of the existing Investment Committee secretariat of the European Fund for Strategic Investments (EFSI).

As regards the location of the secretariat, the Presidency invites all delegations to indicate whether they prefer the secretariat to be administratively located in the Commission or in the EIB, with the aim of reaching a position that is acceptable to a broad majority of delegations.

III. CONCLUSION

10. Against this background, the Permanent Representatives Committee is invited to:
 - give guidance on the location of the secretariat;
 - agree on the partial mandate for negotiations with the European Parliament with regard to the proposed Regulation, as set out in the Annex;
 - invite the Presidency to pursue, as soon as possible, negotiations with the European Parliament on the basis of that partial mandate with a view to reaching a common understanding.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the InvestEU Programme

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 173 and the third paragraph of Article 175 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) With 1.8% of EU GDP, down from 2.2% in 2009, infrastructure investment activities in the Union in 2016 were about 20% below investment rates before the global financial crisis. Thus, while a recovery in investment-to-GDP ratios in the Union can be observed, it remains below what might be expected in a strong recovery period and is insufficient to compensate years of underinvestment. More importantly, the current investment levels and forecasts do not cover the Union's structural investment needs in the face of technological change and global competitiveness, including for innovation, skills, infrastructure, small and medium-sized enterprises ('SMEs') and the need to address key societal challenges such as sustainability or population ageing. Consequently, continued support is necessary to address market failures and sub-optimal investment situations to reduce the investment gap in targeted sectors to achieve the Union's policy objectives.

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

- (2) Evaluations have underlined that the variety of financial instruments delivered under the 2014-2020 Multiannual Financial Framework period has led to some overlaps. That variety has also produced complexity for intermediaries and final recipients who were confronted with different eligibility and reporting rules. Absence of compatible rules also hampered the combination of several Union funds although such combination would have been beneficial to support projects in need of different types of funding. Therefore, a single fund, the InvestEU Fund, building also on the {experience with the} European Fund for Strategic Investments set up under the Investment Plan for Europe, should be set up in order to achieve a more efficiently functioning support to final recipients by integrating and simplifying the financial offer under a single budgetary guarantee scheme, thereby improving the impact of Union intervention while reducing the cost to the Union budget.
- (3) In the last years, the Union has adopted ambitious strategies to complete the Single Market and to stimulate sustainable growth and jobs, such as the Capital Markets Union, the Digital Single Market Strategy, the Clean Energy for all Europeans package, the Union Action Plan for the Circular Economy, the Low-Emission Mobility Strategy, the Defence and the Space Strategy for Europe. The InvestEU Fund should exploit and reinforce synergies between those mutually reinforcing strategies through providing support to investment and access to financing.
- (4) At Union level, the European Semester of economic policy coordination is the framework to identify national reform priorities and monitor their implementation. Member States develop their own national multiannual investment strategies in support of those reform priorities. The strategies should be presented alongside the yearly National Reform Programmes as a way to outline and coordinate priority investment projects to be supported by national or Union funding, or by both. They should also serve to use Union funding in a coherent manner and to maximise the added value of the financial support to be received notably from the European Structural and Investment Funds, the European Investment Stabilisation Function and the InvestEU Fund, where relevant.
- (5) The InvestEU Fund should contribute to improving the competitiveness of the Union, including in the field of innovation and digitisation, the sustainability of the Union's economic growth, the social resilience and inclusiveness and the integration of the Union capital markets, including solutions addressing their fragmentation and diversifying sources of financing for the Union enterprises. To that end, it should support projects that are technically and economically viable by providing a framework for the use of debt, risk sharing and equity instruments underpinned by a guarantee from the Union's budget and by

contributions from implementing partners as relevant. It should be demand-driven while support under the InvestEU Fund should at the same time focus on contributing to meeting policy objectives of the Union and cover a wide range of sectors and regions, while avoiding excessive sectoral or geographical concentration.

- (6) The InvestEU Fund should support investments in tangible and intangible assets to foster growth, investment and employment, and thereby contributing to improved well-being and fairer income distribution in the Union. Intervention through the InvestEU Fund should complement Union support delivered through grants.
- (7) The Union endorsed the objectives set out in the United Nations Agenda 2030 and its Sustainable Development Goals and the Paris Agreement in 2015 as well as the Sendai Framework for Disaster Risk Reduction 2015-2030. To achieve the agreed objectives, including those embedded in the environmental policies of the Union, action pursuing sustainable development is to be stepped up significantly. Therefore, the principles of sustainable development should feature prominently in the design of the InvestEU Fund.
- (8) The InvestEU Programme should contribute to building a sustainable finance system in the Union which supports the re-orientation of private capital towards sustainable investments in accordance with the objectives set out in the Commission Action Plan for Financing Sustainable Growth⁶.
- [(9) Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, the InvestEU Programme will contribute to mainstream climate actions and to the achievement of an overall target of 25 % of the Union budget expenditures supporting climate objectives. Actions under the InvestEU Programme are expected to contribute 30 % of the overall financial envelope of the InvestEU Programme to climate objectives. Relevant actions will be identified during the InvestEU Programme's preparation and implementation and reassessed in the context of the relevant evaluations and review processes. Operations that could undermine the achievements of the climate objectives shall not be eligible for support under this Regulation.]
- (10) The contribution of the InvestEU Fund to the achievement of the climate target will be tracked through an EU climate tracking system developed by the Commission in cooperation with potential implementing partners and using in an appropriate way the criteria established by [Regulation on the establishment of a framework to facilitate

⁶ COM(2018)97 final.

sustainable investment^{7]} for determining whether an economic activity is environmentally sustainable.

- (11) According to the 2018 Global Risks Report issued by the World Economic Forum, half of the ten most critical risks threatening the global economy relate to the environment. Such risks include air, soil and water pollution, extreme weather events, biodiversity losses and failures of climate-change mitigation and adaptation. Environmental principles are strongly embedded in the Treaties and many of the Union's policies. Therefore, the mainstreaming of environmental objectives should be promoted in the InvestEU Fund related operations. Environmental protection and related risk prevention and management should be integrated in the preparation and implementation of investments. The EU should also track its biodiversity-related and air pollution control-related expenditure in order to fulfil the reporting obligations under the Convention on Biological Diversity and Directive (EU) 2016/2284 of the European Parliament and of the Council⁸ Investment allocated to environmentally sustainability objectives should therefore be tracked using common methodologies coherent with that developed under other Union programmes applying to climate, biodiversity and air pollution management in order to allow assessing the individual and combined impact of investments on the key components of the natural capital, including air, water, land and biodiversity.
- (12) Investment projects receiving substantial Union support, notably in the area of infrastructure, should be screened by the implementing partner to determine if they have an environmental, climate or social impact and if so, should be subject to sustainability proofing in accordance with guidance that should be developed by the Commission in cooperation with potential implementing partners under the InvestEU Programme and, using in an appropriate way the criteria established by [Regulation on establishment of a framework to facilitate sustainable investment] for determining whether an economic activity is environmentally sustainable and coherently with the guidance developed for other programmes of the Union. Such guidance should include adequate provisions to avoid undue administrative burden.
- (13) Low infrastructure investment rates in the Union during the financial crisis undermined the Union's ability to boost sustainable growth, competitiveness and convergence. Sizeable investments in the European infrastructure are fundamental to meet the Union's

⁷ COM(2018)353.

⁸ Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344, 17.12.2016, p. 1).

sustainability targets, including the 2030 energy and climate targets. Accordingly, support from the InvestEU Fund should target investments into transport, energy, including energy efficiency and renewable and other safe and sustainable low-emission energy sources, environmental, climate action, maritime and digital infrastructure. To maximise the impact and the value added of Union financing support, it is appropriate to promote a streamlined investment process enabling visibility of the project pipeline and consistency across relevant Union programmes. Bearing in mind safety and security threats, investment projects receiving Union support should include infrastructure resilience, including infrastructure maintenance and safety, and take into account principles for the protection of citizens in public spaces. This should be complementary to the efforts made by other Union funds such as the European Regional Development Fund providing support for security components of investments in public spaces, transport, energy and other critical infrastructure.

- (14) Whereas the level of overall investment in the Union is increasing, investment in higher-risk activities such as research and innovation is still inadequate. The resulting underinvestment in research and innovation is damaging to the industrial and economic competitiveness of the Union and the quality of life of its citizens. The InvestEU Fund should provide the appropriate financial products to cover different stages in the innovation cycle and a wide range of stakeholders, in particular to allow the upscaling of and deployment of solutions at a commercial scale in the Union, in order to make such solutions competitive on world markets.
- (15) A significant effort is urgently needed to invest in digital transformation and to distribute the benefits of it to all Union citizens and businesses. The strong policy framework of the Digital Single Market Strategy should now be matched by investment of a similar ambition, including in artificial intelligence.
- (16) ~~Small and medium-sized enterprises~~ (SMEs) play a crucial role in the Union. However, they face challenges when accessing finance because of their perceived high risk and lack of sufficient collateral. Additional challenges arise from SMEs' need to stay competitive by engaging in digitisation, internationalisation and innovation activities and skilling up their workforce. Moreover, compared to larger enterprises, they have access to a more limited set of financing sources: they typically do not issue bonds, have only limited access to stock exchanges or large institutional investors. The challenge in accessing finance is even greater for those SMEs whose activities focus on intangible assets. SMEs in the Union rely heavily on banks and debt financing in the form of bank overdrafts, bank loans or leasing. Supporting SMEs that face the above challenges and providing more diversified sources of

funding is necessary for increasing the ability of SMEs to finance their creation, growth and development, withstand economic downturns, and for making the economy and the financial system more resilient during economic downturn or shocks. This is also complementary to the initiatives already undertaken in the context of the Capital Markets Union. The InvestEU Fund should provide an opportunity to focus on specific, more targeted financial products.

- (17) As set out in the reflection paper on the social dimension of Europe⁹ and the European Pillar of Social Rights¹⁰, building a more inclusive and fairer Union is a key priority for the Union to tackle inequality and foster social inclusion policies in Europe. Inequality of opportunities affects in particular access to education, training and health. Investment in the social, skills and human capital-related economy, as well as in the integration of vulnerable populations in the society, can enhance economic opportunities, especially if coordinated at Union level. The InvestEU Fund should be used to support investment in education and training, help increase employment, in particular among the unskilled and long-term unemployed, and improve the situation with regard to intergenerational solidarity, the health sector, homelessness, digital inclusiveness, community development, the role and place of young people in society as well as vulnerable people, including third country nationals. The InvestEU Programme should also contribute to the support of European culture and creativity. To counter the profound transformations of societies in the Union and of the labour market in the coming decade, it is necessary to invest in human capital, microfinance, social enterprise finance and new social economy business models, including social impact investment and social outcomes contracting. The InvestEU Programme should strengthen nascent social market eco-system, increasing the supply of and access to finance to micro- and social enterprises, to meet the demand of those who need it the most. The report of the High-Level Task-Force on Investing in Social Infrastructure in Europe¹¹ has identified investment gaps in social infrastructure and services, including for education, training, health and housing, which call for support, including at the Union level. Therefore, the collective power of public, commercial and philanthropic capital, as well as support from foundations, should be harnessed to support the social market value chain development and a more resilient Union.

⁹ COM(2017) 206.

¹⁰ COM(2017) 250.

¹¹ Published as **European Economy Discussion Paper 074** in January 2018.

- (18) The InvestEU Fund should operate under four policy windows, mirroring the key Union policy priorities, namely sustainable infrastructure; research, innovation and digitisation: SMEs; and social investment and skills.
- (18a) While the SME window ~~will~~should benefit SMEs and small midcap companies, midcap companies ~~are~~should be eligible for support under the other three windows.
- (19) Each policy window should be composed of two compartments, that is to say an EU compartment and a Member State compartment. The EU compartment should address Union-wide market failures or sub-optimal investment situations in a proportionate manner; supported actions should have a clear European added value. The Member State compartment should give Member States the possibility to contribute a share of their resources of Funds under shared management to the provisioning of the EU guarantee to use the EU guarantee for financing or investment operations to address specific market failures or sub-optimal investment situations in their own territory, including in vulnerable and remote areas such as the outermost regions of the Union, to deliver objectives of the Fund under shared management. Actions supported from the InvestEU Fund through either EU or Member State compartments should not duplicate or crowd out private financing or distort competition in the internal market.
- (20) The Member State compartment should be specifically designed to allow the use of funds under shared management to provision a guarantee issued by the Union. That combination aims at mobilising the high credit rating of the Union to promote national and regional investments while ensuring a consistent risk management of the contingent liabilities by implementing the guarantee given by the Commission under indirect management. The Union should guarantee the financing and investment operations foreseen by the guarantee agreements concluded between the Commission and implementing partners under the Member State compartment, the Funds under shared management should provide the provisioning of the guarantee, following a provisioning rate determined by the Commission based on the nature of the operations and the resulting expected losses, and the Member State would assume losses above the expected losses by issuing a back-to-back guarantee in favour of the Union. Such arrangements should be concluded in a single contribution agreement with each Member State that voluntarily chooses such option. The contribution agreement should encompass the one or more specific guarantee agreements to be implemented within the Member State concerned, based on the rules of the InvestEU Fund. The setting out of the provisioning rate on a case by case basis requires a derogation from

Article 211(1) of Regulation (EU, Euratom) No 2018/1046¹² (the 'Financial Regulation'). This design provides also a single set of rules for budgetary guarantees supported by funds managed centrally or by funds under shared management, which would facilitate their combination.

- (20a) A partnership between the Commission and the EIB Group should be established drawing on the relative strengths of each partner to ensure maximum policy impact, deployment efficiency, appropriate budgetary and risk management oversight and should support an effective and inclusive direct access;
- (20b) The Commission should seek the views of other potential implementing partners along **with** the EIB Group on investment guidelines, climate tracking and sustainability guidance documents and common methodologies, as appropriate, with a view to ensure inclusiveness and operationality, until the set-up of the governance bodies, whereafter involvement of implementing partners should take place in the framework of the **A**dvisory **B**oard and the **S**teering **B**oard.
- [(21) The InvestEU Fund should be open to contributions from third countries that are members of the European Free Trade Association, acceding countries, candidates and potential candidates, countries covered by the Neighbourhood policy and other countries, in accordance with the conditions laid down between the Union and those countries. This should allow continuing cooperating with the relevant countries, where appropriate, in particular in the fields of research and innovation as well as SMEs.]
- (22) This Regulation lays down a financial envelope for other measures of the InvestEU Programme than the provisioning of the EU guarantee, which is to constitute the prime reference amount, within the meaning of [reference to be updated as appropriate according to the new inter-institutional agreement: point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management¹³], for the European Parliament and the Council during the annual budgetary procedure.
- [(23) The EU guarantee of EUR 38 000 000 000 (current prices) at Union level is expected to mobilise more than EUR 650 000 000 000 of additional investment across the Union and should be indicatively allocated between the policy windows.]

¹²

¹³

Reference to be updated: OJ C 373, 20.12.2013, p. 1. The agreement is available at:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.373.01.0001.01.ENG&toc=OJ.C:2013:373:TOC

- (24) The EU guarantee underpinning the InvestEU Fund should be implemented indirectly by the Commission relying on implementing partners with outreach to intermediaries, where applicable, and to final recipients. A guarantee agreement allocating guarantee capacity from the InvestEU Fund should be concluded by the Commission with each implementing partner, to support its financing and investment operations meeting the InvestEU Fund objectives and eligibility criteria.
- (24a) The InvestEU Fund should be provided with an appropriate governance structure to ensure the appropriate use of the EU guarantee. That governance structure should be composed of an Aadvisory Bboard, a Steering Bboard and an Investment Committee. It should not encroach upon or interfere with the decision-making of the EIB Group or other implementing partners, or be a substitute for their respective governing bodies.
- (25) An Aadvisory Bboard consisting of representatives of the implementing partners and of representatives of Member States should be established in order to provide advice to the Steering Bboard and exchange views and share best practices on implementation of the InvestEU Fund.
- (26) The Commission should assess the compatibility of investment and financing operations submitted by the implementing partners with Union law and policies whereas the decisions on financing and investment operations should ultimately be taken by an implementing partner.
- (27) *deleted*
- (27a) The Steering Board should determine the strategic and operational guidance for the InvestEU.
- (28) An Investment Committee composed of independent experts should conclude on the granting of the support from the EU guarantee to financing and investment operations fulfilling the eligibility criteria, thereby providing external expertise in investment assessments in relation to projects. The Investment Committee should have different configurations to best cover different policy areas and sectors.
- (29) In selecting implementing partners for the deployment of the InvestEU Fund, the Commission should consider the counterpart's capacity to fulfil the objectives of the InvestEU Fund and contribute its own resources, in order to ensure adequate geographical coverage and diversification, to crowd-in private investors and to provide sufficient risk diversification as well as solutions to address market failures and sub-optimal investment situations. Given its role under the Treaties, its capacity to operate in all Member States and the existing experience under the current financial instruments and the EFSI, the European

Investment Bank ('EIB') Group should remain a privileged implementing partner under the InvestEU Fund's EU compartment. In addition to the EIB Group, national promotional banks or institutions should be able to offer a complementary financial product range given that their experience and capabilities at national and regional level could be beneficial for the maximisation of the impact of public funds on the territory of the Union. Moreover, it should be possible to have other international financial institutions as implementing partners, when they present a comparative advantage in terms of specific expertise and experience in certain Member States and when they present a EU majority of shareholding.

(30) *deleted*

(31) The EU guarantee under the Member State compartment should be allocated to any implementing partner eligible according to Article 62(1)(c) of the Financial Regulation, including national or regional promotional banks or institutions, the EIB, the European Investment Fund and other international financial institutions. When selecting implementing partners under the Member State compartment, the Commission should take into account the proposals made by each Member State, as reflected in the contribution agreement. In accordance with Article 154 of the Financial Regulation, the Commission must carry out an assessment of the rules and procedures of the implementing partner to ascertain that they provide a level of protection of the financial interest of the Union equivalent to the one provided by the Commission.

(32) Financing and investment operations should ultimately be decided by an implementing partner in its own name, implemented in accordance with its internal rules, policies and procedures and accounted for in its own financial statements or, where applicable, disclosed in the notes to the financial statements.- Therefore, the Commission should exclusively account for any financial liability arising from the EU guarantee and disclose the maximum guarantee amount, including all relevant information on the guarantee provided.

(33) The InvestEU Fund should, where appropriate, allow for a smooth and efficient blending of grants or financial instruments, or both, funded by the Union budget or by the EU Emissions Trading System (ETS) Innovation Fund with that guarantee in situations where this is necessary to best underpin investments to address particular market failures or sub-optimal investment situations.

(34) Projects submitted by implementing partners for support under the InvestEU Programme, which include blending with support from another Union programmes, should as a whole also be consistent with the objectives and eligibility criteria contained in the rules of the

relevant Union programmes. The use of the EU guarantee should be decided under the rules of the InvestEU Programme.

- (35) The InvestEU Advisory Hub should support the development of a robust pipeline of investment projects in each policy window through advisory initiatives to be implemented by the EIB Group, other advisory partners or directly by the Commission. In addition, the InvestEU Advisory Hub should provide a central entry point for project development assistance delivered under centrally managed Union programmes.
- (35a) The InvestEU Advisory Hub should be established by the Commission with the EIB Group as the main partner, building in particular on the experience acquired under the European Investment Advisory Hub. The Commission should be responsible for the policy steer of the InvestEU Advisory Hub and for the management of the central entry point. The EIB Group should deliver advisory initiatives under the policy windows and should implement the cross sectoral component of the InvestEU Advisory Hub. In addition, the EIB Group should provide operational coordination services to the Commission, including by providing input to the strategic and policy guidelines, mapping existing and emerging advisory initiatives, assessing advisory needs and advising the Commission on optimal ways to address these needs through existing or new advisory initiatives.
- (36) In order to ensure a wide geographic outreach of the advisory services across the Union and to successfully leverage local knowledge about the InvestEU Fund, a local presence of the InvestEU Advisory Hub should be ensured, where needed, taking into account existing support schemes, with a view to provide tangible, proactive, tailor-made assistance on the ground.
- (37) In the context of the InvestEU Fund, there is a need for capacity building support to develop the organisational capacities and market development activities needed to originate quality projects. Moreover, the aim is to create the conditions for the expansion of the potential number of eligible recipients in nascent market segments, in particular where the small size of individual projects raises considerably the transaction cost at the project level, such as for the social finance ecosystem. The capacity building support should be complementary and additional to actions undertaken under other Union programmes that cover a specific policy area.
- (38) The InvestEU Portal should be established to provide for an easily accessible and user-friendly project database to promote visibility of investment projects searching for financing with enhanced focus on the provision of a possible pipeline of investment projects, compatible with Union law and policies, to the implementing partners.

- (39) Pursuant to paragraphs 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016¹⁴, there is a need to evaluate the InvestEU Programme on the basis of information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the InvestEU Programme on the ground.
- (40) A solid monitoring framework, based on output, outcome and impact indicators should be implemented to track progress towards the Union's objectives. In order to ensure accountability to European citizens, the Commission should report annually to the European Parliament and the Council on the progress, impact and operations of the InvestEU Programme.
- [(41) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding.]
- (42) Regulation (EU, Euratom) No [the new FR] applies to InvestEU Programme. It lays down rules on the implementation of the Union budget, including the rules on budgetary guarantees.
- (43) In accordance with Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council¹⁵ (the "Financial Regulation"), Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹⁶, Council Regulation (Euratom, EC) No 2988/95¹⁷,

¹⁴ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

¹⁵ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

¹⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office

Council Regulation (Euratom, EC) No 2185/96¹⁸ and Council Regulation (EU) 2017/1939¹⁹, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities, including fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office ("the EPPO") may investigate and prosecute offences against the Union's financial interests, as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council²⁰. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests, to grant the necessary rights and access to the Commission, OLAF, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, and the European Court of Auditors and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- [(44) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the EEA agreement, which provides for the implementation of the programmes by a decision under that agreement. Third countries may also participate on the basis of other legal instruments. A specific provision should be introduced in this Regulation to grant the necessary rights for

(OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L248, 18.9.2013, p. 1).

¹⁷ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.95, p.1).

¹⁸ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.96, p.2).

¹⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p.1)

²⁰ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

and access to the authorising officer responsible, OLAF, as well as the European Court of Auditors to comprehensively exert their respective competences.]

- (45) Pursuant to [reference to be updated as appropriate according to a new decision on OCTs: Article 88 of Council Decision 2013/755/EU], persons and entities established in overseas countries and territories (OCTs) are eligible for funding subject to the rules and objectives of InvestEU Programme and possible arrangements applicable to the Member State to which the relevant OCT is linked.
- (46) In order to supplement the non-essential elements of this Regulation with investment guidelines with which financing and investment operations should comply, to facilitate a prompt and flexible adaptation of the performance indicators and to adjust the provisioning rate, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of drawing-up the investment guidelines for the financing and investment operations under different policy windows, the amendment of Annex III to this Regulation to review or complement the indicators and the adjustment of the provisioning rate. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (47) The InvestEU Programme should address EU-wide market and/or Member State specific failures and sub-optimal investment situations and provide for Union-wide market testing of innovative financial products, and systems to spread them, for complex market failures. Therefore, action at Union level is warranted,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes the InvestEU Fund providing for an EU guarantee supporting financing and investment operations carried out by the implementing partners in support of the Union's internal policies.

This Regulation also establishes an advisory support mechanism to support the development of investable projects and access to financing and to provide related capacity building ('InvestEU Advisory Hub'). It also establishes a database granting visibility to projects for which project promoters seek financing and which provides investors with information about investment opportunities ('InvestEU Portal').

It lays down the objectives of the InvestEU Programme, the budget and the amount of the EU guarantee for the period 2021 to 2027, the forms of Union funding and the rules for providing such funding.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'blending operations' means operations supported by the Union budget combining non-repayable forms of support or repayable support or both from the Union budget with repayable forms of support from development or other public finance institutions, as well as from commercial finance institutions and investors; for the purposes of this definition, Union programmes financed from sources other than the Union budget, such as the [EU Emissions Trading System (ETS) Innovation Fund], can be assimilated to Union programmes financed by the Union budget;

- (1a) 'EIB' means the European Investment Bank;
- (1b) 'EIB Group' means the European Investment Bank and its subsidiaries or other entities as defined in Article 28(1) of the EIB Statute;
- (1c) 'financial contribution' means the contribution from an implementing partner in the form of own risk taking capacity that shall be provided on a pari passu basis with the EU guarantee or in other forms that allow an efficient implementation of the InvestEU ~~P~~programme while ensuring appropriate alignment of interest;
- (1d) 'contribution agreement' means the legal instrument whereby the Commission and ~~the one~~ **or more** Member States specify the conditions of the EU guarantee under the Member State compartment, specified in Article 9;
- (2) 'EU guarantee' means an overall unconditional, irrevocable and first demand guarantee provided by the Union budget under which the budgetary guarantees in accordance with Article 219(1) of the Financial Regulation take effect through the signature of individual guarantee agreements with implementing partners;
- (3) 'financial product' means a financial mechanism or arrangement under the terms of which the implementing partner provides direct or intermediated financing to final recipients in ~~in~~ any of the forms referred to in Article 13;
- (4) 'financing and/or investment operations' means operations to provide finance directly or indirectly to final recipients in the form of financial products, carried out by an implementing partner in its own name, provided by it in accordance with its internal rules, policies and procedures and accounted for in its own financial statements or, where applicable, disclosed in the notes to the financial statements-;
- (5) 'Funds under shared management' means funds that foresee the possibility of allocating an amount thereof to the provisioning of a budgetary guarantee under the Member State compartment of the InvestEU Fund, namely the European Regional Development Fund (ERDF), the European Social Fund+ (ESF+), the Cohesion Fund, the European Maritime and Fisheries Fund (EMFF) and the European Agriculture Fund for Rural Development (EAFRD);
- (6) 'guarantee agreement' means the legal instrument whereby the Commission and an implementing partner specify the conditions for proposing financing or investment operations to be granted the benefit of the EU guarantee, for providing the budgetary guarantee for those operations and for implementing them in accordance with the provisions of this Regulation;

- (7) 'implementing partner' means the eligible counterpart such as a financial institution or other intermediary with whom the Commission signs a guarantee agreement;
- (8) 'InvestEU Advisory Hub' means the technical assistance platform defined in Article 20;
- (8a) '~~InvestEU Advisory Hub~~ Agreement' means the legal instrument whereby the Commission and the advisory partner specify the conditions for the implementation of the InvestEU Advisory Hub;
- (8b) 'advisory initiative' means technical assistance and advisory services supporting investment, including capacity building activities, as defined in Articles 20(1) and (2), implemented by advisory partners or by the Commission, including through external service providers contracted by the Commission ;
- (8c) 'advisory partner' means the eligible entity~~counterpart~~ such as a financial institution or other entity with whom the Commission signs an agreement to implement one or more advisory initiatives under direct or indirect management, except when the advisory initiatives are implemented by the Commission, including through external service providers contracted by the Commission ;
- (9) 'InvestEU Portal' means the database defined in Article 21;
- (10) 'InvestEU Programme' means the InvestEU Fund, the InvestEU Advisory Hub, the InvestEU Portal and blending operations, collectively;
- (11) 'microfinance' means microfinance as defined in Regulation [[ESF+] number];
- (12) *deleted*
- (13) 'national promotional banks or institutions' (NPBIs) means legal entities carrying out financial activities on a professional basis which are given mandate by a Member State or a Member State's entity at central, regional or local level, to carry out development or promotional activities;
- (14) 'small and medium-sized enterprises (SMEs)' means micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC²¹;
- (15) 'small midcap companies' means entities employing up to 499 employees that are not SMEs;
- (16) 'social enterprise' means a social enterprise as defined in Regulation [[ESF+] number];
- (17) 'third country' means a country that is not a member of the Union.

²¹ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Article 3

Objectives of the InvestEU Programme

1. The general objective of the InvestEU Programme is to support the policy objectives of the Union by means of financing and investment operations contributing to:
 - (a) the competitiveness of the Union, including innovation and digitisation;
 - (b) the sustainability of the Union economy, its growth and its environmental and climate dimension;
 - (c) the social resilience and inclusiveness of the Union;
 - (d) the integration of the Union capital markets and the strengthening of the Single Market, including solutions addressing the fragmentation of the Union capital markets, diversifying sources of financing for Union enterprises and promoting sustainable finance;
 - (e) the promotion of economic, social and territorial cohesion.
2. The InvestEU Programme has the following specific objectives:
 - (a) to support financing and investment operations in sustainable infrastructure in the areas referred to in point (a) of Article 7(1);
 - (b) to support financing and investment operations in research, innovation and digitisation;
 - (c) to increase the access to and the availability of finance for SMEs and small midcap companies;
 - (d) to increase the access to and the availability of microfinance and finance to social enterprises, support financing and investment operations related to social investment and skills and develop and consolidate social investment markets, in the areas referred to in point (d) of Article 7(1).

Article 4

Budget and amount of the EU guarantee

- [1. The EU guarantee for the purposes of the EU compartment referred to in point (a) of Article 8(1) shall be EUR 38 000 000 000 (current prices) in accordance with Article 210 (1)(b) of the Financial Regulation. It shall be provisioned at the rate of 40 %.

An additional amount of the EU guarantee may be provided for the purposes of the Member State compartment referred to in point (b) of Article 8(1), subject to the allocation by Member States, pursuant to [Article 10(1)] of Regulation [[CPR] number]²² and Article [75(1)] of Regulation [[CAP plan] number]²³, of the corresponding amounts.

The contributions from third countries referred to in Article 5 shall also increase the EU guarantee referred to in the first subparagraph, providing a provisioning in cash in full in accordance with Article 218(2) of the Financial Regulation.]

2. The indicative distribution of the amount referred to in the first subparagraph of paragraph 1 is set out in Annex I to this Regulation. The Commission may modify the amounts referred to in that Annex I, where appropriate, by up to 15 % for each objective. It shall inform the European Parliament and the Council of any modification.
- [3. The financial envelope for the implementation of the measures provided in Chapters V and VI shall be EUR 525 000 000 (current prices).]
4. The amount referred to in paragraph 3 may also be used for technical and administrative assistance for the implementation of the InvestEU Programme, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.

Article 5

Third countries associated to the InvestEU Fund

The EU compartment of the InvestEU Fund referred to in point (a) of Article 8(1) and each of the policy windows referred to in Article 7(1) may receive contributions from the following third countries in order to participate in certain financial products pursuant to Article 218(2) of the Financial Regulation:

- (a) European Free Trade Association (EFTA) members which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA agreement;
- (b) acceding countries, candidate countries and potential candidates, in accordance with the general principles and general terms and conditions for their participation in Union programmes established in the respective framework agreements and

²²

²³

- Association Council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and them;
- (c) countries covered by the European Neighbourhood Policy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and association council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- [(d) third countries, in accordance with the conditions laid down in a specific agreement covering the participation of the third country to any Union programme, provided that the agreement:
- (i) ensures a fair balance as regards the contributions and benefits of the third country participating in the Union programmes;
 - (ii) lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article 21(5) of the Financial Regulation;
 - (iii) does not confer to the third country a decisional power on the programme;
 - (iv) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.]

Article 6

Implementation and forms of Union funding

1. The EU guarantee shall be implemented in indirect management with bodies referred to in Article 62(1)(c)(ii), **(iii), (v) ~~and~~ (vi)** of the Financial Regulation. Other forms of EU funding under this Regulation shall be implemented in direct or indirect management in accordance with the Financial Regulation, including grants implemented in accordance with its Title VIII.
2. Financing and investment operations covered by the EU guarantee which form part of the blending operation combining support under this Regulation with support provided under one or more other Union programmes or by the EU Emissions Trading System (ETS) Innovation Fund shall:

(a) be consistent with the policy objectives and comply with the eligibility criteria set out in the rule on the Union programme under which the support is decided;

(b) comply with this Regulation.

3. Blending operations including a financial instrument fully financed by other Union programmes or by the [ETS Innovation Fund] without use of the EU guarantee under this Regulation shall comply with the policy objectives and eligibility criteria set out in the rules of the Union programme under which the support is provided.

4. In accordance with Article 6(2), the non-repayable forms of support and/or financial instruments from the Union budget forming part of the blending operation referred to in paragraphs 2 and 3 shall be decided under the rules of the relevant Union programme and shall be implemented within the blending operation in accordance with this Regulation and with Title X of the Financial Regulation.

The reporting shall also include the elements on the consistency with the policy objectives and eligibility criteria set out in the rules of the Union programme under which support is decided as well on the compliance with this Regulation.

CHAPTER II

InvestEU Fund

Article 7

Policy windows

1. The InvestEU Fund shall operate through the following four policy windows that shall address market failures or sub-optimal investment situations within their specific scope:

(a) sustainable infrastructure policy window: comprises sustainable investment in the areas of transport, energy, digital connectivity, supply and processing of raw materials, space, oceans and water, waste, nature and other environment infrastructure, cultural heritage, tourism, equipment, mobile assets and deployment of innovative technologies that contribute to the environmental or social

sustainability objectives of the Union, or to both, or meet the environmental, climate resilience, or social sustainability standards of the Union;

- (b) research, innovation and digitisation policy window: comprises research and innovation activities, transfer of research results to the market, demonstration and deployment of innovative solutions and support to scaling up of innovative companies as well as digitisation of Union industry;
- (c) SMEs policy window: access to and availability of finance for SMEs and small mid-cap companies;
- (d) social investment and skills policy window: comprises microfinance, social enterprise finance and social economy; gender equality; skills, education, training and related services; social infrastructure (including health and educational infrastructure and social and student housing); social innovation; health and long-term care; inclusion and accessibility; cultural activities with a social goal; integration of vulnerable people, including third country nationals.

2. Where a financing or investment operation proposed to the Investment Committee referred to in Article 19 falls under more than one policy window, it shall be attributed to the window under which its main objective or the main objective of most of its sub-projects fall, unless the investment guidelines define otherwise.
3. Financing and investment operations shall be screened to determine if they have an environmental, climate or social impact and if so, shall be subject to climate, environmental and social sustainability proofing with a view to minimise detrimental impacts and maximise benefits on climate, environment and social dimension. For that purpose, promoters requesting financing shall provide adequate information based on guidance to be developed by the Commission. Projects below a certain size defined in the guidance shall be excluded from the proofing. Projects that undermine the achievement of the climate objectives shall not be eligible for support under this Regulation.

The Commission guidance shall allow to:

- a) as regards adaptation, ensure the resilience to the potential adverse impacts of climate change through a climate vulnerability and risk assessment, including relevant adaptation measures, and, as regards mitigation, integrate the cost of greenhouse gas emissions and the positive effects of climate mitigation measures in the cost-benefit analysis;
- b) account for consolidated project impact in terms of the principal components of the natural capital relating to air, water, land and biodiversity;

- c) estimate the social impact, including on gender equality, the social inclusion of certain areas or populations and the economic development of areas and sectors affected by structural challenges such as the decarbonisation needs of the economy;
 - d) identify projects that undermine the achievement of climate objectives.
4. Implementing partners shall provide the information necessary to allow the tracking of investment that contributes to meeting the Union objectives on climate and environment, based on guidance to be provided by the Commission.
5. Implementing partners shall target that at least 50 % of the investment under the sustainable infrastructure policy window contribute to meeting the Union objectives on climate and environment.
6. The Commission is empowered to adopt delegated acts in accordance with Article 26 to define the investment guidelines for each of the policy windows. The ~~H~~~~investment~~ ~~G~~guidelines shall be prepared in close dialogue with the EIB Group and other potential implementing partners.

Article 8

Compartments

1. Each policy window referred to in Article 7(1) shall consist of two compartments addressing specific market failures or sub-optimal investment situations as follows:
 - (a) the EU compartment shall address any of the following situations:
 - (i) market failures or sub-optimal investment situations related to Union policy priorities and addressed at the Union level;
 - (ii) Union wide market failures or sub-optimal investment situations which have an impact at the Union or national level; or
 - (iii) market failures or sub-optimal investment situations, in particular new or complex ones, which require the development of innovative financial solutions and market structures;
 - (b) the Member State compartment shall address specific market failures or sub-optimal investment situations in one or several regions or Member States to deliver **the policy objectives of the contributing Funds under shared management in particular to strengthen economic and social cohesion in the European Union by addressing imbalances among its regions.**

2. The compartments referred to in paragraph 1 may be used in a complementary manner to support a financing or investment operation, including by combining support from both compartments.

Article 9

Specific provisions applicable to the Member State compartment

1. Amounts allocated by a Member State on a voluntary basis under Article [10(1)] of Regulation [[CPR] number] or Article [75(1)] of Regulation [[CAP plan] number] shall be used for the provisioning of the part of the EU guarantee under the Member State compartment covering financing and investment operations in the Member State concerned **or for the possible contribution from Funds under shared management to the InvestEU Advisory Hub.** ~~When the Member State prefers a regional coverage, the contribution agreement shall specifically envisage that the funds under shared management contributed to InvestEU will be only for the benefit of the region for which these funds would have been used under the rules of shared management. **Those amounts shall contribute to the achievement of the policy objectives selected in the Partnership Agreement and in the programmes which contribute to InvestEU.**~~
- [2. The establishment of that part of the EU guarantee under the Member State compartment shall be subject to the conclusion of a contribution agreement between the Member State and the Commission.

The Member State and the Commission shall conclude the contribution agreement or an amendment to it within four months following the Commission Decision adopting the Partnership Agreement or the CAP plan or simultaneously to the Commission Decision amending a programme or a CAP plan.

Two or more Member States may conclude a joint contribution agreement with the Commission.

By derogation from Article 211(1) of the Financial Regulation, the provisioning rate of the EU guarantee under the Member State compartment shall be set at 40 % and may be adjusted downwards or upwards in each contribution agreement to take account of the risks attached to the financial products intended to be used.]
3. The contribution agreement shall at least contain the following elements:

- a) the overall amount of the part of the EU guarantee under the Member State compartment pertaining to the Member State, its provisioning rate, the amount of the contribution from Funds under shared management, the constitution phase of the provisioning in accordance with an annual financial plan and the amount of the resulting contingent liability to be covered by a back-to-back guarantee provided by the Member State concerned;
- b) the Member State strategy consisting of the financial products and their minimum leverage, the geographical coverage, **including the regional coverage if needed**, types of projects, the investment period and, where applicable, the categories of final recipients and of eligible intermediaries;
- c) the potential implementing partner or partners proposed in accordance with Article 12, and the obligation of the Commission to inform the Member State about the implementing partner or partners selected;
- d) the possible contribution from Funds under shared management to the InvestEU Advisory Hub;
- e) the annual reporting obligations towards the Member State, including reporting in accordance with the **relevant indicators related to the policy objectives covered in the Partnership Agreement or programme and** referred to in the contribution agreement;
- f) provisions on the remuneration of the part of the EU guarantee under the Member State compartment;
- g) possible combination with resources under the EU compartment, including in a layered structure to achieve better risk coverage in accordance with Article 8(2).

4. The contribution agreements shall be implemented by the Commission through guarantee agreements signed with implementing partners pursuant to Article 14.

Where, within nine months from the signature of the contribution agreement, no guarantee agreement has been concluded or the amount of a contribution agreement is not fully committed through one or more guarantee agreements, the contribution agreement shall be terminated or prolonged, by mutual agreement, in the first case or amended accordingly in the second case and the unused amount of provisioning re-used pursuant to [Article 10(5)] of Regulation [[CPR] number] and Article [75(5)] of Regulation [[CAP plan] number].

Where the guarantee agreement has not been duly implemented within a period specified in Article [10(6)] of Regulation [[CPR] number] or in Article [75(6)] of Regulation [[CAP plan] number], the contribution agreement shall be amended and the unused amount of

provisioning re-used pursuant to [Article 10(6)] of the [[CPR] number] and Article [75(6)] of Regulation [[CAP plan]] number].

5. The following rules shall apply to the provisioning for the part of the EU guarantee under the Member State compartment established by a contribution agreement:
 - (a) after the constitution phase referred to in point (a) of paragraph 3 of this Article, any annual surplus of provisions, calculated by comparing the amount of provisions required by the provisioning rate and the actual provisions, shall be re-used pursuant to Article 10(6) of the [CPR] and to Article [75(6)] of the [[CAP plan] number];
 - (b) by derogation from Article 213(4) of the Financial Regulation, after the constitution phase referred to in point (a) of paragraph 3 of this Article, the provisioning shall not give rise during the availability of that part of the EU guarantee under the Member State compartment to annual replenishments;
 - (c) the Commission shall immediately inform the Member State where, as a result of calls on that part of the EU guarantee under the Member State compartment, the level of provisions for that part of the EU guarantee falls below 20 % of the initial provisioning;
 - (d) if the level of provisions for that part of the EU guarantee under the Member State compartment reaches 10 % of the initial provisioning, the Member State concerned shall provide to the common provisioning fund up to 5 % of the initial provisioning upon request by the Commission.

CHAPTER IIA

PARTNERSHIP BETWEEN THE COMMISSION AND THE EIB GROUP

Article 9a

Scope of the partnership

1. The Commission and the EIB Group shall form a partnership under this Regulation with the objective of supporting programme implementation and consistency, inclusivity, additionality, and efficiency of deployment. In accordance with the terms of this Regulation and as further specified in the agreements referred to in paragraph 2, the EIB Group:
 - (a) shall implement the portion of the EU guarantee specified in Article 10(1b);

- (b) shall support the implementation of the EU compartment, and where applicable in accordance with Article 12(1) the **Member State** compartment, of the InvestEU Fund, in particular by:
- (i) contributing to the investment guidelines in line with Article 7(6), contributing to the design of the scoreboard in line with Article 19(1a) and to other documents setting out the operational guidance of the InvestEU Fund,
 - (ii) defining, together with the Commission and potential implementing partners, the risk methodology and risk mapping system related to the financing and investment operations of the implementing partners in order to allow such operations to be assessed on a common rating scale,
 - (iii) upon request by the Commission and in agreement with the potential implementing partner concerned, carrying out due diligence and evaluations of the systems of potential implementing partners where and to the extent required by the conclusions of the audit of the pillar assessment in view of implementing the financial products envisaged by those implementing partners,
 - (iv) providing an opinion on the banking related aspects, notably on the financial risk and financial terms related to the portion of the EU guarantee to be allocated to the implementing partner as defined in the guarantee agreements to be concluded with implementing partners other than the EIB Group. The Commission shall, as appropriate, engage with the implementing partner based on the findings of the opinion. It shall inform the EIB Group on the outcome of its decision making,
 - (v) carrying out simulations and projections on the financial risk and remuneration of the aggregate portfolio based on assumptions agreed with the Commission,
 - (vi) carrying out the financial risk measurement and financial reporting of the aggregate portfolio, and
 - (vii) providing restructuring and recovery services set out in the agreement referred to in Article 9a(2)(b) to the Commission, at the request of the Commission, where the implementing partner is no longer responsible for pursuing restructuring and recovery activities under the relevant guarantee agreement;
- (c) ~~the EIB Group may,~~ upon request by a national promotional bank or institution, provide capacity building referred to in Article 20(2)(f) to that national promotional bank or institution and/or other services, related to the implementation of financial products supported by the EU guarantee;

- (d) shall, in relation to the InvestEU Advisory Hub,
- (i) be allocated an amount of EUR [375] million out of the financial envelope referred to in Article 4(3) for advisory initiatives and operational coordination defined in point (ii);
 - (ii) advise the Commission and perform operational coordination tasks as to be laid down in the agreement referred to in Article 9a(2)(c), by:
 - 1. supporting the Commission in the design, the establishment and functioning of the InvestEU Advisory Hub;
 - 2. providing an assessment of requests for advisory services not considered by the Commission as falling under existing advisory initiatives with a view to support the allocation decision of the Commission;
 - 3. supporting national promotional banks or institutions by providing capacity building referred to in Article 20(2)(f), upon their request, in relation to the development of their advisory capabilities to participate in advisory initiatives;
 - 4. at the request of the Commission and of a potential advisory partner and subject to the agreement of the EIB Group, contracting with advisory partners on behalf of the Commission for the delivery of advisory initiatives not implemented by the EIB Group pursuant to Article 9a(1)(d)(i).

The EIB Group shall ensure an independent performance of the operational coordination tasks referred to in this paragraph.

- 1a. The banking related information transmitted to the EIB Group by the Commission under (ii), (iv), (v) and (vi) of (1)(b) shall be limited to information strictly required for the EIB Group to carry out its obligations under these points. The potential implementing partners shall be involved in the drawing up of the nature and scope of the above mentioned information.
- 2. The modalities of the partnership shall be laid down in agreements, including:
 - (a) on the granting and implementation of the portion of the EU guarantee specified in Article 10(1b):
 - (i) a guarantee agreement between the Commission and the EIB Group, or
 - (ii) separate guarantee agreements between the Commission and the EIB and/or a subsidiary or other entity as defined in Article 28(1) of the EIB Statute;

- (b) an agreement between the Commission and the EIB Group in relation to points (b) and (c) of paragraph 1;
 - {(c) an agreement between the Commission and the EIB Group in relation to the InvestmentEU Advisory Hub;}
 - (d) service agreements between the EIB Group and national promotional banks and institutions concerning capacity building and other services in accordance with point (c) of paragraph 1.
3. Without prejudice to Articles 15(3) and 20(4), the costs incurred by the EIB Group for the performance of tasks referred to in points (b) and (c) of paragraph 1 shall comply with the conditions agreed under the agreement referred to in point (b) of paragraph 2 and may be covered from the repayments or revenues attributable to the EU guarantee contributed to the provisioning, in accordance with Article 211(4) and (5) of the Financial Regulation, or be charged on to the envelope referred to in Article 4(3), upon justification of these costs by the EIB Group and within an overall cap of EUR [million].
4. The costs incurred by the EIB Group for the performance of the operational coordination referred to in point (d)(ii) of paragraph 1 shall be fully covered and paid from the amount referred to in point (d)(i) of paragraph 1, upon justification of these costs by the EIB Group and within an overall cap of EUR [•] million.

Article 9b

Conflict of interest

Within the framework of the partnership the EIB Group shall take all necessary precautions to avoid conflicts of interests with other implementing partners, including through putting in place a dedicated and independent team for the tasks referred to in Article 9a-(1b)-(iii), (iv), (v), and (vi). The EIB Group or other implementing partners shall inform the Commission without delay of any situation constituting or likely to lead to any such conflict. In the event of a conflict of interest, the EIB Group shall take appropriate measures. The steering board shall be informed of the measures taken and their results.

The EIB Group shall take the necessary precautions to avoid conflict of interest situations in the implementation of the InvestEU Advisory Hub, in particular in relation to the operational coordination in its role of supporting the Commission referred to in Article 9a(1)(d)(ii). In the event of a conflict of interest, the EIB Group shall take appropriate measures.

CHAPTER III

EU GUARANTEE

Article 10

EU guarantee

1. The EU guarantee shall be granted as an irrevocable, unconditional, and on demand guarantee to the implementing partners in accordance with Article 219(1) of the Financial Regulation and managed in accordance with Title X of the Financial Regulation in indirect management.
 - 1a. The condition set out in Article 219(4) of the Financial Regulation shall be applied to each implementing partner on a portfolio basis.
 - 1b. 75 % of the EU guarantee under the EU compartment as referred to in first sub-paragraph of Article 4(1), amounting to EUR [28.5 billion], shall be granted to the EIB Group. The EIB Group shall provide an aggregate financial contribution amounting to EUR [7.125 billion]. This contribution shall be provided in a manner and form that facilitates the implementation of the InvestEU Fund and the achievement of the objectives set out in Article 12(2).
 - 1c. The remaining 25 % of the EU guarantee under the EU compartment shall be granted to other implementing partners, which are also to provide a financial contribution to be determined in the ~~G~~uarantee ~~A~~greements.
 - 1d. Best efforts shall be made to ensure that at the end of the investment period a wide range of sectors and regions will be covered and excessive sectoral or geographical concentration is avoided. These efforts shall include incentives for the smaller or less sophisticated NPBI that have a comparative advantage due to their local presence, knowledge and investment competencies. Those efforts shall be supported by the Commission through the development of a coherent approach.
2. Support of the EU guarantee may be granted for financing and investment operations covered by this Regulation for an investment period ending on 31 December 2027. Contracts between the implementing partner and the final recipient or the financial intermediary or other entity referred to in Article 13(1)(a) shall be signed by 31 December 2028.

Article 11

Eligible financing and investment operations

1. The InvestEU Fund shall only support financing and investment operations that
 - (a) comply with the conditions set out in points (a) to (e) of Article 209(2) of the Financial Regulation, in particular with the requirements regarding market failures, sub-optimal investment situations and additionality as set out in points (a) and (b) of Article 209(2) of the Financial Regulation and in Annex V to this Regulation and, where appropriate, maximising private investment in accordance with point (d) of Article 209(2) of the Financial Regulation;
 - (b) contribute to the Union policy objectives and fall under the scope of the areas eligible for financing and investment operations under the appropriate window in accordance with Annex II to this Regulation;
 - (ba) do not provide financial support to the excluded activities defined in point B of Annex V to this Regulation; and
 - (c) are consistent with the investment guidelines.
2. In addition to projects situated in the Union, the InvestEU Fund may support the following projects and operations through financing and investment operations:
 - (a) cross-border projects between entities located or established in one or more Member States and extending to one or more third countries, including acceding countries, candidate countries and potential candidates, countries covered by the European Neighbourhood Policy, the European Economic Area or the European Free Trade Association, or to an overseas country or territory as set out in Annex II to the TFEU, or to an associated third country, whether or not there is a partner in those third countries or overseas countries or territories;
 - (b) financing and investment operations in countries referred to in Article 5 which have contributed to a specific financial product.
3. The InvestEU Fund may support financing and investment operations providing finance to recipients which are legal entities established in any of the following countries:
 - (a) a Member State or an overseas country or territory linked to it;
 - (b) a third country or territory associated to the InvestEU Programme in accordance with Article 5;
 - (c) a third country referred to in point (a) of paragraph 2, where applicable;

- (d) other countries where needed for financing a project in a country or territory referred to in points (a) to (c).

Article 12

Selection of implementing partners other than the EIB Group

1. The Commission shall select, in accordance with Article 154 of the Financial Regulation, the implementing partners, other than the EIB Group.
For the EU compartment, the eligible counterparts shall have expressed their interest in relation to the portion of the EU guarantee referred to in Article 10(1c).
For the Member State compartment, the Member State concerned may propose one or more counterparts as implementing partners from among those that have expressed their interest. The Member State concerned may also propose the EIB Group as implementing partner and may contract, at its own expenses, the EIB Group to provide the services listed in Article 9a.
Where the Member State concerned does not propose an implementing partner, the Commission shall proceed in accordance with the second subparagraph of this paragraph among those implementing partners that can cover financing and investment operations in the geographical areas concerned.
2. When selecting implementing partners, the Commission shall ensure that the portfolio of financial products under the InvestEU Fund meets the following objectives:
 - (a) to maximise the coverage of the objectives laid down in Article 3;
 - (b) to maximise the impact of the EU guarantee through the own resources committed by the implementing partner;
 - (c) to maximise, where appropriate, private investment;
 - (ca) to promote innovating financial and risk solutions to address market failures and sub-optimal investment situations.
 - (d) to achieve geographical diversification via gradual allocation of the EU guarantee;
 - (e) to provide sufficient risk diversification.
 - (f) *deleted*
3. When selecting the implementing partners, the Commission shall also take into account:
 - (a) the possible cost and remuneration to the Union budget;

- (b) the capacity of the implementing partner to implement thoroughly the requirements of Article 155(2) of the Financial Regulation related to tax avoidance, tax fraud, tax evasion, money laundering, terrorism financing and non-cooperative jurisdictions.
4. National promotional banks or institutions may be selected as implementing partners, subject to fulfilling the requirements laid down in this Article and in the second subparagraph of Article 14(1).

Article 13

Eligible types of financing

1. The EU guarantee may be used towards risk coverage for the following types of financing provided by the implementing partners:
- (a) loans, guarantees, counter-guarantees, capital market instruments, any other form of funding or credit enhancement, including subordinated debt, or equity or quasi-equity participations, provided directly or indirectly through financial intermediaries, funds, investment platforms or other vehicles to be channelled to final recipients;
 - (b) funding or guarantees by an implementing partner to another financial institution enabling the latter to undertake financing activities referred to in point (a).

In order to be covered by the EU guarantee, the financing referred to in points (a) and (b) of the first subparagraph of this paragraph shall be granted, acquired or issued for the benefit of financing or investment operations referred to in Article 11(1), where the financing by the implementing partner has been granted in accordance with a financing agreement or transaction signed or entered into by the implementing partner after the signature of the guarantee agreement between the Commission and the implementing partner and which has not expired or been cancelled.

2. Financing and investment operations through funds or other intermediate structures shall be supported by the EU guarantee in accordance with provisions to be laid down in the investment guidelines even if such structure invests a minority of its invested amounts outside the Union and in the countries referred to Article 11(2) or into assets other than those eligible under this Regulation.

Article 14

Guarantee agreements

1. The Commission shall conclude a guarantee agreement with each implementing partner on the granting of the EU guarantee in accordance with the requirements of this Regulation up to an amount to be determined by the Commission.
In case implementing partners form a group, a single guarantee agreement shall be concluded between the Commission and each implementing partner within the group or with one implementing partner on behalf of the group.
2. The guarantee agreements shall contain, in particular, provisions concerning:
 - (a) the amount and the terms of the financial contribution which is to be provided by the implementing partner;
 - (b) the terms of the funding or the guarantees which are to be provided by the implementing partner to another legal entity participating in the implementation, whenever that is the case;
 - (c) in accordance with Article 16, detailed rules on the provision of the EU guarantee, including coverage of portfolios of specific types of instruments and the respective events triggering possible calls on the EU guarantee;
 - (d) the remuneration for risk-taking that is to be allocated in proportion to the respective share in the risk-taking of the Union and the implementing partner or as adjusted in duly justified cases pursuant to Article 16(1);
 - (e) the payment conditions;
 - (f) the commitment of the implementing partner to accept the decisions by the Commission and the Investment Committee as regards the use of the EU guarantee for the benefit of a proposed financing or investment operation, without prejudice to the decision-making of the implementing partner on the proposed operation without the EU guarantee;
 - (g) provisions and procedures relating to the recovery of claims that is to be entrusted to the implementing partner;
 - (h) financial and operational reporting and monitoring of the operations under the EU guarantee;
 - (i) key performance indicators, in particular as regards the use of the EU guarantee, the fulfilment of the objectives and criteria laid down in Articles 3, 7 and 11 as well as the mobilisation of private capital;

- (j) where applicable, provisions and procedures relating to blending operations;
- (k) other relevant provisions in compliance with the requirements of Article 155(2) and Title X of the Financial Regulation;
- (l) the existence of adequate mechanisms to address private investors' potential concerns.**

3. A guarantee agreement shall also provide that remuneration attributable to the Union from financing and investment operations covered by this Regulation is to be provided after the deduction of payments due upon calls on the EU guarantee.
4. In addition, a guarantee agreement shall provide that any amount due to the implementing partner related to the EU guarantee shall be deducted from the overall amount of remuneration, revenues and repayments due by the implementing partner to the Union from financing and investment operations covered by this Regulation. Where this amount is not sufficient to cover the amount due to an implementing partner in accordance with Article 15(3), the outstanding amount shall be drawn from the provisioning of the EU guarantee.
5. Where the guarantee agreement is concluded under the Member State compartment, it may provide for the participation of representatives from the Member State or the regions concerned in the monitoring of the implementation of the guarantee agreement.

Article 15

Requirements for the use of the EU guarantee

1. The granting of the EU guarantee shall be subject to the entry into force of the guarantee agreement with the relevant implementing partner.
2. Financing and investment operations shall be covered by the EU guarantee only where they fulfil the criteria laid down in this Regulation and in the relevant investment guidelines and where the Investment Committee has concluded that they fulfil the requirements for benefiting from the support of the EU guarantee. The implementing partners shall remain responsible for ensuring the compliance of the financing and investment operations with this Regulation and the relevant investment guidelines.
3. No administrative expenditure or fees related to the implementation of financing and investment operations under the EU guarantee shall be due to the implementing partner by the Commission, unless the nature of the policy objectives targeted by the financial product

to be implemented and the affordability for **targeted** final recipients or the type of financing provided allow the implementing partner to duly justify the need for such fees. The amount of fees shall be limited to an amount strictly required to implement the relevant financing and investment operations, the cost of which is not covered by revenues received by implementing partners on the financial and investment operations concerned. This amount of fees shall not significantly impact the provisioning related to the EU guarantee under the EU compartment. The fee arrangements shall be laid down in the guarantee agreement and shall comply with the modalities set out in Article 14(4) and with Article 209(2)(g) of the Financial Regulation.

4. In addition, the implementing partner may use the EU guarantee to meet the relevant share of any recovery costs, unless deducted from recovery proceeds, in accordance with Article 14(4).

Article 16

Coverage and terms of the EU guarantee

1. The remuneration for risk-taking shall be allocated between the Union and an implementing partner in proportion to their respective share in the risk-taking of a portfolio of financing and investment operations or, where relevant, of individual operations. Article 209(2)(f) of the Financial Regulation shall be applied such that, in duly justified cases, taking into account the capacity of the targeted final recipient to bear the cost of the financing and investment operation, the remuneration for the Union may be reduced in the interest of the achievement of policy objectives. This possible reduction shall not significantly impact the provisioning related to the EU guarantee under the EU compartment.

The implementing partner shall have an appropriate exposure at its own risk to financing and investment operations supported by the EU guarantee, unless exceptionally the policy objectives targeted by the financial product to be implemented are of such nature that the implementing partner could not reasonably contribute its own risk-bearing capacity to it.

2. The EU guarantee shall cover:
 - (a) for debt products referred to in Article 13(1)(a):
 - (i) the principal and all interest and amounts due to the implementing partner but not received by it in accordance with the terms of the financing operations until

the event of default; for subordinated debt a deferral, reduction or required exit shall be considered to be an event of default;

(ii) restructuring losses;

(iii) losses arising from fluctuations of currencies other than the euro in markets where possibilities for long-term hedging are limited;

(b) for equity or quasi-equity investments referred to in Article 13(1)(a), the amounts invested and their associated funding cost and losses arising from fluctuations of currencies other than the euro;

(c) for funding or guarantees by an implementing partner to another legal entity referred to in Article 13(1)(b), the amounts used and their associated funding costs.

3. Where the Union makes a payment to the implementing partner upon a call on the EU guarantee, it shall be subrogated into the relevant rights, to the extent they continue to exist, of the implementing partner relating to any of its financing or investment operations covered by the EU guarantee.

The implementing partner shall, on behalf of the Union, pursue the recovery of claims for the amounts subrogated and reimburse the Union from the sums recovered.

CHAPTER IV

GOVERNANCE

Article 17

Advisory Board

1. The Commission and the ~~S~~teering ~~B~~oard shall be advised by an advisory board which shall be composed of representatives of implementing partners and Member States.

2. Each implementing partner and each Member State may nominate one representative.

3. *deleted*

4. The advisory board shall be chaired by a representative of the Commission. A representative nominated by the European Investment Bank shall be appointed as vice-Chairperson.

The advisory board shall meet in plenary format regularly and at least twice a year at the request of the Chairperson. Meetings of representatives of the implementing partners and of the Member States in separate formats shall also be organised at least twice a year.

The Commission shall establish the operating rules and procedures and manage the secretariat of the advisory board. All relevant documentation and information shall be made available to the advisory board to exercise its tasks.

5. The advisory board shall

(a) *deleted*

(i) provide advice to the Commission and the steering board on the design of financial products to be implemented under this Regulation;

(ii) provide advice to the Commission and the steering board about market developments, market failures and sub-optimal investment situations and market conditions;

(b) *deleted*

(i) exchange views and share best practices;

(ia) in its format of Member State representatives, issue recommendations on the implementation and the functioning of the InvestEU Programme. The ~~S~~teering ~~B~~oard shall take these recommendations into account.

(ii) *deleted*

6. The NPBI's represented in the advisory board shall select from among themselves the representatives of other implementing partners than the EIB Group in the steering board referred to in Article 17a(1). The NPBI's shall aim at a balanced representation in the steering board in terms of their size and geographical location. The representatives selected shall represent the agreed common position of all implementing partners other than the EIB Group.

Article 17a

Steering Board

1. A steering board shall be established for the InvestEU Programme. It shall be composed of four representatives of the Commission, three representatives of the EIB Group and two representatives of other implementing partners than the EIB Group. Members shall be appointed for a term of four years, renewable once, with the exception of the representatives of other implementing partners than the EIB Group who will be appointed for a term of two years.

2. The steering board shall select a Chairperson from among the Commission representatives for a term of four years, renewable once. The Chairperson shall report bi-annually to the

representatives of the Member States in the advisory board on the implementation and the functioning of the InvestEU Programme.

The detailed minutes of steering board meetings shall be published as soon as they have been approved by the steering board.

3. The steering board shall:

- (a) determine strategic and operational guidance for the implementing partners, including guidance on the design of financial products and on other operating policies and procedures necessary for the functioning of the InvestEU Fund;
- (b) ___ adopt the risk methodological framework developed by the Commission in cooperation with the EIB Group and the other implementing partners;
- (c) ___ oversee the implementation of the InvestEU Programme;
- (d) ___ be consulted on the shortlist of candidates for the Investment Committee before selection in accordance with Article 19(2);
- (e) adopt the rules of procedure of the secretariat for the Investment Committee referred to in Article 19(2).

4. The steering board shall use a consensual approach in its discussions, therefore taking the utmost possible account of the positions of all members. If the members cannot converge in their positions, decisions of the steering board are taken by qualified majority, consisting of at least seven votes.

Article 18

Policy check

1. *deleted*

2. *deleted*

3. The Commission shall confirm whether the proposed financing and investment operations by the implementing partners other than the EIB comply with Union law and policies.

3a. In the case of EIB financing and investment operations within the scope of this Regulation, such operations shall not be covered by the EU guarantee where the Commission delivers an unfavourable opinion within the framework of the procedure provided for in Article 19 of Protocol No 5.

4. *deleted*

5. *deleted*

6. *deleted*

7. *deleted*
8. *deleted*

Article 19

Investment Committee

1. An Investment Committee shall be established for the InvestEU ~~F~~und. It shall
 - (a) examine the proposals for financing and investment operations submitted by implementing partners for coverage under the EU guarantee;
 - (b) verify their compliance with this Regulation and the relevant investment guidelines,
 - (ba) give particular attention to the additionality requirement referred to in Article 209(2)(b) of the Financial Regulation and in Annex V to this Regulation and to the requirement to crowd in private investment referred to in Article 209(2)(d) of the Financial Regulation; and
 - (c) check whether the financing and investment operations that would benefit from the support of the EU guarantee comply with all the relevant requirements.
- 1a. The detailed rules for the scoreboard to enable the Investment Committee to approve the use of the EU guarantee for a proposed financing or investment operation shall be prepared by the Commission in close dialogue with the EIB Group and other potential implementing partners.
2. The Investment Committee shall meet in four different configurations, corresponding to the policy windows referred to in Article 7(1).

Each configuration of the Investment Committee shall be composed of six remunerated external experts. The experts shall be selected in accordance with Article 237 of the Financial Regulation and be appointed by the Commission, at the recommendation of the ~~S~~teering ~~B~~oard, for a term of up to four years, renewable once. They shall be remunerated by the Union. The Commission, at the recommendation of the ~~S~~teering ~~B~~oard, may decide to renew the term of office of an incumbent member of the Investment Committee without availing itself of the procedure laid down in this paragraph.

The experts shall have a high level of relevant market experience in project structuring and financing or financing of SMEs or corporates.

The composition of the Investment Committee shall ensure that it has a wide knowledge of the sectors covered by the policy windows referred to in Article 7(1) and of the geographic markets in the Union and that it is gender-balanced as a whole.

Four members shall be permanent members of all four configurations of the Investment Committee. In addition, the four configurations shall each have two experts with experience in investment in sectors covered by that policy window. At least one of the permanent members shall have expertise in sustainable investment. The steering board shall assign the Investment Committee members to its appropriate configuration or configurations. The Investment Committee shall elect a chairperson from among its permanent members.

The Investment Committee shall be assisted by a secretariat. The secretariat shall be independent **and shall be composed of staff from the Commission and the EIB in a balanced way. The secretariat** and shall act on the instructions of the Investment Committee when carrying out its responsibilities to the Investment Committee. The secretariat shall be administratively located in the Commission [.....]. The ~~S~~teering ~~B~~oard shall adopt the operating rules for the secretariat with the objective of ensuring the confidentiality of exchanges of information and documents between implementing partners and the respective governing bodies.

3. When participating in the activities of the Investment Committee, its members shall perform their duties impartially and in the sole interest of the InvestEU Fund. They shall not seek or take instructions from the implementing partners, the institutions of the Union, the Member States, or any other public or private body.

CVs and declarations of interest of each member of the Investment Committee shall be made public and constantly updated. Each member of the Investment Committee shall communicate without delay to the Commission and the steering board all information needed to check on an ongoing basis the absence of any conflict of interest.

The steering board may remove a member from his or her functions if he or she does not respect the requirements laid down in this paragraph or for other duly justified reasons.

4. When acting in accordance with this Article, the Investment Committee shall be supported by the documentation provided by the implementing partners, comprising a standardised request form, the scoreboard and any other document the Investment Committee considers relevant, **notably a description of the character of the market failure or sub-optimal investment situation and how this will be alleviated by the financing or investment operation as well as a solid assessment demonstrating the additionality of the**

financing or investment operation. The secretariat shall assist the Investment Committee in the pursuit of its tasks. The Investment Committee may seek clarifications relating to a proposal for an investment or financing operation from the implementing partner concerned during its meetings or by requesting additional written information. Any project assessment conducted by an implementing partner shall not be binding on the Investment Committee for the purposes of a financing or investment operation benefiting from the coverage by the EU guarantee.

The Investment Committee shall use in its assessment and verification of the proposals a scoreboard of indicators referred to in ~~Article 19~~**(paragraph 1a)**.

5. Conclusions of the Investment Committee shall be adopted by simple majority of all members. In case of a draw, the chair of the Investment Committee has the casting vote. Conclusions of the Investment Committee approving the support of the EU guarantee to a financing or investment operation shall be publicly accessible and shall include the rationale for the approval. The publication shall not contain commercially sensitive information.

The scoreboard shall be publicly available after the signature of a financing or investment operation or sub-project, if applicable. The publication shall not contain commercially sensitive information or personal data not to be disclosed under the Union data protection rules.

Twice a year, the conclusions of the Investment Committee rejecting the use of the EU guarantee shall be transmitted to the European Parliament and to the Council, subject to strict confidentiality requirements.

6. Where the Investment Committee is requested to approve the use of the EU guarantee for a financing or investment operation that is a facility, programme or structure which has underlying sub-projects, that approval shall comprise the underlying sub-projects, unless the Investment Committee decides to retain the right to approve them separately.

CHAPTER V

InvestEU Advisory Hub

Article 20

InvestEU Advisory Hub

1. The InvestEU Advisory Hub shall provide advisory support for the identification, preparation, development, structuring, procuring and implementation of investment projects, or enhance the capacity of promoters and financial intermediaries to implement financing and investment operations. Its support may cover any stage of the life-cycle of a project or financing of a supported entity, as appropriate.

Advisory initiatives shall be available as a component under each policy window referred to in Article 7(1) covering ~~all the~~ sectors under that window. In addition, advisory initiatives shall be available and implemented by the EIB Group under a cross sectoral component.

2. The InvestEU Advisory Hub shall, in particular, provide the following services:
 - (a) providing a central point of entry, managed and hosted by the Commission, for project development assistance for authorities and project promoters delivered under centrally managed Union programmes;
 - (b) assisting project promoters, where appropriate, in developing their projects to fulfil the objectives and eligibility criteria set out in Articles 3, 7 and 11 and facilitating development of aggregators for small-scale projects; however, such assistance does not prejudice the conclusions of the Investment Committee on the coverage of the support of the EU guarantee to such projects;
 - (c) supporting actions and leveraging local knowledge to facilitate the use of the InvestEU Fund support across the Union and contributing actively where possible to the objective of sectorial and geographical diversification of the InvestEU Fund by supporting the implementing partners in originating and developing potential financing and investment operations;
 - (d) facilitating the establishment of collaborative platforms for peer-to-peer exchange and sharing of data, knowhow and best practices to support project pipeline and sector development;
 - (e) providing proactive advisory support on the establishment of investment platforms, including cross-border investment platforms involving several Member States;

- (f) supporting actions for capacity building to develop organisational capacities, skills and processes and accelerate investment readiness of organisations in order for promoters and authorities to build investment project pipelines, develop financial instruments and investment platforms and manage projects and for financial intermediaries to implement financing and investment operations for the benefit of entities that face difficulties in obtaining access to finance, including through support to develop risk assessment capacity or sector specific knowledge.
3. The InvestEU Advisory Hub shall be available for public and private project promoters and to financial and other intermediaries.
4. **The Commission shall conclude an advisory agreement with each advisory partner on the implementation of one or more advisory initiatives.** Fees may be charged for the services referred to in paragraph 2 to cover part of the costs for providing those services.
5. In order to achieve the objective referred to in paragraph 1 and to facilitate the provision of advisory support, the InvestEU Advisory Hub shall build upon the expertise of the Commission, the EIB Group and the other advisory partners.
- 5a. Each advisory initiative shall be set up based on a costs sharing mechanism between the Commission and the advisory partner, unless the Commission in duly justified cases where the specificities of the advisory initiative so requires, and ensuring a coherent and equitable treatment across advisory partners, accepts to cover all costs of the advisory initiative.
6. The InvestEU Advisory Hub shall have local presence, where necessary. It shall be established in particular in Member States or regions that face difficulties in developing projects under the InvestEU Fund. The InvestEU Advisory Hub shall assist in the transfer of knowledge to the regional and local level with a view to building up regional and local capacity and expertise for support referred to in paragraph 1.
7. The implementing partners may propose to project promoters applying for financing, including in particular smaller-sized projects, to refer their projects to request the InvestEU Advisory Hub support in order to enhance, where appropriate, the preparation of their projects and to allow for the assessment of the possibility of bundling projects.
- The implementing partners and advisory partners shall also inform promoters, where relevant, of the possibility of listing their projects on the InvestEU Portal referred to in Article 21.}

CHAPTER VI

Article 21

InvestEU Portal

1. The InvestEU Portal shall be established by the Commission. It shall be an easily accessible and user-friendly project database, providing relevant information for each project.
2. The InvestEU Portal shall provide a channel for project promoters to bring their projects for which they are seeking finance visible and thus provide information on them to investors. The inclusion of projects in the InvestEU Portal shall be without prejudice to the decisions on the final projects selected for support under this Regulation, under any other instrument of the Union, or for public funding.
3. Only projects that are compatible with Union law and policies shall be listed on the Portal.
4. Projects meeting the conditions set out in paragraph 3 shall be transmitted by the Commission to the relevant implementing partners.
5. Implementing partners shall examine projects falling within their geographic and activity scope.

CHAPTER VII

MONITORING AND REPORTING, EVALUATION AND CONTROL

Article 22

Monitoring and reporting

1. Indicators to report on progress of the InvestEU Programme implementation towards the achievement of the general and specific objectives set out in Article 3 are set in Annex III to this Regulation.
2. To ensure effective assessment of progress of the InvestEU Programme towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in accordance with Article 26 to amend Annex III to this Regulation to review or complement

the indicators where considered necessary and the provisions on the establishment of a monitoring and evaluation framework.

3. The performance reporting system shall ensure that data for monitoring implementation and results are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements shall be imposed on the implementing partners, the advisory partners and other recipients of Union funds, as appropriate.
4. The Commission shall report on the implementation of InvestEU Programme in accordance with Articles 241 and 250 of the Financial Regulation. For that purpose, the implementing partners and the advisory partners shall provide annually the information necessary to allow the Commission to comply with its reporting obligations.
5. In addition, each implementing partner shall submit every six months a report to the Commission on the financing and investment operations covered by this Regulation, broken down by the EU compartment and the Member State compartment, as appropriate. The implementing partner shall also submit such a report on the Member State compartment to the Member State whose compartment it serves. The report shall include an assessment of compliance with the requirements on the use of the EU guarantee and with the key performance indicators laid down in Annex III to this Regulation. The report shall also include ~~operational~~ statistical, financial and accounting data on each financing and investment operation and at the compartment, policy window and the InvestEU Fund level. **Once a year,** ~~t~~The report from the EIB Group shall also include information on barriers to investment encountered by the implementing partner when carrying out financing and investment operations covered by this Regulation. One of those reports shall contain the information the implementing partners shall provide in accordance with Article 155(1)(a) of the Financial Regulation.

Article 23

Evaluation

1. Evaluations shall be done in a timely manner to feed into the decision-making process.
2. [By 30 September 2024], the Commission shall submit to the European Parliament and to the Council an independent interim evaluation on the InvestEU Programme, in particular on the use of the EU guarantee, on the functioning of the modalities put in place under Article 9a(1)(b) and (c), on the allocation of the EU guarantee foreseen in paragraphs (1b)

and (1c) of Article 10, on the implementation of the InvestEU Advisory Hub, and on the budgetary allocation foreseen in point (d)(i) of Article 9a(1). The evaluation shall in particular demonstrate how the inclusion of the implementing partners and advisory partners have contributed to the achievement of InvestEU Programme targets as well as EU policy goals especially with regard to value added, geographical and sectoral balance of the supported financing and investment operations.

3. At the end of the implementation of the InvestEU Programme, but no later than four years after the end of the period specified in Article 1, the Commission shall submit to the European Parliament and to the Council an independent final evaluation of the InvestEU Programme, in particular on the use of the EU guarantee.
4. The Commission shall communicate the conclusions of the evaluations, accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions.
5. The implementing partners **and advisory partners** shall contribute to and provide the Commission with the information necessary to perform the evaluations referred to in paragraphs 1 and 2.
6. In accordance with Article 211(1) of the Financial Regulation, the Commission shall every three years include in the annual report referred to in Article 250 of the Financial Regulation a review of the adequacy of the provisioning rate laid down in Article 4(1) of this Regulation against the actual risk profile of the financing and investment operations covered by the EU guarantee. The Commission is empowered to adopt delegated acts in accordance with Article 26 in order to adjust, on the basis of that review, the provisioning rate laid down in Article 4(1) of this Regulation by up to 15%.

Article 24

Audits

Audits on the use of the Union funding carried out by persons or entities, including by others than those mandated by the Union institutions or bodies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation.

Article 25

Protection of the financial interests of the Union

Where a third country participates in the InvestEU Programme by a decision under an international agreement or by virtue of any other legal instrument, the third country shall grant the necessary rights and access required for the authorizing officer responsible, the European Anti-Fraud Office (OLAF) and the European Court of Auditors to comprehensively exert their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, provided for in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF).

Article 26

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. Delegated acts concerning activities carried out by, or involving, EIB Group and other implementing partners, shall be prepared following consultation with the EIB Group and other implementing partners.
2. The power to adopt delegated acts referred to in Articles 7(6), 22(2) and 23(6) shall be conferred on the Commission for a period of five years from [entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of that five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 7(6), 22(2) and 23(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 7(6), 22(2) and 23(6) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

CHAPTER VIII

TRANSPARENCY AND VISIBILITY

Article 27

Information, communication and publicity

1. The implementing partners and advisory partners shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results), by providing coherent, effective and targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the InvestEU Programme and its actions and results. Financial resources allocated to the InvestEU Programme shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.

CHAPTER IX

TRANSITIONAL AND FINAL PROVISIONS

[Article 28

Transitional provisions

1. Revenues, repayments and recoveries from financial instruments established by programmes referred to in Annex IV to this Regulation may be used for the provisioning of the EU guarantee under this Regulation.
2. Revenues, repayments and recoveries from the EU guarantee established by Regulation (EU) 2015/1017 may be used for the provisioning of the EU guarantee under this Regulation, unless used for the purposes referred to in Articles 4, 9 and 12 of Regulation (EU) 2015/1017.]

Article 29

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

[ANNEX I

Indicative amounts per specific objective

The indicative distribution referred to in Article 4(2) towards financial and investment operations shall be as follows:

- (a) up to EUR 11 500 000 000 for objectives referred to in point (a) of Article 3(2);
- (b) up to EUR 11 250 000 000 for objectives referred to in point (b) of Article 3(2);
- (c) up to EUR 11 250 000 000 for objectives referred to in point (c) of Article 3(2);
- (d) up to EUR 4 000 000 000 for objectives referred to in point (d) of Article 3(2).]

ANNEX II

Eligible areas for financing and investment operations

The financing and investment operations may fall under one or more of the following areas:

1. Development of the energy sector in accordance with the Energy Union priorities, including security of energy supply, and the commitments taken under the Agenda 2030 and the Paris Agreement, in particular through:

- (a) expansion of the generation, supply or use of clean and sustainable renewable and **safe and sustainable** other zero and low-emission energy sources;
- (b) energy efficiency and energy savings (with a focus on reducing demand through demand side management and the refurbishment of buildings);
- (c) development, smartening and modernisation of sustainable energy infrastructure particularly, but not limited to transmission and distribution level, storage technologies;
- (ca) development of innovative zero- and low emission heat supply systems and combined production of electricity and heat;
- (d) production and supply of synthetic fuels from RES and other **safe and sustainable** zero- and low emission renewable/carbon-neutral sources; ~~alternative fuels~~ bio-fuels, biomass and alternative fuels, contributing to the achievement of the objectives of Directive ~~2009/28/EC~~ **2018/2001**;
- (e) carbon-capture and -storage infrastructure.

2. Development of sustainable transport infrastructures, and equipment and innovative technologies in accordance with Union transport priorities and the commitments taken under the Paris Agreement, in particular through:

- (a) projects supporting development of the TEN-T infrastructure, including infrastructure maintenance and safety, and its urban nodes, maritime and inland ports, multimodal terminals and their connection to the main networks;
- (b) smart and sustainable urban mobility projects (targeting low-emission urban transport modes, increase of accessibility, reduction of air pollution and noise, energy consumption, smart cities networks, maintenance or increase of safety levels and/or decrease of accidents);
- (c) supporting the renewal and retrofitting of transport mobile assets with the view of deploying low-emission mobility solutions;
- (d) railway infrastructure, other rail projects, mass transit projects and maritime ports;
- (e) alternative fuels infrastructure, including electric charging infrastructure.

3. Environment and resources, in particular through:

- (a) water, including drinking water supply and sanitation, and networks efficiency, leakages reduction, infrastructure for the collection and treatment of waste water coastal infrastructure and other water-related green infrastructure;
- (b) waste management infrastructure;
- (c) projects and enterprises in the fields of environmental resource management and clean technologies;
- (d) enhancement and restoration of eco systems and their services including through enhancement of nature and biodiversity by means of green and blue infrastructure projects;
- (e) sustainable urban, rural and coastal development;
- (f) climate change actions, including natural hazard disaster risk reduction;
- (fa) projects and enterprises in the area of the Blue Economy, in line with the Blue Economy Finance Principles;
- (g) projects and enterprises that implement circular economy by integrating resource efficiency aspects in the production and product life-cycle, including the sustainable supply of primary and secondary raw materials;

- (h) decarbonisation of and substantial reduction of emissions of energy-intensive industries, including ~~large-scale~~ demonstration of innovative low-emission technologies and their deployment;
- (i) decarbonisation of the energy production and distribution chain by phasing out the use of coal and oil.

4. Development of digital connectivity infrastructure, in particular through projects supporting deployment of very high capacity digital networks.

5. Research, development and innovation, in particular through:

- (a) research, including research infrastructure and support to academia, and innovation projects contributing to the objectives of [Horizon Europe];
- (b) corporate projects;
- (c) demonstration projects and programmes as well as deployment of related infrastructures, technologies and processes;
- (d) collaboration projects between academia and industry;
- (e) knowledge and technology transfer;
- (ea) research in the field of Key Enabling Technologies (KETs) and their industrial applications, **including new and advanced materials**;
- (f) new effective healthcare products, including pharmaceuticals, medical devices and advanced therapy medicinal products.

6. Development and deployment of digital technologies and services, notably contributing to the objectives of the Digital Europe Programme in particular through:

- (a) artificial intelligence;
- (b) cybersecurity and network protection infrastructures;
- (c) internet of things;

- (d) blockchain and other distributed ledger technologies;
- (e) advanced digital skills;
- (f) other advanced digital technologies and services contributing to the digitisation of the Union industry;
- (g) robotics and automatisation;
- (h) quantum technologies;

(i) photonics.

7. Financial support to entities employing up to 499 employees, with a particular focus on SMEs, and small mid cap companies, in particular through:

- (a) provision of working capital and investment;
- (b) provision of risk financing from seed to expansion stages to ensure technological leadership in innovative and sustainable sectors including enhancing their digitisation and innovation capacity, and to ensure their global competitiveness.

8. Cultural and creative sectors, including cultural heritage; media, audio-visual sector and journalism and press.

9. Tourism.

9a. **Rehabilitation** ~~Regeneration of post-industrial areas~~ **sites (including contaminated sites) and restoration for sustainable use.**

10. Sustainable agriculture, forestry, fishery, aquaculture and other elements of the wider sustainable bioeconomy.

11. Social investments, including those supporting the implementation of the European Pillar of Social Rights, in particular through:

- (a) microfinance, social enterprise finance and social economy;

- (b) demand for and supply of skills;
- (c) education, training and related services, including for adults;
- (d) social infrastructure, in particular
 - (i) **inclusive** education and training, including early childhood education and care, and their related educational infrastructure and facilities, **alternative childcare**, student housing and digital equipment, **that are accessible for all**;
 - (ii) social housing;
 - (iii) health and long-term care, including clinics, hospitals, primary care, home services and community-based care;
- (e) social innovation, including innovative social solutions and schemes aiming at promoting social impacts and outcomes in the areas referred to in this point;
- (f) cultural activities with a social goal;
- (g) integration of vulnerable people, including third country nationals;
- (h) innovative health solutions, including health services and new care models;
- (i) inclusion of and accessibility for persons with disabilities.

12. Development of the defence industry, thereby contributing to the Union's strategic autonomy, in particular through support for:

- (a) the Union's defence industry supply chain, in particular through financial support to SMEs and mid-caps;
- (b) companies participating in disruptive innovation projects in the defence sector and closely related dual-use technologies;
- (c) the defence sector supply chain when participating in collaborative defence research and development projects, including those supported by the European Defence Fund;
- (d) **infrastructure for** defence research and training ~~infrastructure~~.

13. Space, in particular through the development of the space sector in line with Space Strategy objectives:

- (a) to maximize the benefits for the Union society and economy;
- (b) to foster the competitiveness of space systems and technologies, addressing in particular vulnerability of supply chains;
- (c) to underpin space entrepreneurship;
- (d) to foster Union's autonomy for safe and secure access to space, including dual use aspects.

ANNEX III

Key performance indicators

1. Volume of InvestEU financing (broken down by policy window)
 - 1.1 Volume of operations signed
 - 1.2 Investment mobilised
 - 1.3 Amount of private finance mobilised
 - 1.4 Leverage and multiplier effect achieved
2. Geographical coverage of InvestEU financing (broken down by policy window, region and country)
 - 2.1 Number of countries covered by projects
3. Impact of InvestEU financing
 - 3.1 Number of jobs created or supported
 - 3.2 Investment supporting climate objectives
 - 3.3 Investment supporting digitalisation
 - 3.4. Investment supporting industrial transition
4. Sustainable Infrastructure
 - 4.1 Energy: Additional renewable and other **safe and sustainable** zero and low-emission energy generation capacity installed (MW)
 - 4.2 Energy: Number of households with improved energy consumption classification
 - 4.2a Energy : Estimated energy savings generated by the projects;
 - 4.2b Energy: Annual **green-house gas**GHG emissions reduced/avoided in tonnes of eq. CO₂
 - 4.2c Energy: Volume of investment in the development, smartening and modernisation of sustainable energy infrastructure
 - 4.3 Digital: Additional households and socio-economic drivers, including enterprises with broadband access of at least 100 Mbps upgradable to Gigabit speed
 - 4.4 Transport: Investment mobilised in TEN-T of which: TEN-T core

- 4.5 Environment: Investment contributing to the implementation of plans and programmes required by the Union environmental acquis relating to air quality, water, waste and nature
- 5. Research, Innovation and Digitisation
 - 5.1 Contribution to the objective of 3% of the Union's GDP invested in research, development and innovation
 - 5.2 Number of enterprises supported by size carrying out research and innovation projects
- 6. SMEs
 - 6.1 Number of enterprises supported by size (micro, small, medium sized and small mid-caps)
 - 6.2 Number of enterprises supported by stage (early, growth/expansion)
 - 6.3 Number of enterprises supported by member state and region
- 7. Social Investment and Skills
 - 7.1 Social infrastructure: Capacity of supported social infrastructure by sector: housing, education, health, other
 - 7.2 Microfinance and social enterprise finance: Number of social economy enterprises supported
 - 7.5 Skills: Number of individuals acquiring new skills: formal education and training qualification

ANNEX IV

The InvestEU Programme - Predecessor instruments

A. Equity Instruments:

- European Technology Facility (ETF98): Council Decision No 98/347/EC of 19 May 1998 on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs) - the growth and employment initiative (OJ L 155, 29.5.1998, p. 43).
- TTP: Commission decision adopting a complementary financing decision concerning the financing of actions of the activity "Internal market of goods and sectoral policies" of the Directorate-General Enterprises & Industry for 2007 and adopting the framework decision concerning the financing of the preparatory action "The EU assuming its role in a globalised world" and of four pilot projects "Erasmus young entrepreneurs", "Measures to promote cooperation and partnerships between micro and SMEs", "Technological Transfer" and "European Destinations of excellence" of the Directorate-General Enterprises & Industry for 2007 (C(2007)531).
- European Technology Facility (ETF01): Council Decision No 2000/819/EC of 20 December 2000 on a multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (SMEs) (2001-2005) (OJ L 333, 29.12.2000, p. 84).
- GIF: Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013) (OJ L 310, 9.11.2006, p. 15).
- Connecting Europe Facility (CEF): Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe

Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129) as modified by Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

- COSME EFG: Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020) and repealing Decision No 1639/2006/EC (OJ L 347, 20.12.2013, p. 33).
- InnovFin Equity:
 - Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104);
 - Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ L 347, 20.12.2013, p. 81);
 - Council Decision No 2013/743/EU of 3 December 2013 establishing the specific programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC (OJ L 347, 20.12.2013, p. 965).
- EaSI Capacity Building Investments Window: Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ("EaSI") and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 347, 20.12.2013, p. 238).

B. Guarantee Instruments:

- SME Guarantee Facility '98 (SMEG98): Council Decision No 98/347/EC of 19 May 1998 on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs) - the growth and employment initiative (OJ L 155, 29.5.1998, p. 43).
- SME Guarantee Facility '01 (SMEG01): Council Decision No 2000/819/EC of 20 December 2000 on a multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (SMEs) (2001-2005) (OJ L 333, 29.12.2000, p. 84).
- SME Guarantee Facility '07 (SMEG07): Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013) (OJ L 310, 9.11.2006, p. 15).
- European Progress Microfinance Facility – Guarantee (EPMF-G): Decision No 283/2010/EU of the European Parliament and of the Council of 25 March 2010 establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 87, 7.4.2010, p. 1).
- RSI:
 - Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) Statements by the Commission (OJ L 412, 30.12.2006, p. 1);
 - Council Decision No 2006/971/EC of 19 December 2006 concerning the Specific Programme Cooperation implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) (OJ L 400, 30.12.2006, p. 86);
 - Council Decision No 2006/974/EC of 19 December 2006 on the Specific Programme: Capacities implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) (OJ L 400, 30.12.2006, p. 299).

- EaSI-Guarantee: Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ("EaSI") and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 347, 20.12.2013, p. 238).
- COSME Loan Guarantee Facility (COSME LGF): Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020) and repealing Decision No 1639/2006/EC (OJ L 347, 20.12.2013, p. 33).
- InnovFin Debt:
 - Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ L 347, 20.12.2013, p. 81);
 - Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104);
 - Council Decision No 2013/743/EU of 3 December 2013 establishing the specific programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC (OJ L 347, 20.12.2013, p. 965).
- Cultural and Creative Sectors Guarantee Facility (CCS GF): Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC (OJ L 347, 20.12.2013, p. 221).
- Student Loan Guarantee Facility (SLGF): Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions

No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (OJ L 347, 20.12.2013, p. 50).

- Private Finance for Energy Efficiency (PF4EE): Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 (OJ L 347, 20.12.2013, p. 185).

C. Risk-Sharing Instruments:

- Risk Sharing Finance Facility (RSFF): Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) Statements by the Commission (OJ L 412, 30.12.2006, p. 1).
- InnovFin:
 - Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ L 347, 20.12.2013, p. 81);
 - Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).
- Connecting Europe Facility Debt Instrument (CEF DI): Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).
- Natural Capital Financing Facility (NCFF): Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a

Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 (OJ L 347, 20.12.2013, p. 185).

D. Dedicated Investment Vehicles:

- European Progress Microfinance Facility – Fonds commun de placements – fonds d'investissements spécialisés (EPMF FCP-FIS): Decision No 283/2010/EU of the European Parliament and of the Council of 25 March 2010 establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 87, 7.4.2010, p. 1).
- Marguerite:
 - Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks (OJ L 162, 22.6.2007, p. 1);
 - Commission Decision of 25.2.2010 on European Union participation in the 2020 European Fund for Energy, Climate Change and Infrastructure (the Marguerite Fund) (C(2010)941).
- European Energy Efficiency Fund (EEEF): Regulation (EU) No 1233/2010 of the European Parliament and of the Council of 15 December 2010 amending Regulation (EC) No 663/2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy (OJ L 346, 30.12.2010, p. 5).

ANNEX V

Market failures, sub-optimal investment situations, additionality and excluded activities

A. Market failures, sub-optimal investment situations and additionality

In accordance with Article 209 of the Financial Regulation the EU guarantee shall address market failures or sub-optimal investment situations (Article 209(2)(a)) and achieve additionality by preventing the replacement of potential support and investment from other public or private sources (Article 209(2)(b)).

In order to comply with points (a) and (b) of Article 209(2) of the Financial Regulation, the financing and investment operations benefitting from the EU guarantee shall fulfil the following requirements laid down in points 1 and 2 below:

1. Market failures and sub-optimal investment situations

To address market failures or sub-optimal investment situations as referred to in Article 209(2)(a) of the Financial Regulation, the investments targeted by the financing and investment operations shall include one of following features:

- a) Public good nature (such as education and skills, healthcare and accessibility, security and defence, and infrastructure available at no or negligible cost) for which the operator or company cannot capture sufficient financial benefits.
- b) Externalities which the operator or company in general fails to internalise, such as R&D investment, energy efficiency, climate or environmental protection.
- c) Information asymmetries, in particular in case of SMEs¹ and small midcaps, including higher risk levels related to early stage firms, firms with mainly intangible assets or insufficient collateral, or firms focusing on higher risk activities.
- d) Cross-border infrastructure projects and related services or funds investing on cross-border basis to address the fragmentation and enhancing coordination within the EU internal market.
- e) Exposure to higher levels of risks in certain sectors, countries or regions beyond levels that private financial actors are able or willing to accept. This includes that the investment would not have been undertaken or not to the same extent because of its novelty or risks associated with innovation or unproven technology.

f) New and/or complex market failures or sub-optimal investment situations in accordance with Article 8 (1)(a)(iii) of this Regulation.

2. Additionality

Financing and investment operations shall fulfil both aspects of additionality as referred to in Article 209(2)(b) of the Financial Regulation. This means the operations would not have been carried out or not to the same extent by other public or private sources without the InvestEU Fund support. For the purposes of this Regulation, these shall be understood as financing and investment operations having to meet the following two criteria:

1) To be considered additional to the private sources referred to in Article 209(2)(b) of the Financial Regulation, the InvestEU Fund shall support the financing and investment operations of the implementing partners targeting investments which, due to their characteristics (public good nature, externalities, information asymmetries, socio-economic cohesion considerations or other), are unable to generate sufficient market-level financial returns or are perceived to be too risky (compared to the risk levels that the relevant private entities are willing to accept). Therefore, such financing and investment operations cannot access market financing at reasonable conditions in terms of pricing, collateral requirements, type of finance, tenor of financing provided or other conditions and would not be undertaken at all or to the same extent without public support.

2) To be considered additional to existing support from other public sources referred to in Article 209(2)(b) of the Financial Regulation the InvestEU Fund shall only support financing and investment operations for which the following conditions apply:

a) the financing or investment operations would not have been carried out or not to the same extent by the implementing partner without the InvestEU Fund support; and

b) the financing or investment operations would not have been carried out or not to the same extent under other existing public instruments, such as shared management financial instruments operating at regional and national level. However, a complementary use of InvestEU and other public resources shall be possible, in particular where EU value added can be achieved and where the use of public resources to achieve policy objectives in an efficient manner can be optimised.

To demonstrate that the financing and investment operations benefitting from the EU guarantee are additional to the existing market and other public support, the implementing partners shall provide information demonstrating at least one of the following features:

a) Support provided through subordinated positions in relation to other public or private lenders or within the funding structure.

- b) Support provided through equity and quasi-equity or through debt with long tenors, pricing, collateral requirements or other conditions not sufficiently available on the market or from other public sources. Support to operations that carry a higher risk profile than the risk generally accepted by the implementing partner's own standard activities or support to implementing partners in exceeding own capacity to support such operations.
- c) Participation in risk-sharing mechanisms targeting policy areas that exposes the implementing partner to higher risk levels compared to the levels generally accepted by the implementing partner or that private financial actors are able or willing to accept.
- d) Support that catalyses/crowds in additional private or public financing and is complementary to other private and commercial sources, in particular from traditionally risk-averse investor classes or institutional investors, as a result of the signalling effect of the support provided under the InvestEU Fund.
- e) Support provided through financial products not available or not offered to a sufficient level in the targeted countries or regions due to missing, underdeveloped or incomplete markets.

For intermediated financing and investment operations, notably for SME support, the additionality shall be verified at the level of the intermediary, rather than at the level of the final recipient. Additionality is deemed to exist when InvestEU Fund supports a financial intermediary in setting up a new portfolio with a higher level of risk or increasing the volume of activities that are already high risk, compared to the risk levels that private and public financial actors are currently able or willing to accept in the targeted Member State(s) or regions.

The EU guarantee shall not be granted for supporting refinancing operations (such as replacing existing loan agreements or other forms of financial support for projects which have already partially or fully materialised), except in specific exceptional and well justified circumstances in which it is demonstrated that the operation under the EU guarantee will enable a new investment in an eligible policy area of an amount, additional to customary volume of activity by the implementing partner or financial intermediary, at least equivalent to the amount of the operation that fulfils the eligibility criteria set out in this Regulation. **The aforementioned criteria regarding market failure, sub-optimal investment situations and additionality shall apply also to such refinancing operations.**

B. Excluded activities

The InvestEU Fund shall not support:

- 1) activities which limit people's individual rights and freedom or violate human rights;
- 2) in the area of defence activities, the use, development, or production of products and technologies that are prohibited by applicable international law;
- 3) tobacco related products and activities (production, distribution, processing, and trade);
- 4) activities excluded in Article [X] of the [Horizon Europe] Regulation: research on human cloning for reproductive purposes; activities intended to modify the genetic heritage of human beings which could make such changes heritable, activities to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer;
- 5) gambling (production, construction, distribution, processing, trade or software related activities);
- 6) sex trade and related infrastructure, services and media;
- 7) activities involving live animals for experimental and scientific purposes insofar as compliance with the "Council of Europe's Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes" cannot be guaranteed;
- 8) real estate development activity, i.e. an activity with a sole purpose of renovating and re-leasing or re-selling existing buildings as well as building new projects; however, activities in the real-estate sector that are related to the specific objectives of the InvestEU as specified in Article 3(2) of this Regulation and/or to the eligible areas for financing and investment operations under Annex II to this Regulation, such as investments in energy efficiency projects or social housing, shall be eligible;
- 9) financial activities such as purchasing or trading in financial instruments. In particular, interventions targeting buy-out intended for asset stripping or replacement capital intended for asset stripping shall be excluded.
- 10) activities forbidden by applicable national legislation;
- 11) the decommissioning, **the operation, the adaptation** or the construction of nuclear power stations;

12) Investments related to mining / extraction, processing, distribution, storage or combustion of solid fossil fuels and oil as well as investments related to extraction of gas. This exclusion does not apply to:

- i. projects where there is no viable alternative technology;
- ii. projects related to pollution prevention and control;
- iii. projects equipped with Carbon Capture, Storage or Utilisation installations; industrial or research projects that lead to substantial reductions of greenhouse gas emissions compared to the applicable Emission Trading Scheme benchmark(s).

13) Investments in facilities for the disposal of waste in landfill. This exclusion does not apply to investments in:

- i. On-site landfill facilities that are an ancillary element of an industrial or mining investment project and where it has been demonstrated that landfilling is the only viable option to treat the industrial or mining wastes produced by the concerned activity itself;
- ii. Existing landfill facilities to ensure the utilisation of landfill gas and to promote landfill mining and the reprocessing of mining wastes.

14) Investments in Mechanical Biological Treatment (MBT) plants. This exclusion does not apply to investments to retrofit existing MBT plants for waste-to-energy purposes or recycling operations of separated waste such as composting and anaerobic digestion.

15) Investments in incinerators for the treatment of waste. This exclusion does not apply to investments in:

- i. Plants exclusively dedicated to treating non-recyclable hazardous waste;
- ii. Existing plants in order to increase energy efficiency, capture exhaust gases for storage or use or recover materials from incineration ashes provided such investments do not result in an increase of the plant waste processing capacity.

The implementing partners shall remain responsible for ensuring compliance at signature and monitoring the compliance of the financing and investment operations with exclusion criteria during the implementation of the project and undertaking appropriate remedial actions where relevant.
