



Annex II: Direct Guarantee Term Sheet applicable to the guarantee capacity from the Ukraine Investment Framework

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1 | Overview

In order to support the private sector affected by the rapidly intensifying economic effects of the Russian war against Ukraine, the European Commission has entrusted EIF to implement and manage the partial portfolio guarantee programme established under the dedicated Ukraine Investment Framework and aimed at supporting recovery and reconstruction investments in Ukraine.

The primary objective of a Guarantee is to contribute to the objectives of the Ukraine facility established by the Ukraine Facility Regulation through enhancing access to finance to MSMEs in Ukraine and to further strengthening support for Ukrainian MSMEs within specific target groups.

The portfolio Guarantee shall be issued and managed by EIF to offer unfunded credit risk protection to selected Financial Intermediaries originating Debt Financing, which comply with the criteria set out in this Call, including:

1. This document setting out the indicative terms of the Guarantee, and
2. Any additional criteria set out in the Guarantee Agreement (as described below).

The Guarantee shall partly cover the credit risk associated with a Financial Intermediary's newly originated Debt Financing transactions which are included in the relevant Portfolio(s). The Guarantee is structured as a capped Guarantee.

The Guarantee is a financial guarantee and shall cover Defaulted Amounts, on a transaction by transaction basis, incurred by the Financial Intermediary in respect of each defaulted eligible Final Recipient Transaction, up to the Cap Amount.

The origination, due diligence, documentation and servicing of the Final Recipient Transactions shall be performed by the Financial Intermediary in accordance with its standard origination and servicing procedures. In this context, the Financial Intermediary will originate each Final Recipient Transaction based on the pre-defined eligibility criteria listed below, and on those set out in the relevant Guarantee Agreement.

In order to include a Final Recipient Transaction in a Portfolio (to be covered by the Guarantee) a Financial Intermediary will have to send an Inclusion Notice on a quarterly basis, in accordance with the terms of the Guarantee Agreement.



2 | Indicative terms of the direct Guarantee

The terms below apply to the portfolio guarantee issued by EIF and to all Final Recipients and Final Recipient Transactions.

2.1 | General Provisions

Type of Guarantee	The Guarantee shall be a capped Guarantee.
Language and Governing Law	The terms of the Guarantee Agreement shall be in the English language and shall be subjected to the laws of Luxembourg. The parties shall agree to expressly submit the Guarantee to the professional payment guarantee regime governed by the Luxembourg law of 10 July 2020 on professional payment guarantees.
Structure	The Guarantee shall cover Defaulted Amounts incurred by the Financial Intermediary at a Guarantee Rate subject to the Guarantee Cap Rate. The Defaulted Amounts, net of any Recoveries, covered by the Guarantee shall in aggregate not exceed the Cap Amount stipulated in the Guarantee Agreement between EIF and the relevant Financial Intermediary. The Guarantee Cap Rate may cover both expected and part of the unexpected losses. Capped guarantee 11



Applicability of the Base Currency	Final Recipient Transactions shall be denominated in (i) the national currency of Ukraine, (ii) EUR and (iii) USD. If the Portfolio consists of Final Recipient Transactions denominated in EUR and another currency, the Base Currency shall be EUR. The Committed Guarantee Volume shall be expressed in the Base Currency. Payments made under Payment Demands and Recovery notices shall typically be made in the Base Currency, as further specified in the Guarantee Agreement. The following main principles shall apply: i. for the purpose of including Final Recipient Transactions in the Portfolio, any amounts denominated in a currency other than EUR shall be subject to conversion by the EIF using the Spot Rate on or around the date of effectiveness of the relevant Guarantee Agreement; ii. for the purpose of paying amounts claimed by a Financial Intermediary under the Guarantee Agreement, any amounts denominated in a currency other than EUR referred to in any Payment Demand shall be subject to conversion either by the Financial Intermediary or by the EIF using the Applicable Foreign Exchange Rate; iii. for the purpose of paying recoveries to the EIF (if applicable), any amounts denominated in a currency other than EUR shall be subject to conversion by the Financial Intermediary using the Spot Rate on or around the date of (i) receipt by the Financial Intermediary, in case where such amounts are retained, or (ii) payment by the Financial Intermediary to the EIF, in each case in accordance with the terms of the relevant Guarantee Agreement, (or a similar mechanism); and iv. for the purpose of determining the Guarantee Fee to be paid under the Guarantee Agreement, the EUR equivalent of the amount payable to the EIF in respect of a Transaction denominated in another currency shall be determined using the Spot Rate on the date of that conversion; in each case as further specified in the Guarantee Agreement.
Inclusion Process	In order for Final Recipient Transactions to be covered by the Guarantee, they must be signed during the Inclusion Period (or as otherwise agreed in the Guarantee Agreement) and reported to EIF by way of inclusion notices sent by the Financial Intermediary on a quarterly basis. The Inclusion Period typically starts on the date of the signature of a Guarantee Agreement with a Financial Intermediary. The Inclusion Period will be set out in the Guarantee Agreement and will last 2 years.
Guarantee Termination Date	The Guarantee shall terminate on the earlier of the following dates: a) the date on which an Early Termination Event has occurred;



	b) the date (if any) on which EIF is no longer liable to effect further payments to the Financial Intermediary and the EIF has no further claims against the Financial Intermediary; c) the last scheduled maturity date of the Final Recipient Transaction; and d) 15 years from the signing date (1/10/2025) of the Guarantee Agreement between the EIF, the EIB and the European Commission.
Trigger Event	EIF may include trigger events in the Guarantee Agreement, in order to manage Portfolio ramp-up and credit quality. The occurrence of a trigger event entitles but does not oblige EIF to end the Inclusion Period for the relevant Portfolio.
Early Termination Event	The Guarantee Agreement contains certain events of default, including with respect to non-payment, breach of obligation, insolvency, unlawfulness, sanctions and misrepresentation. The occurrence of an event of default, if it has not been remedied within the relevant grace period (if any), may result in early termination of the Guarantee.
Level of Guarantee Rate	The Guarantee Rate shall typically be set at up to 70%.
Determination of the Cap Amount	The Cap Amount corresponds to the level at which the obligation of the EIF to pay under the Guarantee is capped, which is EIF's maximum liability under the Guarantee and is calculated for each Financial Intermediary by EIF at any relevant time, as the product of: i) the lowest of (i) the Committed Guarantee Volume and (ii) the Actual Guarantee Exposure Volume (as evidenced in the last Report received prior to any such calculation); and ii) the Guarantee Cap Rate.
Defaulted Amounts	Means any amounts that are due, payable and outstanding under a Final Recipient Transaction as a result of a Final Recipient Transaction Default, provided that such default has been continuing for at least 90 consecutive days, and excluding: a) late payment or default interest, capitalised interest, fees, damages for breach of contract, indemnified losses and any other costs and expenses; b) in the case of Revolving Final Recipient Transactions, principal amounts exceeding the relevant Credit Limit Amount and any interest amounts which accrued thereon; and c) any interest amounts which accrued after the earlier of (i) a period of ninety (90) calendar days from the first missed payment, (ii) the date of the Final Recipient Transaction Default, and The Guarantee Agreement may specify deviations from the above definition of Defaulted Amount taking into account the specificities of certain types of Debt Financing.



Enhanced Access to Finance Measures Implementation	The Guarantee agreement will contain specific obligations for the Financial Intermediary to ensure that the benefit of the guarantee is passed on to the largest extent possible to the Final Recipients. The Financial Intermediary shall implement financing features and/or focus on one or more categories of SMEs and SMEs+, which are not provided for at all by the Financial Intermediary and/or improve the requirements applied under the Financial Intermediary's current credit policy and/or financing practice. The benefits stemming from the guarantee coverage will be transferred to SMEs and SMEs+. Such benefits may include: - reduced collateral requirements; - lower cost of borrowing; - longer maturities; or - enabling the relevant Financial Intermediary to take on more risk and reach out to underserved segments. EIF shall analyse the transfer of benefit mechanism proposed by the Financial Intermediaries and may, where appropriate, adjust the transfer of benefit during the due diligence phase.
Right of clawback by the EIF	EIF will be entitled to be repaid by the Financial Intermediary certain amounts in specified circumstances, including any amounts paid under the Guarantee by EIF in excess of the Defaulted Amounts, in excess of the Cap Amount, and any excess amount paid as a result of an exclusion of a Final Recipient Transaction from the Portfolio.
Replenishment	During the Replenishment Period and if so regulated in the Guarantee Agreement at the discretion of EIF, the Financial Intermediary may include new transactions with Final Recipients in the Portfolio to replenish the amortised principal amount of Final Recipient Transactions. In case the provisions on Replenishment would not be applicable, the terms and conditions of the Guarantee Agreement, including inter alia the definition of Committed Guarantee Volume, Actual Guarantee Volume, Actual Guarantee Exposure Volume and the Cap Amount, shall be adjusted accordingly.
Final Recipient and Final Recipient Transaction Eligibility Criteria	The Financial Intermediary shall ensure that each Final Recipient and Final Recipient Transaction shall comply with the eligibility criteria indicated in Section 2.3.
Process for Payment Demands	The Financial Intermediary may call on the Guarantee for incurred Defaulted Amounts by sending a Payment Demand together with all required supporting documentation for defaulted final recipient transactions via a centralised platform in line with contractual requirements as specified in the Guarantee Agreement. . A Payment Demand shall only be valid if:



	1) it relates to the Defaulted Amounts with respect to Credit Events reported to EIF no later than the third Report Date following the calendar quarter in which the relevant Credit Event occurred; 2) if validated by EIF or its delegated entity upon successful receipt of all required supporting documentation to ensure final recipient transaction and payment demand eligibility; 3) it relates to Defaulted Amounts incurred by the Financial Intermediary in respect of Credit Events occurred no later than the Guarantee Termination Date. One Payment Demand may be sent by Financial Intermediaries for each calendar quarter, provided that it is sent no later than the Report Date following the end of such calendar quarter. If the Payment Demand is valid, the EIF (following the verification of the final recipient transaction and payment demand eligibility), shall pay any amounts claimed based on processes specified in the Guarantee Agreement.
Process for Recoveries	Where the Financial Intermediary receives Recoveries, a Recovery notice must be sent to EIF in order to notify Recoveries recovered or received by the Financial Intermediary in relation to the Final Recipient Transaction included in the relevant Portfolio(s). The Financial Intermediary shall send to the EIF at any relevant time, but not later than 30 days after the end of each calendar quarter a Recovery notice with the accompanying Recoveries schedule and shall pay to the EIF any relevant amount based on processes specified in the Guarantee Agreement.
Recoveries sharing	Recoveries shall be shared between the EIF and the Financial Intermediary in accordance with the Guarantee Rate (e.g. if the Guarantee Rate is 70%, the Intermediary keeps 30% of the Recoveries and shall pass on 70% of the Recoveries to EIF). However, if the amount of the losses exceeds the Guarantee Cap Amount, a corresponding amount of recoveries may first be allocated to the Financial Intermediary as further specified in the Guarantee Agreement.
Exclusion Process	At any time, the EIF may verify (and/or ask information from the Financial Intermediary on) whether a Final Recipient Transaction included in the relevant Portfolio is an eligible Final Recipient Transaction and whether its inclusion in the relevant Portfolio is in compliance with the terms of the Guarantee Agreement. At any time, the EIF may notify the Financial Intermediary of a non-eligible Final Recipient Transaction by sending an exclusion notice. If a Financial Intermediary becomes aware that a Final Recipient Transaction is or becomes a non-eligible Final Recipient Transaction or any other undertakings, requirements or requests of the Guarantee Agreement are not complied with or satisfied in connection with such Final Recipient Transaction, the Financial Intermediary shall include such information in the immediately following Report delivered to the EIF and flag any such Final Recipient Transaction as excluded. Final Recipient Transactions that do not comply with the Final Recipient Transaction Eligibility Criteria are deemed excluded from the relevant Portfolio (and shall not be covered by the Guarantee).



	If an eligible Final Recipient Transaction is or becomes a non-eligible Final Recipient Transaction as a result of any event or circumstance (even beyond the control of the Financial Intermediary), that Final Recipient Transaction shall not be covered by the Guarantee.
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2.2 | Miscellaneous provisions

Guarantee Fee and Payment Mechanics	The Guarantee Fee rate shall be formed of two components: • [to be discussed during due diligence – x.xx% per annum] on the outstanding guarantee cap amount and; • [to be discussed during due diligence x;xx% per annum] on the outstanding Portfolio amount. The Guarantee Fee amount will be payable in EUR. The Guarantee Fee will be calculated on a yearly basis in line with the calculation method as further specified in the Guarantee Agreement.
Servicing	The Financial Intermediary shall perform the servicing of the Portfolio(s), including monitoring and recovery actions, in accordance with its internal policies and procedures.
Reporting	Financial Intermediaries shall provide EIF with the information in respect of that calendar quarter in a Report on the Report Date. Other reporting may be required from the Financial Intermediary as specified in the Guarantee Agreement.
Monitoring and Auditing	Financial Intermediaries shall agree to allow and to provide access to documents and premises related to the relevant Guarantee for the representatives of the European Commission, the European Court of Auditors, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), the EIF, agents of the EIF, the EIB, and any EU or national institution or body which is entitled to verify the use of the Guarantee in the context of the Ukraine Facility – Capped Guarantee. To that effect, the Financial Intermediaries shall also include appropriate provisions in each agreement with Final Recipients.
Know your Customer	The Financial Intermediary shall, prior to the signature of the Guarantee Agreement, disclose to the EIF information on its beneficial owners and at any time thereafter, promptly inform the EIF of any change in its beneficial owners.
Record keeping	The Financial Intermediary shall maintain or be able to produce all the documentation related to the implementation of the Guarantee Agreement for a period of five (5) years following the Guarantee Termination Date. The Final Recipient shall maintain or be able to produce all the documentation related to the implementation of the Final Recipient Transaction and to the Grant (if applicable) for a period of five (5) years following the date of termination of the Final Recipient Transaction.



State aid	Final Recipient Transactions complying with the conditions set out in this Annex II and the Guarantee Agreement are considered as consistent with State aid rules.
Visibility and promotion	The Financial Intermediaries shall carry out adequate information, marketing and publicity campaigns, including through their website or alternative ways of communication, to achieve equivalent visibility. The Financial Intermediaries shall further ensure that the Final Recipient Transaction agreements, promotional material, press releases and any publication on their website (or alternative ways of communication to achieve equivalent visibility pertaining to the Guarantee Facility) contains a statement to the effect that the Final Recipient Transactions benefit from support from the Ukraine Investment Framework (as further detailed in the Guarantee Agreement). <u>The Financial Intermediaries should acknowledge the origin of, and ensure the visibility of, the EU funding by displaying the emblem of the Union accompanied by one of the following statements: ‘funded by the European Union – Ukraine Facility’ or ‘co-funded by the European Union – Ukraine Facility’ in each Guarantee. Also Final Recipients should acknowledge the origin of, and ensure the visibility of, the EU funding by displaying the emblem of the Union accompanied by one of the following statements: ‘funded by the European Union – Ukraine Facility’ or ‘co-funded by the European Union – Ukraine Facility’.</u>
Risk Retention	The Financial Intermediary shall maintain at all times a relevant portion corresponding to an economic exposure of at least 30% of the outstanding global principal amount of the Final Recipient Transactions included in the Portfolio. For this 30% portion, the Financial Intermediary shall not enter into any credit support, guarantee or other transfer of risk arrangement, provided that any collateral, security or guarantee payable to the Financial Intermediary that qualify as “recoveries” under the relevant Guarantee Agreement shall not be taken into account for this purpose.
Transfer	The Financial Intermediary shall not be entitled to transfer any or all of its rights and obligations under the Guarantee without the prior written consent of the EIF.
Restrictive Measures Implementation	Contractual provisions shall be included in the Guarantee Agreement to ensure that no funds or economic resources are made available directly or indirectly to, or for the benefit of, persons or entities subject to the Restrictive Measures.
International Conventions	Financial Intermediaries in the Guarantee Agreement shall: (a) apply EIF Policies and Procedures in relation to environmental and social principles and requirements to promote the respect of human rights and respect applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards; and (b) implement the relevant Guarantee Agreement in accordance with EIF Policies and Procedures in relation to international human rights law and the following guidelines, principles and conventions (if applicable): (i) UN Principles for Responsible Investment; (ii) UN Guiding Principles on Business and Human Rights;



	(iii) OECD Guidelines for Multinational Enterprises; (iv) UN Food and Agriculture Organization's Principles for Responsible Investment in Agriculture and Food Systems; and (v) International Labor Organization conventions.
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2.3 | Eligibility Criteria

Final Recipient Eligibility Criteria	The Financial Intermediary shall ensure that each Final Recipient shall comply with each of the following eligibility criteria: 1. It shall be acceptable as a counterparty to the Financial Intermediary in accordance with its respective internal policies and guidelines; 2. It shall be deemed potentially economically viable at the time of the signature of the relevant Final Recipient Transaction; 3. It shall not be a Restricted Final Recipient; 4. It shall comply with EIF's Exclusions and Restrictions Policy; 5. It shall not conduct as part of their business activities illegal activities according to applicable legislation; 6. It shall be established and operating in Ukraine; 7. It shall be an SME¹ or a SME+²; 8. It shall not be in an Exclusion Situation; 9. It shall comply with any additional Final Recipient eligibility criteria that may be specified in the relevant Guarantee Agreement.
Final Recipient Transaction Eligibility Criteria	The Financial Intermediary shall ensure that each Final Recipient Transaction shall comply with each of the following eligibility criteria: 1. It shall be newly originated (signed during the Inclusion Period); 2. It shall be denominated in (i) the national currency of Ukraine, or (ii) EUR, or (iii) USD; 3. It shall be in the form of a Debt Financing; 4. The proceeds thereof are not permitted to be used for consumer purposes (with "consumer purposes" being debt taken on by natural persons/individuals for personal (but not business) use or benefit; 5. Except in relation to a Qualifying Factoring Facility, its maturity date is not more than eighty-four months from the date that Final Recipient Transaction

¹ Commission SME Recommendation as amended from time to time.

² Means an enterprise which satisfies the definition of an SME other than the requirement to employ fewer than 250 persons provided that it employs fewer than 500 persons on the basis of its non-consolidated accounts and data, and so excluding any persons employed by that enterprise's "partner enterprises" or "linked enterprises", as those terms are defined in Commission Recommendation 2003/361/EC (OJ L124, 20.05.2003, p. 36).



	6. It shall comply with the maximum principal amount, which shall not exceed EUR 5,000,000 (or equivalent amount in any eligible currency); 7. It shall comply with the provisions on Enhanced Access to Finance Measures; 8. Re-financing of previous debt obligations of a Final Recipient shall not be eligible; 9. It shall comply with EIF's Exclusions and Restrictions Policy;³ 10. It shall comply with any additional Final Recipient Transaction eligibility criteria that may be specified in the relevant Guarantee Agreement.
Portfolio Eligibility Criteria	1. The Financial Intermediary shall ensure that the sum of the guaranteed initial principal amounts of the Final Recipient Transactions issued to SMEs shall account for 80% of the sum of the guaranteed initial principal amounts of all Final Recipient Transactions. 2. The Financial Intermediary shall use commercially reasonable effort to ensure at the end of Inclusion Period, that i) no more than 30% (by initial principal amount) of the aggregate of all covered Final Recipient Transactions have a tenor of less than 24 months; ii) at least 25% (initial principal amount) of all covered Final Recipient Transactions are made to (or, in the case of a covered Bank Payment Instrument, on the application of) a Vulnerable Person; and iii) the portfolio of covered Final Recipient Transactions includes transactions that aim to contribute to the objectives of the Ukraine Facility and the UIF strategic orientations and assist with the implementation of the Ukraine Plan and the policy priorities set out in the Guarantee Agreement.
Verification of Portfolio Eligibility of claims	1. EIF may at its sole discretion decide to appoint a delegated counterpart to assist EIF in performing any eligibility check. 2. Financial Intermediaries shall agree to allow and to provide access to documents and premises related to the relevant Guarantee to the delegated counterpart, including for the purpose of performing the checks set forth in section "Process for Payment Demands" above.

³ For the purpose of compliance with this eligibility criterion the Financial Intermediary may rely on representations or undertakings from the Final Recipient.