

Clarification Document to the Call for Expression of Interest – R-FOF-RO 2016/03 to select Financial Intermediaries that will receive resources from the ESIF Regional Fund-of-Funds Romania to implement the following Financial Instruments: Equity Fund(s) and/or Co investment Facility Window(s)

The Call for Expression of Interest R-FOF-RO 2016/03 (further “Call”) stipulates that: “Requests for clarifications from Applicants shall not receive individual replies. Instead, answers to relevant requests for clarifications received within the relevant deadline will be published together in a clarification document to be posted on the website www.eif.org, at latest on 15 December 2017”.

In accordance with this provision, we hereby present such a clarification document. Capitalised expressions utilised below shall have the meaning attributed to them in the Call, unless otherwise defined below or the context requires otherwise.

Questions may appear as they have been received without any editing by EIF and in a random order. Page numbers indicated in the questions are assumed to refer to the published Call available at http://www.eif.org/what_we_do/resources/esif_regional_Romania/index.htm.

Q1	Would EIF take into consideration mergers and acquisition advisory related experience as for the track record of the team members?
A1	EIF takes into consideration all operational, financial, technical and private equity investment competences of the team which are relevant to the financial instrument and the investment strategy proposed by the applicant.
Q2	Is there any geographic limitation concerning the track record? Would EIF take into consideration only track record realized exclusively in Romania? EIF would grade differently track record realized in Romania versus those achieved in other countries?
A2	There is no geographical exclusivity concerning the presented track record. Nevertheless, it is expected that the presented track record will be consistent with the proposed investment strategy put forward by the applicant, including with respect to broader geographic scope and investment stage targeted.
Q3	Is there any historical limitation concerning the track record? EIF shall use identical grading principles for track record achieved recently compared to those realized in the past, i.e. in the 90's?
A3	The relevance of the track record presented, including its time of occurrence and the specific circumstances at the time of the track record investments made, will be assessed by EIF in light of the overall investment strategy put forward by the applicant.
Q4	What is the expected calendar of this call of expression of interest in terms of Pre-selection stage, Due diligence, selection and signature of the Operational Agreement between the Applicant and EIF? Is there any commitment on behalf of EIF to observe a specific deadline as for the signature of the Operational Agreement?
A4	The timing of the selection will depend on the quantity and quality of the expressions of interest received. We expect significant progress in the selection to be made in the first half of 2018.
Q5	Is there any requirement imposed by EIF or by Romanian Authorities that the fund management company should be established as an Asset Management Company ("Societate de Administrare a Investițiilor - S.A.I.")?
A5	There is no such requirement. It is entirely up to the applicant to propose appropriate legal structure at the point of submission of the expression of interest, considering the relevant EIF policies as detailed under “Compliance” in the Call.
Q6	Please inform us if, at the Expression of Interest stage, the Applicant must be an incorporated entity or, alternatively, it may also be an unincorporated association of individuals?
A6	It is possible for a group of individuals to apply; however the fund management company must be set up prior to the signature of investment documentation, i.e the fund agreement. In such a case, one of the individuals can be considered the applicant who submits the Expression of Interest, and the other proposed team members can be considered participating entities. Each of the proposed team members should sign and submit a Declaration of Honour.
Q7	According to the definition provided in the Call, there are several criteria that investee firms must comply with. One criterion is that “The activity financed is identified as eligible in the NACE codes list approved by Decision of the Regional OP Monitoring Committee

	<p>20/24.11.2016 regarding the approval of the list of eligible sectors within the investment priority 2.2."Supporting the creation and the extension of advanced capacities for product and service development" (available at http://www.inforegio.ro/ro/decizii-por-2014-2020.html).</p> <p>The investee shall not be engaged in any of the sectors listed under "Prohibited types of investees and activities."</p> <p>Is this Decision of the Regional OP Monitoring Committee 20/24.11.2016 regarding the approval of the list of eligible sectors to be maintained for the whole duration of the Equity Fund or Co-investment Fund respectively?</p> <p>Alternatively, is it likely or possible to expect changes to the list of eligible sectors during the duration of the Fund, noting that in 2020 another set of EU policies and instruments could be expected?</p>
A7	<p>The list of eligible activities approved by the Regional Operational Programme (OP) Monitoring Committee is envisaged to be maintained for the whole duration of the Equity Fund or Co-investment Fund. The modification of the list of eligible sectors may only be considered after the approval by the European Commission, Regional OP Monitoring Committee and the Investment Board which oversees the implementation of financial instruments, and only in thoroughly justified cases, related to strategic decisions at the level of the OP and/or major changes in the market.</p> <p>As the Equity Fund(s) and/or Co investment Facility Window(s) Financial Instruments are to be financed from the Regional OP 2014-2020, the above financial instruments are to contribute to the goals and objectives of the EU policies for 2014-2020 programming period.</p>
Q8	<p>Under the heading "Management", applicants are required to provide information on "members of the advisory committees to be established".</p> <p>Please further clarify the role of the advisory committee – its basic terms of reference as they are envisaged by EIF, the anticipated composition (weather it is thought to be comprised only of representatives of LPs).</p> <p>Please clarify if, in case the advisory committee includes highly reputable, independent international professionals, with relevant investment track record and proven industry expertise, it would be acceptable for this committee to exercise a veto right on investments to be made by the management team (or have a statutory veto power over certain investments proposed by the Fund Manager).</p>
A8	<p>The composition of the advisory committee shall be proposed by the applicant, although it is expected that such role shall follow the market practices for advisory committees in private equity funds, i.e. being comprised only by representatives of the limited partners.</p> <p>Generally, the role of the advisory committee mainly has consultative role in the activity of the Fund Manager, as the latter retains the full decision-making functions. It may advise, <i>inter alia</i>, on matters concerning conflicts of interest, valuation policies, or decide on certain fund matters as envisaged in the relevant fund agreement.</p> <p>Should you consider adding external professionals to the decision-making bodies of the Fund Manager, please note that the composition of the latter and the rationale thereof is entirely up to the applicant and shall be disclosed in the Expression of Interest. It is highlighted that committees including external industry advisors may exist, but the role of such committee shall not overlap with the role of the traditional advisory committee.</p>
Q9	<p>Under the heading "Management", applicants are required to provide a "description of team members to be located in Romania, and of their ability to communicate in Romanian and English". Please clarify if there are any restrictions regarding the nationality of the team members (e.g. non-EU members), as well as their actual presence in Romania.</p>
A9	<p>There are no restrictions on nationality of team members. Establishing a presence in Romania is only a requirement under the Equity Fund(s).</p>
Q10	<p>Can one Applicant apply for both for the Equity Fund Window and the Co-Investment Facility? If yes, can this be done in one application or these have to be in two separate applications?</p>
A10	<p>An applicant can apply under both financial instruments, however given the differences between the two windows, separate Expressions of interest need to be submitted.</p>
Q11	<p>Can the "other resources under EIF Management" be considered as "market oriented investor" for the purposes of the Equity Fund Window?</p>
A11	<p>Please refer to section "Private Investor contribution" under the Call.</p>
Q12	<p>The preferred return rate for the Equity Fund investors is "to be agreed" as per the Call: can the Applicant propose different rate of preferred return for the "other resources under EIF Management" on the one hand and other "market oriented investors" on the other hand?</p>
A12	<p>All investors shall rank <i>pari-passu</i> both in economic terms and in governance terms.</p>
Q13	<p>Is the list of financeable activities of otherwise Eligible Investees available in English?</p>
A13	<p>The list of eligible activities is available on the Ministry website indicated in the Call, only in Romanian. The activity codes correspond to the classification of economic activities currently used throughout the EU, the so-called "NACE rev.2". The Regulation approving the classification can be viewed on the Official Journal website here http://eur-lex.europa.eu/legal-</p>

	content/en/ALL/?uri=CELEX:32006R1893 (bilingual display is possible).
Q14	In case of a team that is not yet organized under a legal structure, what is deemed sufficient proof of signatory powers?
A14	Please see A6.
Q15	Would companies registered in Bucharest and Ilfov be Eligible Investees, if the funds from the investment are earmarked for deployment outside Bucharest/Ilfov: i.e production & warehousing facilities, distribution networks etc?
A15	According to the definition in the Call, the location of the eligible activity is determined “based on the place of registration of the SME headquarters and/or branch where the eligible activity is undertaken”. In the above-mentioned situation, where the SME’s headquarters are in a non-eligible location, the SME should use the financing for deployment in a registered location outside Bucharest, i.e. point of presence, branch or subsidiary (in Romanian - filiala, punct de lucru etc.) stipulated in the Trade Registry Certificate (in Romanian, certificat constatator ONRC). Should the point of presence not exist yet at the date of obtaining the investment from the fund, the SME should commit in writing to open such a registered point of presence during the investment.
Q16	Our reading of the Terms of Reference allows both majority and minority investments. Please confirm there are no restrictions in this aspect, emanating either from the terms of reference, other EIF policies or Romanian Government policies.
A16	There are no restrictions in this respect. Please refer to “Replacement Capital” under the Call.
Q17	Could you please elaborate on “credentials of efficient management throughout the lifespan of the fund”? What, aside from the legal documents to be signed with EIF and the other investors, is required in addition to everything else that is already included in other parts of the application (CVs, track record, references, financial commitment of team etc.)?
A17	The credentials of efficient management will be analysed by the EIF in light of the information provided in the Application (which includes CVs, track record, references, financial commitments of the team, others).
Q18	Please elaborate on the level of detail of the carry allocation required at this stage (ie simple numerical allocation, vesting schedules, good-bad leaver provisions etc).
A18	The level of detail is entirely left at the discretion of the applicant. Should the information presented not be sufficient for EIF to undertake its qualitative assessment, additional information might be requested from the applicants. In any case, while the standard commercial information should be communicated at this stage (such as carried interest rate, preferred return rate or allocation among team members), further details (such as vesting schedules or termination provisions) are not expected to be analysed by the EIF under the qualitative assessment and shall instead be part of the legal negotiation stage (if any).
Q19	Our understanding is that given this is an open expression of interest, the restrictions of Article 13 (2) of the Delegated Act do not apply. Please confirm.
A19	The selection of fund managers through the Call constitutes a selection through a competitive tender for the purposes of Article 13(6) of the Delegated Act. As a result, the management costs and fees caps referred to in Article 13(2) and (3) of the Delegated Act may be exceeded (i.e. applicants may propose different thresholds than the ones listed in the previously mentioned articles if deemed more in line with market practice and expectations of private investors) if the outcome of the Call proves the need for higher management costs and fees.
Q20	Could you please specify what types of expenses, aside from the management fee, will the fund cover? More specifically will it cover: i. Formation expenses (legal, accounting etc) ii. Fundraising expenses (info memo, travel etc) iii. Due-diligence expenses for deals, both invested and aborted (financial & tax, legal, commercial, environmental etc) iv. Advisory Committee expenses and fees v. Fund administration: audit, custody, regulatory, Directors’ insurance etc Which of the aforementioned expenses should be included under the operational budget/management fee proposal and which will be covered separately?
A20	Please refer to section “Management fee and cost cap” for all fees & costs borne by the fund manager.
Q21	Does the 20% cost & fee cap include all of these expenses or does it refer just to the management fees?
A21	The cap refers to all management costs and fees incurred in setting up, managing and winding-up the fund, including all transaction costs.
Q22	The nature of the information required indicates that it concerns only private equity deals as opposed to M&A deals. Please confirm.
A22	Please see A1.
Q23	Are the references required in [the track record] section different from the references required in the previous section under “Management”? If so, could you please elaborate on their nature?

A23	It is preferred for the references under track record and management sections to be different.
Q24	We assume that fund level returns are required only in case that one or more team members have been, individually or collectively, responsible for all the deals in a fund. Please confirm.
A24	Individuals may have worked for certain private equity fund managers but contributing only to certain investments. Under such a scenario, please indicate not only fund level returns but also the specific investments which are attributable to such an individual and the extent of attributability (i.e. origination, execution, monitoring, exit).
Q25	Should the indicative investment from the “FoF” also include a potential co-investment from the RCR and other EIF managed resources?
A25	This is correct.
Q26	Are other IFIs (i.e. EBRD, IFC) considered “private investors”?
A26	According to the Call, “Private Investors shall be deemed to be any investors which are normal economic operators (i.e. investors operating in circumstances corresponding to the market economy investor principle in a free market economy, irrespective of the legal nature and ownership structure of such operators, to the extent that they bear the full risk in respect of their investment). In this context, funding with resources, which are not State resources within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union, is considered to be provided by Private Investors”. Thus, investments by EBRD and IFC out of their own resources could be considered to be by a private investor if these conditions are met.
Q27	What is the corporate governance structure of the vehicle from which the co-investment facility shall invest, including from the perspective of the investment approval process?
A27	This is to be proposed by the applicant and discussed in detail during the selection process. In any case, the EIF will work on a fully delegated basis, being that any intermediary vehicle, be it a private equity fund or a co-investment vehicle, shall be managed or advised by the proposed team members of the fund manager. The role of the EIF in such governance will be limited to the typical limited partner role and to the advisory committee member role.
Q28	What are the co-investment facility's limitations and/ or conditions regarding the involvement in investments, aside from the type (SMEs) and geographic location of investees?
A28	Please refer to section “Prohibited types of investees and activities” under the Call.
Q29	Is there a time limit to obtain the private investor commitments after signing the Operational Agreement with a selected Applicant? If so, please provide clarifications / details.
A29	The time to reach minimum as well as final closing will be agreed during the legal negotiation process. Standard market practice is that the subscription period is open for 12 months after the first closing date.
Q30	Can the Applicant effectively start investing after the Operational Agreement is signed but before the private investor commitments are obtained?
A30	No, there must at all times be resources from private investors of at least 30%.
Q31	In relation to the Private Investor contribution (page 20 of Appendix 1 – Termsheet, Equity Fund(s) Window) – each Fund Manager is required to raise an amount equal to at least 30% from market oriented investors. Can you please clarify if the 30% applies to total Fund size or total commitment obtained under the Call? Furthermore, is the 30% inclusive or exclusive of the Fund Manager’s commitment?
A31	The 30% should apply to the total fund size and should in principle include the Fund Manager’s commitment.
Q32	Can you please define quasi-equity instruments? For instance, would a loan to an investee company with equity warrants qualify?
A32	According to Commission Regulation (EU) 651/2014, quasi-equity investment means “a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default. Quasi-equity investments can be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity”. In any case, any debt investment (e.g. shareholder loans) must be associated with an equity component.
Q33	In relation to the Place of business of Eligible Investees (page 19 of Appendix 1 – Termsheet, Equity Fund(s) Window) and the limitation related to the development region Bucharest – Ilfov: <ul style="list-style-type: none"> i. the exclusion applies to any company with a registered headquarter in this region irrespective of where the eligible activity is undertaken? [i.e. if the headquarter is in Bucharest – Ilfov region but most of the income generating activities are undertaken outside this region, would it still be excluded?]; ii. generally, is there a threshold (i.e. ratio of revenues derived in Bucharest – Ilfov development region to total revenues of the company) to be applied in the selection of Eligible Investees or simply any company that has any presence / eligible activity in the Bucharest – Ilfov development region is excluded?
A33	Please see also A15 with regards to question (i) above.

	With regards to question (ii) above, please note that the place of business of an Eligible Investee is not determined by the percentage of revenues derived from all the development regions in Romania with the exception of Bucharest – Ilfov, but rather by the place of registration of the SME headquarters and/or branch where the eligible activity is undertaken or will be undertaken, as to be declared/committed at the time of investment.
Q34	In relation to the Follow-on investments (page 20 of Appendix 1 – Termsheet, Equity Fund(s) Window) – two conditions are cumulatively required to be allowed to recycle capital in follow-on investments in Eligible Investees. However, condition no. 1 is impossible to be attained in the given deadline (31.12.2017). Can you please re-confirm the deadline to the condition no. 1?
A34	For clarity, the notion in the Call is not “to recycle” capital, but to reserve a limited part of the fund’s capital, under certain conditions, after the end of the eligibility period (i.e. 31/12/2013), for follow-on investments. Indeed, in the time since the Call was prepared, the deadline has passed. The Call, however, specifies that the deadline could be a later date than 31.12.2017 in case of changes in the relevant regulations (discussions are ongoing at EU level). The applicants can, for this purpose, prepare two scenarios of their investment strategy – one with the possibility for follow-on investments as per the section in the Call and one without this possibility.
Q35	Can you clarify who will have access to the sensitive commercial information collected from each Fund Manager as part of the Call?
A35	The selection of a fund manager will be made solely upon EIF’s decision, with no external involvement, and will undergo the usual internal phases for approval of the EIF, including the submission of a Request for Approval to the Board of Administration. We reiterate that, as stated in the Call, EIF has recently adopted the practice of publishing the minutes of the Board of Directors (“Board Minutes”) on its website, following their approval and signature. The published Board Minutes only indicate those operations presented for decision which have been approved and, as a general rule, contain a summary indicating the project name, the nature of the operation, the geographical focus and the relevant EIF-managed resources.
Q36	In relation to the condition no.3 of the criteria for Eligible Investees, namely for the activity financed to be identified as eligible in the NACE codes list approved by Decision of the Regional OP Monitoring Committee 20/24.11.2016 – can you please confirm that (i) such list is exhaustive, (ii) that any potential investee needs to be classified under one of the codes in the annex to the said Decision and (iii) that there are no approved extensions to the list of NACE codes after November 2016?
A36	The list of eligible activities is exhaustive and no changes to it have occurred since the publication of the Call. The investment must be used for an eligible activity according to the above-mentioned Decision (see also A15), which should be declared by the SME and included in the relevant certificate issued by the Trade Registry.
Q37	Are there any Key Man provisions?
A37	The EIF will negotiate with the selected applicants appropriate typical LP protection undertakings, which also include certain key man provisions. The key man provisions will be negotiated on a case-by-case basis.
Q38	Can you provide details related to the frequency of reporting and audit requirements?
A38	Apart from the usual reporting requirements of the equity industry, as per Invest Europe guidelines for reporting, there will be specific requirements concerning the compliance with ESIF eligibility and state aid rules. Furthermore, the Fund Manager will agree to keep records and provide access to documents as to be detailed during the selection process.
Q39	What are the minimum and maximum sizes of a fund possible to be financed under the Equity Funds Window? Specifically, for a first time team (i.e. a team that does not manage other funds), what is the minimum size under which a fund is considered not to be economically viable (as per quality assessment criterion 2.1.1 of Annex 2)?
A39	There is no set expectation of a minimum or maximum fund size. The proposed fund size is entirely left at the discretion of the applicants. Attention is drawn to the fact that the proposed fund size must be commensurate to the envisaged investment strategy (i.e. investment ticket sizes, number of envisaged investments, capital deployment, others as relevant).