
**AMENDMENT AND RESTATEMENT AGREEMENT TO THE FUNDING AGREEMENT
DATED 19 NOVEMBER 2013**

BETWEEN

THE GOVERNMENT OF ROMANIA

AND

THE EUROPEAN INVESTMENT FUND

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This agreement (the “**Funding Agreement**”) is entered into by and between:

The GOVERNMENT OF ROMANIA (the “**GoR**”), represented by the Ministry of Public Finances and the Ministry of European Funds;

and

The European Investment Fund (“**EIF**”), 37B avenue J.F. Kennedy, L-2968 Luxembourg, Luxembourg;

(the GoR and EIF hereinafter being jointly referred to as the “**Parties**” and each of them as a “**Party**”)

PREAMBLE

- A. As one of the instruments for the application of funds disbursed under the Funds (as defined in Council Regulation (EC) No. 1083/2006), the initiative “Joint European Resources for Micro to Medium Enterprises” (“**JEREMIE**”) was jointly developed by the Commission of the European Communities (“**Commission**”) and EIF, for the purpose of financing expenditure in respect of operations comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds.
- B. The GoR had appointed EIF as the entity operating the JEREMIE Holding Fund (as defined below) by awarding directly to EIF such contract as contemplated in article 44(c) of Council Regulation (EC) No. 1083/2006.
- C. On 18 February 2008, the Parties entered into a Funding Agreement (“**2008 Funding Agreement**”) which was approved by Government Decision no. 514/2008 published in the Monitorul Oficial 445 of 13.06.2008 and amended from time to time.
- D. An amendment and restatement agreement concerning the 2008 Funding Agreement was entered into on 19 November 2013 (“**2013 Funding Agreement**”), approved by Government Decision no. 916/2013 published in the Monitorul Oficial 728 of 26 November 2013, which was, in turn, amended as follows:
 - The first amendment was entered into on 5 June 2015, approved by Government Decision no. 607/2015 and published in the Monitorul Oficial 587 of 5 August 2015.
 - The second amendment was entered into on 23 March 2017, approved by Government Decision no. 173/2017 and published in the Monitorul Oficial 223 of 31 March 2017.
- E. Through the 2013 Funding Agreement, the Parties agreed, among others, to (i) extend the term of the 2008 Funding Agreement until 31 December 2022, (ii)

increase the GoR Contribution to the JEREMIE Holding Fund by initially EUR 50m and subsequently by other contributions approved by the SOPIEC Monitoring Committee and (iii) re-invest any Proceeds of FI Operations in accordance with the Investment Strategy approved from time to time by the Investment Board during the Term of the 2013 Funding Agreement.

F. The following tranches of the GoR Contribution were received by EIF during the eligibility period 2007-2013, totalling EUR 225 million (the “**GoR Contribution**”):

- 28/07/2008 – EUR 100,000,000.00
- 31/12/2013 – EUR 50,000,000.00
- 12/06/2015 – EUR 50,000,000.00
- 30/10/2015 – EUR 25,000,000.00

G. The Parties now wish to (i) extend the term of the 2013 Funding Agreement until the Scheduled Termination Date (as defined below) and (ii) define the scope of, and the rules governing the Legacy Activities (as defined below) to be performed by EIF. In this regard, the GoR wishes to re-appoint EIF in order to actively manage the JEREMIE Holding Fund and, in particular, to re-invest the Legacy Funds (as defined below) in accordance with the terms set out in this Funding Agreement.

In addition, the Parties agree that EIF shall continue to monitor and report on the Existing Portfolio (as defined), comprised by the FI Operations (as defined below) entered into in accordance with the 2008 Funding Agreement or the 2013 Funding Agreement, as well as to actively manage any FI Operations signed under the 2013 Funding Agreement (i.e. before the signature of the current Funding Agreement), as applicable. The active and passive management tasks relating to the Existing Portfolio, including but not limiting to its monitoring and reporting, shall be performed in accordance with the terms established in this Funding Agreement.

H. Taking into account the current circumstances, namely the SARS-CoV-2 pandemic, EIF will propose new Financial Instruments in accordance with the terms of this Funding Agreement and, in particular, with Appendix A (*Investment Strategy for the Legacy Funds*). These will only be approved by the Investment Board (as defined below) upon EIF’s proposal. These Financial Instruments may include: investment portfolio guarantees, working capital, credit lines, overdrafts; subsidized interest rate loans and risk sharing, venture capital, etc.

I. In the light of the foregoing, the Parties now wish to amend and restate the 2013 Funding Agreement subject to, and in accordance with, the terms of this Funding Agreement.

IT IS HEREBY AGREED as follows:

1. Definitions

1.1. The following definitions shall apply:

“Annual Progress Report” means each report for each calendar year during the Term of this Funding Agreement to be prepared by EIF in accordance with Clause 11 and Appendix B (*Reporting*) with information as per 31 December of year N-1, on the basis of the latest data available to EIF;

“Additional Expenses” means the costs, expenses and liabilities incurred or suffered by EIF in connection with the JEREMIE Holding Fund as further described in Clause 8 (*Management Fees and Additional Expenses*), on an yearly average for the Term of this Funding Agreement in an amount of up to 0.3% of the GoR Contribution:

- (a) costs connected to retention of external consultants and legal advisers in connection with FI Operations and Legacy FI Operations;
- (b) costs connected to litigation that may arise in relation to FI Operations and Legacy FI Operations;
- (c) costs incurred in relation to external translations of any documents necessary for the performance of the Legacy Activities hereunder;
- (d) costs arising in connection with the termination of this Funding Agreement and with the transfer of any Legacy Funds, Operational Agreements and the Existing Portfolio, if any, to the GoR or any entity newly appointed by the GoR as JEREMIE Holding Fund manager;
- (e) costs (including any negative interest borne in relation to deposits or negative return on any investment in treasury instruments)

incurred in relation to the establishment, maintenance and/or administration and treasury management of the JEREMIE Romania Holding Fund Bank Account;

- (f) other costs necessary for the performance of the Legacy Activities, to be defined as Additional Expenses and mutually agreed in writing by EIF and the GoR from time to time; and
- (g) costs related to the Investment Board, as further detailed in Clause 5.7;

“Business Day” means a day during which EIF Luxembourg office is open, and banks are open for general business in Romania and Luxembourg;

“CEOI(s)” means a call for expressions of interest which complies in all material respects with the requirements set out in Clause 3.2 of this Funding Agreement;

“Effective Date” means the date on which the last Party signs this Funding Agreement;

“EURIBOR” means, in relation to an unpaid or overdue amount, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the EIF may specify another page or service displaying the relevant rate after consultation with the Investment Board. If such rate is less than zero, EURIBOR shall be deemed to be zero. The relevant period shall be the period selected by the EIF in good faith which reflects the manner in which the EIF finances the unpaid or overdue amount;

“Existing Portfolio” means the aggregate of FI Operations (including the related operational agreements entered into with Financial Intermediaries) financed by the GoR Contribution or Proceeds of FI Operations, as applicable, and whose management is entrusted to

	EIF pursuant to Clause 2.3.(a) of this Funding Agreement;
“FI Operations”	means a project or a group of projects (<i>transactions</i>) selected by EIF in accordance with the 2008 Funding Agreement and/or the 2013 Funding Agreement, as applicable, and implemented by one or more Financial Intermediaries;
“Financial Instrument”	means any financial instrument, including, without limitation, loans, leases, guarantees and counter-guarantees, equity, quasi-equity or mezzanine investments for the benefit of the Final Recipients set out in accordance with the Investment Strategy (<i>Appendix A</i>) of this Funding Agreement and financed from Legacy Funds;
“Final Recipient”	means a legal or natural person receiving financial support from a Financial Instrument;
“Financial Intermediary”	means a credit institution, financial institution, investment fund (including special purpose entities) or other financial intermediaries, whether public or private, responsible for implementing FI Operations and Legacy FI Operations, selected by EIF in accordance with the 2008 Funding Agreement, 2013 Funding Agreement or this Funding Agreement, as applicable;
“Force Majeure Event”	has the meaning given to such term in Clause 17.10 of this Funding Agreement;
“Force Majeure Notice”	has the meaning given to such term in Clause 17.10 of this Funding Agreement;
“GoR Contribution”	means the contribution received by EIF from the GoR during the eligibility period, totalling EUR 225 million which has been already committed to the FI Operations and also applied to, <i>inter alia</i> , the payment of EIF’s fees and other expenses (relating to the Existing Portfolio), as referred to in Recital F of this Funding Agreement;
“Indemnified Amounts”	has the meaning given to such term in Clause 9.5 of this Funding Agreement;
“ICC Rules”	Means the Rules of Arbitration of the International Chambers of Commerce referred to in Clause 19.2 of this Funding Agreement;

- “Investment Board” or “IB” means the investment board established by the GoR in accordance with this Funding Agreement and entrusted with certain responsibilities regarding the JEREMIE Holding Fund in accordance with Clause 5 of this Funding Agreement;
- “Investment Strategy” means the investment strategy for the Legacy Funds attached to this Funding Agreement as Appendix A (*Investment Strategy for the Legacy Funds*), as updated, complemented and/or supplemented from time to time.
- The specific features of new product(s) to be developed with the Legacy Funds, subject to market testing assessment, will be set out in detail in complements, updates and/or amendments to the Investment Strategy, as approved by the Investment Board. The provisions established in the relevant CEOI shall be considered complementary to the Investment Strategy.
- “JEREMIE Holding Fund” means the holding fund established in accordance with Clause 3 of the 2008 Funding Agreement, and operated and managed by EIF pursuant to Clause 2 of this Funding Agreement, following EIF’s re-appointment;
- “JEREMIE Holding Fund Risk Policy” means the risk framework and policy to be applied by EIF when implementing Financial Instruments and entering into Operational Agreements as set out in Appendix F (*JEREMIE Holding Fund Risk Policy*), as updated, complemented and/or supplemented from time to time;
- “JEREMIE Romania Holding Fund Bank Account” means the segregated bank account relating to the performance of the JEREMIE Holding Fund and the Legacy Activities, in accordance with Article 4 of this Funding Agreement, and any other segregated bank account relating to the performance of the JEREMIE Holding Fund, the Legacy Activities and the treasury management, opened at the discretion of EIF for the performance of this Funding Agreement, being in EIF’s name and for the ultimate benefit of the GoR;
- “Legacy Activities” has the meaning set forth in Clause 3.1 of this Funding Agreement;

“Legacy FI Operations”	means a project or a group of projects (<i>transactions</i>) selected by EIF in accordance with this Funding Agreement, financed from Legacy Funds and implemented by one or more Financial Intermediaries;
“Legacy Funds”	means, from time to time, the aggregate of any funds managed by the EIF pursuant to this Funding Agreement, whether in the form of (i) commitments to Financial Instruments, (ii) Proceeds of FI Operations and Proceeds of Legacy FI Operations; (iii) any interest or revenue; and (iv) any amounts received in the JEREMIE Romania Holding Fund Bank Account; <i>less</i> (iv) any amount repaid to the GoR pursuant to Clause 6 of this Funding Agreement;
“Management Fees”	means a fee which the GoR shall pay to EIF in accordance with the terms of this Funding Agreement for the management and operation of the JEREMIE Holding Fund and the performance of the Legacy Activities in an amount of 0.9% per annum of the total amount of the GoR Contribution;
“Non-Cooperative Jurisdiction”	means a jurisdiction (i) listed in the Annex I of the Council of the European Union conclusions on the revised European Union list of non-cooperative jurisdictions for tax purposes, adopted by the Council of the European Union at its meeting held on 12 March 2019, and/or (ii) listed in the Annex of the Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, and/or (iii) rated as “partially compliant”, “provisionally partially compliant” or “non-compliant” by the Organisation for Economic Cooperation and Development and its Global Forum on Transparency and Exchange of Information for Tax Purposes and/or (iv) included in the Financial Action Task Force “Public Statement” (i.e. countries or jurisdictions with such serious strategic deficiencies that the Financial Action Task Force calls on its members and non-members to apply counter-measures or for which the Financial Action Task Force calls on its members to apply enhanced due diligence measures), and/or (v) included in the Financial Action Task Force statement “Improving Global

AML/CFT Compliance: On-Going process”(i.e. countries or jurisdictions with strategic weaknesses in their AML/CFT measures but that have provided a high-level commitment to an action plan developed with the Financial Action Task Force), in each case as such statement, list, directive or annex may be amended and/or supplemented from time to time;

“Operational Agreement(s)” means an agreement entered into with a Financial Intermediary regarding Legacy FI Operations pursuant to Clause 7 of this Funding Agreement;

“Proceeds of FI Operations” means the aggregate of any amount which is generated, recovered, released, including but not limited to capital repayments and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains, or any other income generated by investments from FI Operations and is paid to or becomes available on the JEREMIE Romania Holding Fund Bank Account;

“Proceeds of Legacy FI Operations” means in respect of a Financial Instrument, the aggregate of any amount which is generated, recovered, released, including but not limited to capital repayments and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains, or any other income generated by investments from Legacy FI Operations and is paid to or becomes available on the JEREMIE Romania Holding Fund Bank Account;

“Scheduled Termination Date” means the date falling six (6) months after the period for the recovery of outstanding claims under the last Operational Agreement in force has expired in accordance with its terms, but in any case after the reporting obligations in Clause 11 have been fulfilled;

“State Aid” means state aid as described in Articles 107 and 108 of the Treaty on the Functioning of the European Union together with all other rules or regulations relating to the provision of state aid as adopted from time to time by the European Union or, as the case may be, the GoR;

“Term” has the meaning set forth in Clause 17.1 of this Funding Agreement;

“Termination for Cause”	means the termination of this Funding Agreement due to a material breach or a series of breaches of the same by a Party, which are not capable of being remedied within a reasonable period of time and/or which, pursuant to the reasoned opinion of the other Party acting in good faith, render the continuation of this Funding Agreement impracticable or extremely onerous by such other Party, as particularly indicated in Clause 17.3;
“Transfer Expenses”	means the Transfer Expenses referred to in Clause 17.9 of this Funding Agreement;
“Transfer Period”	means the Transfer Period referred to in Clause 17.5 of this Funding Agreement;
“Treasury Guidelines”	means the set of guidelines governing the treasury management of the JEREMIE Romania Holding Fund Bank Account balance available from time to time for such investments, as attached to this Funding Agreement as Appendix D (<i>Treasury Guidelines</i>);
“2008 Funding Agreement”	has the meaning given in Recital C of this Funding Agreement; and
“2013 Funding Agreement”	has the meaning given in recital D of this Funding Agreement.

1.2. Interpretation:

Save where the context otherwise requires:

- (a) capitalised terms and expressions defined in the Preamble have the same meaning throughout this Funding Agreement unless herein otherwise defined;
- (b) words denoting:
 - (i) the singular number only shall include the plural number also and vice versa;
 - (ii) one gender only shall include the other gender;
 - (iii) persons only shall include firms and corporations and vice versa.
- (c) headings shall be ignored in construing this Funding Agreement;

- (d) if the last day of any term or deadline falls on a day which is not a Business Day, the relevant term or deadline shall end on the immediately following Business Day;
- (e) the Appendices form an integral part of this Funding Agreement and shall have effect accordingly.

2. Purpose of the Funding Agreement

2.1 The Parties entered into this Funding Agreement for the purpose of:

- (a) Extending the duration of the JEREMIE Holding Fund established in the 2008 Funding Agreement, as further restated by the 2013 Funding Agreement, for the Term contemplated in this Funding Agreement, re-appointing to that end EIF to act in the name of EIF, but for and on behalf of, and at the risk of, the GoR, to manage and operate the JEREMIE Holding Fund and to carry out the other functions and duties in relation to the JEREMIE Holding Fund set out in this Funding Agreement;
- (b) Appointing EIF to carry out the Legacy Activities contemplated in Clause 3 below;

2.2 The GoR mandates EIF with:

- (a) The management and operation of the JEREMIE Holding Fund in EIF's name but for and on behalf of, and at the risk of, the GoR, during the Term of this Funding Agreement;
- (b) The performance of the Legacy Activities, as defined below.

2.3. Pursuant to previous Clause 2.1 above, EIF will perform the following two tasks:

- (a) To continue managing and monitoring the Existing Portfolio (*passive management of the Existing Portfolio*), as well as entering into any active management operations signed/implemented before the signature of the current Funding Agreement (*active management of the Existing Portfolio*) as approved pursuant to the 2013 Funding Agreement. To this end, operational agreements relating to FI Operations shall continue to be governed by the 2008 Funding Agreement or the 2013 Funding Agreement, as applicable; except for the monitoring, reporting and auditing obligations, which shall be governed by Clause 11 (*Monitoring, Reporting and Auditing*) of this Funding Agreement and shall be applicable as from the Effective Date.
- (b) Investing the Legacy Funds (*active management of the Legacy Funds*) following the signature of this Funding Agreement and in accordance with the terms set out in this Funding Agreement.

3. Legacy Activities

3.1. The GoR hereby mandates EIF with the performance of the following activities (the “**Legacy Activities**”):

3.1.1. Concerning the Existing Portfolio and the Legacy Funds,

- (a) to manage the JEREMIE Romania Holding Fund Bank Account and to open any other bank accounts necessary for the Legacy Activities, in the name of EIF but for the account and at the risk of the GoR, including any other fiduciary accounts necessary for the implementation of the JEREMIE Holding Fund, in accordance with present Agreement;
- (b) to issue the Annual Progress Reports and un-audited financial statements, in accordance with Clause 11 (*Monitoring, Reporting and Auditing*) and Appendix B (*Reporting*);
- (c) to monitor the implementation of the respective Operational Agreements and the Existing Portfolio in accordance with Clause 11 (*Monitoring, Reporting and Auditing*) and Appendix C (*Monitoring*);
- (d) to manage the funds credited to the JEREMIE Romania Holding Fund Bank Account, including through outsourcing and/or subcontracting all or part of the treasury activities to third parties, in accordance with the Treasury Guidelines (including setting-off any negative interest generated by the treasury activity or bank charges assimilated to negative interest) (*Appendix D*);
- (e) upon termination of this Funding Agreement, to perform the arrangements necessary for (i) the transfer of the JEREMIE Holding Fund, of the Operational Agreements signed with the Financial Intermediaries and the Existing Portfolio, if any, (ii) the return of the funds available at that time in the JEREMIE Romania Holding Fund Bank Account to the GoR and (iii) the termination of this Funding Agreement (it being understood that, in such cases, no agreed upon procedure audit will be performed); and
- (f) to take any other action and to enter into any deeds or other documents that EIF considers to be necessary or desirable for the proper implementation of the JEREMIE Holding Fund.

3.1.2. Concerning the Existing Portfolio,

- (a) To continue managing (actively and passively, as applicable) and processing any amounts to be paid to the relevant Financial Intermediaries in accordance with Clause 2.3.(a) above;

3.1.3. Concerning the Legacy Funds,

- (a) to execute banking, equity and financial transactions relating to the operation of the JEREMIE Holding Fund in compliance with the terms of this Funding Agreement;

- (b) to re-invest the Legacy Funds into Legacy FI Operations in accordance with the Investment Strategy as described in Appendix A (*Investment Strategy for the Legacy Funds*);
 - (c) to identify, evaluate and select, according to EIF internal rules and procedures, appropriate Financial Intermediaries (by issuing and publishing CEOIs), which shall enter into Operational Agreements, provided that the JEREMIE Holding Fund Risk Policy as set out in Appendix F (*JEREMIE Holding Fund Risk Policy*) of this Funding Agreement is taken into account, as varied from time to time, pursuant to Clause 16 (*Amendments*);
 - (d) to perform due diligence on the Financial Intermediaries;
 - (e) to negotiate, enter into, execute, implement and, if needed, amend Operational Agreements in the name of EIF acting in its capacity as agent for and on behalf of the GoR and for the ultimate benefit and risk of the GoR, taking into account the relevant JEREMIE Holding Fund Risk Policy (Appendix F), including with the assistance or advice of external legal advisers retained by EIF in its discretion; and
 - (f) to enforce, defend and if necessary, adapt or waive any rights of the JEREMIE Holding Fund under or in connection with Operational Agreements, including, where it is commercially reasonable, by means of litigation, arbitration, mediation or other dispute resolution methods or procedures, subject to the recovery processes of the Financial Intermediary or limited to the rights vis-à-vis the Financial Intermediary.
- 3.2. The CEOIs which EIF shall develop and issue in connection with the JEREMIE Holding Fund shall comply with the following requirements in all material respects:
- (a) the CEOIs shall allow EIF to evaluate the Financial Intermediaries with respect to their entitlement under national and Union Law, capacity and suitability to perform the tasks entrusted to them.
 - (b) the CEOIs shall be transparent, allow for justified decision-making on objective grounds and shall not give rise to a conflict of interest.
 - (c) the CEOIs shall use, without limitation, the following criteria, as they may be applicable taking into account the context and nature of the respective Financial Instruments:
 - (i) a robust and credible methodology for identifying and appraising Final Recipient;
 - (ii) the level of costs and fees for the implementation of the Financial Instrument and the methodology proposed for the calculation of such costs and fees;

- (iii) the terms and conditions applied in relation to support to be provided to Final Recipient, including, where relevant, pricing;
 - (iv) the ability to raise resources for investments in Final Recipient additional to contributions from the JEREMIE Holding Fund;
 - (v) where a particular Financial Intermediary already manages a similar financial instrument, the ability to demonstrate additional activity in comparison to present activity; and
 - (vi) in cases of risk sharing, the proposed measures to align interests and mitigate potential conflicts of interest.
- 3.3. EIF shall perform the Legacy Activities in its own name, but for the account and at the risk of the GoR, and, consequently, EIF shall be the holder of and entitled to any right or interest of claim that may arise under any Operational Agreement or as regards the Existing Portfolio. However, any risk materialising out of the Legacy Activities and/or in connection with any action or activity performed by EIF under the 2008 Funding Agreement and the 2013 Funding Agreement shall be solely assumed by the GoR, subject to Clause 9 in relation to the liability regime of the Parties.
- 3.4. EIF shall be responsible for its internal administration of the JEREMIE Holding Fund and the Legacy Activities.
- 3.5. In performing the Legacy Activities, EIF shall be entitled to retain (at the expense of the JEREMIE Holding Fund) services of attorneys and external consultants, such as tax and legal advisers, for specific tasks in connection with the Legacy Activities requiring, at the reasonable opinion of EIF, expert advice. When procuring such services, EIF shall ensure that (i) the scope of such services is connected to the scope of this Funding Agreement, (ii) the fees payable for such services are established in accordance with EIF's internal procedure, and (iii) the services rendered by the external consultants are reasonably evidenced.

4. JEREMIE Holding Fund and the JEREMIE Romania Holding Fund Bank Account

- 4.1. The Parties agree that the JEREMIE Holding Fund was established as a “separate block of finance” within EIF. As stated in Recital G and Clause 2 of this Funding Agreement, EIF will continue to manage the JEREMIE Holding Fund in accordance with this Funding Agreement.
- 4.2. The *Additional Funds Bank Account* established under the 2013 Funding Agreement shall be renamed as the JEREMIE Romania Holding Fund Bank Account.
- 4.3. In order for EIF to perform the Legacy Activities, EIF shall maintain and operate the JEREMIE Romania Holding Fund Bank Account.

Any funds, including, if any, any funds blocked to prudentially honour guarantee calls or any payments due in connection with the Existing Portfolio remaining in any of the bank accounts established in accordance with the 2008 Funding Agreement and 2013 Funding Agreement, among others, the *Funds Bank Account*, the *JEREMIE Non-Eligible Expenses Bank Account*, shall be transferred to the JEREMIE Romania Holding Funds Bank Account after the Effective Date of this Funding Agreement.

EIF, at its entire discretion, may decide to close any of the bank accounts established in accordance with the 2008 Funding Agreement and 2013 Funding Agreement.

- 4.4. The JEREMIE Romania Holding Fund Bank Account shall at all times and in all respects be used, committed or otherwise disposed of separately from other EIF resources, and shall be used exclusively for the performance of the purposes described in this Funding Agreement, in accordance with this Funding Agreement.
- 4.5. The Parties acknowledge and agree that EIF shall be entitled to operate the JEREMIE Romania Holding Fund Bank Account as follows. It shall be:

(a) credited with, *inter alia*, the following items:

- (i) the part of the GoR Contribution prudentially set aside to honour guarantee calls or any payments due in connection with the Existing Portfolio;
- (ii) the Proceeds of FI Operations and the Proceeds of Legacy FI Operations;
- (iii) amounts clawed-back from the Financial Intermediaries, or returned/paid by the Financial Intermediaries;
- (iv) interest accrued in the JEREMIE Romania Holding Fund Bank Account, income generated from the treasury management of the balance of the JEREMIE Romania Holding Fund Bank Account;
- (v) amounts returned after making investments in accordance with the Treasury Guidelines (Appendix D);
- (vi) any funds not already provided for in this indent (a); and

(b) debited by EIF, with the following items:

- (i) amounts to be paid directly or indirectly to Financial Intermediaries under Operational Agreements and/or as regards the Existing Portfolio, including financing for loan products, drawdowns under equity investments and guarantee payments, as applicable;

- (ii) Management Fees and Additional Expenses provided under Clause 8 (*Management Fees and Additional Expenses*);
 - (iii) Management fees (if any) in connection with FI Operations and Legacy FI Operations as regards the performance of the Legacy Activities;
 - (iv) bank charges (including negative interests) in connection with the JEREMIE Romania Holding Fund Bank Account;
 - (v) amounts to be withdrawn to make investments in accordance with the Treasury Guidelines (Appendix D);
 - (vi) amounts to be transferred to the GoR in accordance with Clause 6 of this Funding Agreement (*Contributed Resources and Legacy Funds*), where applicable; and
 - (vii) any other amount expressly authorised in writing by the GoR and EIF jointly.
- 4.6. As regards the FI Operations, EIF (i) shall inform the Financial Intermediaries of the closure of the banks accounts established before the entry into force of this Funding Agreement and referred to in Clause 4.3, and (ii) shall instruct them to perform any payments through the renamed JEREMIE Romania Holding Fund Bank Account.
- 4.7. It is acknowledged and agreed by the Parties that (a) nothing in this Agreement is intended or shall be construed as to qualifying this Agreement, the JEREMIE Holding Fund and the JEREMIE Romania Holding Fund Bank Account, as a fiduciary agreement (in Romanian “*contract de fiducie*”) or, respectively, as fiduciary activities (in Romanian “*operatiuni fiduciare*”) in the sense provided under Title IV Articles 773 – 791 of the Romanian Civil Code, enacted by Law no. 287/2009; and (b) Article 2292 (in Romanian “*Fideiusiunea asimilata*”) of the Romanian Civil Code, enacted by Law no. 287/2009, is not applicable insofar this Funding Agreement or its performance is concerned.

5. Investment Board

- 5.1 The GoR shall establish or designate the Investment Board with a view to monitoring and supervising the implementation of the Investment Strategy for the Legacy Funds (*Appendix A*) in accordance with the provisions of this Funding Agreement. The GoR specifically agrees that, for all matters relating to the implementation and monitoring of the JEREMIE Holding Fund and falling into the scope of this Funding Agreement, the GoR shall express its positions through the Investment Board.
- 5.2 The Investment Board shall consist of five (5) members appointed by the GoR after informing the EIF.

- 5.3 Members of the Investment Board shall appoint the Chairperson of the Investment Board at the first meeting of the Investment Board. The members shall act solely in the interests of the JEREMIE Holding Fund.
- 5.4 EIF shall be entitled to designate up to two (2) of its officials to participate in meetings of the Investment Board as observers.
- 5.5 The Investment Board shall, at its first meeting and subject to EIF not objecting, adopt internal rules of procedure in the form attached in Appendix E (the "***Investment Board Rules of Procedure***").
- 5.6 The Parties acknowledge that any decisions taken or communicated by the Investment Board shall always be taken after appropriate assessment of the position of the GoR as appropriate, and that EIF shall be entitled to rely, without further enquiry, on any decisions taken or communicated by the Investment Board and to assume that such decisions fully reflect the position of the GoR.
- 5.7 The costs of the IB and its internal organization and functioning shall be covered by the Additional Expenses, as defined in this Funding Agreement, within a yearly cap of EUR 20,000 (twenty thousand euro).
- 5.8 The IB Members shall be entitled to compensation solely for expenses incurred in performing their duties up to an amount to be determined from time to time by the GoR, in accordance with national law.
- 5.9 All costs incurred by EIF in relation to its participation in the Investment Board shall be borne by EIF as a part of the Management Fees, including EIF's costs for providing the Secretariat of the Investment Board (the "**Secretariat**").
- 5.10 The Investment Board shall liaise internally with competent ministries and other authorities, as it deems appropriate, to perform its tasks in relation to the implementation of the JEREMIE Holding Fund and Legacy Activities and the Investment Board shall be responsible for the following matters:
- (a) acting as the coordination and communication point between EIF and the GoR on all matters relating to the JEREMIE Holding Fund and the Legacy Activities in accordance with this Funding Agreement;
 - (b) communicating, setting and amending, if deemed necessary, eligibility requirements relating to the JEREMIE Holding Fund and the Legacy Activities, in consultation with EIF;
 - (c) providing conclusive rulings on matters relating to applicable national laws and regulations and on compliance with State Aid rules, in connection with the eligibility of financing to Final Recipients under the Operational Agreements, the operation of the JEREMIE Holding Fund, Financial Instruments and Operational Agreements;
 - (d) (1) upon proposal by EIF, (i) approving any amendments, additions and/or complements to the Investment Strategy for the Legacy Funds (Appendix

A), which shall contain the specific features of new product(s) to be developed with the Legacy Funds, complementing the said Investment Strategy, and (ii) approving the terms of the CEOIs;

(2) on behalf of the GoR and upon EIF's request in the context of the approval of any amendments, additions and/or complements to the Investment Strategy for the Legacy Funds (Appendix A) and the approval of any CEOIs as indicated in paragraph (d)(1) above, providing any representations, warranties and other confirmations, including but not limited to any conclusive rulings on matters relating to applicable national and European laws and regulations; and

(3) upon proposal by EIF, approving any amendment, addition and/or complement to the JEREMIE Holding Fund Risk Policy (Appendix F) as it may be required regarding the specific features of the new product(s) to be developed with the Legacy Funds. The representations foreseen in paragraph (d)(2) shall equally apply to any amendment, update and/or complement to the JEREMIE Holding Fund Risk Policy (Appendix F).

(e) receiving the Annual Progress Report foreseen in Appendix B (*Reporting*);

(f) upon proposal by EIF, granting or refusing within ten (10) calendar days of receipt of a proposal to deviate from the JEREMIE Holding Fund Risk Policy and related risk parameters identified in this Funding Agreement in connection with higher risks implied by such deviations (ineligibility risk, counterparty risks, etc.), in respect of both entering into Operational Agreements and in the course of implementing the Operational Agreements.

5.11. Where the Investment Board has decision-making powers upon proposal of EIF, the Investment Board shall have the power only to approve or reject proposals or recommendations in their entirety (and not in part) and shall not have the power to amend such proposals or recommendations, unless EIF has consented to any such amendment.

5.12. For the avoidance of doubt, the Parties acknowledge and agree that EIF shall have the exclusive right to take any decisions necessary in order to perform the Legacy Activities and to make proposals to the Investment Board on the matters set out in this Funding Agreement.

5.13. The EIF shall provide the secretariat of the Investment Board in accordance with this Funding Agreement. The tasks and functions of the Secretariat shall include the following:

(a) organisation of Investment Board meetings, including drawing up and distribution of Investment Board documents, agenda and minutes;

(b) any other tasks as defined in this Funding Agreement or by the Investment Board; and

- (c) communications related to the activities of the Investment Board shall be channelled through the Secretariat.

- 5.14. Any communications to and from the Investment Board shall be validly effected if addressed in writing in accordance with Clause 20.1 of this Funding Agreement.

6. Contributed Resources and Legacy Funds

- 6.1 During the Term of this Funding Agreement and thereafter, until the final transfer of the JEREMIE Holding Fund and of the Operational Agreements entered into with the Financial Intermediaries and the Existing Portfolio, if any, or winding-up of the JEREMIE Holding Fund or related exit policy, the Legacy Funds (i) shall first be used to cover the Management Fees, as applicable, and any management fees due to Financial Intermediaries (a) in accordance with applicable Operational Agreements, and (b) relating the Existing Portfolio, as the case may be, and to honour guarantee calls or any payments due under the relevant Financial Instrument (if any) in accordance with applicable Operational Agreements; (ii) set up new Financial Instruments and (iii) in the event that any Legacy Funds or other amounts remain in the JEREMIE Romania Holding Fund Bank Account after the payments made under items (i) and (ii) above, upon GoR's request, such Legacy Funds or other amounts shall be returned to the GoR, net of the amounts which are estimated to be necessary to make payments in accordance or to cover exposures under item (i) above during the aforementioned period.
- 6.2 During the same period referred to in Clause 6.1 above, the part of the GoR Contribution prudentially set aside to honour guarantee calls or any payments due in connection with the Existing Portfolio blocked in the JEREMIE Romania Holding Fund Bank account shall be used to honour those calls or attend any of those payments.
- 6.3 Notwithstanding Clause 6.1 above, the GoR shall not withdraw, call or cancel any portion of the Proceeds of FI Operations that may become available to the JEREMIE Holding Fund (whether or not such amount has been effectively paid to the JEREMIE Holding Fund) unless the Parties agree to the withdrawal or cancellation in writing.

7. Operational Agreements

- 7.1. For the purposes contemplated in this Funding Agreement and, in particular, as regards Legacy FI Operations, EIF shall ensure that the Operational Agreements include undertakings or representations from the Financial Intermediaries that:
 - a) the Final Recipients benefiting from the support of the Financial Instruments are selected with due account of the nature of the Financial Instrument;

- b) the selection of the Final Recipients is transparent and can be justified by the Financial Intermediaries on objective grounds and that such selection does not give rise to any conflict of interest;
 - c) the Financial Intermediaries agree that the Financial Instruments may be audited by or on behalf of the GoR audit authority;
 - d) the Financial Intermediaries must hold and maintain amounts received from the JEREMIE Holding Fund in a bank account with a credit institution situated within the territory of a Member State of the EU; and
 - e) direct payments made to the Final Recipients, must be made in a bank account with a credit institution situated within the territory of a Member State of the EU.
- 7.2. EIF shall ensure that the Operational Agreements reflect certain additional requirements, including *inter alia*:
- (a) requirements on the eligibility of the enterprises to be financed (which reflect the terms agreed between EIF and the Investment Board) and the terms approved by the Investment Board for the purpose of the CEOIs;
 - (b) requirements on data protection; and
 - (c) requirements to retain documentation for a period of ten (10) years from the date on which the financial support was granted to Final Recipients.

The requirements listed in indents (a) and (b) above shall be agreed between the EIF and the Investment Board in respect of the CEOIs and/or any complements, updates or amendments to the Investment Strategy for the Legacy Funds (Appendix A).

8. Management Fees and Additional Expenses

- 8.1 From the Effective Date of this Funding Agreement until the end of the Term, the GoR shall pay, in the manner provided in this Clause, the Management Fees.
- 8.2 The Management Fees shall be withheld from the funds available in the JEREMIE Romania Holding Fund Bank Account, on a semi-annual basis. The Management Fees shall be payable (or debited from the JEREMIE Romania Holding Fund Bank Account) in arrears.
- 8.3 The Parties agree that, in case the Management Fees due exceed the funds credited to or available in the JEREMIE Romania Holding Fund Bank Account, such excess amount shall be invoiced by EIF and paid by GoR, provided that such excess amount remains within the relevant threshold applicable with respect to the Management Fees and in accordance with this Funding Agreement.

- 8.4 In case any amount is not paid when due, EIF shall be entitled, from the date of such payment being due, to default interest on such unpaid amounts equal to 6-month EURIBOR, as displayed in the relevant Bloomberg or other applicable screen on the date in which the payment was due, and every six (6) months thereafter if necessary, plus a spread of 2.0%.
- 8.5 The Additional Expenses shall be paid when due, based on the invoices received from time to time, by withholding them from the funds available in the JEREMIE Romania Holding Fund Bank Account.

9. Responsibilities of the Parties and Liability

- 9.1. EIF agrees, without prejudice to Clause 9.2 below, to act with the diligence of a professional manager and in good faith in implementing this Funding Agreement.
- 9.2. Subject to Clause 9.3 below, EIF shall under no circumstances be held responsible or liable to the GoR or any other person in connection with the financial performance of the JEREMIE Holding Fund, the Legacy Activities, any action or activity performed by EIF under the 2008 Funding Agreement and the 2013 Funding Agreement, the financial results of any of the Operational Agreements or Financial Instruments, the investment of Treasury Funds (including as a result of negative interest/charges), the failure by the GoR, any Financial Intermediary or any Final Recipient benefitting from financing to comply with any applicable laws or regulations.
- 9.3. EIF shall not be liable to the GoR, or any other person, for any acts or omissions under or in connection with its appointment under this Funding Agreement and its own performance of the JEREMIE Holding Fund, the Legacy Activities and/or any action or activity performed by EIF under the 2008 Funding Agreement and the 2013 Funding Agreement, except to the extent of such costs, claims, damages, losses, liabilities or expenses of the GoR which directly result from fraud, wilful misconduct or gross negligence of EIF in the performance of this Funding Agreement. For the avoidance of doubt, EIF shall under no circumstances whatsoever be liable to the GoR for consequential damages, loss of profit or exemplary or penal damages.
- 9.4. Subject to Clause 9.3 above, any liability of EIF in connection with this Funding Agreement shall be excluded to the extent any action by EIF is based on information obtained from the GoR or a decision or approval from the Investment Board. EIF assumes no obligation to independently verify the accuracy, relevance or completeness of any such information received from the GoR or to examine or challenge any decision or approval by the Investment Board.
- 9.5. The GoR hereby agrees to indemnify and hold harmless EIF and each of its officers, directors, employees, agents, delegates and sub-delegates upon first written demand in respect of any cost, claim, damage, loss, liability, judgments, settlements or expenses (including legal fees and other costs incurred in

investigating or defending any claim) incurred or suffered by EIF (the "**Indemnified Amounts**") in connection with:

- a) the appointment of EIF under this Funding Agreement or in connection with the JEREMIE Holding Fund;
- b) any information supplied by the GoR or the Investment Board to EIF in relation to this Funding Agreement being false, misleading, inaccurate or incomplete;
- c) any instruction made by or on behalf of the GoR to EIF in relation to this Funding Agreement;
- d) any breach (including failure to pay) or misrepresentation, whether arising directly or indirectly, by the GoR or the Investment Board under this Funding Agreement; and/or
- e) any claim by any person to be entitled to any assets which form part of the JEREMIE Holding Fund,

except in so far as such Indemnified Amounts directly result from the fraud, wilful misconduct or gross negligence of EIF in the performance of this Funding Agreement.

For the avoidance of doubt, the obligation of the GoR under this Clause 9.5 extends also to the obligation to hold the EIF harmless for any payments that EIF would have been obliged to make to Financial Intermediaries (including any penalties) under Operational Agreements and/or as regards the Existing Portfolio, as may be applicable.

9.6. The GoR hereby agrees that:

- (a) Any Indemnified Amount (together with any interest accrued thereon for late payment under Clause 9.6(b) due to EIF shall be paid by the GoR to the EIF within ten (10) Business Days of EIF's written request, as an additional amount payable by the GoR.
- (b) If the GoR does not pay any Indemnified Amount within the delay set out in Clause 9.6(a), such amount shall accrue interest from the due date until the date of payment at a rate equal to EURIBOR plus two (2) per cent.

9.7. The obligations of the GoR to indemnify the EIF under this Funding Agreement are continuing and shall remain in full force and effect notwithstanding any termination of the other terms of this Funding Agreement.

9.8. The Parties acknowledge and agree that where EIF enters into guarantees with Financial Intermediaries, whilst the objective is that such guarantees qualify as eligible unfunded credit protection for the purposes of Articles 201, 203 and 213 et seq. of the Regulation 575/2013 (as amended or replaced from time to time), EIF shall take no responsibility for and shall not engage any liability to the GoR

or to any Financial Intermediary for the satisfaction of these requirements and the Financial Intermediaries shall have sole responsibility regarding the prudential and accounting treatment of such guarantees and shall conduct their own independent due diligence and obtain relevant legal, accounting, regulatory and financial advice from appropriate professional advisers.

10. State Aid

- 10.1. The GoR shall be responsible for ensuring compliance with all applicable State Aid rules in all matters involved by the scope of this Agreement, including for each type of Financial Instrument and if need be, to ensure the adoption of the relevant state aid schemes for such purposes.
- 10.2. The GoR shall provide to EIF all information necessary to enable the JEREMIE Holding Fund, each Financial Instrument and each Operational Agreement to be compliant with rules on State Aid. EIF's responsibility with respect to State Aid shall be limited to requiring each Financial Intermediary to ensure compliance with State Aid requirements in each respective Operational Agreement.
- 10.3. Information referred to in Clause 10.2 above shall be communicated by EIF to the Financial Intermediaries which shall be contractually responsible for satisfying the applicable State Aid rules.
- 10.4. Each Operational Agreement shall include an undertaking by the Financial Intermediary to comply with the State Aid rules in accordance with Clause 10.3.

11. Monitoring, Reporting and Auditing

- 11.1. By June 30 of each year, starting on the date of signature of this Funding Agreement, EIF shall prepare and submit to the GoR an Annual Progress Report with information as per 31 December of year N-1, on the basis of the latest data available to the EIF, informing the Investment Board of the Proceeds of FI operations and Proceeds of Legacy FI Operations, the status of the FI Operations and Legacy FI Operations in accordance with Appendix B (*Reporting*).
- 11.2. EIF shall prepare un-audited annual financial statements including a balance sheet, a statement of income and a treasury report as set out in Appendix B (*Reporting*).
- 11.3. EIF shall perform the monitoring checks in accordance with Appendix C (*Monitoring*) herein.

12. Representations, Warranties and Undertakings by the GoR

- 12.1. The GoR hereby represents and warrants and in respect of the matters in this Clause 12.1 (a), (b), (d), (e), and (e) (below), represents and warrants at all material times until the termination of this Funding Agreement that:

- (a) it has full power and capacity (including with respect to its domestic laws and constitutional requirements) to appoint EIF on the terms of this Funding Agreement and to enter into transactions within the scope of this Funding Agreement and has obtained all necessary authorisations and approvals to permit EIF to do so on its behalf;
- (b) the Investment Strategy herein complies with the objectives and conditions of this Funding Agreement and does not conflict with any national or EU law or regulation (including, for the avoidance of doubt, any State Aid rules), as applicable in Romania. Additionally, the GoR confirms that any complement, update or amendment to the Investment Strategy (Appendix A), the JEREMIE Holding Fund Risk Policy (Appendix F) or any CEOI shall be covered by this representation;
- (c) neither its entry into this Funding Agreement nor into any such transaction will breach any law, rule or regulation applicable to it or any material contract to which it is a party;
- (d) the JEREMIE Holding Fund is free from all liens, charges and encumbrances and the GoR undertakes that no liens, charges or encumbrances over the JEREMIE Holding Fund will arise from the acts or omissions of the GoR or of third parties acting on behalf of the GoR;
- (e) any information or documentation provided by the GoR to EIF (including any information as to the financial position of the GoR or the JEREMIE Holding Fund) is true, complete, accurate and not misleading in any material respect;
- (f) the Investment Board, as the case may be, shall provide any further information properly required by EIF or any competent authority; and
- (g) it has understood and acknowledged the risks entailed in the Financial Instruments in particular as set out in the JEREMIE Holding Fund Risk Policy (*Appendix F*), as amended or supplemented from time to time regarding the Financial Instruments that may be developed.

12.2. The GoR will notify EIF promptly if there is any material change to any of the information provided by it for the purposes of this Funding Agreement or to its circumstances generally, and will provide such other relevant information as EIF may from time to time reasonably require. The GoR acknowledges that a failure to provide such information may adversely affect the ability of EIF to provide services under the Agreement and the quality of the services that EIF may provide.

12.3. The GoR undertakes not to deal, or dispose of any of the assets of the JEREMIE Holding Fund nor to authorise any person other than EIF to deal or dispose of any of them.

13. Material Interests and Disclosures

The GoR acknowledges and agrees that:

- (a) EIF operates, or may operate, a number of mandates agreed, or to be agreed, between EIF and third parties. The investment policies of such mandates may entail the offering of financial instruments of a similar nature to the Financial Instruments in a number of jurisdictions, including Romania;
- (b) EIF may on its own account or on behalf of third parties invest in financial instruments of a similar nature to the Financial Instruments in a number of jurisdictions, including Romania; and
- (c) EIF may (i) interact in other capacities (including as a lender, guarantor or investor) with the Financial Intermediaries as well as (ii) provide financing (including in the form of guarantees or equity) to the same Final Recipients /investments as the Financial Instruments contemplated herein, including in a manner where the Financial Instruments contemplated herein are subordinated to, or serve as a credit enhancement for, such EIF support.

Accordingly, EIF may without prior reference to the Investment Board or to GoR, effect transactions in which EIF has, directly or indirectly, a material interest or a relationship of any description with another party, which involves or may involve a potential conflict with EIF's duty to GoR and the Jeremie Holding Fund. EIF shall manage and where possible, address any such potential conflicts of interest, in accordance with its internal rules and procedures, in good faith, taking into consideration the Investment Strategy for the Jeremie Holding Fund.

14. Document Retention

EIF agrees to retain all supporting documents for its actions pursuant to this Funding Agreement for a three (3) year period from the date this Funding Agreement may be terminated.

15. Offshore Policy

- 15.1. EIF agrees not to enter into Operational Agreements with Financial Intermediaries incorporated in a jurisdiction which at the time of envisaged signature of the Operational Agreement would be a Non-Cooperative Jurisdiction as regards of money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion, in accordance with EIF internal policies, as amended from time to time.
- 15.2. EIF will insert appropriate clauses in the Operational Agreements containing undertakings whereby the Financial Intermediaries agree, (i) not to enter into business relations with any entities incorporated in a Non-Cooperative

Jurisdiction; (ii) and to comply with the relevant EIF Non-Cooperative Jurisdiction policies, as published and amended from time to time by EIF.

- 15.3. The Parties hereby agree that in case the status of jurisdiction changes this change in status shall be applied by the EIF to new Operational Agreements in line with the applicable transition measures in the agreed standard. For the avoidance of doubt, the change in the status of a jurisdiction to a Non-Cooperative Jurisdiction, shall only apply to new Operational Agreements entered into after such change.

16. Amendments

- 16.1. Amendments to this Funding Agreement shall be made in writing with the written consent of the Parties, with each Party representing that all prior authorisations and publications necessary for such amendments have been obtained or performed at the time of the written consent. Amendments shall become effective upon execution by both Parties hereto.
- 16.2. The Parties shall negotiate in good faith and execute any amendments to the terms of this Funding Agreement, which may become necessary or desirable in case of an amendment to any laws, regulations or administrative acts of the GoR or the EU, as applicable.
- 16.3. Notwithstanding Clause 16.1 above, any amendments, updates and/or complements to Appendix A (*Investment Strategy for the Legacy Funds*) or Appendix F (*JEREMIE Holding Fund Risk Policy*) may be made by the Parties following the procedure of approval by the Investment Board set out in Clause 5.10.(d).

17. Effective Date, Termination and Force Majeure

- 17.1. This Funding Agreement shall become effective as of the Effective Date and shall, unless terminated earlier in accordance with this Clause, remain in force until the Scheduled Termination Date (the “**Term**”) (provided that the indemnification obligations of the GoR under Clause 9 shall continue in full force and effect notwithstanding any termination of this Funding Agreement).
- 17.2. No later than six (6) months after the Scheduled Termination Date of this Funding Agreement, EIF shall return the balance of the JEREMIE Romania Holding Fund Bank Account outstanding at that time (after deducting any Management Fees and Additional Expenses payable to the EIF until the Scheduled Termination Date) by crediting the relevant amount to such bank account as the GoR communicates to the EIF. Any residual liabilities under the Operational Agreements and/or in connection with the Existing Portfolio shall be transferred to and assumed by the GoR or to an entity expressly appointed by the GoR for this purpose.
- 17.3. Without prejudice to the generality of the grounds which may give rise to a termination for cause (“**Termination for Cause**”), the following events will permit a Termination for Cause:

- (a) the GoR may declare a Termination for Cause in case of a failure by EIF to comply with any of its material obligations under this Funding Agreement, in each case provided that the GoR has sent a warning notice to EIF stating such breach and EIF has not cured such breach within a period of sixty (60) days from the date of receipt of the notice; and
- (b) EIF may declare a Termination for Cause in case of:
 - (i) a failure by the GoR to comply with any of its material obligations under this Funding Agreement in case such failure would prevent EIF from the performance of the Legacy Activities in accordance with this Funding Agreement, or
 - (ii) a default in payment of any amount due to EIF under this Funding Agreement in excess of EUR 100,000 (one hundred thousand) for a period of more than sixty (60) days,

in each case provided that EIF has sent a warning notice to the GoR stating such and the GoR has not cured such breach within a period of sixty (60) days from the date of receipt of the notice.

17.4. Without prejudice to a Termination for Cause, this Funding Agreement may be terminated by EIF, at any time, in case the GoR or any public authority duly empowered within the GoR amends or changes any laws, regulations or administrative acts and such amendment, in the reasonable opinion of EIF, may have an adverse impact on the activities entrusted to EIF under this Funding Agreement, or on the performance, of the JEREMIE Holding Fund.

17.5. The Parties agree that upon occurrence of a Termination for Cause under Clause 17.3., or a Termination under Clause 17.4, EIF may, but shall not be obliged to, give a written notice to the GoR pursuant to which a three (3) month period from the date of the written notice of Termination for Cause or Termination under Clause 17.4., as relevant, shall be immediately initiated during which the Parties agree that the JEREMIE Holding Fund, all assets and liabilities relating to the JEREMIE Holding Fund (including where held or incurred in the name of EIF as part of the Legacy Activities) and all Operational Agreements entered into and/or the Existing Portfolio, if any, are transferred to (whether by assignment, novation or otherwise) or assumed by the GoR (the "**Transfer Period**").

In particular, in such case,

- (a) the GoR shall accept and assume all rights, obligations and liabilities arising out of Operational Agreements and/or the Existing Portfolio, if any, and agrees to enter into any transfer agreement or equivalent documentation necessary for the formalisation of the transfer thereof to the GoR; and

- (b) the balance of the funds paid in the JEREMIE Romania Holding Fund Bank Account, as well as any assets resulting from the implementation of the Operational Agreements and/or the Existing Portfolio, if any, shall be transferred to the GoR and, as relevant, shall be credited with such bank account as the GoR shall communicate to EIF and the JEREMIE Romania Holding Fund Bank Account shall be closed,

and at the end of the Transfer Period, EIF shall be automatically released of any liability under this Funding Agreement, the Operational Agreements and/or in connection with the Existing Portfolio, if any, and this Funding Agreement shall terminate.

- 17.6. The Parties agree that upon occurrence of a Termination for Cause under Clause 17.3., or a Termination under Clause 17.4., (i) until such time that the EIF has given written notice to the GoR in accordance with the provisions of Clause 17.5 and the Transfer Period has lapsed, or (ii) the EIF decides not to give a written notice to the GoR in accordance with the provisions of Clause 17.5, the EIF shall continue to manage the JEREMIE Romania Holding Fund Bank Account and the then existing Operational Agreements and/or the Existing Portfolio, if any, on the terms of this Funding Agreement, including the right to be paid Management Fees and Additional Expenses, to be reimbursed in respect of costs and expenses and to be indemnified under the terms of this Funding Agreement provided that:

- (a) it shall not enter any new Operational Agreements; and
- (b) it shall not re-invest the Legacy Funds in new Legacy FI Operations, save for such re-investment which is made by the relevant Financial Intermediary in accordance with the express terms of an existing Operational Agreement.

In such circumstances, this Funding Agreement shall continue in full force effect until such time as the Scheduled Termination Date occurs in relation to such Operational Agreements that were in effect on the date on which this Funding Agreement would otherwise have ended by reason of the termination.

- 17.7. Without prejudice to any of the provisions of this Clause relating to the Parties' obligations on termination of this Funding Agreement, in the event of termination of this Funding Agreement, the EIF shall be released from any obligation to perform the Legacy Activities, as of the effective date of such termination.
- 17.8. Termination or expiration of this Funding Agreement shall not affect EIF's and the GoR's rights and obligations accrued or existing at the date of such termination or expiration, including, without limitation, EIF's and the GoR's accrued rights and obligations related to payment obligations. Upon termination or expiration of this Funding Agreement, this Funding Agreement shall remain in force in respect of any actual or contingent liability (including, without limitation, any Additional Expenses) or exposure under any Operational Agreement or as regards the Existing Portfolio, if any, until any such liability

or exposure has been written off or determined to be irrecoverable and any applicable statute of limitation has expired and in particular, EIF shall be entitled to retain such amounts as may be required under this Funding Agreement for the payment of any amount owed thereto or the satisfaction of any accrued or contingent obligations under or in connection with outstanding Operational Agreements or related to the Existing Portfolio, as the case may be.

- 17.9. Upon the occurrence of a Termination for Cause under Clause 17.3, or a Termination under Clause 17.4 of this Funding Agreement, all expenses incurred by the EIF in connection with such termination and any transfer of the balance of the JEREMIE Romania Holding Fund Bank Account outstanding at that time (after deducting any Management Fees and Additional Expenses payable to the EIF until termination) and any residual liabilities under the Operational Agreements or concerning the Existing Portfolio, if any, to the GoR or to an entity expressly appointed by the GoR for this purpose (all these external expenses collectively referred to “**Transfer Expenses**”), must be borne by the Party to which the cause for termination is to be attributed..
- 17.10. Notwithstanding any other provision of this Clause 17, in the event that an unforeseeable exceptional situation or event beyond any of the Parties’ control occurs (other than labour disputes, strikes or financial difficulties and the kind), including (without limitation) the cancellation or suspension of the Legacy Activities pursuant to an act of the GoR or otherwise, which prevents either of them from fulfilling any of their obligations under this Funding Agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence (each a “**Force Majeure Event**”), the Party facing such Force Majeure Event shall inform the other Party without delay through a written notice (“**Force Majeure Notice**”) stating the nature, probable duration and foreseeable effects. Upon receipt of a Force Majeure Notice, the Parties shall immediately enter into consultation and make every effort to minimise any damage due to the occurrence of the relevant Force Majeure Event, it being understood that neither Party shall be held in breach of its obligations under this Funding Agreement if it is prevented from fulfilling them due to a Force Majeure Event. If the Parties, acting in good faith, ascertained that the continuation of the performance of the Legacy Activities is impossible or extremely onerous as a result of the occurrence of a Force Majeure Event, this Funding Agreement shall be terminated in accordance with this Clause 17.
- 17.11. EIF shall ensure that there will be clear procedures and practices established within the Operational Agreements, so that the JEREMIE Holding Fund will be entitled to ‘exit’ the operations in accordance with standard market practices. In this context, the Parties agree that for the purpose of enabling an efficient winding-down of the JEREMIE Holding Fund, the EIF may agree with Financial Intermediaries on a settlement of current and future outstanding amounts under Operational Agreements with a view to terminate such Operational Agreements before their scheduled maturity, in each case as determined in accordance with EIF’s relevant guidelines.

17.12. Upon the termination date of this Agreement, the GoR shall have the right to take any measures considered appropriate regarding the JEREMIE Holding Fund, including, but not limited to the following:

- (i) to continue the operation of the JEREMIE Holding Fund and to designate either the EIF or an appropriate entity as its manager, by entering into an appropriate contractual agreement with the respective entity; or
- (ii) to liquidate the JEREMIE Holding Fund and to request the EIF, at the end of all exits from all existing operations, to transfer any remaining assets of the JEREMIE Holding Fund either to the GoR or to any other entity, in accordance with the applicable legislation.

18. Confidentiality and Disclosure

18.1. EIF is not obliged to disclose to the Investment Board or to take into consideration information:

- (a) the disclosure of which by it to the Investment Board would or might be a breach of duty or confidentiality to any other person; or
- (b) which comes to the notice of an employee, officer or agent of EIF but does not come to the actual notice of an EIF individual managing the JEREMIE Holding Fund or any Operational Agreements.

18.2. The Parties will at all times keep confidential all information of a confidential nature acquired in consequence of their involvement in the implementation of this Funding Agreement, except that they may disclose such information in any of the following circumstances:

- (a) where the disclosure is made by EIF to the European Investment Bank;
- (b) where they may be entitled or bound to disclose it by law or regulation or by their own policies on public access to information, or where requested by regulatory or fiscal authorities or any court of competent jurisdiction, including disclosing such information to the Commission, the European Anti-Fraud Office, and/ or the European Court of Auditors;
- (c) to their professional advisers where reasonably necessary for the performance of their professional services;
- (d) (in the case of EIF when disclosing information relating to the GoR and/or the JEREMIE Holding Fund and the Legacy Activities) to any of its delegates and other agents under this Funding Agreement, to any market counterparty or any broker (in accordance with market practice) in relation to transactions undertaken for the JEREMIE Holding Fund, in all cases only to assist or enable the proper performance of its services under this Funding Agreement, or any Operational Agreements; or

(e) to counterparties where disclosure is reasonable for the purpose of effecting transactions in connection with this Funding Agreement or of establishing a dealing relationship with a view to such transactions.

18.3. Each Party, acting in good faith, shall indicate to the other Party which information should be treated as confidential, considering that any information not covered by such declaration shall be deemed not confidential.

18.4. The GoR authorises EIF to supply to EIF's auditors any information about the JEREMIE Holding Fund requested by them.

19. Governing Law; Dispute Resolution

19.1. This Funding Agreement shall be governed by, and construed in accordance with, the laws of Romania.

19.2. The Parties shall use their best endeavours to settle any dispute arising in connection with this Funding Agreement in an amicable manner. Any dispute arising in connection with this Funding Agreement, including its existence, shall be finally and irrevocably settled by arbitration in accordance with the rules of arbitration and conciliation of the International Chambers of Commerce (“**ICC Rules**”) by three arbitrators, one to be appointed by the GoR, one by EIF and the third in accordance with the ICC Rules. The language of the arbitration proceedings shall be English and the place of arbitration shall be in Bucharest.

20. Waiver of Immunity

20.1. For the purposes of this Funding Agreement, the GoR waives for the benefit of EIF, all immunity, whether from suit, against execution of any judgment or otherwise, that it or its property may have in any jurisdiction, provided that this property is part of the private domain. In particular, but without limitation, the GoR:

(a) submits to arbitration in accordance with Clause 19.2 above and to the supervisory jurisdiction of the competent courts in respect of that arbitration;

(b) consents to the giving of any relief by way of injunction or order for specific performance or for the recovery of land or other property; provided that this property is part of the private domain; and

(c) consents to the issue of any process against its property for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its property, provided that this property is part of the private domain.

20.2. These waivers extend to all the property of the GoR allocated to or comprising the JEREMIE Holding Fund, which the GoR accepts and agrees, constitutes property part of the private domain.

21. Final Provisions

21.1. Any notice or communication by one Party to the other Party shall be made in writing and shall be delivered by registered mail (with transmission confirmation clearly stating in the subject *JEREMIE ROMANIA HOLDING FUND* to the following addresses:

If to the GoR:

Ministry of European Funds

Șoseaua București - Ploiești, nr. 1 – 1B, Victoria Office Intrarea str. Menuetului, nr. 7, Sector 1, București, România

To the attention of : Managing Authority for Competitiveness Operational Programme

If to EIF:

European Investment Fund

Attn: Mandate Management

37B avenue J.F. Kennedy

L-2968 Luxembourg

Grand Duchy of Luxembourg with copy to EIF project manager acting as the contact point for and in the GoR.

21.2. Either Party shall inform the respective other Party in writing without undue delay of any change of the above address details. Until receipt of notification of such changes, a Party may validly serve notice to the last address duly notified to it.

21.3. This Funding Agreement and its Appendices constitute the entire agreement of the Parties on the subject hereof and replaces and supersedes any prior agreement.

21.4. If a provision of this Funding Agreement shall become or be held invalid or unenforceable in whole or in part, the validity and enforceability of the remaining provisions of this Funding Agreement shall not be affected. The invalid or unenforceable provision shall be deemed replaced by a valid and enforceable provision which represents the intentions of the Parties when agreeing on the invalid or unenforceable provision to the utmost possible extent.

21.5. In accordance with Clause 16.2 of this Funding Agreement, the Parties shall negotiate in good faith and execute any amendments to the terms of this Funding Agreement, which may become necessary or desirable in case of an amendment of the EU applicable Regulations or any laws, regulations or administrative acts of Romania.

IN WITNESS WHEREOF each of the Parties has caused this Agreement in three (3) counterparts in the English language, and three (3) counterparts in the Romanian language. The English language version constitutes the authentic text of this document and in case of discrepancies between the English version and the Romanian one, the English version shall prevail.

THE GOVERNMENT OF ROMANIA

Represented by the the Ministry of Public Finances and the Ministry of European Funds

Name: Mr. Vasile-Florin Cîțu

Title: Minister of Public Finances

Date: _____

Name: Mr. Ioan Marcel Boloș

Title: Minister of European Funds

Date: _____

EUROPEAN INVESTMENT FUND

Represented by:

Name: Nicolas Panayotopoulos

Title: Departmental Director. Head of
Corporate & Institutional Affairs

Date: _____

Name: Pablo Millán Cantero

Title: Head of Division. Structural
Funds & FoF

Date: _____

APPENDIX A

INVESTMENT STRATEGY FOR THE LEGACY FUNDS

The EIF, in accordance with its internal rules and procedures, launches a series of CEOIs addressed to all financial intermediaries concerned (including venture capital managers, banks, or non-banking financial institutions, loan or guarantee funds, micro credit providers etc.).

The terms and conditions for contributions to Financial Instruments from the JEREMIE Holding Fund, are set out in a specific agreement, to be entered into between EIF and the selected Financial Intermediaries (*Operational Agreement*).

The portfolio of Financial Instruments to be created with Legacy Funds would indicatively be composed of the following instruments (such composition being subject to modification by decision of the Investment Board according to Clause 5 of this Funding Agreement):

- (Counter-)Guarantee facilities. Working through/in cooperation with financial intermediaries (mainly banks or guarantee institutions), one or more leveraged (counter-)guarantee instruments (such as the First Loss Portfolio Guarantee) would aim to support access to bank lending of enterprises.
- Equity (risk capital) fund(s). This proposed financial engineering instrument aims at supporting SMEs in need of early stage or growth capital financing. Companies may be in the process of being set up or may have been in business for a short time, or alternatively may have already proven commercial success and reached a stage in which they require financing to expand their activities. These funds would typically have a life span of up to twelve (12) years.
- Loan instruments (such as the Portfolio Risk Sharing Facility). This product consists of (i) a loan issued by EIF (acting through the JEREMIE Holding Fund) to a Financial Intermediary pursuant to an Operational Agreement, combined with (ii) an undertaking by the Financial Intermediary to build up a new portfolio of loans (within an availability period) satisfying certain eligibility criteria, co-financed by the liquidity provided to it by the JEREMIE Holding Fund. The product also features a risk-sharing element, in so far as the portfolio repayment risk is shared (at a pre-agreed rate) between the JEREMIE Holding Fund and the Financial Intermediary on a loan by loan basis.

The proposed capital allocation per instrument is subject to the decision of the Investment Board. The deployment of further financial instruments may be envisaged, on the basis of identified needs in the market, the decisions and priorities of Romanian authorities, subject to the approval of the Investment Board. Considering the current context, more precisely the SARS-CoV-2 pandemic, EIF will propose the allocation of Legacy Funds to deploy Financial Instruments. Pursuant to Clause 5.10(d) of this Funding Agreement, the new products will be approved solely by the Investment Board, upon proposal by EIF. Such instruments may include, without limitation: portfolio guarantees, working capital, credit lines, overdrafts, portfolio risk sharing loans, risk capital, etc.

The specific features of new product(s) to be developed with the Legacy Funds, subject to market testing assessment, will be set out in detail in the relevant complements, updates and/or amendments to this Appendix A (both of which, as mentioned, will be

approved by the Investment Board) and in the CEOIs, which shall complement the Investment Strategy herein.

By approving the description of the financial products in application of Clause 5.10.(d), the Investment Board confirms that the Investment Strategy, as updated and/or complemented from time to time does not conflict with any national or EU regulation, as applicable in Romania. Further, the Investment Board shall, on behalf of the GoR, when so approving the description of the financial products in application of Clause 5.10.(d), provide any representations, warranties or other confirmations, including but not limited to any conclusive rulings on matters relating to applicable national laws and regulations. Pursuant to Clauses 10.1 (*State Aid*) and 12.1.(b) (*Representations Warranties and Undertakings by the GoR*), the GoR will represent and warrant that the financial products comply with State Aid rules, as applicable in Romania.

Should EIF propose or the Investment Board deem it necessary, the Investment Strategy may be revised (always upon proposal by EIF) taking into account:

- (a) the performance and the impact on the national or regional economy, as applicable, of the JEREMIE Holding Fund until such time;
- (b) any recommendations issued by the Investment Board; and
- (c) any other circumstances, which, in the reasonable opinion of EIF, require such revision.

Should such revision be deemed necessary, EIF shall submit a draft of the revised Investment Strategy to the Investment Board for approval. Any derogations from the Investment Strategy due to market changes, including inter alia due to changes in the value, risk profile or otherwise of certain Legacy FI Operations resulting only from market forces or changes in the market shall be deemed not to be in breach of the Investment Strategy. For the avoidance of doubt, any new Financial Instruments shall require a complement, update and/or amendment of the Investment Strategy as set out in Clause 5.10(d).

APPENDIX B

REPORTING

By June 30 of each year until the termination of this Funding Agreement, EIF shall prepare an Annual Progress Report with information as per 31 December of year N-1, on the basis of the latest data available to the EIF, informing the GoR of the status of FI Operations, Legacy FI Operations, Proceeds of FI Operations and of Legacy FI Operations. The Annual Progress Reports will consist of qualitative and with an annex on quantitative information, and will be provided in English language.

During the term of the Agreement, EIF shall prepare un-audited annual financial statements.

The Annual Progress Report shall contain:

1. a description of each Financial Instrument;
2. the identity of the Financial Intermediaries;
3. the total amount of support paid to the Final Recipients, paid for the benefit of the Final Recipients or committed to guarantees for financing made to Final Recipients, in addition to the Management Fees incurred or Management Fees paid;
4. a summary of the performance of the Financial Instrument, including the progress of its set-up and selection of the Financial Intermediaries;
5. the total value of equity investments made;
6. un-audited annual financial statement including a balance sheet and profit and loss statement;
7. a summary of the monitoring activities carried out; and
8. a treasury report in respect of the Treasury Funds.

A model Progress Report will be submitted for approval by EIF to the Investment Board.

APPENDIX C

MONITORING

1. GENERAL

- 1.1 In this Appendix C, **Operational Agreements** means *Operational Agreements* as defined in this Funding Agreement and the operational agreements entered into with Financial Intermediaries as regards the Existing Portfolio.

Additionally, the term Final Recipients would encompass Final Recipients as defined in this Funding Agreement, and final recipients concerning the Existing Portfolio.

- 1.2 Monitoring checks shall be performed in line with EIF rules and procedures.
- 1.3 One monitoring visit or one desk review at EIF's headquarter per Operational Agreement shall be undertaken throughout the term of each Operational Agreement.
- 1.4 In the context of the Annual Progress Report (Appendix B), EIF will provide information on:
- (a) the date of monitoring activities performed;
 - (b) the types of findings identified; and
 - (c) the status of the findings identified.

The form of such information will be included in the Annual Progress Report template (Appendix B).

2. MONITORING OF FINAL RECIPIENTS

- 2.1 Financial Intermediaries may, in line with their internal rules and procedures and particularly in the cases where fraudulent behaviour is suspected, perform monitoring checks at the level of the Final Recipients.
- 2.2 Monitoring by EIF of Financial Intermediaries shall address the following:
- (a) monitor compliance of Financial Intermediaries with the relevant Operational Agreement;
 - (b) supporting documents:
 - (i) are retained by Financial Intermediaries with respect to financing made available to Final Recipients in order to provide evidence on the use of the funds for the purposes intended;

are kept for the duration of three (3) years from 31 December following termination of the relevant Operational Agreement;

APPENDIX D

TREASURY GUIDELINES

1. Each of the GoR and EIF acknowledges that in performing the Legacy Activities under this Funding Agreement, EIF has the right to manage all funds from time to time deposited into the JEREMIE Romania Holding Fund Bank Account, which shall, after deduction of those amounts which EIF shall deem appropriate to remain in the JEREMIE Romania Holding Fund Bank Account for liquidity purposes, be termed “**Treasury Funds**”.
2. EIF, in accordance with its internal rules and procedures, shall, for the purposes of the management of the Treasury Funds, select a bank (or, for the avoidance of doubt, multiple banks) (“**Treasury Bank(s)**”) duly authorised to operate within the European Union, and having at least the rating of Baal/P2 by Moody’s (or any equivalent rating released by Standard & Poor’s and/or Fitch Ratings) and approved by EIF in accordance with its internal rules and procedures.
3. Treasury Funds shall be deposited in Euro or Romanian Lei as deposits of various maturities with the Treasury Bank, in accordance with the relevant agreement between EIF and the Treasury Bank.
4. EIF shall report to the GoR reference services any relevant information on the treasury management undertaken by EIF in accordance with the Treasury Guidelines within the Annual Progress Report to be provided in accordance with Clause 11.

APPENDIX E

INVESTMENT BOARD RULES OF PROCEDURE

1. This document sets out the Rules of Procedure approved by the Investment Board pursuant to Clause 5 of this Funding Agreement entered into by the GoR and EIF. Any term used in capitalised letter herein shall have the same meaning attributed to it under the Funding Agreement.
2. The Investment Board, at its first meeting, shall appoint its Chairperson among the members nominated by the GoR. Such appointment shall be valid for a term of four years. Should the Chairperson not be able to attend a meeting, s/he shall indicate who, of the other members nominated by the GoR (including the alternates), shall be the Chairperson in respect of such meeting (or the members attending shall designate an *ad hoc* Chairperson for such meeting).
3. The term of office of each duly empowered member of the Investment Board shall be of four years, and re-appointment for additional terms shall be permitted.
4. The EIF shall be entitled to designate its officials or representatives to participate in the sessions of the Investment Board as observers.
5. The GoR shall be able, at any time, to remove the member(s) nominated by it, whether voting and/or alternates. Any such removal shall become effective only upon appointment of a replacement member and effective communication, in writing, to the EIF of the name(s) and contact details of the substituting member.
6. Each Party shall be able, but shall not be obliged to, nominate also an alternate in respect of each of the, respectively, members or observers nominated by it.
7. If the position of a member (whether voting and/or alternate) vacates for any reason whatsoever (e.g. resignation, removal, death, etc.), the Party which appointed such member shall (but shall not be obliged to in respect of alternates), without unreasonable delay, appoint a new member for the remainder of the term of office of the substituted member, by communicating the name(s) and contact details of the substituting member to the other Party. The Investment Board shall continue to function and be able to carry out its tasks even in the absence of such substitution (in which case, for the avoidance of doubt, the Investment Board may operate with a reduced number of members subject to paragraph 12 below).
8. In case the Chairperson position vacates, the Investment Board, at its immediately following meeting, shall appoint a new Chairperson among the members nominated by the GoR, for the remainder of the term of office of the substituted Chairperson.
9. The observers will not have any voting rights. However, subject to the terms further set out in these Rules of Procedure, they shall receive the same written

information on matters discussed and/or decided upon by the Investment Board, as well as minutes of each meeting, as the voting members and their alternates.

10. Within thirty (30) calendar days ahead of the expiry of a term of office, each Party shall communicate to the other Party the new appointed member (and his/her contact details) or the reappointment of the existing member for an additional term.
11. The quorum necessary in order to have a validly constituted Investment Board meeting is of at least three duly empowered voting members and one observer appointed by the EIF.
12. The Secretariat shall convene each meeting by sending a written notice to all members (including the alternates) and observers by e-mail, at the address specified in the notice of appointment of each member, and by communicating to the EIF. Such notice of call, together with the relevant agenda, shall be sent at least ten (10) Business Days before the scheduled date of the meeting. Meetings can be held on shorter notice if all members and observers so agree. Any relevant documentation shall be sent to the members (voting and alternates) and observers five (5) Business Days ahead of the relevant meeting. However, if the meeting is held on a notice shorter than ten (10) Business Days, any documentation shall be sent/delivered, at the latest, at the beginning of the meeting. Agenda points can be added directly at the meeting if all voting members and observers so agree. The provisions of Clause 21 (*Final Provisions*) of the Funding Agreement shall apply *mutatis mutandis* to the communication and delivery of written notices by the Secretariat.
13. Meetings shall be held in Bucharest or at such other city within the GoR as agreed between the Chairperson and the EIF, at the address, date and time indicated from time to time by the GoR. Members and observers shall be entitled to attend via conference or video call, and they shall be considered to be present as long as the Chairperson is satisfied with the identity of the relevant person.
14. The Investment Board shall be entitled to take decisions by written procedure. The text of the relevant resolution shall be proposed by (a) the voting member asking for the relevant written procedure decision or (b) by EIF as regards any amendment, update or complement of the Investment Strategy (Appendix A) or the JEREMIE Holding Fund Risk Policy (Appendix F), and agreed with the EIF and the Chairperson. The Chairperson will distribute the proposed resolution and any relevant materials to the members and observers of the Investment Board and the deadline for voting on any such proposed resolution shall be of ten (10) Business Days as of the date of dispatch. A resolution shall be deemed as positively voted if, at the expiry of the above mentioned ten (10) Business Days, all members have either voted in favour or not cast a vote (i.e. silence will be deemed as a positive vote). The Chairperson will then confirm, in writing, any relevant decision to all members and observers. A written procedure process can be terminated if so requested by any of the voting members or observers, or if any voting member has provided comments such that the resolution would be substantially different or, in any case, at the discretion of the Secretariat. In such

a case, the Chairperson may organise a physical Investment Board meeting, in which case the notice of call and the relevant documentation shall be sent within five (5) Business Days from the date of interruption of the written procedure.

15. The Investment Board's discussions shall be kept confidential.
16. It is acknowledged that the delegation given to the Investment Board under the Funding Agreement shall in no way limit the powers and responsibilities attributed to the GoR, as managing authority, under the relevant national or EU Regulations.
17. All decisions and relevant discussions of the Investment Board shall be recorded in minutes, to be drafted by the EIF. The minutes shall be final upon their approval by way of signature of the Chairperson and EIF.
18. Members of the Investment Board shall respect defined standards of integrity and shall abstain from action that could induce a conflict of interest in the discharge of their duties.
19. Representatives of the EIF other than the observers to the Investment Board, and of other parties (e.g. Financial Intermediaries) may be invited to meetings of the IB, if so deemed appropriate by the Chairperson. They shall not be entitled to any voting right, remuneration or reimbursement, nor to receive accompanying materials and minutes of the meeting.

APPENDIX F

JEREMIE HOLDING FUND RISK POLICY

Part I

Introduction

Appendix F is an outline of the principal risk factors and risk control mechanisms for debt and equity transactions with Financial Intermediaries under the mandate under this Funding Agreement (the “**Mandate**”). It is intended to provide the framework for managing the Mandate from a risk perspective, in light of the Mandate’s objectives and the investment strategy set out in Appendix A (*Investment Strategy for the Legacy Funds*). For the avoidance of doubt, any new Financial Instruments may require a complement, update and/or amendment of this Appendix F as set out in Clause 5.10(d) of the Funding Agreement.

Before deciding to enter into this Funding Agreement, or updating, complementing and/or amending the Investment Strategy for the Legacy Funds (Appendix A), if any, the GoR should carefully consider all of the information available to them, including, but not limited to, the information set out in this Appendix, as updated, complemented and/or amended. The risk factors set out herein are not exhaustive. There may be other risks that the GoR should consider that are relevant to its own particular circumstances or generally.

In line with its objective of addressing market gaps where commercial operators alone do not fully meet the needs of Final Recipients, it is expected that the Mandate will be taking a significant level of risk. The debt Financial Instrument may support additional risk taking by commercial operators or include a subsidy element (i.e. a reduced or no interest rate and/or reduced collateral requirements). As a consequence, the Mandate will incur a certain level of losses and hence not achieve full financial sustainability.

The actual losses incurred by the Financial Instrument will depend on many variables, including (but not limited to) the Mandate’s objectives, the macroeconomic environment, the product parameters and the Financial Intermediaries selected for the implementation.

The tailoring of the Financial Instrument’s characteristics and the focus of the EIF in the context of the selection and due diligence process will be driven primarily by:

For debt Financial Instruments:

- 1) objectives of the Mandate, as set out in the Investment Strategy;
- 2) proposed funding conditions for the Final Recipients and the Mandate’s financial return and timing of reflows from transactions; and
- 3) ability to disburse the funds in a timely fashion by the selected Financial Intermediary(s).

For equity Financial Instruments:

- 1) Evaluation of the Financial Intermediary's focus and proposed investment strategy in the context of the objectives of the Mandate as well as considering the macroeconomic environment and availability of investment opportunities in the targeted market segment.
- 2) Evaluation of the Financial Intermediary's manager team profile, stability and ability to implement the proposed investment strategy. Ability of the team to source transactions in the targeted geography of the Financial Intermediaries well as attracting private financing for the Financial Intermediary (where required). Assessment of the alignment of interest of the Financial Intermediary's manager team with investors in the Financial Intermediary.
- 3) Track record and other experience of the Financial Intermediary's manager team relevant for the proposed investment strategy.

Notwithstanding the above, the risk of the Financial Instrument can be controlled to some extent both at counterparty and at portfolio level by setting minimum criteria for an acceptable counterparty, as well as criteria limiting the riskiness of the underlying portfolio.

In this respect, the implementation of risk mitigating mechanisms introduces an implicit trade-off between the ability to disburse the funds to Final Recipients in a rapid manner and the level of counterparty and portfolio risk taken by the Mandate. Moreover, there is an implicit trade-off between the criteria limiting the riskiness of the underlying portfolio and the overall Mandate objective of improving funding conditions for final recipients through implementation of Financial Instruments.

EIF will publish CEOIs for the evaluation and selection of suitable Financial Intermediaries (counterparties) according to its internal rules and procedures and within the risk framework of the Mandate, as stated in Part II of this Appendix F.

The Financial Instrument will be implemented by EIF applying its own professional judgement and due care. The implementation of the Financial Instrument will take into consideration a number of relevant factors, including inter alia, the overall economic and market conditions and any specific focus that certain transactions may have. Considering the current context, more precisely the SARS-CoV-2 pandemic, the implementation of the Financial Instrument may be impacted with regard to the amount of funds disbursed to Financial Intermediaries and/or the speed of disbursement of the funds.

The GoR acknowledges and agrees with the product descriptions presented in Appendix A (*Investment Strategy for the Legacy Funds*), their terms and the risks associated with them for the JEREMIE Holding Fund. In particular, the GoR acknowledges the risk factors set out below and agrees that any such risks shall be entirely borne by the JEREMIE Holding Fund.

Part II

Risk Factors and Framework for Debt Instruments

1. Final Recipients portfolio risk

It is expected that the JEREMIE Holding Fund will be taking a significant level of risk, commensurate with its role to address perceived market gaps where commercial operators alone do not fully cover the needs of the targeted Final Recipients. The Financial Instrument carries the potential for significant losses to be incurred. The GoR acknowledges that due to the considerations above the JEREMIE Holding Fund will be exposed to quasi-certainty of loss of the allocated budget due to the high expected losses that may be associated with the underlying portfolio(s).

The actual losses and their volatility incurred by the Financial Instrument will depend on many variables, including (but not limited to) the Mandate's objectives, the macroeconomic environment, the product parameters, portfolio diversification, and the Financial Intermediaries selected for the implementation, (and in case of counter-guarantees, the relevant Financial Sub-Intermediaries selected by Financial Intermediaries), particularly their risk appetite and data provision.

Based on the delegated model, the EIF will entirely rely on the Financial Intermediaries' own standard procedures and policies, including (but not limited to) with regard to the selection of Final Recipients or Financial Sub-Intermediaries and their recovery and work-out procedures.

2. Eligibility risk and Irregularities

Final Recipients transactions entered into by Financial Intermediaries with Final Recipients or through Financial Sub-Intermediaries under the Financial Instrument shall meet a number of eligibility criteria in order to be included in the portfolio(s). Non-compliance with such eligibility criteria has different consequences depending on circumstances.

Final Recipient transactions or guarantee transactions covering Final Recipient transactions which do not comply with the agreed eligibility criteria at the date of the inclusion in the portfolio(s) shall be excluded from the portfolio(s) as of the date of their inclusion. Equally, Final Recipient transactions or guarantee transactions covering Final Recipient transactions which become ineligible at a later stage shall be excluded from the portfolio(s) as of the date of their ineligibility.

However, Final Recipient transactions or guarantee transactions covering Final Recipient transactions are not automatically excluded from the portfolio in case the breach of eligibility criteria is outside the control of the Financial Intermediary and losses suffered by the Financial Intermediaries in connection thereof shall, subject to certain conditions, remain covered by the Financial Instrument.

Although EIF will ensure the monitoring of operations in accordance with Appendix C (*Monitoring*), the GoR agrees that, in case the expenditure incurred will not be considered eligible, any such expenditure shall be borne entirely by the JEREMIE Holding Fund, and EIF shall not be liable for any expense considered ineligible.

3. Counterparty risk

The JEREMIE Holding Fund aims to support the development of Financial Instruments exposed to a risk-capital market.

In particular, such risks may relate to counterparty risk of Financial Intermediaries or Financial Sub- Intermediaries via which Financial Instruments are implemented, i.e. the risk of a Financial Intermediary (and a Sub-Financial Intermediary, in case of a counter-guarantee) becoming insolvent, and not being therefore able to proceed with the investment in Final Recipients and/or repay to the JEREMIE Holding Fund any amounts recovered from Final Recipients.

It is understood that the use of the Financial Instrument implies an acceptance of the counterparty risk inherent to the instrument as the JEREMIE Holding Fund would be subject to the consequences of any default of a Financial Intermediary contracted under the instrument.

In accordance with professional due diligence, EIF will seek to assess the counterparty risk of Financial Intermediaries, (and, in case of a counter-guarantee, their assessment of Sub-Financial Intermediaries), including through identification of suitable risk mitigation mechanisms with regards to Financial Intermediaries.

A default of a Financial Intermediary (and/or a Financial Sub- Intermediary, if applicable) might have a negative impact on the servicing of the already established portfolio and monitoring of the already granted loans or guarantees as well. In such cases, losses on the portfolio might be much higher than anticipated, due to e.g. higher defaults and realisation of lower recoveries as the monitoring, workout and recovery functions might not be efficient any more, and therefore may affect negatively the self-sustainability of the individual scheme.

Other risks stemming from a default of a Financial Intermediary (and/or a Financial Sub- Intermediary, if applicable) include (indicatively), the under-utilisation of JEREMIE Holding Fund resources (e.g. defaults happen before JEREMIE Holding Fund funds reach Final Recipients).

In light of the above, the Parties agree that, notwithstanding the implementation of risk mitigation mechanisms, EIF may proceed with the Mandate implementation, in the interest of deploying the JEREMIE Holding Fund resources, and shall not be deemed responsible for any losses should the risks highlighted above or any other risks associated with this type of instrument materialise.

4. Non-absorption risk

The below risk factors are related to the risk that the underlying portfolio is not built-up (in full or in part).

Notwithstanding all reasonable efforts to promote the instrument, the Financial Intermediaries, and Financial Sub-Intermediaries, if applicable, may not be able, due to market reasons and conditions (i.e. demonstrated substantial decrease of the requests for eligible loans and investments from Final Recipients), to complete the build-up of the portfolio of eligible loans and investments.

5. Portfolio tenor risk

Limitation of Final Recipient transactions tenors typically aims to minimise the average time required for the portfolio to fully amortise - thereby minimising exposure to credit risk - and also to help accelerating the timing of proceeds to the JEREMIE Holding Fund. EIF understands that the GoR does not wish to limit the portfolio in this respect with the view of maximising the achieved benefit for the Final Recipients (i.e. increased maturities). The GoR acknowledges that this lack of limitation periods for loans has an impact on the risk profile of the instrument.

6. Risk related to the JEREMIE Romania Holding Fund Bank Account

The GoR acknowledges and agrees that any loss incurred by the JEREMIE Holding Fund arising from (1) the default, insolvency or fraud of any agent, bank (the JEREMIE Holding Fund Treasury Bank) or other third party involved in the treasury management or (2) the application of negative interests on the JEREMIE Holding Fund's assets, shall be borne entirely by the GoR and that the EIF shall not be responsible in any way whatsoever for any consequence.

1. Portfolio and Counterparty Risk Frameworks for the Financial Instrument

The GoR hereby acknowledges and agrees that EIF may directly enter into and/or revise transactions with Financial Intermediaries under debt instruments to the extent that they fall within the portfolio and counterparty risk frameworks described below:

Return Objective	The Mandate's objective is to support Final Recipients established and operating in the relevant jurisdiction with no expectation of full financial sustainability.
Portfolio Risk Framework:	<p>Measures will be implemented on a case-by-case basis following the relevant due diligence process and contractual negotiations with the Financial Intermediaries.</p> <p>For the avoidance of doubt, the list set out herein indicatively comprehends a vast number of measures which EIF may recur to; however, not all of them will necessarily be reflected in each transaction with Financial Intermediaries and the actual level of protection will be fixed, as appropriate, within the boundaries set out below.</p> <p>1) Acceptable rating classes of Final Recipients, and concentration: All rating classes qualifying for lending or guaranteeing under a Financial Intermediary's credit and collection policy will be eligible. With the view of pursuing the Mandate objectives and, as relevant, favour access to finance for riskier Final Recipients and, at the same time, incentivise lending to the same riskier Final Recipients, the EIF will only aim at limiting the riskiest eligible rating classes (determined according to the relevant Financial Intermediary's categorisation, e.g., the two riskiest classes plus potentially the unrated Final Recipients) to not more than 40% of</p>

	<p>the maximum portfolio volume agreed between EIF and the Financial Intermediary (the “Maximum Portfolio Volume”);</p> <p>Large exposure concentrations: Large exposures (i.e. aggregate loan amount per Final Recipients) above EUR 5,000,000 (five million euros) may be considered. Limit: Not more than 40% of the Maximum Portfolio Volume will be composed of large exposure loans.</p> <p>2) Industry limits:</p> <ul style="list-style-type: none"> a. Not more than 30% of the Maximum Portfolio Volume may fall under any individual industry as defined by reference to NACE Code – Rev.2 Division Level, b. Not more than [45]% of the Maximum Portfolio Volume may fall under the [one/two] largest individual industry as defined by reference to NACE Code – Rev.2 Division Level, and c. Not more than 30% of the Maximum Portfolio Volume may fall under a Financial Intermediary transactions’ two of the riskiest industries in aggregate (as identified by the EIF through its due diligence process) as defined by reference to NACE Code – Rev.2 Division Level. <p>3) Maximum Final Recipients transaction amounts: A maximum loan amount will be set for each transaction (subject also to state aid limitations) equal to EUR 5,000,000 (five million euros). An amount higher than EUR 5m may be set, as determined on a case by case basis by the EIF.</p> <p>4) Limits on bullet/balloon non-revolving repayment transactions¹: Not more than 25% of the Maximum Portfolio Volume may be originated in the form of bullet/balloon non-revolving repayment transactions;</p> <p>5) Geographical limits: No limitations will be set.</p> <p>6) Tenor limitations for Final Recipients transactions: No particular limitations will be set (except for maximum and minimum maturity for each Final Recipients transaction regarding Final Recipients).</p>
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¹ Bullet loan refers to a repayment profile whereby the entire principal amount of the financing is to be repaid at maturity); balloon loan refers to a repayment profile whereby at least 30% of the principal amount of the financing is to be repaid at maturity.

Counterparty Risk Framework for the Financial Instrument	The Operational Agreement will contemplate standard events of default, the occurrence of which, if not remedied within the relevant grace period (if any) or explicitly waived, may trigger the termination of the Financial Instrument. Such events include, inter alia, insolvency, insolvency proceedings, non-payment of amounts due and payable under the Operational Agreement.
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In the case where:

- A. a transaction includes terms falling outside the abovementioned *Portfolio Risk Framework* and *Counterparty Risk Framework for the Financial Instrument* which would lead to a materially higher risk to be taken by the JEREMIE Holding Fund, or
- B. a transaction is considered, by EIF in accordance to its own professional judgement and after taking into account, inter alia, the prevailing economic/market conditions and/or any particular mandate/product focus, that it cannot meet all the criteria referred to in the risk frameworks of this Part II leading to a materially higher risk to be taken by the JEREMIE Holding Fund,

a prior approval from the Investment Board regarding the items of deviation or specific concern will be sought, in accordance with Clause 5.10.(f). of this Funding Agreement, in order to either (i) enter into or amend an Operational Agreement not meeting one or more of the criteria mentioned in the above risk frameworks or to (ii) waive the application of one or more of the criteria mentioned in the above risk frameworks under an Operational Agreement.

Part III

Risk Factors and Framework for Equity Instruments

1. JEREMIE Holding Fund specific risk factors

It is expected that the JEREMIE Holding Fund will be taking a significant level of risk, commensurate with its role to address perceived market gaps where commercial operators alone do not fully cover the needs of the underlying Final Recipients. The instrument carries the potential for significant losses to be incurred.

The equity (including quasi-equity) transactions with Financial Intermediaries under the JEREMIE Holding Fund will be implemented by EIF applying its own professional judgment and due care. This notwithstanding, in order to achieve the objectives of the JEREMIE Holding Fund, as set out in the "*Investment Strategy for the Legacy Funds*", EIF may need to divert from its standard commercial investment criteria and accept conditions such as:

- More risky fund managers (e.g. managers, including first-time teams, with shorter or less relevant track-record than typically accepted);
- Transactions on terms typically not accepted by independent private investors (e.g. taking majority position in funds, potentially providing incentives to other investors, operating in a very narrow geographical focus, etc.);
- Fund managers with commercially sub-optimal investment strategy (e.g. reduced fund sizes, lack of diversity due to very narrow geographical focus, short investment periods).

The actual losses, if any, incurred by the Financial Instruments will depend on many variables, including (but not limited to) the fund manager's performance, the level of development of relevant private equity markets, the macroeconomic environment, the product parameters and embedded incentives for private investors, if any. These losses cannot be foreseen with any degree of accuracy but the theoretical ceiling for losses is assumed to be up to the full amount of the investment in each Financial Instrument.

2. Eligibility risk

Equity transactions entered into by a Financial Intermediary with Final Recipients shall meet a number of eligibility criteria which shall be set out notably in the relevant Operational Agreement. These eligibility criteria are determined on the basis of commercial considerations. Non-compliance with such eligibility criteria has different consequences depending on circumstances.

The Operational Agreements will include certain provisions, the objective of which will be to recover the amounts allocated for an underlying transaction which does not comply or no longer complies with the agreed eligibility criteria.

Nevertheless, the inherent characteristics of equity transactions means that the recovery for the benefit of the JEREMIE Holding Fund of such allocated amounts is not guaranteed and remains subject notably to the application of clauses negotiated with the Financial Intermediary. Furthermore, the exercise by the EIF of its rights with regard to the Financial Intermediary is limited by the rights that any investor may exercise towards the Financial Intermediary under the law, notably company law.

The GoR acknowledges and agrees that such risks shall be borne entirely by the JEREMIE Holding Fund and that the EIF shall not be responsible in any way whatsoever for any consequence of any expense being considered ineligible in such circumstances.

3. Non-absorption risk

Notwithstanding all reasonable efforts to promote the instrument, the Financial Intermediaries may not be able, due to market reasons and conditions (i.e. demonstrated substantial decrease of the requests for eligible investments from Final Recipients), to complete the build-up of the portfolio of eligible investments.

4. General equity risk factors

General equity risk factors for equity (including quasi-equity) Financial Instruments include or relate to equity markets, foreign exchange rates, interest rates, credit risk, counterparty risk, market volatility, political risks, among others. The list of risk factors set out below is not exhaustive. Other risks may arise with a specific investment.

- (c) No assurance can be given that a Financial Intermediary will be successful in obtaining suitable investments or, if such investments are made, that the objectives of the Financial Intermediary will be achieved. Investors must rely entirely on the judgment of the board, the investment committee and the adviser, as the case may be, of the Financial Intermediary with respect to the selection and acquisition of investments.
- (d) Investment in a Financial Instrument managed by a Financial Intermediary requires a long-term commitment, with no certainty of return. Many of the investments made by Financial Intermediaries will be highly illiquid, and there can be no assurance that a Financial Intermediary will be able to dispose of such investments in a timely manner. Although investments by a Financial Intermediary may generate some income, the return of capital and the realisation of gains, if any, from an investment will generally occur only upon the partial or complete disposition or refinancing of such investment. While an investment may be sold at any time, it is not generally expected that this will occur before a number of years after the investment is made.
- (e) Each investor must be prepared to bear the economic risk of an investment for at least the duration of the life of a Financial Instrument.

- (f) Generally, an investor in a Financial Instrument may not withdraw any amount from such Financial Instrument or reduce the amount of his/her/its commitments. Depending on the applicable law, the transfer of shares and/or commitments in a Financial Instrument may be subject to the prior written consent of the fund manager or even the other investors.
- (g) Investors subscribing for shares and/or commitments at subsequent closings will participate in existing investments, diluting the shares of existing investors therein.
- (h) A Financial Intermediary will make investments based on estimates or projections of internal rates of return and current returns, which in turn will be based on, among other considerations, assumptions regarding the performance of the portfolio, the amount and terms of available financing and the manner and timing of dispositions, including possible asset recovery and remediation strategies, all of which are subject to significant uncertainty. In addition, events or conditions which have not been anticipated may occur and may have a significant effect on the actual rate of return received on the relevant investments. Investors have no assurance that any capital will be returned to them.
- (i) There can be no assurance that the operations of a Financial Intermediary will be profitable, that a Financial Intermediary or a Financial Instrument will be able to avoid losses or that cash from a Financial Intermediary's operations will be available for distribution to the investors.
- (j) The success of a Financial Intermediary's activities may be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws and national and international political circumstances. These factors may affect the level and volatility of security prices and liquidity of the securities held by the Financial Intermediary.
- (k) Unexpected volatility or liquidity could impair a Financial Intermediary's profitability or result in it suffering losses.
- (l) There is no assurance that a Financial Intermediary will be able to fully invest the commitments made to it, or that suitable investment opportunities will be identified that satisfy the Financial Intermediary's investment strategy. If a Financial Intermediary is unable to invest the commitments of investors, the potential return to the investors could be significantly reduced.
- (m) The operation of a Financial Intermediary and the tax consequences of an investment in the Financial Intermediary are substantially affected by a wide range of legal requirements and regulations, and the performance of one or a small number of investments or by the laws, including tax laws of any jurisdiction in which a Financial Intermediary may be organized, formed or incorporated.

- (n) A Financial Intermediary may fall within the scope of the Alternative Investment Fund Managers Directive 2011/61/EU ("**AIFMD**"). Under the AIFMD, the Financial Intermediary would have to comply with requirements such as *inter alia* relating to the duties of the depositary and the valuation of the assets of the Financial Intermediary. The Financial Intermediary would also be subject to additional reporting requirements. Additional operating costs may be incurred by the Financial Intermediary as a result of these requirements, which may affect the actual returns of the Financial Intermediary or the Financial Instrument.

Therefore, the GoR's readiness to accept these risks is a prerequisite for implementing Financial Instruments in the area of equity and quasi-equity. The acceptance of the risks is effectively an acceptance of a potential trade-off between the returns and the policy impact, enabling the pursuit of the policy objectives set out in the Appendix A ("*Investment Strategy for the Legacy Funds*").

The GoR hereby acknowledges and confirms its understanding and acceptance that the equity-related Financial Instruments with Financial Intermediaries implemented under the JEREMIE Holding Fund will entail a significant level of risk, may not achieve full financial sustainability and may incur a level of losses, as laid out above.