

## Investment Guidelines for the ESCALAR Programme

### *Important Disclaimer*

*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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## Annex II to the Open Call for Expression of Interest to select Financial Intermediaries under the ESCALAR Programme

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### 1. Definitions

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

<b>Distributable Investment Proceeds</b>	Means any investment proceeds available for distribution to investors pursuant to the contractual documentation of the relevant Fund or Side Fund.
<b>EIF ESCALAR Investment</b>	Means a commitment in any form entered into by EIF under the ESCALAR Programme to invest in a Fund or Side Fund, excluding any co-investments from other resources managed or advised by EIF, if any.
<b>EFSI Regulation</b>	Means regulation (EU) 2015/1017, as amended by Regulation (EU) 2017/2396 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub (OJ L 345, 27.12.2017, p. 34).
<b>ESCALAR Deferred Return</b>	[4 to 6]% IRR to be calculated pro rata temporis on the ESCALAR Shares Net Paid-In.
<b>ESCALAR Financial Intermediary</b>	Means the Fund in the case of ESCALAR Option 1 or Side Fund in the case of ESCALAR Option 2.
<b>ESCALAR Option 1</b>	Means the case in which the EIF ESCALAR Investment is made to a Fund via a subscription to a different class of share or unit to the other investors in the same Fund (see Appendix 1).
<b>ESCALAR Option 2</b>	Means the case in which the EIF ESCALAR Investment is made to a Side Fund via a subscription to a different class of share or unit to the fund investing in the Side Fund (see Appendix 2).
<b>ESCALAR Shares</b>	The class of shares or units subscribed in a Fund or Side Fund by ESCALAR.
<b>ESCALAR Shares Net Paid-in</b>	At any time, the aggregate EIF ESCALAR Investment drawn down by the Fund, or Side Fund, less any distributions received.
<b>Excluded Final Recipient</b>	Means an entity that cannot benefit from financing supported by the ESCALAR Programme as a result of application of the Guidelines on EIF Restricted and Excluded Sectors <sup>1</sup> and applicable legislation.
<b>Final Recipient</b>	Means an entity benefiting directly or indirectly (including inter alia through holding companies and, platforms and/or other funds) from financing provided by the ESCALAR Financial Intermediary.
<b>Fund</b>	Means an investment fund or a special purpose vehicle, in any form, established as a main fund in the EU or to be established therein, that is not a Side Fund and that undertakes long term risk capital investments in the form of equity, preferred equity, Hybrid Debt-Equity Instruments, other type of

<sup>1</sup> [http://www.eif.org/news\\_centre/publications/2010\\_Guidelines\\_for\\_Restricted\\_Sectors.htm](http://www.eif.org/news_centre/publications/2010_Guidelines_for_Restricted_Sectors.htm)

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	mezzanine financing, but excluding entities targeting buy-out (or replacement capital) intended for asset stripping.
<b>Fund Agreement</b>	Means the agreements related to the EIF ESCALAR investment into the Fund or Side Fund, and all agreements related to the Fund or Side Fund's investment in the relevant Final Recipient.
<b>Hybrid Debt-Equity Instrument</b>	Means non-bank alternative financing in the form of a debt financial instrument (alone or in conjunction with an equity component or link), which, in light of its bespoke or subordination nature or of other special circumstances of the issuer, is expected to yield a return in excess of standardized senior bank financing.
<b>Investor Preferred Return</b>	[3-5] % IRR calculated pro rata temporis on the LP Net Paid-In in case of ESCALAR Option 1, or on the MF Side Fund Shares Net Paid-in in case of ESCALAR Option 2.
<b>LP</b>	Means the Limited Partners, other than ESCALAR.
<b>LP Investment</b>	The total amount committed by LPs.
<b>LP Net Paid-in</b>	At any time, the aggregate commitment drawn down from the LPs (excluding from the EIF ESCALAR Investment) less any distributions received.
<b>LP Shares</b>	The interests subscribed to by the LPs, in their capacity as LPs.
<b>MF Investment</b>	The total amount committed by the Fund to a Side Fund.
<b>MF Side Fund Shares</b>	The class, or classes as the case may be, of shares in a Side Fund subscribed to by a Fund.
<b>MF Side Fund Shares Net Paid-in</b>	At any time, and in respect of the Side Fund, the aggregate commitment drawn down from the Fund (excluding from the EIF ESCALAR Investment) less any distributions received.
<b>Minimum Allocation</b>	Means the Minimum Allocation Option 1 or Minimum Allocation Option 2, as applicable.
<b>NAV</b>	The net asset value of the Fund or of the Side Fund.
<b>NPB</b>	Means a national promotional bank or a national promotional institution.
<b>Non-Compliant Jurisdiction</b>	Means a jurisdiction (i) listed in the Annex I of the Council of the European Union conclusions on the revised European Union list of non-cooperative jurisdictions for tax purposes, adopted by the Council of the European Union at its meeting held on 12 March 2019, and/or (ii) listed in the Annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, and/or (iii) rated as "partially compliant", "provisionally partially compliant" or "non-compliant" by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes and/or (iv) included in the Financial Action Task Force "Public Statement" (i.e. countries or jurisdictions with such serious strategic deficiencies that the Financial Action Task Force calls on its members and non-members to apply counter-measures or for which the Financial Action Task Force calls on its members to apply enhanced due diligence

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	measures), and/or (v) included in the Financial Action Task Force statement “Improving Global AML/CFT Compliance: On-Going process”(i.e. countries or jurisdictions with strategic weaknesses in their AML/CFT measures but that have provided a high-level commitment to an action plan developed with the Financial Action Task Force), in each case as such statement, list, directive or annex may be amended and/or supplemented from time to time.
<b>Scale-up</b>	Means an enterprise 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, including in order to finance increased production capacity, to finance market or product development, to provide additional working capital or to be used for a (total or partial) acquisition, with a view to further grow the business
<b>Side Fund</b>	Means an investment fund, or a special purpose vehicle, in any form, established as a side fund in the EU or to be established therein, for the sole purpose of undertaking one or more long term risk capital investments alongside a fund - or as a subsidiary vehicle of a fund - in the form of equity, preferred equity, Hybrid Debt-Equity Instruments, other type of mezzanine financing, but excluding entities targeting buy-out (or replacement capital) intended for asset stripping.
<b>Small Mid-Cap</b>	Means an entity with fewer than 500 full-time equivalent employees that is not an SME.
<b>SME</b>	Means a micro, small or medium-sized enterprise as defined in Commission Recommendation 2003/361/EC (OJ L 124, 20.5.2003, p. 36).
<b>Target Final Recipient</b>	A Final Recipient that is at the time of first financing by the ESCALAR Financial Intermediary: (i) an SME or a Small Mid-cap, (ii) a Scale-Up; (iii) not an Excluded Final Recipient; and (iv) is established or operating in the EU.
<b>Trigger Event</b>	Means the event that has occurred from the moment that the ratio of NAV to ESCALAR Shares Net paid-in drops below [1.5x – 2.0x].

## 2. The terms of an EIF ESCALAR Investment

### *General terms*

<b>Investor</b>	The EIF in its own name with financing from the ESCALAR Programme.
<b>Investment structure</b>	The EIF ESCALAR Investment may take the form outlined in the schedules to this Annex II under ESCALAR Option 1 or ESCALAR Option 2.
<b>Fund Investment Strategy</b>	The ESCALAR Financial Intermediary shall undertake long term risk capital investments in the form of equity, preferred equity, Hybrid Debt-Equity Instruments, other type of mezzanine financing, but excluding entities targeting buy-out (or replacement capital) intended for asset stripping, with a focus on Scale-ups.

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**Drawdowns** The EIF ESCALAR Investment must be drawn down pro-rata with other investor commitments to the Fund, or Side Fund as the case may be and without prejudice to excuse rights.

**Size of EIF ESCALAR Investment** Each EIF ESCALAR Investment shall:

- a) not exceed one hundred million euros (EUR 100,000,000) or the EUR equivalent in another eligible currency at time of commitment;
- b) not exceed 50% of the aggregate commitments made to the Fund in case of ESCALAR Option 1 or the Side Fund in case of ESCALAR Option 2.

**Duration of EIF ESCALAR Investment** The lifetime of the EIF ESCALAR Investment shall not exceed 15 years, plus up to 3 years' extension.

**Investor Base of an ESCALAR Financial Intermediary** At least 30% of total commitments to an ESCALAR Financial Intermediary<sup>2</sup>, excluding the EIF ESCALAR Investment, at the time of the closing of the relevant EIF ESCALAR Investment (including commitments made in earlier closings, if any) are made by independent private investment sources (as set forth below):

- EIF/EIB own resources, invested at own risk and excluding public parts of mandates
- Financial institutions (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)
- NPBs investing own resources, for their own risk, and on commercial terms
- fund-of-funds provided that they invest exclusively on commercial terms and are managed or advised by a privately held asset manager, save that:
  - any fund-of-funds fully funded by state budget resources shall not be considered an independent private investment source;
  - where a fund-of-funds is partially funded by state budget resources, in *pari passu* with private resources invested on commercial terms, the investment made by such a fund-of-funds into a Fund or Side Fund shall be considered as an independent private investment source pro rata to the amounts invested by the fund-of-funds which are funded by private resources.

Other categories of investors may also be considered private investment sources (e.g. sovereign wealth funds or fund-of-funds) where the

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<sup>2</sup> In the ESCALAR Option 2 this requirement shall be tested at the level of the main Fund.

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resources invested are generated by commercial activities and are invested on commercial terms.

For the purpose of the above provisions, state budget resources shall include European Structural and Investment Funds (for e.g. Jeremie initiative).

In assessing compliance with the above requirements, the EIF may rely on a declaration, representation or undertaking from the Financial Intermediary.

### Signing period

The EIF may enter into an EIF ESCALAR Investment until 31 December 2022, provided that the EIF Board of Directors has approved the EIF ESCALAR Investment on or before 31 December 2020

### Specific terms under ESCALAR Option 1

#### Minimum Allocation Option 1

The ESCALAR Financial Intermediary shall invest in Target Final Recipients an amount equal to at least the Minimum Allocation Option 1, defined as the lower of:

- (i) Two times of the aggregate amounts drawn down from the EIF ESCALAR Investment for the purpose of investment; and
- (ii) Two-thirds of the total amount drawn down by ESCALAR Financial Intermediary from its investors for the purpose of investments.

subject to a floor of 50% of invested amounts allocated to Target Final Recipients.

For the avoidance of doubt, the ESCALAR Financial Intermediary may invest in entities that are not Target Recipients.

#### Allocation of Distributable Investment Proceeds<sup>3</sup>

**Prior to a Trigger Event**, Distributable Investment Proceeds shall be distributed in accordance with the waterfall of the relevant Fund provided that the allocations between LPs and ESCALAR shall be made in the following order of priority:

1. To ESCALAR Shares and LP Shares on a pro-rata to the respective drawn down amounts, until ESCALAR Net Paid-in and LP Net Paid-in are reduced to zero
2. To LP Shares until the Investor Preferred Return is paid
3. To ESCALAR Shares and LP Shares, in a pre-agreed proportion, until the ESCALAR Deferred Return is paid
4. To ESCALAR Shares and LP Shares, all remaining Distributable Investment Proceeds in a pre-agreed proportion (in favour of the LP Shares).

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<sup>3</sup> The indicative allocation mechanism described is based on the return of investors' net paid-in amounts. However, in certain cases, where commercially agreed between EIF and the ESCALAR Financial Intermediary, the mechanism may be based on the return of investors' total commitments.

**Following a Trigger Event**, and until cured, Distributable Investment Proceeds shall be distributed in accordance with the waterfall of the relevant Fund provided that the allocations between LPs and ESCALAR shall be made in the following order of priority:

1. To ESCALAR Shares until the ESCALAR Net Paid-in is reduced to zero
2. To LP Shares until the LP Net Paid-in is reduced to zero
3. To LP Shares, until the Investor Preferred Return is paid
4. To ESCALAR Shares and LP Shares, in a pre-agreed proportion, until the ESCALAR Deferred Return is paid
5. To ESCALAR Shares and LP Shares, all remaining Distributable Investment Proceeds in a pre-agreed proportion (in favour of the LP Shares).

*Specific terms under ESCALAR Option 2*

**Minimum Allocation Option 2  
("Minimum Allocation Option  
2")**

**Allocation of Distributable  
Investment Proceeds**

100% of amounts drawn down from investors for investments shall be invested in Target Recipients.

**Prior to a Trigger Event**, Distributable Investment Proceeds shall be distributed in the following order of priority:

1. To ESCALAR Shares and MF Side Fund Shares on a pro-rata to the respective drawn amounts, until ESCALAR Net Paid-in and MF Side Fund Shares Net Paid-in are reduced to zero
2. To MF Side Fund Shares until the Investor Preferred Return is paid
3. To ESCALAR Shares and MF Side Fund Shares, in a pre-agreed proportion, until the ESCALAR Deferred Return is paid
4. To ESCALAR Shares and MF Side Fund Shares, all remaining proceeds in a pre-agreed proportion (in favour of the MF Side Fund Shares).

**Following a Trigger Event**, and until cured, Distributable Investment Proceeds shall be distributed in the following order of priority:

1. To ESCALAR Shares until the ESCALAR Net Paid-in is reduced to zero
2. To MF Side Fund Shares until the MF Side-Fund Shares Net Paid-In is reduced to zero
3. To MF Side Fund Shares, until the Investor Preferred Return is paid
4. To ESCALAR Shares and MF Side Fund Shares, in a pre-agreed proportion, until the ESCALAR Deferred Return is paid
5. To ESCALAR Shares and MF Side Fund Shares, all remaining proceeds in a pre-agreed proportion (in favour of the MF Side Fund Shares).

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### 3. ESCALAR Financial Intermediaries

#### General Requirements

ESCALAR Financial Intermediaries:

- i. Shall not engage in activities incompatible with the Guidelines on the EIF Restricted Sectors;

#### Specific requirements

- i. The ESCALAR Financial Intermediary shall not be entitled to issue any drawdown notice to EIF relating to an investment in any Excluded Final Recipients;
- ii. The ESCALAR Financial Intermediary shall be managed by an independent management team combining the appropriate mix of skills and experience to demonstrate the necessary capability and credibility to manage a risk capital fund and which, during the due diligence process, demonstrated to the EIF that they (i) have a clear strategy to make a sufficient number of investments into Target Final Recipients, create adequate deal flow and establish appropriate exit strategies and (ii) will apply good market practice in areas such as legal structure, investment principles, reporting and evaluation;
- iii. The ESCALAR Financial Intermediary shall be managed by entities which are controlled<sup>4</sup> by individuals or privately held entities;
- iv. The ESCALAR Financial Intermediary shall not be established in a Non-Compliant Jurisdiction unless the operation is physically implemented in the relevant Non-Compliant Jurisdiction and does not present any indication that it supports actions that contribute to targeted activities. The EIF will provide relevant arrangements in order for the Financial Intermediary to transpose this requirement at the level of the Final Recipients;
- v. The Financial Intermediary shall undertake to comply with applicable European Union law and agreed international and European Union standards and, therefore, not support actions that contribute to tax evasion or finance artificial arrangements aimed at tax avoidance. The EIF will provide relevant arrangements in order for the Financial Intermediaries to transpose this requirement at the level the Final Recipients;
- vi. The ESCALAR Financial Intermediary shall accept that it may be subject to an extended due diligence *inter alia* in case it is incorporated in a jurisdiction listed in Annex II of the Council Conclusions as at the date of the application.
- vii. The ESCALAR Financial Intermediary shall acknowledge the EIF Anti-Fraud Policy which sets out the policy of EIF for preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing<sup>5</sup> as amended from time to time, and shall take appropriate measures (as may be further specified in the relevant agreement) to (i) facilitate implementation of such policy as well as to (ii) undertake to support investigations performed by the EIF or the

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<sup>4</sup> For the purpose of this requirement, control means the power to direct the management of the entity which is controlled whether through the ownership of voting capital, by contract or otherwise, or the ability to exercise (whether directly or indirectly) more than 50% of the voting capital or similar rights of ownership in respect of such controlled entity or the contractual right to appoint or remove the management of such entity or a majority of the members of such entity's executive bodies.

<sup>5</sup> Please refer to [http://www.eif.org/attachments/publications/about/Anti\\_Fraud\\_Policy.pdf](http://www.eif.org/attachments/publications/about/Anti_Fraud_Policy.pdf)



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	<p>European Investment Bank, the EPPO, or the European Anti-Fraud (OLAF), or Court of Auditors (ECA) in connection with actual or suspected prohibited conduct.</p> <p>viii. The ESCALAR Financial Intermediary shall accept that the EIF may not be required to participate (subject to applicable law), fully or partially, in an investment in the Final Recipient, if that investment would result in an irremediable breach of the Minimum Allocation.</p>
<b>Governance of Intermediaries</b>	<p>The EIF may be represented on advisory boards or similar investor representation bodies.</p> <p>The legal documentation governing the Fund and the Side Fund shall include the possibility for investors to remove the management team for cause and without cause.</p> <p>i. The EIF will expect the ESCALAR Financial Intermediary to put in place appropriate measures to avoid conflicts of interests and align the interests of the ESCALAR Financial Intermediary, its managers and its investors. Such measures to be in line with market practices and shall be transparent to the ESCALAR Financial Intermediary's investors.</p> <p>ii. Without prejudice to the clause Management fees and Carry in section 4 below, the remuneration of the ESCALAR Financial Intermediary shall be transparent to the ESCALAR Financial Intermediary's investors. Management fees shall be at a level that covers operational and management costs in a sustainable way without disturbing the alignment of interests aimed for. The level of management fees shall allow for the execution of the ESCALAR Financial Intermediary's strategy.</p>
<b>4. Miscellaneous</b>	
<b>Management fees and Carry</b>	<p>The manager of the ESCALAR Financial Intermediary shall not be entitled to charge management fees on the EIF ESCALAR Investment but shall be entitled to the carried interest pursuant to the fund's contractual documentation.</p>
<b>Monitoring and audit</b>	<p>ESCALAR Financial Intermediaries must agree (and must agree to cause the Target Final Recipients to agree) to allow the EC's agents (including OLAF's), the EIF, the European Court of Auditors and EPPO 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 EIF's investment, including the promotion, visibility and transparency requirements specified in this section of this Annex. These controls may include on-the-spot controls of the ESCALAR Financial Intermediaries, and the Final Recipients.</p>
<b>Reporting</b>	<p>ESCALAR Financial Intermediaries shall provide the EIF with quarterly and annual reporting prepared in accordance with the predefined parameters as set by EIF. ESCALAR Financial Intermediaries shall also provide annual audited financial statements in accordance with applicable laws.</p>
<b>Other Information</b>	<p>ESCALAR Financial Intermediaries may be requested to provide, from time to time, further information related to the Target Final Recipients covered by the ESCALAR Programme in the context of instrument</p>

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evaluations and employment and growth reports to be prepared by the EIF based on data available as of 31 December 2019. To this end, the ESCALAR Financial Intermediaries shall require the Target Final Recipients to provide certain information on the basis of a template provided by the EIF. The provision of such information by Target 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 transaction or any eligibility criteria.

### Visibility

ESCALAR Financial Intermediaries shall explicitly inform Final Recipients that financing is made possible through a guarantee of the EC through the EFSI.

### Publication

The EIF may publish on its website a list of ESCALAR Financial Intermediaries containing for each ESCALAR Financial Intermediary the name and address of the ESCALAR Financial Intermediary, as well as the amount of EIF's investment into the ESCALAR Financial Intermediary, an indication of the ESCALAR Financial Intermediary's investment focus.

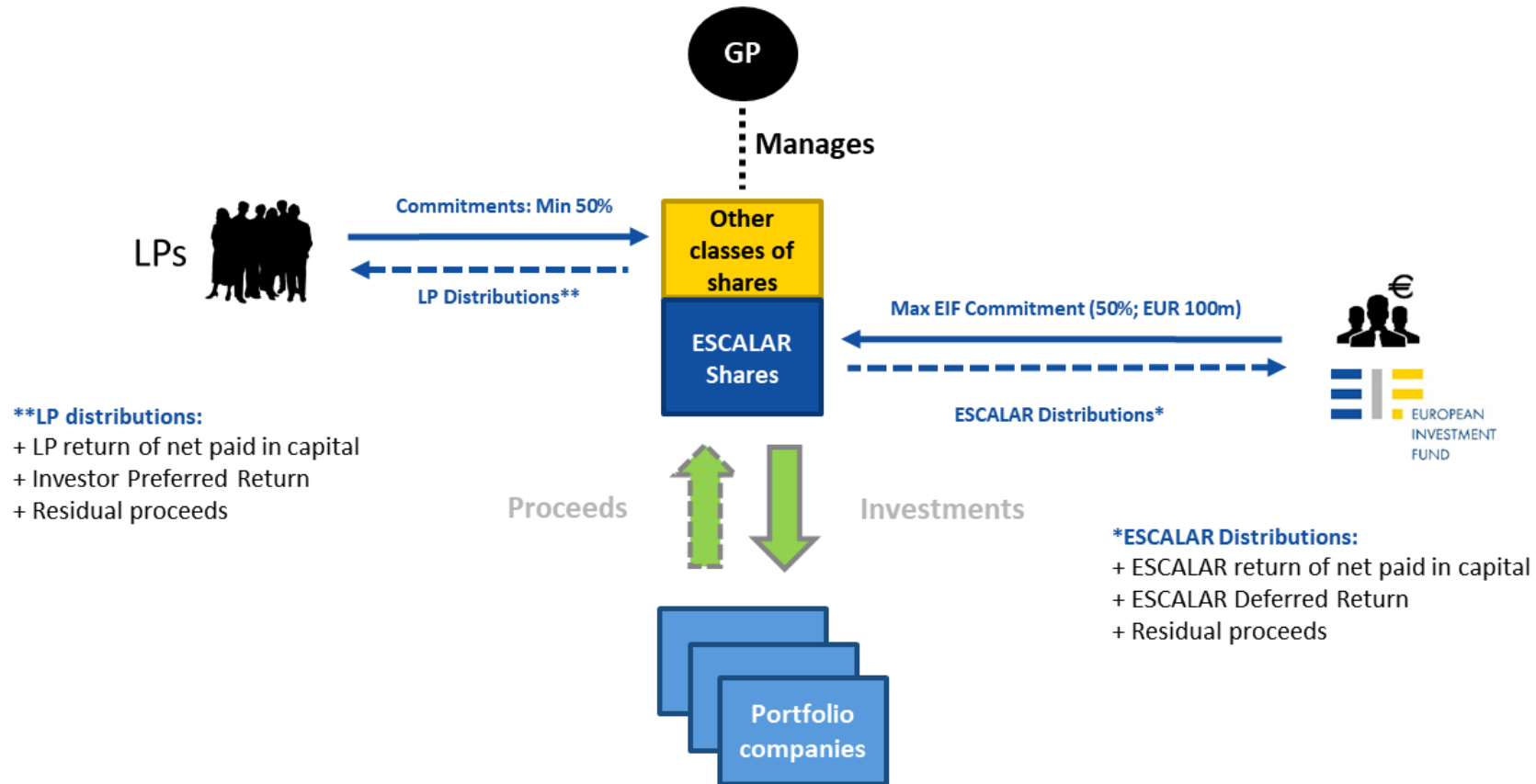
The EIF may also publish on its website a list of Target Final Recipients, containing the name, the address and the type of finance received under the ESCALAR Programme.

Any ESCALAR Financial Intermediary, or Target Final Recipient may, prior to receiving financial support under the ESCALAR Programme, 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. In addition such publication shall not be required if: (i) it would be illegal under the applicable laws and regulations, or (ii) the Target Final Recipient is a natural person.

### Record Keeping

The ESCALAR 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 ESCALAR Financial Intermediary shall require each 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 Final Recipient.

Appendix 1: ESCALAR Option 1 structure



Appendix 2: ESCALAR Option 2 structure

