



REVISED POLICY ON
OFFSHORE FINANCIAL CENTRES AND GOVERNANCE TRANSPARENCY

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PREAMBLE

1. The European Investment Fund (“EIF” or the “Fund”), in compliance with its statutory purpose to contribute to the pursuit of Community objectives, welcomes and wishes (i) to contribute to the international efforts to promote integrity in the financial markets and, more specifically, (ii) to align with the answers given by the European Investment Bank and the European Commission to the international commitments to protect the global financial system from uncooperative and non-transparent jurisdictions.
2. The EIF is committed to ensuring that the benefit of its operations is allocated in line with the intended purposes. Pursuant to its “Policy on preventing and deterring corruption, fraud, collusion, coercion, money laundering and the financing of terrorism in European Investment Fund activities” (“EIF Anti-Fraud Policy”), the EIF has committed to fight prohibited practices, money laundering and the financing of terrorism. In addition, the EIF is committed to discouraging prohibited practices and harmful tax practices in all the areas of the Fund’s operations.
3. In line with the above principles, this document sets forth the policy of the EIF on its involvement in financial transactions using Target Structures (as defined below, 21), which are located in or show substantial links to **Offshore Financial Centres (“OFC”)**.
4. More generally, this document outlines the requirements applied by the Fund to the **transparency** of Target Structures, in particular, without limitation, as regards structures, which contain substantial cross-border elements.
5. The EIF is committed to avoiding participations in Target Structures, which are set up for the purpose of providing tax evasion or tax avoidance schemes for the benefit of either (i) the promoters of (a) a financial intermediary or (b) a finance structure supported by EIF invests or (ii) co-investors of EIF in such Target Structures.
6. The present policy (the “EIF OFC Policy”) considers the principles expressed in the “EIB Interim Revised Policy towards Offshore Financial Centres” of July 2009 of the European Investment Bank (“EIB Interim Revised OFC Policy”).

ISSUE

Offshore Financial Centres

7. The International Monetary Fund in its Background Paper on Offshore Financial Centres (“IMF Paper”)¹ describes OFC as financial centres where:
 - a large number of banking activities are performed with non-resident counterparts;
 - assets and liabilities of the financial system exceed the needs of the domestic markets;
 - specific advantages in relation to taxation or banking secrecy are provided.
8. Concerns that may be raised in connection with operations involving OFC can be summarized as follows:
 - prudential concerns relating to the efficiency of international supervision of financial intermediaries; and

¹ <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>

- market integrity concerns relating to the “effectiveness of international enforcement efforts in respect of illicit activity and abusive market behaviour” (Financial Stability Forum, “FSF”, Report of the Working Group on Offshore Centres of 5 April 2000)².
9. The domiciliation of Target Structures in OFC may specifically stimulate the above concerns as their location typically facilitates opaque legal structures due to:
- a light regulatory regime; and
 - limited co-operation of the authorities in the host jurisdiction.
10. As a result of the above-mentioned concerns, Target Structures in OFC are considered to potentially:
- provide a platform for money laundering; and/or
 - facilitate the set up of tax evasion and tax avoidance schemes.
11. Similar concerns can also apply where only specific elements of a Target Structure are located or otherwise related to OFC or where the Target Structure or any of its elements otherwise and independently from their location profit from legal or tax privileges.

Benchmarks

12. Three benchmarks define the basic international regulatory framework for an assessment of OFC:
- (a) the IMF Paper, which provides a definition of OFC and analyses the motivation to set up finance structures off shore. The IMF Paper essentially distinguishes three groups of OFC jurisdictions:
 - Group I: jurisdictions generally viewed as cooperative, with a high quality of supervision, which largely adhere to international standards;
 - Group II: jurisdictions generally seen as having procedures for supervision and cooperation in place, but where actual performance falls below international standards, and where there is substantial room for improvement;
 - Group III: jurisdictions generally seen as having a low quality of supervision, and/or being non-cooperative with onshore supervisors, and making little or no attempt to adhere to international standards.
 - (b) the documents of the Financial Action Task Force (“FATF”), which relate to the fight against money laundering and which may include the blacklisting of jurisdictions, that are considered not to be co-operative and/or do not fulfill the minimum legal and/or regulatory standards to efficiently fight money laundering.
 - (c) the OECD report of 1998 “Harmful Tax Competition: An Emerging Global Issue” (“OECD Report”)³. The OECD Report denounces the distortion of international competition as a consequence of specific tax regimes, resulting from general local regulatory conditions (“tax haven”) or from specific regulatory situations (“preferential tax regime”). It focuses on four main elements of undesired tax competition:

² http://www.fsforum.org/publications/r_0004b.htm

³ <http://www.oecd.org/dataoecd/33/0/1904176.pdf>

- no, nominal or low effective local tax rates on income;
- lack of effective exchange of information;
- lack of transparency; and
- no substantial local activities or ring-fencing in order to profit from specific privileges.

The OECD continuously issues progress reports (“Progress Reports”)⁴ in which it has established a list of jurisdictions, which distinguishes:

- Jurisdictions, which have not committed to the internationally agreed tax standard;
- Jurisdictions, which have committed to, but not yet fully implemented the internationally agreed tax standard, which include jurisdictions qualified as “tax havens” and “other financial centres”;
- Jurisdictions, which have substantially implemented the internationally agreed tax standard.

Furthermore, it is worth recalling that the OECD as well as the EU institutions have stated that banking secrecy cannot be an obstacle to cooperation and the exchange of information for tax purposes⁵.

For the purpose of this Policy, reference shall be made to the following specific definitions:

- “Prohibited Jurisdictions” shall be understood to be jurisdictions, that are, from time to time, blacklisted by any one of the European Union, the United Nations, the IMF, the Financial Stability Board, the FATF or the OECD (“Lead Organisations”);
- “Monitored Jurisdictions” shall be understood to be jurisdictions, that are, from time to time, identified by any of the before mentioned “Lead Organisation” as (i) weakly regulated and/or (ii) weakly supervised and/or (iii) non transparent and/or (iv) uncooperative or equivalent in connection with financial or business transactions;
- “Compliant Jurisdictions” shall be understood to be jurisdictions that are neither Prohibited nor Monitored Jurisdictions.

BASIC CONSIDERATIONS

Market practice

13. Structuring finance transactions off shore forms part of standard practice both in the venture capital and private equity markets, but also in the guarantee-related markets, especially for securitization transactions. There are a number of legitimate reasons to locate finance structures off shore. These include, in particular:
 - corporate tax advantages: **legitimate** tax-driven reasons to go off shore, including “taking advantage from lower taxation” are recognized in the IMF Paper. These advantages may, e.g. relate to the absence of commercial taxation or register taxes or result from low corporate tax rates or tax exemptions in the OFC location;

⁴ www.oecd.org/dataoecd/50/0/43606256.pdf

⁵ See Art. 26 of the OECD Model Tax Convention and Art. 5 of the OECD Agreement on the exchange of information on tax matters.

- tax neutrality: the corporate tax advantages available in OFC locations enable sponsors of **multi-country structures** to establish **tax-neutral platforms** for investors from different countries, which are typically tax exempt under local legislation and tax transparent in relation to the home country legislation of the investors;
- general cost and regulatory advantages: **corporate set-up cost** is typically lower in OFC than onshore. Reduced regulatory requirements also contribute to cost reduction. The IMF Paper (p. 11) recognizes, in principle, as legitimate the motivation to profit from lighter regulatory conditions.

Group Policy

14. EIB has issued in October 2005 the “Bank Policy towards Offshore Financial Centres” as an EIB Group policy⁶; this policy was updated by the EIB Interim Revised OFC Policy⁷ (for the purposes of this Policy, the principles expressed in the EIB OFC Policy and in the EIB Interim Revised OFC Policy shall be referred to hereafter as the “EIB OFC Policy”).
15. The EIB OFC Policy defines the following eligibility criteria:
 - The EIB will not operate or participate in OFC Structures linked to jurisdictions which qualify as Prohibited Jurisdictions. Exceptions may be made for projects implemented within these countries;
 - EIB shall exercise enhanced vigilance on structures linked to jurisdictions, which qualify as Monitored Jurisdictions; this includes the request to receive an undertaking from contractual counterparts to relocate structures to jurisdictions acceptable to EIB;
 - EIB underlines the need to inform its Board of Directors on the existence, nature and economic rationale of any OFC based structure linked to a Prohibited or Monitored Jurisdiction;
16. The EIF OFC Policy considers, in particular, the policy commitments expressed in the EIB OFC Policy with reference to:
 - vigilance: the compliance function of EIF, which pays specific attention on OFC related elements of each operational proposal to the EIF Board of Directors;
 - exclusion of certain jurisdictions;
 - the adaptation of negotiations;
 - appropriate information of the EIF Board of Directors, in particular through formal positions issued by the compliance function of EIF assessing the compliance risk linked to any admissible OFC based structure.

EIF REPUTATION RISK

17. EIF, as a Community body, has specific concerns related to its reputation: being entrusted with a public mission, EIF seeks to avoid being associated with financial structures, which are illegal under regulatory or fiscal law aspects.
18. Furthermore, beyond a situation where financial structures are illegal, EIF’s reputation can also be affected by a risk of being associated with financial structures, which,

⁶ <http://www.eib.org/attachments/documents/bank-policy-towards-offshore-financial-centres-2005-en.pdf>

⁷ http://www.eib.org/attachments/strategies/eib_interim_revised_policy_towards_ofc_en.pdf

although not illegal per se, create or facilitate undesired or socially incriminated advantages to some or all of their stakeholders. Such may be the case, in particular, where it appears that legal financial structures are set up off shore or otherwise for the purpose of avoiding taxation otherwise due.

19. At the same time, the specific characteristics of EIF require, however, that EIF operates on market terms. Refusing systematically a participation in OFC-based structures could have an adverse effect on EIF's ability to actively participate in the international finance markets and, consequently the efficient pursuit of its mission.
20. In order to comply with these different elements of its statutory purpose, EIF will distinguish structures, which are generally eligible from those where the reputation of EIF, as a Community body, risks to be affected and which might therefore not be eligible. The exclusion of structures as structures eligible for EIF participation has to be transparent and coherent; this applies to all business lines.

EIF POLICY PRINCIPLES

Parameters

21. Target Structures in the meaning of the present EIF OFC Policy are to be understood as structures including special purpose or other investment vehicles as well as other structural elements specifically established to set up or enable financial services to be supported; this definition includes, in particular, (i) entities set up for the direct management or advice of special purpose or other investment vehicles as well as (ii) structures specifically set up for co-investment purposes.
22. The characteristic concerns linked to the domiciliation of Target Structures off shore are essentially linked to the risk of a facilitation of opaque governance and cash flow structures by the typical elements of offshore legislation. As a consequence, the risks related to a lack of transparency in the Target Structures must be addressed by this policy more generally than merely linked to the actual domiciliation of such Target Structures.
23. The EIF OFC Policy considers the following parameters:
 - (a) Reputation Risk: it is a central concern for EIF not to become involved in or associated with any structure or activity which may facilitate or be linked to illicit activities, in particular as regards:
 - money laundering or terrorist financing related offences or other prohibited practices referred to in the EIF Anti-Fraud Policy;
 - tax evasion and tax avoidance as referred to above.
 - (b) Monitoring: OFC-related Target Structures are subject to monitoring processes by the compliance function of EIF which include the assessment of potential reputation risk, inter alia, in the light of the recommendations of the FATF, but also in the light of potential tax evasion schemes.

As a consequence, any due diligence process will have to consider the EIF OFC Policy principles to the extent the Target Structure contains offshore elements.

- (c) Community Policies: EIF has to consider Community Policies in relation to the fight against Money Laundering and Terrorist Financing and in relation to the fight against fiscal fraud⁸.
- (d) EIB OFC Policy: as the EIB OFC Policy is expressed to be a group policy, any EIF OFC Policy may not fall behind the requirements set out in the EIB OFC Policy.
- (e) Consistency: in addition to benchmarking Target Structures against the qualification of their home jurisdiction by any Lead Organisation, the EIF OFC Policy concentrates on the substance of the concerns that are typically attributed to OFC locations and applies its assessment to structural complexities and transparency issues linked generally to cross-border structures. The assessment parameters and policy guidelines expressed herein shall therefore be applied also to OFC Links (as defined below) as well as to cross-border links to Compliant Jurisdictions.
- (f) Marketability: The EIF OFC Policy gives due consideration to standard market practice with a view not to appearing unreasonable to market practitioners. Its purpose is to protect EIF against reputation risk.

Policy Guidelines

24. On the basis of the aforementioned parameters, the EIF OFC Policy shall apply to the participation of EIF in OFC Target Structures according to the following principles:
- (a) The EIF OFC Policy shall apply to any type of business carried out by EIF.
 - (b) Key element to protect EIF against reputation risk is transparency of the Target Structure as well as of its management and/or control.
 - (c) The EIF OFC Policy distinguishes essentially the following situations:
 - the Target Structure is located off shore (“Offshore Location”);
 - the Target Structure is owned by entities or physical persons domiciled off shore (“Offshore Ownership”);
 - the Target Structure is managed or otherwise controlled from off shore (“Offshore Control”);

⁸ See mainly EU and EC Treaty ; Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as implemented by Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (“AML Directive”); Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, as amended by Directive 2004/56/EC of 21 April 2004 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums; Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures; Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments; Code of Conduct for Business Taxation in the conclusions of the ECOFIN Council meeting of 1 December 1997 (see http://ec.europa.eu/taxation_customs/resources/documents/COC_EN.pdf); Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 31 May 2006 concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud; Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 28 April 2009 Promoting Good Governance in Tax Matters.

- persons or entities which manage or otherwise control the Target Structure receive a substantial part of their remuneration off shore without such remuneration being re-channeled on shore (“Offshore Revenues”).

Each of the above elements either alone or together shall qualify, for the purposes of this Policy, as an OFC Link.

- (d) EIF will not participate in any Target Structure with an OFC Link to Prohibited Jurisdictions.
- (e) Target Structures with an OFC Link to Monitored or Compliant Jurisdictions shall evidence to the reasonable satisfaction of the EIF services that such OFC Link:
 - can be justified by specific economic requirements of the proposed structure pursuant to standard market practice, such as transparent tax treatment of international investors in the structure;
 - does not contain indications that the structure is used for illicit purposes and, more specifically for money laundering, the financing of terrorism, fraud, or corruption; and
 - does not appear to be set up for the purpose to enable any specific stakeholder to illicitly avoid any tax due under such stakeholder’s tax regime otherwise applicable to such stakeholder, notwithstanding formal compliance of such structures with applicable law(s).
- (f) Notwithstanding 24 (e) above and unless expressly otherwise authorized by the EIF Board of Directors, the EIF will require from counterparts, as a condition precedent to its financing, the undertaking to relocate within twelve months following the coming into effect of the respective EIF commitment from a Target Structure located in a Monitored Jurisdiction to a Compliant Jurisdiction.
- (g) In the event a Target Structure is located in a jurisdiction, which, following the effectiveness of an EIF commitment, becomes a Monitored Jurisdiction, EIF will request the re-location of such Target Structure to a Compliant Jurisdiction, unless expressly otherwise authorized by the EIF Board of Directors. EIF will, following the effectiveness of the qualification of the relevant jurisdiction as Monitored Jurisdiction, use its best endeavors, in particular, through the exercise of its voting rights in the respective Target Structure with a view to achieving relocation to a Compliant Jurisdiction.
- (h) Target Structures, which, without including an OFC Link, contain otherwise substantial cross-border elements, irrespective of their location or the location of any of their elements, shall evidence to the reasonable satisfaction of the EIF services their full **transparency** in relation to:
 - the choice of jurisdiction for the Target Structure or any of its elements;
 - the governance structure of the Target Structure;
 - the cash flows within the Target Structure or between its elements.

25. Documents which form the legal basis for an EIF commitment will contain adequate reference to make the contractual counterpart aware of the EIF Offshore Policy.

ADMINISTRATION

The present policy reflects essential business principles pursued by EIF. The compliance function at EIF is in charge of its administration and will update it accordingly in order to reflect the developments of market practice and regulation and policy developments within EIB Group.