

JEREMIE Slovakia: Clarification of Call for Expression of Interest [No. JER-005/2](#) to select Financial Intermediaries that will receive resources from the JEREMIE Holding Fund for Slovakia to implement the following Financial Instrument: Risk Capital Financial Instruments

The aforementioned Call stipulated that: "Requests for clarifications from Applicants shall not receive individual replies. Instead, answers to all requests for clarifications received within the relevant deadline will be published together in a clarification document to be posted on the website www.eif.org, at latest on 2 March 2012".

In accordance with this provision, we hereby present such a clarification document.

Capitalised expressions utilised below shall have the meaning attributed to them in the above mentioned Call for Expression of Interest, unless otherwise defined below or the context requires otherwise. Questions may appear as they have been received without any editing from EIF; they also appear in a random order.

Question 1: Reference: page 4 in Call of Eol you indicate the distribution of funds utilized under this scheme:

Indicative capital allocation (millions EUR)	Region	Financial Instrument
3.3 (OP BR)	Bratislava Region	Seed Fund
5.6 (OP R&D)	Bratislava Region	Venture Capital Fund or Co-Investment Fund
22.1 (OP R&D)	Non-Bratislava Regions	Venture Capital Fund or Co-Investment Fund (with a maximum of EUR 4 million to a Seed Fund)

When Venture Capital Fund will be selected as an option for Bratislava region, should the manager of the Fund distribute EUR 3.3m under de-minis scheme in Seed Fund (assuming the manager has applied for both, VCF and Seed funds)? Or once VCF is selected for BA region, the total amount of funds EUR 8.9m will be distributed in Bratislava region under VCF structure?

EIF Answer: The allocation to a Seed Fund in the Bratislava region or Non-Bratislava regions must be implemented under De Minimis Regulation and cannot be instead invested through a VC Fund (under Reg. 800/2008). The Seed Fund(s) and the VC Fund or Co-Investment Fund are expected to be formed as separate legal entities.

Question 2: Reference: page 4 in Call Eol: "Applicants have to state what type of fund(s) they apply for to manage, the amounts to be managed and, in the case of a Seed Fund, clearly state which Region(s) will be covered (location of investment is decisive)." And page 5 of the Call for Eol: "Applicants are welcome to apply for more than one Financial Instrument, and indeed this is required when applying for managing a Seed Fund. Applicants willing to deploy an investment strategy based on more than one Financial Instrument need however to fill-in separate Expressions of Interest."

When applicant decides to apply for more than one type of Funds, should the applicant write separate proposals, or it is sufficient to write only one proposal clearly stating which Funds he is applying for and separate this one proposal into two or more sections? If the entity is willing to apply for all three financial instruments, how many proposals should be submitted to eliminate the risk of being dismissed from any scheme?

EIF Answer: Separate proposals must be submitted for each type of Financial Instrument applied for (VC Fund, Co-investment Fund, Seed Fund(s)). Such separate proposals can be submitted together within the same overall Expression of Interest so as to avoid duplication of information which is applicable to more than one (this must be clearly referenced when doing so).

Question 3: Reference: page 5 in Call of Eol: *"Financial Intermediaries can submit an Expression of Interest to manage only a Venture Capital Fund or a Co-investment Fund, but cannot submit an application to manage only a Seed Fund. Any application to manage a Seed Fund must be accompanied by an application to manage either a Co-investment Fund or a Venture Capital Fund."*

In the above mentioned text is written that Applicant can submit Eol to manage a Venture Capital Fund or a Co-Investment Fund. Is our understanding right that Applicant could choose only one of these Funds and not to apply for both of them (a Venture Capital Fund and a Co-Investment Fund)?

EIF Answer: Your understanding is correct. However, a single Applicant will not be selected to manage both a Venture Capital Fund and a Co-investment Fund concurrently. An Applicant is not prevented from applying for each separately, however, with the intention of having his application selected for one or the other based on what is considered the better proposal.

Question 4: Reference: page 5 in Call of Eol: *"To be noted that joint ventures and/or consortiums can express their interest as long as they indicate/nominate one coordinating entity as the contractual counterpart for the entire term of the Operational Agreement (in case of selection). Such Applicants are required to submit a joint Expression of Interest."*

In case of more than one entity applying forming a consortium or joint ventures – should the cooperation among the partners be established formally as a consortium or jointly owned entity, or is it possible to establish it on a subcontractor basis (i.e. the coordinating entity will have a long term contract with its partner/partners)?

EIF Answer: EIF has no specific preference as to the organisation of the joint venture.

Question 5: Reference: Annex 1

If the Applicant consists of more than 1 entity, should the Applicant provide the Applicant identification for all of them, or just for the authorised (coordinating) entity?

EIF Answer: Identification is required for all applying entities.

Question 6: Reference: Appendix 3 to Annex 2

If the Applicant consists of more than 1 entity, should the Applicant provide Applicant's certificate of registration for all of them, or just for the authorised (coordinating) entity?

EIF Answer: The certificate of registration is required for all applying entities.

Question 7: Reference: Appendix 3 to Annex 2

If the Applicant's certificate of registration is in different language than Slovak or English, should the Applicant provide the translation of such certificate by certified translator to the English language?

EIF Answer: Since the certificate of registration is neither in Slovak nor in English language, the Applicant would usually have to provide a translation of the certificate of registration by a certified translator into English or Slovak.

Question 8: Reference: Annex 2, page 19 Funds allocated for "Non-Bratislava Regions: total amount of funding EUR 22.1 million (including up to EUR 4 million for investment through a Seed Fund)."

Please could you state what is meant by up to EUR4 million? What is the minimum of Funds allocated for investment through a Seed Fund?

EIF Answer: There is no set minimum, but only a maximum of EUR 4m for Seed Fund from the EUR 22.1m allocated to Non-Bratislava regions.

Question 9: Reference: Annex 2, page 20 -Investment period "*Seed Fund: Initial and follow-on investments in Eligible SMEs are envisaged to be made no later than 31 December 2015. Venture Capital Fund: Initial investments in Eligible SMEs are envisaged to be made no later than 31 December 2015*" - with a footnote: "*Assuming that the applicability of the De Minimis Regulation is extended. If this is not the case, then the current deadline of 31 December 2013 will apply.*"

When will be available the final decision as regards to the final deadline for initial and follow-on investments and how should the uncertainty in this respect be addressed in the participants' expression interest?

EIF Answer:

EIF does not possess the information as to when such a decision will be taken, which will be taken solely by the European Commission. While no guarantees of extension can be provided, EIF itself considers an extension to be the more likely scenario. Applicants may decide to communicate on what assumptions the proposal has been submitted with respect to the deadlines for De Minimis.

Question 10: As for Seed Capital - if the De Minimis Regulation is not extended, then initial and follow on investments should be executed till 31 December 2013? Does this mean that all funds for BA region (EUR3.3m) as well as for Non-Bratislava region (up to EUR 4m) should be invested by 31 December 2012?

EIF Answer: All funds under the De Minimis regime would need to be fully disbursed by 31 December 2013 in case the de minimis extension did not materialise.

Question 11: As for Venture Capital Fund - should the same rules apply to the Venture Capital Fund as stated in Q10 with one exception - that only initial investments should be provided to eligible SMEs by 31 December 2012?

EIF Answer: For the VC Fund (under Reg. 800/2008), the committed amounts relating to the JEREMIE holding fund's participation would need to be disbursed by 31 December 2013 in case the Reg. 800/2008 extension did not materialise. To clarify, there is no prohibition on follow-on investments before this date but no new investments may be entered into afterwards.

Question 12: When the applicant is interested in management of both Funds (one for BA region and other one for non-BA region), should the Applicant establish the separate funds (legal entities) for BA region as well as non-Ba region or just treat the funds separately in terms of accounting and reporting?

EIF Answer: Adequate ring-fencing of committed capital and returns from investments and separate treatment of reporting and accounting are required which could be achieved through having separate legal entities or would need to be otherwise ensured.

Question 13: In Part II Selection Criteria for Seed & Venture & Co-Investment Funds Financial Instruments on page 26, in Eligibility Criteria is written that the Expression of Interest is duly signed. Should the Applicant sign each page of the Eoi or just in the stated areas?

EIF Answer: The Applicant only needs to sign in the stated areas.

Question 14: How should an Applicant distinguish the location of an investment?

EIF Answer: The location of an investment is where the majority of the benefit of the investment is expected to materialise (eg. fixed asset investment, revenue generation or location of employees).

Question 15: Should the location of an investee company be based on the relevant court at which an investee is registered?

EIF Answer: No, not necessarily. Please see above answer to question 14.

Question 16: How should an Applicant cover situations where an investee company operates in multiple locations in Slovakia, some of which are in Bratislava region and some of which are not?

EIF Answer: Please see above answer to question 14.

Question 17: Should an Applicant consider each situation for the proper determination of a location with certain level of materiality applied (most of activities in relevant region, most of employees in relevant regions, etc.)? What should that level of materiality be?

EIF Answer: Please see above answer to question 14.

Question 18: Call for EoI No. JER-005/2 at several instances refers to multiple Seed Funds. Should an Applicant assume that there could exist a Seed Fund for Bratislava region with the funding up to EUR 3.3mand a separate Seed Fund for Non Bratislava region(s) with the funding up to EUR 4m euro?

EIF Answer: Yes, this is possible, but only with a connected application for a VC or Co-Investment Fund in each case.

Question 19: Re Seed fund financed from OP BR – do the SMEs need to operate as innovators / creators of new products / processes only? Is there any view how material for the business of an SME should be the aspect of „supporting innovations or development of new products“?

EIF Answer: The definitions or scope of eligibility will be further discussed with selected applicants, but it is not reasonable to expect eligible SMEs to be only those who exclusively innovate and create new products/processes.

Question 20: Re Seed fund financed from OP BR – is a part of the definition of an Eligible SME „...spend funds on innovation or development of products ... typically with a technological component“ met if an SME is a producer of products and part of the SME operational budget is spent on innovation? What proportionality of the funds for development and funds for non-development related activities should an Applicant consider so that this part of the definition is met?

EIF Answer: Please see above answer to question 19.

Question 21: What level / amount of reporting should an Applicant assume for a given Financial Instrument? How should an Applicant estimate costs / man-hour commitment associated with a given level of reporting?

EIF Answer: reporting standards of EVCA can be assumed.

Question 22: Can Applicants make their commercial proposal subject to a minimal floor level of management fees rather than a percentage?

EIF Answer: Management fees are typically calculated as a percentage of the relevant basis (initially commitments). Any fees expressed as a nominal amount will be considered during the assessment of applications. The percentage limits will always apply.

Question 23: Will the Fund Manager(s) be required to follow public procurement rules as per Slovak statutory law when contracting providers of services (amongst others professional services, publicity and marketing, etc.)?

EIF Answer: As it currently stands, no, however this will remain subject to applicable Slovak law.

Question 24: Can a separate legal entity be created for the role of the Fund Manager if an Applicant is selected? Will the applicant be allowed to establish a separate ring-fenced entity which will enter into the respective agreements after the applicant is selected for contractual negotiations or the contractual party must be established at the time of the tender?

EIF Answer: The intended entity must be communicated, but not necessarily established, at the point of submission of the expression of interest.

Question 25: Call for EoI No. JER-005/2 sets out that „Applicants willing to deploy an investment strategy based on more than one Financial Instrument“ need to submit separate Expression of Interest. Does it mean that each Expression of Interest can cover one fund only?

EIF Answer: Please see above answer to question 2.

Question 26: Call for EoI No. JER-005/2 sets out that „Applicants willing to deploy an investment strategy based on more than one Financial Instrument“ need to submit separate Expression of Interest. Does it mean that if an Applicant wishes to apply for more than one Financial Instrument, it needs to submit a separate Submission of Interest for each fund it wishes to apply for?

EIF Answer: Please see above answer to question 2.

Question 27: Can EIF set out the minimal levels of capital allocation that it expects to allocate towards the Financial Instruments with a breakdown per Financial Instrument?

EIF Answer: There are no pre-defined minimal levels or allocations between financial instruments other than those set out in the Call for Expression of Interest. Any allocations will depend on the eligibility and quality of the proposals submitted. For the avoidance of doubt, the financial instruments detailed are the options available to Applicants, which does not mean that any or all of them will actually be implemented.

Question 28: Which hour of 30 March 2012 should an Applicant consider as deadline for the submission of Expressions of Interests?

EIF Answer: Any Expression of Interest received on 30 March 2012 meets the deadline (nb. CET is applicable in both Slovakia and Luxembourg).

Question 29: When (until which date) does EIF expect to select Fund Manager(s) for the Financial Instruments?

EIF Answer: There is no fixed deadline. EIF's typical selection process will apply.

Question 30: How long does EIF envisage to negotiate with the selected Fund Manager(s) the Operational Agreement and any shareholding agreement(s), if applicable for certain Financial Instruments?

EIF Answer: Please see answer above to question 29.

Question 31: What date should an applicant assume to be the starting date of the provision of services under Operating Agreement?

EIF Answer: Please see answer above to question 29.

Question 32: When does EIF expects to sign Operational Agreements with the successful applicant(s)?

EIF Answer: Please see answer above to question 29.

Question 33: What is the definition of a fiscal year?

EIF Answer: This depends on applicable jurisdiction and regulatory framework.

Question 34: Should an Applicant assume that its counterparty under Operating Agreement will be able to deduct VAT which will be charged on the management fee?

EIF Answer: No

Question 35: Do the documents listed in Appendix 3 of the Annex 1 to the Call for Expression of Interest No. JER-005/2 and declaration and statements listed in Appendices 4 to 6 of the above mentioned Annex, in case of consortiums or joint ventures, need to be completed by all participating entities?

EIF Answer: Please see answer above to question 5.

Question 36: Do the participating entities, in case of consortiums and joint ventures, need to document that they authorised a co-ordinating entity to act on their behalf in this Call for Expression of Interest No. JER-005/2?

EIF Answer: Underlying documentation which allows the assessment of the type, quality and extent of the consortium would be required.

Question 37: What exactly will be deemed to be an Eligible SME active in R&D? Does R&D need to be core business or is it sufficient if R&D is a support function within the business of a firm? Is the Applicant free to elaborate further on Eligible SMEs in this respect?

EIF Answer: Please see answer above to question 19. A similar approach will apply.

Question 38: Does EIF foresee to assign positive scores to Applicant(s) who will further define and limit usage of funds from investments at the level of target SMEs (coverage of direct R&D costs, capital expenditures, staff costs, working capital etc.) and/or request to limit purpose if the investment in the Operational Agreement?

EIF Answer: No further guidance on scoring will be provided to Applicants. It can be expected that certain limits will be inserted into the Operational Agreement.

Question 39: Does EIF foresee to receive proposals for other than economic terms and conditions (reinvestment policy, mechanism of the drawn-down, use of proceeds from investment)?

EIF Answer: EIF expects proposals to reasonably cover all relevant elements to aid assessment as per best practice.

Question 40: Is the applicant free to propose legal form of investment from JHF (loan commitment and loan drawdown, share capital contribution)? The legal form of the investment into the Financial Instrument is critical inter alia for (i) assessing taxation issues, (ii) operating costs of the vehicle, (iii) overall terms proposed, (iv) domicile and (v) operational flexibility of the Financial Instrument, and in turn for ability of the Applicant to propose firm economic terms and conditions.

EIF Answer: The Applicant is in principle free to propose the way in which the JHF will invest in the Financial Instrument, provided that this will be assessed by EIF, to make sure that the form of investment/participation is commercially acceptable, and ensures full compliance with the Call and, in particular, eligibility rules. In addition, the Applicant should be aware that non-standard forms of participation will need to be assessed against applicable law.

Question 41: Is the Applicant free to propose domicile, legal structure and tax status of the Financial Instrument? What criteria shall EIF use for evaluating and scoring these proposals? Is it possible to adjust commercial terms if final legal and tax status of the vehicles is different from what was proposed (i.e. because of the changes introduced during negotiation of the Operational Agreements)?

EIF Answer: The Applicant is free to propose domicile, legal structure and tax status of the Financial Instrument, subject to what is already stipulated in the Call for Expression of Interest, with the suitability of the proposed structure being assessed as part of the selection process. No further guidance on scoring will be provided to Applicants, however it should be noted that EIF will not support structures which facilitate tax evasion or tax avoidance and which are unnecessarily complex and/or established exclusively for tax motivations. See also the [EIF Offshore Policy](#).

Question 42: Annex 2 defines that the management costs include transaction costs and costs necessary to manage the Financial Instruments. Will it be possible to downstream transaction costs to target companies (or treat them as part of the investment) or will they need to be strictly borne by the fund manager (if to exceed the 3% threshold)? Please note that for small ticket transactions costs associated with legal documentation, technical DD, feasibility assessments and completion may easily represent rather significant part of the 3% cap or exceed that cap whereby the fund manager might be discouraged to apply best standards documentation and legal / technical DD practices.

EIF Answer: The 3% cap will apply to management costs, i.e. to all the Fund's assets utilised and spent by the manager other than investments. Capitalisation of costs on the investee companies is in principle excluded.

Question 43: Some of the terms, such as reporting, will be further specified in the Operational Agreements whereas the Applicants are requested to provide a firm proposal for commercial terms and

conditions. Will it be possible to adjust these terms should Operational Agreements impose additional duties (and hence cost) to those assumed (as specified in the business plan)?

EIF Answer: Suitability of terms will be assessed in detail during the selection process.

Question 44: Is the 3% cap on management costs deemed to be including or excluding VAT? Please note that if the Financial Instrument is incorporated in Slovakia, it will not be able to claim VAT returns whereby the fund manager will need to be registered for VAT purposes and most of other external costs (legal fees, audit fees, etc.) will come as VAT included as well.

EIF Answer: The 3% cap is inclusive of VAT.

Question 45: The objective is to invest seed capital, start-up capital and expansion capital. These investments are done into undertakings, which are not cash flow positive and may turn cash flow positive only over the longer run. In turn, Financial Instruments will likely not generate regular cash inflow via dividend income or exit returns in early years of the FI's life. Does EIF foresee to contribute additional draw-downs for coverage of operating costs of the Financial Instrument or can the Applicant propose to built-up headroom at the end of the investment period to cover operating expenses of the FI?

EIF Answer: Operating expenses of the financial instrument are expected to be covered by the management costs.

Question 46: Can the Applicant propose the Fund's size as a range? Is it envisaged that EIF might trim down the proposed fund sizes and use sort of allotment? Is it possible to adjust terms and conditions, including legal status, domicile and commercial terms should the final fund sizes differ what was proposed?

EIF Answer: Yes, the fund size can be expressed as a range. As regards allocation of capital available, please see answer above to question 27. Suitability of terms will be assessed in detail during the selection process.

Question 47: Please confirm our understanding that the Distribution cascade included in Annex 2 was meant as for distribution of returns and that usage of proceeds at the Financial Instrument shall be always first to trade debtors for covering operating needs of the vehicle, including tax and other contractual obligations.

EIF Answer: Operating expenses of the financial instrument are expected to be covered by the management costs. Proceeds contribute to returns for which the distribution cascade applies.

Question 48: Will there be a sanction mechanism if the Financial Instruments do not use full amount of committed capital within deadline for whatever reason?

EIF Answer: Regular monitoring will take place, and suitable measures may be taken to address situations where they may be required.

Question 49: How is the drawn-down for the Seed Fund and Co-Investment Fund going to work contractually (notice period, periods for legal steps needed should contributions be done via capital increase, conditions precedent for draw-down)?

EIF Answer: These are details that will follow for any selected applicant.

Question 50: Are the Applicants requested to send entire application via email (application may include scans and potentially large and untransferable attachments)?

EIF Answer: The entire application must also be sent by email. Zip files may be used or attachments can be sent in more e-mails.

Question 51: Does EIF wish to nominate members of the investment committee?

EIF Answer: Industry best practice will apply.

Question 52: Who are going to be parties in the Operational Agreement? Will the Financial Instrument documentation be signed at the level of the Financial Instrument?

EIF Answer: EIF will sign the Operational Agreement in the name and on behalf of SZRF. The relevant contracts will be entered into with the entity set up by the Applicant, being the Fund, the Fund manager and/or any other entity depending on the applicable law and structure selected.

Question 53: Who is going to provide the first drafts of the Operational Agreements?

EIF Answer: The fund manager usually provides drafts of the legal documentation.

Question 54: Is it possible to combine resources from OP R&D and OP BR in the same Seed Fund?

EIF Answer: Please see answer above to question 12.

Question 55: EIF requests that investment period of a Seed Fund and Venture Capital Fund be until 31 December 2015, assuming that the applicability of the De Minimis Regulation and Reg. 800/2008 is extended. Should the applicability of the two regulations not be extended, will EIF provide protection (for example waiver of sanction mechanisms, if any) to the Fund Manager(s) if the funds are not invested within the deadline as a result of the lack of extension?

EIF Answer: The communicated deadlines result from applicable Structural Funds and State aid regulations and as such are not able to be influenced by EIF.

Question 56: Should the Applicant be awarded the management of more than one Financial Instrument, does it have to establish a separate legal entity for each of these instruments?

EIF Answer: Please see answers above to questions 1 and 12.

Question 57: If applying for the Seed Fund and one of either VC or Co-Investment Funds, does the Applicant have to submit a separate application for each instrument?

EIF Answer: Please see answer above to question 2.

Question 58: If there are more Applicants forming a consortium or joint venture, what is the required legal form of cooperation among the parties. Is it sufficient if the cooperation is covered by bi/multi-lateral agreements or do the parties have to establish a separate legal entity which will submit the Expression of interest?

EIF Answer: No separate entity is needed; the applicants are free in terms of how to organise their joint venture, but EIF would need to assess the legal basis of their relationship.

Question 59: According to the Call, the Applicant can “..submit an Expression of Interest to manage only a VCF or a Co-Investment Fund, but cannot submit an application to manage only a Seed Fund”. Does it mean the Applicant is not allowed to apply for Venture Capital AND Co-Investment Funds?

EIF Answer: Please see answer above to question 3.

Question 60: The call states that the maximum amount of funds to be allocated through a Seed Fund in Non-Bratislava regions is EUR 4m. Is there a minimum amount of funds which must be allocated through a Seed Fund with this respect?

EIF Answer: Please see answer above to question 8.

Question 61: Re Annex 2 – Private investor: In case the Applicant applies for the VC Fund and the funds to be allocated via this instrument are split between Bratislava and Non-Bratislava regions, what is the required accounting and legal treatment? Is it necessary to establish a separate VC Fund (legal entity) to facilitate investments in both regions?

EIF Answer: Please see answer above to question 12.

Question 62: Is it possible to change team members in the negotiation phase and what lock-in conditions for the team members will be defined in the Operational Agreement?

EIF Answer: The team composition will be assessed during the selection process. Any individuals who will not be part of the team going forward should be noted and the proposed time commitment of team members should be clearly communicated in the application. Further details for the Operational Agreement will follow for any selected Applicant. Generally, lock-in for members of the team is as per standard of the market, being adverse consequences for the group in case the identified members leave or do not dedicate sufficient time to the structure. Usually the consequence of these events, unless remedied by the group in a way acceptable for the investors (e.g. by replacement of the leaving member), includes removal of the entire team.

Question 63: What if the Applicant needs to change / can no longer guarantee a particular key member participation (due to employment termination for instance)? Are there any reporting obligations of the Applicants to inform about such changes after the tender (before signing of the Operational Agreement)?

EIF Answer: Any such material changes must be communicated as soon as they are known.

Question 64: Will it be possible to change shareholder structure of a Financial Intermediary and what lock-in conditions will be defined in the Operational Agreement?

EIF Answer: The shareholder structure will be assessed during the selection process. Any potential changes to the structure including individuals who will not be part of the structure going forward should be noted. The proposed time commitment of the managing team, including individuals, to the business should be clearly communicated in the application. Such details for inclusion in the Operational Agreement will follow for any selected Applicant.

Question 65: Please provide guidance as to how EIF will assess adequate diversification in case of Co-Investment Fund. How should an Applicant prepare a business plan for this Financial Instrument, if size of the fund, size of the individual investments and number of individual investments are unknown?

EIF Answer: It is expected that an Applicant fund manager proposes the fund strategy.

Question 66: What are the requirements for the audit of financial statements of Financial Instruments? Is an applicant free to propose reporting frequency and audit / auditor requirements and terms?

EIF Answer: These requirements will be based on usual industry best practice with at least an annual external audit.

Question 67: To what extent will the strategies, intentions and plans as to marketing, management costs, incentive policies, etc. outlined in the business plan be binding for the Applicant?

EIF Answer: The proposal must be genuine and realistic but is not strictly binding.

Question 68: What level of legal arrangement need to exist between the Applicant and team members, including members of investment committee and of various boards, at the time of the bid?

EIF Answer: This is up to the Applicant, and will be assessed accordingly.

Question 69: Does the Applicant need to be a legal entity? Is it possible to form a consortium from various individual contributors without legal status?

EIF Answer: The applicant should be a legal entity.

Question 70: What should an Applicant document in relation to the proposed individual team members / committee members if they are of no particular existing legal relationship with the Applicant? Should they submit and sign Appendix 4 and Appendix 5 to EoI separately?

EIF Answer: This is up to the Applicant, and will be assessed accordingly.

Question 71: Will a proposal of commercial terms according to which total costs might potentially exceed the 3% limit (i.e. audit, reporting, legal, transaction costs, aborted fees, not borne by the fund manager but by the vehicle) be evaluated as non-complaint and hence excluded from evaluation?

EIF Answer: The proposal should be in line with the Call: "The management costs of the Financial Instruments shall be according to market practice and shall not exceed, on a yearly basis, 3% of the committed capital during the investment period, and of the invested capital net of the cost of exited and written-off investments thereafter. For the purposes of the above, the management costs shall be deemed to include any fees, expenses and costs necessary to set up and manage the Financial Instruments, including transaction costs that may be borne by the Financial Instrument." The applicants would not be excluded based on grounds of higher fees, but this would be subject to negotiation in the due diligence process.

Question 72: Can an Applicant propose fixed (in percentage terms) fee for itself so that other transaction costs are borne by the Financial Instrument as incurred?

EIF Answer: The proposed management fee should cover all fees and expenses of the Fund Manager. It is expected that other expenses are borne by the Financial Instrument but the total fees and expenses must in any case comply with the management costs cap.

Question 73: Is the 50-50 split between the Co-Investment Fund investment and private co-investor the only possible or 50% share of private investment is the minimal requirement and can be greater? Will the pari passu requirement be met should there be differences in timing in disbursement, statutory and nomination rights, asymmetrical resolution of conflicts, etc. (please note that joint venture / competency risk is being evaluated as one of key risks and potential deal breakers in many investment situations).

EIF Answer: 50% is the minimal share of the private investor, at all times. Pari-passu means that they will share exactly the same upside and downside risks and rewards and will hold the same level of subordination, and will exit from the SME on equivalent commercial terms. The pari-passu principle would not allow different timing or asymmetric conflict resolution.

Question 74: If the 50-50 split between the Co-Investment Fund investment and private co-investor is meant as firm (not at least 50% is co-invested from private sources), does it mean that there any particular limitations on subsequent contributions and investments?

EIF Answer: See answer to question 73. Pari-passu treatment applies whenever the Co-investment Fund is investing; for subsequent investments made by the Co-investment Fund, the pari-passu treatment continues to apply.

Question 75: Will the 50-50 split in Co-Investment Fund be applicable only for new / fresh investment contributions or pari passu requirement relates to any previous or subsequent investment from third parties?

EIF Answer: See answer to question 74.

Question 76: Will a situation where a private sponsor disbursed in cash for instance EUR 1m into share capital in March that particular year and the Co-Investment Fund invests EUR 1m for 50% equity stake later that year be considered as meeting private co-investment rule? What if private sponsor maintains management control (but otherwise there are equal distribution and risk sharing rights and obligations)?

EIF Answer: Pari-passu means that they will share exactly the same upside and downside risks and rewards and will hold the same level of subordination, and will exit from the SME on equivalent commercial terms. The above described would not meet this requirement.

Question 77: Is it envisaged that legal documentations regarding the investment need to be done in English language?

EIF Answer: No, this is not required.

Question 78: Does EIF foresee to require reporting in multiple languages (English and Slovak at the same time)?

EIF Answer: No, English is required (Slovak is optional).

Question 79: Will the pre-selected Applicants obtain certain level of exclusivity if selected for the documentation phase or do they need to cover all their expenses for that phase at their own risk? What costs Applicants can expect at the negotiation phase?

EIF Answer: No Applicant retains any right to sign an Operational Agreement at any point in the process, and must bear its own costs.

Question 80: Can buy-back options be added to equity or quasi equity investments (assuming these options will be reasonably out of the money)?

EIF Answer: Such details will follow for any selected Applicant in the context of negotiations on an Operational Agreement, if applicable.

Question 81: If there are multiple Financial Intermediaries selected by EIF, will there be any sharing mechanism for marketing or publicity campaigns costs between the Financial Instruments / Financial Intermediaries?

EIF Answer: No formal arrangement or requirement in this respect will be imposed.

Question 82: Will there be any specific requirement as to public campaign costs stipulated in the Operational Agreement?

EIF Answer: No.

Question 83: Can successful Applicant expect some consultancy assistance from EIF / other bodies, namely with respect of compliance and legal issues, during the investment period?

EIF Answer: To be discussed with any selected Applicant

Question 84: Who is going to cover the legal costs of establishment of the Financial Instrument?

EIF Answer: Any costs related to the set-up of the financial instrument are to be covered within the management costs cap.

Question 85: Will the proposal for establishment of the Financial Instrument in foreign EU country which has entered into foreign investment protection treaty with the Slovak republic be considered as an advantage?

EIF Answer: No further guidance will be provided to Applicants on the assessment criteria.

Question 86: Will tax considerations be regarded by EIF as proper justification for cross border structures?

EIF Answer: See answer to question 41.

Question 87: Will tax optimal structure be regarded by EIF as an advantage (at the expense of having cross border element within the structure)?

EIF Answer: No further guidance will be provided to Applicants on the assessment criteria.

Question 88: When applying for management of the Seed Fund, please confirm, the maximum amount of the capital that can be applied for is EUR 7.3 million (EUR 3.3 million for Bratislava region and EUR 4 million for Non-Bratislava region)?

EIF Answer: Maximum allocation to Seed Fund(s) is EUR 7.3m. Please also see answer above to question 12.

Question 89: When applying for management of the Co-Investment Fund, is the maximum amount of the capital that can be applied for EUR 27.7 million (EUR 5.6 million for Bratislava region and EUR 22.1 million for Non-Bratislava region).

EIF Answer: Yes, and please also take note of answer above to question 12.

Question 90: When applying for management of both Co-investment Fund and Venture Capital Fund, can the amounts to be managed in each instrument be stated in ranges with a possibility of adjustment at a later date?

EIF Answer: Please see answers above to questions 3 and 46.

Question 91: Can the applicant be a non-Slovak (i.e. EU) legal entity?

EIF Answer: Yes

Question 92: As per Annex 2 Section I, p. 20, Eligible SMEs:

“Applicable to Financial Instrument(s) financed from OP R&D only: Investments can be made in Eligible SMEs active in R&D in any of the following priority areas of OP R&D²⁰:

1. Health – quality of life
2. Progressive materials and technologies
3. Biotechnologies
4. Knowledge technologies supported by ICT
5. Infrastructure for development of society
6. Energy and energetics
7. Security and defence (only SMEs of civilian character)
8. The use, protection and reproduction of biological resources
9. Protection of the environment
10. Use of domestic raw materials resources

Applicable only to Seed Fund financed from OP BR:

Investments can be made in Eligible SMEs which are eligible for aid from OP BR, namely new or existing SMEs which support innovations either directly of a technological character or SMEs which spend funds on innovation or development of products and/or processes typically with a technological component.”

In the next section - Excluded sectors and activities, it is stated : “Investments can be made in projects in all sectors of the economy, except...”

Please clarify if investments can be made in all sectors of the economy with the stated exclusions or only in the areas provided under section “Eligible SMEs” on p. 20-21.

EIF Answer: Investments can be made in all sectors of the economy, that are not among the stated excluded sectors, subject to, and if consistent with, the areas for eligible SMEs on p.20-21 which also apply.

Question 93: Please advise, what is the expected status and composition of the Investment Committee which will approve the investments for each fund for any of three Financial Instruments. Please advise, if the applicant should propose all/certain members or it will be nominated by Fund investors (i.e. EIF and private investors respectively).

EIF Answer: Please see answer above to question 51.

Question 94: Could you please describe conflict of interests, especially for Co-Investment Fund, more in detail? Where can I find more information about conflict of interests as recognized by European Investment Fund?

EIF Answer: In this case conflicts of interest are any circumstance or action involving any one or several of, but not exclusively, an investee company(ies), a potential investee company(ies), investor(s), team member(s) of the manager or connected person(s) etc. where such circumstance or action may give rise to potential or actual benefits or other considerations affecting the Financial Instrument or any other person(s) or entity(ies) connected to the Financial Instrument. In general, EIF is careful to address the avoidance of potential and actual conflicts of interest, and ensures certain measures are put in place to do so.

Question 95: What is the estimated timing of the selection process of the Preferred Investor(s) once the Expression(s) of Interest are submitted by the Deadline? What is the estimated timing of finalizing the arrangement with Preferred Investor(s), i.e. relevant negotiations and signing relevant contracts once the Preferred Investor(s) is selected?

EIF Answer: Please see answer above to question 29.

Question 96: Are third party transaction costs (such as costs of legal and financial DD) 'chargeable' to the investments successfully closed? Will the Fund Manager be allowed to charge (on arms-length basis) for services provided to investee companies above the Management Fee? (this would help to make qualified estimate of the budget and define the % size of the Management Fee needed)

EIF Answer: The 3% cap will apply to management costs, i.e. to all the Fund's assets utilised and spent by the manager other than investments. Capitalisation of costs on the investee companies is in principle excluded.

Question 97: What is the maximum limit per investment in the Venture Capital Fund? Can the Fund do 2-3x 1,5m over 3+ years (while taking into consideration sound portfolio allocation limits i.e. 15-20% of the fund's size per investment)

EIF Answer: Overall limits per investment may be set out in the Operational Agreement, but otherwise it is possible to make several investments while respecting the maximum investment over a 12-month period stemming from the GBER, as applicable from time to time.

Question 98: Is Eligible SME also a company based in Slovakia, operational in Slovakia, but having subsidiaries/business units abroad?

EIF Answer: Please see the answers to questions 14-17.

Question 99: Is it possible to syndicate investments from Venture Capital Fund and Co-Investment Fund (working under assumption that the Fund Manager manages both Financial Instruments)?

EIF Answer: Please see answer above to question 3.

Question 100: Is there a preference or restrictions on country-of-origin of Private Investors (in Venture Capital Fund) or Private Co-investors (for investments to be conducted by Co-Investment Fund)?

EIF Answer: There is no preference or restriction as to the country of origin of the private investor.

Question 101: What is the process of notification of a relevant aid scheme? (as defined in 'Investment Amount into Eligible SME')

EIF Answer: The notification process, if any, is to be undertaken by the Ministry of Education, Science, Research and Sport of the Slovak Republic. Any selected fund manager would be informed of the outcome of such notification process.

Question 102: Is there a recommended/preferred level of % investment by the Fund Manager into Co-Investment Fund?

EIF Answer: The investment by the Fund Manager is to help ensure an alignment of interest with investors.