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WORKING DOCUMENT

From: General Secretariat of the Council
To: Working Party of Financial Counsellors

Subject: InvestEU - Commission replies to Member States questions on the Investment Guidelines

Delegations will find attached the replies by the Commission to Member States questions on the investment guidelines regarding InvestEU to be discussed at the Financial Counsellors Working Party on 24 November 2020.

Questions from Member States on Investment Guidelines et al.

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1. Merger of legacy portfolio

AT1 Apart from the presumably very high set-up cost for this merger, once merged, administrative/ risk costs for the EIB most possibly will be reduced. With this, according to the bank, EUR 12bn could be freed and used to ramp up InvestEU. In our view, this sum is seems quite/ too high if we do not decide at the same time that the bank is allowed to use reflows stemming from EFSI and other instruments - as revolving funds at least until end of next MFF, i.e. end 2027. With this, the reflows of EFSI operation could be re-used for new lending and this might generate most of the EUR 12bn. Do you know more/ do you share this assessment? It then would be a top up of EUR 12bn at the exclusive use of the EIB, not following the 75%/ 25% split with other implementing partners, right?

COM reply:

The estimate of EUR 12bn made by the EIB stems from the scheduled amortization of legacy portfolios considering the disbursed amounts for EFSI IIW Debt portfolio and CEF and InnovFin Debt instruments. This EUR12bn would be a result of the reduction of the EIB Residual Risk Tranche for these instruments but would not, according to the current guarantee agreements, immediately result in an EFSI, CEF and InnovFin first-loss piece (FLP) release. In case of merger with InvestEU, this freed-up risk bearing capacity could be used by EIB to sign a higher (by EUR 12bn) amount of operations under InvestEU over time.

AT2 By merging the legacy portfolios with InvestEU portfolio no separate accounting would take place; hence, as the EFSI et al portfolios would not exist any longer, they couldn't be further assessed / evaluated on their own, right?

COM reply:

The proposed merger requires an assessment of the legal consistency with the underlying legislation, and possibly adjustments to the relevant legislative acts, especially those governing the respective financial instruments/budgetary guarantees. This assessment is ongoing.

There could be a distinction between legacy and new InvestEU operations for reporting purposes. Consequently, it could be possible to assess the performance of legacy portfolios separately from the new InvestEU ones.

NL1 Which portfolios are the relevant for this (EFSI debt standard, InnovFin Debt and CEF, also others?)

COM reply:

The EIB legacy portfolios that would be relevant for the merger with InvestEU would be the EFSI IIW debt under the Infrastructure and Innovation Window, Connecting Europe Facility Debt Instrument and InnovFin Loan Services for R&I Facility under Horizon 2020. Other instruments like NCFE and PF4EE under Life could be considered, subject to further analysis, but would provide limited benefit due to relatively small amounts of EU Guarantee.

Instruments managed by the EIF (capped and uncapped guarantees for portfolios of debt operations to SMES) are not appropriate for the merger. This is because EU support in these cases covers the expected losses of the underlying portfolios which are likely to be consumed. A merger would thus not increase the risk-bearing capacity of InvestEU.

- (**NL1**) How large are the expected costs/savings of the other elements (next to the 12 bn amortizations, so for diversification, lower administrative costs, etc.)? How certain are these expectations?

COM reply:

The Commission has not yet concluded its analysis of the proposal and it is therefore not able, at this stage, to comment on administrative costs or savings.

- (**NL1**) How is ensured that the current programmes are still monitored and evaluated individually, when they become part of the new portfolio?

COM reply:

After the potential merger, the monitoring, control and evaluation would be done according to the InvestEU Regulation and the relevant provisions of the Financial Regulation. EIB would need to continue to indicate which operations are from legacy portfolios and which are new

InvestEU operations, so that performance of current programmes could be monitored and assessed or evaluated separately from the new InvestEU operations if needed.

- (NL1) What are the main differences between the rules for the current programmes and InvestEU? What implications does consolidating these portfolios under the InvestEU regulation have?

COM reply:

The main financial features and risk characteristics of legacy operations are similar to those expected within the relevant InvestEU financial products.

The main difference in terms of financial and risk related rules is that the CEF and InnovFin debt instruments are in the form of financial instruments where the EU FLP contribution is fully funded by the EU Budget. On the other hand, EFSI and InvestEU are budgetary guarantees that are not fully funded as they imply a contingent liability (difference between EU Guarantee and provisioned amount).

The Commission is assessing the implications and the feasibility of bringing together two funded financial instruments, one EFSI product (carved out from the EFSI programme) and one InvestEU financial product under a single scheme.

- (NL1) Why is consolidation only possible from 2023 onwards?

COM reply:

Some programmes (i.e. CEF Debt Instrument) have an investment period that runs until 2023 for signatures (and 2022 for approvals). Consequently, the portfolios under the instruments would not be fully established and the EU budget committed as FLP for these instruments would not be fully used for signed operations before that date. Any approval of new operations under legacy instruments until the end of their investment period also need to respect the relevant eligibility criteria under the original legal framework. These two aspects would make the potential merger before 2023 much more complex, albeit still technically feasible. Moreover, due to the need to frontload InvestEU investments in the first three years given that the main funding source for InvestEU is NGEU, the availability of additional financing capacity over the last four years would help rebalancing the support to investment over the seven-year MFF period.

- (NL1) Which role do the repayments (interest, principle, recoveries) to the EIB and the decreasing of the provisioning of the guaranty play in the proposal? What would happen with these two cash flows without this proposal, and what would change exactly with this proposal? What numbers are we talking about (please segregated per instrument (e.g. EFSI debt standard) and per cash flow (repayments and decreasing provisioning)?

COM reply:

The potential merger would not affect the level of revenues like interest payments, or recoveries from the legacy operations attributable to the EU budget. The level of EU revenues from legacy operations depends on the conditions in the financing agreements like interest rates, tenor, as well as the future level of defaults, which are independent from the merger.

The risk-revenues from the legacy portfolios attributable to the EU budget would be managed under the InvestEU Regulation and treated as InvestEU revenues.

The repayments from the combined FLP will still materialise, but later than in a scenario without a merger.

2. Sustainable investment

2.1 Climate tracking and sustainability proofing

BE6 Climate tracking methods are different depending on the programme. For example, the method is different between InvestEU and JTF: this needs to be explained more clearly. How can blending instruments be combined with different tracking systems?

COM reply:

Climate tracking systems differ slightly from one programme to the other based on the provisions in the respective Regulations. The InvestEU tracking system would take into account, among others, also the system under the Common Provisions Regulation and adjust it to the very granular needs of InvestEU as well as ensure appropriate use of EU Taxonomy criteria. In case of blending of other programmes with InvestEU, InvestEU rules would apply including the InvestEU tracking system. In case of combinations of support from different instruments, separate legal basis would apply and each programme would track climate action based on their legal base.

PL2 *"Moreover, Article 7(3) of the InvestEU Regulation foresees that projects inconsistent with the climate objectives, according to the principles set out in the guidance on sustainability proofing, shall not be eligible for support."*
Due to the importance of this new statement, we ask for clarification on which projects are /can be inconsistent with climate objectives.

COM reply:

Firstly, the InvestEU Regulation has an exclusion list in Annex V. So a first filtering out is made throughout verification of proposed operations against the excluded activities.

Afterwards, climate proofing is required, with some proportionality caveats, and it will help with identifying and mitigating impacts in connection to climate change mitigation and climate change adaptation.

BG1 Regarding the introduction of supplementary reporting requirements, the administrative burden should be well balanced. Provided that all implementing partners have passed the pillar assessment process, the COM should rely on their existing internal systems and procedures, especially for projects below a certain threshold. Sustainability proofing shall be based on the principle of proportionality, with a focus on reducing the administrative burden for both the implementing partner and the final recipient.

COM reply:

The InvestEU Regulation already includes provisions for proportionality: a threshold under which sustainability proofing is not applicable, and screening for the identification of impacts. The considerations of avoiding undue administrative burden are further streamlined in the sustainability proofing guidance being developed, with a gradual approach proposed for intermediated finance. Implementing partners will need to develop capacity to deal with these requirements, especially the ones that do not have procedures and systems in place to deal with environmental and social due diligence. However, this should not be considered as a burden but rather as an asset and creation of a European level playing field of promotional institutions in the medium to long run.

BG2 In our view, **climate tracking reporting should be done on an aggregate level of the portfolio** and not on a project-by-project basis. The COM should provide further guidance on which of the existing methodologies would be used under InvestEU.

COM reply:

According to the InvestEU Regulation proposal, the climate and environmental tracking shall be done based on a guidance document to be developed by the Commission in cooperation with potential Implementing Partners. In line with the current best practice for investment support instruments (as under EFSI, EIB approach, EBRD approach), tracking shall be done on a project-by-project basis. The results could however be presented at portfolio, product and InvestEU level. The Commission is working closely with the potential Implementing Partners to design a tracking system that avoids undue administrative burden, especially for portfolios of small transaction to SMEs, for example.

ES16 May you clarify for the purpose of the Investment Guidelines if there is a difference between environment and climate objectives? May you provide at this stage more details about how Implementing partners should perform the

climate, environmental and social sustainability proofing of an operation? It should be taken into account that Implementing partners do not have the same means to perform this task than the EIB. The process should be streamlined for them. The “guidance on the EU climate, environmental and social sustainability proofing” should be agreed with Implementing partners.

COM reply:

The climate and/or environmental target is applicable only to the Sustainable Infrastructure window, and the aim is to have a balanced sectorial approach. Climate objectives refer to the contribution to climate change mitigation (reduction of emissions) and climate adaptation (increasing resilience to climate change related risks). Environmental objectives refer to other policy areas not covered by mitigation and adaptation, such as pollution reduction, sustainable waste management, circular economy, drinking water supply and sanitation, restoration of ecosystems etc.

In line with the provisions of the InvestEU Regulation, the sustainability proofing guidance needs to be developed by the Commission in cooperation with the potential Implementing Partners. In this respect, an experts working group was established, with participation of policy Directorates-General of the Commission and experts from potential Implementing Partners. Until now, three meetings of the working group have taken place and a fourth one is envisaged for late November. The guidance being developed strives to find a balance between the EU commitments and ambitions, and the reality on the market. The proofing process proposed in the guidance would entail a reasonable administrative burden, some potential Implementing Partners will need to build capacity to deal with the requirements.

ES18 Where the implementing partner concludes that no sustainability proofing is to be carried out it shall provide a justification to the Investment Committee or the Commission. To provide this justification to both of them may be an administrative burden.

COM reply:

Indeed, this point has also been raised in the latest consultation on the Investment Guidelines with potential implementing partners and the Commission has agreed to delete the reference to the Commission in the text. The latest drafting indicates that the implementing partner has to provide justification to the Investment Committee only, in line with the Regulation. Some limited ex-post transparency requirements on the results of the proofing process could also be envisaged.

2.2 JTS

BG4 Keeping in mind that InvestEU is supposed to contribute 30% of the overall financial envelope of the Programme to climate objectives, we would support **enhancing the possibilities for blending operations and combinations**, as stipulated in the draft investment guidelines in order to avoid creating a restriction that could hamper reaching the ambitious objectives of the

EU towards a green and carbon-neutral economy. A clarification from the COM on why financing under the InvestEU JTS shall not be combined with public sector loan blending facility (pillar 3), except for advisory support would be welcome.

COM reply:

The InvestEU Regulation as proposed by the European commission in May 2020 allows for combination of support with the Just Transition Fund. Such combination of support however is not allowed under the Regulation on the Public sector loan facility ('Pillar 3' under the Just Transition Mechanism) that foresees that as a general rule, projects receiving support from Pillar 3 cannot get support from other Union programmes, as mentioned in Working Document n. 27, to avoid overlaps and double funding.

Under the InvestEU Regulation, Member States will have the possibility to contribute to the Member State compartment of InvestEU through a transfer of funds under shared management to develop ring-fenced geographical financial products under one set of rules and simplified State aid rules.

The Commission encourages Member States to engage in the design of the next programming period and to identify where leveraging private investments through the InvestEU programme would be relevant to support the objectives of the contributing programme. This mechanism is particularly valuable for wide-scale climate transition investment programmes such as the renovation of buildings.

ES2 Dedicated incentives for implementing partners in just transition projects. We believe it would be appropriate to further specify and define the dedicated incentives for implementing partners in just transition projects. They should not undermine the level-playing field with other InvestEU operations. These incentives should be well justified and decided on a case by case basis, and subject to clear limits.

COM reply:

The dedicated incentives for implementing partners to support projects benefiting just transition territories will not be further specified in the Investment Guidelines in order to maintain open all the options and find, together with the relevant implementing partner, the incentive that would be most suitable for the specific characteristics of the case (i.e. it will depend on the geography served, the underlying risk of projects supported, the kind of financing to be offered to the market, etc.). These conditions will be set down at the level of the guarantee agreements to be signed between the Commission and the implementing partner.

PL5 *"The InvestEU JTS can be implemented through any InvestEU financial product under the [five] policy windows."*

We request for clarification whether such implementation can be carried out through a single financial product envisaged for regions both eligible and non-eligible for JTS.

COM reply:

Yes. The Commission envisages the inclusion of Just Transition Territories under financial products covering also different geographies. Any project outside a Just Transition Territory that will count towards the JTS target as benefiting such Territory must demonstrate that it is key for the climate transition of the Just Transition Territories. The creation of a financial product purely covering territories eligible for JTS can nonetheless be envisaged, should the relevant implementing partner propose it.

PL6 *"After the adoption of a relevant Territorial just transition plan, such operations or their relevant components shall count towards the InvestEU JTS investment mobilisation target even if they were approved before the adoption of the plan."*

In the situations where operations (or their components) will be approved before the adoption of the transition plans, will it be possible to obtain more favourable conditions (dedicated incentives) for the InvestEU guarantee? If so, on what basis?

COM reply:

The implementing partners will be able to obtain favourable conditions on operations serving the just transition, as specified in the guarantee agreement. When negotiating the guarantee agreement, the Commission will take into account the latest version of the Just Transition Plans to set out territories under the relevant financial products that will trigger the favourable conditions. It could be explored whether the guarantee agreement could offer incentives before the Just Transition Plans are fully fixed but, in that case, those incentives would have to be reversed in case the operations would eventually not benefit territories defined in Just Transition Plans. This may be rather complex to put in place.

This provision foresees the possibility to account already approved operations located in or benefitting Just Transition Territories towards the InvestEU JTS on an ex-post basis as Territorial Just Transition Plans will not yet be in place in early 2021 when the InvestEU programme comes in force. Once these plans are approved and if they cover the territories where an InvestEU operation has already been approved, such previously approved operation benefitting the given JT territory could be counted towards the InvestEU JTS contribution of the implementing partner and the overall InvestEU JTS investment target provided it meets all the InvestEU JTS conditions and requirements.

[2.3 Link to Taxonomy](#)

BE1 The need to complete update the references to the various EU directives and regulations, such as on taxonomy, disclosure, clean hydrogen, agri/fish/biodiversity sector regulations, circular economy, waste treatment... What about the legislative proposals currently under discussion (for instance on blue hydrogen)?

COM reply:

The InvestEU Regulation mentions that the development of the two guidance documents (Climate & Environmental tracking and Sustainability proofing guidance) should be developed consistent with other guidance documents developed for other Programmes (e.g. CEF II, CPR), and appropriately take into consideration the EU Taxonomy. There is no other requirement to take into consideration any other legislative proposal. However, to ensure a coherent approach with other upcoming proposals in a dynamic manner, the Commission will update the necessary references at the time of publication of the two InvestEU guidance documents.

BE2 The need to standardize language with clear regulatory references: the reference to ESGs is used without a clear link to taxonomy. It should be specified. When talking about green bonds, it is also unclear whether or not reference is made to the 'EU green bond standard'. Is it this reference, which at this stage is a guideline and not a regulation, that the Commission intends to use?

COM reply:

When reference is made in the Investment Guidelines to green bonds, this reference refers to green bond finance in a broader sense and not only to green bonds that would comply with any future EU Green Bond Standard (EU GBS).

Please note that the EU Taxonomy is a classification meant to identify environmentally sustainable economic activities, which will be put in place gradually. The Commission will adopt criteria on climate change mitigation and adaptation in the next weeks, which will enter into force in early 2022, and the criteria for the four other environmental objectives by end 2022, to enter into force in early 2023. InvestEU will cover a broader range of activities than the EU Taxonomy and will start running before all the technical criteria of the EU Taxonomy are in place. Therefore, these cases and timeline gaps need to be covered too.

BE3 In particular, the use of the taxonomy should be clarified: it is not clear how the taxonomy will be applied. Will it be used as a means of identifying eligible investments or only as a disclosure tool?

COM reply:

The appropriate use of the EU Taxonomy, once formally adopted and applied in the market, is foreseen for two purposes in the context of InvestEU, (1) climate and environmental tracking, and (2) sustainability proofing. For both purposes, the Commission will issue separate guidance documents, which will specify the methodologies, including references on how the EU Taxonomy will be taken into consideration.

However, the EU Taxonomy is not supposed to add an additional layer of eligibility to the eligibility areas already included in Annex II of the InvestEU Regulation. As mentioned in the point above, the EU Taxonomy is a classification system meant to identify activities contributing substantially to one of the six objectives without doing significant harm to the other five

objectives. InvestEU has a broader eligibility, ensuring a balanced approach between different EU policy priorities.

2.4 Other questions

CZ1 The definition of the sectorial programme which can be used for blending is not entirely clear. Specifically, will it be possible to blend support from the Modernisation fund with the Just transition scheme? If yes, how could the support be combined?

COM reply:

For the purposes of the investment guidelines, by sectorial programme the Commission intends any Union programme that includes an enabling clause in the relevant legal basis allowing for blending.

However, the Modernisation Fund created by the EU ETS Directive to support investments in modernising the power sector and wider energy systems in certain Member States is operated under the responsibility of the benefitting Member States, i.e. it is not centrally managed by the Union.

As no enabling clause is foreseen in the legal basis of the Modernisation Fund regarding blending, blending operations under InvestEU (and therefore for pillar II of the Just Transition Scheme) cannot be envisaged in relation to the Modernisation Fund. Combination of the Modernisation Fund resources with InvestEU can only occur at project level. Notably, Modernisation Fund grant support might be combined with InvestEU finance for individual investments and schemes in benefitting Member States, subject to state aid clearance and applicable thresholds.

PL4 *"The implementing partners shall annually report to the Commission, on aggregate level, on the operations contributing to the climate and environment targets and, if applicable, separately per contributing Fund under shared management in the Member State compartment. Such reporting shall include relevant indicators, where applicable."*

Please confirm that implementing partners will only report to the EC? Will the Investment Committee not be informed at any stage about the next stages of the project in the form of a report?

COM reply:

The Investment Committee's role, as laid down in Article 23 of the InvestEU Regulation, does not include ex-post checks to already approved projects but to approve the coverage of the EU guarantee to operations (e.g. projects) proposed by the implementing partner.

3. Financial structuring and risk

BE4 What is the methodology that the Commission will apply to assess the evolution of sectoral risks, by portfolio, by activity? This question is crucial for our public finances.

COM reply:

The Commission will monitor annually the financial risk exposure under the EU guarantee and the sustainability of the contingent liabilities arising from it, as required by Article 41(5) of the Financial Regulation, based on an InvestEU Risk Methodological Framework developed by the Commission in cooperation with the EIB Group and the other implementing partners. This Risk Methodological Framework will include a risk methodology that will allow to assess and monitor the adequacy of the provisioning rate over the lifetime of the EU guarantee. Such a methodology will consider the financial impact of specific financial products taking into account the risk sharing models and risk profile of the underlying financing and investment operations to be covered.

According to Article 41(5) of the Financial Regulation, a breakdown of operations covered by the InvestEU guarantee by sector will be provided by the Commission on an annual basis.

ES6 Financial Contribution: The investment in the senior tranches from implementing partners should be considered as part of their financial contribution.

COM reply:

Under InvestEU, each implementing partner is required to provide a financial contribution, from its own resources, to InvestEU, in order to allow alignment of interest through risk-sharing between the EU and an implementing partner.

Based on a proposal by the Commission, the methodology for the evaluation of financial contribution is still under discussion among the experts representing potential implementing partners in the InvestEU Risk Expert Group. While it has been agreed that all tranches will be taken into account, including senior tranches, for computing the financial contribution, the details of the proposed approach still need to be defined. The methodology is planned to be finalised towards the end of the year.

ES7 High risk granular portfolios: *“high risk granular portfolios such as energy efficiency and renewable energy for households or SMEs, greening of mobile assets under SIW used to be a thematic product in the Investment Guidelines and are now considered as a general financial product”*.

We would rather prefer to keep this product as a thematic product.

COM reply:

To be defined as such, thematic products need to respect two requirements at the same time: (i) high policy added value, and (ii) high coverage from the EU guarantee, justified by their high financial risk.

In the current version of the guidelines, capped and uncapped guarantees provided by the implementing partners are considered as general products under all the windows. This would typically cover the type of portfolios referred to in the question. This does not mean that high risk granular portfolios in energy efficiency and renewable energy for households are now not considered as high policy value or that they are receiving less guarantee coverage.

The Commission will consider further clarifying in the next version of the guidelines that those portfolios could also be considered under thematic products.

ES10 It should be considered in exceptional circumstances the possibility to increase the limit of 50% of the project cost of a direct operation. In exceptional Strategic cases, the limit of 50% of the fund size for indirect equity operations should be increased. For all the three limits some flexibility could be preserved and the following may be added “unless otherwise specified in these investment guidelines under section 5.

COM reply:

The limit of 50% set in regard to project costs of a direct operation and for indirect equity operations (investments in funds) will be applied. The Investment Guidelines may foresee an exception for investments in technology transfer funds, as for such early-stage, high-risk funds, attracting finance from other sources/ investors could be particularly difficult.

ES11 A thematic financial product, that requires a higher EU guarantee, may be justified not only due to a higher risk profile but also when it is addressing a new risk.

COM reply:

Please see also reply to ES7. The Commission considers that investments with a higher risk profile include also investments whose risks are of a novel nature and as such are difficult to quantify.

ES13 Probability of default sometimes is not the most crucial and adequate factor to assess the risk of a direct debt-type operation. For instance in a sector highly regulated such as social housing the Probability of Default is low but for several reasons the support of the EU guarantee is justified. We would suggest to include after probability of default the following: “*or other means demonstrating the higher/additional risk*”.

COM reply:

Financial support under InvestEU can be provided to address sub-optimal investment situations in a variety of policy areas specified by the InvestEU Regulation. Sub-optimal investment situations may result from higher financing risk or other factors leading to market failures and investment gaps. Under the proposed Social Investment and Skills windows, support for the

financing of affordable social housing is possible. There is no need to make an amendment to the probability of default approach for that purpose.

ES19 For duly justified cases (regulatory constraints for national mandates) and circumscribed to a specific InvestEU financial product, it should be possible for the Implementing Partner not to retain any risk on its balance sheet. This does not automatically presume a 100% coverage from InvestEU, but rather a combination of InvestEU coverage and another source of guarantee for a 100% coverage of the financing operation.

COM reply:

Alignment of interest between the EU budget and the implementing partners is at the core of the functioning of the InvestEU budgetary guarantee. Therefore, it is expected that an implementing partners bear a share of the risk in InvestEU financial products. However, the Investment Guidelines envisage limited exceptions to the standard principle under duly justified circumstances. The conditions for the availability of the InvestEU guarantee and the possible combination with another source of guarantee would have to be negotiated and defined in the guarantee agreement.

IT3 “For all direct debt-type operations, the implementing partners shall carry out their standard risk assessment... For intermediated operations, the implementing partners may rely on the standard procedures of financial intermediaries.” Different implementing partners may have different risk assessment procedure: so the reference to “standard” risk assessment is not clear. Furthermore, as this Information shall also be submitted to the Investment Committee, it not clear how this information can be compared and aggregated for risk management purposes.

COM reply:

Implementing partners should conduct the risk assessment of direct debt-type operations under InvestEU in accordance with their own standard procedures, as they would do for any other debt-type financing, and without taking into account the EU guarantee and their own financial contribution to determine the risk profile of operations.

While risk assessment standards of implementing partners may slightly vary, such risk assessment standards would have to comply with requirements for risk assessment of international rules, notably Basel III.

Regarding comparability of risk assessments of implementing partners, the InvestEU Regulation foresees that the EIB, in close cooperation with the Commission and implementing partners, defines the risk mapping system that relates to the operations of the implementing partner, in order to allow such operations to be assessed on a common rating scale.

IT4 “The implementing partner shall be obliged to retain a minimum of 20% of the exposure on an individual operation for the purpose of alignment of interest.”
Does this mean that a transfer of the exposure/risk connected to the 20 percent is forbidden? It is not clear, as the fact that the EU guarantee does not cover 100 per cent of the exposure ensures the alignment of interest per se, so a further transfer of the exposure should be permitted.

COM reply:

This provision applies to the cases in which the InvestEU guarantee covers a standalone individual operation (not a portfolio of operations). The Investment Guidelines indeed foresee that an implementing partner retains a minimum risk exposure of at least 20% for each individual operation, in order to ensure alignment of interest between the EU and the implementing partner. Those minimum 20% risk exposure of an implementing partner for each individual operation cannot be reduced further, for instance through guarantees from other parties. Such own risk exposure (of minimum 20%) is deemed necessary to ensure careful selection of individual operations including risk assessment by implementing partners.

NL4 “Based on the information received from the implementing partner, the Investment Committee shall verify that an InvestEU supported financing or investment operation submitted by an implementing partner or a combination of such operations submitted by more than one implementing partner:

- For direct operations, shall not exceed 50% of the total project cost,*
- For indirect equity operations, shall not exceed 50% of the fund size,*
- For indirect debt operations, at least 20% of the exposure shall be retained by the financial intermediary.”*

How did you arrive at the percentage that at least 20% of the exposure shall be retained by the financial intermediary?

COM reply:

The logic of requiring risk exposure by the financial intermediary for indirect debt operations of at least 20% for each operation is that such minimum risk retention allows a balanced alignment of interest between all risk-sharing partners (the EU, the implementing partner and the financial intermediary). The approach follows the risk-sharing and risk retention approach for standalone direct operations (i.e. minimum risk exposure of the implementing partner of at least 20% - see reply to IT4).

NL6 “Investments by implementing partners in funds shall typically not represent more than 25% of the fund size. In the cases of high policy value added, investments representing up to 50% of the fund size may be allowed, except under the Social Investment and Skills window where it may be up to 75% of the fund size.”

On what basis is here an exception for pillar I of InvestEU?

COM reply:

It is unclear to the Commission to what the question is referring when mentioning ‘pillar I of InvestEU’, in particular when linking it to the passage in the Investment Guidelines on the limits to investments in funds. If the question is referred to the Social Investment and Skills window, the exception is due to the low development of many market segments in this area (social innovation or impact investment) which require a higher level of commitment to attract investors to areas which are not attractive.

NL5 “The part of financing covered by the EU guarantee shall represent in aggregate up to 70% of the overall equity-type financing provided by the implementing partner under the different financial products and own risk financing shall represent at least 5% of the overall equity-type financing provided by the implementing partner under any financing or investment operation.”
How did you arrive at the percentage of 70%?

COM reply:

The number incorporates the expected coverage by implementing partners in main equity products, based on the current financial instruments and EFSI. As an example, under EFSI the EU guarantee and the EIB split *pari passu* (50% each) the risk of investments in infrastructure funds, while the participation of EIF in venture capital funds may go as low as 5%.

The 70% can be achieved as an average across equity-type portfolios. Of the remaining 30%, 25% can be covered by another guarantee while 5% must be retained by the implementing partner in order to ensure a minimum alignment of interest.

PL8 “The EU guarantee may also take a subordinated position in respect of an individual operation. In this case, the maximum exposure of the EU guarantee on an individual operation is limited to 25% of the overall amount of financing provided by the implementing partner. The implementing partner must take a share of at least 5% to the subordinated position.”
This is a new limitation. In view of the current market situation increase of the maximum exposure of the EU guarantee on an individual operation should be envisaged in case of subordinated debt financing

COM reply:

This is not a new limitation. The alignment of interest of at least 5% required by the implementing partner and the limit to 25% of the overall amount applied to individual transactions in case of subordinated financing has always been present in the investment guidelines. A subordinated guarantee coverage of 25% on an individual operation represents a very significant credit risk enhancement for the implementing partner.

PL9 *"The EU guarantee may also cover an FLP or a mezzanine tranche in respect of the relevant portfolio of financing and investment operations financed by the implementing partner. Where the EU guarantee covers the FLP, the implementing partner must take a share of at least 5% to the FLP."*

Clarification is needed on whether the minimal IP share refers to the overall amount of financing provided by the implementing partner under a financial product or it is 5 % of the thickness of the FLP.

COM reply:

5% refers to the minimum share in the FLP that the implementing partner needs to take, *pari passu* with the Commission. Should an FLP be present, the implementing partner would then very likely fully cover the senior tranche.

PL10 *"It shall be limited to up to 30% of the overall amount of financing provided"*

Under the RID window, there should be also an option to increase the thickness of the FLP i.e. due to the high-risk profile.

COM reply:

The Commission believes that for general financial products the limit of 30% is appropriate also under the RID window. The limit can be considerably higher under a thematic financial product.

4. Policy Windows

BE8 6.1.2.1: need to recall the compliance with AMLD ...

COM reply:

Implementing partners will be checked during the Pillar Assessment on the processes they have in place to check for anti-money laundering and counter-terrorism financing, including in financial intermediaries.

BE9 6.2.1.1 (p.40): How does the Commission characterise the “EU healthcare needs and solutions” and “unmet long-term EU healthcare investment needs”?

COM reply:

From a policy point of view, it is well acknowledged that the reforms and modernisation of health systems require sustained financing - both for up-front investments and during a transitional period until the reforms are implemented and bring the anticipated benefits and returns.

In this context, investments are needed not only in the traditional areas of hospital infrastructure and medical equipment, but also on several additional fronts: new facilities such as primary care and community care centres; digital systems such as eHealth and mHealth tools and services;

system re-organisation into new service models; novel financing/reimbursement methodologies; integration of new innovative products/technologies; and education and up-skilling of health workforce in new roles and skills.

The lack of investments in health has been documented by the High-Level Task Force (HLTF) on investing in social infrastructure in Europe, which indicates an annual investment gap of €70bn in social infrastructure for health and long-term care across the EU Member States. Furthermore, a market study commissioned by the EIB and Commission has identified a combined deficit in healthcare capital stock (assets) of €262bn in 18 Member States¹. The same study revealed that even if EU Member State strategies prioritise investments in areas such as primary care and disease prevention, in practice, little is invested in these.

Considering the specific circumstances brought by the Covid-19 pandemic, the notion of “EU healthcare needs and solutions” and “unmet long-term EU healthcare investment needs” is explained in the Investment Guidelines text on pages 33 and 40 respectively:

- *Investments in operations with high perceived risk or capital intensity requirements targeting **rapid response to urgent EU healthcare needs and solutions** of high public interest such as manufacturing, provision and stockpiling of critical vaccines, medicines, devices, personal protective equipment.*
- *Supported operations shall also target **unmet long-term EU healthcare investment needs** such as financing testing and production of vaccines and treatments and increased resilience and competitiveness of the EU pharmaceutical industry as a whole, including production of chemicals and active pharmaceutical ingredients*

CZ3 The draft InvestEU regulation excludes “*investments related to the extraction of gas*” from the eligible activities. Our understanding is that only extraction of gas is not eligible in this case and other investments related to gas are therefore eligible. Could the EC confirm our understanding?

COM reply:

This is correct. On the way towards climate neutrality in 2050, the natural gas will still have a role to play, however, essentially as a transitional fuel that can help reduce emissions, notably by displacing coal, and serve as a flexibility provider backing-up the renewable energy production, contributing to energy security. For that reason, gas infrastructure projects are eligible under some EU budget programmes proposed within the Multiannual Financial Framework for 2021-2027, including the draft InvestEU Regulation.

Furthermore, the InvestEU Regulation requires that all investment projects be subject to sustainability proofing (as regards their climate, environment and social dimensions) and comply with Article 7.3 of the draft Invest EU Regulation, which states that “*Projects that are inconsistent with the achievement of the climate objectives shall not be eligible for support under this Regulation*”. The results of the sustainability proofing will also be considered in this respect.

¹ <https://eiah.eib.org/publications/attachments/report-health-sector-study-20180322-en.pdf>

ES4 Social and affordable Housing: The document should differentiate between social housing and affordable housing and both options should be considered eligible for support.

COM reply:

The inclusion of stand-alone affordable housing operations was excluded in the 2019 partial agreement between the co-legislators that limited investment to social housing alone. The May 2020 Commission proposal expanded this concept to “affordable social housing” so that InvestEU can support investment to address the issue of disadvantaged persons excluded from the regular housing market due to solvency constraints, with a particular focus on the most vulnerable and socially excluded. In the latter case, InvestEU should follow a housing-led approach, targeting investments that combine the provision of housing units with person-centred enabling support services.

ES12 Would it be possible to clarify the process to decide if a joint general or a thematic financial product should be developed to address policy objectives falling under more than one policy window?

COM reply:

The Commission has identified in the investment guidelines an allocation mechanism for financial products to fall under each window based on the final recipients they serve.

However, for certain kinds of financial products, the involvement of two or more window means a better coverage of certain final recipients coupled with an avoidance of multiplication of offers to the market.

As an example, equity funds investing in innovation are usually covering SMEs, small midcaps and midcaps. Taking into account the requirements laid down in the investment guidelines regarding minimum coverage of eligible final recipients to be achieved by each covered fund and considering that large midcaps are not eligible under the SMEW, the support of innovative final recipients via an equity product would have needed to be split between the RIDW (to cover for innovative midcaps) and the SMEW (to cover for innovative SMEs and small midcaps). However, the most efficient way ahead would be to create a joint product encompassing both windows.

The decision to establish a joint product will be taken by the Commission and the relevant implementing partner on the basis of the scope of the financial products proposed by the latter and in respect of the allocation criteria of the investment guidelines.

ES15 May you clarify if “housing” could be included the category of “social infrastructure”?

COM reply:

Affordable social housing is included under the category of social infrastructure in line with Annex II point 12. Student housing is also mentioned under the same point. On the other hand plain real estate development activity, such as an activity with a sole purpose of renovating and re-leasing or re-selling existing buildings as well as building new projects is part of the excluded activities of InvestEU under Annex V, point B (8).

ES17 Regarding energy efficiency there could be a trade-off between affordable social housing and renovating residential buildings. It is difficult to achieve the highest possible energy efficiency standards and at the same time to keep the buildings socially affordable. These trade-offs should be considered and a balance shall be strike within the criteria for sustainability proofing and its three dimensions (environment, climate, social).

COM reply:

This is true although most recent affordable and social housing projects have an embedded component of upgraded energy efficiency for the buildings in question. These questions will also be considered under the sustainability proofing guidance, to make sure that both dimensions (environment and social) are taken into account.

IT5 *“Equity and quasi-equity financing may be provided by implementing partners to final recipients directly (direct equity and quasi-equity financing shall not be allowed under the EU compartment of the SME window) or through financial intermediaries.”*

This represents a penalization for the SMEs sector that has no reason. All kind of equity financing should be foreseen, including through the EU compartment of the SME window.

COM reply:

Direct equity investments into SMEs are planned under Horizon Europe in the context of the European Innovation Council, which is complementary to the actions financed under InvestEU.

The overarching objective of the financial products to be set up under the SME window of InvestEU is to build on the positive experiences under existing and previous financial instruments.

While there are significant market gaps and under-investments in certain parts of the SME financing market, the InvestEU limited resources will not be nearly sufficient to close all market gaps.

Therefore the programme should focus on those interventions, which allow to crowd in significant amounts of private capital, achieve significant leverage and ensure European added value.

The objective of the interventions in the area of equity finance for SMEs is to ensure that more private capital flows to equity investments of SMEs and small midcaps. Mobilising private investment is an overarching objective of InvestEU and is the main differentiating factor vis-à-vis other EU programmes and initiatives. This is why the Commission privileges working through an intermediated structure, i.e. a fund, which already at the level of the fund crowds in private investment.

PL7 In the current draft of IG the EC transferred specific parts of the guidelines to the general part, like those related to inter alia, the use of the EU guarantee for debt type operations, which until now were constituting dedicated rules for particular windows. Please note that such a change should not affect a general perception of the Social Investment and Skills window, which will support specific projects that, in particular, are focused on achieving goals of social policy and do not bring any profit or do so only to a limited extent. These particularities have to be taken into account in case of the window mentioned above and should affect in a positive way the final terms of the guarantee. It has to be underlined that in case of this window aspects limiting access to capital are particularly visible, such as a lack of collateral, credit history or a high-risk profile or low expected returns. **(This comment has been made twice, regarding part 4 and part 6.4, PL13)**

COM reply:

The Social Investment and Skills window indeed allows for looser limitations in many cases under chapters 4 and 5 to allow an adequate support for the specific projects that may be financed under it.

PL15 *"The window shall also support social infrastructure (including health and educational infrastructure as well as social and student housing), projects involving social innovation, health services, ageing and long-term care, access to prevention, innovative treatments and e-health options, inclusion and accessibility, as well as cultural and creative activities with a social goal."*

Suggestion for additional wording: Including *critical healthcare provision*" between *"health services"* and *"aging and long-term care"*

COM reply:

The Commission believes that the proposed addition is covered by the broad term "health services" on page 49 and more specifically by the following bullet point on page 50, hence, there is no need to make this additional reference:

- *health infrastructure projects that contribute to the development of strategic and geographically balanced network of modernised, digitalised and resilient prevention and healthcare infrastructure, capable of ensuring universal access to critical healthcare infrastructure and services across the EU. Supported projects may also address specific*

urgent healthcare and emergency response needs through development of mobile and field medical stations or medical transport

5. Strategic Investment

BE7 European Defence Fund (p33): caveats had been put in place so that InvestEU could only finance dual use. Here much too broad by the use of "*as well as dual-use*". It is necessary to put insane guards in place to ensure compliance with international agreements on the non-proliferation of massive weapons, nuclear warheads, and to comply with the EU treaties. The same applies to CRMs (critical raw materials): the references to the Kimberley Treaties etc. should be included

COM reply:

The Investment Guidelines cannot contain activities excluded under Annex V.B to the InvestEU Regulation. Point 2 of Annex V excludes investments ‘in the area of defence activities, the use, development, or production of products and technologies that are prohibited by applicable international law’, accompanied by point 10 which excludes investments ‘activities forbidden by applicable national legislation’. Point 13 of Annex II to the InvestEU Regulation however does not limit the support to dual use.

NL2 The regulation leaves room for the investment guidelines and the steering board to set conditions for strategic investments in space, defense, cybersecurity and other areas with security considerations. In the investment guidelines it is put forward that the steering board can decide to set conditions (regarding the ownership of companies) for other areas than space, defense and cybersecurity in light of any applicable public order or security considerations. [p.13].

- (**NL2**) What is the role of the steering board in security considerations considering the competence of member states on national security issues?

COM reply:

The text of Section 2.9 will be clarified in a non-paper to be presented by the next meeting of the Financial Counsellors.

- (**NL2**) How will the steering board assess the interests of public order and security? It must be prevented that the open, competing European economy and foreign investments are unnecessarily harmed; how does the steering board see the balance/weighting between safety and openness? How will the steering board make such trade-off?

COM reply:

These questions will be determined by the Steering Board when it will be in place. The Regulation foresees the possibility for the Steering Board to expand on the requirements identified in the investment guidelines but only if necessary.

- (NL2) Who monitors the steering board on this issue? Can member states/the commission influence such decisions? Can such decisions be reversed after complains of member states? Do member states have the ultimate say to decide whether companies constitute a security threat? It is important that such decisions are not made lighthearted, based on decent analyses and politically independent; how will the steering board ensure this?

COM reply:

The Commission will be represented in the Steering Board (four voting members out of nine). The Commission also chairs it. The decision-making is based on a consensual approach. The Commission has a blocking minority in case of a vote.

The approach in the investment guidelines has been to address the security issues already there so that the potential need for the Steering Board to act is minimised. Please see the revised Section 2.9 in the non-paper to be presented in the next Financial Counsellors' meeting.

In addition, in accordance with Article 19(6) and (7) of the InvestEU Regulation, the Member States' formation of the Advisory Board may issue recommendations to the Steering Board for its consideration regarding the implementation and operation of the InvestEU Programme.

NL3 How will be ensured that the link with the EDF does not cause unnecessary (double) administrative burdens for companies?

COM reply:

The InvestEU limitations set out in line with the principles in the EDF will be clearly listed in section 2.9 of the Investment Guidelines, ensuring that no separate assessment of the EDF criteria is required.

- (NL3) How will the conditions of the EDF will be monitored? Member states should be in the drivers seat, given their competence on national security; how will this be ensured? The EIB and implementing partners do not have the knowledge and know-how on this issue, how will these authorities be spared without making the monitoring bureaucratically complicated?

COM reply:

Article 7(1b) of the InvestEU Regulation in the Council compromise text reads that the Commission shall set out InvestEU limitations in line with the principles concerning eligible entities set out in Article [10] of the European Defence Fund Regulation. This means that the elaborate, stringent and defence-specific limitations of the EDF are adapted for a demand-driven, indirectly managed programme as InvestEU. Specifically, section 2.9 of the Investment Guidelines will ensure that implementing partners can apply these safeguards by themselves in an efficient manner.

- (NL3) Who is in charge for deciding whether companies/project/sectors are covered by the definition: “specific types of projects with actual and direct security implications in critical sectors”? How will this be decided? See also the considerations on competence of member states, importance of political independence and decent analyses on this point.

COM reply:

The Commission does not envisage to expand the scope of application of the limitations mentioned in Article 7(1b) to areas other than defence, space and cybersecurity. Overburdening the implementing partners with more areas in which they would have to verify whether the limitations are met appears counterproductive for an efficient financing of these sectors. Moreover, since the limitations are to be set out in line with the principles in the EDF and the Space Regulation, Member States have made clear that the focus should lie on these areas (plus cybersecurity since it is mentioned explicitly).

6. COVID-19

PL11 *"Investments in operations with high perceived risk or capital intensity requirements targeting rapid response to urgent EU healthcare needs and solutions of high public interest such as manufacturing, provision and stockpiling of critical vaccines, medicines, devices, personal protective equipment."*

Please confirm the possibility of financing urgent healthcare needs under Sector I - Sustainable infrastructure, in the context of the current and final wording of the provisions of the draft Regulation on InvestEU.

COM reply:

Such investments falling in the scope of strategic investments are indeed eligible under the Sustainable Infrastructure window, as foreseen in the section 6.1.1.8. of the Investment Guidelines.

PL12 *"Supported operations shall also target unmet long-term EU healthcare investment needs such as financing testing and production of vaccines and treatments and increased resilience and competitiveness of the EU pharmaceutical industry as a whole, including production of chemicals and active pharmaceutical ingredients"*

Please confirm the possibility of financing the above-mentioned investment in healthcare under Segment 2 Research, Innovation and Digitisation window, in the context of the current and final wording of the provisions of the draft Regulation on InvestEU. Current wording of Annex 2: *"new effective and accessible healthcare products, including pharmaceuticals, medical devices, diagnostics and advanced therapy medicinal products, new antimicrobials and innovative development process that avoid using animal testing."*

COM reply:

Such investments falling in the scope of strategic investments are eligible under the Research, Innovation and Digitisation window, as foreseen in the section 6.2.2.1. of the Investment Guidelines.

7. Various questions

Securitization

ES1 Footnote 2 – Refinancing operations. We would replace footnote 2 by the following paragraph of Annex V of the InvestEU Regulation:
“The EU guarantee shall not be granted for supporting refinancing operations (such as replacing existing loan agreements or other forms of financial support for projects which have already partially or fully materialised), except in specific exceptional and well justified circumstances in which it is demonstrated that the operation under the EU guarantee will enable a new investment in an eligible area for financing and investment operations an amount, additional to customary volume of activity by the implementing partner or financial intermediary, at least equivalent to the amount of the operation that fulfils the eligibility criteria set out in this Regulation. Such refinancing operations shall respect the requirements regarding market failure, sub-optimal investment situations and additionality.”

COM reply:

The text of the InvestEU Regulation applies and should not be repeated *verbatim* in the Investment Guidelines. The footnote already takes into account the text mentioned under Annex V on refinancing and aims to operationalise it with regard to specific exceptional and well justified circumstances.

Pipeline review

IT2 The Commission may in particular but not exclusively: periodically review the project pipeline provided by implementing partners together with them, which consists of aggregate information (or detailed information if so agreed in the guarantee agreement) regarding the projected amount of financing under the relevant policy areas, at sub-sector level, and geographical coverage of operations... It is important not to overburden the implementing partners with too frequent pipeline revisions.

COM reply:

The Commission does not plan to use the pipeline review to overburden the implementing partners but as a tool to enhance policy dialogue with the implementing partner for the mutual benefit. The investment guidelines further reduce the burden on implementing partners by allowing for the information to be provided in aggregate.

Allocation principle

ES14 More clarity about allocation principles per policy window is welcome. The SME window may be exhausted very quickly, it could be positive to foresee some flexibility.

COM reply:

The allocation principles, defined in section 2.5, set out under which window financial products serving a given final recipient should be allocated, especially in cases where there may be overlaps across windows. The SMEW will indeed cover all the intermediated finance primarily dealing with SMEs and small midcaps, in line with its objective as set under Article 7(1)(c) of the InvestEU Regulation.

This does not mean that SMEs could not be financed under other windows. For direct financing, the SME window will only cover generalist portfolios of SMEs and portfolios of innovative SMEs or SMEs active in the cultural and creative sectors (areas identified in Article 7 of the InvestEU Regulation). Other windows may support SMEs as well, as long as the financial product under such window is not primarily targeting SMEs financing.

Finally, Article 4(2) of the InvestEU Regulation allows for a reallocation of the amounts of the EU guarantee by up to 15% for each window.

Approval process

ES8 Policy Check: Could you please explain how you expect to avoid that policy check represent a heavy bureaucratic burden for implementing partners?

COM reply:

The policy check process was agreed between the co-legislators in the partial agreement of 2019.

With the policy check, the Commission will verify the compliance with EU law and policies (Article 22(1) of the InvestEU Regulation) of a financing and/or investment operation submitted by implementing partners other than the EIB. In the case of the EIB, financing and/or investment operations will be submitted to the Commission under the Article 19 procedure.

The process for the submission of policy check requests by implementing partners other than the EIB consists in submitting a policy check request form regarding a financing and/or investment operation between the implementing partner and a financial intermediary (indirect financing) or a final recipient (direct financing), as applicable.

Furthermore, if a financing and/or investment operation is a facility, programme or structure with underlying sub-projects, the approval process applies to such facility, programme or structure and not to each individual sub-project. In order to be considered as such, the sub-projects under the financing and/or investment operation should have strong features of commonality and/or uniformity (for instance, framework loans or facilities, targeting a specific sector or a group of final recipients under a specific geography), so that the policy check related to the facility, programme or structure is possible and meaningful.

Reporting standards

BG3 Regarding IPSAS, there is a clear need for more information and clarification from the Commission on the reporting standards (IFRS or IPSAS) the implementing partners will have to apply. Neither in the preliminary discussions, nor in the Terms of reference were IPSAS explicitly mentioned. Most NPBI's implement the IFRS and if only IPSAS are to be accepted by the COM, additional costs may act as a deterrent and burden for smaller NPBI's to become implementing partners.

COM reply:

The Commission is discussing internally the implications of reporting standards and will come back to implementing partners. However, this question is not addressed in the Investment Guidelines.

Financial intermediaries

CZ2 According to draft IG, financial intermediaries must be selected by implementing partners in an open and non-discriminatory procedure. Does it mean that, in this case, implementing partners do not need to explicitly follow public procurement rules based on public procurement directives?

COM reply:

When selecting financial intermediaries, the implementing partner must use procedures that are in line with Article 208(4) of the Financial Regulation and respect the principles of open, transparent, proportionate and non-discriminatory procedures, and avoid conflict of interest. Public procurement rules fulfil these requirements but are not the only option.

Geographical balance

NL5 *“The volume of financing and investment operations covered by the EU guarantee in any [three] Member States shall not account for more than [45] % of the amount of the financing supported by the InvestEU Fund across all implementing partners, in aggregate at the end of the investment period (excluding financing and investment operations or the relevant parts of them covered under the Member State compartments).”*

How did you arrive at the percentage of 45% of financing for three Member States?

COM reply:

This is in line with the current practice under EFSI.

Member State Compartment

PL1 In the previous version of IGs it was written: *“Member State compartments shall be included under each policy window, if applicable, and shall constitute ring-fenced allocations from contributing Member States to ensure delivery of the policy objectives of the funds under shared management”*

Does this mean that Member State compartments will now be mandatory in at least one policy window? Please clarify this provision.

COM reply:

The text will be modified to read *“under one or more policy windows”* after consultation with the EIB Group to clarify that financial products under the MS compartment could be also joint financial products (a joint product covers two or more windows). It is not mandatory to have the MS compartment in at least one policy window but if a MS compartment is established the windows concerned need to be defined.

Administrative burden

ES3 Burden on IP: generally speaking in order to involve as many Implementing Partners as possible we should try to minimize the administrative burden on them. No additional requirements or reports should be required unless they are absolutely necessary, and that case they should be as clear as possible.

COM reply:

The reporting under InvestEU is currently being developed with this exact purpose. However, it is not possible to avoid a certain reporting from implementing partners, which is needed to monitor the overall financial situation and policy achievements, and allows to carry out evaluations and corrective actions when needed. The Commission also has extensive reporting obligations towards the budgetary authority on the use of the budgetary funds and the information needs to come in many cases from the implementing partner.

Criteria for access to finance

ES5 Access to financial markets: There should be clear criteria to define when a potential final recipient has an easier access to capital markets or bank financing or display lower levels of risk. The evaluation of an InvestEU operation should take into account not only the final beneficiary but the value added and the impact of the operation.

COM reply:

This type of analysis is part of the additionality screening that has to be carried out for each financing and investment operation based on the provisions in Annex V. Other things being equal, a recipient in a given country may enjoy less access to finance than its competitors. Likewise, providing financing to a new entrant in a market segment can be more additional than providing it to a well established and large company. Equally, supporting a corporate financing project may be less

risky than a project financing operation with limited recourse. This type of analysis will have to be presented to the Investment Committee for each operation.

Direct financing

ES9 Implementing Partners in some cases may have the same role than Financial Intermediaries providing support and services to the final recipient. That should be considered in the text.

COM reply:

According to Article 2(14) of the InvestEU Regulation implementing partners are “an eligible counterpart such as a financial institution or other financial intermediary with whom the Commission has concluded a guarantee agreement”. So if e.g. an NPBI does not become implementing partner, it can be a financial intermediary and act accordingly.

Direct equity under SMEW

HU1 Footnote 29 of the Investment Guidelines states: “*Direct equity and quasi-equity financing shall not be allowed under the EU compartment of the SME window*”. In our understanding, the definition of “*direct equity financing*” is provided in the definition of “*direct operations*”, which reads as follows according to the draft: “*Direct operations concern direct financing by implementing partners to final recipients*” (p. 5). Footnote 3 relates to this: “*A financing or investment operation taking the form of, or including, a guarantee from the implementing partner to a third party financier in relation to specific projects assessed and selected by the implementing partner direct operation.*”

COM reply:

Your understanding is correct and direct equity financing is included in the definition you quote.

Concerning the restrictions for direct equity and quasi-equity financing under the SME window, the objective of the interventions in the area of equity finance for SMEs is to ensure that more private capital flows to equity investments of SMEs and small midcaps. Mobilising private investment is an overarching objective of InvestEU and is the main differentiating factor vis-à-vis other EU programmes and initiatives. This is why the Commission prioritises working through an intermediated, i.e. a fund structure, which already at the level of the fund crowds in private investment.

IP-controlled organisations

HU2 Taken together, these rules imply that an undertaking majority owned by an “*implementing partner*” but with independent decision-making does not qualify as a “*third party financier*”, thus a capital transaction through such an organization does not qualify as “*direct equity financing*”. Is our interpretation correct?

COM reply:

If the undertaking is controlled by an implementing partner (subsidiary) but it has not been included in the perimeter of the pillar assessment it is considered as a third entity. The investments by these entities can benefit from InvestEU support only if their procedures are pillar assessed. Furthermore, these investments may be considered direct provided that the implementing partner cannot deploy these equity operations at holding level, but only through its subsidiary.

If it is not included under the pillar assessment, then the general rules on selection of financial intermediaries apply and in that case operations would not be qualified as direct equity financing.

Large corporates access to finance

IT1 For financing and investment operations benefiting final recipients that are large corporates, public sector and public-sector type entities which generally benefit from easier access to capital markets or bank financing or display lower levels of risk, the implementing partner shall demonstrate high policy value added.

It is not always true that those operators have easier access to finance. In this case the fact itself of facilitating access to finance should be considered as a demonstration of high policy value added. Otherwise, the sentence should be deleted.

COM reply:

Facilitating access to finance cannot automatically result in high policy added value. This would not be consistent with the additionality requirements stated in Annex V of the InvestEU Regulation whereby for all operations the implementing partner has to demonstrate that they would not have been carried out or not to the same extent by other public or private sources without the InvestEU Fund support.

Not all large corporates have easy access to finance, and if the implementing partner can demonstrate one of the conditions in Annex V to exist there is no need for the condition of high policy value added to be met.

Gender

PL3-14-16-17

*"The design of financial products under InvestEU shall take into consideration the contribution to the objectives of sustainability including through the scaling up of the green bond and sustainable bond market; the deployment of innovative solutions in the areas of circular economy, bioeconomy, blue economy, food and climate change; protection of environment and bio-diversity; the transition and decarbonisation of energy intensive industries, including through investments in digital technologies; the need to address related negative impacts that may adversely affect in particular vulnerable citizens, including those in need of upskilling or re-skilling and adaptation to new forms of work and regions lagging behind in terms of creation of sustainable industries and services; as well as the promotion of **gender** equality and equality on other grounds."*

*"The provision of investment amounts of up to EUR 500 000 for social enterprises shall in particular be encouraged, while larger amounts of up to EUR 2 000 000 shall also be targeted to foster their expansion and scaling up. Support shall also include measures to promote **gender** equality and equality on other grounds, social inclusion, the supply of and demand for skills, education, training and related services including for the development of sustainable social infrastructure in urban as well as rural areas."*

"Support shall aim at promoting gender equality and equality on other grounds, broadening self-employment and social integration of persons in vulnerable situations including third-country nationals."

"Special attention shall be paid to social enterprises and the activities they carry out such as scaling initiatives, fostering the development of digital and entrepreneurial skills for disadvantaged groups to address gender and other diversity gaps in these areas"

Change proposal: "between women and men" instead of "gender"

Justification: The guidelines contain semantically unclear concept of "gender" which does not function in the EU primary law and is not defined in any EU legal act.

COM reply:

The suggestion cannot be accepted as gender equality is well identified as one of the core values of the EU, a fundamental right (under Articles 2 and 3(3) TFEU; Articles 8, 10, 19 and 157 TFEU and Articles 21 and 23 of the EU Charter of Fundamental Rights) and a key principle of the European Pillar of Social Rights (Chapter I: Equal opportunities and access to the labour market).

Unclear reference

BE5 footnote on page 5: it is very important to specify the exceptions.

COM reply:

Please specify which of the three footnotes the question refers to. Furthermore, none of the three footnotes in page 5 deals with exceptions.