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ANNEXES 1 to 3

ANNEXES

to the

COMMUNICATION FROM THE COMMISSION

**on new requirements against tax avoidance in EU legislation governing in particular
financing and investment operations**

ANNEX 1: Exclusion system applicable to direct and indirect management

Direct management

In direct management, the **exclusion system** is a system to facilitate the detection of persons and entities which pose a risk to the Union's financial interests. The exclusion system aims at excluding from receiving Union funds or participating in award procedures the entities or persons found in specific exclusion situations (also called « exclusion grounds »):

1. breach of obligations relating to the payment of taxes or social security contributions in accordance with the applicable law; (Article 136(1)(b)FR)
2. involvement in money laundering or terrorism financing as defined in Directive (EU) 2015/849; (Article 136(1)(d)(iv) FR)
3. (NEW) creation of an entity to circumvent tax, social or other legal obligations (empty shell company) (Articles 136(1)(g) and (h) FR).

Recipients of Union funds or participants in award procedures are obliged to declare that they are not in one of the exclusion grounds mentioned above. (NEW) Under the revised financial regulation they have also the obligation to disclose their beneficial ownership structure (Article 137(2)(b) FR).

The exclusion is decided by the Commission on the basis of a final judgment or of a final administrative decision or, in the absence of such a judgment or decision, on the basis of a recommendation of the Exclusion Panel (and of established facts or findings and their preliminary classification in law contained in such recommendation) in relation to the cases of Articles 136(1)(d)(iv), 136(1)(g) and 136(1)(h) FR. For the first exclusion ground (breach of obligations relating to the payment of taxes - Article 136(b) FR) a final administrative decision is necessary under all circumstances.

Indirect management

Under the new Financial Regulation, when implementing funds under **indirect management** covered by the Financial Regulation, the Commission may rely on implementing partners' equivalent exclusion system or if the relevant system of the implementing partner has not been positively assessed, the Commission will include exclusion-related provisions in the agreement with the implementing partner:

(NEW) prior to signing any contribution agreement with an Implementing Partner, the Commission shall assess whether the implementing partner's exclusion system is equivalent to the system of the Financial Regulation (Article 154(4)(d) FR). The Terms of reference for ex-ante assessments will contain specific indication elements on tax good governance.

(NEW) Should this ex-ante assessment prove that the Implementing Partner's exclusion system is equivalent the Commission may rely on their system. If the Commission concludes that the system and rules of the implementing partner are not or only partially equivalent, or if an ex-ante assessment has not been performed, the Commission shall apply appropriate remedy or safeguard measures, including a contractual obligation to apply the exclusion system of the Commission in its entirety or for specific exclusion grounds.

Where the Commission has a financial partnership agreement with the Implementing Partner, this partnership agreement should detail the extent to which the Commission can rely on the procedures of the Implementing Partners.

Considering that for financial instruments it is likely that an ex-ante assessment to Implementing Partners will not be fully equivalent unless they integrate the EU list in their systems and procedures, the new Financial Regulation specifies that the financial recipients and intermediaries shall provide a declaration on their honour that they are not in one of the situations of exclusion (Article 137 FR). Therefore, it should be ensured, through the introduction of provisions in the contractual agreements with Implementing Partners that these partners fulfil their obligations.

In addition, the partners implementing financial instruments under indirect management shall foresee in their contracts with their beneficiaries (final recipients and intermediaries) that financing supported by the EU budget would be contingent upon the disclosure of beneficial ownership information for the purpose of combatting money laundering and terrorist financing (Article 155(3)FR). This information may be requested by the Implementing Partner at any moment during the implementation.

Compliance with tax obligations should be ensured as for other obligations under the applicable contractual arrangements between the Commission and the implementing partner; any breach of such obligations would trigger the consequences set in the applicable arrangement, (such as, *inter alia*: remedial measures, suspension, termination of the contract, ineligibility of related costs etc.).

ANNEX 2: Legal provisions on tax avoidance

Article 22 – EFSD Regulation	Article 13- ELM Decision	Article 22 – EFSI Regulation	Agreed redraft of COM proposal for Financial Regulation- Article 150 (2) & (2a) after
Adopted and entered into force	Agreed, to enter into force by Q1 2018	Adopted and entered into force	Agreed text after trilogues
<p>Excluded activities and non-cooperative jurisdictions</p> <p>1. In their financing and investment operations, the eligible counterparts shall comply with applicable EU legislation and agreed international and EU standards and, therefore, shall not support projects under this Regulation that contribute to money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion.</p> <p>In addition the eligible counterparts shall not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant EU policy on</p>	<p>Prevention of money laundering, fight against terrorism, taxation, non-cooperative jurisdictions</p> <p>1. In its financing operations covered by this Decision, the EIB shall comply with applicable EU legislation and agreed international and EU standards and, therefore, shall not support projects under this decision that contribute to money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion.</p> <p>In addition the EIB shall not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant EU policy on non-cooperative jurisdictions, or that are identified as high risk third countries pursuant to article 9.2 of Directive 2015/849, or that do not effectively comply with EU or</p>	<p>Excluded activities and non-cooperative jurisdictions</p> <p>1. In their financing and investment operations covered by this Regulation, the EIB and the EIF shall comply with applicable EU legislation and agreed international and EU standards and, therefore, shall not support projects under this Regulation that contribute to money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion.</p> <p>In addition the EIB and the EIF shall not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant EU policy on non-cooperative jurisdictions, or that are identified as high risk third countries pursuant to article 9.2 of Directive (EU) 2015/849, or that do not effectively comply with EU or internationally agreed tax standards on</p>	<p>2. When implementing Union funds entities and persons shall:</p> <p>(a) comply with applicable Union legislation and agreed international and Union standards and, therefore, not support actions that contribute to money laundering, terrorism financing, tax avoidance, tax fraud and tax evasion.</p> <p>(b) when implementing financial instruments and budgetary guarantees in accordance with Title X, not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions or that are identified as high risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849, or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information. They may derogate from this principle only if the action is physically implemented in one of those</p>

<p>non-cooperative jurisdictions, or that are identified as high risk third countries pursuant to article 9.2 of Directive (EU) 2015/849, or that do not effectively comply with EU or internationally agreed tax standards on transparency and exchange of information. The eligible counterparts may derogate from this principle only if the project is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in paragraph 1.</p> <p>When concluding agreements with financial intermediaries, the eligible counterparts shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.</p> <p>2. In its financing and</p>	<p>internationally agreed tax standards on transparency and exchange of information. The EIB may derogate from this principle only if the project is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in paragraph 1.</p> <p>When concluding agreements with financial intermediaries, the EIB shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.</p> <p>The EIB shall review its policy on non-cooperative jurisdictions at the latest following the adoption of the Union list of non-cooperative jurisdictions for tax purposes.</p> <p>Every year thereafter, the EIB shall submit a report to the EP and to the Council on the implementation of its policy mentioned in the previous paragraph in relation to financing operations including country by country information and a list of intermediaries with whom they cooperate.</p> <p>2. In its financing operations covered by this Decision, the EIB</p>	<p>transparency and exchange of information.</p> <p>When concluding agreements with financial intermediaries, the EIB and the EIF shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.</p> <p>The EIB and EIF shall review its policy on non-cooperative jurisdictions at the latest following the adoption of the Union list of non-cooperative jurisdictions for tax purposes.</p> <p>Every year thereafter, the EIB and EIF shall submit a report to the EP and to the Council on the implementation of its policy mentioned in the previous paragraph in relation to the EFSI financing and investment operations including country by country information and a list of intermediaries with whom they cooperate.</p> <p>2. In its financing and investment operations covered by this Regulation, the EIB shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and</p>	<p>jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in point (a) of this paragraph.</p> <p>When concluding agreements with financial intermediaries, entities and persons implementing financial instruments and budgetary guarantees in accordance with Title X shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.</p> <p>3. When implementing financial instruments and budgetary guarantees in accordance with Title X entities and persons shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and in particular Regulation (EU) 2015/847 of the European Parliament and of the Council and Directive (EU) 2015/849. They shall make funding under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849 and publish country-by-country reporting data in accordance with Article 89(1) of Directive 2013/36/EU of the European Parliament and of the Council.</p>
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<p>investment operations, the eligible counterpart shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and in particular Regulation (EU) 2015/847 of the European Parliament and of the Council¹ and Directive (EU) 2015/849. The eligible counterparts shall make both direct funding and funding via intermediaries under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849 and publish country-by-country reporting data in accordance with Article 89(1) of Directive 2013/36/EU of the European Parliament and of the Council².</p>	<p>shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and in particular in Regulation (EU) 2015/847 of the European Parliament and of the Council (1) and Directive (EU) 2015/849 of the European Parliament and of the Council (2). In particular, the EIB shall make both direct funding and funding via intermediaries under this Decision contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849."</p>	<p>in particular in Regulation (EU) 2015/847 of the European Parliament and of the Council and Directive (EU) 2015/849 of the European Parliament and of the Council. In particular, the EIB shall make both direct funding and funding via intermediaries under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849.</p>	
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ANNEX 3: EU tax policy and regulatory framework

The EU tax policy and regulatory framework includes, in particular and subject to further developments:

- Code of Conduct for business taxation, 1.12.1997 OJ C2, 6.1.1998,
- Council Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States,
- Council directive 2003/49/EEC on a common system of taxation applicable to interest on royalty payments made between associated companies of different Member States,
- Commission Recommendation of 6 December 2012 on aggressive tax planning 2012/772/EU,
- Council directive 2011/16/EU on administrative cooperation in the field of taxation.
- Commission Anti-Tax Avoidance Package: Next steps towards delivering effective taxation and greater tax transparency in the EU (COM/2016/23), Commission Recommendation (EU) 2016/136 28 January 2016 on the implementation of measures against tax treaty abuse; Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market,
- ECOFIN Council conclusions of 12 February, 8 March, 25 May, 17 June, 8 November and 5 December 2016, 5 December 2017, 23 January and 13 March 2018.

This information can be consulted at:

- EU policy on non-cooperative jurisdictions for tax purposes (https://ec.europa.eu/taxation_customs/tax-common-eu-list_en),
- the anti-tax avoidance package (Commission website: https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package_en; Council website : <http://www.consilium.europa.eu/en/policies/anti-tax-avoidance-package/>),
- the EU policy against harmful tax competition (https://ec.europa.eu/taxation_customs/business/company-tax/harmful-tax-competition_en) including the work of the Code of conduct Group on business taxation (Council website: <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>),
- the EU work on administrative cooperation in the field of direct taxation (https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en),
- on transparency for intermediaries (https://ec.europa.eu/taxation_customs/business/company-tax/transparency-intermediaries_en),
- and the EU regulatory framework on taxation (http://eur-lex.europa.eu/browse/directories/consleg.html?root_default=CC_1_CODED%3D09&displayProfile=lastConsDocProfile&classification=in-force#arrow_09).