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Legislation

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EN

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I

(Legislative acts)

REGULATIONS

**REGULATION (EU) 2021/1077 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 24 June 2021
establishing, as part of the Integrated Border Management Fund, the instrument for financial support
for customs control equipment**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The 2 140 customs offices situated at the external borders of the Union need to be properly equipped to ensure the efficient and effective operation of the customs union. The need for adequate customs controls with equivalent results is ever more pressing, not only because of the traditional function of customs, which is to collect revenue, but also increasingly because of the need to significantly reinforce the control of goods entering and exiting the Union's external borders in order to ensure both safety and security. However, at the same time, such controls on the movement of goods across the external borders should not impair but rather facilitate legitimate trade with third countries.
- (2) The customs union is one of the cornerstones of the Union, which is one of the largest trading blocks in the world. Since the customs union is essential for the proper functioning of the internal market, and for businesses and citizens to benefit from it, continuous steps to strengthen the customs union are needed.
- (3) There is currently an imbalance in the performance of customs control by Member States. This imbalance is due to differences between Member States both in terms of their geographic features, and their capacities and resources. The ability of Member States to react to challenges generated by the constantly evolving global business models and supply chains depends not only on the human component but also on the availability, and on the proper functioning, of modern and reliable customs control equipment. Challenges, such as the surge in e-commerce, increasing digitalisation and the need to improve resilience to cyber-attacks, will also increase demand for effective customs controls. The provision of equivalent customs control equipment is therefore an important element in addressing that current imbalance. It will improve equivalence in the performance of customs controls across the Member States and thereby contribute to preventing the diversion of flows of goods towards the weakest points in the customs control system, often referred to as 'import point shopping'. Consequently, goods entering the customs territory of the Union should be subject to risk-based controls in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽³⁾ ('the Union Customs Code').

⁽¹⁾ OJ C 62, 15.2.2019, p. 67.

⁽²⁾ Position of the European Parliament of 16 April 2019 (OJ C 158, 30.4.2021, p. 133) and position of the Council at first reading of 27 May 2021 (OJ C 227, 14.6.2021, p. 1). Position of the European Parliament of 23 June 2021 (not yet published in the Official Journal).

⁽³⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (4) Member States have repeatedly expressed the need for financial support, and have requested an in-depth analysis of the equipment needed. In its conclusions on customs funding on 23 March 2017, the Council invited the Commission to evaluate the possibility of funding technical equipment needs from future Commission financial programmes and improve coordination and cooperation between customs authorities and other law enforcement authorities for funding purposes.
- (5) Under the Union Customs Code, customs controls are to be understood not only as the enforcement of customs legislation but also as the enforcement of other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside the customs territory of the Union, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure. That other legislation empowers customs authorities to carry out specific control tasks and contains provisions on taxation, in particular as regards excise duties and value added tax, on the external aspects of the internal market, on the common trade policy and other common Union policies having a bearing on trade, on the overall supply chain security and on the protection of the financial and economic interests of the Union and its Member States.
- (6) Supporting the achievement of an adequate and equivalent level of customs control results at the Union's external borders enables the benefits of the customs union to be maximised, thereby giving additional support to customs authorities acting as one to protect the interests of the Union. A dedicated Union fund for customs control equipment to correct current imbalances would contribute to the overall cohesion between Member States. That dedicated fund would take account of the different needs experienced at the different types of border, namely those at sea and on other waterways, in the air, and on land, including rail and road borders, as well as postal hubs. In view of the challenges facing the world, in particular the continued need to protect the financial and economic interests of the Union and its Member States while easing the flow of legitimate trade, the availability of modern and reliable control equipment at the external borders is indispensable.
- (7) It is therefore appropriate to establish a new Instrument for financial support for customs control equipment intended to be used at all types of borders. The Instrument should support the customs union and the work of the customs authorities, in particular helping them to protect the Union's financial and economic interests, to ensure security and safety within the Union and to protect the Union from unfair and illegal trade, such as counterfeiting of goods, while facilitating legitimate business activity. It should contribute to adequate and equivalent results of customs controls. Furthermore, customs control equipment financed under this Instrument should support the implementation of the customs risk management framework as referred to in the Union Customs Code. This objective should be achieved through the transparent purchase, maintenance and upgrading of relevant, state-of-the-art and reliable customs control equipment, taking due account of the protection of data, cyber-resilience, and safety and environmental considerations, including the environmentally friendly disposal of the replaced equipment.
- (8) Customs authorities of the Member States have been taking on an increasing number of responsibilities which are carried out at the external border and which often extend into the security field. It is therefore important to provide Union financial support to the Member States in order to enable them to ensure equivalence in the performance of border control and customs control at the external borders of the Union. It is equally important to promote, at Union borders, as regards controls of goods and controls of persons, inter-agency cooperation among the national authorities in each Member State that are responsible for border control or for other tasks carried out at the border, with a view to maximising Union added value in the field of border management and customs controls.
- (9) It is therefore necessary to establish an Integrated Border Management Fund ('the Fund').
- (10) Due to the legal particularities of Title V of the Treaty on the Functioning of the European Union (TFEU), as well as the different applicable legal bases regarding the policies on external borders and on customs control, it is not legally possible to establish the Fund as a single instrument.

- (11) The Fund should therefore be established as a comprehensive framework for Union financial support in the field of border management, consisting of the Instrument for financial support for customs control equipment ('the Instrument') established by this Regulation and the Instrument for Financial Support for Border Management and Visa Policy established by the Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy.
- (12) In view of the importance of tackling climate change and in line with the Union's commitments to implement the Paris Agreement under the United Nations Framework Convention on Climate Change ⁽⁴⁾, and to achieve the United Nations Sustainable Development Goals of the 2030 Agenda for Sustainable Development adopted on 25 September 2015, the actions under this Regulation should contribute to the achievement of the Union's goal of spending at least 30 % of the total amount of the Union budget on supporting climate objectives and of the Union's ambition to spend 7,5 % of the annual Union budget on biodiversity in 2024 and 10 % both in 2026 and in 2027, while taking into account the existing overlaps between climate and biodiversity goals.
- (13) This Regulation lays down a financial envelope for the entire duration of the Instrument, which is to constitute the prime reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources ⁽⁵⁾, for the European Parliament and the Council during the annual budgetary procedure. It should be possible for that financial envelope to cover necessary and duly justified expenses for activities for managing the Instrument and evaluating its performance, insofar as those activities are related to the general and specific objectives of the Instrument.
- (14) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁶⁾ (the 'Financial Regulation') applies to this Instrument. The Financial Regulation lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect management, financial instruments, budgetary guarantees, financial assistance and the reimbursement of external experts.
- (15) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 TFEU apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes and indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also include a general regime of conditionality for the protection of the Union budget. Funding under this Instrument should be subject to the principles referred to in the Financial Regulation and should ensure the optimal use of financial resources in achieving its objectives.
- (16) Regulation (EU) 2021/444 of the European Parliament and of the Council ⁽⁷⁾ establishes the Customs programme for cooperation in the field of customs (the 'Customs programme') to support the customs union and customs authorities. In order to preserve the coherence and horizontal coordination of cooperation actions relating to customs and customs control equipment, it is appropriate to implement such actions under a single legal act, namely, the Customs programme, containing a single set of rules. Therefore, only the purchase, maintenance and upgrade of the eligible customs control equipment should be supported under this Instrument, while all other related actions, such as cooperation actions for the assessment of needs or training relating to the equipment concerned, should be supported by the Customs programme.

⁽⁴⁾ OJ L 282, 19.10.2016, p. 4.

⁽⁵⁾ OJ L 433 I, 22.12.2020, p. 28.

⁽⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

⁽⁷⁾ Regulation (EU) 2021/444 of the European Parliament and of the Council of 11 March 2021 establishing the Customs programme for cooperation in the field of customs and repealing Regulation (EU) No 1294/2013 (OJ L 87, 15.3.2021, p. 1).

- (17) In addition, and where appropriate, the Instrument should also support the purchase or upgrade of customs control equipment for testing new pieces of equipment or new functionalities for existing pieces of equipment in operational conditions before Member States start large-scale purchases of such new equipment. Testing in operational conditions should follow up in particular on the outcomes of research of customs control equipment in the framework of Regulation (EU) 2021/695 of the European Parliament and of the Council ⁽⁸⁾. The Commission should encourage the joint procurement and joint testing of customs control equipment by two or more Member States, making use of the cooperation tools under the Customs programme.
- (18) Most customs control equipment may be equally or incidentally fit for controls of compliance with other Union law, such as that on border management, visa or police cooperation. The Fund has therefore been conceived as two complementary instruments for the purchase of equipment, each with a distinct but complementary scope. On the one hand, the Instrument for Financial Support for Border Management and Visa Policy will only financially support the costs of equipment of which the primary aim or effect is integrated border management, but will also allow that equipment to be used for additional purposes, such as customs controls. On the other hand, the instrument for financial support for customs control equipment established by this Regulation will only financially support the costs of equipment of which the primary aim or effect is customs controls but will also allow that equipment to be used for additional purposes, such as border controls and security. This distribution of roles between the two instruments will foster inter-agency cooperation, as referred to in point (e) of Article 3(1) of Regulation (EU) 2019/1896 of the European Parliament and of the Council ⁽⁹⁾, as a component of the European integrated border management approach, thereby enabling customs and border authorities to work together and maximising the impact of the Union budget through co-sharing and inter-operability of control equipment. The sharing of equipment between customs and other border authorities should not be systematic.
- (19) In accordance with Article 193(2) of the Financial Regulation, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. While in such cases the costs incurred prior to the date of submission of the grant application would in principle not be eligible, this should exceptionally be possible in view of the delayed entry into force of this Regulation as compared to the beginning of the multiannual financial framework 2021-2027. In order to allow implementation from the beginning of the multiannual financial framework 2021-2027 and to avoid any delay in Union support which could be prejudicial to the Union's interest in being properly equipped to ensure the efficient and effective operation of the customs union, it should be possible, for a limited period of time at the beginning of the multiannual financial framework 2021-2027, to provide in the financing decision for costs incurred in respect of actions supported under this Regulation which have already begun to be considered eligible as of 1 January 2021, even if those actions were implemented and those costs were incurred before the grant application was submitted.
- (20) By way of derogation from the Financial Regulation, funding of an action by several Union programmes or instruments should be possible in order to allow and support, where appropriate, cooperation and interoperability across domains. However, in accordance with the principle of prohibition of double funding established by the Financial Regulation, in such cases, the contributions are not permitted to cover the same costs. If a Member State has already been awarded or has received contributions from another Union programme or support from a Union fund for the acquisition of the same equipment, that contribution or support should be communicated to the Commission, in accordance with Article 191 of the Financial Regulation.
- (21) Any funding in excess of the co-financing rate ceiling should be granted only in duly justified cases, which might include cases of joint procurement and of joint testing of customs control equipment by two or more Member States.

⁽⁸⁾ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

⁽⁹⁾ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

- (22) In view of the rapid evolution of technologies, threats and customs priorities, work programmes should not extend over longer periods. At the same time, annual work programmes would not be necessary for the implementation of the Instrument and would increase the administrative burden on the Commission and Member States. Against that backdrop, work programmes should in principle cover more than one budgetary year, but not more than three.
- (23) In order to ensure uniform conditions for the implementation of the work programmes under this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁰⁾.
- (24) Although central implementation is indispensable if the specific objective of ensuring equivalent results of customs controls is to be achieved, the technical nature of this Instrument means that preparatory work is required at technical level. Therefore, implementation should be supported by assessments of needs. Those assessments of needs are dependent on national expertise and experience through the involvement of customs authorities. They should be based on a clear methodology that includes a minimum number of steps ensuring the collection of the relevant information. The Commission should use this information to determine the allocation of the funds to Member States, taking into consideration in particular the volume of trade, the relevant risks and the administrative capacity of the customs authorities to use and maintain the equipment, with a view to achieving the most efficient use of the customs control equipment financed under the Instrument. To contribute to budgetary discipline, the conditions for the prioritisation of grants should be clearly defined and based on such an assessment of needs.
- (25) To ensure regular monitoring and reporting, a proper framework for monitoring the results achieved by the Instrument and actions under it should be put in place. Such monitoring and reporting should be based on quantitative and qualitative indicators for measuring the effects of the actions under the Instrument. Reporting requirements should include a requirement to provide the Commission with information on customs control equipment where the cost of a piece of customs control equipment exceeds EUR 10 000 exclusive of taxes. That information should be distinguished from the information required to be provided to the general public and to the media in order to promote the actions and the results of the Instrument.
- (26) Pursuant to paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹¹⁾, the Instrument should be evaluated on the basis of information collected in accordance with specific monitoring requirements, while avoiding an administrative burden, in particular on Member States, and overregulation. Those requirements, where appropriate, should include measurable indicators as a basis for evaluating, in a comparable and complete manner, the effects of the Instrument on the ground. The interim and final evaluations, which should be performed no later than four years after the start of the implementation and the completion of the Instrument, respectively, should contribute to the efficient decision-making process concerning financial support for customs control equipment under the next multiannual financial frameworks. It is therefore of the utmost importance that the interim and final evaluations include satisfactory and sufficient information and that those evaluations are delivered in due time. The Commission should include in the interim and final evaluations details of the sharing between customs and other border authorities of equipment financed under the Instrument to the extent that relevant information has been provided by the Member States. In addition to the interim and final evaluations of the Instrument, annual progress reports should, as part of the performance reporting system, be issued to monitor the implementation of the Instrument. Those reports should include a summary of the lessons learnt and, where appropriate, of the obstacles encountered, and shortfalls discovered in the context of the activities of the Instrument that took place in the year in question. Those annual progress reports should be communicated to the European Parliament and the Council.

⁽¹⁰⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽¹¹⁾ OJ L 123, 12.5.2016, p. 1.

- (27) In order to respond appropriately to evolving policy priorities, threats and technologies, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the indicative list of customs control equipment that may be used to achieve the customs control purposes and the list of indicators to measure the achievement of the specific objective. It is of particular importance that the Commission carry out appropriate and fully transparent consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (28) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹²⁾ and Council Regulations (EC, Euratom) No 2988/95 ⁽¹³⁾, (Euratom, EC) No 2185/96 ⁽¹⁴⁾ and (EU) 2017/1939 ⁽¹⁵⁾, the financial interests of the Union are to be protected by means of proportionate measures, including measures relating to the prevention, detection, correction and investigation of irregularities, including fraud, to the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, to the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) has the power to carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. The European Public Prosecutor's Office (EPPO) is empowered, in accordance with Regulation (EU) 2017/1939, to investigate and prosecute criminal offences affecting the financial interests of the Union, as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council ⁽¹⁶⁾. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the Court of Auditors and, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the EPPO, and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.
- (29) The forms of funding and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objective of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. Those forms and methods should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.
- (30) Since the objective of this Regulation, which is to establish an Instrument that supports the customs union and customs authorities by providing financial support for the purchase, maintenance and upgrading of customs control equipment, cannot be sufficiently achieved by the Member States alone further to objective imbalances existing at geographical level amongst them, but can rather, by reason of the equivalent level and quality of results of customs controls that a coordinated approach and a centralised funding will help providing, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

⁽¹²⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

⁽¹³⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

⁽¹⁴⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁽¹⁵⁾ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

⁽¹⁶⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (31) The recipients of Union funding should acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public. Such information should show the added value of the Instrument in supporting the customs union, and in particular, how it helps customs authorities to fulfil their missions, as well as the efforts of the Commission to ensure budgetary transparency. Furthermore, in order to ensure transparency the Commission should regularly provide information to the public relating to the Instrument, its actions and results, referring to, *inter alia*, the work programmes adopted under this Regulation.
- (32) In order to ensure continuity in providing support in the relevant policy area and to allow implementation to start from the beginning of the multiannual financial framework 2021-2027, this Regulation should enter into force as a matter of urgency and should apply, with retroactive effect, from 1 January 2021,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

Jointly with the Regulation establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy, this Regulation establishes an Integrated Border Management Fund (the 'Fund') for the period from 1 January 2021 to 31 December 2027.

As part of that Fund, this Regulation establishes an Instrument to provide financial support for the purchase, maintenance and upgrading of customs control equipment (the 'Instrument') for the period from 1 January 2021 to 31 December 2027. The duration of the Instrument shall be aligned to the duration of the multiannual financial framework.

This Regulation lays down the objectives of the Instrument, the budget for the period 2021 2027, the forms of Union funding and the rules for providing such funding.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'customs authorities' means the customs authorities as defined in point (1) of Article 5 of Regulation (EU) No 952/2013;
- (2) 'customs controls' means the customs controls as defined in point (3) of Article 5 of Regulation (EU) No 952/2013;
- (3) 'customs control equipment' means equipment intended primarily for performing customs controls;
- (4) 'mobile customs control equipment' means any means of transport that, beyond its mobile capacities, is itself intended to be a piece of customs control equipment or that is fully equipped with customs control equipment;
- (5) 'maintenance' means preventive, corrective and predictive interventions, including operational and functional checks, servicing, repair and overhaul of a piece of customs control equipment necessary in order for it to retain, or to be restored to, its specified operable condition with a view to it achieving its maximum useful life, but excluding any upgrading;

- (6) 'upgrade' means evolutive interventions necessary for bringing an existing piece of customs control equipment from an outdated to a state-of-the-art specified operable condition.

Article 3

Instrument objectives

1. As part of the Fund and with a view to achieving the long-term aim of the harmonised application of customs controls by the Member States, the general objective of the Instrument is to support the customs union and customs authorities in their mission to protect the financial and economic interests of the Union and its Member States, to ensure security and safety within the Union and to protect the Union from illegal trade while facilitating legitimate business activity.
2. The specific objective of the Instrument is to contribute to adequate and equivalent results of customs controls through the transparent purchase, maintenance and upgrading of relevant and reliable state-of-the-art customs control equipment that is secure, safe and environmental-friendly, thereby helping the customs authorities act as one to protect the interests of the Union.

Article 4

Budget

1. The financial envelope for the implementation of the Instrument for the period 2021–2027 shall be EUR 1 006 407 000 in current prices.
2. The amount referred to in paragraph 1 may also cover expenses for preparation, monitoring, control, audit, evaluation and other activities for managing the Instrument and evaluating the achievement of its objectives. It may also cover expenses linked to studies, meetings of experts, information and communication actions that are related to the objectives of the Instrument, as well as expenses linked to information technology networks focusing on information processing and exchange, including corporate information technology tools and other technical and administrative assistance needed in connection with the management of the Instrument.

Article 5

Implementation and forms of Union funding

1. The Instrument shall be implemented under direct management in accordance with the Financial Regulation.
2. The Instrument may provide funding in any of the forms laid down in the Financial Regulation and in particular by means of grants.
3. When the action that is supported under the Instrument involves the purchase or upgrade of customs control equipment, the Commission shall set up a coordination mechanism to ensure the interoperability of the customs control equipment purchased with the support of Union programmes and instruments, and therefore its efficient use.

CHAPTER II

ELIGIBILITY

Article 6

Eligible actions

1. In order for actions to be eligible for funding under the Instrument, those actions must comply with the following requirements:
 - (a) implement the objectives set out in Article 3; and

(b) support the purchase, maintenance or upgrading of customs control equipment including innovative detection technology equipment, that has one or more of the following customs control purposes:

- (1) non-intrusive inspection;
- (2) indication of hidden objects on humans;
- (3) radiation detection and nuclide identification;
- (4) analysis of samples in laboratories;
- (5) sampling and field analysis of samples;
- (6) handheld search.

Annex I contains an indicative list of customs control equipment that may be used to achieve the customs control purposes referred to in points (1) to (6) of the first subparagraph.

2. In duly justified cases, actions under the first subparagraph of paragraph 1 may also cover the transparent purchase, maintenance and upgrading of customs control equipment for testing new pieces of equipment or new functionalities for existing pieces of equipment in operational conditions.

3. In accordance with point (a) of the second subparagraph of Article 193(2) of the Financial Regulation, taking into account the delayed entry into force of this Regulation and in order to avoid any delay in Union support which could be prejudicial to the Union's interest in being properly equipped to ensure the efficient and effective operation of the customs union, costs incurred in respect of actions supported under this Regulation may, for a limited period, exceptionally be considered eligible from 1 January 2021, even if those actions were implemented and those costs incurred before the grant application was submitted.

4. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend this Regulation by updating, where necessary, the indicative list of customs control equipment set out in Annex I.

5. Customs control equipment financed under this Instrument should be used primarily for customs controls, but may also be used for additional purposes, including, in support of the national border management authorities and investigation, for the control of persons. Such customs control equipment shall not be systematically shared between customs and other border authorities.

6. The Commission shall encourage the joint procurement and joint testing of customs control equipment by two or more Member States.

Article 7

Eligible entities

By way of derogation from Article 197 of the Financial Regulation, the eligible entities shall be the customs authorities on condition that they provide the information necessary for the assessment of needs referred to in Article 11(4) of this Regulation.

Article 8

Co-financing rate

1. The Instrument may finance up to 80 % of the total eligible costs of an action.
2. Any funding in excess of that ceiling shall be granted only in duly justified exceptional circumstances.

*Article 9***Eligible costs**

The costs directly related to actions referred to in Article 6 shall be eligible for funding under the Instrument.

The following costs shall not be eligible for funding under the Instrument:

- (a) costs related to the purchase of land;
- (b) costs relating to training or the upgrading of skills, other than the introductory training included in the purchase or upgrade contract;
- (c) costs relating to infrastructure, such as buildings or outdoor facilities, as well as to furniture;
- (d) costs associated with electronic systems, with the exception of software and software updates directly necessary to use the customs control equipment and with the exception of the electronic software and programming necessary to interlink existing software with the customs control equipment;
- (e) costs of networks, such as secured or unsecured communication channels, or subscriptions, with the exception of networks or subscriptions exclusively necessary to use the customs control equipment;
- (f) costs of transport means, such as vehicles, aircrafts or ships, with the exception of mobile customs control equipment;
- (g) costs of consumables, including reference or calibration material, for customs control equipment;
- (h) costs relating to personal protective equipment.

CHAPTER III

GRANTS*Article 10***Award, complementarity and combined funding**

1. Grants under the Instrument shall be awarded and managed in accordance with Title VIII of the Financial Regulation.
2. In accordance with point (f) of the first paragraph of Article 195 of the Financial Regulation, grants shall be awarded without a call for proposals to the entities that are eligible under Article 7 of this Regulation.
3. An action that has received a contribution under the Instrument may also receive a contribution from the Customs programme or from another Union programme, provided that the contributions do not cover the same costs. The rules of the relevant Union programme shall apply to the corresponding contribution to the action. The cumulative financing shall not exceed the total eligible costs of the action. The support from the different Union programmes may be calculated on a pro-rata basis in accordance with the documents setting out the conditions for support.
4. The work of the evaluation committee referred to in Article 150 of the Financial Regulation shall be based on the general principles applicable to grants laid down in Article 188 of that Regulation and, in particular, on the principles of equal treatment and transparency laid down in points (a) and (b) of that Article, as well as on the principle of non-discrimination.
5. The evaluation committee shall evaluate proposals on the basis of the award criteria, taking into account, where appropriate, the relevance of the proposed action in view of the objectives pursued, the quality of the proposed action, its impact, including its economic, social and environmental impact, and its budget and cost-effectiveness.

CHAPTER IV

PROGRAMMING, MONITORING AND EVALUATION

Article 11

Work programme

1. The Instrument shall be implemented through work programmes as referred to in Article 110(2) of the Financial Regulation.
2. The Commission shall adopt implementing acts establishing those work programmes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).
3. The work programmes shall aim to achieve the objectives set out in Article 3 through actions in accordance with Article 6. The work programmes shall set out the total amount of the financing plan for all actions. In addition, they shall set out:
 - (a) for each action:
 - (i) the objectives pursued and the expected results, in accordance with the general and specific objectives set out in Article 3;
 - (ii) a description of the actions to be financed;
 - (iii) where appropriate, an indication of the amount allocated to each action; and
 - (iv) the method of implementation and an indicative implementation timetable;
 - (b) for grants, the maximum rate of co-financing referred to in Article 8.
4. The preparation of the work programmes referred to in paragraph 1 shall be supported by an assessment of the needs of the customs authorities. That assessment of needs shall be based on the following:
 - (a) a common categorisation of border crossing points;
 - (b) a comprehensive description of available customs control equipment;
 - (c) a common list of customs control equipment that should be available, by reference to the category of border crossing points; and
 - (d) an estimate of financial needs.

The assessment of needs shall be based on actions carried out under the Customs 2020 programme established by Regulation (EU) No 1294/2013 of the European Parliament and of the Council ⁽¹⁷⁾ or under the Customs programme, and shall be updated regularly at least every three years.

Article 12

Monitoring and reporting

1. Indicators to report on the progress of the Instrument towards the achievement of the general and specific objectives set out in Article 3 are listed in Annex II.
2. To ensure the effective assessment of the Instrument's progress towards the achievement of its objectives, the Commission is empowered to adopt delegated acts in accordance with Article 14 to amend Annex II with regard to the indicators where considered necessary, as well as to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.

⁽¹⁷⁾ Regulation (EU) No 1294/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme for customs in the European Union for the period 2014-2020 (Customs 2020) and repealing Decision No 624/2007/EC (OJ L 347, 20.12.2013, p. 209).

3. The performance reporting system shall ensure that data for monitoring the implementation and results of the Instrument are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements shall be imposed on the recipients of Union funds.
4. Where the cost of a piece of customs control equipment exceeds EUR 10 000 exclusive of taxes, the reporting requirements referred to in paragraph 3 shall include at least the annual communication to the Commission of the following information:
 - (a) a detailed list of the customs control equipment financed under the Instrument;
 - (b) information on the use of the customs control equipment, including any related results, and supported, where appropriate, by relevant statistics.

Article 13

Evaluation

1. Evaluations shall be carried out in a timely manner so that they can be used in the decision-making process.
2. An interim evaluation of the Instrument shall be carried out by the Commission once there is sufficient information available about its implementation, but no later than four years after the start of that implementation. In its interim evaluation, the Commission shall assess the performance of the Instrument, including aspects such as its effectiveness, efficiency, coherence and relevance, as well as the synergies within the Instrument and Union added value.
3. At the end of the implementation of the Instrument, but no later than four years after the end of the period specified in Article 1, a final evaluation of the Instrument shall be carried out by the Commission.
4. The Commission shall communicate the conclusions of the evaluations, accompanied by its observations and lessons learnt, to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

CHAPTER V

EXERCISE OF THE DELEGATION AND COMMITTEE PROCEDURE

Article 14

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 6(4) and 12(2) shall be conferred on the Commission until 31 December 2027. The Commission shall draw up a report in respect of the delegation of power not later than nine months before that date. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 6(4) and 12(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 6(4) and 12(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 15

Committee procedure

1. The Commission shall be assisted by the Customs Programme Committee established by Article 17 of Regulation (EU) 2021/444.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

Article 16

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the Instrument, to actions taken pursuant to the Instrument and to the results obtained.
3. Financial resources allocated to the Instrument shall also contribute to the corporate communication of the political priorities of the Union, insofar as those priorities are related to the objectives referred to in Article 3.

Article 17

Transitional provision

If necessary, appropriations may be entered in the Union budget beyond 2027 to cover the expenses provided for in Article 4(2), to enable the management of actions not completed by 31 December 2027.

Article 18

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 June 2021.

For the European Parliament
The President
D. M. SASSOLI

For the Council
The President
A. P. ZACARIAS

ANNEX I

INDICATIVE LIST OF CUSTOMS CONTROL EQUIPMENT THAT MAY BE USED TO ACHIEVE THE CUSTOMS CONTROL PURPOSES LISTED IN POINT (B) OF THE FIRST SUBPARAGRAPH OF ARTICLE 6(1)

CUSTOMS CONTROL PURPOSE	CUSTOMS CONTROL EQUIPMENT	
	CATEGORY	APPLICATION
1. Non-intrusive inspection	X-ray scanner – High energy	Containers, trucks, rail wagons and vehicles
	X-ray scanner – Low energy	Pallets, boxes and parcels
		Passenger baggage
		Vehicles
	X-ray backscatter	Containers
		Trucks
		Vehicles
	Other	Automatic Number Plate/Container Recognition Systems
		Vehicle weighting scales
		Forklifts and similar mobile customs control equipment
2. Indication of hidden objects on humans ⁽¹⁾	X-ray based backscatter portal	Mainly used in airports to detect hidden objects on humans (drugs, explosives, cash)
	Body scanner	
	Millimetre wave-based security scanner	
3. Radiation detection and nuclide identification	Radiological and Nuclear Detectors	Personal Radiation Monitor/detector (PRM)
		Handheld Radiation detector
		Isotope Identification Device (RIID)
		Radiation Portal Monitor (RPM)
		Spectrometric Portal Monitor for isotope identification (SPM)
4. Analysis of samples in laboratories	Equipment for the identification, quantification and verification of all possible goods	Gas and liquid chromatography (GC, LC, HPLC etc.)
		Spectrometry and techniques combined with spectrometry (IR, Raman, UV-VIS, Fluorescence, GC-MS etc.)
		X-ray equipment (XRF etc.)
		NMR spectrometry and Stable isotope analyses
		Other laboratory equipment (AAS, Distillation Analyser, DSC, Electrophoresis, Microscope, LSC, Smoking machine etc.)

CUSTOMS CONTROL PURPOSE	CUSTOMS CONTROL EQUIPMENT	
	CATEGORY	APPLICATION
5. Sampling and field analysis of samples	Trace detection based on Ion Mobility Spectrometry (IMS)	Portable equipment to screen traces of specific threat materials
	Canine trace detection	Applied to a range of risks on small and larger objects
	Sampling	Tools to take samples, fume hood, glovebox
	Mobile laboratories	Vehicle fully housing equipment for field analysis of samples
	Handheld detectors	Analysis of organic materials, metals and alloys
		Chemical colorimetric tests
		Raman spectroscopy
		Infrared spectroscopy
		X-ray fluorescence
		Gas detectors for containers
6. Handheld search	Personal hand tools	Pocket tools
		Mechanics tool kit
		Telescoping mirror
	Devices	Endoscope
		Stationary or handed metal detector
		Cameras to check the under-side of vehicles
		Ultrasonic device
		Density meter
	Other	Underwater search

(¹) Subject to applicable legislative provisions and other recommendations as regards the protection of health and the respect of privacy.

ANNEX II

**INDICATORS FOR REPORTING ON THE PROGRESS OF THE INSTRUMENT IN ACHIEVING THE GENERAL
AND SPECIFIC OBJECTIVES SET OUT IN ARTICLE 3**

To report on the progress of the Instrument towards the achievement of the general and specific objectives set out in Article 3, the following indicators shall be used:

Equipment

- (a) Availability at land border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (b) Availability at sea border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (c) Availability at air border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (d) Availability at postal border crossing points of customs control equipment meeting agreed standards (by type of equipment)
 - (e) Availability at rail border crossing points of customs control equipment meeting agreed standards (by type of equipment)
-

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/1078

of 14 April 2021

supplementing Regulation (EU) 2021/523 of the European Parliament and of the Council by setting out the investment guidelines for the InvestEU Fund

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 ⁽¹⁾, and in particular Article 8(9) thereof,

Whereas:

- (1) The aim of the InvestEU Programme is to support financing and investment operations contributing to the achievement of the Union's policy objectives set out in Articles 3 and 8 of Regulation (EU) 2021/523.
- (2) Pursuant to Article 8 of Regulation (EU) 2021/523, the InvestEU Fund is to operate under four policy windows reflecting Union policy priorities, namely, sustainable infrastructure, research, innovation and digitalisation, small and medium-sized enterprises, and social investment and skills.
- (3) Pursuant to Article 14(1)(d) of Regulation (EU) 2021/523, financing and investment operations under each of those policy windows are to be consistent with the investment guidelines established by the Commission, in order to be eligible under the InvestEU Fund. To that effect, pursuant to Article 24(1)(b) of Regulation (EU) 2021/523, the Investment Committee is to verify that the proposals for financing and investment operations submitted by implementing partners comply with the requirements laid down in those investment guidelines.
- (4) The investment guidelines consist of a horizontal part, which applies to all financing and investment operations under the InvestEU Fund, and a 'policy windows' part, which lays down specific provisions for financing and investment operations under each policy window.
- (5) Pursuant to Article 8(9) of Regulation (EU) 2021/523, the Commission has prepared the investment guidelines in close dialogue with the European Investment Bank Group and other potential implementing partners.
- (6) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

⁽¹⁾ OJ L 107, 26.3.2021, p. 30.

HAS ADOPTED THIS REGULATION:

Article 1

The investment guidelines for the financing and investment operations under the InvestEU Fund established by Regulation (EU) 2021/523, as laid down in the Annex, are adopted.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 April 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

INVESTMENT GUIDELINES FOR THE INVESTEU FUND

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1. SCOPE

These investment guidelines lay down the eligibility requirements for financial products and financing and investment operations under the policy windows of the InvestEU Fund pursuant Article 8(9) of the Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 ⁽¹⁾ (the 'InvestEU Regulation'):

- (a) the financial products referred to in Article 2(9) of the InvestEU Regulation and the financing and investment operations referred to in Article 2(10) of that Regulation must comply with the requirements laid down in the InvestEU Regulation and in these investment guidelines;
- (b) the Investment Committee, when deciding in accordance with Article 24 of the InvestEU Regulation, must verify compliance with these investment guidelines.

These investment guidelines concern both the EU and Member State compartments set out in Article 9 of the InvestEU Regulation, unless otherwise specified in these guidelines. The definitions set out in Article 2 of the InvestEU Regulation apply also to these investment guidelines.

2. HORIZONTAL PROVISIONS

2.1. Contribution to Union policy objectives and Union added value

Financing and investment operations supported under the InvestEU Fund shall focus on investments that provide Union added value. The nature of the Union added value can vary for financing and investment operations under specific financial products as set out in each policy window in Section 6 of these investment guidelines. The Union added value of financing and investment operations under financial products can also result from risk diversification at financial product level across various sectors or geographies. Furthermore, Union added value can also be derived from the contribution to the resilience of the Union in areas of strategic importance as further set out in Section 2.10.

To achieve Union policy objectives in the policy areas supported by InvestEU, as set out in Article 3 and Annex II of the InvestEU Regulation in relation to the sectors therein, financing and investment operations may complement grant financing and other support in particular through blending operations and combinations. The InvestEU Fund may in particular complement relevant policy objectives of Horizon Europe ⁽²⁾, the Connecting Europe Facility ⁽³⁾ (CEF), the Digital Europe programme ⁽⁴⁾, the Single Market programme ⁽⁵⁾, the European space programme ⁽⁶⁾, the European

⁽¹⁾ OJ L 107, 26.3.2021, p. 30.

⁽²⁾ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

⁽³⁾ Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

⁽⁴⁾ Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1).

⁽⁵⁾ Regulation (EU) No 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (OJ L 153, 3.5.2021, p. 1).

⁽⁶⁾ Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).

Regional Development Fund (ERDF) ⁽⁷⁾, the Cohesion Fund ⁽⁸⁾, the European Social Fund+ (ESF+) ⁽⁹⁾, the Recovery and Resilience Facility (RRF) ⁽¹⁰⁾, the European Agricultural Fund for Rural Development (EAFRD) ⁽¹¹⁾, the Creative Europe programme ⁽¹²⁾, the Asylum and Migration Fund ⁽¹³⁾, the Internal Security Fund ⁽¹⁴⁾, the European Maritime, Fisheries and Aquaculture Fund (EMFAF) ⁽¹⁵⁾, the Programme for the Environment & Climate Action (LIFE) ⁽¹⁶⁾, the ETS Innovation Fund ⁽¹⁷⁾, EU4Health ⁽¹⁸⁾, the Just Transition Fund (JTF) ⁽¹⁹⁾ and the European Defence Fund ⁽²⁰⁾.

2.2. Market failures, suboptimal investment situations and additionality

In accordance with Article 209(2)(a) and (b) of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (the 'Financial Regulation' ⁽²¹⁾) the EU guarantee shall address market failures or suboptimal investment situations and achieve additionality, as laid down in Section A of Annex V to the InvestEU Regulation ⁽²²⁾.

2.3. Common requirements for the financing and investment operations

2.3.1. Implementing partners, financial intermediaries and final recipients

According to Article 2(13) of the InvestEU Regulation, implementing partners are eligible counterparts, such as financial institutions, with whom the Commission has concluded a guarantee agreement.

⁽⁷⁾ Regulation on European Regional Development Fund and on the Cohesion Fund not yet published. Awaiting Parliament 2nd reading.

⁽⁸⁾ Regulation on European Regional Development Fund and on the Cohesion Fund not yet published. Awaiting Parliament 2nd reading.

⁽⁹⁾ Regulation on the European Social Fund Plus (ESF+) not yet published. Awaiting Parliament 2nd reading.

⁽¹⁰⁾ Regulation (EU) 2021/241 of the European Parliament and of the Council of 18 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

⁽¹¹⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

⁽¹²⁾ Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC (OJ L 347, 20.12.2013, p. 221).

⁽¹³⁾ Regulation on the Asylum and Migration Fund not yet published. Awaiting Council's 1st reading position.

⁽¹⁴⁾ Regulation establishing the Internal Security Fund not yet published. Awaiting Council's 1st reading position.

⁽¹⁵⁾ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

⁽¹⁶⁾ Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 (OJ L 347, 20.12.2013, p. 185).

⁽¹⁷⁾ Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3); and Commission Delegated Regulation (EU) 2019/856 of 26 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund (OJ L 140, 28.5.2019, p. 6).

⁽¹⁸⁾ Regulation (EU) 2021/522 of the European Parliament and of the Council of 24 March 2021 establishing a Programme for the Union's action in the field of health ('EU4Health Programme') for the period 2021-2027, and repealing Regulation (EU) No 282/2014 (OJ L 107, 26.3.2021, p. 1).

⁽¹⁹⁾ Regulation on Just Transition Fund not yet published. Awaiting signature of act.

⁽²⁰⁾ Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170, 12.5.2021, p. 149).

⁽²¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

⁽²²⁾ In accordance with the last paragraph of Section A of Annex V to the InvestEU Regulation, refinancing operations shall not be supported by the EU guarantee except in specific exceptional and well-justified circumstances. Financing and investment operations covering existing portfolios falling under this exception may only be established initially within a pilot scheme with a limited budget under a respective policy window and shall meet all the conditions set out in Annex V to the InvestEU Regulation and further laid down in the guarantee agreement.

Implementing partners can provide financing directly ⁽²³⁾ to final recipients or indirectly through private or public financial intermediaries.

Implementing partners may also become advisory partners to provide, directly or indirectly, technical assistance and capacity-building support to financial intermediaries and final recipients under the InvestEU Advisory Hub. Financial intermediaries may also provide technical assistance and capacity-building support to final recipients or may benefit from it themselves.

Direct operations concern direct financing by implementing partners to final recipients ⁽²⁴⁾.

For indirect operations, the implementing partners may conclude agreements with financial intermediaries in accordance with Article 208(4) of the Financial Regulation. In the case of intermediated financing, pursuant to Article 208(4) of the Financial Regulation those financial intermediaries must be selected by the implementing partners following procedures equivalent to those applied by the Commission. Such procedures must respect the principles of open, transparent, proportionate and non-discriminatory procedures, and must avoid conflict of interests. They could, for example, take the form of a call for expression of interest. Indirect operations may also consist of providing financing through investment platforms as defined in Article 2(18) of the InvestEU Regulation.

In accordance with Articles 209(2)(a) and 219(3) of the Financial Regulation, financing and investment operations shall provide support only to final recipients deemed economically viable according to internationally accepted standards at the time of the Union financial support.

The eligible final recipients must be natural or legal persons including:

- (a) private entities such as special-purpose vehicles (SPVs) or project companies, large corporates, midcap companies, including small midcap companies ⁽²⁵⁾, and SMEs;
- (b) public-sector entities (territorial or not, but excluding financing and investment operations with entities ⁽²⁶⁾ giving rise to direct Member State risk) and public-sector type entities;
- (c) mixed entities, such as public–private partnerships (PPPs) and private companies with a public purpose; or
- (d) not-for-profit organisations.

The targeted final recipients under a financial product will be defined in the guarantee agreement.

Implementing partners must not be in any of the situations referred to in Article 136(1) or (4)(a) or (b) of the Financial Regulation. With regard to financial intermediaries and final recipients, the application of Article 136 must be specified in the guarantee agreements. Where financing and investment operations benefit final recipients that are large corporates, public-sector and public-sector-type entities that benefit from easier access to capital markets or bank financing or display lower levels of risk, the implementing partner must demonstrate high policy value added.

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:

- (a) for direct operations, shall not exceed 50 % ⁽²⁷⁾ of the total project cost;

⁽²³⁾ Direct equity and quasi-equity financing shall not be allowed under the EU compartment of the SME window.

⁽²⁴⁾ 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, is treated as a direct operation.

⁽²⁵⁾ Mid-caps companies are companies employing up to 3 000 employees, but which are not SMEs. Small mid-caps are companies as defined in Article 2(22) of the InvestEU Regulation.

⁽²⁶⁾ i.e. government bodies or bodies fully guaranteed by the Member State.

⁽²⁷⁾ In the cases of projects of high policy added value and when it is essential to attract additional private investors through financing structures (such as syndicated loans), the figure may go up to 70 % of the total project cost, as further laid down in the guarantee agreement.

- (b) for indirect equity operations, shall not exceed 50 % of the fund size ⁽²⁸⁾;
- (c) for indirect debt operations, at least 20 % of the exposure shall be retained by the financial intermediary.

These requirements apply unless otherwise specified in these investment guidelines under Section 5.

For indirect operations, the implementing partner shall contractually require that a financial intermediary cannot include the same transaction with final recipients or other intermediaries in more than one portfolio supported by InvestEU.

For indirect equity operations, in respect of the requirement in point (b) above, the implementing partner shall request that potential financial intermediaries inform it about their intention to seek investment from another implementing partner and/or financial intermediary benefiting from the EU guarantee, subject to confidentiality requirements binding on the potential financial intermediaries.

Final recipients shall be contractually required to confirm that the combination of support from the InvestEU Fund and from other Union programmes does not exceed the total project cost, where applicable, and that InvestEU supported financing is not used to pre-finance a grant from Union programmes or that a grant from Union programme will not be used to reimburse InvestEU support.

Implementing partners shall ensure the visibility of the InvestEU support in accordance with Article 32 of the InvestEU Regulation as further specified in the guarantee agreements taking into account the nature of the financial product and of final recipients.

2.3.2. *Types of financial product and requirements for ensuring common interest with implementing partners and financial intermediaries*

2.3.2.1. Prioritisation of policy objectives

Key performance indicators that demonstrate the achievement of policy priorities will be set in order to prioritise the policy objectives under each financial product. In addition, one or more of the following means will be used:

- (a) target amounts for financing granted to certain policy priorities;
- (b) specific dedicated criteria to target relevant final recipients;
- (c) different coverage by the EU guarantee of risks for specific policy priorities;
- (d) concentration limits per sector/geography;
- (e) a duly justified performance-based mechanism to reflect the delivery of specific policy priorities;
- (f) definition of milestones and targets linked to the allocation of additional EU guarantee tranches to new or existing financial products of an implementing partner; or
- (g) any other appropriate means.

The prioritisation and applicable means will be specified in the guarantee agreement.

Furthermore, a close dialogue will be established between the Commission and each implementing partner to provide policy steer and review the pipeline of operations foreseen under the InvestEU Fund.

To ensure flexibility and responsiveness to potentially changing market and policy needs as required under each policy window, the Commission and the relevant InvestEU governance bodies may prioritise the eligible areas for financing set out in Annex II to the InvestEU Regulation based on the means described in this Section. The Commission may in particular:

- (a) periodically review the project pipeline provided by implementing partners together with them. The project pipeline consists of aggregate information (or detailed information, subject to confidentiality commitments in place between the implementing partner and the final recipient, 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. More granular information will need to be provided for thematic products defined under Section 2.3.2.2 and for financing and investment operations benefiting from blending defined under Section 2.9.

⁽²⁸⁾ Exceptions may apply regarding the 50 % limit relating to the fund size in case the Member State compartment is used. Section 5.1.2 sets out further rules for investments in equity funds.

- (b) give guidance on the interpretation of eligibility criteria and prioritisation means referred to in these guidelines.
- (c) review the performance and scope of the relevant financial products in order to optimise the achievement of the policy priorities referred to in these guidelines.

Within the framework set out in this Section 2.3.2.1, indicative targets focusing on specific policy objectives may be set under general financial products.

2.3.2.2. Financial products

Financial products may take the form of general financial products, thematic financial products, and joint general or thematic financial products.

General financial products shall support one or more policy areas covered under each policy window as further defined in Section 6 of these investment guidelines.

In duly justified cases, depending on the risk profile of the financing and investment operations targeting specific policy objectives, **thematic financial products** can be created under policy windows.

A thematic financial product shall focus on a clearly defined, higher Union added value policy area where the market failure or suboptimal investment situation cannot be addressed by general financial products because it significantly departs from the terms and conditions of these available general financial products. This may in particular be due to the high-risk profile of the financing and investment operations, which require higher EU guarantee coverage through asymmetric, limited or no risk sharing with the implementing partner. In any case, the financial contribution of the implementing partner shall comply with Article 13(4) and (5) of the InvestEU Regulation on a portfolio basis.

A thematic financial product shall be based on a market failure or suboptimal investment situation assessment, which shall be proportionate to the features of the proposed thematic financial product, to the extent that the product was not already covered by existing assessments and studies.

In addition to the pipeline review, the implementing partner shall provide specific information regarding eligibility to the Commission on each financing or investment operation under a thematic product, as laid down in the guarantee agreement.

A **joint general or thematic financial product** may be developed to address policy objectives falling under more than one policy window in a more efficient manner. Such products shall combine resources from two or more windows.

2.3.3. Excluded activities

The InvestEU Fund shall not support activities referred to in Section B of Annex V to the InvestEU Regulation.

2.3.4. State aid considerations

Member State resources involved in financing and investment operations supported under the InvestEU Fund under EU and Member State compartments may in certain instances qualify as State aid in the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). However, they are exempted from the notification requirement for State aid measures laid down in Article 108(3) TFEU if they meet the requirements, which are laid down in the General Block Exemption Regulation ⁽²⁹⁾, in particular the InvestEU specific section thereof ⁽³⁰⁾, or in another block exemption regulation ⁽³¹⁾. Any State aid that does not meet the requirements laid down in one of the block exemption regulations must be notified to the Commission pursuant to Article 108 TFEU.

2.4. Risk assessment

For all direct debt-type operations, the implementing partners shall carry out their standard risk assessment, involving the computation of the probability of default and the expected recovery rate and the classification according to the internal rating or grading system of the implementing partner, and report accordingly to the Commission.

⁽²⁹⁾ Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽³⁰⁾ Not yet adopted.

⁽³¹⁾ When State aid is involved, Article 1(4)(c) of the General Block Exemption Regulation states that the Regulation does not apply to undertakings in difficulty.

To reflect the overall risk of the operation, such computation shall be performed without taking into account the EU guarantee and the financial contribution from the implementing partner. However, it must take into account the fact that some operations under thematic products may, under the rules and procedures of the implementing partner, fall outside the scope of its regular risk metrics. In such cases, adequate risk assessment shall be developed by the implementing partner in cooperation with the Commission as to ensure adequate risk reporting.

Information on the expected risk profile of debt-type operations shall also be submitted to the Investment Committee as part of the application for InvestEU Fund support. A debt-type operation is an operation that has the risk characteristics of debt, which may include instruments in the legal form of debt. Examples of debt include loans, financial leases, mortgages, letters of credit, guarantees, standby credit facilities, and securities issued on the capital markets such as bonds; these may be senior, mezzanine or subordinated and secured or unsecured.

For equity-type operations, the EU guarantee may be used to support investments in individual entities or projects (equity-type investments) by the implementing partners or through investments in funds (including funds of funds, co-investment vehicles or other types of intermediaries) or other types of financing vehicles presenting equity-type portfolio risks (equity-type portfolio).

An equity-type operation is an operation that has the risk characteristics of equity. This may include instruments in the legal form of equity, such as investments in common or preferred shares, and of quasi-equity or hybrid instruments, such as deeply subordinated loans with profit participations, mezzanine finance, venture loans, convertibles, warrants or other forms of equity kickers when exposing the holder to equity-type risk. For direct equity-type operations, the implementing partner shall carry out their standard assessment and report accordingly to the Commission. For operations that fall outside the scope of regular equity metrics, the implementing partner shall develop an adequate method of assessment in cooperation with the Commission so as to ensure adequate reporting.

The implementing partner shall use its standard risk assessment to determine whether an operation is classified as equity-type or debt-type, irrespective of its legal form and nomenclature, and shall report this accordingly to the Commission.

For intermediated operations, the implementing partners may rely on the standard procedures of financial intermediaries with respect to the assessment of the risk of the final recipients or the valuation of the operation, as applicable. The guarantee agreement will provide that the outcome of analysis performed by the implementing partners, based on the input received from financial intermediaries at portfolio level, shall be reported to the Commission so that it can assess the impact of such operations on the risk borne by the EU guarantee and the adequacy of the provisioning needs.

Financing and investment operations shall be mapped against a common rating system put in place in accordance with Article 11(1)(b)(ii) of the InvestEU Regulation. Relevant information on the risk assessment of a financing or investment operation shall be made available to the Investment Committee in line with Article 24(4) of the InvestEU Regulation and to the Commission for reporting purposes. The detailed requirements shall be laid down in the guarantee agreements, taking into account the interests of the EU as the guarantor and ensuring that appropriate protection is given to the confidentiality of private and/or commercially sensitive information.

2.5. Currency of financing

The EU guarantee to implementing partners shall be provided in EUR.

Financing to final recipients under financing and investment operations may be provided in any currency that has the status of legal tender in a Member State. Such financing may also contribute to the development of local capital markets.

Financing may also be provided in other tradeable currencies. However, implementing partners and financial intermediaries shall strive to avoid exposing final recipients to foreign exchange risk. As a rule, financing may be provided to final recipients in currencies other than the legal tender of the State where the final recipient is established, only when there is strong economic rationale for doing so. In such cases, the financing should be preferably granted in EUR.

2.6. Allocation principles per policy window

Financial products shall be established under the appropriate policy window, in accordance with the principles set out below:

- (a) financial products to support financing and investment operations whose main objective is to achieve a positive social impact or skills development, fall under the Social Investment and Skills window;
- (b) financial products to support portfolios consisting exclusively of SMEs and small midcaps on an intermediated basis in the form of debt or equity fall under the SME window, except for those falling under the scope of point (a). For direct operations, financial products to support portfolios consisting exclusively of SMEs and small midcaps as a general policy area as referred to in Article 8(1)(c) of the InvestEU Regulation shall be allocated to the SME window, while financial products targeting other specific policy areas are to be allocated to the window covering that area;
- (c) financial products to support research, innovation or digitisation activities fall under the Research, Innovation and Digitisation (RID) window, except for those referred to in points (a) and (b);
- (d) financial products to support infrastructure operations, related mobile assets, deployment of innovative technologies for which the risk is mainly on demand and sector specific market development shall fall under the Sustainable Infrastructure window, subject to the following conditions:
 - (i) financial products related to social infrastructure ⁽³²⁾ are to be allocated to the Social Investment and Skills window;
 - (ii) financial products related to infrastructure for which the main risk lies in technology development and innovation activities are to be allocated to the RID window. However, financial products related to projects pursuing relevant sustainable infrastructure policy objectives may also be implemented and developed by SMEs and small mid-caps under the Sustainable Infrastructure window as long as the portfolios do not fall under point (b).

Capital support to SMEs in accordance with Article 3(1)(g) of the InvestEU Regulation may be provided through financial products falling under any policy window.

Joint financial products fall under two or more windows according to the relevant guarantee allocation mechanism as set out in the guarantee agreements. Such guarantee allocation mechanism may consist of a pro-rata sharing of each financing or investment operation defined *ex ante* among the relevant policy windows or other mechanism.

Each individual financing or investment operation proposed by the implementing partner shall be allocated to the respective financial product to which they correspond. For financing or investment operation meeting the criteria of more than one established financial product, such operation shall be allocated to the financial product under which its main objective falls, in accordance with Article 8(4) of the InvestEU Regulation.

In its submission of a specific financing or investment operation, the implementing partner shall propose the relevant financial product under the policy window to which the financing or investment operation shall be allocated.

2.7. Geographical and sectoral diversification

The volume of financing and investment operations covered by the EU guarantee in any three Member States should 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. This excludes financing and investment operations or the relevant parts of them covered under the Member State compartments.

⁽³²⁾ Social infrastructure in the context of the Social Investment and Skills window refers to the infrastructure supporting the provision of social services and selected services of general interest (education and health) as defined in the Commission Communication on Social Services of General Interest and Services of General Interest (COM(2007) 725 final and COM(2006) 177 final). More specifically, social infrastructure in the field of social services supports the provision of enabling services assisting people, through personalised support, to overcome their adverse social situations, to ensure inclusion in society and to enhance their employability. This type of infrastructure is typically delivered on a local level and involves integrated delivery and community based provision.

In addition, every effort must be made to ensure that at the end of the investment period a wide range of eligible areas listed in Annex II to the InvestEU Regulation will be covered. That will include in particular nascent or under-developed markets, and will take into account financial products provided by the implementing partner. Any of the eligible areas for financing and investment operations set out in Annex II to the InvestEU Regulation may be covered by a financial product.

Investment platforms may be established to promote geographical diversification combining efforts and expertise of implementing partners with national promotional banks and institutions with limited experience in the use of financial instruments.

Under the Member State compartments, the geographical scope and specific ring-fencing will be included in the respective contribution agreements.

2.8. Member State compartments in policy windows

Member State compartments may be established to cover one or more applicable policy window or windows. They will constitute ring-fenced allocations from contributing Member States to ensure delivery of the policy objectives of the funds under shared management, of the RRF or for purposes laid down in the contribution agreement, depending on the origin of the amount contributed. The Member State compartments may, among other things, provide capital support for SMEs in accordance with Article 3(1)(g) of the InvestEU Regulation.

The financing and investment operations under the Member State compartments shall be delivered in accordance with the rules of the InvestEU Fund and comply with these investment guidelines and a contribution agreement pursuant to Article 10 InvestEU Regulation, including objectives of the contributing programmes.

Each Member State compartment ⁽³³⁾ may provide support in the following scenarios in relation to the financial products set out in Section 2.3.2.2:

- (a) an existing financial product designed for the EU compartment may also be implemented under the Member State compartment. The contribution shall be ring-fenced for the originating Member State(s) or region(s);
- (b) tailor made financial products may be developed to address specific needs and specific final recipients of the originating Member State or region. Such financial product may be a new type of financial product or may significantly differ from an existing financial product developed for the EU compartment;
- (c) a financial product may combine support from the EU and Member State compartments in a complementary manner.

Two or more Member States may conclude a joint contribution agreement with the Commission in accordance with Article 10(2) of the InvestEU Regulation.

2.9. Blending operations receiving support from the InvestEU Fund

Blending operations ⁽³⁴⁾ defined in Article 2(5) and referred to in Article 6(2) of the InvestEU Regulation involve support from the InvestEU Fund. A proposal for a financing or investment operation which constitutes part of such a blending operation shall be submitted by the implementing partner for the approval of the Investment Committee.

The implementation of the blending operation shall take place under InvestEU rules. The blended element provided by the sectoral programme ⁽³⁵⁾ can take the form of a grant or a financial instrument and shall comply with the eligibility rules of the sectoral programme. The blended element taking the form of a financial instrument can be combined and share the risk with the InvestEU guarantee, as further specified in the guarantee agreement. The relevant work programme ⁽³⁶⁾ will

⁽³³⁾ The Member State compartment could be financed by any of the following shared management funds: ERDF, Cohesion Fund, ESF+, EAFRD and EMFF; or by a cash contribution from a Member State, including those supported by the RRF.

⁽³⁴⁾ A blending operation shall not be treated as a financing or investment operation, as defined in Article 2(5) of the InvestEU Regulation, which constitute part of such blending operation.

⁽³⁵⁾ For the purposes of these investment guidelines, 'sectoral programmes' means Union programmes as defined in Article 2(5) of the InvestEU Regulation. For the purposes of this Section 2.9, only sectoral programmes for which a corresponding enabling clause is included in the legal basis are relevant.

⁽³⁶⁾ In the case of blending with the ETS Innovation Fund, relevant decision adopted in accordance with delegated acts adopted on the basis of Article 10a(8) of Directive 2003/87/EC as amended by Directive (EU) 2018/410 (OJ L 76, 19.3.2018, p. 3).

constitute the financing decision on the blended element of the sectoral programme and will mention its form, objectives, the budgetary amount of the sectoral programme to be allocated to blending operations and the list of entities involved in the blending operation. A decision on the blended element from a sectoral programme is without prejudice to the decision of the Investment Committee on the EU guarantee under the InvestEU Regulation.

In the design and implementation of a blending operation special attention shall be paid to the efficiency and proportionality of the combined Union support. The guarantee agreement will indicate the financial product(s) under which blending operations can be submitted and the specific provisions applicable to blending operations. These may include indicative or mandatory ceilings of the respective tranches of Union support. Moreover, aggregate information (or if so agreed in the guarantee agreement, detailed information) on blending operations may be reviewed during the project pipeline discussions with the Commission. The scoreboard shall reflect whether a blending operation benefits from a grant component or a financial instrument from other Union programmes.

In addition to the pipeline review, the implementing partner shall provide specific information regarding eligibility to the Commission on each financing or investment operation benefiting from blending under a financial product, as defined in the guarantee agreement. For homogenous indirect financing or investment operations, specific eligibility criteria for transactions with final recipients may be defined in the guarantee agreement that may replace the need for such specific information.

2.10. Strategic investments

Financing or investment operations under InvestEU may contribute to activities that are of strategic importance to the Union as set out in Article 8(3) of the InvestEU Regulation. Such activities will be considered strategic investments if they:

- (i) concern projects and final recipients associated with risks to the security or public order of the Union and its Member States, in particular investments in defence and space sectors and cybersecurity:
 - for defence, investments in defence technologies and products identified in the annual work programme for the European Defence Fund;
 - for space, investments in the following products:
 - atomic clocks (e.g. for Galileo positioning systems);
 - strategic launchers (i.e. space launch vehicles for Union-controlled space systems); and
 - space products defined in a list decided by the Commission on an annual basis and communicated to the Steering Board;
 - for cybersecurity, investments focusing solely on developing and deploying cybersecurity tools and solutions, including when these are part of deploying or upgrading digital networks and data infrastructure;

or

- (ii) contribute to the resilience of the Union in areas of strategic importance to it, as set out in Sections 6.1.1.8, 6.2.1.1 and 6.4.1.1, by upholding and strengthening strategic value chains and maintaining and reinforcing activities of strategic importance to the Union, including Important Projects of Common European Interest (IPCEI), in the areas of critical infrastructure, transformative technologies, game-changing innovations and inputs to businesses and consumers.

For direct operations, the implementing partner shall ensure that strategic investments respect the limitations laid down in the paragraphs below. For indirect operations, the implementing partner shall contractually require that the financial intermediary ensures compliance with the same limitations.

Limitations apply to final recipients falling under point (i) in the first paragraph, except in the case of direct operations below EUR 10 000 000 and transactions under indirect operations below EUR 10 000 000.

For the purposes of the limitations set out in this Section:

- (a) ‘control’ means the ability to exercise a decisive influence on a legal entity directly or indirectly through one or more intermediate legal entities;

- (b) 'executive management' means a body of a legal entity appointed in accordance with national law, and, where applicable, reporting to the chief executive officer, or any other person having comparable decisional power, which is empowered to establish the legal entity's strategy, objectives and overall direction, and which oversees and monitors management decision-making;
- (c) 'third country' entity means a legal entity established in a third country or, where it is established in the Union, having its executive management in a third country. The location of establishment of the legal entity is determined by the location of its registered office.

A final recipient falling under point (i) shall not be controlled by a third country or third country entities and shall have its executive management in the Union.

If the final recipient falling under point (i) is involved in a strategic investment in the field of 5G connectivity, the measures and risk mitigation plans, pursuant to the 5G Cybersecurity Toolbox ⁽³⁷⁾ shall also apply to its suppliers. Such suppliers notably include vendors of telecom equipment and manufactures and other third-party suppliers, such as cloud infrastructure providers, managed service providers, systems integrators, security and maintenance contractors and transmission equipment manufacturers.

Where the final recipient falling under point (i) is involved in a strategic investment in the field of defence, this limitation shall also apply to its suppliers and subcontractors.

The limitations concerning the absence of control by a third country or third country entity set out in the three paragraphs above do not apply for a particular financing and investment operation where the final recipient falling under point (i) can demonstrate that it is a legal entity for which the Member State in which it is established has approved a guarantee in line with the principles concerning eligible entities set out in the relevant provisions of the European Defence Fund ('EDF') Regulation ⁽³⁸⁾ or the Commission waiver granted in accordance with principles concerning eligible entities set out in the relevant provisions of the Space Regulation ⁽³⁹⁾. The implementing partner must notify the Commission of any derogation granted to the limitations set out in this Section 2.10.

Final recipients falling under point (i) shall not exclusively license or transfer intellectual property rights to related critical technologies and technologies instrumental to safeguarding the essential security interest of the Union and its Member States directly resulting from those strategic investments to third countries or third-country entities, unless approved by the Member State in which the final recipient is established.

This limitation shall cease to apply 5 years after the date of the final disbursement of the financing.

3. PROMOTING SUSTAINABLE INVESTMENTS

InvestEU, as an important part of the Sustainable Europe Investment Plan/Green Deal Investment Plan ⁽⁴⁰⁾, will help deliver on the European Green Deal and on the Just Transition Mechanism. It will also contribute to building up the social dimension of the Union.

The InvestEU Regulation contains specific legal requirements concerning the contribution to climate and environmental objectives, as well as to the sustainability of financing and investment operations receiving the support of the EU guarantee. In the InvestEU context, sustainability refers to the impact on the three dimensions mentioned in the InvestEU Regulation: climate, environment and social.

Moreover, under Article 8(5) of the InvestEU Regulation, projects inconsistent with the climate objectives, according to the principles set out in the guidance on sustainability proofing, shall not be eligible for support.

⁽³⁷⁾ NIS Cooperation Group, Cybersecurity of 5G networks EU Toolbox of risk mitigating measures, 01/2020, https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=64468

⁽³⁸⁾ Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170, 12.5.2021, p. 149).

⁽³⁹⁾ Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).

⁽⁴⁰⁾ Commission Communication on Sustainable Europe Investment Plan/European Green Deal Investment Plan (COM(2020) 21 final).

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 sustainability bond market; the deployment of innovative and sustainable solutions in the areas of circular economy, bio-economy, blue economy, food and climate change; protection of environment and natural capital (air, water, nature, land and bio-diversity); the transition and decarbonisation of energy intensive industries, including through investments in digital technologies and circular systems; sectors needing support to be aligned with 2030 and 2050 climate objectives of the European Union; 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.

Implementing partners are encouraged to support economic activities that are aligned with the criteria of Regulation (EU) 2020/852 ⁽⁴¹⁾.

Dedicated advisory services may be provided to project promoters, financial intermediaries or implementing partners ⁽⁴²⁾, especially to build up the capacity to deal with sustainability proofing requirements and to build up a pipeline of projects addressing the above objectives.

3.1. Climate and environment tracking and reporting

As noted in Recital 10 of the InvestEU Regulation, the aggregate volume of financing and investment operations is expected to contribute at least 30 % of the overall financial envelope of the InvestEU Programme to climate objectives. In addition, a specific target of at least 60 % of the aggregate volume of financing and investment operations on climate and environment related objectives under the Sustainable Infrastructure window is laid down in Article 8(8) of the InvestEU Regulation for the EU compartment. The financing and investment operations are also expected to contribute to the overall Union biodiversity objectives.

Climate and environmental targets shall apply both to the EU and the Member State compartment of the InvestEU Fund. However, achievement of the targets ⁽⁴³⁾ shall be calculated and monitored separately for the EU and the Member State compartments.

Implementing partners shall measure the contribution to climate and environmental objectives of the financing and investment operations they submit to the Investment Committee, in accordance with the Commission climate and environmental tracking guidance referred to in Article 8(7) of the InvestEU Regulation. Climate and environmental tracking under the InvestEU Fund will build on a coherent system for collecting, marking and aggregating relevant information from all implementing partners, while ensuring compatibility with a broader climate tracking methodology applicable to all relevant programmes financed through the Union budget. This system will have to use in an appropriate way the criteria for determining whether an economic activity is environmentally sustainable in accordance with the Regulation on the establishment of a framework to facilitate sustainable investment ⁽⁴⁴⁾.

In order to monitor the achievement of the 30 % climate target and the 60 % cumulative climate and/or environment target for the Sustainable Infrastructure window, at the time of submission of a proposal to the Commission, the implementing partners shall provide the information needed in order to track the contribution to these targets, in accordance with the guidance issued by the Commission. The same information will also be submitted to the Investment Committee as part of the application for InvestEU Fund support.

Guarantee agreements will require the implementing partners to report annually to the Commission, at 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 will include relevant indicators, where applicable.

⁽⁴¹⁾ Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13), and relevant delegated acts.

⁽⁴²⁾ The advisory support to implementing partners will be complementary to the technical assistance provided by the Technical Support Instrument.

⁽⁴³⁾ 30 % for climate and 60 % for climate and environment under the Sustainable Infrastructure window.

⁽⁴⁴⁾ Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

3.2. Sustainability proofing

In accordance with Article 8(5) of the InvestEU Regulation, financing and investment operations shall be screened by the implementing partner to determine if they support projects above a certain size ⁽⁴⁵⁾ and, in such case, whether they have any significant environmental, climate or social impact. If so, they shall be subject to sustainability proofing in accordance with guidance developed by the Commission in cooperation with potential implementing partners. Where the implementing partner concludes that no sustainability proofing is to be carried out, it shall provide a justification to the Investment Committee.

The implementing partner will be responsible for performing the sustainability proofing based on information provided by the project promoters and in line with the Commission guidance. When applying for InvestEU support, the implementing partners shall provide a sustainability proofing summary, as applicable. With due regard to rules and practices regarding confidential and commercially sensitive information, including intellectual property, the sustainability proofing summary shall be made public after the Investment Committee has approved the use of the EU guarantee for a specific operation.

The Commission guidance will be developed in a way that is consistent with the guidance developed for other programmes of the Union, and on the basis of existing legislation ⁽⁴⁶⁾, existing guidelines, tools and best practices to ensure climate resilience and assess environmental externalities ⁽⁴⁷⁾, and by taking into account, in an appropriate way, the criteria for determining whether an economic activity is environmentally sustainable, as defined by the Regulation (EU) 2020/852, including the principle of 'do no significant harm'. The proofing shall also contribute to verifying that InvestEU investment operations should aim at eliminating inequalities, or at least not contribute to maintaining or increasing existing inequalities.

3.3. Just Transition Scheme under InvestEU

As part of the Sustainable Europe Investment Plan/European Green Deal Investment Plan, InvestEU will contribute to the Just Transition Mechanism, with a dedicated InvestEU Just Transition Scheme (InvestEU JTS), implemented through InvestEU financial products. The InvestEU JTS shall support investments that address social, economic and environmental challenges deriving from the transition towards achieving of the Union's 2030 climate target and its target of achieving climate neutrality by 2050. In order to be able to benefit from the InvestEU JTS, Member States shall set out in the relevant territorial just transition plan the sectors and activities envisaged to be supported, in accordance with the principles concerning the territorial just transition plans set out in the relevant provisions of the Just Transition Fund Regulation ('JTF' Regulation) ⁽⁴⁸⁾.

The InvestEU JTS shall support economically viable investments by private and public-sector entities aligned with just transition objectives. Projects or final recipients shall be located in territories covered by an approved territorial just transition plan under the JTF Regulation. Moreover, projects or final recipients not located in these territories but contributing to meet their development needs may be supported, provided that funding for such projects is key to the transition of the territories with a territorial just transition plan. For instance, infrastructure projects that improve the connectivity of the just transition regions may be covered.

The InvestEU JTS shall support investments in line with the objectives (Article 3 of the InvestEU Regulation) and investment priorities (Article 8(1) and Annex II to the InvestEU Regulation) set out in the InvestEU Regulation and in these investment guidelines.

⁽⁴⁵⁾ The specific thresholds to be applied will be defined in the sustainability guidance issued by the Commission pursuant to Article 8(6) of the InvestEU Regulation.

⁽⁴⁶⁾ For instance: Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1), as amended by Directive 2014/52/EU (OJ L 124, 25.4.2014, p. 1); Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7); Directive 2000/60/EC establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1); Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

⁽⁴⁷⁾ 'Climate change and major projects. Outline of the climate change related requirements and guidance for major projects in the 2014-2020 programming period: ensuring resilience to the adverse impact of climate change and reducing the emission of greenhouse gases', European Commission (25.8.2016) https://ec.europa.eu/clima/sites/clima/files/docs/major_projects_en.pdf; as well as 'Integrating Climate Change Information and Adaptation in Project Development: Emerging Experience from Practitioners', European Union Financial Institutions Working Group on Adaptation to Climate Change (EUFIWACC) (May 2016) https://ec.europa.eu/clima/sites/clima/files/docs/integrating_climate_change_en.pdf

⁽⁴⁸⁾ Regulation on Just Transition Fund not yet published. Awaiting signature of act.

The InvestEU JTS can be implemented through any InvestEU financial product under the four policy windows. Due to the specificities of the just transition territories (e.g. economic disparities, labour market structure, absorption capacity etc.) and the impact on the economic outlook due to the COVID-19 pandemic, higher demand for financing can be expected under some financial products and limited or no demand under others. Considering these factors, dedicated incentives may be offered to implementing partners and financial intermediaries. They may take, where justified, the form of more advantageous risk sharing arrangements for the investment portfolios between the EU and the implementing partner, a lower remuneration of the EU guarantee or partial coverage of the administrative costs under the financing and investment operations contributing to the InvestEU JTS as defined in Article 13(2) of the InvestEU Regulation or another form agreed in a guarantee agreement in the context of one or more financial products. Dedicated advisory support may be offered, where appropriate, to relevant project promoters or financial intermediaries to support the development of a viable project pipeline.

Any reduction of the remuneration of the EU guarantee shall fully benefit final recipients.

The contribution from implementing partners to achieving investment objectives for the InvestEU JTS may vary depending on the nature of the financial product concerned.

Implementing partners shall track and report on the financing and investment operations or their relevant components supporting projects or final recipients under the InvestEU JTS. After the adoption of a relevant territorial just transition plan, such operations or their relevant components shall count as investment mobilised under the InvestEU JTS even if they were approved before the adoption of the plan, provided that the implementing partner verifies that they comply with the objectives of the relevant territorial just transition plan.

Financing under the InvestEU JTS shall not be combined with the public sector loan facility ⁽⁴⁹⁾ (pillar 3), except for advisory support.

4. USE OF THE EU GUARANTEE

The **EU guarantee** may be used to cover different tranches of risk of financing or investment operations under different financial products or portfolios of financing and investment operations under financial products. The details of the use of the EU guarantee shall be set out in the guarantee agreement.

The EU guarantee may be *pari passu* with the risk position taken by the implementing partner or can cover a junior tranche, for example a First Loss Piece ('FLP') or a mezzanine tranche. For guarantee agreements covering more than one policy window, the losses occurring under financial products can be mutualised within one or among more policy windows, taking into account the risk sharing structure defined in the guarantee agreement.

The implementing partner's share in the FLP counts towards the financial contribution of the implementing partner as defined in Article 2(7) of the InvestEU Regulation. Risk sharing in other forms, such as the implementing partner's share in a mezzanine tranche, may count towards the financial contribution of the implementing partner, subject to conditions and calculation methodology laid down in the guarantee agreements.

The lifetime of a financial product and conditions for terminating it shall be defined in the guarantee agreement. Where appropriate, a possibility may be foreseen under a financial product at the level of the financing or investment operation to exit investments or dispose of exposures before the end of the lifetime of the underlying investments if the achievement of policy objectives can be ensured, while observing the Union's and the implementing partner's financial interests.

Without prejudice to the principles set out in this Section 4 that shall apply *mutatis mutandis*, the thickness of the junior or mezzanine tranche may also be set via a transfer rate mechanism, which will be specified in the guarantee agreement. That consists of applying an individual transfer rate to each financing or investment operation to determine the level of contribution for that operation to such junior or mezzanine tranche by the implementing partner and the EU guarantee.

⁽⁴⁹⁾ Regulation on Public Sector Loan Facility not yet published. Awaiting Parliament's position in 1st reading

The following principles shall apply to the use of the EU guarantee, unless otherwise specified in these investment guidelines under the relevant policy window Section. For the Member State compartment, the thickness of the FLP or mezzanine tranche may differ from the principles set out in this Section 4, as specified in the relevant contribution agreement signed between the Commission and the Member State.

4.1. General financial products

4.1.1. Use of the EU guarantee for debt-type operations

As a principle, subject to the provisions in Sections 4.1.1.1 to 4.1.1.3, for portfolios supporting debt-type operations under financial products, when the EU guarantee covers an FLP, the implementing partner shall take a share of at least 5 % in the FLP.

4.1.1.1. Coverage of individual operations

This Section 4.1.1.1 applies only to direct operations.

The EU guarantee may be used to partly cover an individual operation on a *pari passu* basis. In this case, the EU guarantee on an individual operation cannot exceed 50 % of the financing provided by the implementing partner. The implementing partner shall be obliged to retain a minimum of 20 % *pari passu* share on an individual operation for the purpose of alignment of interest.

The EU guarantee may also take other forms, including a subordinated position in respect of an individual operation. In this case, the EU guarantee on an individual operation is limited to 25 % of the overall amount of financing provided by the implementing partner ⁽⁵⁰⁾. The implementing partner must take a share of at least 5 % in the subordinated position.

4.1.1.2. Coverage of portfolios of operations other than those referred to in Section 4.1.1.3

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 % in the FLP.

The thickness of the FLP will be based on the expected risk profile of the operations under the guaranteed portfolio. It shall be limited to up to 30 % of the overall amount of financing provided by the implementing partner under a financial product. Under the Social Investment and Skills window, the thickness of the FLP may be increased with reference to an appropriate portion of the overall amount of financing.

4.1.1.3. Coverage of portfolios of capped and uncapped guarantees

For intermediated debt financing, both in the form of capped guarantees and in the form of uncapped guarantees, where remuneration from financial intermediaries is not sufficient to adequately remunerate the risk of the financing provided by the implementing partner, the EU guarantee may take a share of up to 100 % in the FLP set at expected losses level. For such intermediated debt financing in the form of capped guarantees, the thickness of the FLP covered by the EU guarantee may be set at up to 100 % of the financing provided by the implementing partner.

In duly justified cases, for uncapped guarantees offered by the implementing partner, the EU guarantee may cover losses above expected losses. In such cases, the portion of unexpected losses covered by the EU guarantee shall be priced, as specified in the guarantee agreement.

In exceptional cases of high policy value, for capped guarantees offered by the implementing partner, the thickness of the FLP covered by the EU guarantee may be set at a level higher than expected losses. In such cases, the portion of unexpected losses covered by the EU guarantee shall be priced, as specified in the guarantee agreement.

⁽⁵⁰⁾ In the case of a financing or investment operation taking the form of a guarantee from the implementing partner to the third-party financier, the limit of 25 % applies to the financing provided by the third-party financier.

4.1.2. Use of the EU guarantee for equity-type operations

In principle, as regards portfolios supporting equity-type operations, implementing partners have to invest on a *pari passu* basis in each financing or investment operation at their own risk for a share that ensures sufficient alignment of interests, as defined *ex ante* under each financial product. 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 (which can be considered at a group level) on a *pari passu* basis under the different financial products and own risk financing shall represent at least 5 % of the overall equity-type financing provided *pari passu* by the implementing partner under any financing or investment operation.

In duly justified cases, risk sharing arrangements between implementing partners and the Commission may be on a non *pari passu* basis. For example, a subordinated use of the EU guarantee may be allowed for public goods with systemic market failures or for the failure to appropriately price externalities, such as first-of-a-kind operations or new market creation.

Only in exceptional cases, including those where there is a high concentration of risk, the EU guarantee may cover up to 100 % of the FLP (which will not be higher than 50 % of the overall financing provided by the implementing partner under such portfolio). In all cases, the revenue sharing between the implementing partner and the Commission shall be commensurate to their risk exposure.

4.2. Thematic financial products

4.2.1. Use of the EU guarantee for debt-type operations

The EU guarantee may cover an FLP in respect of the relevant portfolio of debt-type operations financed by the implementing partner. Given the characteristics of such financial products, the thickness of the FLP may be higher than 50 % of the target financing provided by the implementing partners. The implementing partner shall take a share of at least 5 % in the FLP in order to ensure alignment of interest. In duly justified cases, the alignment of interest may be ensured through other financial means specified in the relevant guarantee agreement.

In duly justified cases, the implementing partners' contribution to the loss coverage ensured by the FLP can be provided progressively, as the portfolio matures and is de-risked. This contribution can be provided through the revenues originating from the guaranteed or other portfolio(s), or through other appropriate and innovative mechanisms.

4.2.2. Use of the EU guarantee for equity-type operations

The EU guarantee may cover an FLP in respect of the relevant portfolio of equity-type operations financed by the implementing partner; the thickness of the FLP may be higher than 50 % in respect of the relevant portfolio of operations financed by the implementing partner. The implementing partner shall take a share of at least 5 % in the FLP in order to ensure alignment of interest. In duly justified cases, the alignment of interest may be ensured through other financial means specified in the relevant guarantee agreement.

In duly justified cases, the implementing partners' contribution to the loss-coverage ensured by the FLP can be provided progressively, as the portfolio matures and is de-risked. This contribution can be provided through the revenues originating from the guaranteed or other portfolio(s), or through other appropriate and innovative mechanisms.

5. FINANCING PROVIDED BY THE IMPLEMENTING PARTNER

The following principles shall apply to the financing provided by the implementing partner, unless otherwise specified in these investment guidelines under the relevant policy window Section.

5.1. General financial products

5.1.1. Debt financing provided by the implementing partner

5.1.1.1. General debt financing

The implementing partner may provide financing directly to final recipients, that is to say in the form of direct loans or other forms of direct debt financing, or through financial intermediaries.

5.1.1.2. Capped and uncapped guarantees

The following conditions shall apply to the financing and investment operations made under the EU compartment:

- (a) the EU guarantee may be offered to the implementing partners in order for them to provide a capped or an uncapped guarantee for a portfolio of newly established financing transactions originated by a financial intermediary. Transactions with final recipients subject to collective insolvency proceedings or fulfilling the criteria under their domestic law for being placed in collective insolvency proceedings at the request of its creditors shall not be eligible for inclusion in these portfolios;
- (b) in the case of a capped portfolio guarantee, the cap rate shall be established at the level of the expected losses of the new portfolio and shall be determined individually for each portfolio guarantee agreement signed with the financial intermediary ⁽⁵¹⁾. The expected losses shall be determined and documented on the basis of historical data and forward-looking estimations. In the absence of relevant data, the cap rate shall be set at a pre-agreed level and laid down in the guarantee agreement between the Commission and the implementing partner. The maximum permissible cap rate shall be 25 %. For the Social Investment and Skills window, the maximum permissible cap rate may be higher;
- (c) in duly justified cases, the guarantee coverage up to the level of expected losses may be provided for free (for both capped and uncapped guarantees) while the risk taking above expected losses has to be priced by the implementing partner as may be defined in the guarantee agreement between the Commission and the implementing partner. In both cases, the reduction of the remuneration of the EU guarantee shall fully benefit the final recipients;
- (d) the guarantee rate for the individual financing transactions included in the new portfolio shall typically be set at 50 % but this percentage may be increased for transactions of specific policy value;
- (e) the financial intermediary shall be obliged to retain a minimum of 20 % of the exposure in relation to each financing transaction ranking *pari passu* with the guarantee provided by the implementing partner. In duly justified cases, a lower percentage may be specified in the guarantee agreement between the Commission and the implementing partner if consistent or compliant, as applicable, with State aid rules. Under the Social Investment and Skills window, the minimum exposure may be reduced to 5 % in duly justified cases;
- (f) with regard to loss recoveries, the guarantee provided by the implementing partner shall rank *pari passu* with the financial intermediary. In the case of capped guarantees, if the amount of the losses exceeds the guarantee cap amount, a corresponding amount of loss recoveries may first be allocated to the more senior exposures; alternatively, an *ex-ante* estimated recovery rate may be applied;
- (g) the minimum tenor of financing transactions that can be included in the portfolios is set at 12 months, except under the Social Investment and Skills window where it may be less.

5.1.2. Equity financing provided by the implementing partner

Equity and quasi-equity financing may be provided by implementing partners to final recipients directly ⁽⁵²⁾ or through financial intermediaries, such as dedicated funds and investment vehicles, including co-investment vehicles. Intermediary funds or investment vehicles shall typically target minority participations in final recipients.

⁽⁵¹⁾ The cap rate may exceptionally, in duly justified cases, be set at higher than expected losses level under the Member State compartment of the SME window.

⁽⁵²⁾ Direct equity and quasi-equity financing shall not be allowed under the EU compartment of the SME window.

All of the following conditions shall apply to investments made under the EU compartment to financial intermediaries, as further set out in the guarantee agreements with implementing partners and, for the avoidance of doubt, they apply to the financing provided by the implementing partner under InvestEU (financing or investment operation), including the parts covered by the EU guarantee and by the financial contribution of the implementing partner:

- (a) a financial intermediary receiving an investment under InvestEU (financing or investment operation) shall, as part of its investment strategy, commit to invest in final recipients eligible under the InvestEU Regulation an amount equal to at least the higher of:
 - (i) 50 % of the intermediary's aggregate invested amounts; and
 - (ii) two times the amount drawn down under the EU backed investment for investment purposes, capped at 80 % of the intermediary's aggregate invested amounts.
- (b) investments by implementing partners in funds shall typically not represent more than 25 % of the fund size. In 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 or in exceptional cases of technology transfer funds under other policy windows where it may be up to 75 % of the fund size. In the case of fund of funds, these limits apply at the level of the investee funds;
- (c) investments in funds dedicated to green and digital investments at European level by three or more implementing partners may be in aggregate up to 75 % of the fund size;
- (d) for co-investment vehicles and schemes, a specific set of rules will be laid down in the guarantee agreements with the implementing partners;
- (e) investments by implementing partners under InvestEU shall be made on a *pari passu* basis with other public and private investors and on a market conform basis. Market conformity requires that a minimum of 30 % of all investments into a fund or into the fund's underlying projects shall be made by private investors in a comparable situation with the remaining investors and on a *pari passu* basis ⁽⁵³⁾. The requirements in this paragraph may not apply for the purpose of investment in areas of specific policy relevance for the EU, as further specified in the relevant guarantee agreement with an implementing partner;
- (f) investment in funds by implementing partners under InvestEU shall normally be made at the first closing of the fund; investments at subsequent closings are only possible where duly justified;
- (g) financing and investment operations shall be long term and have durations typically ranging from 5 to 20 years;
- (h) investments in final recipients that are eligible in accordance with the relevant financial product shall take the form of primary investments ⁽⁵⁴⁾. Secondary investments may also be considered eligible where duly justified, as specified in the guarantee agreement.

5.2. Thematic financial products

5.2.1. Debt financing provided by the implementing partner

The implementing partner may provide financing to final recipients in the form of direct loans or other forms of direct debt financing or via financing intermediaries to target the relevant higher Union added value policy area.

5.2.2. Equity financing provided by the implementing partner

Equity and quasi-equity financing may be provided by implementing partners to final recipients directly ⁽⁵⁵⁾ or through dedicated funds and investment vehicles. Investment in funds or other investment vehicles, and platforms supported by the EU guarantee may, in duly justified cases, also rank in a subordinated manner compared to other investors.

⁽⁵³⁾ For the SME window, the minimum 30 % financing from private investors is required at fund level. In the case of co-investment vehicles, the private participation may also be made at the level of the investment into each final recipient.

⁽⁵⁴⁾ Primary investment means a direct or indirect investment (including in the form of debt) in a final recipient resulting in financing flowing directly or indirectly into the final recipient.

⁽⁵⁵⁾ Direct equity and quasi-equity financing shall not be allowed under the EU compartment of the SME window.

6. POLICY WINDOWS

6.1. Sustainable Infrastructure window

6.1.1. Policy areas of intervention

The sustainable infrastructure window aims to support financing and investment operations in sustainable infrastructure in the areas referred to in Article 8(1)(a) of the InvestEU Regulation. Without prejudice to provisions on excluded activities (Section 2.3.3 of these investment guidelines) and InvestEU Fund allocation principles set out in Section 2.6, any relevant area linked to sustainable infrastructure listed in Annex II to the InvestEU Regulation is eligible for support under the sustainable infrastructure policy window. That support mainly relates to points 1, 2, 3, 4, 9, 10, 11, 13(d), 14 and 15 of Annex II to the InvestEU Regulation, some of which are further described in a non-exhaustive and indicative way in Sections 6.1.1.1 to 6.1.1.8. The eligible areas may be prioritised in line with Section 2.3.2.1.

While respecting the general target of 60 % of investment contributing to Union objectives on climate and environment, financing provided by the implementing partners shall seek to ensure a sufficient degree of diversification between sectors taking into account the financial products implemented by the implementing partner.

The sustainable infrastructure policy window may also channel support from sectoral programmes (Section 2.9 on blending). Moreover, support to investments under the sustainable infrastructure policy window may be combined with support from funds under shared management or from the RRF.

Support under the sustainable infrastructure policy window is set to add value by providing access to finance in any of the following instances:

- (a) achieve policy targets and objectives related to sustainable development defined on a European scale. For example, this relates to the simultaneous promotion of economic, environmental, and social objectives, such as adherence to environmental, social, and governance(‘ESG’) principles ⁽⁵⁶⁾;
- (b) support the development of infrastructure as an asset class by promoting the consistent application of high sustainability standards (including accessibility ⁽⁵⁷⁾), transparency and comparability in the areas of project preparation, financing techniques and products, monitoring and data;
- (c) promote projects that have macro-regional and/or cross-border impact, where the costs and benefits are distributed among multiple Member States or where costs occur at national or local level, while benefits are realised transboundary or on a Union scale;
- (d) support projects that internalise environmental and socioeconomic costs and benefits stemming from EU policy priorities. This would, for instance, relate to contributions to modal shift and the use of sustainable fuels in transport, the contribution to material and energy efficiency, renewable energy, air or water quality improvements, environmental protection, promoting long-term protection and restoration of biodiversity, sustainable infrastructure and nature-based solutions, support to bioeconomy, greenhouse gas emissions reductions, cultural heritage management, tourism, energy performance of buildings etc. This would also include support to the renewal and retrofitting of transport mobile assets solutions;
- (e) promote trans-European network infrastructure, equipment and innovative technologies that serve, for example, as a public good for the energy and transport system, etc. Such projects may also be key enablers for higher levels of investment in renewables, energy efficiency and demand response, healthcare (e.g. e-health and care solution), public administration (such as e-public services) and alternative fuelled and cooperative, connected and automated mobility;

⁽⁵⁶⁾ See, for example, the Commission Communication on Financing Sustainable Growth (COM(2018) 97 final) and the input provided by the High Level Expert Group on Sustainable Financing by means of its final report published on 31 January 2018, online at https://ec.europa.eu/info/sites/info/files/180131-sustainable-finance-final-report_en.pdf

⁽⁵⁷⁾ In accordance with the accessibility requirements of the European Accessibility Act (Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

- (f) promote sustainable digital connectivity and data platforms and infrastructures across the Union and projects supporting a broad range of communications and information technology-related products and services, promoting EU-international connectivity when needed, where sustainability includes attention to the circularity of infrastructure and equipment;
- (g) promote the development and operation of sustainable (in-orbit and ground-based) space infrastructure that enables space services and space-based applications;
- (h) promote projects where the benefits depend on other investments in the value or supply chain or network and/or entail a high 'first mover' risk;
- (i) promote interoperability in cross-border infrastructure and services, including digital platforms and services;
- (j) promote deployment of and synergies with research infrastructure, including e-infrastructures, across the Union. This must focus on the market development of facilities, resources and services that are used by communities to foster innovation;
- (k) address efficient functioning of the internal market by promoting market-based investment under various regulatory regimes ⁽⁵⁸⁾;
- (l) achieve critical mass as well as groups and aggregate projects in order to attract private investors.

Support to the policy areas described in Sections 6.1.1.1 to 6.1.1.8 may be complemented by accompanying measures that aim to help public authorities and project promoters develop capacity for defining investment strategies, blending financing, planning and grouping projects.

6.1.1.1. Development of the energy sector

Support to the generation, supply or use of clean and **sustainable renewable energy** shall focus on projects with high perceived risk and capital intensity enabling the further integration of renewables in all sectors (power generation, heating and cooling, transport) as well as other zero and low-emission energy sources and solutions. It may indicatively include renewables projects of cross-border or offshore nature (see also Section 6.1.1.7), projects targeting the decarbonisation of buildings, the use of renewables in industrial processes, low-carbon gas (such as low-carbon, clean hydrogen or biomethane, in line with the Hydrogen Strategy ⁽⁵⁹⁾) production and supply (at commercial scale), advanced bio-fuels, biomass and other sustainable alternative fuels projects and on-site storage. Support should also be given to locally led renewables projects, such as those headed by energy communities, often integrated with energy efficiency improvements. Support to the energy sector may contribute where appropriate, to the objectives of Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources ('RED II' ⁽⁶⁰⁾) and Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action ('Governance Regulation' ⁽⁶¹⁾), as well as promote energy efficiency in investment decisions, including through the Union renewable energy financing mechanism ⁽⁶²⁾.

⁽⁵⁸⁾ Member States have a wide variety of regulatory frameworks supporting sustainable energy infrastructure, carrying a multitude of policy-, market-design and regulatory risks, which affect the cost of capital of investments.

⁽⁵⁹⁾ Commission Communication on a hydrogen strategy for a climate-neutral Europe (COM(2020) 301 final).

⁽⁶⁰⁾ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

⁽⁶¹⁾ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

⁽⁶²⁾ The Union renewable energy financing mechanism is established by Article 33 of the Governance Regulation.

Support under **energy efficiency and energy savings** will include projects in line with the Union's commitments under Agenda 2030 and the Paris Agreement, and further the objectives in Directive 2012/27/EU ⁽⁶³⁾ (reducing energy demand through energy saving measures and demand-side management, applying circular economy principles, supporting district heating and energy generation in co-generation projects that reduce energy consumption and prevent emissions of greenhouse gases and other pollutants). Support will include projects in line with the Renovation Wave Strategy ⁽⁶⁴⁾, in particular its three focus areas: tackling energy poverty and worst-performing buildings; renovating public buildings, such as administrative, educational and healthcare facilities and decarbonising heating and cooling. Projects that modernise the heating and cooling systems of buildings should be supported as they are essential to decarbonise the EU building stock. The deployment of local renewable energy potential is also key to reduce the EU's dependence on imported fossil fuels. It will include **energy efficiency renovations of existing buildings** that target or achieve an increase of their energy performance as determined through one or more of the criteria laid down in Article 10(6) of Directive 2010/31/EU on the Energy Performance of Buildings ⁽⁶⁵⁾, e.g. through the improvement achieved due to such renovation by comparing energy performance certificates issued before and after renovation, and construction of **highly energy efficient new buildings only when exceeding national nearly zero-energy buildings standards** (given the legal deadline for all new buildings in the EU to be nearly zero-energy buildings from 31 December 2020), including the modernisation of buildings thanks to smart ready technologies and their integration into a connected energy, storage, digital and transport system including through the deployment of infrastructure for e-mobility in line with Directive 2010/31/EU ⁽⁶⁶⁾. Support will also include projects addressing life-cycle energy performance of buildings as well as projects applying the Level(s) European indicator framework for sustainable buildings ⁽⁶⁷⁾. It will also target a reduction of energy intensity of enterprises through improved efficiency of processes or production of products with lower carbon footprint as well as the development of innovative zero and low emission heat supply systems and combined production of electricity and heat.

Development, smartening and **modernising of sustainable energy infrastructure** shall target the transmission and distribution level. It will also include supporting Projects of Common Interest (PCIs), as established in the Regulation on guidelines for trans-European energy infrastructure ⁽⁶⁸⁾, digitalising and modernizing energy grids to facilitate a greater uptake of renewables, as well as projects relating to demand-side flexibility and the energy storage.

Support from the InvestEU will also promote the deployment of low-emission technologies: projects that include **carbon capture, transport, storage and/or use** (CCUS) technologies and infrastructure for the production of renewable electricity, heat and cold, low-carbon gases (such as hydrogen) or industrial processes, as well as bio-energy plants and manufacturing facilities enabling the energy transition, or carbon removals.

6.1.1.2. Development of sustainable transport infrastructures, equipment and innovative technologies

Support for the development of sustainable transport infrastructures, equipment and innovative technologies will be directed at the development of sustainable and safe transport infrastructures, superstructures, mobility solutions and equipment, and innovative technologies, in accordance with the Union's transport priorities, the Sustainable and Smart Mobility Strategy ⁽⁶⁹⁾ and the commitments taken under the Paris Agreement. That will include projects supporting development of the **trans-European transport network** ("TEN-T") infrastructure, the rehabilitation and upgrading of existing infrastructure and interconnection levels components across all modes, including its urban nodes, maritime and inland ports, airports, multimodal terminals and their connection to the main networks and the telematic applications laid down in the TEN-T Regulation ⁽⁷⁰⁾;

⁽⁶³⁾ Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

⁽⁶⁴⁾ Commission Communication on a Renovation Wave for Europe – greening our buildings, creating jobs, improving lives (COM(2020) 662 final).

⁽⁶⁵⁾ Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).

⁽⁶⁶⁾ OJ L 153, 18.6.2010, p. 13.

⁽⁶⁷⁾ https://ec.europa.eu/environment/topics/circular-economy/levels_en

⁽⁶⁸⁾ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

⁽⁶⁹⁾ Commission Communication on Sustainable and Smart Mobility Strategy – putting European transport on track for the future (COM (2020) 789 final).

⁽⁷⁰⁾ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

Support will, in priority, target projects in the TEN-T core network, as identified in the core network corridor work plans that address missing links, bottlenecks or cross-border connections. Whenever relevant, it will include: rehabilitation and upgrading of existing of rail, road, waterborne and aviation infrastructure, safety upgrades, using appropriate safety management procedures, and environmental performance upgrades, including the deployment of digital transport management systems like ITS ⁽⁷¹⁾, RIS ⁽⁷²⁾, ERTMS ⁽⁷³⁾, SESAR, including on-board equipment, and digital transport infrastructure for interoperable data sharing and reporting across modes and sectors. It will also include the development and deployment of new transport technologies and services, e.g. in relation to connected and autonomous modes of transport, integrated ticketing and less polluting inland and maritime means of transport (including the prevention of oil-spills from ships). It will also include support to adapt the TEN-T network to cater for military mobility needs, to the extent that such infrastructure meets the need of both civilian and military purposes (dual-use).

Support will also target **TEN-T infrastructure projects that provide for the use of at least two different modes of transport**, in particular multi-modal freight terminals and logistics platforms, and passenger transport hubs. Support will also target multimodal connections and last mile sections allowing freight or passenger traffic to be shifted to more sustainable transport modes such as rail transport, public/collective transport, inland navigation or short sea shipping.

Support may be given to **smart and sustainable urban mobility projects** in particular multi-modal hubs for passenger transport, active modes, inland waterways and innovative mobility solutions, digital transport infrastructure for the seamless and effective connection of travel modes, infrastructure for active and zero-emission mobility. Projects aiming at promoting the shift to sustainable modes of transport must focus on improving the safety of users and non-discriminatory accessibility including with regard to passengers with reduced mobility. Projects will also aim to improve road safety, in line with the Union's objective of eliminating fatalities and serious injuries on European roads by 2050, paying particular attention to vulnerable road users such as cyclists and pedestrians.

The **renewal and retrofitting of transport mobile assets** must prioritise non-discriminatory projects for the purchase of rolling stock and vessels for use in rail, inland waterways and maritime transport. For rail and inland navigation, it will also include investments in current rolling stock and vessels, e.g. digital RIS equipment, noise reduction, equipping with ERTMS and with digital automatic couplers. It will also include projects in the aviation, shipping, maritime and inland waterways, sectors taking into account the circular economy principles and aiming at transition towards sustainable alternative fuels, reduction of pollution of any kind and helping the industry to comply with upcoming commitments related to greenhouse gas emissions, including back-up for zero-emission ships and the replacement of old aircrafts and vessels with new generation ones achieving significant emissions reductions, based on full life-cycle emissions. In addition, vessels and zero- and low-emission road vehicles are eligible (see paragraph below on alternative fuels infrastructure).

Support to **railway infrastructure, other rail projects, inland waterway infrastructure, mass transit projects and maritime ports and motorways of the sea** may be given to investments that prevent or reduce emissions of greenhouse gases and toxic pollutants, or noise levels. Those investments may also target port reception facilities and other means enabling environmental protection measures, and investments in combined sustainable infrastructure, including the deployment of small-scale infrastructure for alternative fuels and other solution reducing ports' overall carbon footprint. Investments in the greening of airport infrastructure and related services (such as ground handling, ground traffic operations, aircraft on the ground) that prevent or reduce emissions or noise levels may be supported.

Support may be given for the deployment for all modes of transport of **recharging and refuelling infrastructure** for electricity, hydrogen and liquefied or compressed natural gas blended highly with bio-methane (> 50 %), deployment of fleets of low- and zero-emission road transport vehicles, and platforms for smart connectivity and interoperable services. When renewing road vehicle fleets, they should also fulfil the applicable high safety standards. When deployed through retrofitting, those vehicles must be retrofitted to the standard of zero emission at tailpipe. Support may be given for the deployment of zero- and low-emission vessels and fleets using sustainable alternative fuels (including LNG) and aircraft using sustainable energy sources. Retrofitting of vessels will enable maritime and inland shipping to use sustainable alternative fuels or electricity. Priority for related investments will be given to (i) deployment of publicly accessible refuelling and recharging infrastructure, taking into account the circular economy principles; (ii) refuelling and recharging infrastructure for use by fleets of public authorities or of operators for the discharge of public service obligations under a

⁽⁷¹⁾ Intelligent transport system.

⁽⁷²⁾ River information services.

⁽⁷³⁾ European rail traffic management system.

public service contract; and (iii) deployment, in public service and private fleets, of light- and heavy-duty zero- and low-emission vehicles, zero- and low-emission vessels and fleets running on sustainable alternative fuels, or low-emission aircraft running on sustainable energy sources. Road infrastructure must be accessible to the public without any limitation and will provide for possibility of easy to use ad-hoc payments (e.g. bankcard payment) so that vehicle users can charge without the need of entering into a service contract with the operator concerned. Moreover, available static and dynamic data will be made available through common or national access points. These public accessibility requirements will not apply in the case of charging or filling infrastructure in privately managed or operated depots that serve a captive fleet. Support may be given for the development, production and supply infrastructure for sustainable alternative fuels for aviation, land and waterborne transport, implementing EU transport decarbonisation policies (such as ReFuelEU Aviation, FuelEU Maritime).

Support may be given for **other smart and sustainable mobility projects** in urban and rural areas, targeting road safety; accessibility; emission and noise reduction; and the development and deployment of new transport technologies and services such as in relation to connected and autonomous modes of transport or integrated ticketing.

The InvestEU Fund support can be granted to measures designed to upgrade, achieve or maintain compliance with standards, including environmental and safety standards, and projects **to maintain or upgrade existing transport infrastructure**, rehabilitation of existing transport infrastructure or safe parking areas and facilities.

6.1.1.3. Environment and resources

The InvestEU Fund is expected to mobilise investments related to natural capital and circular economy ⁽⁷⁴⁾. In that respect, besides the greening of investments in traditional infrastructure areas listed in this Section 6.1.1.3, investments include for example mobility projects targeting air pollution and noise, nature, energy consumption and accidents.

Support for **water, including drinking water supply and sanitation, flood protection**, networks efficiency, leakages reduction, infrastructure for the collection and treatment of waste water, **coastal infrastructure and other water-related green infrastructure**, which will comprise of investment projects and accompanying services supporting the implementation of Union environmental policies concerning land-based and marine water resources and related ecosystem services set out in, for example, Directives 2008/56/EC ⁽⁷⁵⁾, 2000/60/EC ⁽⁷⁶⁾ and 2007/60/EC ⁽⁷⁷⁾, Council Directives 98/83/EC ⁽⁷⁸⁾, 91/271/EEC ⁽⁷⁹⁾ and 91/676/EEC ⁽⁸⁰⁾, Regulation (EU) 2019/1009 ⁽⁸¹⁾ and Regulation (EC) No 1107/2009 ⁽⁸²⁾. Particular importance must be given to (i) ensuring access to water supply and sanitation for all Union citizens by completing and maintaining infrastructure for drinking water and wastewater treatment that complies with energy efficiency and leakage prevention criteria; and (ii) ensuring compliance with the Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC), including measures foreseen in the river basin management plans and flood risk management plans, notably investments ensuring good ecological status of rivers, renovating or upgrading of existing hydropower to increase efficiency and reduce ecological impacts, and reducing diffuse pollution from agriculture, aquaculture, and industrial sources, water efficiency solutions, water re-use in any sector and nature-based solutions to reduce flood risks.

⁽⁷⁴⁾ Commission Communication on Europe's moment: Repair and Prepare for the Next Generation (COM(2020) 456 final).

⁽⁷⁵⁾ Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy ('Marine Strategy Framework Directive') (OJ L 164, 25.6.2008, p. 19).

⁽⁷⁶⁾ Directive 2000/60/EC establishing a framework for Community action in the field of water policy ('Water Framework Directive') (OJ L 327, 22.12.2000, p. 1).

⁽⁷⁷⁾ Directive 2007/60/EC on the assessment and management of flood risks ('Floods Directive') (OJ L 288, 6.11.2007, p. 27).

⁽⁷⁸⁾ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption ('Drinking Water Directive') (OJ L 330, 5.12.1998, p. 32).

⁽⁷⁹⁾ Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ('Urban Waste Water Directive') (OJ L 135, 30.5.1991, p. 40).

⁽⁸⁰⁾ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ('Nitrates Directive') (OJ L 375, 31.12.1991, p. 1).

⁽⁸¹⁾ Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 ('Fertiliser Regulation') (OJ L 170, 25.6.2019, p. 1).

⁽⁸²⁾ Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ('Plant Protection Products Regulation') (OJ L 309, 24.11.2009, p. 1).

Support for **waste management infrastructure**, i.e. infrastructure necessary to support the transition to a more circular economy in Member States notably shifting upwards in the implementation of the EU waste hierarchy, with waste prevention at its pinnacle. Without prejudice to the exclusion criteria set out in Annex V to the InvestEU Regulation, investment projects should cover the implementation of waste management plans and waste prevention programmes (based on the amended Waste Framework Directive 2008/98/EC ⁽⁸³⁾), the establishment and support of re-use and repair networks, and the setting up of functional waste separation and collection schemes, and recycling facilities (including for municipal biowaste and textiles for their separate collection).

Investment in the **enhancement and restoration of eco-systems and their services**, which must focus on projects that promote the conservation, restoration, management and enhancement of natural capital for biodiversity and adaptation benefits, including by means of green and blue infrastructure projects. It will include ecosystem-based solutions to challenges, such as those related to air and climate systems, sea, land, soil, forestry, agriculture, water and waste, and transport and energy. Support will also include measures aimed at pursuing the goals of the 'biodiversity' ⁽⁸⁴⁾ and 'farm to fork' ⁽⁸⁵⁾ strategies through the improvement of food-production value chains (where these do not fall within the scope of the SME window). Cross-border projects shall be in particular encouraged as well as projects that promote **sustainable cultural heritage**. Support may also include the **rehabilitation of industrial sites** (including contaminated sites) and restoration for sustainable use.

Support for **sustainable development in urban, rural, coastal, offshore areas development and wider bioeconomy** – this should involve infrastructure projects not covered in other areas and focused on a geographical area, including investments in nature and nature-based solutions aimed at the prevention or control of emissions of greenhouse gases, toxic pollutants, noise and other impacts or natural capital dependencies whilst promoting the transformation towards a circular economy. It will include infrastructure projects aimed at promoting inclusive and accessible smart cities and their networks, regions and sectors. This will also encompass projects aimed at fostering bioeconomy through investment in bio-based industries, marine and terrestrial solutions that substitute for energy intensive or fossil materials, aquaculture and blue and green biotechnology. Support may also concern seas and oceans, through the area of the blue economy and its finance principles, in particular through renewable marine energy and circular economy.

Support under **climate change actions, climate adaptation and mitigation, including natural hazard disaster risk reduction**, will include infrastructure projects aiming at climate change adaptation and increasing the resilience to current and future climate. This will include, among others, the protection of low-lying areas, coastal areas and other measures related to sea-level rise, flood prevention, improved and sustainable use of water supply and drought prevention, and adaptation of infrastructure to extreme temperature. This can also include innovative technologies that contribute to the environmental climate resilience or social sustainability objectives of the Union, or to both, and meet the environmental or social sustainability standards of the Union.

Support to **projects and enterprises that implement circular economy systems, including the sustainable use of raw materials**, in line with the goals of the Circular Economy Action Plan ⁽⁸⁶⁾. That support will include, among others, projects integrating resource efficiency aspects in the production and product life cycle and all strategies aimed at ensuring that the value and lifespan products, assets and of material resources is maximised, as well as infrastructure and services fostering industrial symbiosis and asset sharing between industrial plants across sectors and urban and rural communities. This shall also include application of circular business models that lead to dematerialisation, servitisation and more intensive and efficient use of products and resources, internalising or eliminating negative externalities. Investment projects should also encompass actions covering the entire value chain of secondary raw materials, including closed loop systems, elimination of legacy toxic and problematic chemicals and substances from feedstock processing to recycling. Particular attention will be paid to sectors that use the most resources and where the potential for circularity is high, i.e. electronics and Information and Communication Technologies (ICT), batteries and vehicles, packaging, plastics, textiles, construction and buildings, and food, water and nutrients.

⁽⁸³⁾ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste (OJ L 312, 22.11.2008, p. 3), as amended by Directive 2018/851/EU (OJ L 150, 14.6.2018, p. 109).

⁽⁸⁴⁾ Commission Communication on EU Biodiversity Strategy for 2030 – Bringing nature back into our lives (COM(2020) 380 final).

⁽⁸⁵⁾ Commission Communication on a Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM(2020) 381 final).

⁽⁸⁶⁾ Commission Communication on a new Circular Economy Action Plan – For a cleaner and more competitive Europe (COM(2020) 98 final).

Support to operations that support the **decarbonisation** of and substantial reduction of emissions of energy-intensive industries, including closed-loop systems and deployment of innovative low-carbon emission technologies including energy storage, carbon capture, transport, storage and/or use (CCUS) as well as operations that promote the decarbonisation of the energy production and distribution chain by phasing out the use of coal and oil, and gradual substitution of natural gas by low-carbon gases. It shall also promote closed loop circular systems in energy-intensive processing of materials, such as steel, aluminium, plastic and cement, to eliminate impurities that result in value loss in recyclates.

6.1.1.4. Development of sustainable and secure digital connectivity infrastructure

Support to the development of sustainable and secure **digital connectivity infrastructure** must focus on projects supporting broad range of communications and information technology-related products and services. That support may include, for example, projects supporting a universal (i.e. including rural/peripheral areas) roll-out of infrastructure, deployment of very high capacity digital networks, including through the deployment of wired and wireless connection systems including fibre and 5G connection systems, and investments needed to reach the Union's strategic digital connectivity objectives as defined in the Communication on Connectivity for a Competitive Digital Single Market ⁽⁸⁷⁾.

It will also target projects aimed at increasing the capacity and resilience of Union networks (e.g. quantum-secured communication networks, interregional and international connectivity, including through land-based, submarine cables, satellite systems, data centres and public protection and disaster relief networks), and at supporting the digital transformation of key public services.

It will also target the rollout of sustainable and high capacity interconnected cloud infrastructures in the EU (such as the deployment of software defined infrastructures for workload balancing optimisation among clouds and; green connectivity networks for interconnecting cloud infrastructures) as well as foster best-in class energy efficient European data centres supported by the retrofitting of data centres for both large and small companies (such as new cooling systems and power management solutions).

Digital connectivity infrastructures, for example those aiming at optimising transport and energy infrastructures, optimising energy consumption in buildings, reducing waste and pollution and optimising the use of natural resources via digital solutions, will also constitute suitable investment targets.

In doing so, it should target projects aiming at reduction or avoidance of greenhouse gas emissions and at deploying infrastructure that is designed to be durable, repairable, upgradeable and recyclable, in accordance with the European Green Deal.

6.1.1.5. Development of sustainable space infrastructure

Support to sustainable development and modernisation of new and existing in-orbit and ground infrastructure. That will enable the greening of the space industry for launchers and spacecraft (e.g. satellites) and associated ground segments. This includes the manufacturing, assembly, testing, operation, maintenance and launch facilities towards the development of greener spacecraft, launch systems and associated facilities. A cleaner use of space through spacecraft de-orbiting and de-commissioning is also included.

Support to the Union space programme components and related services, as well as support to the 'space strategy for Europe' ⁽⁸⁸⁾ objectives to maximise the benefits for the Union's society and economy. That will enable the development of dedicated services and applications meeting existing and emerging users' needs, including in priority areas of climate change, sustainable development, connectivity and security.

6.1.1.6. Development of sustainable tourism infrastructure

Support to the development of sustainable tourism infrastructure and services must contribute to strengthening the sector's long-term competitiveness by supporting projects fostering a shift towards sustainable, innovative and digital tourism.

⁽⁸⁷⁾ Commission Communication on Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society (COM(2016) 587 final).

⁽⁸⁸⁾ Commission Communication on Space Strategy for Europe (COM(2016) 705 final).

6.1.1.7. Offshore development for decarbonisation

Support in this areas must contribute to the generation of offshore electricity to meet the future energy demand. It must also alleviate the multiple demands on the EU's land resources by improving the productivity of aquatic and marine resources like for instance, the production and use of algae, and other new sources of protein that have the potential to relieve the pressure on agricultural land.

Support must focus on the deployment of:

- (a) floating wind farms;
- (b) developments to convert ports from transport nodes to hubs for servicing offshore industry;
- (c) cabling for an offshore grid with a particular focus on AC connections from turbines to hubs which then use DC interconnectors to shore;
- (d) devices for wave and tide energy;
- (e) offshore aquaculture.

6.1.1.8. Strategic investment in critical infrastructure

Strategic investment under the Sustainable Infrastructure window may target projects contributing to the stability, operational security and resilience of the critical infrastructure parts, whether physical or virtual, or supply chains to the critical infrastructure, or directly to the critical elements of infrastructure, in particular in view of the Union's green and digital transitions.

Supported operations may also target companies, including SMEs, producing goods and services instrumental for the operation and maintenance of any of the critical infrastructure priorities as listed in this Section 6.1.1.8.

Investment operations concerning **critical infrastructure** may target operations defined as European Critical Infrastructures pursuant to Council Directive 2008/114/EC ⁽⁸⁹⁾, as selected by Member States pursuant to its Article 3. Support may target supply chains for clean energy, namely the manufacturing capacity of equipment for renewable energy technologies (such as solar PV, wind energy, hydropower, renewable hydrogen, etc.).

Operations supported may also target **supply chains for the European aviation, rail, road, inland waterways transport and maritime shipping**, including supporting investment in the integration of modes and production capacities.

For **digital infrastructure**, strategic investments are those closely linked to the objectives of resilient and secure provision of digital communication services, including critical elements of very-high capacity connectivity and 5G networks, quantum communication, the internet of things, media, online service platforms, secure cloud computing, data processing and storage, and to the underlying value chains behind these infrastructures and services. Given the various architectures and constantly evolving technological solutions, including those relevant for cybersecurity ⁽⁹⁰⁾, it is necessary to screen the evolving needs of the digital transition and relevant security and technological autonomy and resilience dimensions of such transition related to the data transfers, use and storage. Support to projects related to **digital electoral infrastructure and sensitive facilities** shall have as the main objective their reinforced security, resilience and protection against malicious and disruptive action, including in particular disinformation, data theft, and cyberattacks.

Investments in **communication and media infrastructure** are also considered strategic to the extent that they contribute to independent European content production in line with the objective to protect the Union's democratic values and Member States' sovereignty in the digital age, and the production, intellectual property protection and monetisation of European content globally.

⁽⁸⁹⁾ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

⁽⁹⁰⁾ Cybersecurity risks are to be assessed following the relevant EU and national law and guidance, including the 5G Security Toolbox.

Projects related to **critical infrastructure for space** must support the update of existing Union space programme components and the development of new Union space infrastructure and services. In particular, it shall target: (i) autonomous, reliable and cost-effective access to and use of space enabled by European launchers, including innovative concepts such as re-usability, advanced manufacturing, new space transportation systems; (ii) space surveillance and protection of assets, (iii) satellite communication and connectivity, (iv) other evolving needs.

Operations supported may also target the resilience and competitiveness of space systems and technologies, addressing the vulnerability of the value chains.

Support to **defence industry infrastructure** may include the upgrade of existing or the installation of new infrastructures needed to support from a technological and industrial perspective the life cycle of defence technologies and products or training facilities. These infrastructures refer not only to the traditional air, land and sea domains, but also to emerging ones such as information, space and cyber. They may also be used also for the R & D, demonstration, testing and certification of defence systems or technologies, including developed in the context of the European Defence Fund, as well as dual-use systems and technologies. Multinational projects open to users from other Member States should be supported. Support may also target projects oriented to implement pan-European digital and cyber capacities and infrastructure related, for instance, to virtual engineering development environments, digital test beds and labs, new collaborative combat environment, supercomputing, artificial intelligence (AI) and related advance digital skills for defence (e.g. digital shipyard; digital model, or twin, of military systems).

In the area of **critical raw materials** (CRMs) supported investments may include projects and beneficiaries contributing to increased Union autonomy and resilience in industrial ecosystems for e-mobility, batteries, renewable energies, pharmaceuticals, digital applications and defence. CRM-linked priority investment areas may include magnet development, recovery of rare earths from used magnets, rare earth refining, primary ores and recycled mining waste (bauxite, iron ore, coal waste). Other CRM needs may emerge in the future.

In order to ensure a **safe and sustainable food supply**, relevant investments for example into transport, logistics, decentralised food chain infrastructure and the setting up of clusters in the area of food supply may be supported.

6.1.2. *Features of potential financial products*

The support under the Sustainable Infrastructure window will offer senior and subordinated financing in the form of debt, guarantees, any other forms of funding or credit enhancement, quasi-equity and equity financing. It will aim at facilitating access to eligible project and corporate finance. The financial products must be available horizontally to the various areas covered by this policy window or can be dedicated to specific policy priorities including under thematic financial products.

Financial products must be developed according to policy prioritisation and market needs.

6.1.2.1. Financial intermediaries to be involved

(a) for debt financing:

Any type of financial intermediary, including national promotional banks or institutions and other publicly owned intermediaries, commercial banks, guarantee societies, diversified debt funds providing senior and subordinated financing, and leasing companies, which is able to provide financing in the areas covered by the Sustainable Infrastructure window in full compliance with applicable national and Union legislation and with the relevant requirements of the Financial Regulation, may apply.

(b) for equity financing:

Public or private financial intermediaries, or entities to be incorporated, funds-of-funds, private equity funds, venture capital funds, co-investment vehicles, venture debt funds, which are able to provide equity financing in the areas covered by the Sustainable Infrastructure window in full compliance with applicable national and EU-legislation and with the relevant requirement of the Financial Regulation, may apply.

The managers, advisors or other similar persons associated with such intermediaries (including first time managers or advisors) must demonstrate the capacity and skills to undertake such investments in the areas in which they intend to invest under the Sustainable Infrastructure window, the ability to fundraise and attract private capital, and the ability to produce returns, which would attract more private investments into this asset class.

6.1.2.2. Final recipients targeted

The focus of the Sustainable Infrastructure window is to support investment in infrastructure and related equipment promoted, among others, by:

- (a) stand-alone promoters;
- (b) private, public and semi-public enterprises;
- (c) SPVs.

6.1.2.3. General financial products

General financial products must aim at improving access to finance for standalone projects or grouped smaller projects, through finance provided directly or indirectly (for example through investment vehicles) by the implementing partners.

General financial products may support a diversified range of final recipients with different risk profiles such as the following:

- (a) projects from regulated entities on a corporate or non-recourse basis, including PPPs (e.g. energy, transport, waste, water and wastewater utilities and large infrastructure managers) or from public or semi-public enterprises, which typically present a low risk.
- (b) projects from non-regulated entities on a corporate or non-recourse basis, including PPPs (e.g. energy generation, energy storage, energy efficiency for energy intensive industries, motorways concessionaries, airports/ports terminal and railways operators, green shipping, broadband and space infrastructure) which typically present a medium to high risk.
- (c) deployment of projects supporting public goods, including projects deployed by SMEs in the fields of e-mobility, energy efficiency, natural capital or nature based solutions by local authorities or philanthropic investors, and space, which typically present a high risk.
- (d) portfolios of transactions in areas such as energy efficiency and renewable energy for households or SMEs, greening of mobile assets.

For debt financing provided by the implementing partner:

The EU guarantee may be provided for financing and investment operations including in the form of:

- (a) senior loans, bonds, leasing contracts and credit lines, including senior debt to limited recourse projects;
- (b) subordinated loans, including in a form of a mezzanine financing;
- (c) guarantees (funded or unfunded) to third-party financiers and other risk sharing arrangements with financial intermediaries;
- (d) credit enhancement for new investments (to project bonds, bank loans or a combination of the two), including in the form of subordinated products.

Subordinated financing can also be used in order to leverage private finance and diversification from banking to capital market finance.

The EU guarantee may be used for the development of financial products supporting the use of green bonds.

6.1.2.4. Thematic financial products

Support from thematic financial products will, among others, target:

- (a) in the transport area, high-risk projects in the field of sustainable mobility, smart and safer transport.

- (b) in the renewables area, specific high risk activities such as:
 - (i) customised innovative guarantees under the Member State compartment aiming to reduce the cost of capital of renewables investment in such Member State;
 - (ii) high-risk guarantee products to foster the Renewables Corporate Power Purchase Agreement market, helping ensure increased levels of long-term private financing for renewable energy investments;
- (c) in the energy efficiency area, specific high risk activities such as:
 - (i) residential Buildings: the guarantee instrument can be combined with grants to unlock private financing and prompt households to address the significant financing gap in the renovation and refurbishment of residential buildings, especially deep renovations;
 - (ii) energy performance contracting and Energy Services Companies (ESCOs): guarantee instrument and revolving fund for ESCOs to address the barriers and unlock financing for the development of energy performance contracts for energy efficiency projects;
 - (iii) irrespective of the final recipient, credit enhancement in relation to green bonds to crowd in institutional investors into new energy efficiency financing, at the same time promoting the expansion of the currently limited size of the green bond market;
- (d) in the smartening and modernisation of electricity infrastructure, projects promoting:
 - (i) new business models for the deployment of flexibility sources such as demand response and energy storage;
 - (ii) decentralised and small-scale energy sources developed by new entrants and energy communities in new markets.
- (e) projects promoting the market deployment of low-carbon emission technologies: projects that include carbon capture, transport, storage and/or use (CCUS) related to the production of electricity, heating or cooling, low-carbon gases (such as hydrogen) or industrial processes, energy storage, as well as bio-energy plants and manufacturing facilities enabling the energy transition and substitution of carbon intensive products;
- (f) high-risk sustainable green investment projects or programme promoting a comprehensive natural capital-based approach relating to the protection and restoration of the environment and the management of the transition towards a circular, resource efficient and low-emission bio-economy and enhancing the carbon removals;
- (g) in the digital sector, projects with a high financial risk, notably connectivity deployments in white and grey areas (i.e. with no immediate commercial viability) or which present a significant technological advancement (e.g. not incremental upgrades but deployment of latest generation technologies, including deployment of sustainable networks and data infrastructures);
- (h) high-risk portfolios in the areas of energy efficiency, renewable energy and the greening of mobile assets;
- (i) in the space sector, high-risk or capital intensive projects linked to space infrastructure and related services, as well as new concepts for space infrastructure and solutions in space and on ground.

6.2. Research, Innovation and Digitisation window

6.2.1. Policy areas of intervention

Support under the Research, Innovation and Digitisation (RID) window shall facilitate and accelerate access to finance for research and innovation (R&I) projects, promoters, businesses and other innovative entities and stimulate the digital transformation of businesses, markets and Member States in accordance with Articles 3(2)(b) and 8(1)(b) of the InvestEU Regulation. In line with the InvestEU objective of promoting Union's competitiveness, the RID window will deliver scientific, technological, economic and societal impact by strengthening the Union's scientific and technological base with the ultimate aim of delivering on the Union's strategic priorities and provide support to the upscaling of innovative companies and the market roll-out of technologies. Investments under the RID window will provide the means for Europe to develop resilience in key industrial sectors.

The eligible areas for financing and investment operations under the RID window are listed in Annex II to the InvestEU Regulation, and in particular in points 5 and 6 thereof. Any other relevant areas for financing and investment operations listed in Annex II to the InvestEU Regulation, such as points 13 and 14, and falling under RID activities are also eligible for financing under the RID window. Those areas may include research, product development, demonstration, innovation and digitisation activities in the sectors covering energy, energy-intensive industry, environment, blue economy, maritime, transport, health, life sciences, bio-technology, agro-food, defence, space and cultural and creative sectors, among others. The eligible areas may be prioritised in line with Section 2.3.2.1 of these investment guidelines.

The investment scope of the window covers research, innovation, demonstration and digitisation activities, including investments related to launching new products and technologies in the market, which have passed the research and development (R & D) stage, as well as organisational and process innovation, including new and innovative business models. It also includes financing and investment operations in the field of fundamental and applied research to actual system proven in an operational environment ⁽⁹¹⁾.

R & D is defined as systematic work undertaken to increase the stock of knowledge and to devise new applications of available knowledge. The activity must be novel, creative, uncertain in its outcome, and follow systematic, transferable and reproducible methods ⁽⁹²⁾.

Innovation refers to product, process and organisational innovation, encompassing the development, demonstration, implementation, commercialisation, and adoption of a new or significantly improved product or process (including business model) or service, which creates consumer and/or societal value.

Digitisation refers to the R&I, demonstration, testing, deployment and adoption of digital technologies and services and to investments that contribute to the digital transformation of the Union's enterprises, industries and areas of public interest.

Moreover, support under the RID window will aim to contribute substantially to the European Green Deal, targeting projects with climate and environmental benefits. Among others, this window may target projects aimed at avoiding or reducing greenhouse gas emissions and pollution from energy-intensive industries, and from the digital economy and their material efficiency. It will target projects using digital technologies, services and solutions to achieve the avoidance or reduction of greenhouse gas emissions, pollution and waste in other sectors of the economy, including (but not limited to) industry, transport, energy and agriculture. Support will also be provided for investments with a substantial contribution to circular economy, particularly in key sectors that use the most resources and where the potential for circularity is high.

Investments in the space ecosystem may support the 'space strategy for Europe' objectives to maximise the benefits for the Union society and economy by targeting project that: (i) accelerate the deployment of digital applications and services based on space data; (ii) integrate space data and services into innovative products in other market segments, e.g. autonomous vehicles or connectivity networks; and (iii) scale up the commercial deployment and manufacturing of space technology, including access to space ⁽⁹³⁾.

The RID window may also contribute to the development of the defence industry, in particular through support for companies participating in innovation projects in the defence sector and closely related dual-use technologies and through support for the defence sector supply chain.

The RID window will also support the Union's policy priorities as set out in other programmes such as Horizon Europe, Digital Europe programme, Creative Europe programme, European space programme, European Defence Fund, European Maritime, Fisheries and Aquaculture Fund, European Agricultural Fund for Rural Development, etc.

The RID window may also channel funds from sectoral programmes, such as the Innovation Fund established under the Emission Trading System (ETS) and other Union and national programmes and funds. Such investments may be combined with financing provided under EU programmes or those established under cohesion policy (shared management) or national programmes.

⁽⁹¹⁾ Technology readiness levels.

⁽⁹²⁾ OECD, Frascati Manual 2015 – Guidelines for Collecting and Reporting Data on Research and Experimental Development, p. 44-45, https://read.oecd-ilibrary.org/science-and-technology/frascati-manual-2015_9789264239012-en

⁽⁹³⁾ In line with the latest update of the list of actions on Critical Space Technologies for European strategic non-dependence established by the Commission, ESA and EDA Joint Task Force (JTF).

Support under the RID window is set to add policy value by providing access to finance to RID in any of the following instances:

- (a) promote investment in R&I to strengthen the Union's scientific and technological base, accelerate industrial transformation, including investments in key technologies, and deliver on Horizon Europe objectives and missions;
- (b) support the digital transformation of SMEs and mid-caps;
- (c) support digitisation and innovation projects that increase interoperability and address disparities in the level of digitisation and innovation across Member States, companies and sectors;
- (d) promote the development and deployment of strategic digital capacities and technologies, including cyber-secure digital solutions that result in innovative and unproven business models that tackle societal challenges (e.g. digital solutions for sustainability) and contribute to resilience, circularity and autonomy;
- (e) support investments into products, technologies, solutions or business models that deliver environmental and climate benefits compared to alternative solutions, contributing to climate mitigation and reduction of environmental impact;
- (f) support risk investments, including cross-border, linked to the technology, market, demonstration, implementation and business, that entail higher risk due to the uncertainty of the success of their outcome, or of the final financial benefit for the entity concerned;
- (g) promote early demonstration operations for which private investors are risk-averse, face unpredictable returns or market volatility;
- (h) promote operations that leverage private investment in RID to achieve EU policy objectives;
- (i) promote transfer and scale up of R&I results as well as technologies to the market and support their industrial deployment, supporting market enablers and cooperation between enterprises;
- (j) support R&I investments by research institutes, universities and research organisations, contributing to Horizon Europe and Erasmus+ objectives and enhancing connections between R & D service providers (academic institutions, research centres, etc.) and enterprises;
- (k) support fast-growing innovative companies seeking finance to commercialise innovations past technical and economic feasibility;
- (l) provide economies of scale and complement national, interregional and regional-level investments in RID, including the uptake of novel products, technologies or business models across regions within Member States;
- (m) support thematic investment platforms and other innovative financial products (with due consideration of economies of scale); or
- (n) promote alternative finance and innovative financing solutions such as crowdfunding, business angels, and venture philanthropy, fostering the transfer of best practices between financial intermediaries with a view to encouraging the emergence of a broad product offering for RID activities.

The actions set out in points (a) to (n) of the twelfth paragraph of this Section 6.2.1 may be complemented by:

- (a) gathering EU-wide data on the RID market failures or suboptimal investment situations, tracking technological and industrial changes, identifying future emerging strategic value chains, and making such intelligence publicly available; and
- (b) providing technical assistance to and improving the bankability of RID projects across different sectors.

6.2.1.1. Strategic investments under the RID window

Strategic investments under the RID window may support the **industrial deployment of demonstrated EU made technologies, foster their markets and promote the EU industry as a global frontrunner** in line with the objectives of the 'new industrial strategy for Europe' ⁽⁹⁴⁾ and underlying sector specific strategies, including the digital strategy ('shaping Europe's digital future' ⁽⁹⁵⁾), the 'white paper on AI' ⁽⁹⁶⁾, the 'European data strategy' ⁽⁹⁷⁾ (including common European data spaces for example for health and finance) and the 'European vaccines strategy' ⁽⁹⁸⁾. They must target the industrial upscaling and manufacturing of these enabling, transformative, green and digital technologies and innovations in the sectors covered by the RID window past the stage of research, innovation and demonstration.

Support may be provided to investment in **recycling and manufacturing facilities for production of ICT components and devices in the Union** that contribute to the innovation, sustainability, resilience and autonomy of European ICT industry and its sub-sectors and value chains. Such projects may relate to any of the following ICT manufacturing domains: electronic components (semiconductors and microprocessors), computers and peripheral equipment, communication equipment, consumer electronics, magnetic and optical media, electronic and telecommunications equipment and parts, software, programming, data processing, hosting and related activities and others.

In the area of **healthcare**, supported operations must target new effective and accessible healthcare products, including RID and manufacturing of pharmaceuticals, vaccines, medical devices, diagnostics and advanced therapy medicinal products, new antimicrobials and innovative development process that do not involve animal testing, and competitiveness of the Union pharmaceutical industry as a whole, including production of chemicals and active pharmaceutical ingredients.

In the area of **defence**, technology related and/or productive investment (e.g. modernisation, digitisation and extension of existing or the establishment of new production capacities), projects may be related to strategic areas, where investments will contribute to the technological and industrial autonomy of the Union's defence industry thereby contributing to its strategic autonomy and resilience. Support may be given for innovative companies' development of critical and disruptive defence technologies. Investments may also help successfully bringing key projects for which the R & D phase has already been supported for instance under the EDF and its pre-cursor programmes in the post-R & D phases or support the supply chains involved in such projects.

Projects may also involve safeguarding and developing critical capabilities in the Union defence supply chains in relation to strategic areas and reducing of dependence on third countries.

6.2.2. Features of potential financial products

6.2.2.1. Financial intermediaries to be involved

(a) for debt financing:

Any type of financial intermediary, including national promotional banks or institutions and other publicly owned intermediaries, commercial banks, guarantee societies, diversified debt funds providing senior and subordinated financing, and leasing companies, which is able to provide financing in the areas covered by the RID window in full compliance with applicable national and Union legislation and with the relevant requirements of the Financial Regulation, may apply.

(b) for equity financing:

Public or private financial intermediaries, or entities to be incorporated, funds-of-funds, private equity funds, venture capital funds, co-investment vehicles, venture debt funds, business angel funds, technology transfer funds, that are able to provide equity financing in the areas covered by the RID window in full compliance with applicable national and Union legislation and with the relevant requirements of the Financial Regulation, may apply.

⁽⁹⁴⁾ Commission Communication on a New Industrial Strategy for Europe (COM(2020) 102 final).

⁽⁹⁵⁾ Commission Communication on Shaping Europe's digital future (COM(2020) 64 final).

⁽⁹⁶⁾ White Paper On Artificial Intelligence – A European approach to excellence and trust (COM(2020) 65 final).

⁽⁹⁷⁾ Commission Communication on a European strategy for data (COM(2020) 66 final).

⁽⁹⁸⁾ Commission Communication on EU Strategy for COVID-19 vaccines (COM(2020) 245 final).

The managers, advisors or other similar persons associated with such intermediaries (including first time managers or advisors) must demonstrate the capacity and skills to undertake such investments in the areas in which they intend to invest under the RID window, the ability to fundraise and attract private capital, and the capability to produce returns, which would attract more private investments into this asset class.

6.2.2.2. Final recipients targeted

The focus of the RID window is to support research, innovation and digitisation activities promoted by:

- (a) stand-alone promoters;
- (b) private, public and semi-public enterprises, including SMEs and mid-caps;
- (c) SPVs;
- (d) universities, technology transfer offices and higher education centres;
- (e) research centres;
- (f) research and technology infrastructures;
- (g) innovation and digitisation agencies, accelerators, incubators, hubs, clusters;
- (h) other RID-driven promoters (e.g. natural persons, research-funding foundations).

Market segmentation and identifications of target groups will be done on a sectoral basis (linked to the fields in which the policy priorities will be implemented) and on project or company life-cycle basis (based on market assessment).

Operations under InvestEU Fund that are supported through a contribution of the ETS Innovation Fund shall respect the eligibility rules and selection criteria contained in Article 10a(8) of Directive 2003/87/EC ⁽⁹⁹⁾ and the delegated acts adopted on that provision.

6.2.2.3. General financial products

Support granted under the RID window will offer senior and subordinated financing in the form of debt or guarantees, any other forms of funding including venture debt and leasing or credit enhancement, quasi-equity and equity financing, to facilitate access to finance for RID projects and companies. The financial products may be made available horizontally to the various areas covered by the policy window or can be dedicated to specific priorities under thematic financial products.

Support from general financial products may, among others, be directed at:

- (a) research and technology infrastructure: promoted by public or private research organisations (e.g. research institutes and universities), including facilities directly related to R&I and digital activity, such as laboratories or high performance computing centres.
- (b) large RID projects: improving access to risk finance for large size RID projects emanating from larger firms; PPPs; and SPVs or stand-alone projects.
- (c) innovative SMEs, small midcaps and mid-caps in order to support RID activities feeding into growth.
- (d) fast-growing or RID-driven enterprises, research and technology infrastructures, R&I investments by public or private research organisations (such as research institutes and universities) located in Member States, which are labelled as 'moderate innovators' and 'modest innovators' in the European Innovation Scoreboard.

- (a) for debt financing provided by the implementing partner

The EU guarantee may be provided for the financing and investment operations including in the form of:

- (a) direct debt (including subordinated loans), unsecured lending, uncollateralised loans, mezzanine financing, senior loans and credit lines;

⁽⁹⁹⁾ Directive 2003/87/EC as amended by Directive (EU) 2018/410 (OJ L 76, 19.3.2018, p. 3).

- (b) (counter)-guarantees, on-lending guarantees, funded guarantees and other risk sharing arrangements for guarantee schemes implemented by financial intermediaries or implementing partners;
- (c) direct guarantees to and other risk sharing arrangements for financial intermediaries or implementing partners;
- (d) credit enhancement for new investments (to project bonds, bank loans or a combination of the two);
- (e) a direct investment in or alongside a financial intermediary, being it an investment fund, a (co-)investment scheme or a special purpose vehicle that invests directly or indirectly in senior or subordinated debt or hybrid debt-equity.

The EU guarantee will aim at reducing the particular difficulties that viable entities face in accessing finance mainly because of their perceived higher risk or lack of sufficient collateral or a limited ability of commercial finance providers to assess the underlying project or business model.

- (b) for equity financing provided by the implementing partner

Equity and quasi-equity investments shall in particular be made in the form of:

- (a) direct equity in final recipients;
- (b) co-investments and co-investment schemes (including investment platforms);
- (c) equity and guarantees to financial intermediaries which invest directly into entities at any stage of their development or guarantees to investors in such financial intermediaries;
- (d) investment and/or risk sharing arrangement in debt fund structures;
- (e) investment in fund-of-funds structures.

6.2.2.4. Thematic financial products

Support from thematic financial products may target:

- (a) thematic finance facilities providing debt and/or equity financing for areas such as:
 - (i) innovative early demonstration projects and digitisation projects of high-risk thematic areas such as low-carbon industry, transport, energy and space;
 - (ii) clinical development, validation and market entry in the area of infectious diseases, rare and complex diseases, neurodegenerative diseases and others;
 - (iii) sustainable blue economy and the sustainable use of marine resources, e.g. aquaculture and blue bio-technology;
 - (iv) food systems, bio-based systems, and wider bio-economy;
 - (v) circular economy, nature-based solutions and natural capital;
 - (vi) climate technologies, services and adaptation.

Thematic areas will be selected on the basis of policy priorities and the assessment referred to in Section 2.3.2.2 of these investment guidelines.

- (b) other risk sharing arrangements such as investment platforms to catalyse third-party financing into specific fields of strategic importance of RID policy in complementarity to and in synergy with investment from the existing national, local and public financing systems. Those platforms shall fulfil the following conditions:
 - (i) provide access to finance via debt and/or equity products to projects in specific thematic areas and shall be managed by financial intermediaries or fund managers selected through procedures as described in Section 2.3.1;
 - (ii) provide support to the overall digitisation of Union industry and technologies as set out in Annex II to the InvestEU Regulation, point 6, and other eligible areas;

- (iii) support technologies, products or business models that face greater risk due to their technological innovativeness or because they pursue new markets or significant market disruption;
- (iv) target setting-up of early demonstration and industrial production facilities that aim at the implementation of breakthrough, market-creating and highly innovative processes or the production of new products with high market-creating innovation content in the specific area.

6.3. SME window

6.3.1. Policy areas of intervention

Support under the SME window must facilitate access to and availability of finance primarily for SMEs, but also to small midcaps, and enhance their global competitiveness, at any stage of their development, in particular to those that are perceived as high risk and lack sufficient collateral, especially in their early development stages.

The support under the SME window must also aim to provide more diversified sources of funding, including subordinated debt, equity and quasi-equity financing, in order to increase the ability of SMEs and small mid-caps to finance their creation, growth, development, and transfer, withstand economic downturns, and contribute to the resilience of the economy and the financial system during economic downturn or shocks. It may provide support for investment and working capital, as well as for risk financing from seed to expansion stages to ensure technological leadership in innovative and sustainable sectors, in particular by targeting SMEs whose activities focus on intangible assets because of RID activities or because of sector specificities such as cultural and creative sector ⁽¹⁰⁰⁾. Where necessary, it may provide financing for the acquisition of a business or a participation in a business by employees. The eligible areas may be prioritised as described in Section 2.3.2.1 of these investment guidelines. Products under the SME window will be developed in accordance with the priorities and areas outlined in the 'SME Strategy for a sustainable and digital Europe' ⁽¹⁰¹⁾.

The support under the SME window will be complementary to the Union initiatives undertaken in the context of the capital markets union.

Support under the SME window is set to add value by supporting debt financing primarily to SMEs (as well as small midcaps) in any of the following instances:

- (a) market failures or suboptimal investments situations are not adequately addressed (in terms of volumes, coverage or risk appetite or timeframe) through financial instruments set up at regional or national level; this may include setting up schemes providing greater effectiveness, efficiency or economies of scale as Member States may be reluctant to create support schemes on their own because of cost efficiency considerations;
- (b) enterprises operating in clearly defined underserved economic sectors (e.g. in some cases the cultural and creative sectors, including the media sector), thus contributing to the achievement of EU policy priorities;
- (c) need to speed up adjustment of enterprises to clearly identified structural changes thus contributing to the achievement of EU policy priorities;
- (d) financing solutions that help achieve the objectives of the capital markets union, including those which are provided on a cross-border basis;
- (e) transfer of best practices throughout the Union (which may also include the provision of technical assistance) taking place between financial intermediaries with a view to encourage the emergence of a broad product offering for higher risk SME financing transactions suitable for their specific financing needs.

In addition, support under the SME window is set to add policy value by supporting funds providing tailor-made debt financing solutions and equity or quasi-equity financing for SMEs and for small midcaps in any of the following instances:

- (a) financial intermediaries raise funds or invest or provide finance on a cross-border basis, which supports risk diversification and attracts and crowds in private capital;

⁽¹⁰⁰⁾ As described in point 8 of Annex II to the InvestEU Regulation.

⁽¹⁰¹⁾ Commission Communication on an SME Strategy for a sustainable and digital Europe (COM(2020) 103 final) (Section 4. Improving access to financing).

- (b) the investment supports the creation of larger funds that have the capacity to realise sufficient returns in order to attract private investors;
- (c) market failures or suboptimal investments situations are not adequately addressed (in terms of volumes, coverage of the development stage or timeframe) through financial instruments set up at regional or national level. This may include setting up schemes providing enhanced effectiveness, efficiency or economies of scale, as Member States may be reluctant to create support schemes on their own because of cost efficiency considerations;
- (d) the intervention has demonstration and/or catalytic effects and contributes to Union policy objectives, including those of the capital markets union;
- (e) the intervention increases the availability of market-based and tailor-made funding solutions for SMEs and small mid-caps;
- (f) transfer of best practices throughout the Union, with a view to encouraging the emergence of new fund managers/management teams to broaden and deepen the venture capital market in the EU. This may include support to alternative finance and innovative financing solutions such as crowdfunding, business angels and venture philanthropy.

6.3.2. *Features of potential financial products*

6.3.2.1. Financial intermediaries to be involved

(a) for debt financing:

Any type of financial intermediary, including national promotional banks or institutions and other publicly owned intermediaries, commercial banks, guarantee societies, diversified debt funds providing senior and subordinated financing, and leasing companies, which is targeting to generate new portfolios of higher risk SMEs and/or small mid-caps financing transactions, including tailor-made debt financing transactions targeting underserved economic sectors, in full compliance with applicable national and Union legislation and with the relevant requirements of the Financial Regulation, may apply.

(b) for equity financing:

Established financial intermediaries, or entities to be set-up, including private equity and mezzanine funds, co-investment vehicles, venture debt funds, venture capital funds, business angel funds, fund-of-funds, crossover funds, that are able to provide equity and quasi-equity financing in areas covered by the SME window in full compliance with applicable national and Union legislation and with the relevant requirements of the Financial Regulation, may apply.

The managers, advisors or other similar entities associated with such intermediaries, which shall also include first-time managers or advisors, must demonstrate the capacity and skills to undertake such investments, the ability to fundraise and attract private capital, and the prospective ability to produce returns, including via a sound investment strategy, that would attract more private investments into this asset class.

6.3.2.2. Final recipients targeted

(a) for debt financing:

Debt financing support will be made available through intermediaries or directly by the implementing partner to finance predominantly SMEs, as well as small midcaps, as defined in the InvestEU Regulation, which would not receive financing from the market or not receive support to the same extent due to, amongst others, the perceived higher risk, the lack of (sufficient) collateral or because the business is active in a clearly defined underserved economic area or engages in activities of the Union policy priorities.

Where justified, more dedicated support may be provided to businesses in a specific sector or engaging in an area of specific policy orientation, including the just transition. In such cases, clear and unambiguous eligibility criteria will be formulated in the respective financial products for innovative SMEs and small midcaps. Furthermore, the operational reporting requirements will make it possible to identify the support provided for such sector or policy orientation.

(b) for equity financing:

Under the EU compartment, equity finance support will be made available through intermediaries (including through co-investment vehicles) to SMEs and small midcaps according to the definitions contained in the InvestEU Regulation, and more specifically to those activities, which would help achieve the Union policy objectives referred to in Article 3 of the InvestEU Regulation.

Targeting may be done on the basis of the fund manager's investment strategy focusing on sectors or activities of the Union policy priorities and a company life-cycle basis, based on market assessments.

6.3.2.3. Features of financial products

Financial products will be complementary to the Member States' use of financial instruments for SMEs at national and regional level in line with the additionality requirements in accordance with Annex V to the InvestEU Regulation.

(a) for debt financing provided by the implementing partner

The EU guarantee may be provided for financing and investment operations taking the form of:

- (a) direct loans by the implementing partner;
- (b) counter-guarantees, on-lending guarantees and other risk sharing arrangements for guarantee schemes implemented by financial intermediaries or implementing partner;
- (c) direct guarantees and other risk sharing arrangements for financial intermediaries or implementing partners;
- (d) direct investment in or alongside a financial intermediary, being an investment fund, a (co-)investment scheme or a special purpose vehicle which invests directly or indirectly in senior or subordinated debt.

Through such arrangements, the EU guarantee shall aim to reduce the particular difficulties that viable enterprises face in accessing finance because of their perceived higher risk or lack of (sufficient) collateral. This can be achieved through supporting, amongst others, the following transactions:

- (a) start-up financing;
- (b) financing transactions with significantly reduced (or no) collateral requirements (unsecured lending);
- (c) subordinated financing;
- (d) financing transactions with repayment conditions or tenures that are not typically provided by financial intermediaries.

The eligibility of a financial intermediary's proposal for building a portfolio of financing transactions will be determined for each intermediary and, in case of direct financing, for each implementing partner, in relation to its existing business activities. In principle, the EU guarantee is meant to lead to the financial intermediary or the implementing partner broadening its business activity by financing transactions that it would not have financed in the absence of the EU guarantee due to the higher risk profile of such a portfolio. Where a financial intermediary already has a dedicated higher-risk SME financing product in place but its ability to serve market demand is restricted, the EU guarantee may be used to support a significant increase in the volumes of such higher risk SME financing product.

Financing transactions, that can be included in the portfolios will include, among others, investment loans, working capital facilities (including revolving ones), trade finance facilities, loans (including those embedded in or linked to a current account), bank guarantees, leasing transactions, sub-ordinated loans, and senior and subordinated debt issuance loans.

(b) for equity financing provided by the implementing partner

The EU guarantee will be used to guarantee investments into intermediary risk capital funds, including fund of funds and co-investment vehicles that provide equity-and quasi-equity to SMEs and small midcaps at any stage of their development and funds providing debt financing to SMEs and small midcaps.

Possible additional product developments:

The SME window will also be available for the creation of pilot financial products to address market failures and suboptimal investment situations or to crowd-in more private investment (e.g. through providing guarantees for investors). Such pilot schemes, if successful, may subsequently be rolled-out on a fully-fledged basis. In duly justified cases, based on market assessments, these pilot projects may deviate from the conditions set out in Sections 4 and 5 of these investment guidelines.

6.4. Social Investment and Skills window

6.4.1. Policy areas of intervention

Support under the Social Investment and Skills window must facilitate the deployment of projects strengthening the social dimension of the Union as underscored in the European Pillar of Social Rights. The emphasis under the Social Investment and Skills window is to generate a positive social impact. In particular, actions under that window aim at upwards convergence, reducing inequalities, increasing resilience and inclusiveness through promoting employment and skills development including entrepreneurship and self-employment, social enterprises, social economy and social inclusion, improving citizens' health, well-being and overall quality of life; boosting education outcomes and skill provisions and supporting a just transition to a low carbon economy. Actions also aim to increase access to and availability of microfinance and of finance to social enterprises, support financing and investment operations related to social investment, competences and skills and develop and consolidate social investment markets, in the areas referred to in Article 8(1)(d) and in accordance with Article 3(2)(d) of the InvestEU Regulation. The Social Investment and Skills window will facilitate development of skills and key competences, matching, deployment and higher skills utilisation through education, training, including on-the-job training and related activities with a view to achieve the policy objectives set out in the 'European skills agenda' ⁽¹⁰²⁾, the 'Council Recommendation on Vocational Education and Training' ⁽¹⁰³⁾, the 'European education area' ⁽¹⁰⁴⁾ and the 'digital education action plan 2021-2027' ⁽¹⁰⁵⁾.

The eligible areas for financing and investment operations under the Social Investment and Skills window, are listed in Annex II to the InvestEU Regulation, in particular point 12. The eligible areas may be prioritised in line with Section 2.3.2.1 of these investment guidelines.

The Social Investment and Skills window will support microfinance and social enterprises. In the case of microfinance, a microloan (or microcredit) means a loan of up to EUR 50 000. The provision of investment amounts of up to EUR 500 000 for social enterprises will in particular be encouraged, while larger amounts of up to EUR 2 000 000 will also be targeted to foster their expansion and scaling up.

Support will 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 and rural areas. The window will 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, and cultural and creative activities with a social goal.

The Social Investment and Skills window will also focus on the provision of sustainable and ethical finance for final recipients facing restrictions or barriers affecting their human rights and fundamental freedoms. It will, in particular, target projects that involve a reasonable degree of (prospective) financial viability, but are not delivered (or not to a sufficient extent) by the market due to higher risks, lack of collateral, not achieving optimal scale without public-sector support or other market barriers. The supported projects must contribute to crowd-in private investment to satisfy unmet needs.

⁽¹⁰²⁾ Commission Communication on European Skills Agenda for sustainable competitiveness, social fairness and resilience (COM(2020) 274 final).

⁽¹⁰³⁾ Council Recommendation 2020/C 417/01 of 24 November 2020 on vocational education and training (VET) for sustainable competitiveness, social fairness and resilience (OJ C 417, 2.12.2020, p. 1).

⁽¹⁰⁴⁾ Commission Communication on achieving the European Education Area by 2025 (COM(2020) 625 final).

⁽¹⁰⁵⁾ Commission Communication on Digital Education Action Plan 2021-2027: Resetting education and training for the digital age (COM(2020) 624 final).

Financing and investment operations will aim at the provision of **social infrastructure** and connected services that may pertain to:

- (a) inclusive education and training, including early childhood education and care, and related educational infrastructure and services, alternative and inclusive childcare, student housing and digital equipment, that are accessible for all, promotion of digital proficiency from early education years, universal deployment of and access to ICTs in all education and training institutions and remote access and distance learning tools and platforms;
- (b) affordable social housing;
- (c) health and long-term care, including clinics, hospitals, primary care, home services and community-based care;
- (d) health infrastructure projects that contribute to the development of a 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 ⁽¹⁰⁶⁾ needs through the development of mobile and field medical stations or medical transport;
- (e) enabling social services delivered at community level and, where feasible, in an integrated way.

Social infrastructure, typically financed by public-sector entities or dependent entities, faces sizeable financing gaps. The fallout of the Covid-19 pandemic aggravated further those needs.

Investments in social infrastructure, in the meaning of point 12(d) of Annex II to the InvestEU Regulation, aimed at addressing market failures or suboptimal investment situations may include operations with public sector entities. In such a situation, a financial product dedicated to social infrastructure investment promoted by public sector entities under the Social Investment and Skills Window may be agreed in a guarantee agreement to address market failures referred to in point 2(f) of Section A of Annex V to the InvestEU Regulation. Financing and investment operations under such financial product satisfy the additionality requirements set out in point (b) of Article 209(2) of the Financial Regulation and in Annex V to the InvestEU Regulation.

Compliance with the relevant Union, national, or regional social legislation, as applicable, is a requisite for operations' support under the InvestEU Fund. Interventions should fully respect the principle of subsidiarity, by complementing, where they exist, national and regional support schemes. Where applicable the services provided from the supported projects must be delivered at the community-based local level. Regarding infrastructure in the health area, the focus must be on developing models moving from institutional care to prevention, primary care and community-based care and services supporting integrated person-centred care and independent living, in line with the UN Convention on the Rights of Persons with Disabilities.

⁽¹⁰⁶⁾ See, for example, the *Overview of Natural and Man-Made Disasters and Risks the European Union may face* <https://op.europa.eu/en/publication-detail/-/publication/285d038f-b543-11e7-837e-01aa75ed71a1>

As regards investments in the affordable social housing, particular focus will be on delivering housing solutions that pursue the objective of lifting people from social exclusion in complementarity, where they exist, with national or regional support schemes. For the purpose of investments supported by the InvestEU Fund, affordable social housing ⁽¹⁰⁷⁾ should be understood as aimed at disadvantaged persons or socially less advantaged groups ⁽¹⁰⁸⁾ who, due to income or social constraints live in severe housing deprivation or are unable to obtain housing at market conditions. When targeting people falling under the ETHOS definition of homelessness and housing exclusion, social housing provision should, as much as possible, follow a housing-led approach. The infrastructure and services should respect the applicable quality standards and UN conventions and shall not lead to segregation or isolation of specific groups.

In addition to financing solutions provided by traditional financial intermediaries, the provision of in-kind services may also qualify organisations, such as education and training institutions, or health, social service and care providers, to benefit indirectly from the EU guarantee through an implementing partner.

The Social Investment and Skills window will put particular emphasis on the inclusiveness of **persons in vulnerable situations** and their access to quality services, also for inclusion, and **accessibility for persons with disabilities and for ageing population**.

Support under the Social Investment and Skills window will also support the provision of inclusive **education and training, including vocational training, and related services**, covering initial and continuing education and training, including for adults, and organisational and process innovation, including new and innovative business models. The Social Investment and Skills window will also support innovative health solutions, such as e-health services and new care models. Support will 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 must be paid to **social enterprises** and their activities, 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. Support under the Social Investment and Skills window will address Union-wide market failures in social enterprise and social impact financing, microfinance, health, ageing, education and housing funding gaps and innovation through bringing about stronger Union intervention and more efficient market testing aimed at enhancing the Union's social dimension.

The Social Investment and Skills window will support the **demand for and supply of skills**, addressing final recipients' skills deficiencies or improving the skills utilisation and fostering skills-investment markets.

Advisory support may also contribute to exploring new ways for the provision of social services and in general help to develop the supply of and demand for skills, in line with the InvestEU Regulation.

As regards **microfinance**, the policy objective is to promote quality, sustainable employment and social inclusion by supporting job creation and income-generating activities, in particular for persons in vulnerable situations who wish to start up or develop a micro-enterprise, including on a self-employed basis. In addition, financial intermediaries active in the

⁽¹⁰⁷⁾ Affordable social housing projects may consist in operations such as:

- (a) provision of new, non-segregated and accessible rental social housing stock through one or several of these actions:
 - construction of new buildings;
 - refurbishment or transformation of existing buildings;
 - sourcing of individual housing units from the private housing market (through purchase or mediation);
- (b) set-up of a social rental agency;
- (c) provision of housing-led solutions, combining the provision of rental housing units with enabling support services of proximity (i.e. delivered on-site or made easily accessible);
- (d) adapting existing social housing stock to fit the needs of persons with disabilities, including owner-occupied housing;
- (e) targeted support for marginalised communities that experience severe deprivation in their current housing conditions, including owner-occupied housing.

⁽¹⁰⁸⁾ As defined at the national, regional or local level, as applicable, and/or by economic and social contexts.

microfinance space must ensure the provision, directly or indirectly, of non-financial services such as business development services (mentoring, coaching and training), which are an integral part of microfinance. Conditions such as the cost of borrowing (including the lending rate) and collateral requirements for microfinance directly or indirectly supported in the framework of InvestEU must reflect the benefit derived from the support and must be justifiable with regard to underlying risks and the actual cost of funding related to a credit.

As a pre-condition for InvestEU Fund support, financial intermediaries providing microfinance must sign up to (in the case of non-banks) or endorse (in the case of banks) the 'European code of good conduct for microcredit provision' ⁽¹⁰⁹⁾ to ensure high ethical lending standards in terms of, among others, governance, management and customer protection. Financial intermediaries shall seek to prevent individuals and undertakings from becoming over-indebted by, among others, taking into account their repayment capacity and ensuring an affordable cost of borrowing.

Support under the Social Investment and Skills window will be in line with the ESF+ objectives, including in its proposed operational objectives to support the development of the market ecosystem relating to the provision of finance for social enterprises and microfinance for micro-enterprises in start-up and development phases, in particular those that employ persons in vulnerable situations. Under the ESF+, the Commission will provide guidance for the development of the social infrastructure (including housing and for health, childcare, long-term care and education and training) needed for the implementation of the European Pillar of Social Rights. However, participation in ESF+ is not a pre-condition for accessing InvestEU Fund support.

Support under the Social Investment and Skills window will also be addressed at **social innovation**, which may include innovative social solutions and schemes aiming at promoting **social impacts and outcomes** in order to contribute to achieve the policy objectives of that window.

In pursuing those objectives, the **combination of InvestEU Fund support with contributions from donors, philanthropists, foundations and other private sector actors** shall be encouraged. InvestEU Fund will seek to strengthen private sector engagement to help deliver on the European Pillar of Social Rights, supporting, among others, quality employment, inclusive education and training, health, social inclusion and active participation in society as well as accessibility and disability inclusiveness. Private-sector actors will be able to contribute to the objectives of the Social Investment and Skills window either through direct contributions (donations, repayable and non-repayable forms of support) and/or co-investments in the projects or financial intermediaries supported indirectly by the InvestEU Fund.

Likewise, **grouping of smaller projects** is encouraged, as many projects in the social space are too small to attract interest from private investors or to make a more efficient use of public money. For example, social policy reforms area may entail implementation of social infrastructure and services, such as for new social, care and healthcare models, in several locations in the jurisdiction of a national or regional authority through a number of small-sized projects. It may be necessary to group small projects in a single investment proposition to raise interest from investors. Grouping may involve:

- (a) grouping small social infrastructure or technology or social service projects into a single investment proposition that involves a number of sub-projects in different locations;
- (b) grouping investments needs for social infrastructure, technology and social services in a single project or investment proposition. This may require blending of financing sources or instruments;
- (c) grouping investments needs for social infrastructure and services in a larger investment vehicle for urban or rural renewal or development, aimed at social inclusion or under 'civic match-funding' schemes.

The actions described in points (a) to (c) of the previous paragraph may be complemented by **accompanying measures** which aim to (i) help project promoters and financial intermediaries develop skills for configuring investment strategies, blending or hybrid financing, planning and grouping projects; (ii) support the development of social innovators, social enterprises, social impact investors, and philanthropists, including venture philanthropists; and (iii) create a pan-European

⁽¹⁰⁹⁾ <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8312&furtherPubs=yes>

network of social impact and social innovation relay and coaching centres, innovative education and training services, such as providers of guidance, skills forecasting, skills assessments and validation services or services helping to match the demand for and supply of skills and education-business partnerships and centres of excellence, including centres of vocational excellence.

Those actions may also be complemented by gathering EU-wide data on market failures or suboptimal investment situations in the policy areas linked to the social investment and skills window and making it publicly available.

6.4.1.1. Strategic investments under the Social Investment and Skills window

Support to **education and training** will in particular target projects contributing to the digitalisation of the European education and training systems, including promoting digital proficiency from early education years, universal deployment of and access to ICTs in the education and training institutions and remote access and distance-learning tools and platforms. Supported actions should also target other digitisation programmes, aimed at life-long and inclusive access and support in digital skills and solutions for all social groups and ages. Furthermore, support to education and training should facilitate the development of new skills and strengthening of established skills that would ensure the effective functioning of strategic and critical activities set out in Sections 6.1.1.8 and 6.2.1.1 of these investment guidelines.

6.4.2. Features of potential financial products

6.4.2.1. Financial intermediaries to be involved

(a) for debt financing:

Financial intermediaries, including national promotional banks and institutions, commercial banks, guarantee societies and institutions, diversified debt funds providing senior and subordinated financing, microfinance institutions, leasing companies, crowd-lending and crowd-equity platforms, SPVs, match-funding vehicles, co-investment funds or schemes, non-banking financial institutions including loan funds, patient capital providers such as cooperatives, credit unions, insurance companies, pension funds, Private Equity/Business Angel funds, funds of funds may apply.

Social investment market enablers (including investment readiness and capacity-building intermediaries active in the microfinance and social enterprise finance space, FinTech companies, higher education institutions, universities, research centres and EIT Knowledge and Innovation Communities, foundations, crowdfunding platforms, and vocational education and training institutions, including centres of vocational excellence and education-business partnerships) are also eligible. Other groups of investors including corporate investors, social impact investors, (social) business angels, educational entrepreneurs (e.g. Massive Open Online Courses 'MOOCs'), venture philanthropists and philanthropists may also apply.

Other publicly-owned intermediaries and those operating in social infrastructure, social enterprise finance and social economy space (such as ethical or alternative banks, cooperative banks), which are able to provide financing in the eligible areas covered by the Social Investment and Skills window in full compliance with applicable national and Union legislation and with the relevant requirements of the Financial Regulation, may apply.

The potential public financial intermediaries referred in these guidelines may also play a role in combining InvestEU Fund support with other central Union funding programmes and funds under shared management.

(b) for equity financing:

Financial intermediaries may include, amongst others, national promotional banks and institutions, commercial banks, guarantee societies and institutions, loan funds, debt funds, pension funds, microfinance institutions, leasing companies, crowd-lending and crowd-equity platforms, SPVs, match-funding vehicles, co-investment funds or schemes.

Eligible financial intermediaries for equity financing may also include non-banking financial institutions including patient capital providers such as cooperatives, credit unions, insurance companies and entities to be incorporated, funds-of-funds, private equity funds, venture capital funds, business angel funds, technology transfer funds, co-investment funds or schemes, venture debt funds, other arrangements or schemes that provide investments in equity, quasi-equity, hybrid debt-equity and other forms of mezzanine finance.

Social investment market enablers (including investment readiness and capacity-building intermediaries active in the micro-finance and social enterprise finance space, FinTech companies, higher education institutions, universities, research centres and EIT Knowledge and Innovation Communities, foundations, crowdfunding platforms, and vocational education and training institutions, including centres of vocational excellence and education-business partnerships) may also be eligible. Other groups of investors including corporate investors, social impact investors, (social) business angels, educational entrepreneurs (e.g. MOOCs), venture philanthropists and philanthropists can act as financial intermediaries in full compliance with applicable national and Union legislation when they are able to generate projects or investment portfolios in the areas covered by the social investments and skills window.

The managers of financial intermediaries (including first time managers or advisors) must demonstrate the capacity and experience to undertake such investments in the area under the Social Investment and Skills window as well as the ability to fundraise and attract private capital, and the prospective ability to become financially viable (including via a sound investment strategy), in order to attract more private investments into the specific asset class.

6.4.2.2. Final recipients targeted

The Social Investment and Skills window focuses on the support interventions in various policy areas, therefore targeting a wide range of final recipients, which may include:

(a) natural persons:

- (i) persons in vulnerable situations (such as those experiencing or at risk of social exclusion, including those who are homeless or who live in severe housing deprivation, those who have lost or are at risk of losing their job, or have difficulties entering or re-entering labour market, persons from minority groups, third country nationals, persons in a disadvantaged position with regards to access to the conventional credit market who wish to start up or develop their own micro-enterprises);
- (ii) children, parents, teachers and school administrators;
- (iii) potential or current students and learners (including adult learners).

(b) enterprises:

- (i) micro-enterprises, including self-employed, especially micro-enterprises which employ vulnerable persons;
- (ii) social enterprises;
- (iii) public enterprises;
- (iv) SMEs;
- (v) Other private-sector companies.

(c) education, training and related service providers, including European Universities, schools, education and training institutions, including centres of vocational excellence and providers of early childhood education and care;

(d) SPVs;

(e) associations, foundations, mutuals and cooperatives;

(f) non-governmental organisations;

(g) public authorities;

(h) health authorities, health service providers, social services providers, technology providers, healthcare professionals, patients, private individuals;

(i) in the field of social infrastructure, the targeted final recipients may be project promoters, public enterprises, operators of buildings/facility managers, social housing providers, PPPs.

Financing and investment operations will also support projects from private and public sector organizations active in the social investment space or in need of such investment.

Such organizations include, among others, SMEs, large corporations, cooperatives, foundations, venture philanthropists, impact-driven enterprises, education and training institutions and providers, triple bottom line ventures, local and municipal authorities.

Their activities cover various sectors and sub-sectors, including, among others, smart and inclusive mobility, urban renewal, rural socioeconomic revitalizing community building and intergenerational solidarity, inclusive communities, homelessness, integration of persons in vulnerable situations including people with disabilities, mental health difficulties and dementia, community development, the integration of third country nationals addressing demographic and migratory challenges and integrating new populations, digital inclusiveness and entrepreneurial skills.

6.4.2.3. General financial products

Support from the InvestEU Fund will be underpinned by a single EU budgetary guarantee covering financial products that address a diversified portfolio of risks. This may include, among others bank guarantees, loans, equity, mezzanine debt, dedicated funds and investment platforms (which may have a layered structure of FLP, mezzanine tranche and senior debt), investment support into social outcomes contracting schemes and partnerships, working capital, support to the acquisition of tangible and intangible assets, and leasing transactions. Financing transactions shall have a minimum maturity of 12 months, however for specific segments with typical maturity shorter than average, e.g. microfinance, minimum maturity can be reduced to up to 3 months. Particular attention will be given to the provision of patient capital foregoing immediate returns with the expectation of long-term value creation.

That may be done, among others, through dedicated investment vehicles, which may provide loans, equity capital, hybrid capital and risk-sharing instruments for intermediaries or direct financing to final recipients.

Guarantees will enable the implementing partners and intermediaries to target final recipients identified in Section 6.4.2.2 at better financial and non-financial conditions than they would have without the guarantee, thereby passing on the benefit arising from the EU intervention. A reduction of the risk premium charged to the final recipients may be in particular considered for InvestEU Fund-supported operations under the Social Investment and Skills window. In addition, in line with the risk profile of the assets (often of intangible nature) under the Social Investment and Skills window FLP coverage by the guarantee will be possible.

Pilot social outcome contracting schemes may be supported, including investments in payment-by-result schemes and social impact bonds in specific areas, in which public procuring bodies (or also private bodies) pursue social impacts based on pre-defined social outcomes, if they result in additionality in accordance with Annex V to the InvestEU Regulation. They will entail private sector risk taking and shall not fall within the scope of essential social services for which public authorities would have to step in in the event of failure. As long as that is the case, possible areas of intervention may include access to education and training, health and care, migration and integration of third country nationals, employment services, skills upgrading and social services. When targeting social services, pilot social outcome contracting schemes may be launched to test whether an innovative intervention is effective and scalable. Such schemes should provide for transparency as to the set-up, functioning and monitoring of their effectiveness.

(a) for debt financing provided by the implementing partner

Debt instruments supported by the EU guarantee through implementing partners and financial intermediaries will predominantly target projects that are having difficulty obtaining debt finance on the market due to, among others, the lack of collateral, credit history or a high-risk profile or low expected returns.

The EU guarantee may be provided for the financing and investment operations in the form of:

- (a) direct debt (including subordinated loans), bonds, unsecured lending, uncollateralised loans, corporate loans, mezzanine investments, senior loans and credit lines;

- (b) credit enhancement for new investments (to project bonds, bank loans or a combination of the two) and loans for social and educational infrastructure projects, corporate loans, or senior debt and subordinated loans to SPVs and PPP structures (in project financing schemes);
- (c) intermediate debt including framework loans disbursed through financial intermediaries and involving multiple final recipients;
- (d) (counter)-guarantees, on-lending guarantees, funded guarantees and other risk sharing arrangements for schemes implemented by financial intermediaries and guarantees (funded and unfunded) to third party financiers;
- (e) guarantee products covering newly originated loans that may, subject to applicable regulations and with the consent of the relevant national regulators if applicable, provide regulatory capital relief for financial intermediaries;
- (f) targeted guarantee mechanisms that may be devised to enable and support social investments from the endowment base of foundations and philanthropic organisations, helping to reduce the risk of such investments and to pursue a certain level of returns. These will typically be linked to the commitment that returns generated on the side of investors from the use of the guarantee would be spent on grants and non-repayable assistance aligned with InvestEU priority funding areas.

(b) for equity financing provided by the implementing partner

Equity financing must be used to reach critical mass and give the flexibility in funding structures typically associated with bank lending. Equity operations can attract a range of patient capital, used in the pre-bankable- stages of business start-ups in all sectors, allow social enterprises to move gradually away from a grant-based funding approach and enhance their innovation and growth potential.

Potential equity products that may be covered by the EU guarantee include:

- (a) **(in)direct equity and quasi-equity investments**, hybrid debt-equity and other forms of mezzanine finance in private or public equity funds, private debt funds, venture capital funds, financial intermediaries such as microfinance institutions and social finance providers (e.g. for capacity building purposes, for supporting funds linked to incubators, accelerators or providing incubation services to social enterprises and social innovators, including innovative education, training and related services providers, or for co-investing with social business and angels venture philanthropist and for supporting certain innovative financial solutions). In certain special circumstances, the departure from the traditional *pari passu* principle towards an asymmetric model of risk and return sharing distribution may also be considered;
- (b) **direct equity participations**, shareholder equity, convertible shareholder loans and combinations of different types of equity participations issued to the investors. The possibility to allow for asymmetric returns and risk-sharing shall also be considered;
- (c) open equity participations, dormant holdings, shareholder loans and combinations of different types of equity participations issued to the investors and donations, including advanced repayable and non-repayable forms of support. These products shall not involve voting or management rights for the investors (including co-investors).

The implementing partners benefiting from the EU guarantee should rank at least *pari passu* with other investors. However, under the Social Investment and Skills window, when duly justified, that *pari passu* principle may not apply, that is to say the investments of implementing partners which are benefiting from the EU guarantee may be in a sub-ordinated position as well as asymmetric with regard to risk and revenues in the waterfall.

The pool of investors willing to invest in the social instruments is currently limited given the return and risk perceptions. In particular, programme implementation will not aim to maximise returns, but rather to achieve a level of return that is sufficient to guarantee **alignment of incentives and investor participation**. Given that the emphasis will be on generating a social return rather than a financial return, the target portfolio return for an operation may be as low as 0 %.

6.4.2.4. Thematic financial products

Such products take the form of pilot financial products and platforms to address market failures and suboptimal investment situations, accelerate the development of the social investments market or crowd in more private investment and contribute to tailored finance solutions for social impact ⁽¹¹⁰⁾.

In case of financing by the implementing partner to support microfinance institutions and social finance providers for their capacity building purposes, the requirement for the implementing partner to provide 5 % own resources contribution to the FLP as mentioned in Section 4.2.2 above does not apply.

⁽¹¹⁰⁾ e.g. through providing guarantees for investors, establish acceleration facilities for social impact vehicle managers, or devise social impact incentive mechanisms for social enterprises).

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1079**of 24 June 2021****laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods ⁽¹⁾, and in particular Articles 3(6), 4(12), 5(3) and 8(2) thereof,

Whereas:

- (1) In order to properly implement Regulation (EU) 2019/880, it is necessary to lay down specific rules for the establishment of an import licensing system for certain categories of cultural goods listed in Part B of the Annex to that Regulation.
- (2) It is also necessary to lay down rules regarding an importer statement system for the categories listed in Part C of the Annex to Regulation (EU) 2019/880.
- (3) Furthermore, it is necessary to lay down rules regarding the exceptions to the requirements to obtain an import licence or to submit an importer statement under certain conditions.
- (4) The safekeeping of cultural goods which are at imminent risk of destruction or loss in a third country should be carried out in refuges in the Union in order to guarantee their safety, maintenance in good condition and safe return when the situation so allows. In order to ensure that cultural goods entrusted for safekeeping will not be diverted in the Union and placed on the market, refuges should be supervised or operated by public entities and the cultural goods should remain under their direct supervision at all times.
- (5) Cultural goods entrusted for safekeeping in a refuge in a Member State should be placed under suitable customs procedures, which would guarantee their storage for an indeterminate period of time, and arrangements should be made in case the risk situation in the third country is expected to persist beyond the foreseeable future. In order to allow the general public to benefit from the temporary presence of these cultural goods in the Union's territory, their exhibition in premises operated by the same entity that operates the relevant refuge should be permitted, subject to the prior consent of the third country and, where the goods have been placed under customs warehousing, to a prior authorisation by customs in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽²⁾. Moving the goods to exhibition premises should only be allowed if their safety and maintenance in good condition can be ensured.
- (6) The exemption from having to obtain an import licence or submit an importer statement to customs in the case of temporary admission of cultural goods for the purpose of education, science, conservation, restoration, exhibition, digitisation, performing arts, research conducted by academic institutions or cooperation between museums or similar institutions should be arranged in such a way as to ensure that the cultural goods are to be used for those purposes only. Establishments and institutions of the public sector are considered trustworthy with regard to the use of the temporarily imported cultural goods; it should therefore only be required of them to register in the electronic system. Institutions or establishments governed by private law or both private and public law should also be allowed to benefit from the exemption, provided that their registration in the electronic system is subsequently confirmed by the competent authority. This exemption should also be implemented in a way that ensures that the same objects temporarily admitted will be the ones re-exported at the end of the procedure and that customs can readily identify the beneficiary establishments via the centralised electronic system.

⁽¹⁾ OJ L 151, 7.6.2019, p. 1.

⁽²⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (7) In order to ensure the traceability of the cultural goods temporarily admitted in exemption from the requirement of an import licence or an importer statement under Article 3(4), points (b) and (c), of Regulation (EU) 2019/880, it is appropriate to lay down rules regarding the description of those goods that should be uploaded to the electronic system referred to in Article 8 of that Regulation.
- (8) For the correct application of Article 3(5) of Regulation (EU) 2019/880 and in order to ensure uniform implementation and avoid misuse of the exemption by permanent sales outlets such as auction houses, antique shops and galleries, commercial art fairs should fulfil certain conditions as regards their duration, purpose and accessibility to the general public, as well as the publicity given to them.
- (9) In order to ensure the uniform implementation of the provisions of Regulation (EU) 2019/880 on import licences, rules governing the drawing up, submission and examination of applications and the issue and validity of the relevant licences using the centralised electronic system are necessary.
- (10) In order to prevent the irregular use of an import licence that has been revoked by a competent authority, an alert should be triggered in the electronic system for the import of cultural goods referred to in Article 8 of Regulation (EU) 2019/880, drawing the attention of other Member States customs and competent authorities.
- (11) The licit provenance of a cultural good which has been imported in the past in the Union under an import licence has already been examined by a Member State competent authority. In order to ensure consistency with that assessment and to facilitate trade, a new application for the re-importation of the same cultural good should be subject to simplified requirements.
- (12) In accordance with Regulation (EU) 2019/880, the 90-day period for a competent authority to decide on an import licence application starts from when that authority receives a complete application. In order to ensure equal treatment and the expedient processing of licence applications, where additional information to that submitted by the applicant with their electronic application is considered necessary to demonstrate legal export, the 90-days period should only start from when the applicant has submitted the requested additional information by uploading it to the electronic system. As the applicant has the burden of proof for demonstrating legal export, when the additional requested information has not been submitted to the competent authority within the set deadline, the application should be rejected as incomplete.
- (13) In order to prevent the introduction into the Union of cultural goods illegally exported from a third country, certain documents or information certifying the legal export by the third country authorities, adequately identifying the cultural good and engaging the liability of the importer, should always be submitted with an application for an import licence or be in the possession of the declarant submitting an importer statement, in case customs authorities request their presentation.
- (14) In order to allow applicants to prove legal provenance in the case where the country in which the good was created or discovered did not have an export certification system at the time of export, operators should be allowed to submit in support of their application for an import licence or have in their possession, in case these documents are requested by customs, a combination of other forms of evidence. In that case, Member States should require the operator to furnish as many different types of evidence as possible, including the history and ownership of the object through which its authenticity and ownership can be determined.
- (15) In order to ensure that the importer statements, as referred to in Regulation (EU) 2019/880, are uniform, rules governing the drawing up of the signed declaration in the centralised electronic system and the content of the standardised description of the cultural good are necessary.
- (16) Customs are to carry out controls, other than random checks, based primarily on risk analysis. In order to ensure that the object presented to customs is the one for which the import licence has been obtained or the importer statement was drawn up, customs should carry out controls by applying risk management criteria in accordance with Articles 46 to 49 of Regulation (EU) No 952/2013.

- (17) Regulation (EU) 2019/880 provides for the establishment by the Commission of a centralised electronic system to manage the import of cultural goods from third countries into the customs territory of the Union. Detailed arrangements should be laid down as to the operation, use, access, contingency provisions and security of that system and of the information stored or exchanged via the system.
- (18) In order to ensure an adequate level of security of electronic means of identification and electronic certification and in order to digitalise and harmonise processes, import licences and importer statements should meet the standards for electronic signatures, electronic seals and electronic timestamps in their different levels of identity assurance set by Regulation (EU) No 910/2014 of the European Parliament and of the Council ⁽³⁾ and Commission Implementing Decision (EU) 2015/1506 ⁽⁴⁾.
- (19) Access to the content of import licences, applications thereof, importer statements and any information or documents submitted in their support should only be reserved to the Member States authorities in charge of implementing Regulation (EU) 2019/880 and to the applicants and declarants themselves. However, in order to facilitate trade, such as in the case of transfer of ownership of an imported cultural good, the holders of import licences or initiators of importer statements should be allowed to give access to third parties to their own licences or statements.
- (20) Member States may restrict the number of customs offices which can process cultural goods import formalities. In order for importers to know which are the appropriate customs offices to carry out import formalities, this information should be made available to them and regularly updated in the centralised electronic system.
- (21) Regulation (EU) 2019/880 provides that its Articles 3(2) to (5), (7) and (8), Article 4(1) to (10), Article 5(1) and (2) and Article 8(1) shall apply from the date on which the electronic system referred to in its Article 8 becomes operational or at the latest from 28 June 2025. Therefore, the date from which this Regulation should apply should be deferred accordingly.
- (22) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁵⁾ and delivered an opinion on 23 April 2021.
- (23) The measures provided for in this Regulation are in accordance with the opinion of the Cultural Goods Committee ⁽⁶⁾,

⁽³⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

⁽⁴⁾ Commission Implementing Decision (EU) 2015/1506 of 8 September 2015 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies pursuant to Articles 27(5) and 37(5) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (OJ L 235, 9.9.2015, p. 37).

⁽⁵⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁽⁶⁾ Article 8 of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ L 39, 10.2.2009, p. 1).

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'refuge' means a secure storage facility within the customs territory of the Union, which is designated by a Member State for the safekeeping of cultural goods that are of importance for archaeology, prehistory, history, literature, art or science and which are under serious and imminent threat of destruction or loss if they were to remain at their current location;
- (2) 'third country' means a country or territory outside the customs territory of the Union, as defined in Article 1(11) of Commission Delegated Regulation (EU) 2015/2446 ⁽⁷⁾;
- (3) 'country of interest' means the third country where the cultural good to be imported was created or discovered or the last country where the cultural good was located for a period of more than five years for purposes other than temporary use, transit, re-export or transshipment, in accordance with Articles 4(4) and 5(2) of Regulation (EU) 2019/880;
- (4) 'ICG system' means the electronic system for the import of cultural goods referred to in Article 8 of Regulation (EU) 2019/880;
- (5) 'TRACES' means the system referred to in Article 133(4) of Regulation (EU) 2017/625 of the European Parliament and of the Council ⁽⁸⁾;
- (6) 'electronic signature' means an electronic signature as defined in Article 3(10) of Regulation (EU) No 910/2014;
- (7) 'advanced electronic seal' means an electronic seal complying with the technical specifications laid down in Commission Implementing Decision (EU) 2015/1506;
- (8) 'qualified electronic seal' means a qualified electronic seal as defined in Article 3(27) of Regulation (EU) 910/2014;
- (9) 'qualified electronic time stamp' means an electronic time stamp as defined in Article 3(34) of Regulation (EU) 910/2014;
- (10) 'EORI number' means the Economic Operators Registration and Identification number, as defined in Article 1(18) of Commission Delegated Regulation (EU) 2015/2446.

⁽⁷⁾ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

⁽⁸⁾ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (OJ L 95, 7.4.2017, p. 1).

CHAPTER II

DETAILED ARRANGEMENTS FOR AN EXEMPTION FROM DOCUMENTARY REQUIREMENTS

Article 2

Safekeeping

1. Member States that import cultural goods for the purpose of safekeeping shall create refuges for their storage. Those storage facilities shall be specifically equipped to receive cultural goods and ensure their safety and maintenance in good condition. Free zones as referred to in Article 243 of Regulation (EU) 952/2013 may not be designated as a refuge.
2. Where a Member State creates a refuge, it shall designate a public authority to operate it or supervise its operation and shall upload the contact details of that authority to the ICG system. The Commission shall make this information available on the internet.
3. Member States may only designate state, regional or local authorities or bodies governed by public law as those are defined in Article 2(1) point (4) of Directive 2014/24/EU of the European Parliament and of the Council ⁽⁹⁾, as public authorities to operate or supervise the operation of a refuge.
4. Cultural goods belonging to the categories listed in Parts B and C of the Annex to Regulation (EU) 2019/880, which are of importance for archaeology, prehistory, history, literature, art or science may be temporarily placed in a refuge within the customs territory of the Union to prevent their destruction or loss due to armed conflict, natural disaster or other emergency situations affecting the third country in question.
5. The import of cultural goods for the purpose referred to in Article 3(4) point (b) of Regulation (EU) 2019/880 shall require the prior acceptance of an official request for safekeeping submitted by a public authority of the third country possessing or holding the cultural goods to the public authority in the Union which has been designated to operate or to supervise the operation of the refuge in which the cultural goods are to be placed.
6. In the absence of a specific arrangement between the parties, the costs of storage and maintenance of the cultural goods placed in a refuge shall be borne by the Member State hosting that refuge.
7. The following shall apply with regard to the customs procedure under which cultural goods can be placed while they are stored in a refuge:
 - (a) The entity operating the refuge shall declare the cultural goods for placement under the private customs warehousing procedure in accordance with Article 240 of Regulation (EU) No 952/2013, provided that that entity holds an authorisation for operating a private customs warehouse in the premises of that refuge.
 - (b) Alternatively, the entity operating the refuge may declare the cultural goods for release for free circulation with relief from import duty, in accordance with Articles 42 to 44 of Council Regulation (EC) 1186/2009 ⁽¹⁰⁾.
 - (c) The entity operating the refuge may initially place the cultural goods under the temporary admission procedure. When this customs procedure is selected, arrangements shall be made for the goods to be subsequently placed under one of the procedures under point (a) or (b), in case the maximum allocated temporary admission period under Article 251 of Regulation (EU) No 952/2013 expires and its extension is not granted, while the safe return of the goods to the third country is not yet possible.
8. The cultural goods may be temporarily moved from the premises of the refuge in order to be exhibited to the public, provided that the following conditions are met:
 - (a) the third country from which the cultural goods have been imported has given its consent;

⁽⁹⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽¹⁰⁾ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324, 10.12.2009, p. 23).

- (b) the customs authorities have authorised the move in accordance with Article 240(3) of Regulation (EU) No 952/2013;
- (c) the premises designated for the purpose of display offer the appropriate conditions to ensure the protection, conservation and maintenance of the goods.

Article 3

Temporary admission for education, science or research

1. The temporary admission of cultural goods pursuant to Article 3(4) point (c) of Regulation (EU) 2019/880 shall be permitted without an import licence or an importer statement for the following purposes:
 - (a) exclusive use of the cultural goods by scientific, teaching or vocational training public establishments in teaching, vocational training or scientific research and under their responsibility;
 - (b) temporary lending by museums and similar institutions in third countries, of cultural goods belonging to their permanent collections to a public museum or similar institution within the customs territory of the Union for the purpose of exhibiting those cultural goods to the public by the latter or using them in artistic performances;
 - (c) digitisation, namely the preservation of their images or sounds in a form suitable for transmission and computer processing, by an establishment suitably equipped for this purpose and under the responsibility and supervision of a public museum or similar institution;
 - (d) restoration or conservation by professional experts under the responsibility of a public museum or similar institution, provided that such treatment or handling does not go beyond what is necessary to repair the cultural goods, restore them to good condition or preserve them in good condition.
2. For the purposes of paragraph 1, the establishment or institution concerned shall offer all the guarantees considered necessary for the cultural good to be returned in the same condition to the third country and that the cultural good can be so described or marked that there will be no doubt, at the moment of temporary admission, that the good being imported is the same one that will be re-exported at the end of the procedure.
3. Without prejudice to paragraphs 1 and 2, Member States may grant private or semi-private establishments or institutions in their territory an exemption pursuant to Article 3(4) point (c) of Regulation (EU) 2019/880 for the purposes specified in paragraph 1 of this Article, provided that they offer the necessary guarantees that the cultural good will be returned in good condition to the third country at the end of the temporary admission procedure.
4. In order to benefit from an exemption under paragraph 1, public establishments and institutions and authorised private or semi-private establishments or institutions shall register in the ICG system. This information shall be made available to customs in the Union via the ICG system.

Article 4

Traceability

The holders of cultural goods exempted from the documentary requirements laid down in Article 3(4) points (b) and (c) of Regulation (EU) 2019/880 shall provide a standardised general description of the goods in the ICG system before lodging the corresponding customs declaration.

The general description shall be completed following the data dictionary set out in Annex I in an official language of the Member State where the goods are to be imported.

*Article 5***Temporary admission of cultural goods offered for sale in commercial art fairs**

1. In order for the exemption laid down in Article 3(5) of Regulation (EU) 2019/880 to apply, the commercial art fair at which the goods are to be presented shall fulfil all of the following conditions:
 - (a) it is a limited-time trade event, other than a public auction, where cultural goods are exhibited with a view to a possible sale;
 - (b) it is accessible to the general public, regardless of whether that public has an intention to purchase or not;
 - (c) it is previously advertised via electronic or conventional media of wide circulation, such as newspapers, periodicals or exhibition catalogues.
2. In order to benefit from the exemption laid down in Article 3(5) of Regulation (EU) 2019/880, a cultural good shall be so described or marked that there can be no doubt at the moment of temporary admission that the good being imported is the same one that will be re-exported or placed under another customs procedure referred to in Article 2(3) of Regulation (EU) 2019/880 at the end of the temporary admission procedure.
3. For the purposes of the second sentence of Article 251(1) of Regulation (EU) 952/2013, the period during which cultural goods may remain under the temporary admission procedure shall be determined by the customs authorities taking into consideration the time necessary for the purposes of the exhibition and the issue of an import licence, in the event that the goods are to remain within the customs territory of the Union after the end of the commercial art fair.
4. In accordance with Article 4(1) of Regulation (EU) 2019/880, the application for an import licence shall be submitted to the competent authority of the Member State where the cultural good was imported for the first time and placed under temporary admission.

CHAPTER III

DETAILED ARRANGEMENTS FOR THE IMPORT LICENCE*Article 6***General principles**

1. The validity of an import licence shall expire in any of the following cases:
 - (a) the cultural good is released for free circulation;
 - (b) the import licence has been used only to place the cultural good under one or more of the customs procedures mentioned in Article 2(3) point (b) of Regulation (EU) 2019/880 and the cultural good is subsequently re-exported from the customs territory of the Union.
2. A separate import licence shall be issued for each cultural good.

However, where a consignment consists of several cultural goods, the competent authority may determine whether a single import licence shall cover one or several cultural goods in that consignment.

3. Before issuing an import licence, the competent authority may require that the cultural goods to be imported are made available to them for a physical inspection at the customs office or other premises within their jurisdiction, where the goods are kept in temporary storage. At the discretion of the competent authority and if deemed necessary, the physical inspection may be carried out using a remote video connection.
4. Any costs related to an application for an import license shall be borne by the applicant.

5. A competent authority may revoke an import licence it has issued, if the conditions under which it was granted are no longer met. The administrative decision revoking the import licence, together with a statement of reasons and information on the appeal procedure, shall be communicated to the holder of the import licence via the ICG system. The revocation of an import licence shall trigger an alert in the ICG system, informing the other Member States customs and competent authorities.

6. The use of import licences shall not affect obligations related to customs import formalities or related documents.

Article 7

Consistency of issued import licences

1. The holder of a cultural good for which an import licence has been issued prior to its export or re-export from the Union may refer to that licence in any new application for import.

2. The applicant shall demonstrate that the cultural good has been exported or re-exported from the customs territory of the Union, and that the cultural good for which an import licence is applied for is the same as the one previously licenced. The competent authority shall verify whether these conditions are met and shall issue a new import licence, based on the elements of the previous one, unless it has reasonable doubts about the legal export of the cultural good from the country of interest, based on new information.

Article 8

List of supporting documents to prove licit provenance in an import licence application

1. The applicant shall provide evidence to the competent authority that the cultural good in question has been exported from the country of interest in accordance with its laws and regulations or shall provide evidence of the absence of such laws and regulations at the time the cultural good was taken out of its territory. In particular:

- (a) The import licence application shall include a signed declaration by which the applicant explicitly assumes responsibility for the veracity of all statements made in the application and states that they have exercised all due diligence to ensure that the cultural good they intend to import has been exported legally from the country of interest.
- (b) Where the laws and regulations of the country of interest subject the export of cultural goods from its territory to the obligation to obtain a prior authorisation, the applicant shall upload to the ICG system copies of the relevant export certificates or export licences issued by the competent public authority of the country of interest, certifying that the export of the cultural good in question was duly authorised by them.
- (c) The application shall be accompanied by photographs in colour of the object against a neutral background, following the specifications set out in Annex II.
- (d) Other types of documents to submit in support of an import licence application may be, but are not limited to the following:
 - (i) customs documentation providing evidence as to past movements of the cultural good;
 - (ii) sales invoices;
 - (iii) insurance documents;
 - (iv) transport documents;
 - (v) condition reports;
 - (vi) property titles, including notarised wills or handwritten testaments declared valid under the laws of the country where they were established;
 - (vii) declarations under oath of the exporter, the seller or other third party, which were made in a third country and in accordance with its laws, testifying as to the date on which the cultural good has left the third country where it was created or discovered or other events supporting its licit provenance;

- (viii) expert appraisals;
- (ix) publications of museums, exhibition catalogues; articles in related periodicals;
- (x) auction catalogues, advertisements and other promotional sales material;
- (xi) photographic or cinematographic evidence, which supports the legality of export of the cultural good from the country of interest or allows to determine when it was located there or when it exited its territory.

2. The documents and other records of information listed under paragraph 1 point (d) shall be assessed freely by the competent authority, taking into consideration the circumstances and the perceived risk of illicit trade in each case.

3. The competent authority may require the applicant to upload official translations of the documents referred to in paragraph 1 points (b) and (d) in an official language of the relevant Member State.

Article 9

Procedural rules on the processing of applications for import licences

1. The competent authority may make multiple requests for additional information in accordance with Article 4(6) of Regulation (EU) 2019/880 within the 21-day time-limit laid down in that provision.

2. The applicant shall provide the additional information requested within 40 days, failing which, the application shall be rejected. Once the applicant has submitted the requested information, the competent authority shall examine it and make a decision within 90 days. If the competent authority has made multiple requests for information, the 90-day period shall start from the submission of the last piece of information by the applicant.

3. Where an application for an import licence is submitted to a Member State other than the one in which the applicant is established, the ICG system shall notify the competent authority of the Member State where the applicant is established.

4. Where the competent authority that receives the notification is in possession of any information that it considers relevant for the processing of the application, it shall forward such information through the ICG system to the competent authority to which the import licence application was submitted.

5. In case the application is not submitted to the authority which is competent to issue the import licence pursuant to Article 4(1) of Regulation (EU) 2019/880, the authority that received the application shall forward it to the appropriate competent authority without delay.

Article 10

Controls of import licences

1. When carrying out customs controls in accordance with Articles 46 to 49 of Regulation (EU) No 952/2013, the customs office to which the customs declaration for the import of the cultural goods is lodged shall ensure that the goods presented correspond to those described in the import licence and that a reference is made to that licence in the customs declaration.

2. Where cultural goods are placed under the customs warehousing procedure referred to in Article 240 of Regulation (EU) 952/2013, the tariff classification number of the goods in TARIC shall be stated in the customs declaration.

3. Where cultural goods are placed under the free zone procedure, the controls referred to in paragraph 1 shall be carried out by the competent customs office to which the import licence is presented in accordance with Article 245(1) of Regulation (EU) No 952/2013. The holder of the goods shall indicate the tariff classification number of the goods in TARIC upon their presentation to customs.

CHAPTER IV

DETAILED ARRANGEMENTS FOR THE IMPORTER STATEMENT

*Article 11***General principles**

1. Importer statements shall be drawn up using the form provided for this purpose in the ICG system, in one of the official languages of the Member State where the cultural good is to be imported and submitted to customs.
2. With the exception of coins of category (e) of Part C of the Annex to Regulation (EU) 2019/880, a separate importer statement shall be drawn up for each cultural good to be imported. More than one coin of the same denomination, material composition and origin may be covered under the same importer statement, following the specifications set out in Annex I to this Regulation.
3. An importer statement shall be drawn up and submitted for every subsequent re-importation of the same cultural good, unless an exemption laid down in points (a), (b) or (c) of Article 3(4) of Regulation (EU) 2019/880 applies.

*Article 12***List of supporting documents to prove licit provenance that should be in the possession of the declarant**

1. The importer statement shall include a signed declaration by which the importer assumes responsibility and explicitly states that they have exercised all due diligence to ensure that the cultural good which they intend to import has been exported legally from the country of interest.
2. The importer statement shall be accompanied by standardised information describing the cultural good in sufficient detail for it to be identified by customs, including photographs in colour of the cultural goods against a neutral background, following the specifications set out in Annex II.
3. Where the laws and regulations of the country of interest subject the export of cultural goods from its territory to obtaining a prior authorisation, the importer shall be in possession of the relevant permit documents issued by the competent public authority of the country of interest, certifying that the export of the cultural good in question was duly authorised by it. Upon request, that documentation shall be presented to customs.
4. Other types of documents which the holder of the goods could have in their possession to support, if so requested, their import statement may be, but are not limited to, the following:
 - (a) customs documentation providing evidence as to past movements of the cultural good;
 - (b) sales invoices;
 - (c) insurance documents;
 - (d) transport documents;
 - (e) condition reports;
 - (f) property titles, including notarised wills or handwritten testaments declared valid under the laws of the country where they were established;
 - (g) declarations under oath of the exporter, the seller or other third party, which were made in a third country and in accordance with its laws, testifying as to the date on which the cultural good has left the third country where it was created or discovered or other events supporting its licit provenance;
 - (h) expert appraisals;
 - (i) publications of museums, exhibition catalogues; articles in related periodicals;

- (j) auction catalogues, advertisements and other promotional sales material;
 - (k) photographic or cinematographic evidence, which supports the legality of export of the cultural good from the country of interest or allows to determine when it was located there or when it exited its territory.
5. The documents and other records of information listed under paragraph 4 shall be assessed freely, based on the circumstances and taking into consideration the perceived risk of illicit trade in each case.
6. The customs authority may require from the holder of the goods to upload official translations of the documents referred to in paragraphs 3 and 4 in an official language of the relevant Member State.

Article 13

Controls of importer statements

1. When carrying out customs controls in accordance with Articles 46 to 49 of Regulation (EU) No 952/2013, the customs office to which the customs declaration for the import of the cultural goods is lodged shall ensure that the goods declared correspond to those described in the importer statement and that a reference is made to that statement in the customs declaration.
2. Where cultural goods are placed under the customs warehousing procedure, the tariff classification number of the goods in TARIC shall be stated in the customs declaration.
3. Where the cultural goods are placed under the free zone procedure, the controls referred to in paragraph 1 shall be carried out by the customs office to which the importer statement is presented in accordance with Article 245(1) of Regulation (EU) No 952/2013. The holder of the goods shall indicate the tariff classification number of the goods in TARIC upon their presentation to customs.

CHAPTER V

ARRANGEMENTS AND DETAILED RULES FOR THE ELECTRONIC SYSTEM FOR THE IMPORT OF CULTURAL GOODS

Article 14

Deployment of the ICG

The Commission shall:

- (a) develop the ICG system as an independent module of TRACES;
- (b) ensure the functioning, maintenance, support and any necessary update or development of the ICG system;
- (c) have access to all data, information and documents in the ICG system for the purpose of producing annual reports and for the development, functioning and maintenance of the system;
- (d) ensure the interconnection between the ICG system and national customs systems, via the European Union Single Window Environment for Customs.

Article 15

Contact Points

1. Member States and the Commission shall designate contact points for the purpose of managing, steering the development of, identifying priorities for and monitoring the correct operation of the ICG system.

2. The Commission contact point shall maintain and keep up to date a list of all contact points and make it available to the other contact points.

Article 16

Use of the EORI number

Holders of cultural goods who apply for an import licence or submit an importer statement shall use an EORI number to identify themselves.

Article 17

Electronic import licences

1. Electronic import licence applications shall be completed following the data dictionary in Annex I and shall be signed by the holder of the goods with their electronic signature.
2. Electronic import licences shall be signed by the authorising officer of the competent authority with their electronic signature, sealed with an advanced or qualified electronic seal of the issuing competent authority, and then sealed by the ICG system with an advanced or qualified electronic seal.
3. The following steps in the process of issuing an electronic import licence shall be marked with an electronic qualified time stamp:
 - (a) the submission of the application by the holder of the goods;
 - (b) any request by the competent authority for missing or additional information from the applicant in accordance with Article 4(6) of Regulation (EU) 2019/880;
 - (c) any submission of additional information or document by the applicant, following a request from the competent authority;
 - (d) any decision taken on the application by the competent authority;
 - (e) the expiry of a 90-day period following the reception of the complete application, without a decision by the competent authority.

Article 18

Electronic importer statements

1. The electronic importer statements shall be drawn up using the ICG system in at least one of the official languages of the Member State where the goods are placed for the first time under one of the customs procedures referred to in Article 2(3) of Regulation (EU) 2019/880. They shall be completed following the data dictionary in Annex I.
2. Electronic importer statements shall be signed by the holder of the goods with their electronic signature and shall be sealed by Traces with an advanced or qualified electronic seal.

Article 19

Access to import licences, importer statements and general descriptions in the ICG system

1. Each holder of the goods shall have access to their own import licences, importer statements and general descriptions referred to in Article 4, in the ICG system.
2. Customs and competent authorities shall have access to import licences on which a decision has been made, to importer statements and to general descriptions referred to in Article 4.
3. Without prejudice to the Commission's right of access pursuant to Article 14 point (c), authorities which have not been involved in the handling, production or transmission of data, information or documents in the ICG system, or persons who have not been involved in the relevant import operations, shall not have access to such data, information or documents.

4. By way of derogation from paragraph 3, holders of the goods may provide access to their import licences, importer statements or general descriptions referred to in Article 4 to a subsequent holder of the goods through the ICG system.

Article 20

Joint controllership

1. The Commission and the Member States shall be regarded as data controllers of the processing of personal data necessary for the establishment, operation and maintenance of the ICG system.
2. The Commission shall be responsible for:
 - (a) determining and implementing the technical means in the ICG system to inform data subjects and enable them to exercise their rights;
 - (b) ensuring the security of processing;
 - (c) determining the categories of its staff and external providers to whom access to the system may be granted.
 - (d) notifying and communicating any personal data breach of the ICG systems to the European Data Protection Supervisor, pursuant to Article 34 of Regulation (EU) 2018/1725 and to the data subjects pursuant to Article 35 of that Regulation, respectively;
 - (e) ensuring that its staff and external providers are adequately trained to perform their tasks within the ICG system in accordance with Regulation (EU) 2018/1725;
3. Member States customs and competent authorities shall be responsible for:
 - (a) ensuring that the data subject's rights are exercised in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹¹⁾ and with this Regulation;
 - (b) ensuring the security and confidentiality of personal data pursuant to Section 2 of Chapter IV of Regulation (EU) 2016/679;
 - (c) designating the staff and experts that are to have access to the ICG system;
 - (d) ensuring that staff and experts accessing the ICG system are adequately trained to perform their tasks in accordance with Regulation (EU) 2016/679 and, where relevant, with Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹²⁾.
4. The Commission and the Member States shall enter into a joint controllership arrangement in the form of an agreement at the latest three years after the entry into force of this Regulation.

Article 21

Update of designated customs offices lists

Member States shall keep the ICG system updated with lists of the customs offices competent to handle the import of cultural goods, pursuant to Article 6 of Regulation (EU) 2019/880.

⁽¹¹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹²⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

*Article 22***Availability of electronic systems**

1. The Commission and the Member States shall conclude operational agreements laying down the practical requirements for the availability and performance of the ICG system as well as for business continuity.
2. The ICG system shall be kept permanently available, except in the following cases:
 - (a) in specific cases related to the use of the electronic system laid down in the agreements referred to in paragraph 1 or, at national level, in the absence of those agreements;
 - (b) in the case of force majeure.

*Article 23***Contingency arrangements**

1. The ICG system contact points shall maintain an online public repository containing a writeable electronic template of all documents that may be issued in the ICG system.
2. Where the ICG system, or one of its functionalities is unavailable for more than eight hours, users may use the writeable electronic template referred to in paragraph 1.
3. Member States shall determine their national operational details for the submission of importer statements and processing of applications for import licences during any unavailability of the ICG system.
4. Once the ICG system or the unavailable functionality become available again, operators shall use the documents created in accordance with paragraph 2, to record the same information in the system.

*Article 24***Security of the ICG system**

1. When developing, maintaining and using the ICG system, the Member States and the Commission shall establish and maintain adequate security arrangements for its effective, reliable and secure operation. They shall also ensure that measures are in place for checking the source of data and for protecting data against the risk of unauthorised access, loss, alteration or destruction.
2. Each input, modification and deletion of data shall be recorded together with information giving the reason for and exact time of such processing and identifying the person who carried it out.
3. The Member States shall inform each other, the Commission and, where appropriate, the operator concerned of all actual or suspected breaches of security of the ICG system.

CHAPTER VI

FINAL PROVISIONS

*Article 25***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date referred to in Article 16(2) point (b) of Regulation (EU) 2019/880.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 June 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Data dictionary and specifications for drawing up general descriptions, import licences and importer statements

The entries specified in this section shall constitute the data dictionary for the completion of the general description referred to in Article 4, the import licence referred to in Chapter III and the importer statement referred to in Chapter IV.

Unless otherwise specified or established by Union legislation, all entries and boxes apply to the electronic general descriptions, import licences and importer statements.

All boxes are mandatory, except those indicated with an asterisk (*).

Box	Description
PART I Holder of the goods	
	Document type
	Select the document type: general description, import licence, importer statement
I.1	Reference number
	This is the unique alphanumeric code assigned to the document by the ICG system.
I.2	Status
	This is the status of the document in the ICG system.
I.3	QR Code
	This is the unique machine-readable optical label assigned by the ICG system, which hyperlinks to the electronic version of the document.
I.4	National Reference(*)
	The competent authority can use this box to indicate the unique national alphanumeric code assigned to the document.
I.5	Local Reference(*)
	The holder of the good can use this box to indicate the unique alphanumeric code assigned to the document for the holder's internal use.
I.6	Country of import and competent authority or customs office
	Select the Member State of import, i.e. the Member State where the cultural good is to be imported for the first time, and For an import licence: Select the appropriate competent authority in the Member State of import For importer statement: Select the customs office
I.7	Derogations(*)
	For importer statement only Use this box in case the cultural goods are subject to the following derogation: — Import (temporary admission procedure) for a commercial art fair
I.8	Destination
	For importer statement only Select the Member State where the cultural goods are to be temporarily admitted when the derogation is applied. Indicate the name of the art fair and the address of the art fair venue.

I.9	Length of temporary admission procedure grante(*)
	Only for importer statement. This box is automatically filled by the ICG system on the basis of the temporary admission procedure granted by customs authorities in national customs systems.
I.10	Links to other documents(*)
	This box may be automatically filled in by the ICG system on the basis of other documents linked to this one (e.g. cultural goods subject to import licence, imported into the Union under a commercial art fair derogation with an importer statement, and only to be submitted to a licencing procedure at a later stage).
I.11	Country of interest
	Indicate the country of interest, as defined in Article 1(3). Indicate also if: (a) this is the country where the cultural good was created and/or discovered or, (b) in case the country where the cultural good was created and/or discovered is not known or it is known but the cultural good was exported from there before 24 April 1972, if it is the last country where the cultural good was located lawfully for more than 5 years before its dispatch to the Union.
I.12	Category of the object
	Indicate the category of the cultural good according to Part B or C of the Annex to Regulation (EU) 2019/880.

Description of the cultural good (Section)

	This section includes boxes I.13 to I.16. For import licence: This section shall be repeated and filled in separately for each item in a consignment. For importer statement: Every importer statement shall consist of only one section for the cultural good's description. With the exception of coins of category (e) of Part C of the Annex to Regulation (EU) 2019/880 which are of the same denomination, material composition and origin, when a consignment consists of more than one cultural good, separate importer statements shall be drawn up for each one of them.
I.13	Unique ID of the cultural good
	This is the unique alphanumeric code assigned by the ICG system to each individual cultural good.
I.14	TARIC code
	Indicate the appropriate TARIC classification code for the imported cultural good.
I.15	Description of the cultural good
	Indicate the following information about the cultural good: — Type of cultural good: indicate the type, e.g. sculpture, painting, book, etc. — Materials: indicate what materials have been used to make the cultural good. — Technique(s): indicate the technique(s) used to make the cultural good. — Title of the cultural good: indicate the title or name by which the cultural good is known (if known). — Subject: indicate the subject/genre/theme of the cultural good. — Dating: Where no precise date is known for the categories listed in Part B of the Annex to Regulation (EU) 2019/880, indicate the century and part of the century (first quarter, first half) or millennium. — For antique cultural goods listed in Part C of the Annex to Regulation (EU) 2019/880 for which it is not sufficient to indicate the century, specify a year, even if approximate (for example, around 1790, approximately 1660). — In the case of sets (archives and libraries), indicate earliest and latest dates. — In the case of cultural goods of paleontological interest, indicate the geological era (if known).

	— Maker: indicate the maker of the cultural good. If the maker is not known indicate 'Unknown'. — Origin: indicate the historical origin of the cultural good, E.g. for a Mesopotamian statue one could mark 'Babylon, Achaemenid Empire' — Description: a short description of the cultural good, including any additional information. — Customs value: for import licences and importer statements, indicate the value of the cultural good for customs purposes.
I.16	Photographs and measurements
	Provide photographs of the cultural good in: — three-quarter, where appropriate (3-dimensional objects); — front; — left side, where appropriate (3-dimensional objects); — right side, where appropriate (3-dimensional objects); — back; — top, where appropriate (3-dimensional objects); — bottom, where appropriate (3-dimensional objects). For cultural goods presenting distinguishing features, provide a photograph of the distinguishing feature and a textual description. For cultural goods presenting marks, provide a photograph and textual description of the mark. For cultural goods presenting inscriptions, provide a photograph of the inscription, and the text of the inscription in its original language and, a translation, if possible. Measurements: Indicate the weight, shape and measurements of the cultural good. In the case of coins, indicate also the number of pieces that may be covered by a single importer statement.
I.17	Supporting documents(*)
	Use this box to upload supporting documents to the ICG system.
I.18	Holder of the goods
	Indicate the name and address, country, ISO alpha-2 country code and EORI number of the holder of the goods.
I.19	Owner of the cultural goods(*)
	Indicate the name and address, country, ISO alpha-2 country code of the owner of the cultural goods.
I.20	Declaration of the holder of the good
	For import licence and importer statement. <i>"I hereby declare under penalty of law that all information submitted is correct, complete and truthful and that, to the best of my knowledge, the cultural good which I intend to import into the European Union has been exported in accordance with the laws and regulations of <country of interest as indicated in box I.11>".</i> For importer statement: Indicate if the country of interest requires a licence, authorisation or other type of permit for the cultural good in question to be lawfully exported from its territory and, if yes, indicate whether such a document is in your possession. For import licence: Indicate if the country of interest requires a licence, authorisation or other type of permit for the cultural good in question to be lawfully exported from its territory and, if yes, upload the document in question. The declaration shall be signed with the electronic signature of the holder of the goods, date-stamped and electronically sealed with an advanced or qualified electronic seal of the ICG system.
I.21	Response to request(s) for additional information(*)
	For import licence only, mandatory in case the competent authority requests additional information in box II.1.

	Indicate what information has been provided in response to a request for additional information from the competent authority. After this box is filled in, the licence must be signed again.
PART II Competent Authority	
II.1	Request for additional information(*)
	For import licence only. This box can be used by the competent authority to request additional information from the applicant-holder of the goods.
II.2	Decision on an import licence application
	For import licence only. Indicate if the import licence is granted or not. If the import licence application is rejected, indicate the reasons for the rejection, as provided for in Article 4(7) of Regulation (EU) 2019/880.
II.3	Electronic signature and electronic seal
	For import licence only. Electronic signature of the authorising officer of the competent authority selected in box I.6. Advanced or qualified electronic seal of the competent authority selected in box I.6. Advanced or qualified electronic seal of the ICG system. Electronic timestamp.

EXPLANATORY NOTES

- (1) In checking the provenance of a cultural good the aspect of duly diligent behaviour of the applicant shall be taken into account, namely, whether the applicant has exercised due care and attention in acquiring the objects. In addition to the availability of appropriate certification or documentation, other aspects that shall be taken into account are the nature of the parties in a transaction, the price paid or declared, the risk associated with the country of export or the particular category of goods and whether the applicant consulted any accessible register of stolen cultural objects and any relevant information which could reasonably have been obtained, or has taken any other step that a reasonable person would have taken in the circumstances of the case.
- (2) Experts appraisals in the form of a substantiated determination of provenance by a recognised, independent expert, such as an individual affiliated to a university or a research institution, a consultant to court proceedings or approved by judicial process, or an approved and recognised expert may be considered as satisfactory evidence of the cultural good's origin or history, provided that there are no perceived conflicts of interest. A declaration under oath or similar signed declaration made by third parties, such as the exporter or seller, under the law of a third country may be taken into consideration provided that it is corroborated by other forms of evidence and that the undersigned is aware of the consequences of a false declaration. In any case, competent authorities shall appreciate freely and use their judgement in weighing the submitted evidence, depending on the particular circumstances and the perceived risk of illicit trade in each case.

ANNEX II

Import licence and importer statement templates

Note: The sequence of the boxes in the template as well as their the size and shape are indicative.

IMPORT LICENCE FOR CULTURAL GOODS			
I.1 Reference Number		I.2 Status:	I.3 QR CODE
I.4 National Reference			
I.5 Local Reference			
I.6 Country of import and competent authority			
I.10 Links to other documents:		I.11 Country of interest:	
DESCRIPTION OF THE CULTURAL GOOD			
I.12 Category of the cultural good in accordance with Part B of the Annex to Regulation (EU) 2019/880:			
☐ category (c)		☐ category (d)	
I.13 Unique ID of the cultural good:		I.14 TARIC code:	
I.15 Description of the cultural good(s)			
Type of the cultural good:			
Materials:			
Technique(s):			
Title of the cultural good:			
Subject:			
Dating:			
Maker:			
Origin:			
Description:			
Customs value:			

I.16 Photographs and measurements

Photograph (three-quarter)	Measurements (should match photographs)
Photograph (front)	
Photograph (left)	
Photograph (right)	
Photograph (back)	
Photograph (top)	
Photograph (bottom)	
Photograph(s) (additional)	Measurements (should match the photographs)
Photograph(s) (markings)	Type of mark:
Photograph(s) (distinguishing features)	Type of distinguishing feature
	Description:
Photograph(s) (Inscriptions)	Original text:
	Translated text:

I.17 Supporting documents:

I.18 Holder of the goods: Name Street and number: City Postcode Country EORI Number	I.19 Owner of the cultural goods: Name Street and number: City Postcode Country
I.20 Declaration: <i>I hereby declare under penalty of law that all information submitted is correct, complete and truthful and that, to the best of my knowledge, the cultural good which I intend to import into the European Union has been exported in accordance with the laws and regulations of</i> ☐ Which does not require an export licence/certificate/permit ☐ Which requires an export licence/ /certificate/permit, that I have uploaded to the ICG system that I have not uploaded to the ICG system	Electronic signature of the holder of the goods Advanced or qualified electronic seal of the ICG system Date (time stamp)

I.21 Response to request(s) for additional information

PART II
Competent authority

II.1 Request for additional information

II.2 Decision on the application for an import licence

II.3 Electronic signature and electronic seal

Electronic signature of the authorising officer of the competent authority selected in box I.6.

Advanced or qualified electronic seal of the competent authority selected in box I.6.

Advanced or qualified electronic seal of the ICG system.

IMPORTER STATEMENT FOR CULTURAL GOODS

I.1 Reference Number		I.2 Status:	I.3 QR CODE
I.4 National Reference			
I.5 Local Reference			

I.6 Country of import and competent authority

I.7 Derogations: ☐ Commercial art fair	I.8 Destination:
--	------------------

I.9 Length of temporary admission procedure granted:

I.10 Links to other documents:	I.11 Country of interest:
--------------------------------	---------------------------

DESCRIPTION OF THE CULTURAL GOOD

I.12 Category of the cultural good in accordance with Regulation (EU) 2019/880:

☐ Part B
categories

☐ Part C
categories

I.13 Unique ID of the cultural good:	I.14 TARIC code:
--------------------------------------	------------------

I.15 Description of cultural good(s)

Type of the cultural good:	
Materials:	
Technique(s):	
Title of the cultural good:	
Subject:	
Dating:	

Maker:	
Origin:	
Description:	
Customs value:	

I.16 Photographs and measurements

Photograph (three-quarter)	Measurements (should match the photographs)
Photograph (front)	
Photograph (left)	
Photograph (right)	
Photograph (back)	
Photograph (top)	
Photograph (bottom)	
Photograph(s) (additional)	Measurements (should match the photographs)
Photograph(s) (markings)	Type of mark:
Photograph(s) (distinguishing features)	Type of distinguishing feature
	Description:
Photograph(s) (Inscriptions)	Original text:
	Translated text:

I.17 Supporting documents:**I.18 Holder of the goods:**

Name
Street and number:
City
Postcode
Country
EORI Number

I.19 Owner of the cultural goods:

Name
Street and number:
City
Postcode
Country

I.20 Declaration:

I hereby declare under penalty of law that all information submitted is correct, complete and truthful and that, to the best of my knowledge, the cultural good which I intend to import into the European Union has been exported in accordance with the laws and regulations of.....

☐ Which does not require an export licence/certificate/permit

☐ Which requires an export licence/certificate/permit, that I have in my possession

Electronic Signature of the holder of the goods
Advanced or qualified electronic seal of the ICG system
Date (time stamp)

COMMISSION REGULATION (EU) 2021/1080**of 28 June 2021****amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standards 16, 37 and 41, and International Financial Reporting Standards 1, 3 and 9****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾, and in particular Article 3(1) thereof,

Whereas:

- (1) By Commission Regulation (EC) No 1126/2008 ⁽²⁾ certain international standards and interpretations that were in existence at 15 October 2008 were adopted.
- (2) On 14 May 2020, the International Accounting Standards Board (IASB) published several minor amendments to International Accounting Standard (IAS) 16 *Property, Plant and Equipment*, IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*, and International Financial Reporting Standards (IFRS) 3 *Business Combinations*. Those amendments provide further clarifications for a more consistent application of the standards, or update references.
- (3) The IASB also issued on 14 May 2020 the *Annual Improvements to IFRS Standards 2018–2020 Cycle* in the framework of its regular improvement process. The annual improvements aim at streamlining and clarifying existing standards. The objective of the annual improvements is to address non-urgent but necessary issues discussed by the IASB during the project cycle on areas of inconsistency in International Financial Reporting Standards, or where clarification of wording is required. The annual improvements contain amendments to IAS 41 *Agriculture*, IFRS 1 *First-time Adoption of International Financial Reporting Standards*, and IFRS 9 *Financial Instruments*.
- (4) Following the consultation with the European Financial Reporting Advisory Group, the Commission concludes that the amendments to IAS 16 *Property, Plant and Equipment*, IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*, IAS 41 *Agriculture*, IFRS 1 *First-time Adoption of International Financial Reporting Standards*, IFRS 3 *Business Combinations*, and IFRS 9 *Financial Instruments* meet the criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.
- (5) Regulation (EC) No 1126/2008 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

⁽²⁾ Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1126/2008 is amended as follows:

- (a) International Accounting Standard (IAS) 16 *Property, Plant and Equipment* is amended as set out in the Annex to this Regulation;
- (b) IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* is amended as set out in the Annex to this Regulation;
- (c) IAS 41 *Agriculture* is amended as set out in the Annex to this Regulation;
- (d) International Financial Reporting Standard (IFRS) 1 *First-time Adoption of International Financial Reporting Standards* is amended as set out in the Annex to this Regulation;
- (e) IFRS 3 *Business Combinations* is amended as set out in the Annex to this Regulation;
- (f) IFRS 9 *Financial Instruments* is amended as set out in the Annex to this Regulation;

Article 2

Each company shall apply the amendments referred to in Article 1, at the latest, as from the commencement date of its first financial year starting on or after 1 January 2022.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 June 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Amendments to IAS 16 Property, Plant and Equipment**Amendments to IAS 37 Provisions, Contingent Liabilities and Contingent Assets****Amendments to IFRS 3 Business Combinations****Annual Improvements to IFRS Standards 2018-2020 Cycle****Amendments to IAS 16 Property, Plant and Equipment**

Paragraphs 17 and 74 are amended; paragraphs 20A, 74A, 80D and 81N are added. The requirements formerly in paragraph 74(d) have not been amended but have been moved to paragraph 74A(a).

MEASUREMENT AT RECOGNITION

...

Elements of cost

...

17. Examples of directly attributable costs are:

...

- (e) costs of testing whether the asset is functioning properly (ie assessing whether the technical and physical performance of the asset is such that it is capable of being used in the production or supply of goods or services, for rental to others, or for administrative purposes); and

...

...

20A Items may be produced while bringing an item of property, plant and equipment to the location and condition necessary for it to be capable of operating in the manner intended by management (such as samples produced when testing whether the asset is functioning properly). An entity recognises the proceeds from selling any such items, and the cost of those items, in profit or loss in accordance with applicable Standards. The entity measures the cost of those items applying the measurement requirements of IAS 2.

...

DISCLOSURE

...

74. The financial statements shall also disclose:

...

- (b) the amount of expenditures recognised in the carrying amount of an item of property, plant and equipment in the course of its construction; and
- (c) the amount of contractual commitments for the acquisition of property, plant and equipment

74A If not presented separately in the statement of comprehensive income, the financial statements shall also disclose:

- (a) the amount of compensation from third parties for items of property, plant and equipment that were impaired, lost or given up that is included in profit or loss; and
- (b) the amounts of proceeds and cost included in profit or loss in accordance with paragraph 20A that relate to items produced that are not an output of the entity's ordinary activities, and which line item(s) in the statement of comprehensive income include(s) such proceeds and cost.

TRANSITIONAL PROVISIONS

...

- 80D *Property, Plant and Equipment—Proceeds before Intended Use*, issued in May 2020, amended paragraphs 17 and 74 and added paragraphs 20A and 74A. An entity shall apply those amendments retrospectively, but only to items of property, plant and equipment that are brought to the location and condition necessary for them to be capable of operating in the manner intended by management on or after the beginning of the earliest period presented in the financial statements in which the entity first applies the amendments. The entity shall recognise the cumulative effect of initially applying the amendments as an adjustment to the opening balance of retained earnings (or other component of equity, as appropriate) at the beginning of that earliest period presented.

EFFECTIVE DATE

...

- 81N *Property, Plant and Equipment—Proceeds before Intended Use*, issued in May 2020, amended paragraphs 17 and 74, and added paragraphs 20A, 74A and 80D. An entity shall apply those amendments for annual reporting periods beginning on or after 1 January 2022. Earlier application is permitted. If an entity applies those amendments for an earlier period, it shall disclose that fact.

Amendments to IAS 37 Provisions, Contingent Liabilities and Contingent Assets

Paragraphs 68A, 94A and 105 are added and paragraph 69 is amended. Paragraph 68 is not amended, but is included for ease of reading.

APPLICATION OF THE RECOGNITION AND MEASUREMENT RULES

...

Onerous contracts

...

68. This Standard defines an onerous contract as a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. The unavoidable costs under a contract reflect the least net cost of exiting from the contract, which is the lower of the cost of fulfilling it and any compensation or penalties arising from failure to fulfil it.
- 68A The cost of fulfilling a contract comprises the costs that relate directly to the contract. Costs that relate directly to a contract consist of both:
- (a) the incremental costs of fulfilling that contract—for example, direct labour and materials; and
 - (b) an allocation of other costs that relate directly to fulfilling contracts—for example, an allocation of the depreciation charge for an item of property, plant and equipment used in fulfilling that contract among others.
69. Before a separate provision for an onerous contract is established, an entity recognises any impairment loss that has occurred on assets used in fulfilling the contract (see IAS 36).

...

TRANSITIONAL PROVISIONS

...

- 94A *Onerous Contracts—Cost of Fulfilling a Contract*, issued in May 2020, added paragraph 68A and amended paragraph 69. An entity shall apply those amendments to contracts for which it has not yet fulfilled all its obligations at the beginning of the annual reporting period in which it first applies the amendments (the date of initial application). The entity shall not restate comparative information. Instead, the entity shall recognise the cumulative effect of initially applying the amendments as an adjustment to the opening balance of retained earnings or other component of equity, as appropriate, at the date of initial application.

EFFECTIVE DATE

...

105. *Onerous Contracts—Cost of Fulfilling a Contract*, issued in May 2020, added paragraphs 68A and 94A and amended paragraph 69. An entity shall apply those amendments for annual reporting periods beginning on or after 1 January 2022. Earlier application is permitted. If an entity applies those amendments for an earlier period, it shall disclose that fact.

Amendments to IFRS 3 *Business Combinations*

Paragraph 11 is amended and the footnote to *Framework for the Preparation and Presentation of Financial Statements* in paragraph 11 is deleted. Paragraphs 14, 21, 22 and 23 are amended and paragraphs 21A, 21B, 21C, 23A and 64Q are added. A heading is added above paragraph 21A and the headings below paragraph 21 and above paragraph 22 are amended. Paragraph 10 is unamended but is included for ease of reference.

THE ACQUISITION METHOD

...

Recognising and measuring the identifiable assets acquired, the liabilities assumed and any non-controlling interest in the acquiree**Recognition principle**

10. **As of the acquisition date, the acquirer shall recognise, separately from goodwill, the identifiable assets acquired, the liabilities assumed and any non-controlling interest in the acquiree. Recognition of identifiable assets acquired and liabilities assumed is subject to the conditions specified in paragraphs 11 and 12.**

Recognition conditions

11. To qualify for recognition as part of applying the acquisition method, the identifiable assets acquired and liabilities assumed must meet the definitions of assets and liabilities in the *Conceptual Framework for Financial Reporting* at the acquisition date. For example, costs the acquirer expects but is not obliged to incur in the future to effect its plan to exit an activity of an acquiree or to terminate the employment of or relocate an acquiree's employees are not liabilities at the acquisition date. Therefore, the acquirer does not recognise those costs as part of applying the acquisition method. Instead, the acquirer recognises those costs in its post-combination financial statements in accordance with other IFRSs.

...

14. Paragraphs B31–B40 provide guidance on recognising intangible assets. Paragraphs 21A–28B specify the types of identifiable assets and liabilities that include items for which this IFRS provides limited exceptions to the recognition principle and conditions.

...

Exceptions to the recognition or measurement principles

21. This IFRS provides limited exceptions to its recognition and measurement principles. Paragraphs 21A–31A specify both the particular items for which exceptions are provided and the nature of those exceptions. The acquirer shall account for those items by applying the requirements in paragraphs 21A–31A, which will result in some items being:
- (a) recognised either by applying recognition conditions in addition to those in paragraphs 11 and 12 or by applying the requirements of other IFRSs, with results that differ from applying the recognition principle and conditions.
 - (b) measured at an amount other than their acquisition-date fair values.

Exceptions to the recognition principle

Liabilities and contingent liabilities within the scope of IAS 37 or IFRIC 21

- 21A Paragraph 21B applies to liabilities and contingent liabilities that would be within the scope of IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* or IFRIC 21 *Levies* if they were incurred separately rather than assumed in a business combination.
- 21B The *Conceptual Framework for Financial Reporting* defines a liability as ‘a present obligation of the entity to transfer an economic resource as a result of past events’. For a provision or contingent liability that would be within the scope of IAS 37, the acquirer shall apply paragraphs 15–22 of IAS 37 to determine whether at the acquisition date a present obligation exists as a result of past events. For a levy that would be within the scope of IFRIC 21, the acquirer shall apply IFRIC 21 to determine whether the obligating event that gives rise to a liability to pay the levy has occurred by the acquisition date.
- 21C A present obligation identified in accordance with paragraph 21B might meet the definition of a contingent liability set out in paragraph 22(b). If so, paragraph 23 applies to that contingent liability.

Contingent liabilities and contingent assets

22. IAS 37 defines a contingent liability as:
- (a) a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or
 - (b) a present obligation that arises from past events but is not recognised because:
 - (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or
 - (ii) the amount of the obligation cannot be measured with sufficient reliability.
23. The acquirer shall recognise as of the acquisition date a contingent liability assumed in a business combination if it is a present obligation that arises from past events and its fair value can be measured reliably. Therefore, contrary to paragraphs 14(b), 23, 27, 29 and 30 of IAS 37, the acquirer recognises a contingent liability assumed in a business combination at the acquisition date even if it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation. Paragraph 56 of this IFRS provides guidance on the subsequent accounting for contingent liabilities.
- 23A IAS 37 defines a contingent asset as ‘a possible asset that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity’. The acquirer shall not recognise a contingent asset at the acquisition date.

...

EFFECTIVE DATE AND TRANSITION

Effective date

...

- 64Q *Reference to the Conceptual Framework*, issued in May 2020, amended paragraphs 11, 14, 21, 22 and 23 and added paragraphs 21A, 21B, 21C and 23A. An entity shall apply those amendments to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after 1 January 2022. Earlier application is permitted if at the same time or earlier an entity also applies all the amendments made by *Amendments to References to the Conceptual Framework in IFRS Standards*, issued in March 2018.

Amendment to IFRS 1 *First-time Adoption of International Financial Reporting Standards*

Paragraph 39AG and, in Appendix D, paragraph D13A are added. Paragraph D1(f) is amended.

EFFECTIVE DATE

...

- 39AG *Annual Improvements to IFRS Standards 2018–2020*, issued in May 2020, amended paragraph D1(f) and added paragraph D13A. An entity shall apply that amendment for annual reporting periods beginning on or after 1 January 2022. Earlier application is permitted. If an entity applies the amendment for an earlier period, it shall disclose that fact.

*Appendix D***Exemptions from other IFRSs**

This appendix is an integral part of the IFRS.

D1 An entity may elect to use one or more of the following exemptions:

...

(f) cumulative translation differences (paragraphs D12–D13A);

...

Cumulative translation differences

...

D13A Instead of applying paragraph D12 or paragraph D13, a subsidiary that uses the exemption in paragraph D16(a) may elect, in its financial statements, to measure cumulative translation differences for all foreign operations at the carrying amount that would be included in the parent's consolidated financial statements, based on the parent's date of transition to IFRSs, if no adjustments were made for consolidation procedures and for the effects of the business combination in which the parent acquired the subsidiary. A similar election is available to an associate or joint venture that uses the exemption in paragraph D16(a).

...

Amendment to IFRS 9 Financial Instruments

Paragraph 7.1.9, paragraph 7.2.35 and its heading, and paragraph B3.3.6 A are added. Paragraph B3.3.6 is amended. The requirements in paragraph B3.3.6 A have not been amended but have been moved from paragraph B3.3.6.

Chapter 7 Effective date and transition

7.1 EFFECTIVE DATE

...

7.1.9. *Annual Improvements to IFRS Standards 2018–2020*, issued in May 2020, added paragraphs 7.2.35 and B3.3.6 A and amended paragraph B3.3.6. An entity shall apply that amendment for annual reporting periods beginning on or after 1 January 2022. Earlier application is permitted. If an entity applies the amendment for an earlier period, it shall disclose that fact.

7.2 TRANSITION

...

Transition for Annual Improvements to IFRS Standards

7.2.35. An entity shall apply *Annual Improvements to IFRS Standards 2018–2020* to financial liabilities that are modified or exchanged on or after the beginning of the annual reporting period in which the entity first applies the amendment.

*Appendix B***Application Guidance**

This appendix is an integral part of the Standard.

...

RECOGNITION AND DERECOGNITION (CHAPTER 3)

...

Derecognition of financial liabilities (Section 3.3)

...

B3.3.6 For the purpose of paragraph 3.3.2, the terms are substantially different if the discounted present value of the cash flows under the new terms, including any fees paid net of any fees received and discounted using the original effective interest rate, is at least 10 per cent different from the discounted present value of the remaining cash flows of the original financial liability. In determining those fees paid net of fees received, a borrower includes only fees paid or received between the borrower and the lender, including fees paid or received by either the borrower or lender on the other's behalf.

B3.3.6 A If an exchange of debt instruments or modification of terms is accounted for as an extinguishment, any costs or fees incurred are recognised as part of the gain or loss on the extinguishment. If the exchange or modification is not accounted for as an extinguishment, any costs or fees incurred adjust the carrying amount of the liability and are amortised over the remaining term of the modified liability.

...

Amendment to IAS 41 Agriculture

Paragraph 22 is amended and paragraph 65 is added.

RECOGNITION AND MEASUREMENT

...

22. An entity does not include any cash flows for financing the asset or re-establishing biological assets after harvest (for example, the cost of replanting trees in a plantation forest after harvest).

...

EFFECTIVE DATE AND TRANSITION

...

65. *Annual Improvements to IFRS Standards 2018–2020*, issued in May 2020, amended paragraph 22. An entity shall apply that amendment to fair value measurements on or after the beginning of the first annual reporting period beginning on or after 1 January 2022. Earlier application is permitted. If an entity applies the amendment for an earlier period, it shall disclose that fact.

DECISIONS

COMMISSION DECISION (EU) 2021/1081

of 28 June 2021

amending Decision (EU) 2018/1220 on the rules of procedure of the panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, and in particular Article 143(4) thereof ⁽¹⁾,

Whereas:

- (1) Commission Decision (EU) 2018/1220 ⁽²⁾ lays down the rules of procedure of the panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046.
- (2) The Commission has determined 1 June 2021 as the date on which the European Public Prosecutor's Office (EPPO) assumes the investigative and prosecutorial tasks ⁽³⁾ conferred on it by Council Regulation (EU) 2017/1939 ⁽⁴⁾. The practical arrangements for close cooperation between the Panel and the EPPO must therefore be defined, taking into account the arrangements for cooperation between the European Commission and the EPPO set out in the agreement referred to in Article 103(1) of the above-mentioned Regulation.
- (3) In order to ensure the continuity of the functioning of the Panel and, consequently, the continued protection of the Union's financial interests, it should be specified that the Chair of the Panel continues to perform his/her duties until a replacement has effectively been appointed, or at least for the first months following the end of his/her term of office.
- (4) The conditions relating to the function or minimum grade required for deputies to Panel members representing the European Commission should be aligned on those required for the members representing the authorising officers. To that end, they should be set at the function group level of Head of Unit or equivalent.
- (5) This Decision should come into force on the day following its publication in the *Official Journal of the European Union*, in order to guarantee the functioning of the Panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046.
- (6) Decision (EU) 2018/1220 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

⁽¹⁾ OJ L 298, 26.10.2012, p. 1.

⁽²⁾ Commission Decision (EU) 2018/1220 of 6 September 2018 on the rules of procedure of the panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 226, 7.9.2018, p. 7).

⁽³⁾ Commission Implementing Decision (EU) 2021/856 of 25 May 2021 determining the date on which the European Public Prosecutor's Office assumes its investigative and prosecutorial tasks (OJ L 188, 28.5.2021, p. 100).

⁽⁴⁾ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ L 283, 30.10.2017, p. 1).

Article 1

Decision (EU) 2018/1220 is amended as follows:

(1) Article 2(1) is replaced by the following:

‘1. The Chair of the Panel shall be appointed by the Commission for a non-renewable term of five years, in accordance with Article 143(3) of Regulation (EU, Euratom) 2018/1046, following a call for expressions of interest. His/her term of office shall begin on the date fixed for that purpose in the decision on the appointment. This Decision shall be published in the C series of the *Official Journal of the European Union*.

At the end of his/her term of office, in so far as required for the functioning of the Panel, the Chair shall remain in his/her post until his/her replacement is appointed. This period may not exceed six months.’;

(2) Article 5(1) is replaced by the following:

‘1. The Director of the Central Financial Service in the Directorate-General for Budget shall be one of the two permanent members of the Panel representing the Commission, pursuant to Article 143(2)(b) of Regulation (EU, Euratom) 2018/1046. The Director-General for Budget shall designate an official from at least the function group of Head of Unit or equivalent to deputise for this permanent member.

The Director-General for Budget shall designate the second permanent member representing the Commission *ad personam* among Commission officials of at least AD14 grade. The Director-General for Budget shall designate an official from at least the function group of Head of Unit or equivalent to deputise for this permanent member.’;

(3) in Article 6, paragraphs 3 and 4 are replaced by the following:

‘3. In matters where the request of the referring authority is based, inter alia, on information transmitted by the European Anti-Fraud Office (OLAF), OLAF’s representative shall attend the Panel’s meetings and participate in oral and written procedures. He/she may provide comments at the request of the Chair.

In matters where the request of the referring authority is based, in whole or in part, on information transmitted by the European Public Prosecutor’s Office (EPPO), the latter shall transmit information and attend as an observer in accordance with the provisions of the agreement referred to in Article 103(1) of Council Regulation (EU) 2017/1939.

4. In other cases, OLAF may be invited to provide information or advice, at the request of the Chair. The EPPO may also be invited to provide information or advice, at the request of the Chair, in accordance with the provisions of the agreement referred to in Article 103(1) of Council Regulation (EU) 2017/1939.’;

(4) the following article is inserted:

‘Article 9a

Cooperation with the EPPO

The arrangements for cooperation with the EPPO shall be set out in the agreement referred to in Article 103(1) of Council Regulation (EU) 2017/1939.’;

(5) in Article 10, paragraph 4 is replaced by the following:

‘4. The request for a recommendation shall contain the information required in Article 142(3) of Regulation (EU, Euratom) 2018/1046. It shall also contain the other relevant information referred to in Article 136 of the aforementioned Regulation, including, where applicable, OLAF reports and the information transmitted by the EPPO to enable the appropriate measures to be taken to protect the Union’s financial interests. It shall include a duly completed information sheet.’;

(6) Article 26 is replaced by the following:

'Article 26

Notification of the opinion and the recommendation

The Panel shall notify the opinion without delay to the referring authority, the authorising officer responsible and the observers. Where the EPPO has been invited as an observer, the provisions of the agreement referred to in Article 103(1) of Council Regulation (EU) 2017/1939 shall apply.'

Article 2

Entry into force and publication

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 28 June 2021.

For the Commission
The President
Ursula VON DER LEYEN

CORRIGENDA

Corrigendum to Decision (EU) [2021/1074] of the European Central Bank of 18 June 2021 on the temporary exclusion of certain exposures to central banks from the total exposure measure in view of the COVID-19 pandemic and repealing Decision (EU) 2020/1306 (ECB/2021/27)

(Official Journal of the European Union L 230 I of 30 June 2021)

On the cover page and on page 1, the title of the Decision:

for: **'Decision (EU) [2021/1074] of the European Central Bank of 18 June 2021 on the temporary exclusion of certain exposures to central banks from the total exposure measure in view of the COVID-19 pandemic and repealing Decision (EU) 2020/1306 (ECB/2021/27)',**

read: 'Decision (EU) 2021/1074 of the European Central Bank of 18 June 2021 on the temporary exclusion of certain exposures to central banks from the total exposure measure in view of the COVID-19 pandemic and repealing Decision (EU) 2020/1306 (ECB/2021/27)'.

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