Template guarantee agreement for the InvestEU Programme

Indicative specific terms and conditions for

direct debt products with pari passu coverage

DISCLAIMER

In any phase of the negotiations prior to entering into a Guarantee Agreement or an amendment thereof with an Implementing Partner, the Commission reserves full discretion as to whether to conclude a Guarantee Agreement or an amendment thereof with an applicant, and no applicant shall have any claim or other right or may expect to ultimately sign a Guarantee Agreement or an amendment thereof as an Implementing Partner. Any negotiation of terms and conditions of the Guarantee Agreement or an amendment thereof (including those included in this template) by no means entails any obligation for the Commission to enter into such Guarantee Agreement or amendment thereof with the relevant applicant.

These indicative terms and conditions have not been adopted or endorsed by the Commission. Any views expressed are the preliminary views of certain Commission services and may not in any circumstances be regarded as stating an official position of the Commission. These indicative terms and conditions reflected provide a basis for negotiations, and thus may be subject to modifications and may be non-exhaustive.

**Defined terms to be added in Article 1 of the Agreement[[1]](#footnote-2)**

“**Available [Debt Guarantee/**

**Global] Cap**” means, at any time, the amount of the EU Guarantee allocated to the [*insert the name(s) of the [relevant] Financial Product(s)*], as set out in Article 21.3 [of the Agreement], less:

(i) the aggregate Guaranteed Sums claimed from the Commission in accordance with Article 13.4 [of the Agreement], and

(ii) the aggregate amounts released in accordance with Article 11 of Annex I.

“**Debt Final Recipient**”means an entity or a natural person that receives direct financial support under a Debt Final Recipient Transaction.

“**Debt Final Recipient**

**Transaction**”means a Direct Operation to provide Debt Financing to a Debt Final Recipient carried out by the Implementing Partner.

“**Debt Financing**”means any debt financing other than guarantees and counter-guarantees, including loans, capital market instruments, any other form of funding, including subordinated debt other than equity or quasi-equity, as set out in the [relevant] Product Schedule.

“**Debt Operation**”means a Direct Operation under a Debt Product which has risk characteristics other than those of equity risk, irrespective of its legal form.

“**Debt Operation Termination**

**Date**” means the date falling [6] month[s] after the scheduled maturity date of a Debt Operation.

“**Debt Portfolio**” means the Portfolio of Debt Operations signed by the Implementing Partner under the same Debt Product as set out in Article 4.2 of Annex I.

“**Debt Product(s)**” means the [*insert the name of the Financial Product*] set out in Product Schedule [*insert number*] and the [*insert the name of the Financial Product*] set out in Product Schedule [*insert number*].

"**Eligible Debt Final Recipient**” has the meaning attributed to it in the [relevant] Product Schedule.

“**EU Pari Passu**”means the Pari Passu Protection covered by the EU Guarantee for each Debt Operation, as set out in Article 6.2 of Annex I.

“**EU Pari Passu Fee**”means for each Debt Operation included in a Debt Portfolio, the product of:

(a) the relevant EU Pari Passu Fee Rate in basis points per annum as set out in the [relevant] Product Schedule; and

(b) the outstanding, disbursed principal amount of the Debt Operation;

calculated on a daily basis *pro rata* over the relevant quarter, provided that a Debt Operation shall only be taken into account until the Debt Final Recipient is classified by the Implementing Partner as non-performing, and shall be taken into account again when both:

at the earlier of (x) when the Debt Final Recipient is re-classified by the Implementing Partner as performing and (y) eighteen (18) months from the date of classification as non-performing; and

(x) either the Debt Operation has not been subject to a Restructuring or (y) it has been subject to a Restructuring that did not entail a Restructuring Loss and did not involve a debt type to equity type conversion.

**“EU Pari Passu Fee Rate”** means the value in basis points per annum as set out in the [relevant] Product Schedule

“**EU Recoveries**” means the amounts allocated to the Commission pursuant to Article 10.1 of Annex I.

**“InvestEU Sums”** has the meaning attributed to it in Article 8.1 of Annex I.

“**IP Pari Passu**” means the Pari Passu Protection covered by the Implementing Partner for each Debt Operation, as set out in Article 7.2 of Annex I.

“**Non-eligible Debt Operation**” means any Debt Operation that was not eligible at the time of compliance required for a relevant eligibility criterion agreed under this Agreement.

“**Pari Passu Protection**” means a vertical tranche risk protection in a Debt Operation, as further set out in Annex I.

“**Restructuring Losses**”means:

(a) the reduction in amounts due to the Implementing Partner under the terms of [a/an] Debt Operation as a result of a Restructuring (including losses resulting from extensions of time or waivers), whereby amounts corresponding to reimbursements of costs shall not be treated as being due to the Implementing Partner as a result of a Restructuring; and

(b) losses which arise in respect of a sale in the secondary market or any other sale at arm’s length as a result of a Restructuring, where following such Restructuring, the Implementing Partner, acting in accordance with its rules, policies and procedures, is required to exit the Debt Operation;

provided that, in case the EU Guarantee has been called in respect of a Restructuring Loss in the form of separate amounts on a period by period basis (instead of in the form of a lump sum), any amount received by the Implementing Partner in respect of the Debt Operation to which the Restructuring Loss relates, which is in excess of the amount that would have been due to the Implementing Partner absent the Restructuring, is treated as Recoveries up to the amount equal to Restructuring Loss for which the EU Guarantee has been called and any further excess shall be allocated to the Commission and to the Implementing Partner on a *pari passu* basis and *pro rata* to the sizes of the EU Pari Passu and the IP Pari Passu relative to the Pari Passu Protection, whereby the amounts allocated to the EU Pari Passu shall be paid to the Commission in accordance with Article 16 [of the Agreement].

**Articles from the main part of the agreement adapted to direct debt products with pari passu coverage**

**Article 13****Scope and amount of the EU Guarantee**

* 1. In accordance with the terms of this Agreement, the EU irrevocably, unconditionally and on demand guarantees as a primary obligor and not merely as a surety to the Implementing Partner the full and punctual performance of the Guaranteed Sums.
  2. The amount of the EU Guarantee provided to the Implementing Partner consists of EUR [*insert amount of the EU Guarantee*] provided in accordance with Article 13(5) of the InvestEU Regulation.
  3. The EU shall pay to the Implementing Partner any and all Guaranteed Sums, subject to Article 13.5.
  4. The EU Guarantee may be called with respect to any and all of the following amounts (“**Guaranteed Sums**”):
     1. the portion of the InvestEU Sums attributable to the EU Pari Passu in accordance with Article 8.2 of Annex I.
  5. The aggregate amount up to which the EU Guarantee may be called with respect to the Guaranteed Sums shall not exceed, at any point of time, the amount of the EU Guarantee set out in Article 13.2 (“**Global Cap**”). The called amount of the EU Guarantee in each Claims Form shall not exceed the Available [Debt Guarantee/Global] Cap at the time of its submission.
  6. The EU shall have no further exposure or liability to the Implementing Partner beyond the Global Cap.

**Article 15****Calls of the EU Guarantee**

* 1. The EU Guarantee may be called in respect of a Guaranteed Sum.
  2. The Implementing Partner may decide not to call the EU Guarantee immediately or at all, in accordance with its rules, policies and procedures, provided that calls on the EU Guarantee may only be made until the Debt Operation Termination Date.
  3. The Parties agree that neither the obligations of the EU under the EU Guarantee, nor the rights, powers and remedies of the Implementing Partner with respect to the EU Guarantee or conferred upon it by law shall be discharged, impaired or otherwise affected by the winding-up, dissolution, administration or reorganisation of the underlying obligor or any other person under any applicable law or any change in the status, function, control or ownership of the underlying obligor or by any obligations of the underlying obligor becoming illegal or unenforceable or ineffective in any respect or by any amendment or variation to any document to which the underlying obligor is a party or by any other act, omission, matter or event which would, but for this Article, reduce, release or prejudice any of the EU’s obligations under the Agreement, except as set out in this Agreement.

# Annex I – Financial Products and Portfolios

# I. General provisions for Financial Products and Portfolios

1. **Interpretation**
   1. In this Annex I, a reference to an “Article” or “Product Schedule” is a reference to such article, or product schedule to this Annex I, except if otherwise specified.
   2. In this Annex I, a reference to an “Article of the Agreement” is a reference to such article in the main part of the Agreement.
2. **Use of currencies and management of currency risk**
   1. [*Insert either the mention: “*Each Operation under this Agreement shall be denominated in euro.” *or* *specific rules concerning currency exposures*]

1. **State aid** [*to insert:* **compliance** *or* **consistency[[2]](#footnote-3)**, *as applicable*]
   1. [*Insert specific rules for State aid consistency or compliance, as applicable.[[3]](#footnote-4)*]
2. **General principles for the Financial Product(s) and Portfolio(s)**
   1. The Implementing Partner shall implement the following [*insert number of Financial Products*] Financial Product(s):
      1. the [*insert the name* *of Financial Product 1*];
      2. the [*insert the name of Financial Product 2, if any*];
      3. […];

as each set out in the [relevant] Product Schedule(s).

* 1. The Implementing Partner shall set up the following [separate] Portfolio(s) corresponding to [each of its] Financial Product(s):
     1. the [*insert the name of Portfolio 1, corresponding to the name of Financial Product 1*];
     2. the [*insert the name of Portfolio 2, corresponding to the name of Financial Product 2*];
     3. […].
  2. Operations shall be included in the [relevant] Portfolio, corresponding to the Financial Product under which the Operation falls, on the date of signature of the relevant Operation [or as Transitional Operations in accordance with Article 19.5 of the Agreement].
  3. The amount of each Operation in the Portfolio shall correspond to the outstanding (after deduction of, amongst others, De-committed or Cancelled Amounts reducing an Operation’s principal or book value, as applicable) committed (including both disbursed and not yet disbursed amounts) principal amount of such Operation at the relevant time.
  4. [*In case of Financial Products falling under more than one Policy Windows: insert allocation rules between Policy Windows.*]
  5. Any De-committed or Cancelled Amounts under Operations may be used during the Signature Period by the Implementing Partner to enter into new Operations [under the same Financial Product] or to increase the amount of existing Operations [under the same Financial Product], provided that such new Operations or increases of existing Operations are approved and entered into in accordance with the provisions of this Agreement.
  6. [*insert risk covenant applicable to the Financial Products*]
  7. The Recoveries waterfall and the remuneration of the EU Guarantee shall be applied at the end of each quarter.
  8. Payments to the Commission and to the Implementing Partner shall be made in accordance with Article 16 of the Agreement.

# II. Specific provisions for the Debt Financial Product(s)

1. **Characteristics of the Debt Product(s)**
   1. The objective of the Debt Financial Product(s) is to provide Debt Financing directly to Debt Final Recipients by the Implementing Partner, as set out in this Annex I and in the [relevant] Product Schedule(s).
   2. The amount of each Debt Operation in the [relevant] Debt Portfolio shall correspond to the outstanding (after deduction of, amongst others, repayments, prepayments under the Debt Operation, De-committed or Cancelled Amounts and amounts considered as InvestEU Sums reducing [a/an] Debt Operation’s principal value) committed (including both disbursed and not yet disbursed amounts) principal amount of such Debt Operation at the relevant time.
2. **Coverage of the Debt Operations** 
   1. Each Debt Operation, included in the [relevant] Debt Portfolio, shall be individually covered by the EU Guarantee up to the amount of the EU Pari Passu, in accordance with this Agreement.
   2. The risk coverage of a Debt Operation consists of a Pari Passu Protection. The Pari Passu Protection consists of an EU Pari Passu and an IP Pari Passu on *pari passu* basis. The level of the EU Pari Passu shall be as follows:
      1. up to [*insert percentage*] % of the amount of each Debt Operation under the [*insert the name of the Debt Portfolio*],
      2. up to [*insert percentage*] % of the amount of each Debt Operation under the [*insert the name of the Debt Portfolio*].

The remaining part of the Pari Passu Protection shall be covered by the IP Pari Passu.

* 1. The EU Pari Passu shall be made available by the EU to the Implementing Partner for each Debt Operation, at the time of the inclusion of the Debt Operation in the [relevant] Debt Portfolio, until the [relevant] Debt Operation Termination Date.
  2. At least 20% of the signed principal amount of each Debt Operation shall be covered by the Implementing Partner at its own risk, which shall constitute a part of the IP Pari Passu. For the avoidance of doubt, this part of the signed principal amount of a Debt Operation shall not be covered by any third party guarantee.

1. **Non-eligible Debt Operations**
   1. The Implementing Partner shall notify the Commission without delay, but in any event within twenty (20) Business Days, if after the signature of [a/an] Debt Operation, the Implementing Partner becomes aware that such Debt Operation is a Non-eligible Debt Operation.
   2. Unless the Commission considers the breach of the eligibility criteria immaterial by sending to the Implementing Partner a notice in this sense, the Implementing Partner shall remove the Debt Operation from the [relevant] Debt Portfolio within ten (10) Business Days from the notification sent to the Commission in accordance with Article 7.1 and inform the Commission accordingly without undue delay.
   3. If at any time, through controls and monitoring set out in Article 31 of the Agreement, the Commission becomes aware that [a/an] Debt Operation included in the [relevant] Debt Portfolio is a Non-eligible Debt Operation, the Commission may send an exclusion notice to the Implementing Partner relating to such Debt Operation, which shall be excluded from the [relevant] Debt Portfolio upon reception of such exclusion notice by the Implementing Partner.
2. **InvestEU Sums**
   1. Any of the following amounts shall be considered as InvestEU Sums:
      1. following the occurrence of an event of default, the principal, interests and all amounts due to the Implementing Partner but not received by it in accordance with the terms of the Debt Operation prior to the event of default, whether directly or by way of subrogation;
      2. Restructuring Losses; and
      3. following a Restructuring by way of a debt-to-equity conversion, all amounts (i) lent or invested by the Implementing Partner or (ii) owed by the Implementing Partner, in each case not recovered upon exit or disposal;

and for the avoidance of doubt: any amounts under points (a) to (c) above if received and later required to be repaid pursuant to any enactment relating to insolvency shall be treated as not having been received.

* 1. For each Debt Operation, the InvestEU Sums shall be allocated to the EU Pari Passu and to the IP Pari Passu on a *pari passu* basis and *pro rata* to their size relative to the Pari Passu Protection.

1. **Principal waterfall**
   1. Any cash flows received under a Debt Operation, other than Recoveries and reimbursement of costs, that are classified as principal in accordance with the Implementing Partner’s accounting policies, shall be allocated to the reduction of the principal outstanding amount under the [relevant] Debt Operation, and thus, decrease the amount of the [relevant] Pari Passu Protection.
2. **Recoveries waterfall** 
   1. Recoveries paid to the Implementing Partner with respect to a Debt Operation shall be allocated to the Pari Passu Protection, *i.e.* to the EU Pari Passu and to the IP Pari Passu on a *pari passu* basis and *pro rata* to their sizes relative to the Pari Passu Protection. Recoveries allocated to the EU Pari Passu shall be paid to the Commission in accordance with Article 16 of the Agreement, as EU Recoveries.
3. **Release of the Pari Passu Protection**
   1. In case of any decrease of the Pari Passu Protection in accordance with Article 9.1, the corresponding amount of such decrease shall be released.
   2. After the end of the Signature Period, in case of any De-committed or Cancelled Amounts under a Debt Operation, the corresponding amount of the Pari Passu Protection shall be released.
   3. The released Pari Passu Protection shall be split between the Debt Operation’s EU Pari Passu and the Debt Operation’s IP Pari Passu on a *pari passu* basis and *pro rata* to their sizes relative to the size of the Debt Operation’s Pari Passu Protection.
   4. The release shall be applied at the end of each semester and calculated on the basis of the semi-annual reporting under Annex IV and Annex V for the [relevant] Debt Portfolio of the relevant semester and the Available [Debt Guarantee/Global] Cap shall be reduced accordingly.
4. **Remuneration of the EU Guarantee** 
   1. The EU Guarantee shall be remunerated in the form of an EU Pari Passu Fee applied to all Debt Operations in [a/the] Debt Portfolio.
   2. The aggregate amount of the EU Pari Passu Fees shall be paid to the Commission in accordance with Article 16 of the Agreement.

**Product Schedule(s)[[4]](#footnote-5)**

|  |  |
| --- | --- |
| **Name of the Financial Product** | [*insert the name of the Financial Product*] |
| **Type of financing provided by the Implementing Partner** | Debt Financing directly to Debt Final Recipients. |
| **Use of Policy Window(s) and EU Guarantee amount per Policy Window** | The allocated amount of the EU Guarantee under the [*insert the* *name of the Policy Window*] is up to EUR [*insert amount of the EU Guarantee*]. |
| **Indicative size of the Debt Portfolio** | EUR [*insert the foreseen amount of the* Debt *Portfolio*] |
| **Policy objective(s)** | Debt Operations shall be used for the following purposes:  [*insert detailed description of the policy objectives of the Financial Product*] |
| **Eligible Debt Final Recipients** | Eligible Debt Final Recipients shall:   1. be established and operating in a Member State or in an OCT; and 2. be active in any of the areas listed under Annex II of the InvestEU Regulation; and 3. comply with the eligibility criteria set out in Article 24.6 of the Agreement; and 4. not be Restricted Persons; and 5. [*insert any other applicable requirements depending on specific circumstances of the Financial Product*]. |
| **Targeted geography** | [*insert the targeted geographical scope of the Financial Product*] |
| **Minimum and maximum principal amount of Debt Operations** | The signed principal amount of [a/an] Debt Operation shall be at least EUR [*insert amount*].  The signed principal amount of [a/an] Debt Operation shall be maximum EUR [*insert amount*]. |
| **Minimum and maximum maturity of Debt Operations** | The scheduled minimum maturity of a Debt Operation shall be [*insert the minimum term in years*] years.  The scheduled maximum maturity of a Debt Operation shall be [*insert the maximum term in years*] years. |
| **EU Pari Passu Fee Rate** | [*insert the relevant rate*] bps p.a. |
| **Framework Operations** | [*insert:* “Framework Operations are allowed.” *or* “Framework Operations are not allowed.”] |
| **Eligibility Checklist Procedure** | [applicable/not applicable] |
| **[Other relevant elements (for example: any additional criteria for thematic Financial Products)]** |  |

1. *N.B.* Terms in brackets are to be adapted to the type and the number of the Financial Products included in the Agreement. [↑](#footnote-ref-2)
2. *N.B.* In the case of supranational Implementing Partners, State aid consistency rules apply based on their specific circumstances. [↑](#footnote-ref-3)
3. *N.B.* The general clauses on State aid compliance can be found in the template of the main part of the Agreement, which shall be adapted to each specific Financial Product as necessary. [↑](#footnote-ref-4)
4. *N.B.* A separate Product Schedule will be included for each Financial Product. [↑](#footnote-ref-5)