

Annex III to the Open Call for Expression of Interest to select Financial Intermediaries under the Single EU Equity Financial Instrument

COSME Equity Facility For Growth Investment Guidelines

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This document is for information purposes only. This document is an outline of the principal operational guidelines for the product described herein, which are subject to change and non-exhaustive.

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1. Definitions

Whenever used in these guidelines, the following terms shall have the meanings opposite them. Any capitalised items not defined in this Annex have the meaning given to them in the Open Call for expression of Interest or as the case may be Annex II thereto.

EFG Financial Intermediary	Means an entity undertaking risk capital investments which is eligible to receive funding under the EFG; and which shall include investment funds, private equity funds and special purpose vehicles established or in formation, by providing long-term equity and/or quasi-equity but shall exclude entities (i) targeting buy out or replacement capital intended for asset stripping and (ii) operating lending activities requiring a banking licence. For the avoidance of doubt, these may include funds or investment vehicles that provide co-investment facilities for Business Angels or co-operate with Business Angels in any other format.
Multi-Stage Financial Intermediary	Means a Financial Intermediary that meets investment criteria of EFG and InnovFin Equity which, in its investment policy targets to invest in Final Recipients both in their Early Stage and Expansion and Growth Stage and commits to achieve an InnovFin-EFG Allocation of more than 75%.
InnovFin-EFG Allocation	A quotient of (i) the aggregate commitment amounts by a Multi-stage Financial Intermediary to eligible InnovFin Final Recipients and eligible EFG Final Recipients, and (ii) the total amounts allocated to investments of that Multi-stage Financial Intermediary.
Expansion and Growth Stage Financial Intermediary	Means an EFG Financial Intermediary which in its investment policy targets to invest in eligible EFG Final Recipients in their Expansion and Growth Stage and commits to achieve an EFG Allocation of more than 50%.
EFG Allocation	Means the minimum allocation of investment to eligible EFG Final Recipients as agreed at the time of the EFG Investment in the EFG Financial Intermediary.
Expansion and Growth Stage	Means the stage of development of a company that has already established a product or service, and has already generated revenue, but may or may not be making a profit and needs financing to grow and expand. Such financing may be used – without being limited - to finance increased production capacity, market or product development, provide additional working capital or is used for a transfer of business with a view to further grow the business.
EFG Investment	Means an investment, co-investment or any contractual arrangement entered into between the EIF and an EFG Financial Intermediary pursuant to an EFG Agreement.
EFG Final Recipient	Means a recipient (natural or legal person) other than an EFG Financial Intermediary as defined in section 4 “EFG Final Recipient” of these investment guidelines who receives support under the EFG.
Final Recipient	Means either an InnovFin Final Recipient or an EFG Final Recipient.
EFG Agreement	Means in relation to each EFG Investment the agreement whereby the EIF commits an EFG Investment to an EFG Financial Intermediary.
Fund Agreement	Means either an InnovFin Agreement or EFG Agreement, as appropriate. In the case of Multi-Stage Financial Intermediaries a single agreement combining resources of InnovFin Equity and EFG.
Non-Cooperating Jurisdiction	Financial Intermediaries shall comply with relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud to which they may be subject. Furthermore, in the case of cross-border Financial Instruments where the relevant support is not reserved for operations, projects or activities implemented in the same jurisdiction where the concerned EFG Financial Intermediary is

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	<p>incorporated, EFG Financial Intermediaries shall not be incorporated in territories whose jurisdictions do not co-operate with the Union in relation to the application of the internationally agreed tax standard (of the Organisation for Economic Cooperation and Development (OECD) and its Global Forum on Transparency and Exchange for Tax Purposes).</p> <p>Each Applicant may inquire about the status of a particular jurisdiction with the EIF.</p>
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2. The terms of an EFG Investment

Nature	Direct investments in Expansion and Growth Stage Financial Intermediaries and Multi-stage Financial Intermediaries jointly with InnovFin Equity.
Investor	The EIF in its own name operating on behalf of the European Commission.
Types of EFG Financial Intermediaries	Expansion and Growth Stage Financial Intermediaries and Multi-Stage Financial Intermediaries.
Timing of EFG Investment	The EIF shall normally commit at the first closing of an EFG Financial Intermediary. The EIF may invest in other closings if the policy fit and value added are duly demonstrated.
Size of EFG Investment	<p>Each EFG Investment shall represent:</p> <ul style="list-style-type: none"> • at least 7.5% of total commitments to the EFG Financial Intermediary at the closing at which the EFG Investment is made; • up to 25% of the total commitments to the EFG Financial Intermediary at any closing. <p>In any event, the maximum size of the EFG Investment in an EFG Financial Intermediary shall be limited to EUR 30 million or equivalent.</p> <p>Notwithstanding the before-mentioned conditions, the maximum percentage of an EFG Investment in an EFG Financial Intermediary under the EFG will be reduced by the proportion of investments in final recipients which are not eligible EFG Final Recipients in the case of investment in the Expansion and Growth Stage Financial intermediary (and in the case of investment in the Multi-Stage Financial Intermediary, eligible EFG Final Recipients and InnovFin Final Recipients) foreseen in the EFG Financial Intermediary's investment policy.</p>
Duration of EFG Investments	EFG Investments shall usually consist of 5 to 15 year positions in EFG Financial Intermediaries. In any event, the contractual lifetime of any EFG Investment shall not exceed 22 nd July 2034.

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Investor Base of an EFG Financial Intermediary

In order to catalyse private sector investments, the majority of the capital committed to any EFG Financial Intermediary shall be provided by investors that pass the market economy operator test¹.

When calculating the portion of capital invested in any one EFG Financial Intermediary by investors that pass the market economy operator test, no account shall be taken of the capital committed or proposed to be committed to an EFG Financial Intermediary under the EFG. No single investor shall account, directly or indirectly, for more than 50% of the total commitments to any EFG Financial Intermediary.

Furthermore, each EFG Financial Intermediary shall have at least 30% of its total commitments at the time of EIF's closing, and including earlier closings if such have taken place, coming from independent private investors, whereby the following categories of investors shall be considered independent private investment sources:

- EIF/EIB own resources
- Banks (investing at own risk and from own resources)
- Private endowments & foundations
- Family offices & Business Angels (including joint investment vehicles set-up by/with Business Angels)
- Corporate investors
- Insurance companies
- Pension funds
- Private individuals
- Academic Institutions (including universities and public and private research institutions)

Other categories of investors may also be considered private investment sources (e.g. sovereign wealth funds or fund-of-funds). In the case of sovereign wealth funds, they shall be considered independent private investment sources if the money invested is generated by commercial activities and is invested on commercial terms.

Fund-of-funds shall be considered independent private investment sources provided that they invest in an EFG Financial Intermediary exclusively on commercial terms and are managed or advised by a privately held asset manager. Any fund-of-funds fully funded by state budget resources shall not be considered an independent private investment source².

In assessing compliance with the above requirements as regards shareholding of a fund-of-funds, the EIF may require a declaration from the EFG Financial

¹ Communication from the Commission: Guidelines on State Aid to promote risk finance investments of 15 January 2014 (http://ec.europa.eu/competition/state_aid/modernisation/risk_finance_guidelines_en.pdf)

² Where a fund-of-funds is partially funded by state budget resources, the investment made by such a fund-of-funds into an EFG Financial Intermediary shall not be considered as an independent private investment to the extent the fund-of-funds is directly funded by state budget resources. For the purpose of the above sentences, state budget resources shall include Structural Funds e.g. Jeremie initiative) but, for the avoidance of doubt, shall exclude funding provided by promotional banks with a public shareholder base investing their own resources, for their own risk, and on commercial terms.

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	Intermediary.
Ranking of EFG Investments	EFG Investments shall rank at least <i>pari-passu</i> (i.e. Like Risk, like Reward) with investors investing in the same risk class. A transaction is presumed to be compliant with the above <i>pari-passu</i> principle requirement if investors in the same risk class make their investment under equivalent economic terms and conditions and hold the same level of subordination. The relevant constitutional documents of the EFG Financial Intermediary (including, where relevant, any side letter entered into by the EIF) shall reflect such key requirement.
Representation of EFG Investments	The EIF shall be represented in advisory boards or similar investor representation bodies.
Borrowing and lending by EFG Financial Intermediaries	<p>There shall be no borrowing by the EFG Financial Intermediary's manager secured by any asset (including undrawn commitments) of the EFG Financial Intermediary. The EFG Financial Intermediary shall not borrow from its manager or from any other vehicle managed by the same manager (or any affiliated or associated entity) nor shall it make loans to the manager or any fund managed by the same manager (or any affiliated or associated entity).</p> <p>Commercial lending activity requiring a banking licence shall be excluded. Other type of lending made by EFG Financial Intermediaries shall only be made alongside or for the preparation of equity investments, at market rate, and shall be limited to a maximum of 30% of the total commitments to the EFG Financial Intermediary at any point in time.</p>
EFG Signing Period	<p>Where lending structures are used by an EFG Financial Intermediary (e.g. a mezzanine fund) to make an investment carrying equity or mezzanine risk, such funding should be considered as equity or mezzanine irrespective of its legal form (convertible bonds/loans, loan with warrants, etc.).</p> <p>The EIF may sign an EFG Agreement until 31 December 2020. However, and provided that the EIF Board has approved the EFG Investment before 31 December 2020, EFG Agreements may be signed by the EIF until 31 December 2021.</p>
Monitoring and audit	The EFG Financial Intermediaries must agree (and must agree to cause the EFG Final Recipients to agree) to allow the Commission's agents, the EIF and the European Court of Auditors to have access to adequate information to enable them to discharge their duties with respect to monitoring, control and auditing of the correct use of the EFG Investments, including the promotion, visibility and transparency requirements specified in this Annex in the "Miscellaneous" section. These controls may include on-the-spot controls of the EFG Financial Intermediaries and the EFG Final Recipients.
State Aid	The EFG is considered to be consistent with State aid rules and therefore do not constitute State Aid.

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3. The EFG Financial Intermediaries

The EFG Financial Intermediary needs to comply with the following general and specific requirements:

General Requirements

The EFG Financial Intermediary shall:

- i. Provide the EIF with a representation as attached in Annex I;
- ii. Agree to publicize the support of the European Union under the EFG as set out in the "Miscellaneous" section of this Annex III³;
- iii. Agree to transpose these requirements under (ii) into their agreements with EFG Final Recipients;
- iv. Agree not to select Excluded EFG Final Recipients.

Specific requirements

The EFG Financial Intermediary shall:

- i. Meet the definition of the EFG Financial Intermediary or Multi-stage Financial Intermediary;
- ii. Provide long-term equity and/or quasi-equity (including, without limitation, equity, subordinated and participating loans and/or convertible bonds) involving up to 15 year positions;
- iii. Not include in their business activity any of the activities referred to below:
 - a. illegal activities according to applicable legislation;
 - b. the activities excluded as referred to in Article 19 of the Regulation (EU) No 1291/213 of the European Parliament and of the Council establishing Horizon 2020:
 - research activity aiming at human cloning for reproductive purposes;
 - research activity intended to modify the genetic heritage of human beings which could make such changes heritable (excluding research relating to cancer treatment of the gonads);
 - research activities intended to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by

³ In the case of Multi-Stage Financial Intermediaries the respective provisions of Annex II and Annex III shall apply.

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means of somatic cell nuclear transfer; and/or

- c. any activity which would make such an EFG Investment not compatible with the Guidelines on the EIF Restricted Sectors⁴ as amended from time to time;
- iv. Be established in an EFG Participating Country;
- v. Not be established, at the date of the Fund Agreement, in a Non-Cooperating Jurisdiction;
- vi. Be commercially-oriented managed by independent management teams⁵ combining the appropriate mix of skills and experience to demonstrate the necessary capability and credibility to manage a risk capital fund;
- vii. Agree to provide reporting in accordance with the applicable provisions of the EFG as further specified in the "Miscellaneous" section;
- viii. Be willing to comply with the visibility requirements in accordance to the "Miscellaneous" section;
- ix. Be willing to contribute to evaluations and employment and growth surveys as further specified in the "Miscellaneous" section;
- x. Be willing to accept that the EIF may not be required to participate, fully or partially, in an investment in the Final Recipient if that investment would result in an irremediable breach of the EFG Allocation (or InnovFin-EFG Allocation in the case of Multi-Stage Financial Intermediaries), as agreed with the EFG Financial Intermediary at the time of the EFG Investment;
- xi. Be willing to provide the list of investors in compliance with the requirements set out in the "Investor base" section.

4. EFG Final Recipients

EFG Financial Intermediaries shall undertake to select EFG Final Recipients according to their internal rules and procedures taking due account of the economic viability of projects of EFG Final Recipients.

Excluded EFG Final Recipients

EFG Financial Intermediaries shall not be entitled to invest in final recipients which at the time of the envisaged first investment:

⁴ http://www.eif.org/news_centre/publications/2010_Guidelines_for_Restricted_Sectors.htm

⁵ Independent management teams include teams operating within a corporate or university structure provided that the operation of the fund management business has a high degree of independence from the parent company/organisation

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- a) are in one of the situation as listed in Annex I;
- b) are established, at the date of first investment by the EFG Financial Intermediary, in a Non-Cooperating Jurisdiction;
- c) do not provide the EFG Financial Intermediary with a representation as attached in Annex I;
- d) are not willing to acknowledge the support of the European Union under the EFG and are not willing to comply with the relevant provisions in terms of publication of information as set out in the "Miscellaneous" section;
- e) include in their business activity any of the activities referred to below:
 - illegal activities according to the applicable legislation;
 - the activities excluded as referred to in Article 19 of the Regulation (EU) No 1291/2013 of the European Parliament and of the Council establishing Horizon 2020:
 - i. research activity aiming at human cloning for reproductive purposes;
 - ii. research activity intended to modify the genetic heritage of human beings which could make such changes heritable (excluding research relating to cancer treatment of the gonads);
 - iii. research activities intended 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; and/or;
 - any activity which, should an investment be made by an EFG Financial Intermediary in that entity, would make such investment not compatible with the Guidelines on the EIF Restricted Sectors as amended from time to time.

Eligible EFG Final Recipients

Shall be defined as final recipients which are not Excluded EFG Final Recipients and which satisfy all of the following eligibility criteria:

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- a) the final recipient is an SME immediately before or after the time of first investment⁶;
- b) the final recipient is established and operating in an EFG Participating Country at the time of first investment;
- c) the final recipient is in its Expansion and Growth Stage at the time of first investment⁷.

5. Miscellaneous

Reporting

EFG Financial Intermediaries shall provide the EIF with quarterly and annual reporting prepared in accordance with the reporting guidelines published or endorsed by the Invest Europe from time to time which on date of this Open Call endorses the International Private Equity and Venture Capital Investor (“IPEV”) Valuation Guidelines. The indicative list of information that each EFG Financial Intermediary shall provide to the EIF is specified in the Annex IV to this Call for Expression of Interest. EFG Financial Intermediaries shall also provide annual audited financial statements in accordance with applicable laws. The valuation of risk capital investments in EFG Final Recipients shall be made in accordance with the valuation principles published or endorsed by IPEV.

Other Information

EFG Financial Intermediaries may also be requested to provide, from time to time, further information related to the SMEs covered by EFG in the context of programme evaluations and employment and growth reports⁸. This information is required by the European Commission for reporting purposes and will be used for evaluating the COSME programme. The European Commission requests will be coordinated by the EIF. Any request of additional information will be within the context of the COSME programme legal basis and will follow the principle of proportionality.

The EFG Financial Intermediary shall ask the eligible EFG Final Recipients to provide information on the basis of a template provided by the EIF. The provision of such information by the eligible EFG Final Recipients shall (i) be subject to applicable laws, including without limitation in relation to data protection and banking secrecy, and (ii) not be mandatory requirement nor constitute a condition precedent to the relevant EFG Operation or any eligibility criteria. Any failure to provide information shall not affect the eligible

⁶ For avoidance of doubt, any increase of participation beyond the thresholds mentioned in Commission Recommendation 2003/361/EC subsequent to the initial investment or the fact that the SME grows beyond the thresholds is not considered a breach of the requirements.

⁷ In the case of investment in the Multi-stage Fund eligible final recipients shall be either in the Early Stage or Expansion & Growth Stage)

⁸ One of the COSME programme objectives is to contribute to the creation of employment. In order to track employment and growth at the level of the Final Recipients, the EIF will enquire EFG Financial Intermediaries about relevant data available for every eligible Final Recipients at the time of first investment and as of 31 December 2017 and 31 December 2019

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EFG Final Recipient transaction granted or require the EIF or any EFG Financial Intermediary to take any further steps. Neither the EIF nor the EFG Financial Intermediary nor the EFG Final Recipients or any of their employees, officers or agents shall be liable for the correctness of information or the completeness of data provided by the employment and growth report.

Visibility

Each EFG Financial Intermediary shall:

- i. explicitly inform EFG Final Recipients that financing is made possible through the support of the EFG with the financial backing of the European Union under COSME Financial Instruments. Such information needs to be prominently included either in the contractual documentation and/or in an accompanying cover letter and it shall be duly acknowledged by the EFG Final Recipient;
- ii. create a dedicated section on its website or a clear link to this information, regarding the type of finance offered, name of the product supported through the EFG (if applicable), a description of the key eligibility criteria, the investment focus (if applicable) and information on the application procedure;
- iii. include in any press release that the EFG Financial Intermediary may choose to make with regard to the EFG Operation and on a dedicated information page of the type of finance offered referred to in (ii) above on its website a reference, in the relevant language, that the EFG Financial Intermediary has benefited from the support of the European Union under the COSME programme. This shall include the Union Emblem of at least equal prominence to the logo of the EIF. Instead of issuing a press release, the EFG Financial Intermediary may choose alternative ways of communication, in which case the same visibility requirements shall apply;
- iv. follow the rules and conventions⁹ when displaying the Union Emblem;
- v. provide the EIF with at least 2 case studies of EFG Final Recipient having benefited of an EFG Operation by filling in and sending to the EIF the case study template provided by the EIF.

Publication

The EIF shall publish on its website each year:

- a) a list of EFG Financial Intermediaries with whom the EIF concluded a Fund Agreement¹⁰, containing for each EFG Financial Intermediary the name and address of the EFG Financial Intermediary, as well as

⁹ As set out in <http://europa.eu/about-eu/basic-information/symbols/flag/>

¹⁰ This shall also include the name of the entity that applied for the funding.

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the amount invested by the EIF under the Fund Agreement into the EFG Financial Intermediary, an indication of the nature of the EFG Financial Intermediary's investments (indicating whether this EFG Financial Intermediary is a sector specific entity by publishing the respective sector or by indicating that this EFG Financial Intermediary has a generalist approach);

- b) a list of eligible EFG Final Recipients, containing for each eligible EFG Final Recipient the name and address and the type of finance received under the EFG.

Any EFG Financial Intermediary, or eligible EFG Final Recipient may, prior to receiving financial support under the EFG, declare in writing (including by a representation in the relevant agreement) that the publication requirements set out above risks harming its commercial interests or risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union, on the basis of a written justification. The implementation details will be established by the EIF. In addition such publication shall not be required if: (i) it would be illegal under the applicable laws and regulations, or (ii) the eligible EFG Final Recipient is a natural person.

Record Keeping

The EFG Financial Intermediary shall maintain or be able to produce all the documentation related to the implementation of the Fund Agreement for a period of seven (7) years following the termination of the Fund Agreement. The EFG Financial Intermediary shall require each EFG Final Recipient to maintain and be able to produce all documentation related to the investment for a period of seven (7) years following the termination of the investment in such EFG Final Recipient.